

§ 18-1-405. Speedy trial.

Colorado Statutes

Title 18. CRIMINAL CODE

Article 1. Provisions Applicable to Offenses Generally

Part 4. RIGHTS OF DEFENDANT

Current through Chapter 364 of the 2015 Legislative Session

§ 18-1-405. Speedy trial

- (1) Except as otherwise provided in this section, if a defendant is not brought to trial on the issues raised by the complaint, information, or indictment within six months from the date of the entry of a plea of not guilty, he shall be discharged from custody if he has not been admitted to bail, and, whether in custody or on bail, the pending charges shall be dismissed, and the defendant shall not again be indicted, informed against, or committed for the same offense, or for another offense based upon the same act or series of acts arising out of the same criminal episode.
- (2) If trial results in conviction which is reversed on appeal, any new trial must be commenced within six months after the date of the receipt by the trial court of the mandate from the appellate court.
- (3) If a trial date has been fixed by the court, and thereafter the defendant requests and is granted a continuance for trial, the period within which the trial shall be had is extended for an additional six-month period from the date upon which the continuance was granted.
- (3.5) If a trial date has been fixed by the court and the defendant fails to make an appearance in person on the trial date, the period within which the trial shall be had is extended for an additional six-month period from the date of the defendant's next appearance.
- (4) If a trial date has been fixed by the court, and thereafter the prosecuting attorney requests and is granted a continuance, the time is not thereby extended within which the trial shall be had, as is provided in subsection (1) of this section, unless the defendant in person or by his counsel in open court of record expressly agrees to the continuance or unless the defendant without making an appearance before the court in person or by his counsel files a dated written waiver of his rights to a speedy trial pursuant to this section and files an agreement to the continuance signed by the defendant. The time for trial, in the event of such agreement, is then extended by the number of days intervening between the granting of such continuance and the date to which trial is continued.
- (5) To be entitled to a dismissal under subsection (1) of this section, the defendant must move

for dismissal prior to the commencement of his trial and prior to any pretrial motions which are set for hearing immediately before the trial or prior to the entry of a plea of guilty to the charge or an included offense. Failure to so move is a waiver of the defendant's rights under this section.

- (5.1) If a trial date is offered by the court to a defendant who is represented by counsel and neither the defendant nor his counsel expressly objects to the offered date as being beyond the time within which such trial shall be had pursuant to this section, then the period within which the trial shall be had is extended until such trial date and may be extended further pursuant to any other applicable provisions of this section.
- (6) In computing the time within which a defendant shall be brought to trial as provided in subsection (1) of this section, the following periods of time shall be excluded:
- (a) Any period during which the defendant is incompetent to stand trial, or is unable to appear by reason of illness or physical disability, or is under observation or examination at any time after the issue of the defendant's mental condition, insanity, incompetency, or impaired mental condition is raised;
 - (b) The period of delay caused by an interlocutory appeal whether commenced by the defendant or by the prosecution;
 - (c) 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;
 - (d) The period of delay resulting from the voluntary absence or unavailability of the defendant; however, a defendant shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained, or he resists being returned to the state for trial;
 - (e) The period of delay caused by any mistrial, not to exceed three months for each mistrial;
 - (f) The period of any delay caused at the instance of the defendant;
 - (g) The period of delay not exceeding six months resulting from a continuance granted at the request of the prosecuting attorney, without the consent of the defendant, if:
 - (I) 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 this evidence will be available at the later date; or
 - (II) The continuance is granted to allow the prosecuting attorney additional time in felony cases to prepare the state's case and additional time is justified because of exceptional circumstances of the case and the court enters

specific findings with respect to the justification;

- (h) The period of delay between the new date set for trial following the expiration of the time periods excluded by paragraphs (a), (b), (c), (d), and (f) of this subsection (6), not to exceed three months;
- (i) The period of delay between the filing of a motion pursuant to section 18-1-202(11) and any decision by the court regarding such motion, and if such decision by the court transfers the case to another county, the period of delay until the first appearance of all the parties in a court of appropriate jurisdiction in the county to which the case has been transferred, and in such event the provisions of subsection (7) of this section shall apply.

- (7) If a trial date has been fixed by the court and the case is subsequently transferred to a court in another county, the period within which trial must be had is extended for an additional three months from the date of the first appearance of all of the parties in a court of appropriate jurisdiction in the county to which the case has been transferred.

Cite as C.R.S. § 18-1-405

History. L. 71: R&RE, p. 398, § 1. C.R.S. 1963: § 40-1-505 . L. 79: (2) amended, p. 725, § 1, effective October 1. L. 85: (4) and (5) amended and (5.1) and (6)(h) added, pp. 622, 623, §§ 6, 7, effective July 1. L. 87: (3.5) added, p. 606, § 11, effective April 16. L. 88: (3.5) amended, p. 664, § 4, effective July 1. L. 92: (6) amended and (7) added, p. 402, § 13, effective June 3. L. 94: (6)(a) amended, p. 1716, § 4, effective July 1. L. 99: (6)(a) amended, p. 404, § 7, effective July 1.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For note, "Right of a Federal Prisoner to a Speedy Trial on a State Charge", see 12 Rocky Mt. L. Rev. 214 (1940). For article, "One Year Review of Criminal Law and Procedure", see 39 Dicta 81 (1962). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses cases relating to speedy trials, see 15 Colo. Law. 1595 and 1617 (1986). For article, "Justice Delayed is Justice Denied", see 21 Colo. Law. 2195 (1992). For article, "The Ins and Outs, Stops and Starts of Speedy Trial Rights in Colorado--Part I", see 31 Colo. Law. 115 (July 2002). For article, "The Ins and Outs, Stops and Starts of Speedy Trial Rights in Colorado--Part II", see 31 Colo. Law. 59 (August 2002).

Annotator's note. (1) For other annotations concerning speedy trials, see § 16 of art. II, Colo. Const., and Crim. P. 48.

(2) Since § 18-1-405 is similar to former § 39-7-12 , C.R.S. 1963, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Purpose of section. It is not the purpose of this section to enable the guilty to escape, but to prevent unnecessary delays on the part of the prosecution. This section was intended to give effect to that provision of our bill of rights which guarantees one accused of a criminal offense a speedy trial. *Henwood v. People*, 57 Colo. 544, 143 P. 373 (1914).

This section is not concerned with the crime, nor with the punishment therefor, but is intended to prevent any unreasonable detention of an accused preliminary to his trial. The accomplishment of this purpose does not require final action on the criminal charge. *People v. Henwood*, 65 Colo. 566, 179 P. 874 (1919).

The fundamental right of an accused to a speedy trial arises from § 16 of art. II, Colo. Const. This section must be regarded as having been enacted for the purpose of rendering the constitutional guaranty effective and providing a method of securing the right declared. *Ex parte Schechtel*, 103 Colo. 77, 82 P.2d 762 (1938), overruled on other grounds in *Watson v. People*, 700 P.2d 544 (Colo. 1985).

This section is intended to implement the constitutional right to a speedy trial by requiring dismissal of the case whenever the defendant is not tried within the six-month period and the delay does not qualify for one of the express exclusionary categories set out in the statute. *People v. Deason*, 670 P.2d 792 (Colo. 1983); *People v. Marez*, 916 P.2d 543 (Colo. App. 1995).

The obvious purpose of both the rule of criminal procedure and this section is to prevent dillydallying on the part of the district attorney or the court in a criminal proceeding. *People v. Bates*, 155 Colo. 277, 394 P.2d 134 (1964).

The right to a speedy trial is not only for the benefit of the accused, but also for the protection of the public. It is essential that an early determination of guilt be made, so that the innocent may be exonerated and the guilty punished. *Jaramillo v. District Court*, 174 Colo. 561, 484 P.2d 1219 (1971); *People v. Martin*, 732 P.2d 1210 (Colo. 1987).

Intent of this section is to prevent unnecessary prosecutorial and judicial delays. *People v. Cerrone*, 867 P.2d 143 (Colo. App. 1993), *aff'd* on other grounds, 900 P.2d 45 (Colo. 1995).

The speedy trial provisions are designed to foster more effective prisoner treatment and rehabilitation by eliminating, as expeditiously as possible, the uncertainties surrounding outstanding criminal charges. *Simakis v. District Court*, 194 Colo. 436, 577 P.2d 3 (1978).

An accused person's right to a speedy trial is ultimately grounded on the federal and state constitutions, and statutes relating to speedy trial are intended to render these constitutional guarantees more effective. *Simakis v. District Court*, 194 Colo. 436, 577 P.2d 3 (1978).

The right of an accused to a speedy trial is an important civil right, and when the constitutional mandate is

invoked the matter should receive careful consideration by the courts. *Ex parte Russo*, 104 Colo. 91, 88 P.2d 953 (1939).

Section guarantees speedy trial. Under this section and under § 16 of art. II, Colo. Const., a defendant in a criminal action is entitled to a speedy trial, and, generally speaking, he may not be held without trial for a period beyond that fixed by law. *Ex parte Schechtel*, 103 Colo. 77, 82 P.2d 762 (1938).

It does not limit the constitutional right of an accused person to have a speedy public trial. *Hicks v. People*, 148 Colo. 26, 364 P.2d 877 (1961).

Trial in violation of defendant's speedy trial rights not permitted. A court would be proceeding without jurisdiction if it was to try a criminal defendant in violation of his rights under the Colorado speedy trial statute and the rules of the Colorado supreme court. *Hampton v. District Court*, 199 Colo. 104, 605 P.2d 54 (1980).

Court's practice of postponing arraignment until all pretrial matters are concluded thwarts purpose of this section and Crim. P. 48(b). *People v. Chavez*, 779 P.2d 375 (Colo. 1989).

Period during which a defendant first was charged counts in assessing a contention by defendant that he was denied his constitutional right to a speedy trial when the state filed charges against him, later sought and obtained dismissal of the charges, and still later refiled the charges. *People v. Nelson*, 2014 COA 165, ___ P.3d ___.

Meaning of subsection (1). The phrase "brought to trial on the issues raised by the... information", as used in this section, refers to a trial which resolves the ultimate guilt or innocence of the accused as to the charges filed against him and not a sanity trial, even when the defendant pleads not guilty by reason of insanity. *People v. Deason*, 670 P.2d 792 (Colo. 1983).

Subsection (2) is ambiguous because it is silent on the remedy if a new trial does not occur within six months. In order to effectuate the intent of the statute, the dismissal remedy from subsection (1) must be imported into subsection (2). In addition, it is necessary to import the provisions of subsection (6) into subsection (2) in order to avoid an absurd result. *People v. Mosley*, ___ P.3d ___ (Colo. App. 2011).

An accused is "brought to trial" when the court calls the case for trial and the attorneys are ready to proceed. *People v. Peltz*, 697 P.2d 766 (Colo. App. 1984), *aff'd*, 728 P.2d 1271 (Colo. 1986).

Commencement of a sanity trial is not the functional equivalent of a trial on the merits for purposes of satisfying the state's speedy trial obligation. *People v. Deason*, 670 P.2d 792 (Colo. 1983).

Section applies in juvenile proceedings. Trial courts are bound by the statutory and constitutional speedy trial requirements in juvenile as well as adult proceedings; fundamental fairness requires no less. *P.V. v. District Court*, 199 Colo. 357, 609 P.2d 110 (1980); *People in Interest of T.F.B.*, 199 Colo. 474, 610 P.2d 501 (1980).

Burden of compliance with time requirements is on prosecution and trial court. *People v. Lopez*, 41 Colo. App. 206, 587 P.2d 792 (1978); *Marquez v. District Court*, 200 Colo. 55, 613 P.2d 1302 (1980).

If trial court fails to cause such record to be made, dismissal of charges is required, even after jury has returned verdict of guilty. *People v. Scales*, 745 P.2d 259 (Colo. App. 1987), rev'd on other grounds, 763 P.2d 1045 (Colo. 1988).

It is duty of both prosecutor and trial judge to secure and protect defendant's right to speedy trial. *People v. Chavez*, 779 P.2d 375 (Colo. 1989); *Fisher v. County Court*, 796 P.2d 65 (Colo. App. 1990).

Even where defendant moves for change of venue. Where the defendant successfully moved for a change of venue, and the case was delayed because the trial judge did not designate a new venue and set a date or trial, such delay is attributable to the state since it is the responsibility of the district attorney and the trial court to cause the case to be brought to trial within the prescribed time limits. *People v. Colantonio*, 196 Colo. 242, 583 P.2d 919 (1978).

Burden of compliance with speedy trial statute includes making a record sufficient for an appellate court to determine statutory compliance. *Marquez v. District Court*, 200 Colo. 55, 613 P.2d 1302 (1980).

The constitutional right to a speedy trial derived from the federal and Colorado constitutions, is distinct from the statutory speedy trial right and the determination as to one does not necessarily dispose of the other. *People v. Harris*, 914 P.2d 425 (Colo. App. 1995).

This statutory language is mandatory and leaves no room for court discretion. Its preface confines exceptions only to those delineated in the statute. *Carr v. District Court*, 190 Colo. 125, 543 P.2d 1253 (1975).

The language of this section is mandatory and leaves no discretion for a court to fashion exceptions to the six-month rule apart from those delineated in the statute. *Harrington v. District Court*, 192 Colo. 351, 559 P.2d 225 (1977).

The language of this section is mandatory unless the period of delay fits within or can be inferred from one of its exclusionary provisions. *People v. Martin*, 732 P.2d 1210 (Colo. 1987).

If defendant is not tried within six months of entering plea of not guilty, and defendant has not waived speedy trial rights and no extensions or exclusions are allowable, charges must be dismissed. *Tongish v. Arapahoe County Court*, 775 P.2d 63 (Colo. App. 1989).

If no statutory exception or constitutional right justifies a delay and the defendant has taken no action to either cause or consent to a delay, noncompliance with the speedy trial requirements of this section must result in dismissal of the charges against the defendant. *People v. Arledge*, 938 P.2d 160 (Colo. 1997).

This section and Crim. P. 48(b) clarify and simplify the parameters of the constitutional right to a speedy trial. *Carr v. District Court*, 190 Colo. 125, 543 P.2d 1253 (1975); *People v. Cisneros*, 193 Colo. 141, 563 P.2d 355 (1977); *People v. Chavez*, 779 P.2d 375 (Colo. 1989).

This section and Crim. P. 48(b) were designed to render the federal and state constitutional rights to a speedy trial more effective. *Sweet v. Myers*, 200 Colo. 50, 612 P.2d 75 (1980); *People v. Sanchez*, 649 P.2d 1049 (Colo. 1982).

Crim. P. 48(b) was designed to substantially conform to this section. Carr v. District Court, 190 Colo. 125, 543 P.2d 1253 (1975).

Since Crim. P. 48(b) is the procedural counterpart to the speedy trial statute and is virtually identical to this section, the resolution of a speedy trial issue is the same whether the analysis proceeds from the statute or the rule. People v. Deason, 670 P.2d 792 (Colo. 1983).

Effect of Crim. P. 48(b). Trial within the time period prescribed by Crim. P. 48(b) does not preclude raising the defendant's right to a speedy public trial as embodied in § 16 of art. II, Colo. Const. Casias v. People, 160 Colo. 152, 415 P.2d 344 (1966).

For the applicability of Crim. P. 48(b), see Rhodus v. People, 160 Colo. 407, 418 P.2d 42 (1966); Ferguson v. People, 160 Colo. 389, 417 P.2d 768 (1966); Lucero v. People, 161 Colo. 568, 423 P.2d 577 (1967); Maes v. People, 169 Colo. 200, 454 P.2d 792 (1969); Lucero v. People, 173 Colo. 94, 476 P.2d 257 (1970).

Right to a speedy trial has been formulated to force the prosecution to try a defendant promptly in compliance with the statutes, rules, and constitutional requirements of each case. People ex rel. Coca v. District Court, 187 Colo. 280, 530 P.2d 958 (1975).

Right to speedy trial attaches with filing of a formal charge. People v. Chavez, 779 P.2d 375 (Colo. 1989).

Where determination that delays in bringing defendant to trial involved resolutions of fact questions, the district attorney could not appeal such determinations. People v. Murphy, 183 Colo. 106, 515 P.2d 107 (1973).

Section parallels C.M.C.R. 248(b). This section, also enacted as Crim. P. 48(b), is the parallel rule to C.M.C.R. 248(b). Bachicha v. Municipal Court, 41 Colo. App. 198, 581 P.2d 746 (1978).

Subsection (5.1) does not apply to acts committed before July 1, 1985, but which continue thereafter. People v. Newton, 764 P.2d 1182 (Colo. 1988).

The prosecution satisfied the three criteria in subsection (6)(g)(I) that permit the six-month speedy trial extension. Although the prosecution had a taped deposition of its central witness's testimony, the witness's live testimony was material. Since credibility of the witness was attacked by the defense in the deposition, the witness's live testimony could be more credible in person. The prosecution exercised due diligence in trying to secure the witness's testimony by contacting the witness's parents and commanding officers to see if he would be able to return for the original retrial date. The prosecution showed that the witness would be available at a later date even though it did not know the exact date. People v. Valles, 2013 COA 84, ___ P.3d ___.

This section, and not the Uniform Mandatory Disposition of Detainers Act (UMDDA), §§ 16-14-101 to 16-14-108, applies to the retrial of charges on convictions overturned on appeal. The UMDDA applies only to untried charges, and the charges against this defendant, while still pending, were not untried. People v. Campbell, 885 P.2d 327 (Colo. App. 1994).

Applied in *People v. Flowers*, 190 Colo. 453, 548 P.2d 918 (1976); *People v. Reliford*, 39 Colo. App. 474, 568 P.2d 496 (1977); *People v. Trujillo*, 41 Colo. App. 223, 586 P.2d 235 (1978); *People v. Gonzales*, 198 Colo. 546, 603 P.2d 139 (1979); *People v. Peek*, 199 Colo. 3, 604 P.2d 23 (1979); *People v. Boos*, 199 Colo. 15, 604 P.2d 272 (1979); *People ex rel. Freed v. County Court*, 42 Colo. App. 272, 592 P.2d 1355 (1979); *People v. Williams*, 628 P.2d 1011 (Colo. 1981); *People v. Small*, 631 P.2d 148 (Colo. 1981); *People v. Jones*, 631 P.2d 1132 (Colo. 1981); *People v. Mann*, 646 P.2d 352 (Colo. 1982); *People in Interest of D.M.*, 650 P.2d 1350 (Colo. App. 1982); *People v. Olds*, 656 P.2d 705 (Colo. 1983); *People v. Ashton*, 661 P.2d 291 (Colo. App. 1982); *People v. Harding*, 671 P.2d 975 (Colo. App. 1983); *People v. Jones*, 677 P.2d 383 (Colo. App. 1983); *Snyder v. Moss*, 703 P.2d 1311 (Colo. App. 1985); *People v. Mascarenas*, 706 P.2d 404 (Colo. 1985); *People v. Goodpaster*, 742 P.2d 965 (Colo. App. 1987).

II. SCOPE OF RIGHT TO SPEEDY TRIAL.

Incarceration of defendant outside state did not make him unavailable for purposes of speedy trial considerations, unless the prosecution can show that despite diligent efforts defendant's presence could not be secured. *Watson v. People*, 700 P.2d 544 (Colo. 1985); *People v. Byrne*, 762 P.2d 674 (Colo. 1988).

Diligent efforts found lacking. See *People v. Byrne*, 762 P.2d 674 (Colo. 1988).

Trial within required period not preclusion of assertion of right. A defendant is not precluded from asserting his constitutional right to a speedy trial simply because the trial was held within the required statutory period; the defendant, however, has the burden of proving that his constitutional speedy trial right has been denied. *Gelfand v. People*, 196 Colo. 487, 586 P.2d 1331 (1978).

A defendant is entitled to be tried within six months of the entry of a plea of not guilty. *People v. Slender Wrap, Inc.*, 36 Colo. App. 11, 536 P.2d 850 (1975).

Speedy trial is calculated separately for each criminal complaint. When charges in a complaint are properly dismissed within the speedy trial period without prejudice, they are a nullity. If defendant is arraigned under new charges, even if they are identical to the dismissed charges, the speedy trial period begins anew. *Huang v. County Court of Douglas County*, 98 P.3d 924 (Colo. App. 2003).

When charges are dismissed without prejudice within the speedy trial period and defendant is later charged with the same or similar counts, the speedy trial clock begins anew unless the district attorney dismissed the charges and refiled them to avoid a speedy trial violation. *People v. Walker*, 252 P.3d 551 (Colo. App. 2011); *People v. Nelson*, 2014 COA 165, ___ P.3d ___.

When the court dismissed the original charges against defendant when victim did not show up for trial within the speedy trial period against the wishes of the prosecution and defendant did not object, there is no basis to claim district attorney sought dismissal of the original charges to avoid a speedy trial violation. *People v. Walker*, 252 P.3d 551 (Colo. App. 2011).

Court and prosecutor's joint responsibility to avoid useless delays. It is the joint responsibility of the district attorney and the trial court to assiduously avoid any occasion for a useless and unnecessary delay in the trial of a criminal case. *People v. Murphy*, 183 Colo. 106, 515 P.2d 107 (1973).

Ad hoc balancing test used to determine whether right to speedy trial has been denied. *People v. Spencer*, 182 Colo. 189, 512 P.2d 260 (1973); *People v. Chavez*, 779 P.2d 375 (Colo. 1989).

The test includes four factors: The length of the delay, the reason for the delay, the defendant's assertion or demand for a speedy trial, and the prejudice to the defendant. *People v. Spencer*, 182 Colo. 189, 512 P.2d 260 (1973); *People v. Chavez*, 779 P.2d 375 (Colo. 1989); *People v. Fears*, 962 P.2d 272 (Colo. App. 1997).

Statutory speedy trial period held to exclude period of time reasonably necessary to reset the case for trial after issuance of remittitur following appeal of case on constitutional grounds. *People in Interest of N.P.*, 768 P.2d 707 (Colo. 1989) (decided under law in effect prior to 1985 amendment).

Speedy trial statute tolled with regard to all counts of the charging document when the people file an original proceeding seeking reinstatement of one or more counts of a multi-count charging document. *People v. Beyette*, 711 P.2d 1263 (Colo. 1986).

Time taken to complete appeal is excluded from six-month speedy trial period, but only the time of defendant's absence and a reasonable time to reschedule the hearing may be excluded. *People ex rel. Gallagher v. District Court*, 933 P.2d 583 (Colo. 1997).

The six-month speedy trial period for commencing a new trial after initial conviction was reversed on appeal was tolled while defendant's C.A.R. 21 proceeding was being considered by the supreme court; therefore, the period of delay caused by the C.A.R. 21 proceeding is excluded from the six-month speedy trial period. *People v. Powell*, 917 P.2d 298 (Colo. App. 1995).

Appeal of trial court's ruling that death penalty statute was unconstitutional, although not technically "interlocutory," was not improperly filed and ultimately was accepted and decided by the Colorado Supreme Court pursuant to C.A.R. 21. Therefore, speedy trial period was tolled during the pendency of the appeal. *People v. Fears*, 962 P.2d 272 (Colo. App. 1997).

Stay of proceedings pending appeal is one means, but not the exclusive means, for tolling of the speedy trial period to occur. *People v. Fears*, 962 P.2d 272 (Colo. App. 1997).

Right guaranteed although defendant is out on bail or parole. Under former provision, the lapse of the prescribed time after the issuance of a *capias* and arrest of the defendant without an application to postpone or delay the trial entitles him to his discharge, notwithstanding the fact that he has been out on bail. *Van Buren v. People*, 7 Colo. App. 136, 42 P. 599 (1895).

The fact that the accused during almost the whole time of the delay was at large upon bail does not divest him of his

right to the speedy trial guaranteed by the constitution and the provisions of this section. *Ex parte Miller*, 66 Colo. 261, 180 P. 749 (1919).

The parole status of a federal prisoner is without effect on the conduct of officials charged with the prosecution of an indictment against the prisoner for the violation of a state law. *Ex parte Schechtel*, 103 Colo. 77, 82 P.2d 762 (1938), overruled in *Watson v. People*, 700 P.2d 544 (Colo. 1985).

The fact that defendant was at large under bond manifestly does not divest him of the right to that speedy trial which is guaranteed by § 16 of art. II, Colo. Const. *Hicks v. People*, 148 Colo. 26, 364 P.2d 877 (1961).

The right to a speedy trial is not dissipated by the fact that the defendant is granted bail. *Jaramillo v. District Court*, 174 Colo. 561, 484 P.2d 1219 (1971).

Section cannot be invoked where defendant has not been apprehended. One charged with a criminal offense may not invoke the provisions of this section concerning speedy trials where he has not been apprehended, and committed for trial. *Ex parte Russo*, 104 Colo. 91, 88 P.2d 953 (1939).

Or where delay caused by defendant. One charged with a criminal offense may not successfully invoke his right to a speedy trial where the delay of which he complains was occasioned by his avoidance of arrest, it appearing that the prosecution proceeded reasonably as to time after defendant was apprehended. *Ex parte Russo*, 104 Colo. 91, 88 P.2d 953 (1939).

A person is not entitled to be discharged if he requested a postponement of his trial or otherwise caused the delay. *People v. Bates*, 155 Colo. 277, 394 P.2d 134 (1964).

The record does not disclose that defendant was in anywise denied the speedy public trial guaranteed him by the constitution where at least certain delays in getting to trial were of his own making. *Lucero v. People*, 161 Colo. 568, 423 P.2d 577 (1967).

Both § 18-1-405 and Crim. P. 48 exclude delay which is caused by, agreed to, or created at the instance of the defendant. *Saiz v. District Court*, 189 Colo. 555, 542 P.2d 1293 (1975).

Because sufficient time for trial preparation is a necessary requirement for the effective assistance of counsel, and the substitution of counsel was made at the instance of defendant, continuing the trial date outside the speedy trial deadline was not a violation of his statutory right to a speedy trial. *People v. Brewster*, 240 P.3d 291 (Colo. App. 2009).

In the absence of a showing of bad faith on the part of the prosecutor in endorsing a witness on the day of the trial, the delay resulting from the defendant's tactical decision to seek a continuance as a result of the late endorsement is chargeable to her. *People v. Steele*, 193 Colo. 187, 563 P.2d 6 (1977).

Both competency examinations requested by defense counsel for the benefit of the defendant and scheduling delays to accommodate defense counsel are attributable to the defendant. *Jones v. People*, 711 P.2d 1270 (Colo. 1986).

Where defendant held in another jurisdiction pending extradition to a foreign state makes no effort to disclose his whereabouts to prosecuting authorities in a county in which charges are pending against him, and where such authorities are unaware of the pending extradition proceedings, the period of delay until the defendant returns to the state is attributable to the defendant and must be excluded from the applicable six-month speedy trial period. *People v. Moyer*, 635 P.2d 194 (Colo. 1981).

When a defendant fails to make a scheduled bond appearance before the trial court, the six-month speedy trial period is tolled until he makes himself available to the court, even where some of the time he is unavailable due to being incarcerated in another jurisdiction. *People v. Moyer*, 635 P.2d 194 (Colo. 1981).

The provisions of this section cannot be used to the advantage of a defendant who violates his bond, fails to appear at the trial, and absconds from the state. *People v. Martin*, 732 P.2d 1210 (Colo. 1987).

Six-month period was tolled during period of time that defendant was being processed in federal system, at which time defendant was unable to appear on scheduled trial date in state trial; defendant's failure to appear for trial on the state charges could only be attributed to defendant and, therefore, constituted a waiver of his right to speedy trial. *People v. Marquez*, 739 P.2d 917 (Colo. App. 1987).

Defendant's speedy trial time was tolled by his voluntary request for speedy disposition of detainer filed against him by authorities in another state, and by his subsequent removal to that state, where defendant's actions precluded Colorado authorities from objecting to his removal. *People v. Yellen*, 739 P.2d 1384 (Colo. 1987).

Subsection (6) includes any delays agreed to by defendant or requested by his attorney. Scheduling delays to accommodate defense counsel are attributable to the defendant. *People v. Hamer*, 689 P.2d 1147 (Colo. App. 1984); *People v. Marez*, 916 P.2d 543 (Colo. App. 1995).

Defendant's speedy trial rights were not violated when, in response to the testimony of defendant's mental health expert during a suppression hearing that defendant's statements were involuntary because of a mental disorder, prosecution requested, and was granted, three month continuance in order to arrange for expert testimony and analyze the alleged mental disorder. *People v. Whalin*, 885 P.2d 293 (Colo. App. 1994).

The time necessary to determine the People's appeal after the trial court granted the defendant's motion to dismiss certain charges was chargeable to the defendant and therefore excluded from the speedy trial computations. *People v. Warner*, 930 P.2d 564 (Colo. 1996).

A motion by the defendant's attorney for a continuance, made in open court with the consent of the defendant, is a request for a continuance, governed by subsection (3), rather than a mere delay, governed by subsection (6). In the absence of a showing of bad faith on the part of the prosecution in the late disclosure of evidence bearing on the credibility of one of its prospective witnesses, the legal consequence of defense counsel's request for a continuance was to extend the period within which the trial could be commenced for an additional six months from the date of the continuance. *People v. Duncan*, 31 P.3d 874 (Colo. 2001).

Delay caused by briefing and determining defendant's motion to dismiss properly charged to defendant.

Williamsen v. People, 735 P.2d 176 (Colo. 1987).

Delay due to substitution of counsel. Continuances made necessary because of the substitution of counsel may, depending upon the particular circumstances of the case, be chargeable to the defendant. People v. Scales, 763 P.2d 1045 (Colo. 1988).

Substitution was appropriate when caused by defendant's refusal to cooperate with defense attorney and continuance resulting therefrom was properly charged to the defendant. People v. Scales, 763 P.2d 1045 (Colo. 1988).

Trial court's ruling, which disqualified defendant's former attorneys for ethical conflict and which caused need for continuance so that new attorney could prepare, did not deprive defendant of speedy trial rights, where defendant agreed to continuance. People v. Lewis, 739 P.2d 861 (Colo. App. 1987); People v. Monroe, 907 P.2d 690 (Colo. App. 1995).

Determination that delay was caused by substitution of counsel not supported by record and not properly chargeable to defendant. Defendant's actions did not require a substitution of counsel, he was not counseled by the court on a need for a continuance and he expressed no understanding of such a need, and the court did not attempt to find other counsel who could meet the deadline. People ex rel. Gallagher v. District Court, 933 P.2d 583 (Colo. 1997).

Substitution may cause defendant to be tried after speedy trial date. Delay may be charged to defendant if court finds the defendant will not receive effective assistance of counsel without a postponement. People ex rel. Gallagher v. District Court, 933 P.2d 583 (Colo. 1997); People v. Roberts, 2013 COA 50, 321 P.3d 581.

Continuance to allow third attorney to prepare for trial was properly chargeable to defendant where defendant had engaged in a pattern of noncooperation with his attorneys and failure to continue the trial date would have given the defendant a claim of ineffective assistance of counsel. The fact that the trial court delayed in appointing the third attorney due to a competency evaluation of the defendant in another case did not change this result. People v. Rocha, 872 P.2d 1285 (Colo. App. 1993).

Where defendant requested a continuance because of the unavailability of his fingerprint expert, the delay was attributable to the defendant and it does not make the granting of an earlier continuance an abuse of discretion. People v. Madsen, 743 P.2d 437 (Colo. App. 1987).

Charges not dismissed where defendant's expressed understanding of computation of time period differs from statute. Where defendant's expressed understanding was that the six-month period of the speedy trial statute would commence to run at the end of defendant's continuance, the failure to try defendant within six months of the granting of the continuance does not entitle him to dismissal of charges. Baca v. District Court, 198 Colo. 486, 603 P.2d 940 (1979).

Delays analyzed to ascertain what part due to defendant. In computing the time chargeable to a defendant in

connection with speedy trial determinations, any prolonged lapse of time which causes a trial date to be extended should be carefully analyzed by the trial court to ascertain what part, if any, was due to delays at the request of or for the benefit of the defendant, and the time involved in such delays is properly chargeable to a defendant. *People v. Murphy*, 183 Colo. 106, 515 P.2d 107 (1973).

Period of delay was excluded from the speedy trial period under the provisions of subsection (6)(c). The trial court did not abuse its discretion in refusing to grant a severance, therefore the continuance granted to the codefendant was chargeable to the defendant, and the defendant was not denied his right to a speedy trial. *People v. Backus*, 952 P.2d 846 (Colo. App. 1998); *People v. Reynolds*, 159 P.3d 684 (Colo. App. 2006).

Defendants' delay in asserting their right to a speedy trial is entitled to strong evidentiary weight in determining whether the defendants were denied their constitutional right to a speedy trial. *People v. Spencer*, 182 Colo. 189, 512 P.2d 260 (1973).

Delay caused by extradition attributable to prosecution. Delay initiated by the issuance of the governor's arrest warrant and subsequent extradition to another state is attributable to the people. *People v. Wimer*, 43 Colo. App. 237, 604 P.2d 1183 (1979).

Delay caused by defendant's waiver of extradition not attributable to defendant. Delay in bringing defendant to trial which is caused by defendant's waiver of extradition to another state is not attributable to the defendant within the meaning of this section. *People v. Wimer*, 43 Colo. App. 237, 604 P.2d 1183 (1979).

Motion for continuance of arraignment date containing waiver. Where petitioner moved to continue his arraignment date and his written motion contained a statement to the effect that "the Defendant waives his right to a speedy trial", this statement was intended only as a waiver of the right to challenge any speedy trial violation caused by the request for a continuance of the arraignment date and was not effective with respect to any subsequently occurring statutory speedy trial violation. *Sweet v. Myers*, 200 Colo. 50, 612 P.2d 75 (1980).

Section not invoked where grant of new trial extends original limitation. Where defendant's first trial was completed before the expiration of the period fixed by statute, and a new trial was thereafter granted, the new trial may be set beyond such period. *Ferguson v. People*, 160 Colo. 389, 417 P.2d 768 (1966).

Or where defendant moves for separate trial. Where a trial is not had as required by this section, but practically every continuance is made with the express consent of a defendant's counsel, and where a defendant moves for a separate trial, such motion being filed, heard and denied after the expiration of such period, the defendant cannot avail himself of the benefits of the statute. *Gallegos v. People*, 139 Colo. 166, 337 P.2d 961 (1959), overruled in *Villafranca v. People*, 194 Colo. 472, 573 P.2d 540 (1978).

Or where delay caused by detention by another sovereign power. The constitutional right of one charged with the commission of a crime to a speedy trial is not violated by failure of the state to put him on trial while he is in the custody of the United States serving a sentence for violation of federal laws, and in such circumstances there is no obligation imposed upon the prosecuting authorities of the state to apply to the federal government for a return of such

prisoner to the state for trial on the state charge. *Ex parte Schechtel*, 103 Colo. 77, 82 P.2d 762 (1938), overruled in *Watson v. People*, 700 P.2d 544 (Colo. 1985).

But not where defendant is incarcerated by same sovereign. A sovereign may not deny an accused person a speedy trial in a court also of that sovereign by reason of the circumstance that the accused is incarcerated in a penal institution of that sovereign under a prior conviction and sentence of that sovereign. *Rader v. People*, 138 Colo. 397, 334 P.2d 437 (1959).

Prosecutor had duty to obtain defendant's presence. Where the district attorney was aware that the defendant was being held in custody in another county concerning a different charge, the district attorney had the burden of obtaining the presence of the defendant and delay due to defendant's absence is not chargeable to defendant for purposes of computing speedy trial requirements. *People v. Murphy*, 183 Colo. 106, 515 P.2d 107 (1973).

Chronic trial congestion does not excuse the respondents' failure to bring petitioners to trial within the six-month time limit imposed by this section. *Carr v. District Court*, 190 Colo. 125, 543 P.2d 1253 (1975).

Docket congestion merely factor to consider. Although it is clear that docket congestion would not warrant a retrial later than the three-month maximum period for delay caused by a mistrial, it is a factor in determining the reasonableness of the delay within the statutory and procedural time periods of subsection (6)(e) and Crim. P. 48(b)(6)(V). *Pinelli v. District Court*, 197 Colo. 555, 595 P.2d 225 (1979).

Delay due to congested docket not caused by defendant. Neither the trial court's decision to conduct a hearing, nor the court's congested docket when the hearing date arrived, produce delays that were "caused at the instance of the defendant." *People v. Bell*, 669 P.2d 1381 (Colo. 1983).

When a trial court continues a case due to docket congestion, but makes a reasonable effort to reschedule within the speedy trial period, and defense counsel's scheduling conflict does not permit a new date within the speedy trial deadline, the resulting delay is attributable to defendant. The period of delay is excludable from time calculations for purposes of the applicable speedy trial provision. *Hills v. Westminster Mun. Court*, 245 P.3d 947 (Colo. 2011).

When the defendant pleads "not guilty by reason of insanity" and is thus entitled to a separate trial on the sanity issue, he must be brought to trial on that issue within six months from the date of entry of the plea or defendant's last continuance under subsection (3). *People v. Haines*, 37 Colo. App. 302, 549 P.2d 786 (1976).

Once the sanity trial is ended and the defendant is found to be sane, he must then be brought to trial on the other issues of the crime charged within the statutory six months from the judgment in the sanity trial. *People v. Haines*, 37 Colo. App. 302, 549 P.2d 786 (1976).

Period from time of commitment until filing of final psychiatric report excludable. When a defendant pleads not guilty by reason of insanity, the period from the time of commitment until the filing of the final psychiatric report, if filed within a reasonable time, is excludable for purposes of the six-month period. *People v. Renfrow*, 193 Colo. 131, 564

P.2d 411 (1977).

Commitment to institution not necessary for exclusion of time for psychiatric reports. The defendant need not be committed to an institution for examination before a reasonable time can be excluded from the speedy trial computation for filing of psychiatric reports. *People v. Brown*, 44 Colo. App. 397, 622 P.2d 573 (1980).

Defendant confined to mental institution. When a defendant is confined to a mental institution or hospital for observation or examination prior to a determination of mental competency, he cannot complain of a denial of his constitutional right to a speedy trial because of the delay occasioned by that confinement. *People v. Jones*, 677 P.2d 383 (Colo. App. 1983), *aff'd in part and rev'd in part on other grounds*, 711 P.2d 1270 (Colo. 1986).

For an example of the computation of six-month period where defendant pleads not guilty by reason of insanity, see *Sanchez v. District Court*, 200 Colo. 33, 612 P.2d 519 (1980).

Exclusions from six-month period. Subsection (6)(a) excludes from the six-month term in which a trial must commence only that period of delay required for the sanity examination and the filing of a timely report with the court. *People v. Deason*, 670 P.2d 792 (Colo. 1983).

The period excluded from speedy trial computation under subsection (6) does not end upon the filing of a report that a defendant is competent to proceed, but rather when the court makes a determination that the defendant is restored to competency. *People v. Harris*, 914 P.2d 425 (Colo. App. 1995).

Defendants not denied right. Where the record reflects that the defendants made no demand for a speedy trial until 14 months expired and showed no prejudice as a result of the delay and that the delay occurred to permit the defendants to obtain expert testimony and prepare for trial, and moreover, the defendants were free on bond at all times prior to trial, the defendants were not denied their constitutional right to a speedy trial. *People v. Spencer*, 182 Colo. 189, 512 P.2d 260 (1973).

Because criminal proceedings are suspended during the entire time a defendant is incompetent and may not resume until a judicial determination is made that the defendant has been restored to competency, there is no basis upon which to find that the period in which a defendant is "incompetent" under subsection (6) ends in any manner other than in accord with the procedures of the former § 16-8-113. *People v. Harris*, 914 P.2d 425 (Colo. App. 1995).

Court retains jurisdiction to correct erroneous judgment. In a criminal proceeding where the trial court has jurisdiction of the person of the defendant and of the subject matter and has entered an erroneous judgment, such court retains jurisdiction to correct, modify, or alter such erroneous judgment notwithstanding expiration of the term of court at which the erroneous judgment was pronounced. Under former provision, the fact that there had been a considerable lapse of time and that many terms of court had intervened was held to be immaterial. *Villalon v. People*, 145 Colo. 327, 358 P.2d 1018 (1961).

For the effect of refiling of information as result of change in circumstances, see *Schiffner v. People*, 173 Colo. 123, 476 P.2d 756 (1970).

Delay chargeable to defendant. In computing the time within which a defendant must be brought to trial, in order for the delay to be charged to the defendant, it must be attributable to affirmative action on defendant's part, or to defendant's express consent to the delay, or to other affirmative conduct evidencing such consent. *Tasset v. Yeager*, 195 Colo. 190, 576 P.2d 558 (1978).

Any delays resulting from a defendant's attempt to meet the conditions of a plea bargain, such as the time allocable to defendant's efforts to qualify for a deferred judgment, should be charged to the defendant. *People v. Luevano*, 670 P.2d 1 (Colo. 1983).

Defendant's attempt to effect plea bargain by applying for probation attributable to defendant and tolls running of speedy trial period under subsection (6)(f). *People v. Madsen*, 707 P.2d 344 (Colo. 1985).

Delay not attributable to defendant where a continuance is granted to prosecution as a sanction against the defense for his failure to disclose any defenses other than his not guilty plea, and for his failure to identify his intent to cross-examine the prosecution's witnesses. *People v. Castro*, 835 P.2d 561 (Colo. App. 1992).

Or where trial judge instituted reconsideration of a recusal motion, previously denied, and judge recused himself three days prior to trial. At this point, the judge could not require the defendant to waive speedy trial and no part of the subsequent delay was chargeable to the defendant. *People v. Arledge*, 938 P.2d 160 (Colo. 1997).

Key to interpreting subsection (6)(f) is to determine whether the defendant caused the delay. If the delay is caused by, agreed to, or created at the instance of the defendant, it will be excluded from the speedy-trial calculation made by the court. *People v. Bell*, 669 P.2d 1381 (Colo. 1983).

"Material evidence" for purposes of subsection (6)(g)(I) means evidence that has a logical connection with consequential facts. The prosecution has the burden of proving the evidence is material. In order to satisfy that burden, the prosecution must provide the court with enough specificity and information on the record to show that the unavailable evidence is material to the prosecution's case. The court had sufficient information to exercise its independent judgment to determine that the evidence was material. *People v. Roberts*, 146 P.3d 589 (Colo. 2006).

No evidence of a lack of due diligence under subsection (6)(g)(I) where prosecution had prior knowledge of the victim's pregnancy and did not obtain a subpoena. The prosecution asserted to the trial court that, when the trial was originally scheduled, it was anticipated that the victim would have delivered her baby and been available for trial. The trial court did not abuse its discretion in finding that the extension of the victim's pregnancy beyond her original expected due date was the cause of her nonappearance. *People v. Scialabba*, 55 P.3d 207 (Colo. App. 2002).

Appeal tolls speedy trial period. The period of time necessary to go through the appellate process, where the appeal stems from a dismissal upon the defendant's motion, tolls the statutory speedy trial period. *People v. Jamerson*, 198 Colo. 92, 596 P.2d 764 (1979); *People v. Daley*, 97 P.3d 295 (Colo. App. 2004).

Delay caused by interlocutory appeal excluded. This section and Crim. P. 48 exclude from the computation of the time in which a defendant shall be brought to trial the period of delay caused by an interlocutory appeal. *People v.*

Medina, 40 Colo. App. 490, 583 P.2d 293 (1978).

"Interlocutory appeal" construed. An original proceeding initiated in good faith by either the defense or the prosecution constitutes an "interlocutory appeal" for purposes of the speedy trial statute. *People v. Ferguson*, 653 P.2d 725 (Colo. 1982); *People v. Beyette*, 711 P.2d 1263 (Colo. 1986).

Prosecution's appeal from a new trial order must be characterized as interlocutory in nature, so as to toll the speedy trial period under subsection (6)(b), so long as the appeal is taken in good faith, is filed before the defendant is convicted, and is necessarily disruptive of the course of proceeding to a final resolution. *People v. Gallegos*, 946 P.2d 946 (Colo. 1997); *People v. Curren*, 2014 COA 59M, ___ P.3d ___.

Prosecution's appeal of a trial court's partial dismissal at a preliminary hearing of a multi-count information is an interlocutory appeal that tolls the running of the speedy trial period. *People v. Gallegos*, 946 P.2d 946 (Colo. 1997).

Prosecution's appeal of an order granting defendant a new trial was interlocutory in nature for purposes of tolling the speedy trial period under subsection (6)(b) even though it was also final in the sense contemplated under § 16-12-102, and the speedy trial period was tolled during the prosecution's appeal. *People v. Curren*, 2014 COA 59M, ___ P.3d ___.

Appeal of disqualification of district attorney did not have a substantial effect on prosecution's case where special prosecutor was appointed. As such, appeal of the disqualification was not an interlocutory appeal. *People v. Witty*, 36 P.3d 69 (Colo. App. 2000).

Even a second interlocutory appeal, if initiated in good faith, tolls the statute regardless of the fact that it is later dismissed. *People v. Morgan*, 681 P.2d 970, (Colo. App. 1984), cert. denied, 469 U.S. 881, 105 S. Ct. 248, 83 L. Ed. 2d 185 (1984).

New trial order pursuant to motion treated as reversal on appeal. A new trial order pursuant to a new trial motion is similar to a reversal on appeal for purposes of the speedy trial provisions. *People v. Jamerson*, 196 Colo. 63, 580 P.2d 805 (1978); *People v. Jamerson*, 198 Colo. 92, 596 P.2d 764 (1979).

Measurement of six-month period upon filing of amended complaint. When the prosecution files an amended complaint charging new material after the defendant's initial guilty plea, the period of time for dismissal under the speedy trial provisions is measured from the second guilty plea unless the prosecution has shown bad faith in amending the complaint. If the amended complaint does not charge new material, the time period is measured from the original guilty plea. *Amon v. People*, 198 Colo. 172, 597 P.2d 569 (1979).

Period of delay caused by mistrial not includable. The computation of the six-month period allowed for in this section and Crim. P. 48(b)(1) shall not include any period of delay caused by a mistrial, and the extension provided following a mistrial is part of the period of delay caused thereby. *Pinelli v. District Court*, 197 Colo. 555, 595 P.2d 225 (1979).

Three-month exclusion from period following mistrial. Subsection (6)(e) and Crim. P. 48(b)(6)(V) grant the prosecution a three-month exclusion in which to retry a case after a mistrial, provided that the delays are reasonable. *People v. Pipkin*, 655 P.2d 1360 (Colo. 1982); *Mason v. People*, 932 P.2d 1377 (Colo. 1997).

The general assembly intended to grant no more than three months as an exclusion from the speedy trial period, which is one-half of the statutory speedy trial period, following a mistrial. *People v. Pipkin*, 655 P.2d 1360 (Colo. 1982).

Mistrials due to prosecutor's actions not treated differently. Neither Crim. P. 48(b)(6)(V) nor subsection (6)(e) treats mistrials due to the prosecutor's actions differently than mistrials due to other reasons. *People v. Erickson*, 194 Colo. 557, 574 P.2d 504 (1978).

Prosecutor must request additional time upon change of venue. When a change of venue is granted after arraignment, it is incumbent upon the prosecuting attorney to make a motion to obtain additional time to bring the defendant to trial because of the exceptional circumstances of the case. *People v. Colantonio*, 196 Colo. 242, 583 P.2d 919 (1978).

District attorney's motion for continuance insufficient basis for justifying delay. Where the record indicated that the respondent court granted the district attorney's motion to continue the July 30, 1979, trial date solely on the basis of the district attorney's written motion which contained only the unsupported allegation that a material witness would be unavailable for trial on July 30, 1979, and there was no showing of due diligence or that the witness would be available at a later trial date, the delay between July 30, 1979, and November 1, 1979, was not properly excludable from the statutory speedy trial period under subsection (6)(g)(I), and where defendant had plead not guilty on April 20, 1979, the petitioner was entitled to a dismissal of the charges against him under subsection (1). *Sweet v. Myers*, 200 Colo. 50, 612 P.2d 75 (1980).

Habitual criminal charges not subject to statutory speedy trial deadline. Habitual charges are not offenses, but rather are sentence enhancers, and thus the statutory speedy trial six-month time limit does not apply. Section 18-1.3-803(1) specifically requires the court to conduct a hearing on habitual charges as soon as practicable after the trial of the substantive offense, so the specific requirements of that statute control over the general speedy trial statute. *People v. Green*, 2012 COA 68M, 296 P.3d 260.

Forfeiture action under Colorado public nuisance statute is civil in nature and therefore is not subject to constitutional or statutory speedy trial provisions applicable to criminal prosecutions. *People v. Milton*, 732 P.2d 1199 (Colo. 1987).

Where defendant is present when trial date is set and does not object to the setting of a trial date beyond the time required by statute, an extension of the statutory deadline to the date actually set for trial results. *People v. Velarde*, 790 P.2d 903 (Colo. App. 1989).

Defendant was not denied right to speedy trial where he was counseled at length by trial court and appeared to have understood the need for a continuance caused by substitution of counsel and where neither the prosecution nor

the judiciary was responsible for the delay. *People v. Cerrone*, 867 P.2d 143 (Colo. App. 1993).

III. ENFORCEMENT OF RIGHT.

Defendant must enter a plea before he may take advantage of the restriction of this section and Crim. P. 48(b)(1). *People v. Wilkinson*, 37 Colo. App. 531, 555 P.2d 1167 (1976).

Six-month limitation runs from date plea entered. The six-month limitation of both this section and Crim. P. 48(b)(1) runs from the date that defendant's plea is entered. *People v. Wilkinson*, 37 Colo. App. 531, 555 P.2d 1167 (1976).

A defendant must be brought to trial within six months from the date of the entry of a plea of not guilty, except as otherwise provided by subsection (6)(a). *Sanchez v. District Court*, 200 Colo. 33, 612 P.2d 519 (1980).

Rule that defendant must be brought to trial within six months from the date of the entry of a plea of not guilty equally applies where a defendant pleads not guilty by reason of insanity. *Sanchez v. District Court*, 200 Colo. 33, 612 P.2d 519 (1980).

Computation of six-month time provision found in *People v. Hampton*, 696 P.2d 765 (Colo. 1985).

The special time limitations of § 24-60-501 prevail, when conflicts arise, over the more general criminal procedure provisions of this section and Crim. P. 48. *Simakis v. District Court*, 194 Colo. 436, 577 P.2d 3 (1978).

UMDDA controls over general speedy trial provisions. The UMDDA is a special statute designed to foster more effective prisoner treatment and rehabilitation; thus, when there is a conflict with the general speedy trial provisions, § 16-14-101 et seq., this section, § 24-60-501 et seq., and Crim. P. 48, the provisions of the uniform act control. *People v. Swazo*, 199 Colo. 486, 610 P.2d 1072 (1980).

Policies of this section same as §§ 16-14-101 to 16-14-108. The policies underlying this section and Crim. P. 48 are the same as those relative to the UMDDA, §§ 16-14-101 to 16-14-108. *People v. Lopez*, 41 Colo. App. 206, 587 P.2d 792 (1978).

The six-month period commences upon the arraignment for the last information. *People v. Dunhill*, 40 Colo. App. 137, 570 P.2d 1097 (1977); *Meehan v. County Court, Jefferson Co.*, 762 P.2d 725 (Colo. App. 1988).

It is the shared responsibility of the trial court and the prosecution to schedule the suppression hearing for a date within the six-month speedy trial period so that, if the motion were granted, a new trial could commence within the six-month period. *People v. Zedack*, 93 P.3d 629 (Colo. App. 2004).

The length of delay "caused by any mistrial" must be calculated to include the days on which the aborted trial or trials were in progress. *People v. Erickson*, 194 Colo. 557, 574 P.2d 504 (1978).

The entire period of delay caused by a mistrial is to be "excluded" from the computation of the time within which a

defendant must be tried. *People v. Thimmes*, 643 P.2d 778 (Colo. App. 1981).

Delay excluded may be longer than period of absence. The excludable period of delay resulting from defendant's absence, may, in some cases, be longer than merely the period of defendant's absence. *People v. Alward*, 654 P.2d 327 (Colo. App. 1982), cert. dismissed, 677 P.2d 948 (Colo. 1984).

Factors authorized a continuance and thereby extended the speedy trial time where a period of delay was attributable to the inability of the prosecution, despite its exercise of due diligence, to obtain the victim's presence for trial and prosecution demonstrated the victim would be available to testify at a later date. *People v. Grenemyer*, 827 P.2d 603 (Colo. App. 1992).

Defendant's right to speedy trial not violated where defendant asked for a continuance to review evidence produced by the prosecution concerning the credibility of a prospective witness and there was no indication of bad faith by the prosecution in producing the evidence just prior to trial. The legal consequence of the defendant's request for a continuance was to extend the period within which trial could be commenced for an additional six months from the date of the continuance, as provided in subsection (3). *People v. Duncan*, 31 P.3d 874 (Colo. 2001).

Speedy trial right not violated where trial court did not abuse its discretion in finding prosecutors had acted with due diligence in seeking to obtain presence of out-of-state witnesses for trial and a continuance was warranted. *People v. Wolfe*, 9 P.3d 1137 (Colo. App. 1999).

The speedy trial statute is not violated in a case where there is no evidence a sheriff acted in bad faith in violating a segregation order that resulted in a delay of the defendant's criminal proceedings and a defendant's waiver of a statutory speedy trial right. *People v. McMurtry*, 101 P.3d 1098 (Colo. App. 2003), rev'd on other grounds, 122 P.3d 237 (Colo. 2005).

The intent of the general assembly was to exclude a reasonable time period from the speedy trial period following the absence or unavailability of the defendant when the delays are such that might reasonably result from the defendant's absence. *People v. Martin*, 732 P.2d 1210 (Colo. 1987).

Six-month period includes a reasonable period of time in which to reschedule and prepare for trial a case that has been postponed from its original trial date due to the voluntary absence of the defendant. *People v. Martin*, 732 P.2d 1210 (Colo. 1987).

Factors to be considered in determining whether the trial delay is reasonable include the difficulty in locating witnesses, the problem of overcrowded dockets, and the potential abuse of the speedy trial period by defendants who attempt to run time off the speedy trial period before absconding from the state. *People v. Martin*, 732 P.2d 1210 (Colo. 1987).

Defendant's motion for severance shortly before trial constitutes an exceptional circumstance allowing consideration of docket congestion in determining the reasonable period of delay that tolls statute. *People v. Runningbear*, 753 P.2d 764 (Colo. 1988).

In order to determine if the defendant was entitled to have the charges against him dismissed for violating his rights to a speedy trial, the court must determine whether there was a delay that should be attributable to the defendant's absence and whether the trial delay caused by such absence was reasonable. *People v. Martin*, 732 P.2d 1210 (Colo. 1987).

Whether jeopardy has attached is irrelevant. If the court is forced to dismiss the jurors or prospective jurors and reschedule the trial, whether jeopardy has yet attached is irrelevant in computing the length of delay excluded due to mistrial. *People v. Erickson*, 194 Colo. 557, 574 P.2d 504 (1978).

Effect of escape on running of six-month rule. The defendant was not denied a speedy trial under this section, as his escape stopped the running of the six-month rule, and that the time did not again commence to run until the district attorney had actual knowledge of his return to custody. *People v. Gillings*, 39 Colo. App. 387, 568 P.2d 92 (1977).

Exclusion of period fairly attributable to defendant's voluntary unavailability. Subsection (6)(d) contemplates an exclusion from the speedy trial period not only for the time of the defendant's actual absence or unavailability but also for any additional period of delay that may be fairly attributable to the defendant as a result of his voluntary unavailability. *People v. Sanchez*, 649 P.2d 1049 (Colo. 1982); *People v. Milton*, 732 P.2d 1199 (Colo. 1987).

In determining what delay can be attributable to the absence or unavailability of the defendant, each case must be viewed individually, and the determination is dependent upon the facts of the specific case. *People v. Martin*, 732 P.2d 1210 (Colo. 1987).

Such delay may include the time required to reschedule the defendant's trial. *People v. Gray*, 710 P.2d 1149 (Colo. App. 1985).

Defendant has burden to prove he has been denied speedy trial. *People v. Chavez*, 779 P.2d 375 (Colo. 1989).

Accused must move for dismissal or discharge. To properly raise the question the accused may apply for his discharge or for dismissal for lack of a speedy trial. *Jaramillo v. District Court*, 174 Colo. 561, 484 P.2d 1219 (1971).

In accordance with the express language of subsection (5), defendant waived his right to a speedy trial by failing to move for dismissal of charges prior to entering a guilty plea. This did not, however, automatically waive the defendant's constitutional right to a speedy trial. *Moody v. Corsentino*, 843 P.2d 1355 (Colo. 1993).

The objection that the defendant has not had a speedy trial must itself be speedily raised when the case is moved for trial. *Keller v. People*, 153 Colo. 590, 387 P.2d 421 (1963).

Failure to move for dismissal prior to beginning of trial is a waiver of the statutory right to speedy trial. *People v. Drake*, 748 P.2d 1237 (Colo. 1988).

A juvenile's failure to request dismissal on speedy trial grounds before the beginning of the adjudicatory trial will result in the waiver of the juvenile's speedy trial rights under this section. *People ex rel. J.M.N.*, 39 P.3d 1261 (Colo. App. 2001).

Defendant's attorney did not object to the trial date on speedy trial grounds until the date of trial. The defendant waived his ability to claim that his right to a speedy trial had been violated. *People of City of Aurora v. Allen*, 885 P.2d 207 (Colo. 1994).

Subsection (5) does not require the defendant to demand his right at the earliest possible time. *Harrington v. District Court*, 192 Colo. 351, 559 P.2d 225 (1977).

Subsection (5) merely requires that the defendant make such a demand prior to the commencement of his trial, which, in most cases, would certainly be after the trial setting. *Harrington v. District Court*, 192 Colo. 351, 559 P.2d 225 (1977).

Defendant's failure to demand dismissal prior to trial pursuant to alleged denial of speedy trial rights normally waives any speedy trial objection after conviction. *People v. Marquez*, 739 P.2d 917 (Colo. App. 1987).

Effect of the failure of the prosecution and the trial court to comply with the speedy trial statute requires the dismissal of the charges against the defendant with prejudice. *People v. Martin*, 732 P.2d 1210 (Colo. 1987).

Upon refusal of discharge, accused may apply for habeas corpus. Where a person is entitled to discharge under this section, but such discharge is denied him in the district court, he may at once apply for the writ of habeas corpus. *Ex parte Miller*, 66 Colo. 261, 180 P. 749 (1919).

A defendant is entitled to a dismissal of charges against him or her for violation of his or her statutory right to a speedy trial if he or she timely files a motion to dismiss even if it is filed on the day of trial, as long as it is filed prior to any hearing on any pretrial motion that is set for hearing on that date. A defendant should not have to assert a violation of his or her speedy trial right weeks before trial when a violation of such right might not occur until days before, or even on the day of, trial. *People v. Desantiago*, 2014 COA 66M, ___ P.3d ___.

Right to speedy trial may be waived. The right to a speedy trial, both under this section and § 16 of art. II, Colo. Const., may certainly be waived. *Keller v. People*, 153 Colo. 590, 387 P.2d 421 (1963).

Defendant can waive his constitutional and statutory right to a speedy trial by his failure to make a timely objection. *People v. O'Donnell*, 184 Colo. 104, 518 P.2d 945 (1974).

Defendant's failure to object to the date set for pre-trial motions hearing constituted his consent to the trial schedule that was offered, subject only to the condition that the actual trial commence within a reasonable time thereafter. A defendant cannot stand mute and allow a trial schedule to be adopted without registering his complaint that such schedule violates his speedy trial rights. *People v. Atkins*, 885 P.2d 243 (Colo. App. 1994); *People v. Franco*, 74 P.3d 357 (Colo. App. 2002).

Failure to object before trial is waiver. A defendant who has gone to trial without objection cannot by motion obtain his discharge on the ground that he was not tried within the time prescribed by this section. *Heller v. People*, 2 Colo. App. 459, 31 P. 773 (1892).

Failure to object in the trial court to the first trial being held and the subsequent request for a continuance by the defendant constitutes a waiver of the statutory and constitutional right to a discharge. *Keller v. People*, 153 Colo. 590, 387 P.2d 421 (1963).

Statutory right to a speedy trial can be waived, and it is waived by failure to make objection at the trial. *Valdez v. People*, 174 Colo. 268, 483 P.2d 1333 (1971).

Counsel's sending waiver form to defendant not waiver. An agreement by defense counsel to send a waiver form to the defendant cannot be interpreted as a waiver of defendant's right to a speedy trial. *People v. Bell*, 669 P.2d 1381 (Colo. 1983).

Written waiver not essential. The fact that the defendant did not execute a written waiver of her right to a speedy trial as required in the deferred prosecution statute and as she agreed to do in open court does not inure to her benefit. *People v. Ybarra*, 190 Colo. 409, 547 P.2d 925 (1976).

But affirmative conduct is. An express consent to the delay or other affirmative conduct evidencing such consent must be shown. *Harrington v. District Court*, 192 Colo. 351, 559 P.2d 225 (1976); *People v. Lopez*, 41 Colo. App. 206, 587 P.2d 792 (1978); *People v. Wimer*, 43 Colo. App. 237, 604 P.2d 1183 (1979).

An express waiver or other affirmative conduct evidencing such a waiver must be shown. *People v. Gallegos*, 192 Colo. 450, 560 P.2d 93 (1977); *Rance v. County Court*, 193 Colo. 220, 564 P.2d 422 (1977).

Mere silence by a defense counsel at a trial setting shall not be construed as a waiver of the defendant's statutory right to a speedy trial. *Harrington v. District Court*, 38 Colo. 360, 559 P.2d 225 (1977); *Rance v. County Court*, 193 Colo. 220, 564 P.2d 422 (1977); *People v. Lopez*, 41 Colo. App. 206, 587 P.2d 792 (1978).

This section does not state that defendant's failure to object to a trial setting beyond the six-month period should be viewed as a delay attributable to the defendant. In fact, subsection (5) mandates that the only affirmative action required on the part of the defendant be that he move for a dismissal prior to trial. *Harrington v. District Court*, 192 Colo. 351, 559 P.2d 225 (1977).

Failure of each defendant to interpose any objection to a trial setting in county court beyond the six-month speedy trial period did not waive his right to a speedy trial. *Rance v. County Court*, 193 Colo. 220, 564 P.2d 422 (1977).

Request for a pretrial conference in criminal case, without more, does not constitute waiver of speedy trial right nor a delay caused at defendant's instance to be excluded from speedy trial calculations. *Rodman v. County Court*, 694 P.2d 871 (Colo. App. 1984).

Waiver by defense attorney's setting trial date. Where a trial date is set at the request of the defendant's attorney to accommodate his schedule, the defendant waives any speedy trial claims as to this trial date. *People v. Fetty*, 650 P.2d 541 (Colo. 1982).

When defense counsel insists he could not try the case prior to expiration of the six-month speedy trial period, this is tantamount to a request for a continuance. *People v. Chavez*, 650 P.2d 1310 (Colo. App. 1982).

When a defendant's attorney participates in a trial date setting which is within six months of the plea entered on that day, regardless of an earlier plea, the defendant thereby acquiesces to subsection (6)(f) and the prosecution thus meets its burden of demonstrating compliance with the speedy trial statute. *People v. Rogers*, 706 P.2d 1288 (Colo. App. 1985).

To establish a waiver the record must demonstrate that defense counsel had notice of the trial date and had adequate opportunity to object. *People v. Franco*, 74 P.3d 357 (Colo. App. 2002).

Nothing in subsection (5.1) precludes an off-the-record trial setting, nor does the subsection specify that the defendant or defense counsel must be present. *People v. Franco*, 74 P.3d 357 (Colo. App. 2002).

No provision in this section for revocation once a waiver is in place. *People v. Jefferson*, 981 P.3d 613 (Colo. App. 1998).

A guilty plea waives a defendant's right to claim the improper denial of his or her statutory right to a speedy trial. *People v. McMurtry*, 122 P.3d 237 (Colo. 2005).

By entering an unconditional, voluntary guilty plea, a defendant waives the right to assert, either on appeal or by collateral attack, a violation of the statutory right to speedy trial. *People v. Owen*, 122 P.3d 1006 (Colo. App. 2005).

Defendant's attorney, without defendant's personal consent, may obtain a continuance of a trial setting subject to the discretion of the trial court and the continuance will extend the speedy trial deadline an additional six months from the granting of the continuance. *People v. Anderson*, 649 P.2d 720 (Colo. App. 1982).

Defendant's motion to dismiss, because defense counsel was unable to proceed on the scheduled trial date within the speedy trial period, was considered tantamount to a request for a continuance in order to protect the defendant's sixth amendment right to counsel. *People v. Wilson*, 972 P.2d 701 (Colo. App. 1998).

Compliance with speedy trial requirements is jurisdictional. Failure to comply with the requirements of the speedy trial act is jurisdictional in the sense that defendant may request mandatory dismissal of the charges upon expiration of the allotted time. *People v. Anderson*, 649 P.2d 720 (Colo. App. 1982).

Failure to comply not automatic deprivation of jurisdiction. However, failure to bring defendant to trial within the allotted time does not automatically deprive the trial court of jurisdiction because defendant's failure to demand dismissal prior to trial waives any speedy trial objection. *People v. Anderson*, 649 P.2d 720 (Colo. App. 1982).

Relief in nature of prohibition under C.A.R. 21, is appropriate remedy when a district court is proceeding without jurisdiction to try a defendant in violation of his right to a speedy trial. *Marquez v. District court*, 200 Colo. 55, 613 P.2d 1302 (1980).

Whether a speedy trial has been afforded is a judicial question. *Casias v. People*, 160 Colo. 152, 415 P.2d 344 (1966).

Exclusions and extensions applied concomitantly. Nothing prevents a court from applying concomitantly the exclusionary provisions of subsection (6) and the rule governing extensions in subsection (3) when it makes a speedy trial determination. *People v. Luevano*, 670 P.2d 1 (Colo. 1983).

Entry of negotiated plea which is later withdrawn tantamount to continuance. Where defendant enters negotiated plea which he later withdraws following the court's rejection of the plea agreement, it is appropriate to view such plea as a continuance requested by the defendant under subsection (3). *People v. Madsen*, 707 P.2d 344 (Colo. 1985).

The fact that defendant was allowed to withdraw his plea because the plea bargain could not be implemented is irrelevant for speedy trial analysis. *People v. Cass*, 68 P.3d 537 (Colo. App. 2002).

A speedy public trial is a relative concept in that the circumstances of each case determine whether or not it has been afforded. *Casias v. People*, 160 Colo. 152, 415 P.2d 344 (1966); *Maes v. People*, 169 Colo. 200, 454 P.2d 792 (1969).

Speedy public trial does not mean trial immediately after the accused is apprehended and indicted, but public trial consistent with the court's business. *Maes v. People*, 169 Colo. 200, 454 P.2d 792 (1969).

Defendants have the burden of proof that an expeditious trial was denied them. *Casias v. People*, 160 Colo. 152, 415 P.2d 344 (1966); *Maes v. People*, 169 Colo. 200, 454 P.2d 792 (1969).

A motion for discharge or for dismissal for want of due prosecution of a charge of crime must be sustained by the accused; he has the burden of showing that he was not afforded a speedy trial. *Jaramillo v. District Court*, 174 Colo. 561, 484 P.2d 1219 (1971).

The burden is upon the defendant to establish that he has been denied a speedy trial in violation of the statute or rule or that his constitutional right to a speedy trial requires dismissal. *Saiz v. District Court*, 189 Colo. 555, 542 P.2d 1293 (1975).

Prima facie showing of violation shifts burden of proof to prosecution. Where a defendant has shown a prima facie violation of this section with no evidence in the record to the contrary, the burden of showing compliance with the time requirements of the rule and statute rests with the trial court and the prosecution. *People v. Wimer*, 43 Colo. App. 237, 604 P.2d 1183 (1979).

Dismissal of charges. The people cannot indiscriminately dismiss and refile charges in order to avoid the mandate of this section and Crim. P. 48(b)(1). However, to be entitled to dismissal on these grounds, the defendant must affirmatively establish the existence of such a course of action on the part of the prosecution. *People v. Wilkinson*, 37 Colo. App. 531, 555 P.2d 1167 (1976); *Meehan v. County Court, Jefferson Co.*, 762 P.2d 725 (Colo. App. 1988);

People v. Kraemer, 795 P.2d 1371 (Colo. App. 1990).

Charges in an original information properly dismissed without prejudice within the speedy trial limits for that case become a nullity; upon defendant's arraignment under a subsequent information, speedy trial period begins anew. People v. Kraemer, 795 P.2d 1371 (Colo. App. 1990).

The speedy trial period is calculated separately for each criminal complaint brought against a defendant, and, generally, if the charges in a summons and complaint are properly dismissed without prejudice, that case becomes a nullity, and a new speedy trial period begins if and when the accused enters a plea to subsequently filed charges, unless the defendant can establish that the prosecution acted in bad faith to circumvent the speedy trial limits. People in Interest of C.O., 870 P.2d 1266 (Colo. App. 1994).

Where original case was properly dismissed without prejudice by the county court, the speedy trial period started anew in the juvenile case, and the juvenile waived his right to speedy trial by not objecting when the juvenile trial was scheduled outside the speedy trial limits. People in Interest of C.O., 870 P.2d 1266 (Colo. App. 1994).

Dismissing a claim in an earlier case for the legitimate purpose of joinder does not support a conclusion that prosecutor was indiscriminately dismissing and refiling charges in order to avoid the speedy trial mandate. People v. Kraemer, 795 P.2d 1371 (Colo. App. 1990).

Finding of good cause for denial of motion for severance is specifically required by subsection (6)(c).

Although court properly denied motion for severance on evidentiary grounds, under § 16-7-101, it was an abuse of discretion to deny motion for severance on speedy trial grounds under this section where court made no finding of good cause why severance should not be granted. People v. Hernandez, 829 P.2d 392 (Colo. App. 1991).

Insufficient proof. The burden of establishing that the prosecution indiscriminately dismissed and refilled charges in order to avoid the mandate of this section and Crim. P. 48(b)(1) is not satisfied by proof only that the district attorney sought and obtained a subsequent indictment for different offenses arising from the same transaction. People v. Wilkinson, 37 Colo. App. 531, 555 P.2d 1167 (1976); Meehan v. County Court, Jefferson Co., 762 P.2d 725 (Colo. App. 1988).

Dismissal of charges sufficient to protect defendant's rights. Where defendant's trial took place within six months of defendant's plea of not guilty to the charges in the second indictment, and while the trial was not held until more than six months after defendant's plea to the charges of the original indictment, those charges were dismissed by the trial court, such dismissal was sufficient to protect defendant's rights under this section and Crim. P. 48(b)(1). People v. Wilkinson, 37 Colo. App. 531, 555 P.2d 1167 (1976); Meehan v. County Court, Jefferson Co., 762 P.2d 725 (Colo. App. 1988).

Defendant waived right to speedy trial. Although the first trial which resulted in a mistrial took place beyond the period fixed by statute, the defendant waived any right to discharge he may have had under this section by going to trial without objection. Such an objection is a prerequisite to his claim for discharge under this section and under § 16 of art. II, Colo. Const., guaranteeing a speedy trial. Keller v. People, 153 Colo. 590, 387 P.2d 421 (1963); Keller v.

Tinsley, 335 F.2d 144 (10th Cir.), cert. denied, 379 U.S. 938, 85 S. Ct. 342, 13 L. Ed. 2d 348 (1964).

Agreement by defendant and defense counsel at hearing within six-month period that defendant was responsible for 20 days of delay in bringing case to trial deemed express consent to a 19-day delay in the trial and waiver of any speedy trial claims. *People v. Barnes*, 636 P.2d 1323 (Colo. App. 1981).

Defendant expressly waived the requirements concerning trial within period fixed by statute. Under such circumstances, this section is not applicable. *Wilson v. People*, 156 Colo. 243, 398 P.2d 35 (1965).

Defendant's failure to object to the trial date or to seek an earlier trial date, and his request for a continuance, all operated to waive his constitutional and statutory rights to discharge because he was not brought to trial within the time limits set by this section. *Adargo v. People*, 159 Colo. 321, 411 P.2d 245 (1966); *Adargo v. Patterson*, 371 F.2d 822 (10th Cir. 1967).

Where the record does not disclose any objection to delay made by defendant at the time of trial and further and where defendant's motion for postconviction relief under Crim. P. 35(b) does not set forth any facts showing that the delay was in any manner oppressive or arbitrary nor that he was in any way deprived of any defense or that any witness was unavailable, the court is not required to hold an evidentiary hearing. *Valdez v. People*, 174 Colo. 268, 483 P.2d 1333 (1971).

Motion for discharge not waived. *Rude v. People*, 44 Colo. 384, 99 P. 317 (1909).

Delay justified discharge. *In re Garvey*, 7 Colo. 502, 4 P. 758 (1884); *Rude v. People*, 44 Colo. 384, 99 P. 317 (1909); *Ex parte Miller*, 66 Colo. 261, 180 P. 749 (1919).

Duty of court to dismiss if dismissal required because right denied. If the constitution, the statutes, the rules, or the case law requires dismissal of a prosecution because of a denial to right of a speedy trial, it is the duty of the trial court to order that the case be dismissed. *People ex rel. Coca v. District Court*, 187 Colo. 280, 530 P.2d 958 (1975).

Section does not apply to an action where the alleged offense was committed prior to July 1, 1972. *People v. Reliford*, 186 Colo. 6, 525 P.2d 467 (1974).

Defendant cannot be required to pursue his C.A.R. 21 proceeding in a separate action only at the expense of his right to a speedy trial. *People v. Rosidivito*, 940 P.2d 1038 (Colo. App. 1996).

Test in subsection (6)(g)(I) applied in *People v. Koolbeck*, 703 P.2d 673 (Colo. App. 1985).