

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE REPEAL AND)  
REENACTMENT OF SDCL 23A-44-5.1 )

RULE 91-11

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Pursuant to a hearing held on February 14, 1991, at Pierre, South Dakota, relating to the repeal and reenactment of SDCL 23A-44.5.1, the Court having considered the proposed repeal and reenactment, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 23A-44-5.1, be and it is hereby repealed and reenacted to read in its entirety as follows:

**23A-44-5.1. Time allowed for disposition of criminal case--Periods excluded--Dismissal.**

- (1) Every person indicted, informed or complained against for any offense shall be brought to trial within one hundred eighty days, and such time shall be computed as provided in this section.
- (2) Such one hundred eighty day period shall commence to run from the date the defendant has first appeared before a judicial officer on an indictment, information or complaint. As to indictments, informations, complaints or orders for a new trial pending on July 1, 1991, such one hundred eighty day period shall commence to run from July 1, 1991.
- (3) If such defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, such period shall commence to run from the date of the mistrial,

filing of the order granting a new trial, or the filing of the mandate on remand.

- (4) The following periods shall be excluded in computing the time for trial:
- (a) The period of delay resulting from other proceedings concerning the defendant, including but not limited to an examination and hearing on competency and the period during which he is incompetent to stand trial; the time from filing until final disposition of pretrial motions of the defendant, including motions brought under § 23A-8-3; motions for a change of venue; and the time consumed in the trial of other charges against the defendant;
  - (b) The period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel provided it is approved by the court and a written order filed. A defendant without counsel shall not be deemed to have consented to a continuance unless he has been advised by the court of his right to a speedy trial and the effect of his consent;
  - (c) The period of delay resulting from a continuance granted by the court at the request of the prosecuting attorney if the continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date and provided a written order is filed;
  - (d) The period of delay resulting from the absence or unavailability of the defendant;
  - (e) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not

granting a severance. In all other cases the defendant shall be granted a severance so that he may be tried within the time limits applicable to him; and

- (f) Other periods of delay not specifically enumerated herein, but only if the court finds that they are for good cause. A motion for good cause need not be made within the one hundred eighty day period.
- (5) If a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, the defendant shall be entitled to a dismissal with prejudice of the offense charged and any other offense required by law to be joined with the offense charged.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 1991.


DATED at Pierre, South Dakota, this 26th day of February, 1991.

BY THE COURT:



Robert A. Miller, Chief Justice

ATTEST:

  
Clerk of the Supreme Court  
(SEAL)

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

FEB 26 1991

  
Clerk