THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Aro-21-312

DENNIS WINCHESTER
Appellant

v.

STATE OF MAINE
Appellee

ON APPEAL from the Aroostook County
Unified Criminal Docket

BRIEF OF AMICUS CURIAE MAINE COMMISSION ON INDIGENT LEGAL SERVICES

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INTEREST OF AMICUS CURIAE

The Maine Commission on Indigent Legal Services ("MCILS") is an independent commission whose purpose is to provide efficient, high-quality representation to consumers of indigent legal services, including criminal defendants, consistent with federal and state constitutional and statutory obligations. 4 M.R.S. § 1801.

INTRODUCTION

Momentarily, amicus curiae will turn its attention towards identifying the substantive parameters of the Maine Constitution's Speedy Trial Clause. Inherent in that undertaking, however, is recognition of the judicial prerogative to reach state constitutional questions before conducting – indeed, sometimes *entirely in lieu of* – any federal constitutional analysis. In other words, part and parcel of dissecting *the way* the Maine Constitution applies to an issue of law is an appreciation of *why* the Maine Constitution must come first.

In recent years, this Court has revived the primacy approach it first announced in 1984. *See, e.g., State v. Fleming*, 2020 ME 120, ¶ 17 n. 9, 239 A.3d 648; *State v. Chan*, 2020 ME 91, ¶¶ 32-36, 236 A.3d 471 (Connors, J., concurring). Now is thus an opportune time to remind ourselves of the vital interests served by a robust, state-constitution-first approach. This Court recently recognized three such interests. *State v. Athayde*, 2022 ME 41, ¶ 21, --- A.3d ---. Amicus concurs, and writes here only to add

another: Simply, *the primacy approach is the only way to ensure that Mainers' constitutional rights remain defined by Mainers.*

The Speedy Trial Clause of Article I, § 6 is an example. For the first 150 or so years of our state, its founders, the drafters of the Maine Constitution, this Court, and the citizens of Maine considered that provision first and, in fact, without reference to federal law. So construed, the Speedy Trial Clause of the Maine Constitution assiduously guarded against pretrial delay. In the 1960s, for reasons amicus will soon detail, this Court shifted its focus, analyzing the constitutional speedy-trial right according to the Sixth Amendment and United States Supreme Court decisions. As a result, Mainers lost control of the speedy-trial right, even, respectfully, erroneously equating the state- and federal constitutional speedy-trial rights.

The primacy approach, which this Court has rightly "adopted," *see* amicus-brief invitation of this Court, is the only way to ensure that, going forward, Mainers will retain the speedy-trial rights that Mainers deem appropriate.

ARGUMENT

I. Maine's state-constitutional speedy-trial provision is more protective than the federal analogue.

Article I, Section 6 of Maine Constitution guarantees that a criminal defendant be brought to trial no later than 12 months after arraignment or initial appearance. A case delayed beyond that time must be dismissed unless the defendant has caused the delay or consents to it, and without regard to prejudice to the defense. Whether a defendant has delayed or consented to a delay must account for the totality of the circumstances, but insufficient judicial, prosecutorial, or indigent-defense resources can never justify delay.

Consequently, Winchester's state-constitutional right to a speedy trial was violated. The delay far exceeded that permitted by the Maine Constitution – *years* after petitioner was charged. Under the simple test pursuant to the Maine Speedy Trial Clause, the sole remaining question is whether that delay was the result of permissible reasons. Because at least 15 months of that delay was not of petitioner's making, § 6 was necessarily violated.

To demonstrate the injury to Winchester, MCILS here details the history of the Maine constitutional speedy-trial right, illuminating its contours and rebutting the conclusion this Court reached in the early 1990s: that the speedy-trial provisions of § 6 and the Sixth Amendment are

"identical."[1] *State v. Joubert*, 603 A.2d 861, 863 (Me. 1992); *State v. Harper*, 613 A.2d 945, 946 (Me. 1992). Respectfully, that conclusion represents an erroneous and marked departure from the intent, history and policy-purposes of § 6's speedy-trial right.

A. History of Maine's state-constitutional speedy-trial provision

1. Pre-statehood: a discernible break from the Commonwealth

Section 6 was born at a time when residents of what is now Maine were displeased with the slow pace of courts in the Commonwealth of Massachusetts. In 1786, a prominent group of separatists published a list of grievances, including, according to a historian:

> The business of the Supreme Judicial Court is so great and the territory of the state so large that proper and expeditious justice is not always achieved. Especially grievous was the location of the clerk's office and all his records in Boston, a fact that necessitated costly and time-consuming trips to the capital.

Ronald F. Banks, *Maine Becomes a State*, 15 (1970). Anti-separatists thought this objection so inflammatory that, in 1797, they procured passage in Boston of legislation devolving some power to local shire courts in the District of Maine. *Id.* at 39; *see also* Richard M. Candee, *Chapter*, *Maine Towns, Maine People: Architecture and the Community*, 1783-1820 in

[1] The Court did not receive the benefit of briefing on this important point of constitutional law. Amicus has obtained and reviewed the briefs in both *Joubert* and *Harper*. In neither case did the parties debate which standard applied under the Maine Constitution. Amicus wishes to thank Nancy Rabasca, Librarian at the Cleaves Law Library, for her generous assistance in obtaining the old briefs.

Charles E. Clark et al. (eds.) *Maine in the Early Republic: From Revolution to Statehood*, 44 (1988) (noting that Massachusetts legislature established new courts in Maine "to undercut local sentiment for separation").

It was not until 1761 that the court began to hold trials in Maine;[2] previously, Maine-based matters were tried in either Boston or Charlestown, Massachusetts. William Willis, *A History of The Law, the Courts, and the Lawyers of Maine, From its First Colonization to the Early Part of the Present Century*, 39 (1863). And, during the Revolutionary War, the Supreme Judicial Court ceased its visits to Maine entirely. Alan Taylor, *Liberty Men and Great Proprietors: The Revolutionary Settlement on the Maine Frontier, 1760-1820*, 32 (1990). In the early years of the nineteenth century, Chief Justice Theophilus Parsons "usually declined to undertake the long journey" to far-flung Maine courthouses, leaving it to other justices to preside over matters in the district. *Id*. at 146.

Ultimately, the Commonwealth's attempts to ameliorate the slow pace of justice in the District of Maine were fruitless:

> [A]s the circuits extended and business increased, it was found that the court could not dispatch the constantly increasing business, it being impossible for the full court to travel into each county and dispose of all the actions. The consequence was, a large accumulation of causes on the dockets, and great delay in disposing of them.

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[2] "Prior to the adoption of the Massachusetts Constitution in 1780, the Supreme Judicial Court [was] the only statewide court for jury trials...." Donald G. Alexander, *The Maine Supreme Judicial Court and the Maine Judiciary: The 200th Anniversary*, 9 n. 34 (2022) (citing Vincent L. McKusick, *History of the Maine Supreme Judicial Court and the Maine Judiciary*, 142 (Presentation at the 1968 Summer Meeting of the Maine State Bar Assoc.)).

Willis*, A History*, *supra*, 41. Mid-coast resident Orchard Cook, who served in the U.S. House of Representatives from 1805-1811, noted to prominent separatist and the later-first governor of Maine, William King, in 1806 Mainers' frustration with the judiciary:

> By a continuation of connexion [of the District of Maine with Massachusetts proper,] the judiciary of the whole state is distracted & operated with impracticable & neglected requisitions.

Letter from Orchard Cook to William King et al., 2, (Feb. 27, 1806) (Maine Historical Society artifact # 103678).

Complaints about the slow pace and inadequate resources of the courts were an enduring impetus for separation. In 1791, Daniel Davis, credited with writing "the first important publication to come out of the separation movement," Banks, *Maine*, *supra* at 28, wrote to the Massachusetts General Court:

> Another very important advantage that we shall enjoy by a separation from Massachusetts, will be the *sitting of a Supreme Judicial Court twice a year in some, and once at least in all the counties in the district*. At present we are indulged with but one term of that Court annually in each of the counties in York, Cumberland and Lincoln; and it is now holden in Lincoln but once a year for that, and the counties of Hancock and Washington.

Daniel Davis, *An Address to the Inhabitants of the District of Maine upon the Subject of Their Separation from the Present Government of Massachusetts by One of Their Fellow Citizens,* 16 (1791) (Maine Historical Society artifact # 103653) (emphasis in original). Davis went on to explain why more court-time was needed:

> It is not an unusual thing, for persons to be confined in the jails, at the publick expense, for nine or ten months together, waiting for nothing but the return of the Supreme Judicial court, to give them their trial.

Id. at 17-18. "[T]he injured prisoner may suffer the pains and horrors of a twelve months imprisonment, without any other satisfaction than what arises from a conscious innocence, and the pleasure of reproaching the government for its delay." *Id.* at 18. Davis' tract went on to discuss with disapproval specific instances of prisoners held approximately 10 to 11 months pending trial. *Id.* at 18 *.

Clearly, those in Boston understood that inhabitants of the district in Maine were discontented with the pace of court proceedings there. Thus, in the Act of Separation of 1819, lawmakers established a specific deadline for how soon matters would be heard in the courts of the new state:

> [A]ll actions, suits, and causes, civil and criminal…shall be respectively transferred, and returned to, have day in, and be heard, tried and determined in the highest Court of Law that shall be established in the said new State…and at the first term of such Court, that shall be held within the county in which such action, writ, process, or other matter or thing, may be so pending or returnable.

Articles of Separation § 7 (1819). Evidently, trial within one term was thought by Maine's founders to be essential to justice – even in civil cases.

The text of that year's § 6 Speedy Trial Clause – "In all criminal prosecutions, the accused shall have a right to…have a speedy trial" – closely resembles that of the Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right to a speedy…trial…." Both eschewed the earlier

language of the Massachusetts corollary: "obtain right and justice…promptly, and without delay."[3] MA. CONST., Part First, art. XI.

Perhaps this departure from the text of Massachusetts Constitution was motivated by untimely trials and the Massachusetts Supreme Judicial Court's hands-off approach to its constitutional promise.[4] *See* Committee of the Constitutional Convention, *Prefix to the Constitution*, *"Address to the People"* (1819) (noting that drafters of the Maine Constitution "deviat[ed]" from Massachusetts and United States Constitutions "where the experience…seemed to justify and require it."). The Massachusetts Supreme Court itself did not discuss its speedy-trial-clause-equivalent until 1912, some 132 years after that court came into existence, and more than nine

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[3] In fact, the Maine Constitution does contain this language – in Article I, 19. ME. CONST. Art. I, § 19 ("justice shall be administered…promptly and without delay"). Whatever that provision was intended to mean, the drafters' additional inclusion of the speedy-trial language in § 6 indicates a clear intent to exceed the guarantees of the 1780 Massachusetts Constitution.

This Court has given § 19 a civil construction. *See Nowlan v. Griffin*, 68 Me. 235 (1878).

[4] The Speedy Trial Clause of § 6 is not specifically identified as such a deviation in the Prefix to the Constitution. However, the Committee explained, "there are others," in the drafters' views, which were "wholesome and salutary" deviations. *Prefix to the Constitution*, *supra,* reprinted in Banks, *Maine*, *supra* at 280, 284. Where there is a textual departure from the constitution of those former citizens of the District of Maine, the departure should be construed as purposeful. *See also Letter from William Pitt Preble to William King*, 2, (Aug. 5, 1819) (Maine Historical Society artifact # 102199) (noting that Maine Constitution would be based on that of Massachusetts but with such "alterations, omissions and additions," as based on "long experience…would improve the instrument").

decades after the Maine court first discussed § 6.[5] *See In re Opinion of Justices*, 211 Mass. 618, 98 N.E. 337 (1912). It was not until 1958 that Massachusetts' article XI was finally construed to confer speedy-trial rights in criminal cases. *See Commonwealth v. Hanley*, 337 Mass. 384, 387 (1958). To Mainers at and near the time of statehood, the Massachusetts constitutional right must have seemed but a dead letter.

But that begs the question: What does § 6's resemblance to the Sixth Amendment likely say about the possibility of intended equivalency between the two? For one, the United States Constitution was, at best, an afterthought for most Mainers in the years prior to statehood. *See* Banks, *Maine*, *supra* at 9-10. According to the U.S. Attorney for Maine in the early days of the state, most Mainers knew little of the U.S. Constitution, notably excepting that the "objects of their concern are the sheriffs and justices of the peace – these are often looked upon with dread." *Ibid.* (citing *Letter from Silas Lee to George Thacher*, Feb 28, 1788, reprinted in George Thacher, *MSS* (Boston Public Library), Vol. I, No. 179). Moreover, in the years before Maine adopted its constitution, the Speedy Trial Clause of the Sixth Amendment was mentioned only once by the United States Supreme Court, and then only in a dissent. *See Ex parte Bollman*, 8 U.S. 75, 109 (1807)

[5] Perhaps for this reason, one author contends that the right to a speedy trial is not provided for in the Massachusetts Constitution of 1780. Marshall J. Tinkle, *The Maine State Constitution*, 38 (2d 2013). Given the Massachusetts court's more recent construction of article XI, *see*, *e.g.*, *Commonwealth v. Butler*, 464 Mass. 706, 707 (2013), however, it is more precise to say that, at the time of the creation of the Maine Constitution, the Massachusetts corollary had not yet been construed by courts to apply to criminal cases.

(Johnson, J., dissenting).[6] Even if the average resident of the District of Maine had kept abreast of the Supreme Court's construction of the Speedy Trial Clause, they would have known little about it because the Clause had not yet been substantively defined. It seems likely that the drafters of § 6 purposefully deviated from the Massachusetts speedy-trial provision, adopting text closely resembling the *tabula rasa* federal clause because both the Maine and United States provisions were meant to mean something different than the Massachusetts experience. If the United States Supreme Court never fulfilled that intent, early Mainers, including justices of the Law Court, surely did their part to do so.

2. Statehood to the early 1970s: A long, strong tradition of fixed deadlines

Maine's very first legislature enacted a rather finitely-bounded speedy-trial law. Here's what a speedy trial meant to "The First:"

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[6] Given the inclusion of contemporaneous speedy-trial provisions in habeas corpus laws, *see, e.g.,* The Habeas Corpus Act, 1784 Mass. Acts 72, § 1, if § 6's drafters understood anything about the Supreme Court's speedy-trial views, they would have believed it to be expansive. In *Ex parte Bollman*, the Court held that it had jurisdiction to grant a writ of habeas corpus to release prisoners, including alleged revolutionaries, from unlawful detention.

The shared lineage of Maine's speedy-trial guarantee and habeas corpus at common law is also noteworthy for a legal reason. ME. CONST. Art. I, § 10's Suspension Clause prohibits dilution of the writ of habeas corpus "unless when in cases of rebellion or invasion the public safety may require it." And, the statutory replacement for the Great Writ, the post-conviction review statute, must be construed to provide for all the same remedies available at common law. *See Kimball v. State*, 490 A.2d 653, 658-59 (Me. 1985); 15 M.R.S. § 2122; *see also Petgrave v. State*, 2019 ME 72, ¶¶ 18-26, 208 A.3d 371 (Alexander, J., concurring). In other words, the common-law quasi-speedy-trial provisions are vouchsafed by 15 M.R.S. § 2122 and § 10 of the Maine Constitution, in addition to § 6.

> [A]ny person who shall be held in prison upon suspicion of having committed a crime for which he may have sentence of death[7] passed upon him, shall be bailed or discharged, if he is not indicted at the second term of the sitting of the Supreme Judicial Court in the county where the crime is alleged to have been committed, when there are two terms a year in such a county. And in such counties as have but one Supreme Judicial Court in a year, the defendant shall be bailed or discharged, if he is not indicted at the first term: *Provided*, Such person shall have been held in prison for the space of six months next preceding the day of the siting of the Court. And when any person shall be held in prison under indictment, he shall be tried or bailed at the first term next after his indictment, if he demands the same, unless it shall appear to the Court that the witness, on behalf of the government, have either been enticed away or are detained by some inevitable accident from attending. And all persons under indictment for felony shall be bailed or tried at the second term after the bill shall be returned, if they demand it.

P.L. 1821, c. 59, § 44, (emphasis in original). Similar provisions were enacted in an unbroken chain for nearly the next century and a half. *See* R.S. 1841, c. 172, §§ 12-15; R.S. 1857, c. 134, §§ 9, 10; R.S. 1871, c. 134, §§ 9, 10; R.S. 1883, c. 134, § 10; R.S. 1903, c. 135, §§ 9, 10; R.S. 1916, c. 136, §§ 10, 11; R.S. 1930, c. 146, § 11; R.S. 1954, c. 148, §§ 8, 9; 15 M.R.S. § 1201 (1964); *see also* R.S. 1860, c. 157. This Court has observed that these statutes were "similar to the Habeas Corpus Act of 1679, 31 Charles II, c. 2." *State v. O'Clair*, 292 A.2d 186, 191 (Me. 1972).

The newly created Maine judiciary took a more robust approach to § 6 than had the Massachusetts Supreme Court taken to MA. CONST., Part First, art. XI. In an early decision contained in the very first Maine Reporter, the Court noted that § 6, including the right to a speedy trial, "is placed on a more

[7] Crimes punishable by death were not otherwise bailable. *Harnish v. State*, 531 A.2d 1264, 1266-67 (Me. 1987). In addition to homicide, this category included rape, arson, and burglary. *Id.* at 1268.

durable basis than the pleasure of the legislature." *Johnson's Case*, 1 Me. 230 (1821) (*per curiam*). The two supreme judicial courts' divergent treatment of their respective constitutional analogues is further evidence that Maine's provision meant something more than its Massachusetts counterpart meant to the court in Boston.

In one such decision in 1853, this Court cited the Maine state clause, striking down a statute as unconstitutional. *Saco v. Wentworth*, 37 Me. 165, 171-74 (1853). In *Saco*, the Law Court implied that Maine's statutory speedy-trial provisions were declarative of a constitutional bottom-line: "The inconvenience and hardship" of being held and subjected to bail conditions, Justice Tenney wrote, are not unconstitutional so long as they are in accordance with "statutes which are not in conflict with the constitution." *Id.* at 173. More broadly, § 6 guarantees the right to a trial "as soon as circumstances will render it expedient." *Id.* at 174. The *Saco* court explained that our state constitutional speedy-trial guarantee was encapsulated in pre-founding common law, *i.e.*, "the law of the land." *Id.* at 171.

Just six years after *Saco*, the Court again noted that the speedy-trial right tracked the law of the land, evoking the Magna Carta[8] as "the boast of the common law." *State v. Learned*, 47 Me. 426, 432 (1859). "[E]xercise of this right," the Court continued, "is limited and controlled by the paramount

[8] "Wee shall not . . . deny or delay Justice and right, neither the end, which is Justice, nor the meane, whereby we may attaine to the end, and that is the law." E. Coke, *The Second Part of the Institutes of the Laws of England 56* (Garland 1979 facsimile of 1642 ed.) (quoting Magna Carta ch. 40 (1215) and Magna Carta ch. 29 (1225)).

law in the Constitution." *Ibid.* And by that – "the Constitution" – the Court reiterated, it meant the "law of the land" as it had "remained untouched and unchanged," presumably since the Magna Carta, if not earlier. *Ibid.*

Such an interpretation was lasting in Maine jurisprudence. Nearly one hundred years after this line of speedy-trial statutes derived from "the law of the land" was first enacted, the Law Court described the then-in-effect version as having been "designed to carry out the general provisions of the constitution guaranteeing a 'speedy trial.'" *State v. Slorah*, 118 Me. 203, 207, 106 A.3d 768, 769 (1919). In fact, in *Slorah*, the Court suggested that if the statute was violated, Art. I, § 6 was necessarily violated. *Ibid.*

This paradigm of common law provisions and early Maine statutes embodying the constitutional guarantee of a speedy trial continued into the 1960s. *See State v. Couture*, 156 Me. 231, 247, 163 A.3d 646, 656 (1960) ("designed to implement the general provisions of the Constitution guaranteeing a speedy trial"). In 1961, the Law Court wrote that the Speedy Trial Clause of § 6 "has been implemented by statute by" the then-most-recent such enactment. *State v. Hale*, 157 Me. 361, 368-69, 172 A.2d 631, 636 (1961). A different iteration of the Court similarly suggested that the statutes did not represent merely the outer bounds of the state constitutional speedy-trial right; rather they were "intended by the Legislature to implement *in certain specific circumstances* the speedy trial provision of our own Constitution." *O'Clair*, 292 A.2d at 195 (emphasis added); *see also Couture*, 156 Me. at 246, 163 A.2d at 656 (noting that state constitutional

speedy-trial violation could occur even if the statutory deadlines "are not specifically applicable.").

The logic is clear: Those who authored the Speedy Trial Clause of § 6 presumably knew best what they meant by it, and they enacted specific statutory provisions to specify those limits. And many of those who authored the Maine Constitution – notably, John Chandler (first senate president), William King (Maine's first governor), William Pitt Prebble (one of the five original justices of this Court) – had plenty of opportunity to say otherwise from each vantage of government – legislative, executive and judicial. *See Maine State Legislature Legislators Biographical Database* available at: https://history.mainelegislature.org/Presto/home/home.aspx (search "Chandler, John"); *Governors of Maine, 1820-,* available at: https://legislature.maine.gov/9197/; *Cleaves Law Library, The Supreme Judicial Court of the State of Maine, 1820 to 2015*, available at: http://cleaves.org/sjcbios1.htm (webpages last accessed June 14, 2022).

In 1965, Maine adopted its first edition of the Rules of Criminal Procedure, repealing in the process the last in the long line of the statutory provisions implementing the state constitutional right to a speedy trial. P.L. 1965, c. 356, § 43 (repeal); *see O'Clair*, 292 A.2d at 195. Thus marked the end of a lengthy period – since founding – during which the Law Court was

never called to specify[9] a state-constitutional standard apart from the statutes that *were* the standard.

3. 1965 to the mid-1980s: The rise and fall of Rule 48(b)

Some context illuminates the environment in which the state-constitutional speedy-trial right was eroded. Nationally, the 1960s touched off two decades of a staggering increase in criminal prosecutions. Federal Bureau of Investigation, U.S. Dept. of Justice, *Uniform Crime Reporting Statistics*, available at: https://ucr.fbi.gov/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/about-cius (last accessed June 20, 2022); *see also* Alexander, *The Maine Supreme Judicial Court*, *supra*, 132-35 (noting that, from 1960s through 1980s, demands on Maine court-system increased). Not surprisingly, "speedy trial problems" became "the bane of the 1960s." Marc M. Arkin, *Speedy Criminal Appeal: A Right Without A Remedy*, 74 MINN. L. REV. 437, 438-39 n. 10 (1990) (collecting authorities); *see also* J.C. Gobold, *Speedy Trial -- Major Surgery for a National Ill*, 24 ALA. L. REV. 265, 265 (1972); *Barker v. Wingo*, 407 U.S. 514, 519 (1972).

No doubt influenced by the practical considerations of such an increase, "the framers of our rules of criminal procedure" effectuated the

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[9] Except, arguably, for *Couture* in 1960. *See* 156 Me. at 245, 163 A.2d at 655 ("'The right to a speedy trial is necessarily relative; it is consistent with delays, and whether such a trial is afforded must be determined in the light of the circumstances of each particular case as a matter of judicial discretion.'") (quoting 22 C.J.S., Criminal Law, § 467 (b) (3)); *see also State v. Cadman*, 476 A.2d 1148, 1150 (Me. 1984) (citing *Couture* for notion that "[t]he right to a speedy trial under our Constitution is necessarily a relative matter; whether such a trial has been afforded must be determined from the circumstances of the particular case.").

watering down and eventual repeal of the speedy-trial statute in preference for a more "flexible standard" – Rule 48(b). *O'Clair*, 292 A.2d at 192. Commentators observe that such a "flexible standard" "gives" the speedy-trial right "little teeth." Andrew M. Siegel, *When Prosecutors Control Criminal Court Dockets: Dispatches on History and Policy from a Land Time Forgot,* 32 AM. J. CRIM. L. 325, 357 n. 118 (2005).

Early proponents of the Maine Rules of Criminal Procedure were keen to abandon common law in favor of uniform rules modeled on the federal rules of procedure. *See State v. Wedge*, 322 A.2d 328, 330-31 (Me. 1974); Alexander, *The Maine Supreme Judicial Court*, *supra*, 123-34. On the heels of the Warren Court, the Burger Court quickly filled the gap. In *Barker*, it explained, "We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate." 407 U.S. at 521. It criticized reliance on a "fixed point in the criminal process," *ibid.*, while leaving it to the states to impose deadlines based on their own laws. 407 U.S. at 530 n. 29.

In *O'Clair*, the Law Court described its view of the state-constitutional standard in light of these developments:

> Although the specific statutory time limits, as heretofore obtained and which tended to safeguard an accused's constitutional right to a speedy trial, were discarded and replaced by the more flexible standard of "unnecessary delay" imposed by Rule 48(b) of the Maine Rules of Criminal Procedure, which has the force of law, the change-over was not intended as a repudiation of the long-standing judicial construction of the speedy trial provision. Rather, it manifests on the part of the framers of our rules of criminal procedure a desire to substitute for the former definite term limitations a formula adaptable to a

> judicial system respecting which the existence or expiration of terms of court as such was meant to be phased out.

292 A.2d at 192. Maine judges were suddenly to enforce the constitutional speedy-trial right – which, until then, had been measured according to dates certain – without reference to any fixed deadlines.

Respectfully, the Law Court permitted rules of procedure to effectively supplant the core state-constitutional provisions that the Court had long recognized were embodied by the former speedy-trial statutes. Rather than reiterate the state-constitutional standard, the Court looked elsewhere – to the federal courts. *See* Alexander, *The Maine Supreme Judicial Court*, *supra*, 124 ("The changes proved timely, as opinions of the United States Supreme Court, during the 1960s, mandated significant reform of criminal practice in recognition of criminal defendants' [federal] constitutional rights. Adoption of the Maine Rules of Criminal Procedure, drawing on the Federal Rules, allowed relatively seamless accommodation in Maine practice of the *more rigorous* consideration of [federal] constitutional rights required by the U.S. Supreme Court opinions."). (emphasis added).

On one hand, the Law Court confirmed that Rule 48(b) "implemented" the state-constitutional speedy-trial right, but, in practice, the rule provided no standard except a vague notion of whether a delay was "unnecessary." *See Dow v. State*, 295 A.2d 436, 440 (Me. 1972); *see also State v. Wells*, 443 A.2d 60, 64 (Me. 1982) (stating that "the proper inquiry under Rule 48(b) goes not only to the *length* of the delay but necessarily also addresses the

reasons for the delay.")[10] (emphasis in original). On more than one occasion, too, the Court interpreted Rule 48 narrowly; while it left open the possibility that "there might" be discretion for a judge to find a Rule-48 violation that would otherwise not constitute a constitutional speedy-trial violation, the Court never explained how the two standards differed. *State v. Brann*, 292 A.2d 173, 176 (Me. 1972); *see also Wells*, 443 A.2d at 63 (noting that Rule 48 theoretically means something more than the Sixth Amendment speedy-trial right but not explaining how the two differ, other than Rule 48 also exists to ease court "congestion"[11]); *State v. Lemar*, 483 A.2d 702, 704 n. 5 (Me. 1985) (again noting possibility of different meanings but declining to "expand" on what that means). By combining the two ineffable standards into one, the Court effectively made dismissal for constitutional speedy-trial violations a matter of a judge's *discretion*.[12] *See Brann*, 292 A.2d at 176-77

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[10] This formulation, of course, does not differ from the crux of *Barker,* 407 U.S. at 531, nor, for that matter, from the speedy-trial provisions which were the state-constitutional standard as early as 1821. *See* P.L. 1821, c. 59, § 44 (exceptions for certain delays not to be charged to prosecution).

[11] Considering the unprecedented, seemingly intractable "congestion" in many Maine state courts today, it is difficult to understand why more trial judges have not resorted to exercising such discretion, as Rule 48(b) is still on the books. *See, e.g.*, Judy Harrison, Bangor Daily News, Article, *It will take 15 years to clear case backlog in Washington County if pace continues*, (July 29, 2022) available at:
https://www.bangordailynews.com/2022/07/29/news/down-east/washington-county-backlog-joam40zk0w/ (last accessed August 2, 2022).

[12] The Court's most recent decision on the matter, *State v. Hofland*, 2012 ME 129, ¶ 11, 58 A.3d 1023 ("We review for abuse of discretion a court's judgment on a motion to dismiss a charge for failure to provide a speedy trial."), reiterates this line of cases, contrary to courts' reasoning elsewhere.

(reviewing for abuse of discretion); *State v. Murphy*, 496 A.2d 623, 629 (Me. 1985) (same); *Lemar*, 483 A.2d 704-05 (same). Given the constitutional remedy of dismissal with prejudice upon deprivation of a speedy trial, this case-law was akin to making exercise of the Bill of Rights discretionary. *See Barker*, 407 U.S. at 522 (dismissal is "the only possible remedy"); *Strunk v. United States*, 412 U.S. 434, 439-40 (1973) ("In light of the policies which underlie the right to a speedy trial, dismissal must remain, as *Barker* noted, 'the only possible remedy.'") (*citing ibid.*).

Such disorder quickly caused judges to erroneously seek standards elsewhere rather than returning to the state constitutional analysis that this Court worked to develop for nearly a century and a half. Federal law readily obliged as, in 1967, the Supreme Court incorporated the Speedy Trial Clause of the Sixth Amendment. *Klopfer v. North Carolina*, 386 U.S. 213 (1967). Incorporation was followed, five years later, by the announcement of a multi-part standard for evaluating federal speedy-trial claims, which still predominates today. *Barker*, 407 U.S. 514. The Law Court recognized those

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See United States v. Molina-Solorio, 577 F.3d 300, 304 (5th Cir. 2009) (de novo); *United States v. Mitchell*, 625 Fed. Appx. 113, 118 (3d Cir. 2015) (bifurcated: de novo and clear error); *United States v. Burgess*, 684 F.3d 445, 451 (4th Cir. 2012) (same)*; United States v. Williams*, 753 F.3d 626 (6th Cir. 2014) (same); *United States, v. Arceo*, 535 F.3d 679, 684 (7th Cir. 2008) (same); *United States v. Aldaco*, 477 F.3d 1008, 1016 (8th Cir. 2007); *United States v. Sutcliffe*, 505 F.3d 944, 956 (9th Cir. 2007) (same); *United States v. Knight*, 562 F.3d 1314, 1321 (11th Cir. 2009) (same); *but see United States v. Irizarry-Colón*, 848 F.3d 61, 68 (1st Cir. 2017) (noting that its traditional standard of review – abuse of discretion – is "in tension" with other courts, but holding that it "need not resolve" that tension in this case because there was error regardless); *United States v. Cabral*, 979 F.3d 150, 156 (2d Cir. 2020) (a rather idiosyncratic exemplar of abuse of discretion).

opinions within months of their issuance. *See State v. Coty*, 229 A.2d 205, 215 (Me. 1967) (noting "the very recent case of *Klopfer*" and suggesting that defendant, on remand, renew his motion based on federal law); *State v. Carlson*, 308 A.2d 294, 298 (Me. 1973) (applying "recent" decision in *Barker* to a Sixth Amendment claim).

4. New judicial federalism: *State v. Cadman* and the primacy approach

In 1984, citing to decisions of other state supreme courts that had recently taken a robust approach to their respective state constitutions, the *Cadman* court announced what would become known as the primacy approach: Before analyzing federal constitutional rights, the Court stated, it would first analyze state-constitutional arguments. *State v. Cadman*, 476 A.2d 1148, 1150 (Me. 1984).

Unfortunately, *Cadman* was an awful speedy-trial case from an appellate standpoint: Because defendant had failed to raise speedy-trial arguments below, the Court was "left to speculate as to what caused the delay and as to whether it was a normal or exceptional circumstance." *Id.* at 1150-51. The lack of record denied the *Cadman* court occasion to consider an important question: What, precisely, was the state-constitutional speedy-trial standard? The closest the *Cadman* court got was its identification of a truism: "The right to a speedy trial under our Constitution is necessarily a relative matter; whether such a trial has been afforded must be determined from the circumstances of the particular case." *Id.* at 1150 (citing *Couture*, 156 Me. at 245, 163 A.2d at 655). The Court reserved for another day the

question "whether the speedy trial guarantee of the Maine Constitution affords broader protection or less protection than its federal counterpart." *Cadman*, 476 A.2d at 1152.

5. 1984-1992: 180 degrees in eight years

In the very next speedy-trial case – decided just six days after *Cadman* – the Law Court conducted no state-constitutional analysis, jumping right into the federal-constitutional analysis. *State v. Spearin*, 477 A.2d 1147, 1154-55 (Me. 1984). While that analysis may seem incongruous with the primacy approach just announced in *Cadman,* the discrepancy is likely the product of the two opinions having been written nearly simultaneously. Nonetheless, it was missed opportunity, again, to pin down the state standard in the post-statute and post-common-law context.

A few months later, Justice Nichols, who had authored *Cadman*, took another tentative step towards clarifying the state-constitutional standard, writing that "Rule 48(b) primarily concerns a defendant's right to a speedy trial," but declining to "expand" on the contours of that standard. *Lemar*, 483 A.2d 704 n. 6.

Fourteen months after *Cadman*, Chief Justice McKusick cited *Cadman's* conclusory statement about the state-constitutional standard – it "takes into account all the circumstances of the case at hand" – and then immediately proceeded to apply the federal *Barker* factors. *Murphy*, 496 A.3d at 627. The *Murphy* court treated Rule 48(b) as if it were a separate standard, but not saying how the two differed, in denying a speedy-trial argument. *Id*. at 629.

Then came *State v. Willoughby*, 507 A.2d 1060 (Me. 1986), in which the Court repeated *Murphy's* citation to *Cadman's* barebones statement of the state-constitutional standard: "[W]hether an accused has been deprived of his right to a speedy trial 'can be determined only through the use of a delicate balancing test that takes into account all of the circumstances of the case at hand.'" 507 A.2d at 1064 (quoting *Murphy*, 496 A.2d at 627). Just as in *Murphy*, the Court then immediately pivoted to the factors enumerated in *Barker*, as if they *were* the state-constitutional standard but without so holding. *Willoughby*, 507 A.2d at 1064.

Next, in *State v. Beauchene*, 541 A.2d 914 (Me. 1988), Chief Justice McKusick cited directly to *Willoughby*: Suddenly, "we *must*" consider the *Barker* factors. 541 A.2d at 918 (emphasis added). The primacy approach, in this way, was short-circuited, substituting the federal-constitutional analysis for that of the state constitution without explanation why the latter merely mimicked the former. After all, just four years earlier and specifically in the context of the Speedy Trial Clause of § 6, the *Cadman* court implicitly held otherwise.

A month after *Beauchene*, Justice Nichols retired. *See Cleaves Law Library, The Supreme Judicial Court of the State of Maine, 1820 to 2015, supra*. The next speedy-trial decision deftly described the applicable analysis: "We *have used* the balancing test of *Barker v. Wingo*, 407 U.S. 514, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972) to analyze speedy trial cases under both our state and federal constitutions." *State v. Carisio*, 552 A.2d 23, 26 (Me. 1988) (emphasis added) (citing to *Murphy*, 496 A.2d at 627). That was

correct, to a point: *Barker's* wide-ranging factors had, of course, been "used;" however, increasingly, they were starting to more closely resemble *the only* factors comprising the state-constitutional standard rather than just some of those, among others, that the Court *had used* previously.

The Law Court's next substantive discussion of constitutional speedy-trial rights explicitly took the final step: "The analysis of a speedy trial claim is identical under both the Federal and the State Constitutions." *State v. Joubert*, 603 A.3d 861, 863 (Me. 1992) (citing *Beauchene*, 541 A.2d at 918). The *Joubert* court had not enjoyed the benefit of briefing on the issue. *See supra* n. 1.

The timeline is worth repeating: In 1984, the Court identified two distinct constitutional analyses, one state, the other federal. *See* 476 A.2d at 1150-52. The next year, in *Murphy*, the Court again noted the existence of a separate state-constitutional standard, but, in the next sentence, proceeded to apply the federal *Barker* test without explaining the basis for doing so. Then, with each subsequent decision, the state-constitutional standard faded farther, and the federal standard embodied by *Barker* became increasingly entrenched. *Compare Willoughby*, 507 A.2d at 1064 (identifying state-constitutional standard by citing to *Murphy*, then applying federal-constitutional standard after implying that *Murphy* had equated the two standards) *with Beauchene*, 541 A.2d at 918 (stating that state-constitutional standard "must" equate to federal analysis by citing to *Willoughby*) *and Joubert*, 603 A.3d at 863 (stating that state and federal analysis were "identical" with unadorned citation to *Beauchene*). Within the

span of eight years, the Law Court went from identifying two separate standards to saying that there was only one. As detailed here, the string of decisions leading to that conclusion was hardly unassailable. Nevertheless, it is the basis for decades of this Court's jurisprudence treating our separate state guarantee as if it were merely "identical" to the federal one as construed in Washington, D.C.

Amicus stresses that *Cadman's* downfall was not the result of the primacy approach. Far from it, primacy, doctrinally, is the only way to ensure Mainers' baseline constitutional rights remain defined by Mainers. *See, supra,* INTRODUCTION. Rather, the problem with *Cadman* was that it did not identify the appropriate state-constitutional standard before announcing that it would start each case by analyzing that standard – whatever it was.

As a result, inertia took over. On one side, a black hole, caused by the repeal of the statute which had embodied the state-constitutional standard since founding and the Court's subsequent omission of a defined standard via Rule 48(b), let the long-recognized state right fade to oblivion. At the same time, powerful federal forces – incorporation of the Speedy Trial Clause and profusion of the *Barker* standard – provided a clear alternative. The result was equivalency. The correct standard, however, has been there all along.

II. Identifying the state-constitutional standard: Lessons from our speedy-trial tradition

The defining qualities of the Maine constitutional speedy trial were embodied in the first 150 years or so of our state. In the five or six decades since, Maine courts have deviated from those qualities, favoring federal jurisprudence. To return to our state standard after a substantial period of mistaken equivalency, the Law Court must begin by looking back to that history, to the distinct purpose and expectations of § 6, and to notions of fairness.[13]

The lessons from Maine's history are strong evidence that Maine's speedy-trial right means something more than under the Massachusetts and United States Constitutions. The Law Court's earlier and consistent discussion of § 6 staked a claim to a speedy-trial provision distinct from the federal and Massachusetts versions. Trends emerge from those early decades to reveal how § 6 differs: (A) Maine's right hinges on deadlines on the order of less than a year; (B) those deadlines shall not be enlarged

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[13] Insofar as the speedy-trial right is concerned, this historical approach is a fitting method of constitutional interpretation because it demonstrates that subsequent judicial decision-making has diminished the breadth of the state-individual rights of Mainers. Of course, other methods of constitutional interpretation are worthy of confidence; amicus does not intend to endorse historical, textual, or originalist analysis as the exclusive way to derive constitutional meaning.

An illustrative counter-point to amicus's originalist bent in this brief is the example of Maine's constitutional voluntariness guarantee, which is derived from "public policy." *See State v. Collins*, 297 A.2d 620, 626 (Me. 1972); *State v. Rees*, 2000 ME 55, ¶ 7, 748 A.2d 976. The brief of fellow Amicus Curiae American Civil Liberties Union of Maine aptly arrives at the same conclusion as does MCILS vis-à-vis speedy trials by way of a policy-centered argument.

because of insufficient system resources; (C) it is much more likely for a meaningful delay to violate the speedy-trial provision of the Maine Constitution, regardless of whether the delay "prejudiced" the defendant, than it is under the Speedy Trial Clause of the Sixth Amendment. Taken together, relief is meant to be more liberally accorded than it has been since the 1960s.

None of this, however, is meant to supplant the totality-of-the-circumstances analysis that, traditionally, has defined the Maine standard. See *Cadman*, 476 A.2d at 1150 (citing *Couture*, 156 Me. at 245, 163 A.2d at 655). Evaluating the totality of the circumstances is the only way to discern which entity – the defendant, the prosecution, or the court – has caused a delay.

A. Presumptively fixed deadlines on the order of 6-12 months

Maine's state-constitutional provision was repeatedly equated with fixed deadlines: For the five or so first decades of the state, as seen in *Saco*, 37 Me. at 171-74 and *Learned*, 47 Me. at 432, the source of those deadlines was primarily[14] compared to the "law of the land," common law. Among the most prominent fonts of common law are the Magna Carta and the Habeas Corpus Act of 1679, both of which the Law Court has said *were* the state-constitutional standard. *Saco*, 37 Me. at 171-72; *Learned*, 47 Me. at 432;

[14] *Saco*, in 1853, also tied the state-constitutional right to the statutes. 37 Me. at 173.

O'Clair, 292 A.2d at 191. Fixed, presumptive deadlines *are* part of the state constitution.

Moreover, we know what those deadlines are, albeit roughly. The "terms" of the Supreme Judicial Court occurred at least yearly, varying by county and year. *See* P.L. 1821, c. 59, § 44 (noting that some counties have two terms a year, others have one); R.S. 1871, c. 134, § 9 (same); *see also* R.S. 1857, c. 134, § 13 (provision if term is not held within six months); *Slorah*, 118 Me. at 206, 106 A. at 769 (noting at least three terms in year). Thus, Maine's Speedy Trial Clause – as defined by nearly 150 years of historical interpretation – envisions a trial within six to twelve months (if not sooner, *see ibid.*), absent intervening circumstances.

Maine's turn away from deadlines in the latter half of the twentieth century was a step away from both common law and statute which, this Court had repeatedly reaffirmed, embody the Constitution of Maine's speedy-trial right. Were Maine to restore its pre-1960s state-constitutional law, it would effectively reimpose such presumptive deadlines. That is the essence of the Maine guarantee.

In these calculations, the speedy-trial clock begins with charging.[15] That is required by the text of § 6 itself: "*In all criminal prosecutions*, the accused shall have a right to…a speedy…trial…." (emphasis added).

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[15] In substance, this does not meaningfully differ from ACLU-Maine's proposed starting-point: "the moment in which the right to counsel attaches." ACLU-Maine's Brief at 12 n. 13. To the extent the right to counsel commences with initial charging – and it does, generally, *see Rothgery v. Gillespie County*, 554 U.S. 191, 198 (2008) – the distinction is without

B. A lack of systemic resources is not a permissible ground to enlarge those deadlines.

One of the reasons this brief is addressed to the Maine rather than Massachusetts Supreme Judicial Court, is separatists' frustration with the delays in their courts. Citizens of the District of Maine repeatedly complained of the slow pace of justice. Faster access to trials was among the motivations for the sustained push to statehood. And drafters of the Maine Constitution added the guarantee of a speedy trial in a rebuke of the Massachusetts Constitution, which contained no such provision. The Maine Constitution's Speedy Trial Clause thus rejects delay past six to 12 months when such delay is based on inadequate resources.

The speedy-trial imperative was realized over the first century and a half of the state. In those years, the statutory provisions that expressed the state-constitutional right to speedy trials brooked no delay for lack of resources. The first link in the nearly-150-year statutory chain delineated only two permissible reasons for enlarging the pre-trial period: If it "appear[s] to the Court that the witness, on behalf of the government, have either been enticed away or are detained by some inevitable accident from attending." P.L. 1821, c. 59, § 44. Amicus assumes that implicitly added to this short "list" are delays caused by the efforts of the defense, *i.e.*, appropriate time to dispose of defendants' motions, analyze evidence, and

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difference. However, there are occasions in which speedy-trial rights commence even when there is no right to counsel (*e.g.*, when there is no risk of incarceration) and, conversely, there are occasions in which the right to counsel commences but no speedy-trial right has commenced (*e.g.*, *Miranda*-type interrogations prior to charging).

prepare a trial-defense. Having too few suitable courtrooms, too few marshals, too few judges, too few prosecutors, too few defense attorneys,[16] etc. are not permissible bases for delay under Maine's Speedy Trial Clause.

Over time, the Court's decisions have deviated from the intent and history of § 6. *See State v. Hider*, 1998 ME 203, ¶ 18, 715 A.3d 942 ("[W]e have been reluctant to find violations of the right to a speedy trial unless the delay is *solely* attributable to the State's conduct….") (emphasis in original); *State v. Drewry*, 2008 ME 76, ¶ 14, 946 A.2d 981 (because "[t]here was no deliberate attempt to hamper Drewry's defense," delays by court, "an infectious disease quarantine at the jail," and succession of court-appointed attorneys, not counted against State); *State v. Lewis*, 373 A.2d 603, 609 (Me. 1977) (delay caused on unavailability of trial judge and other "circumstances beyond the control of the prosecution is not counted against the State).[17] In fact, the court below repeated this reasoning. *See* A81 (court declines to attribute certain delay to State because it is not the prosecution's "fault").

A return to recognizing the vigor of § 6 is essential to the rights of defendants, especially light of the back-log of cases currently clogging our

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16 *See* Emily Rose, *Note*, *Speedy Trial as a Viable Challenge to Chronic Underfunding in Indigent-Defense Systems*, 113 MICH. L. REV. 279 (2014) (proposing that underfunding of criminal justice system be counted against the government for speedy-trial purposes).

17 Tellingly, the Massachusetts state-constitutional speedy-trial provision accords less weight to delay caused by "other public actors (whether law enforcement or the courts)" than it does to delay caused by the prosecutors, particularly. *See Commonwealth v. Butler*, 464 Mass. 706, 716 (2013). This is the sort of practice which, at least in part, the State of Maine was literally created to forestall.

under-resourced courts, straining our under-resourced prosecutors, and decimating the ranks of defense counsel. *See* Sixth Amendment Center, *The Right to Counsel in Maine: Evaluation of Services Provided by the Maine Commission on Indigent Legal Services*, 98, 102 (April 2019) ("the prosecutorial function in Maine is under-resourced"); Chief Justice Stanfill, *A Report to the Joint Convention of the Second Regular Session of the 130th Maine Legislature*, 6 (2022) ("[W]e simply lack the capacity to just 'catch up' or to schedule and hear more cases with our existing workforce."); Justin Andrus, *Assessment of MCILS Adherence to the American Bar Association's Ten Principles of Public Defense Delivery*, 7-9 (2022) (a "long way to go" until MCILS is properly resourced).

C. Prejudice is irrelevant under the Maine Constitution.

Prior to the 1960s, the Maine Constitution's speedy-trial right was not tied to "prejudice." "The law of the land" – which this Court repeatedly reaffirmed was the Maine constitutional guarantee – did not tie relief to "prejudice." Rather "prejudice" was a factor introduced in Maine under the influence of federal and extra-jurisdictional jurisprudence.

Maine's first legislature, including several of the drafters of the Maine Constitution, understood "speedy trial" to mean that an indicted and imprisoned defendant must be tried by the end of the following term – no proof of "prejudice" required. *See* P.L. 1821, c. 59, § 44; R.S. 1841, c. 172, §§ 14, 15 (same); R.S. 1857, c. 134, § 10 (same); R.S. 1871, c. 134, § 10 (same); R.S. 1903, c. 135, § 10 (after two terms); R.S. 1916, c. 136, § 11 (next term); R.S. 1954, c. 148, § 9 (two terms). Prominent common law ("law of

the land") authorities similarly required no hint of "prejudice." *See* Habeas Corpus Act of 1679, 31 Charles II, c. 2.

The Law Court has interpreted § 6 in accord with this notion of speedy trials. In *Brann*, the Court described its jurisprudence about "prejudice:" A "sufficiently long" – specifically, it was referring to "a delay between indictment and trial of approximately *eight months*" – creates either "a rebuttable presumption" of prejudice or constitutes proof of "actual prejudice to [a] defendant so strong that the ultimate burden is placed upon the State to establish the absence of such prejudice to defendant." 292 A.2d at 179, 182 (emphasis in original). Indeed, in *Couture*,[18] unambiguously analyzing the defendant's state-constitutional speedy-trial right, this Court wrote,

> It can readily be seen that long delay, such as existed in this case, might well be prejudicial to a person charged with crime, because during the interval existing between the time of the return of the indictment and the time when such person learns of its existence, witnesses essential to his defense might have died or become otherwise unavailable.

156 Me. at 247-48. The watering down of this principle came only with the conflation of the federal and state analyses.[19]

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[18] *Couture* also held that the remedy for a state-constitutional speedy-trial violation is dismissal. 156 Me. at 244. In *Brann*, the Law Court seemed to reaffirm that principle, explaining that because of jurisdictional idiosyncrasies, the Court in *Couture* was deprived of the ability to order dismissal (it ordered only a new trial). 292 A.2d at 181-82.

[19] The *Brann* court, which was describing its pre-Rule 48(b) decision in *Couture*, declined to follow *Couture* some twelve years after that decision, instead favoring federal benchmarks.

This is a significant distinction from federal constitutional law, which holds that what it calls "presumptive prejudice" – that is, the ill effects inherent in being held without trial for a significantly lengthy period – "cannot alone carry" a violation of the Speedy Trial Clause of the Sixth Amendment. *Doggett v. United States*, 505 U.S. 647, 656 (1992). In *Couture*, that is exactly what "carried" the violation. 156 Me. at 247-48. The federal standard has been subject to criticism. *See* Arkin, *Speedy Criminal Appeal*, *supra*, at 442 ("The inadequacy of the speedy trial standard is largely due to its requirement that the defendant demonstrate prejudice arising from the delay in order to establish a [federal] constitutional violation."). Indeed, turning the constitutional right to a speedy trial into merely the right to a trial delayed until the onset of sufficient "prejudice" is akin to turning the right to a public trial into a right to a trial in the public *only if* the defendant can establish "prejudice" resulting from their exclusion. *But see Weaver v. Massachusetts*, 137 S.Ct. 1899, 1910 (2017) (noting that violation of public-trial right is structural error); *see* Blue Brief at 13 ("[T]he problem with this federal speedy trial law is that is mixes together and confuses the right to a *speedy* trial and the right to a *fair* trial. Those are two different rights.") (emphasis in original). Section 6's guarantee is a right to be free from pretrial limbo. It is not merely a right to a speedy trial only if prejudice would ensue from delay.

D. Fairness and the totality of the circumstances

Above, amicus indicated that the totality-of-the-circumstances are relevant in the § 6 analysis. *See Cadman*, 476 A.2d at 1150; *Couture*, 156

Me. at 245, 163 A.2d at 655. Primarily, the circumstances are relevant in determining whether a defendant has consented to or caused a delay, which is effectively the manner in which the *Barker* standard and its analogues consider "the circumstances."

For instance, the former statutes that defined Maine's constitutional speedy-trial right often set deadlines from indictment. *See*, *e.g.*, P.L. 1821, c. 59, § 44. It would not be fair, considering the circumstances, to start that clock ticking if, rather than appearing for an arraignment or initial appearance, a just-indicted defendant goes on the lam, making his timely prosecution difficult or impossible. *See Beauchene*, 541 A.2d at 918 (the defendant's whereabouts were unknown when indicted). The Maine Constitution ascribes such delay to the absent defendant.

Another thorny issue in federal case-law is what a defendant has done to "invoke" the Speedy Trial Clause. Under the Maine Constitution the right exists whether it is explicitly asserted or not. The facts of Mr. Winchester's case suggest that, in the totality of the circumstances, it is both unfair and unwise to hold the lack of such an invocation against a defendant. The court below "conclude[d] that factually no request for a speedy trial was made," despite the fact that "[a] clerk with initials 'CMH'" made a notation that petitioner's counsel had "in fact filed the motions." (A81). Under the *Barker* analysis, this would be an important omission.

In Maine, however, the 12-month (or less, depending on severity of the charges), deadline is fixed in law. Perhaps, in certain circumstances, a defendant's express speedy-trial demand might shorten that deadline. But

absent other indicia of an intent or consent to delay trial, there is no basis for anyone to believe that such a delay is intended or agreed to. A person cannot acquiesce to the deprivation of fundamental constitutional rights; those rights must be waived.

What about preparation for trial? Certainly, delays beyond the fixed deadlines which are attributable to lack of resources result in constitutional violation. Again, the lack of judicial resources was *the* impetus behind Maine's constitutional speedy-trial provision in the first instance.

There will be occasions, no doubt, when judges must plumb the depths of gray to determine on which side a delay falls. For instance, indigent Maine defendants are often in need of the assistance of private investigators and other "litigation supports" such as psychiatric experts. *See* Sixth Amendment Center, *The Right to Counsel in Maine*, *supra*, 60. To the extent a trial is delayed by rates of remuneration too low to timely procure such reasonably necessary assistance, constitutional violation is at hand. If the delay is due to a defense attorney's pace of work apart from any resource concerns, then post-conviction procedures will reveal whether the delay is attributable to the defendant, personally, or to ineffectiveness of counsel.

There are countless examples beyond the scope of this brief. Amicus simply suggests that these issues will be rightly decided in future cases so long as here, in this case, this Court properly highlights the pillars of § 6's Speedy Trial Clause, as discussed above. By fairly construing that right to ensure timely trials without regard to "prejudice," and without brooking

delay resulting from underfunding the system, the essential Maine Constitution will be implemented.

III. Petitioner's right to a speedy trial per § 6 was violated.

Amicus relies on the findings of the court below, applying them to the state-constitutional standard it has just sketched.

The first step in the analysis is to evaluate whether the delay is greater than 12 months. Here, only one finding is necessary to dispose of this question: Hearing and disposing of motions "regarding the return of seized items to the owners" "took 15 months to be resolved." (A83). In other words, yes, the delay exceeded 12 months.

The next – and only other – question that needs to be answered is whether Mr. Winchester occasioned that delay. The lower court found:

> The motions were filed August 3, 2015, and decided by the court on October 27, 2016. The court does not know why these motions took 15 months to be resolved, and agrees that seems excessive. But in no way does it appear it was due to fault of the State.

(A81). This finding does not support the conclusion that petitioner consented to the delay, certainly not to one of such an "excessive" duration. Further, it does not matter whether the prosecutor bears responsibility for the delay; it is enough that the court was not able to dispose of such a non-complex[20] motion within a constitutionally adequate timeframe. Because

[20] A copy of the resulting "Order on Motion to Suppress" is available at: https://apps.maine.edu/SuperiorCourt/show_detail.jsp?case_id=4871

there was a delay in excess of 12 months not of his making, Mr. Winchester's speedy-trial right was violated.

Following the primacy approach, then, it is not necessary to analyze petitioner's claim under the United States Constitution.

CONCLUSION

In many ways, we are again in a time like that experienced by citizens of the District of Maine in the late-eighteenth and early-nineteenth centuries. Justice is moving too slowly. Defendants awaiting trial are in jail or are subject to restrictive bail conditions; they are unable to plan for their future so long as criminal charges remain unresolved over their heads; and, even with the help of competent counsel, delays are causing witnesses' memories to fade and helpful evidence to disappear. The pressure to plead guilty, just to get it over with, is increasing by the day. These are precisely the sort of times which § 6's drafters had in mind when they conceived of the speedy-trial provision. This Court should return the Speedy Trial Clause to its rightful place assiduously guarding Mainers against the tyranny of pre-trial limbo.

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CERTIFICATE OF SERVICE

I sent a native PDF version of this brief to the Clerk of this Court and to the parties' counsel at the email addresses provided in the Board of Bar Overseers' Attorney Directory. I mailed 10 paper copies of this brief to this Court's Clerk's office via U.S. Mail, and I sent 2 copies to each party's counsel at the addresses provided by that same Directory.

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STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Aro-21-312

Dennis Winchester

v.

CERTIFICATE OF SIGNATURE

State of Maine

I am filing the electronic copy of this brief with this certificate. I will file the paper copies as required by M.R.App.P. 7A(i). I certify that I have prepared the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R.App.P. 7A(f), and conform to the form and formatting requirements of M.R.App.P. 7A(g).

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Table 1: *A comparison of the states: speedy-trial provisions other than the Sixth Amendment* *see* M.R.App.P. 7A(f)(2)

State	Fixed/Definite Period?	Maximum remedy:	Provision	State Const. Provision:	State constitutional test:
Alabama	No	N/A	N/A	Art. I, sec. 6	Adopted Barker. Ex parte Hamilton, 970 So. 2d 285, 287 (Ala. 2006)
Alaska	120 days post-charge	Dismissal w/ prejudice	Alaska R. Crim. P. 45	Art. I, sec 11	Modified Barker: "While the presence of a demand or a showing of prejudice to one's case can only help the claim, their absence alone will not necessarily frustrate the right to a speedy trial, including the right to a dismissal of the charges with prejudice when there has been a clear denial of this constitutional right. We reach this conclusion on the basis of our interpretation of article I, section 11, of the Alaska Constitution rather than upon any dispositive holding in Hooey and Klopfer." Glasgow v. State, 469 P.2d 682, 686 (Alaska 1970).
Arizona	150 days post-arraignment if in custody; 180 days if on bail conditions; 270 days if complex offense	Dismissal w/ prejudice	Ariz.R.Crim.P. 8	Art. II, sec. 24	Adopted Barker. State v. Miller, 234 Ariz. 31 (Ariz. 2013).
Arkansas	12 months post-charge (if on bail)	Dismissal w/ prejudice	Ark.R.Crim.P. 28.1(d)(3)	Art. II, sec. 10	State: "A criminal defendant's constitutional right to a speedy trial is protected by Article VIII of the Arkansas Rules of Criminal Procedure (Rules 27 - 30). This court adopted Rule 28 for the purpose of enforcing the constitutional right to a speedy trial." Archer v. Benton County Circuit Court, 872 S.W.2d 397, 398 (Ark. 1994).
California	60 days post-indictment/arraigment (felony); 30 days arraignment/plea (misdemeanor)	Dismissal	Pen. Code, § 1382	Art. I. sec. 15	Modified Barker: "The state constitutional right to speedy trial attaches when a criminal complaint has been filed. (People v. Hannon, (1977) 19 Cal.3d 588, 608 [138 Cal.Rptr. 885, 564 P.2d 1203].) However, it is not until "either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge" that the federal constitutional right to speedy trial is engaged. (United States v. Marion (1971) 404 U.S. 307, 320 [30 L.Ed.2d 468, 478, 92 S.Ct. 455].)." People v. Hill, 691 P.2d 989, 991 n. 3 (Calif. 1989).
Colorado	6 months post-charge/indictment	Dismissal w/ prejudice	CO Rev Stat § 18-1-405 (2016)	Art. II, sec. 16	Full parity: "Colorado constitution, art. II, § 16, is congruent with the United States Constitution, amendment VI." Lucero v. People, 476 P.2d 257, 259 (Colo. 1970).
Connecticut	12 months later of post-charge or arrest (if in custody)	Dismissal w/ prejudie. (See Conn. Practice Book § 43-41)	Conn. Practice Book § 43-39	Art. I, sec. 8	Adopted Barker: State v. McCarthy, 425 A.2d 924, 927-28 (Conn. 1979) ("The Connecticut constitution, article first, § 8, provides a comparable safeguard).
Delaware	None	N/A	N/A	Art. I sec. 7	Harsher than *Barker*: *Key v. State* , 463 A.2d 633, 638 (Del. 1983) ("Our analysis of Key's state constitutional challenge parallels that of his federal claim. *See also Shockley v. State, Del. Supr* ., 269 A.2d 778 (1970) (state speedy trial right interpreted in light of federal precedents); *State v. Cunningham* , Del. Super., 405 A.2d 706 (1979), *rev'd and remanded on other grounds* , Del. Supr., 414 A.2d 822 (1980) (table) (same); *State v. Walker* , Del. Super., 48 Del. 190, 100 A.2d 413 (1953) (same). The only difference in determining Key's state rights is that his own actions weigh more heavily against him.")
D.C.	100 days post-arrest (if in custody)	Discharge from custody & conditions	DC Code 23-1322	None	N/A
Florida	90 days post-arrest if subject to bail conditions or in custody (misdemeanor); 175 days (felony)	Dismissal w/ prejudice	Fla. R. Crim. P. 3.191	Art. I, sec. 16	Adopted Barker. Ferris v. State, 475 So. 2d 201, 203-04 (Fla. 1985).
Georgia	By end of next regular term post-demand	Acquittal	O.C.G.A. § 17-7-170	Art. I, sec. I, para. XI	Adopted Barker. Simmons v. State, 659 S.E.2d 721, 723-24 (Ga. App. 2008).
Hawaii	6 months post-arrest (if subject to bail conditions)	Dismissal w/ prejudice	Haw. R. Penal P. Rule 48	Art I sec. 16	Adopted Barker. State v. Visintin, 426 P.3d 367, 380 (Haw. 2018)
Idaho	6 months post-charge	Dismissal	I.C. § 19-3501	Art. I, sec. 18	Adopted Barker: State v. Russell, 696 P.2d 909, 913 (Idaho 1985) ("While the state constitutional right to a speedy trial is not necessarily identical to the federal constitutional right, the Barker balancing test issue is utilized for determining whether the Idaho Constitution speedy trial right has been violated.").
Illinois	120 days post-taken into custody (if in custody); 160 days post-imposition of bail conditions	Discharge from custody & conditions	725 ILCS 5/103-5	Art. I, sec. 8	Adopted Barker. People v. Lacy, 996 N.E.2d 1, 5 (Ill. 2013).
Indiana	6 months from later of arrest or charge	Discharge from custody & conditions	Ind. R. Crim. P. 4	Art. I sec. 12	Adopted Barker -- Probably. Watson v. State, 155 N.E.3d 608, 614 n. 2 (Ind. 2020) ("Since Fortson—the first time this Court confronted a speedy trial claim brought under both constitutions—Indiana courts have used the federal Barker factors when evaluating a defendant's state constitutional claim. See, e.g., Sweeney v. State, 704 N.E.2d 86, 102 (Ind. 1998). But these factors—particularly, the defendant's assertion of the speedy trial right—may not account for the difference in language between the Sixth Amendment and Article 1, Section 12. The former states a right, "[T]he accused shall enjoy the right to a speedy and public trial," U.S. Const. amend. VI, but the latter gives a directive, "Justice shall be administered . . . speedily, and without delay," Ind. Const. art. 1, § 12. So, while the Sixth Amendment invites analysis into whether and how defendants assert their right to a speedy trial, Article 1, Section 12 seemingly does not. In fact, prior to Fortson, this Court recognized that Article 1, Section 12 "casts no burden upon the defendant, but does cast an imperative duty upon the state and its officers, the trial courts and prosecuting attorneys, to see that a defendant" receives a speedy trial. Zehrlaut v. State, 230 Ind. 175, 183-84, 102 N.E.2d 203, 207 (1951). Therefore, under our state constitution, a defendant's speedy trial "demand is effectively made for him." Id. at 184, 102 N.E.3d. at 207; see also Barker, 407 U.S. at 524 & n.21 (citing Zehrlaut in recognizing Indiana as one of eight states to reject a demand rule). Yet, in Fortson, there was no reference to Zehrlaut or to the disparity in language between the two provisions. See Fortson, 269 Ind. at 169, 379 N.E.2d at 152. And thus, for a speedy trial claim brought under Article 1, Section 12, an analysis distinct from Barker may be more suitable. Cf. State v. Harberts, 331 Ore. 72, 11 P.3d 641, 648, 650-51 (Or. 2000) (rejecting the Barker factors for analyzing speedy trial claims brought under the Oregon Constitution, which was modeled after Indiana's). But because neither party asks us to undertake this separate analysis, we use only the federal test.").

Table 1: *A comparison of the states: speedy-trial provisions other than the Sixth Amendment* *see* M.R.App.P. 7A(f)(2)

Iowa	90 days post-indictment; 1 year post-initial appearance	Dismissal w/ prejudice	Iowa R. Crim. P. 2.33	Art. I, sec. 9	Adopted Barker. State v. Smith, 957 N.W.2d 669, 686 (Iowa 2021)
Kansas	150 days post-arraignment if in custody; 180 days if on bail conditions	Dismissal w/ prejudice	K.S.A. § 22-3402	Bill of Rights, sec. 10	Adopted Barker. State v. Green, 252 Kan. 548, 551-52 (Kan. 1993).
Kentucky	None	N/A	N/A	Sec. 11	Adopted Barker. Gabow v. Commonwealth, 34 S.W.3d 63, 69-70 (Ky. 2000).
Louisiana	1 year post-"initiation of prosecution" (misdemeanor); 2 years (felony)	Dismissal w/ prejudice	La. C.Cr.P. Art. 578; see also La. C.Cr.P. Art. 701 (for discharge from jail and bail conditions)	Art. I, sec. 16	Adopted Barker. State v. Harris, 857 So. 2d 16, 18-19 (La. 4th Ct. App. 2003)
Maine	None	N/A	N/A	Art. I, sec. 6	Full parity. "The analysis of a speedy trial claim is identical under both the Federal and the State Constitutions." State v. Joubert, 603 A.3d 861, 863 (Me. 1992)
Maryland	180 days post-earlier of appearance of counsel or initial appearance	Dismissal w/ prejudice (See State v. Hicks, 403 A.2d 356, 360 (Md. 1979))	Md. Criminal Procedure Code Ann. § 6-103	Dec. of Rights, sec. 21	Full parity: "The "speedy trial" right under the Maryland Constitution is "coterminous with its Federal counterpart" and any resolution of a claim under the Sixth Amendment will be dispositive of a parallel claim under Article 21. State v. Lawless, 13 Md. App. 220, 225." *Erbe v. State* , 336 A.2d 129, 132 (Md. App. 1975).
Massachusetts	12 months post-"return day"	Dismissal	Mass.R.Crim.P. 36	Part First, sec. XI	Adopted Barker -- Probably . Commonwealth v. Dirico, 106 N.E.3d 603, 617-18 (Mass. 2018) ("We interpret art. 11 through the lens of Sixth Amendment analysis.").
Michigan	28 days post-arrest if in custody (misdemeanor); 180 days in custody (felony)	Discharge from custody & conditions	MCR 6.004	Art. I, sec. 20	Adopted Barker. People v. Collins, 202 N.W.2d 769, 771-73 (Mich. 1972).
Minnesota	60 days post-plea	Discharge from custody & conditions	Minn. R. Crim. P. 6.06 (misdemeanor) ; Minn. R. Crim. P. 11.09 (felony)	Art. I, sec. 6	Full parity. *State v. Windish* , 590 N.W.2d 311, 315 (Minn. 1999) ("Article 1, Section 6 of the Minnesota Constitution also provides the same guarantee.").
Mississippi	270 days post-arraignment (felony)	Dismissal w/ prejudice (See Johnson v. State, 666 So. 2d 784, 791 (Miss. 1995))	Miss. Code Ann. § 99-17-1	Art. III, sec. 26	Adopted Barker. One 1970 Mercury Cougar v. Tunica County, 115 So. 3d 792, 795-96 (Miss. 2013).
Missouri	180 days post-demand	Dismissal w/ prejudice	§ 217.460 R.S.Mo.	Art. I, sec. 18(a)	Full parity. *State ex rel. McKee v. Riley* , 240 S.W.3d 720 (Mo. 2007) (en banc) ("The United States and Missouri Constitutions provide equivalent protection for a defendant's right to a speedy trial. See Bolin, 643 S.W.2d at 810 n.5 (the "Missouri constitutional provision" protecting the right to a speedy trial is not "any broader in scope than is the sixth amendment").).
Montana	6 months post-plea (misdemeanor)	Dismissal w/ prejudice	46-13-401, MCA	Art. I, sec. 24	Modified Barker. State v. Ariegwe, 167 P.3d 815, 827 (Mont. 2007) ("Twenty-six years after Barker was decided, we observed that the four-factor balancing test had, unfortunately, led to "seemingly inconsistent results" nationwide. Bruce, P20; see also Bruce, PP21-49 (identifying varied and inconsistent applications of the test in our own caselaw). Therefore, seeking to achieve more consistent dispositions of speedy trial claims in Montana, we articulated a more structured method for analyzing such claims. As described below, we retained the four factors identified in Barker, but we incorporated objective, bright-line criteria into three of them, and we modified the function and importance each factor plays in the overall balancing.").
Nebraska	6 months post-charge	Dismissal w/ prejudice (R.R.S. Neb. § 29-1208)	R.R.S. Neb. § 29-1207	Art. I, sec. 11	Adopted Barker. State v. Feldhacker, 672 N.W.2d 627, 631-32 (Neb. 2004)
Nevada	60 days post-arraignment	Dismissal w/ prejudice (Nev. Rev. Stat. Ann. § 178.562)	Nev. Rev. Stat. Ann. § 178.556	None	N/A
New Hampshire	6 months post-plea (misdemeanor); 9 months (felony); 4 months (if in custody)	Dismissal (*deadlines trigger show-cause hearings at which prosecution must satisfy Barker at penalty of dismissal)	Superior Court Speedy Trial Policy, https://www.courts.nh.gov/superior-court-speedy-trial-policy	Pt. First, Art. 14	Adopted Barker. State v. Griffin, 2022 N.H. LEXIS 3 * 6 (N.H. 2022).
New Jersey	180 days post-arrest or charge (if indictable)	Dismissal	N.J. Court Rules, R. 3:25-4	Art. I para. 10	Adopted Barker. State v. Cahill, 61 A.3d 1278, 1281 (N.J. 2013).
New Mexico	182 days post-arraignment (on complaint)	Dismissal w/ prejudice	6-506 NMRA	Art II, sec 14	Adopted Barker -- Probably. State v. Garza, 212 P.3d 387, 392 n.1 (N.M. 2009)
New York	6 months post-charge (felony); 90 days (misdemeanor punishable more than 3 mos.' prison); 60 days (misdemeanor punishable no more than 3 mos.)	Dismissal w/ prejudice	NY CLS CPL § 30.30	Not explicit	Modified Barker. People v. Romeo, 904 N.E.2d 802, 805-06 (N.Y. 2009) ("The five factors to be considered are: (1) the extent of the delay; (2) the reason for the delay; (3) the nature of the underlying charges; [4] (4) any extended period of pretrial incarceration; and (5) any impairment of defendant's defense (see Taranovich, 37 NY2d at 445). The balancing of these factors must be performed carefully in light of the particular facts in each case (see People v Vernace, 96 NY2d 886, 887, 756 NE2d 66, 730 NYS2d 778 [2001])..").

Table 1: *A comparison of the states: speedy-trial provisions other than the Sixth Amendment* *see* M.R.App.P. 7A(f)(2)

North Carolina	Within 2 following terms (felony) so long as at least 4 mos.	Discharge from custody and conditions	N.C. Gen. Stat. § 15-10	Art. I, sec. 18(a)	Adopted Barker. State v. Tindall, 242 S.E.2d 806, 809 (N.C. 1978).
North Dakota	90 days post-demand (certain felonies)	Dismissal	N.D.C.C. § 29-19-02	Art. I, sec. 12	Adopted Barker. State v. Moran, 711 N.W.2d 915, 919 (N.D. 2006).
Ohio	30-90 days post-summons (misdemeanor); 270 days (felony)	Dismissal	ORC Ann. 2945.71	Art. I, sec. 10	Adopted Barker. State v. Long, 168 N.E.3d 1163, 1167 (Ohio 2020).
Oklahoma	1 year post-arrest (if in custody); 18 months (if on bail conditions)	Dismissal (*deadlines trigger show-cause hearings at which prosecution must satisfy Barker at penalty of dismissal)	22 Okl. St. § 812.1	Art. II, sec. 20	Adopted Barker. Lott v. State, 98 P.3d 318, 327 (Ok. Crim. App. 2004).
Oregon	90 days post-custody	Dismissal w/ prejudice	ORS 135.763	Art. I, sec. 10	Modified Barker. State v. Harberts, 11 P.3d 641, 650-51 (Or. 2000) ("This court has held thatdelay in and of itself may be sufficient to establish a speedy-trial violation if the delay is so long "that the thought of ordering [a] defendant to trial 'shocks the imagination and the conscience,'" Vawter, 236 Ore. at 96 (quoting United States v. Chase, 135 F. Supp. 230, 233 (ND Ill 1955)), or if the delay is caused purposely to hamper the defense, Ivory, 278 Ore. at 506."); ("Although this court endorsed the Barker analysis in Ivory, it subsequently acknowledged that not all the Barker analysis is appropriate for evaluating claims under Article I, section 10. In State v. Dykast, 300 Ore. 368, 375 n 6, 712 P.2d 79 (1985), for example, this court explained that it had been "mistaken" in adopting the requirement that a defendant demand a speedy trial. That is so because, as noted, the requirement that a defendant be brought to trial "without delay" is not a "right" of a criminal defendant. Rather, it is a mandatory directive to the state. See Clark, 86 Ore. at 471 (so stating). Accordingly, the burden to proceed promptly is on the state. Vawter, 236 Ore. at 87. Because Article I, section 10, does not guarantee an individual a "right" to a speedy trial, the second Barker factor is inapplicable under the Oregon Constitution. Emery, 318 Ore. at 468 n 13; State v. Mende, 304 Ore. 18, 21, 741 P.2d 496 (1987); Dykast, 300 Ore. at 375 n 6."); ("This court also has declined to follow the federal practice of balancing the conduct of the defendant against the conduct of the state in evaluating speedy-trial claims. Mende, 304 Ore. at 22. Rather, this court considers all the relevant factors, Haynes, 290 Ore. at 81, and assigns "weight" to them, Mende, 304 Ore. at 24.").
Pennsylvania	365 days post-complaint; 180 days post-complaint if in custody and granted bail	Dismissal w/ prejudice	234 Pa. Code Rule 600	Art. I, sec. 9	Adopted Barker. Commonwealth v. Hailey, 368 A.2d 1261, 1264 (Penn. 1977).
Rhode Island	None	N/A	N/A	Art. I, sec. 10	Adopted Barker. State v. Oliveira, 127 A.3d 65, 73 (R.I. 2015).
South Carolina	None	N/A	N/A	Art. I, sec. 14	Adopted Barker. State v. Brazell, 480 S.E.2d 64, 70 (S.C. 1997).
South Dakota	180 days post-first appearance	Dismissal w/ prejudice (unless prosecution can rebut presumed prejudice)	S.D. Codified Laws § 23A-44-5.1	Art. VI, sec. 7	Adopted Barker. State v. Tiegen, 744 N.W.2d 578, 585 (S.D. 2008).
Tennessee	None	N/A	Tenn. Code Ann. § 40-14-101	Art. I, sec. 9	Adopted Barker. State v. Utley, 956 S.W.2d 489, 491 (Tenn. 1997).
Texas	None	N/A	N/A	Art. I, sec. 10	Full parity. *State v. Lopez* , 631 S.W.3d 107, 113 (Tex. Crim. App. 2021) ("The Texas Constitution provides the same guarantee.").
Utah	None	N/A	Utah Code Ann. § 77-1-6	Art. I, sec. 12	Adopted Barker -- Probably. State v. Younge, 321 P.3d 1127, 1133 n. 21 (Utah 2013) ("evaluated similarly").
Vermont	60 days post-denial of bail	Discharge from custody	13 V.S.A. § 7553b	Art. I, sec. 10	Full parity. *State v. Reynolds* , 95 A.3d 973, 978-80 (Vt. 2014).
Virginia	5 months post-probable cause determination (if in custody); 9 months (if on bail conditions)	Dismissal w/ prejudice	Va. Code Ann. § 19.2-243	Art. I, sec. 8	Full parity. *Jones v. Commonwealth* , 2008 Va. App. LEXIS 84 * 5 n. 10 (Va. App. 2008)("The speedy trial guarantees in the United States and Virginia Constitutions are reviewed without distinction.").
Washington	60 days (if in custody); 90 days (if not in custody)	Dismissal w/ prejudice	Wash. CrRLJ 3.3	Art. I, sec. 12	Adopted Barker. State v. Ollivier, 312 P.3d 1, 10 (Wash. 2013) ("substantially the same").
West Virginia	3 terms post-indictment	Dismissal w/ prejudice	W. Va. Code § 62-3-21	Art. III, sec. 14	Adopted Barker. State v. Drachman, 358 S.E.2d 603, 607 (W.V. 1987) ("essentially adopted").
Wisconsin	60 days post-initial appearance (misdemeanor); 90 days post-demand (felony)	Discharge from custody	Wis. Stat. § 971.10(2)(a)	Art. I, sec. 7	Adopted Barker. State v. Urdahl, 704 N.W.2d 324, 329 (Wis. App. 2005).
Wyoming	180 days post-arraignment	Dismissal w/o prejudice	W.R.Cr.P. 48	Art. I, sec. 10	Adopted Barker. Berry v. State, 93 P.3d 222, 230 (Wyo. 2004)..