

By Mr. Sisitsky, a petition (accompanied by bill, Senate, No. 726) of Alan B. Sisitsky and Raymond A. Jordan, Jr., for legislation to provide for the speedy trial of criminal defendants. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-eight.

AN ACT PROVIDING FOR THE SPEEDY TRIAL OF CRIMINAL DEFENDANTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 A bill to repeal section seventy-two of chapter two hundred  
2 seventy-seven of the General Laws, as recently amended by  
3 section sixty-one of chapter two hundred eighteen of the Re-  
4 vised Laws, and inserting in place thereof:

5 1) The trial of criminal cases shall be given preference  
6 over civil cases. The trial of defendants in custody and de-  
7 fendants whose pre-trial liberty is reasonably believed to pre-  
8 sent unusual risks should be given preference over other crim-  
9 inal cases.

10 a) In cases where a defendant is detained, the common-  
11 wealth must be ready for trial within ninety days from the  
12 date of detention. If the Commonwealth is not ready for trial  
13 within such time, the defendant shall be released upon bond  
14 or his own recognizance or upon such other conditions as  
15 the court may determine unless there is a showing of ex-  
16 ceptional circumstances by the Commonwealth justifying the  
17 continued detention of the defendant, and then the detention  
18 shall continue only for as long as necessary. This shall not  
19 apply to any defendant who is serving a term of imprison-  
20 ment for another offense, nor to any defendant who, subse-  
21 quent to release under this rule, has been charged with an-  
22 other crime or has violated the conditions of his release.

23 b) In all cases, the Commonwealth must be ready for trial  
24 within six months from the date of arrest, service of sum-  
25 mons, detention, or the filing of a complaint or for a formal  
26 charge upon which the defendant is to be tried (other than a

27 sealed indictment) whichever is the earliest. If the Common-  
28 wealth is not ready for trial within such time, or within the  
29 period extended by the court for good cause, then, upon appli-  
30 cation of the defendant or upon motion of the court, after an  
31 opportunity for argument, the charge shall be dismissed.

32 2) Specified periods of time excluded from the above com-  
33 putations are:

34 a) A reasonable period of delay resulting from other pro-  
35 ceedings concerning the defendant, including but not limited  
36 to proceedings for the determination of competency and the  
37 period during which he is incompetent to stand trial, pre-trial  
38 motions, interlocutory appeals, trial of other charges, and the  
39 period during which such matters are subjudice.

40 b) The period of delay resulting from a continuance granted  
41 by the court at the request of, or with the consent of, the  
42 defendant or his counsel. The court shall grant such a con-  
43 tinuance only if it is satisfied the postponement is in the  
44 interest of justice, taking into account the public interest in  
45 the prompt disposition of criminal charges. A defendant with-  
46 out counsel should not be deemed to have consented to a con-  
47 tinuance unless he has been advised by the court of his rights  
48 under these rules and the effect of his consent.

49 c) The period of delay resulting from a continuance granted  
50 at the request of a prosecuting attorney if:

51 i. the continuance is granted because of the unavailability  
52 of evidence material or witnesses to the government's case,  
53 when the prosecuting attorney has exercised due diligence to  
54 obtain such evidence and there are reasonable grounds to  
55 believe that such evidence will become available within a  
56 reasonable period; or

57 ii. the continuance is granted to allow the prosecuting attor-  
58 ney additional time to prepare the government's case and the  
59 Commonwealth shows this additional time is justified by the  
60 exceptional circumstances of the case.