

Case Law Update: Tolling of the Speedy Trial Clock During the Pandemic

by Adam Sheppard

In Illinois, criminal defendants must be brought to trial within 120 days if they are in custody and 160 days if on bond. 725 ILCS 5/103-5. An exception can be made when defendants agree to extend the deadline. *Id.* Defendants also have a constitutional right to a jury trial. In response to the COVID-19 pandemic, on March 13, 2020, the Circuit Court of Cook County suspended jury trials (at first for 30 days). On March 20, 2020, the Illinois Supreme Court entered an order authorizing the Chief Judges of each circuit to continue trials “for the next 60 days and until further order of this Court.” M.R. 30370 (3/20/20). The Court further ordered, “[i]n the case of criminal proceedings, any delay resulting from this emergency continuance order shall not be attributable to either the state or the defendant for purposes of [speedy trial computations].” Given the ongoing nature of the pandemic, the portion of the order which had initially limited the length of trial continuances to 60 days was subsequently removed. M.R. 30370 (5/20/20). Additionally, the Court ordered the speedy trial clock tolled during these continuance periods. *Id.* All the while, the Circuit Court of Cook County continues to suspend jury trials.

The intention behind these orders – public safety – is obviously laudable. The question remains, however, whether these orders are constitutional. The Illinois Supreme Court’s order states that the pandemic-related-continuances “serve the ends of justice and outweigh the best interests of the public and defendants in a speedy trial.” *Id.* But this language does not appear in the Illinois speedy trial statute. See 725 ILCS 5/103-5. It does appear in the federal Speedy Trial Act. See 18 U.S.C. § 3161(h)(7)(A). The federal act, however, is non-binding on Illinois courts.

Where then is the authority for the Court’s order tolling the speedy trial clock indefinitely? The Court can point to “Emergency Preparedness Standards for the Illinois Circuit Courts,” which constitute an official policy of the Administrative Office of the Illinois Courts (eff. January 1, 2009).

Available at https://courts.illinois.gov/SupremeCourt/Policies/Pdf/Emergency_Preparedness_Standards_2.0.pdf. Under §2.0, “[i]n the event a court facility is closed due to an emergency, procedures shall be established to facilitate requests to suspend, toll, or otherwise grant relief from time deadlines imposed by statutes and rules. This may include, but is not limited to, those procedures affecting speedy trials in criminal and juvenile proceedings, civil process and proceedings, and appellate time limitations.” *Id.* These standards were not promulgated specifically to address the current pandemic. Comparatively, in response to COVID-19, the Ohio General Assembly passed House Bill 197 (effective March 27, 2020) which tolled statutory speedy trial in all cases set to expire between March 9, 2020 and July 30, 2020.

A principal issue with the current Illinois order is its tolling of the speedy trial clock *indefinitely*. Comparatively, federal law *extends* the time periods for bringing defendants to trials during an emergency and delineates those time periods. See 18 U.S.C. § 3174(a) (providing that the ordinary 70-day time limit for a speedy trial can be suspended up to one year and instead, allowing up to 180 days before a trial must commence). See 18 U.S.C. § 3174(b); see e.g., *In re Approval of Judicial Emergency Declared in Cent. Dist. of California*, 955 F.3d 1140, 1142 (9th Cir. 2020) (applying the statute based on coronavirus). Indeed, in the Northern District of Illinois, the current order from Chief Judge Pallmeyer excludes from the speedy trial clock a specific time period: “the period of any continuance entered from the date of this Fifth Amended General Order [July 10, 2020] through September 14, 2020.” (N.D. Ill. 5th Amnd. Gen. Ord., 20-0012). Historically, when courts have suspended speedy trial clocks based on an emergency, they did so for a finite period of time. See e.g., *People v. Sheehan*, 39 Misc. 3d 695 (N.Y. Cnty. Crim. Ct. 2013) (30-day suspension was excepted from speedy trial deadline as an exceptional circumstance based on Hurricane Sandy). Based on the foregoing, defendants may be able to challenge blanket orders which suspend the speedy trial clock indefinitely.

Defendants can also argue for a case-by-case approach. Under Illinois case law, “[f]our factors must be balanced to determine whether a defendant was deprived of his speedy trial right: the length of the delay, the reasons for the delay, the defendant’s assertion of his right, and the prejudice, if any, to the defendant. *** [N]o single factor is necessary or sufficient to find that the right to a speedy trial has been violated.” *People v. Holmes*, 2016 IL App (1st) 132357, ¶ 66. Accordingly, defendants—particularly in-custody defendants—should cite the prejudice to them when making their speedy trial arguments. Given those factors also include the defendant’s assertion of his speedy trial right, it is also good practice for defendants who are seeking a speedy trial to demand trial and object, for the record, to continuances.

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