

Chapter 134

Compromise; Dismissal; Prosecution of Prisoners; Detainers

134.010

NOTES OF DECISIONS

Only misdemeanors may be compromised. *Saxon v. Conger*, (1877) 6 Or 388; *State v. Keep*, (1917) 85 Or 265, 166 P 936.

It was held that the prosecuting witness had no right to receive in compromise more than value of property stolen from him. *Saxon v. Conger*, (1877) 6 Or 388.

Denial of motion for mistrial was not ground for reversal or abuse of discretion when court gave instruction to disregard testimony of compromise of alleged misdemeanor made by defendant's attorney when defendant was not present. *State v. Jackson*, (1960) 221 Or 315, 351 P2d 439.

FURTHER CITATIONS: *State v. McLennan*, (1917) 82 Or 621, 634, 162 P 838.

LAW REVIEW CITATIONS: 36 OLR 179.

134.020

NOTES OF DECISIONS

An unequivocal acknowledgement of satisfaction by the injured person is essential to a valid compromise; an agreement to acknowledge satisfaction is not sufficient. *Saxon v. Conger*, (1877) 6 Or 388.

LAW REVIEW CITATIONS: 36 OLR 179.

134.040

NOTES OF DECISIONS

An agreement not to prosecute indictments so long as accused remains in prison is illegal and void. *State v. D'Au-tremont*, (1957) 212 Or 344, 317 P2d 932.

134.110

NOTES OF DECISIONS

Dismissal of a felony charge is not a bar to further prosecution. *State v. Jairl*, (1962) 229 Or 533, 368 P2d 323; *State v. Wilson*, (1962) 230 Or 251, 369 P2d 739.

That the court continued the charge against the defendant for several successive terms after stating that good cause had been shown was sufficient as "good cause" to prevent dismissal of prosecution. *State v. Swain*, (1934) 147 Or 207, 31 P2d 745, 32 P2d 773, 93 ALR 921.

Failure to indict within the time limited is not a bar to prosecution on an indictment returned after such period. *State v. Sutton*, (1960) 223 Or 570, 355 P2d 247.

This section must be interpreted in the light of the requirements of Ore. Const. Art. I, §10 and U.S. Const., Am. 4. *State v. Downing*, (1970) 4 Or App 269, 478 P2d 420.

By failure to move for dismissal before the indictment was returned, defendant waived his right under this section. *State v. Sutton*, (1960) 223 Or 570, 355 P2d 247; *State v. Wilson*, (1962) 230 Or 251, 369 P2d 739; *State v. Hedrick*, (1962) 233 Or 137, 377 P2d 325.

FURTHER CITATIONS: *In re Clark*, (1916) 79 Or 325, 154 P 748, 155 P 187; *State v. Teague*, (1959) 215 Or 609, 336 P2d 338; *Gumm v. Heider*, (1960) 220 Or 5, 348 P2d 455; *Bevel v. Gladden*, (1962) 232 Or 578, 376 P2d 117; *State v. Vawter*, (1963) 236 Or 85, 386 P2d 915; *State v. Rowley*, (1971) 92 Or App Adv Sh 1386, 485 P2d 1120, Sup Ct review denied.

ATTY. GEN. OPINIONS: Delay when defendant is in federal prison outside of state, 1960-62, p 394.

134.120

NOTES OF DECISIONS

1. In general
2. Next term
3. Consent of defendant
4. Good cause
5. Reasonable time

1. In general

Defendant's right under this section is enforceable by asking for dismissal, then taking appeal; mandamus is not available to force dismissal. *In re Von Klein*, (1913) 67 Or 298, 135 P 870; *In re Clark*, (1916) 79 Or 325, 154 P 748, 155 P 187.

This statute was enacted for the purpose of carrying out the guarantee in Ore. Const. Art. I, §10 that justice shall be administered completely and without delay. *Johnston v. Circuit Court*, (1932) 140 Or 100, 12 P2d 1027; *State v. Swain*, (1934) 147 Or 207, 31 P2d 745, 32 P2d 773, 93 ALR 921.

This section does not define "without delay" for Ore. Const. Art. I, §10, since different courts have different terms. *State v. Kuhnhausen*, (1954) 201 Or 478, 266 P2d 698, 272 P2d 225; *State v. Robinson*, (1970) 3 Or App 200, 473 P2d 152.

A defendant is entitled to have the indictment dismissed as of course if the state fails to show cause. *State v. Bateham*, (1919) 94 Or 524, 186 P 5.

The court may proceed with the trial although defendant has appealed the denial of his motion for dismissal under this section. *State v. De Grace*, (1933) 144 Or 159, 22 P2d 896, 90 ALR 232.

It is the duty of the prosecutor to see that the defendant is arraigned, enters a plea and is speedily brought to trial. *State v. Chadwick*, (1935) 150 Or 645, 47 P2d 232.

Indictment was dismissed where several terms elapsed without trial of defendant. *State v. Rosenberg*, (1914) 71 Or 389, 142 P 624; *State v. Hellala*, (1914) 71 Or 391, 142 P 624.

2. Next term

The holding of a term of circuit court in any one of three counties of a judicial district is a term only for that particular county; the continuance of a case over terms of other counties does not entitle the defendant to dismissal of the indictment. *State v. Ryan*, (1925) 114 Or 91, 234 P 811.

The next term of court in which indictment is triable is the next term after the cause is at issue on a question of fact by a plea of "not guilty" or of former conviction. *State v. Chadwick*, (1935) 150 Or 645, 47 P2d 232.

A defendant does not necessarily receive a speedy trial by being tried in the next term of court following the term in which the indictment was returned. *State v. Kuhnhausen*, (1954) 201 Or 478, 266 P2d 698, 272 P2d 225.

The requirement of a speedy trial may be waived by voluntary consent of the accused, which remains effective until withdrawn. *State v. D'Autremont*, (1957) 212 Or 344, 317 P2d 932.

Where the record does not indicate demurrer was filed solely for delay, defendant will not be presumed to have consented to all ensuing delay. *State v. Crosby*, (1959) 217 Or 393, 342 P2d 831.

3. Consent of defendant

Where the defendant has consented to continuance of the case, the indictment should not be dismissed. *State v. Clark*, (1917) 86 Or 464, 168 P 944; *State v. Moss*, (1919) 92 Or 449, 181 P 347; *State v. Stilwell*, (1921) 100 Or 637, 198 P 559; *Johnston v. Circuit Court*, (1932) 140 Or 100, 12 P2d 1027.

"Consent" as used in this section must be express. *State v. Chadwick*, (1935) 150 Or 645, 47 P2d 232. **But see** *State v. Moltzner*, (1932) 140 Or 128, 13 P2d 347.

4. Good cause

Statement of lack of time on the part of the court requiring a continuance of unfinished business is in itself "good cause" for not dismissing a pending indictment. *State v. Bateham*, (1919) 94 Or 524, 186 P 5; *State v. Lee*, (1924) 110 Or 682, 224 P 627; *State v. Goldstein*, (1924) 111 Or 221, 224 P 1087; *State v. Moltzner*, (1932) 140 Or 128, 13 P2d 347; *State v. Weitzel*, (1936) 153 Or 524, 56 P2d 1111; *State v. German*, (1940) 163 Or 642, 98 P2d 6.

After the jury disagrees and is discharged it is in discretion of court to continue the action for hearing at next term. *State v. Clark*, (1917) 86 Or 464, 168 P 944.

In the absence of evidence to the contrary it is presumed that order of continuance is based upon good cause. *State v. Ellison*, (1957) 209 Or 672, 307 P2d 1050.

On appeal from denial of motion to dismiss, burden is upon appellant to show that trial court abused its discretion. *Id.*

Where the jury failed to agree and were discharged and the court continued the case for the term, such order continuing the case was "good cause" shown. *State v. Clark*, (1917) 86 Or 464, 168 P 944.

Absence of material witnesses was good cause. *State v. Ryan*, (1925) 114 Or 91, 234 P 811.

Where a defendant's multiple crime and not the fault of the state causes a failure to bring him to trial, it was not error to refuse to dismiss the indictment. *State v. Swain*, (1934) 147 Or 207, 31 P2d 745, 32 P2d 773, 93 ALR 921.

The fact that the duties of the court in other counties composing the judicial district was such that the court could not try the defendant on the indictment at that term of court, was not good cause for postponement. *State v. Chadwick*, (1935) 150 Or 645, 47 P2d 232.

The fact that civil cases were set for trial constituted good cause for delay. *State v. Kuhnhausen*, (1954) 201 Or 478, 266 P2d 698, 272 P2d 225.

5. Reasonable time

The tests applied in determining whether an accused has been deprived of his right to a speedy trial under the Oregon Constitution are likewise the tests under the statute. *State v. Kuhnhausen*, (1954) 201 Or 478, 266 P2d 698, 272 P2d 225; *State v. Jackson*, (1961) 228 Or 371, 365 P2d 294, 89 ALR2d 1225; *State v. Downing*, (1970) 4 Or App 269, 478 P2d 420.

A reasonable time is such length of time as may reasonably be allowed or required having regard to attending circumstances. *State v. Jackson*, (1961) 228 Or 371, 365 P2d 294, 89 ALR2d 1225; *State v. Gardner*, (1963) 233 Or 252, 377 P2d 919; *State v. Thompson*, (1965) 240 Or 468, 402 P2d 243; *State v. Harrison*, (1969) 253 Or 489, 455 P2d 613; *State v. Rowley*, (1971) 92 Or App Adv, Sh 1386, 485 P2d 1120, Sup Ct review denied.

"Reasonable time" begins to run from the indictment. *State v. Dodson*, (1961) 226 Or 458, 360 P2d 782; *State v. Downing*, (1970) 4 Or App 269, 478 P2d 420; *State v. Rowley*, (1971) 92 Or App Adv Sh 1386, 485 P2d 1120, Sup Ct review denied.

This section does not apply to trial in circuit court on appeal from a lower court. *State v. Dodson*, (1961) 226 Or 458, 360 P2d 782.

Consideration must be given to at least three basic factors in judging the reasonableness of a particular delay: the source of the delay, the reason for it and whether the delay prejudiced interest protected by the speedy trial clause. *State v. Robinson*, (1970) 3 Or App 200, 473 P2d 152.

Thirteen months' delay in bringing defendant to trial was unreasonable and entitled defendant to dismissal of indictment. *State v. Crosby*, (1959) 217 Or 393, 342 P2d 831.

Defendant by his demurrer consented to reasonable delay, including court's unattached orders continuing the cause from one term to the next. *State v. Robinson*, (1959) 217 Or 612, 343 P2d 886.

The circuit court did not abuse its discretion in denying defendant's motion to dismiss an indictment based on a delay of seven and one-half months in bringing defendant to trial. *State v. Vawter*, (1963) 236 Or 85, 386 P2d 915.

The delay occasioned by the state exercising its statutory right to appeal in a criminal case was not prohibited by the state or federal constitutions. *State v. Robinson*, (1970) 3 Or App 200, 473 P2d 152.

FURTHER CITATIONS: *State v. Breaw*, (1904) 45 Or 586, 78 P 896; *State v. Teague*, (1959) 215 Or 609, 336 P2d 338; *State v. Gates*, (1962) 230 Or 84, 368 P2d 605; *Bevel v. Gladden*, (1962) 232 Or 578, 376 P2d 117; *State v. Hedrick*, (1962) 233 Or 76, 377 P2d 23; *State v. Hedrick*, (1962) 233 Or 137, 377 P2d 325; *Klopper v. No. Car.*, (1967) 386 US 213, 220, 87 S Ct 977, 18 L Ed 2d 1.

LAW REVIEW CITATIONS: 39 OLR 171, 172.

134.130

CASE CITATIONS: *State v. Ellison*, (1957) 209 Or 672, 307 P2d 1050.

134.140

NOTES OF DECISIONS

Failure to indict within the time limited is not a bar to prosecution on an indictment returned after such period. *State v. Sutton*, (1960) 223 Or 570, 355 P2d 247.

Subsection (2) applies alike to city and state prosecutions whenever: (a) the case that was dismissed was a prosecution for an offense which carried the possibility of a jail sentence; and (b) the same facts are alleged in both prosecutions. *State v. Mayes*, (1966) 245 Or 179, 421 P2d 385.

FURTHER CITATIONS: *State v. Reinhart*, (1895) 26 Or 466, 38 P 822; *Gue v. Eugene*, (1909) 53 Or 282, 100 P 254; *Ex parte Jung Shing*, (1915) 74 Or 372, 145 P 637; *State v. Ritchie*, (1933) 144 Or 430, 25 P2d 156; *State v. Downing*, (1970) 4 Or App 269, 478 P2d 420.

134.150**NOTES OF DECISIONS**

On application of district attorney for dismissal, the court may in its discretion refuse dismissal and mandamus is not available to force dismissal. *In re Clark*, (1916) 79 Or 325, 154 P 748, 155 P 187.

The power of dismissal is in court, not district attorney. *Timmins v. Hale*, (1927) 122 Or 24, 256 P 770.

A criminal case undisposed of will go over to the next term of court without entry of a formal order for continuance. *State v. D'Autremont*, (1957) 212 Or 344, 317 P2d 932.

FURTHER CITATIONS: *Ex parte Jung Shing*, (1915) 74 Or 372, 145 P 637; *State v. Mayes*, (1966) 245 Or 179, 421 P2d 385; *State v. Kent*, (1971) 5 Or App 297, 484 P2d 1109.

ATTY. GEN. OPINIONS: Dismissal of information on motion of district attorney, (1970) vol 35, p 354.

134.160**NOTES OF DECISIONS**

The district attorney has no authority to make an agreement, binding on the grand jury of another county, with one indicted that if he pleads guilty all other prosecutions growing out of the same transaction will be dismissed. *State v. Keep*, (1917) 85 Or 265, 166 P 936.

The power of dismissal is in court, not district attorney. *Timmins v. Hale*, (1927) 122 Or 24, 256 P 770.

134.510 to 134.530**NOTES OF DECISIONS**

In the absence of a showing that an inmate-accused, who is not represented by counsel, was aware of the procedure provided by these statutes, it cannot be determined that he waived his constitutional right to a speedy trial. *State v. Downing*, (1970) 4 Or App 269, 478 P2d 420.

Reasonable statutory procedural requirements, such as these sections, may be adopted to implement the constitutional requirement for a speedy trial. *Id.*

FURTHER CITATIONS: *State v. Gardner*, (1963) 233 Or 252, 377 P2d 919.

134.510

CASE CITATIONS: *State v. D'Autremont*, (1957) 212 Or 344, 317 P2d 932; *Bevel v. Gladden*, (1962) 232 Or 578, 376 P2d 117; *State v. Gardner*, (1963) 233 Or 252, 377 P2d 919; *State v. Vawter*, (1963) 236 Or 85, 386 P2d 915; *State v. Evans*, (1967) 249 Or 314, 432 P2d 175.

ATTY. GEN. OPINIONS: Prisoner in penitentiary against whom there is a detainer for violation of probation, 1954-56, p 151; order to produce prisoner-parent in juvenile proceedings, 1960-62, p 297.

134.520**NOTES OF DECISIONS**

When a criminal defendant, represented by counsel, chooses not to avail himself of a statutory procedure under which he might have obtained the dismissal of an indictment, such inaction amounts to a waiver of the question that might have been raised. *Bevel v. Gladden*, (1962) 232 Or 578, 376 P2d 117.

FURTHER CITATIONS: *State v. Gardner*, (1963) 233 Or 252, 377 P2d 919; *State v. Evans*, (1967) 249 Or 314, 432 P2d 175.

134.530**NOTES OF DECISIONS**

This statute was intended as an additional measure of protection for inmates and not to deprive them of any rights under other statutes. *State v. Gardner* (dictum), (1963) 233 Or 252, 377 P2d 919.

The state may not evade the purpose of ORS 134.510 to 134.560 by re-indictment and dismissal. *State v. Kent*, (1971) 5 Or App 297, 484 P2d 1109.

Defendant is not required to show he was prejudiced when the statutes are not complied with. *Id.*

134.605 to 134.665

ATTY. GEN. OPINIONS: Agency responsible for expenses of sheriff returning prisoners, (1969) Vol 34, p 863.