

Alabama Rules of Criminal Procedure

Rule 15. Preparation for trial; pleadings and motions.

Rule 15.5. Effect of determination of motion.

(a) EFFECT OF GRANTING MOTION BASED ON DEFECTIVE CHARGE. The court grants a motion based on a defect in the commencement of the proceedings or in the charge, the court shall order the defendant released, or, on motion of the district attorney, may order the defendant held in custody, or his pre-trial release continued for a reasonable specified time pending the filing of a new charge.

(b) ADVERSE DETERMINATION. If a motion is determined adversely to the defendant, he shall plead if he has not done so previously.

(c) STATUTES OF LIMITATIONS TOLLED. The running of the time prescribed by an applicable statute of limitations shall be tolled by the issuance of the charging instrument until such time as the court grants a motion to dismiss based on a defect in the commencement of the proceedings or in the charge, unless the court in granting the motion finds that the state has not made a good faith effort to proceed properly and that the defendant has been prejudiced by any resulting delay.

Committee Comments

If a motion to dismiss is granted due to some defect in the charge or in the institution of the prosecution, section (a) allows the court to ensure that the defendant will be available when the new charge is filed.

Section (c) is added to avoid penalizing the state for an inadvertent technical error which has not prejudiced the defendant, and it is intended that, if a motion to dismiss is granted due to a defect in the charge or in the institution of the prosecution, the time period for which the charging instrument was in effect is also tolled.