Criminal Rule 4 and the Right to a Speedy Trial

Criminal Rule 4 is "separate and distinct" from the constitutional right to a speedy trial (6th Amendment and Article 1, Section 12 of the Indiana Constitution). Can violate one without violating the other, so must analyze separately.

Logan v. State, 16 N.E.3d 953, 958 (Ind. 2014)
Curtis v. State, 948 N.E.2d 1143, 1147 n.3 (Ind. 2011)

I. Criminal Rule 4

- Rule 4 places an affirmative duty on the State to bring a defendant to trial within the proscribed period of time. It is the prosecutor's job, not the defendant's, to make sure that Rule 4 is complied with.

  Cundiff v. State, 967 N.E.2d 1026, 1028 (Ind. 2012)

- Where the record is silent as to the reason for delay, the delay will count toward the Rule period/cannot be attributed to the defendant.

  Curtis v. State, 948 N.E.2d 1143, 1151 (Ind. 2011)
  Young v. State, 765 N.E.2d 673, 678 (Ind. Ct. App. 2002)
  Staples v. State, 553 N.E.2d 141, 143 (Ind. Ct. App. 1990) (stating that the trial court "speaks through its docket")

  Object Lesson: *Tinker v. State*, __ N.E.3d __ (Ind. Ct. App. April 22, 2016)

  Multiple trial dates passed with no trial, no explanation in docket. CTA unwilling to remand to allow court to provide explanation after-the-fact for the delay, consider anything not set out in record.

- When Rule period expires on weekend/holiday, Rule period is extended through the close of the next day when the court is in session.

  See Criminal Rule 4(B)(2) and 4(E).

- Acts of attorney are viewed as acts of the defendant for Rule 4 purposes.

  Underwood v. State, 722 N.E.2d 828, 832 (Ind. 2000)
  Vaughn v. State, 470 N.E.2d 374, 377 (Ind. Ct. App. 1984)
  Miller v. State, 702 N.E.2d 1053, 1060 (Ind. 1998)

- Rule 4 does not apply to probation revocation proceedings.

  Wilburn v. State, 671 N.E.2d 143, 148 (Ind. Ct. App. 1996)

A. Criminal Rule 4(A): Six-Month Rule

A defendant held in jail must be brought to trial within 6 months.

> (A) Defendant in Jail. No defendant shall be detained in jail on a charge, without a trial, for a period in aggregate embracing more than six (6) months from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge (whichever is later); except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar; provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall make such statement in a motion for continuance not later than ten (10) days prior to the date set for trial, or if such motion is filed less than ten (10) days prior to trial, the prosecuting attorney shall show additionally that the delay in filing the motion was not the fault of the prosecutor. Provided further, that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time. Any defendant so detained shall be released on his own recognizance at the conclusion of the six-month period aforesaid and may be held to answer a criminal charge against him within the limitations provided for in subsection (C) of this rule.

- Applies only to a defendant who is incarcerated on a criminal charge.

- Remedy is release from incarceration pending trial, not discharge.

  McQueen v. State, 711 N.E.2d 503, 505 (Ind. 1999)

- Defendant does not have to object to trial date set outside 6-month period (there is no "acquiescence" to later date under this part of the Rule).

  State ex rel. Bramley v. Tipton Circuit Court, 835 N.E.2d 479, 481 (Ind. 2005)

- 3 Exceptions to the Rule (delay that does not count toward the 6 months):

  1) Defendant moves for a continuance
  2) Delay was caused by an act of the defendant
  3) Court congestion or emergency

B. Criminal Rule 4(B): 70-Day Rule

A defendant who requests an early trial must be brought to trial within 70 days.

> (B) Defendant in Jail – Motion for Early Trial. If any defendant held in jail on an indictment or an affidavit shall move for an early trial, he shall be discharged if not brought to trial within seventy (70) calendar days from the date of such motion, except where a continuance within said period is had on his motion, or the delay is otherwise caused by his act, or where there was not sufficient time to try him during such seventy (70) calendar days because of the congestion of the court calendar. Provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as set forth in subdivision (A) of this rule. Provided further, that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time.

- Only applies to a defendant who is incarcerated pending trial. If the defendant is released on bond, the right to trial within 70 days is extinguished.

  Driver v. State, 725 N.E.2d 465, 470 (Ind. Ct. App. 2000)

- To apply, the defendant must be incarcerated on the pending charge for which he is requesting an early trial. The right is not triggered by incarceration on a different matter. (The pending charge does not have to be the sole reason the defendant is incarcerated, but it must be one of the reasons why a defendant is being held.)

  Cundiff v. State, 967 N.E.2d 1026, 1027-31 (Ind. 2012)

- Remedy for violation is discharge – defendant cannot be tried.

- Rule does not require an early trial motion to be made in writing. Trial court has discretion to require written order, but must be explicit and clear that oral request is not effective.

  McGowan v. State, 599 N.E.2d 589, 591 (Ind. 1992) (time calculated from written motion)

  Smith v. State, 943 N.E.2d 421, 425-26 (Ind. Ct. App. 2011) (time calculated from oral motion)

- State cannot avoid the 70-day limitation by dismissing and re-filing the charges. The 70-day clock begins running again where it left off when the charges are re-filed; the defendant does not need to file a new early trial motion for this to occur. The clock is tolled during the period between the dismissal and the re-filing.

  Hornaday v. State, 639 N.E.2d 303, 306-09 (Ind. Ct. App. 1994)

- Rule 4(B) does apply to re-trials, but the defendant must file a new early trial request after the re-trial is ordered.

  Underwood v. State, 722 N.E.2d 828, 832 (Ind. 2000)
  James v. State, 716 N.E.2d 935, 938-39 (Ind. 1999)

- If trial date is set outside the 70-day window and the defendant does not object, he is deemed to have acquiesced in that trial date and waived any claim that this date violated the Rule 4(B) deadline.

  Hill v. State, 777 N.E.2d 795, 797-99 (Ind. Ct. App. 2002) (opinion on reh'g)
  Hornaday v. State, 639 N.E.2d 303, 309 (Ind. Ct. App. 1994)
  Bell v. State, 610 N.E.2d 229, 232 (Ind. 1993)

- 3 Exceptions to the Rule (delay that does not count toward the 70 days):

  1) Defendant moves for a continuance
  2) Delay was caused by an act of the defendant
  3) Court congestion or emergency

N.B. Defendant must maintain position consistent with early trial request. Actions inconsistent with the request are deemed an abandonment of the request terminating the 70-day clock. Defendant must thereafter file a new motion for early trial, which will start a new 70-day clock.

Minneman v. State, 441 N.E.2d 673, 677 (Ind. 1982)
Sholar v. State, 626 N.E.2d 547, 549 (Ind. Ct. App. 1993)
Payne v. State, 658 N.E.2d 635, 640 (Ind. Ct. App. 1995)

Examples of actions inconsistent with request for early trial:

Filing another motion for an early trial (*Minneman*)

Accepting a guilty plea or even just engaging in plea negotiations (*Payne*) (*Vaughan v. State*, 470 N.E.2d 374, 377 (Ind. Ct. App. 1984)) (*State v. Smith*, 495 N.E.2d 539, 541 (Ind. Ct. App. 1986))

Moving for a continuance (*Sholar*)

But see State v. Jackson, 857 N.E.2d 378 (Ind. Ct. App. 2006) – motion for a change of venue filed contemporaneously with a motion for early trial under Rule 4(B) was not treated as an inconsistent action (even though it would necessarily cause delay). Instead, the 70-day clock began to run when venue was transferred to the receiving county, i.e., when the transcript and papers were received in the clerk's office of the receiving county.

- If court congestion/emergency necessitates moving trial outside the 70-day window, must be re-set within a "reasonable" amount of time. The reasonableness will be assessed in the context of the circumstances of the particular case.

  Sholar v. State, 626 N.E.2d 547, 549 (Ind. Ct. App. 1993)

C. Criminal Rule 4(C): One-Year Rule

A defendant must be brought to trial within one year.

> (C) Defendant Discharged. No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar; provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as under subdivision (A) of this rule. Provided further, that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time. Any defendant so held shall, on motion, be discharged.

- Applies to all defendants awaiting trial, not just those being held in jail.

- Clock begins to run with the later of arrest or filing of charge.

  Wilson v. State, 606 N.E.2d 1314, 1316 (Ind. Ct. App. 1993)
  Caldwell v. State, 922 N.E.2d 1286, 1289 (Ind. Ct. App. 2010)

If a summons is used in lieu of an arrest, the clock begins to run on the date the summons orders the defendant to appear in court.

Johnson v. State, 708 N.E.2d 912, 915 (Ind. Ct. App. 1999)

- Applies separately/independently to each charge. So if initially file one charge and subsequently add a second charge, the one-year period will expire earlier on the initial charge than it will on the second charge.

  Coates v. State, 534 N.E.2d 1087, 1090 (Ind. 1989)
  Butts v. State, 545 N.E.2d 1120, 1122 (Ind. Ct. App. 1989)
  Burkes v. State, 617 N.E.2d 972, 973 (Ind. Ct. App. 1993)

- State cannot avoid one-year limitation by dismissing and re-filing the same charges. The Rule period will be tolled while the charges are dismissed, but upon re-filing/re-arrest it picks up where it left off and starts running again.

  Wilson v. State, 606 N.E.2d 1314, 1317-18 (Ind. Ct. App. 1993)
  Hornaday v. State, 639 N.E.2d 303, 307-08 (Ind. Ct. App. 1994)
  Young v. State, 521 N.E.2d 671, 673 (Ind. 1988)

  If the Rule period expires on a charge, the State cannot thereafter file a "related" charge arising out of the same incident/based on the same facts that could have been joined with the original charge.

  State v. Tharp, 406 N.E.2d 1242, 1243-47 (Ind. Ct. App. 1980)

  But the *Tharp* rule is inapplicable if the subsequent charges are based on "separate and distinct" facts from the original charges, even if they all arise out of same incident

  Hawkins v. State, 794 N.E.2d 1158, 1163 (Ind. Ct. App. 2003)
  Pruett v. State, 617 N.E.2d 980, 981-82 (Ind. Ct. App. 1993)

- Trial must begin within the one-year Rule period, but it does not have to be completed within one year.

  State v. Erlewein, 755 N.E.2d 700, 707 (Ind. Ct. App. 2001)
  Lee v. State, 569 N.E.2d 717, 719-20 (Ind. Ct. App. 1991)
  State ex rel. Brumfield v. Perry Circuit Court, 426 N.E.2d 692, 695 (Ind. 1981)

- Rule 4(C) does not apply to re-trials (after mistrial, hung jury, successful appeal). All that is required in that context is that retrial occur within "reasonable" time period (i.e., the defendant must rely on his constitutional speedy trial right in that context).

James v. State, 716 N.E.2d 935, 939 (Ind. 1999)
Nelson v. State, 542 N.E.2d 1336, 1338 (Ind. 1989)
Lahr v. State, 615 N.E.2d 150, 151 (Ind. Ct. App. 1993)

- If while still within Rule period (so still possible to set conforming trial date), trial court sets trial date outside the Rule period, the defendant must object or he will be deemed to have acquiesced to that date and waived any claim that he was tried outside the Rule period. However, if the Rule period has already expired at the time the court sets the late trial date, the defendant is not required to object and his motion for discharge will not be waived.

  State v. Black, 947 N.E.2d 503, 506-08 (Ind. Ct. App. 2011)
  State v. Delph, 875 N.E.2d 416, 420 (Ind. Ct. App. 2007)

- 3 Exceptions to the Rule (delay that does not count toward the one year):

  1) Defendant moves for a continuance
  2) Delay was caused by an act of the defendant
  3) Court congestion or emergency

D. Delay that Does Not Count Toward Rule Period (the 3 exceptions)

1. Continuance Sought by Defendant

- Delay from a defendant's motion for continuance will not be attributed to the defendant (and will count against the Rule period) if the reason necessitating the continuance was the State's failure to provide timely discovery.

  Where the State violated discovery orders or was negligent or less than diligent in providing discovery, the appellate courts have refused to charge the delay to the defendant.

  Isaacs v. State, 673 N.E.2d 757, 762 (Ind. 1996)
  Marshall v. State, 759 N.E.2d 665, 669-71 (Ind. Ct. App. 2001)
  Biggs v. State, 546 N.e.2d 1271, 1274-75 (Ind. Ct. App. 1989)

  Where the State has complied with discovery orders and provided discovery as expeditiously as possible under the circumstances, the appellate courts will not count the delay toward the Rule period.

  Paul v. State, 799 N.E.2d 1194, 1198-1200 (Ind. Ct. App. 2003)
  Cole v. State, 780 N.E.2d 394, 396-98 (Ind. Ct. App. 2002)
  Blair v. State, 877 N.E.2d 1225, 1231-32 (Ind. Ct. App. 2007)

- If the defendant requests an "indefinite continuance," he must take some affirmative act to notify the court that he now desires to go to trial to re-start the running of the one-year clock. Until he does so, all the delay will continue to be attributable to the defendant.

  State v. Penwell, 875 N.E.2d 365, 367-68 (Ind. Ct. App. 2007)
  Rivers v. State, 777 N.E.2d 51, 55 (Ind. Ct. App. 2002)
  State v. Powell, 755 N.E.2d 222, 225-26 (Ind. Ct. App. 2001)

2. Delay Caused by Act of Defendant

Delay caused by an act of the defendant will not count toward the Rule period, but for this to apply, the defendant's act must actually impact a trial date/the ability of the case to proceed to a trial.

Whether/what amount of the delay is attributable to the defendant is decided on a case-by-case basis.

Wheeler v. State, 622 N.E.2d 192, 194 (Ind. Ct. App. 1996)

- Delay caused by a defendant's act (or his motion for a continuance) does not count toward the Rule period regardless of whether a trial date has been set at the time or not.

  Cook v. State, 810 N.E.2d 1064, 1065 (Ind. 2004)

- Delay resulting from a defendant's acceptance of a plea agreement will not count toward the Rule period. However, merely engaging in plea negotiations does not exclude time from the Rule period (unless the defendant has specifically requested a continuance in order to pursue plea negotations) or waive the right to be tried within one year.

  State v. Smith, 495 N.E.2d 539, 541-42 (Ind. Ct. App. 1986)
  Miller v. State, 650 N.E.2d 326, 329 (Ind. Ct. App. 1995)
  Leek v. State, 878 N.E.2d 276, 278-80 (Ind. Ct. App. 2007)

- Delay from a defendant's motion to suppress will not count toward the Rule period, but only to the extent that it causes a trial date to be delayed; filing a motion to suppress is not automatically considered a delay attributable to the defendant.

  Curtis v. State, 948 N.E.2d 1143, 1150 (Ind. 2011)
  State v. Stacy, 752 N.E.2d 220, 223-24 (Ind. Ct. App. 2001)

If the trial court fails to timely rule on a motion to suppress, all of the continuing delay may not be attributable to the defendant; the State needs to file a lazy judge motion under Trial Rule 53.1 to protect itself.

West v. State, 976 N.E.2d 721, 722-24 (Ind. Ct. App. 2012)

- Delay resulting from the pursuit of an interlocutory appeal does not count toward the Rule period (at least if it is the defendant taking the interlocutory appeal or the State is appealing from the grant of a defense motion).

  State ex rel. Cox v. Superior Court of Madison County, 445 N.E.2d 1367, 1368-69 (Ind. 1983)
  Martin v. State, 245 Ind. 224, 227-30, 194 N.E.2d 721, 723-24 (1963)

  But after *Pelley*, it is no longer clear whether this is always the case or if it is only the case when the trial court proceedings have been stayed pending the appeal. So to be safe, always ask for a stay whenever an interlocutory appeal occurs.

  Pelley v. State, 901 N.E.2d 494, 499-500 (Ind. 2009)

  If the defendant asks for an interlocutory appeal, but then fails to pursue one, the one-year clock may resume running when the deadline for the defendant to perfect his interlocutory appeal in the appellate courts passes.

  Haston v. State, 695 N.E.2d 1042, 1043-44 (Ind. Ct. App. 1998)

- Delay resulting from a defendant's claim of incompetency does not count toward the one-year Rule period.

  Curtis v. State, 948 N.E.2d 1143, 1150 (Ind. 2011)
  Ferguson v. State, 594 N.E.2d 790, 792 (Ind. 1992)
  Pettiford v. State, 619 N.E.2d 925, 927 (Ind. 1993)

- Delay from a defendant's request for a change of judge/change of venue does not count against Rule period. Clock will resume running when the new judge assumes jurisdiction over the case/the transcript and papers are received in the new county of venue.

  State ex rel. Brown v. Hancock County Superior Court, 267 Ind. 546, 547-48, 372 N.E.2d 169, 170 (1978)
  State v. Jackson, 857 N.E.2d 378, 380-81 (Ind. Ct. App. 2006)
  State v. Grow, 255 Ind. 183, 184-86, 263 N.E.2d 277, 278-79 (1970)
  McGary v. State, 421 N.E.2d 747, 749 (Ind. Ct. App. 1981)
  Johnson v. State, 708 N.E.2d 912, 915 (Ind. Ct. App. 1999)

- Delay resulting from a withdrawal of defendant's counsel as a result of the defendant's conduct.

  Isaacs v. State, 673 N.E.2d 757, 762 (Ind. 1996)
  Ferguson v. State, 594 N.E.2d 790, 792 (Ind. 1992)
  Baumgartner v. State, 891 N.E.2d 1131, 1134-35 (Ind. Ct. App. 2008)

- Delay resulting from a defendant's failure to appear/unknown whereabouts does not count toward the Rule period until the prosecutor/trial court have actual notice of the defendant's whereabouts.

  Fuller v. State, 995 N.E.2d 661, 664-66 (Ind. Ct. App. 2013)
  Feuston v. State, 953 N.E.2d 545, 549-52 (Ind. Ct. App. 2011)
  Werner v. State, 818 N.E.2d 26, 30-31 (Ind. Ct. App. 2004)
  Rust v. State, 792 N.E.2d 616, 618-20 (Ind. Ct. App. 2003)

3. Court Congestion/Emergency

- Rule requires prosecutor to move for continuance based on congestion 10 days prior to trial date. Failing to do so puts at risk that delay will be charged toward Rule period (if court has not done *sua sponte*).

  Marshall v. State, 759 N.E.2d 665, 671 (Ind. Ct. App. 2001)

- Finding of congestion must be made on record prior to expiration of the Rule period and not after-the-fact. Nunc pro tunc entries or presenting evidence of congestion at a later hearing will not be sufficient to get around this requirement.

  Huffman v. State, 502 N.E.2d 906, 908 (Ind. 1987)
  Young v. State, 765 N.E.2d 673, 676, 678-79 (Ind. Ct. App. 2002)
  Alter v. State, 860 N.E.2d 874, 877-79 (Ind. Ct. App. 2007)

- In making congestion determinations, trial courts must prioritize cases—as a general rule, prioritize criminal cases over civil cases, cases that have been pending longer over cases pending shorter, cases in which a defendant has filed a motion for early trial under Rule 4(B) over cases where the defendant has not. (But none of these are rules set in stone – must assess reasonableness of prioritization based on the specific circumstances of the situation, may take into account how long the trial will take, need to accommodate travel logistics of witnesses, etc.)

  Austin v. State, 997 N.E.2d 1027, 1040-41 (Ind. 2013)
  Logan v. State, 16 N.E.3d 953, 959-60 (Ind. 2014)
  Clark v. State, 659 N.E.2d 548, 551-52 (Ind. 1995)
  McKay v. State, 714 N.E.2d 1182, 1188 (Ind. Ct. App. 1999)

- Trial court finding of congestion is presumptively valid. A defendant may challenge that finding by demonstrating it to be inaccurate, entitling him to discharge absent further explanation from the court justifying the congestion. On appeal, the finding of congestion must be shown to be clearly erroneous.

  Austin v. State, 997 N.E.2d 1027, 1038-40 (Ind. 2013)
  James v. State, 716 N.E.2d 935, 939 (Ind. 1999)

- Unavailability of essential personnel or physical facilities is an exigency falling within the congestion exception.

  Loyd v. State, 272 Ind. 404, 409-10 398 N.E.2d 1260, 1265-66 (1980) (serious medical/health crises struck prosecutor's parents two days prior to trial)

  Henderson v. State, 647 N.E.2d 7, 13 (Ind. Ct. App. 1995) (unavailability of qualified judge to preside over trial)

  Lowrimore v. State, 728 N.E.2d 860, 864-65 (Ind. 2000) (need to appoint Criminal Rule 24 qualified counsel in death penalty case)

  Dunville v. State, 271 Ind. 393, 395-96, 393 N.E.2d 143, 145-46 (1979) (severe blizzard incapacitated county, preventing judge and jurors from arriving for trial)

  Wood v. State, 999 N.E.2d 1054, 1062-63 (Ind. Ct. App. 2013) (trial court's loss of jurisdiction after TR 53.1 motion filed/while awaiting appointment of special judge)

  State v. Love, 576 N.E.2d 623, 625-26 (Ind. Ct. App. 1991) (resignation of public defender/assignment of new counsel shortly before trial date)

  Paul v. State, 799 N.E.2d 1194, 1196-1200 (Ind. Ct. App. 2003) (belated discovery, provided as expeditiously as possible given assumption of office by new prosecutor, not allowing counsel sufficient time to prepare for trial)

- When congestion pushes trial beyond one-year limit, trial date must be rescheduled within a "reasonable" period of time.

  Alter v. State, 860 N.E.2d 874, 877 (Ind. Ct. App. 2007)
  Young v. State, 765 N.E.2d 673, 676 (Ind. Ct. App. 2002)

E. Criminal Rule 4(D): Extensions of the Rule Period

The State can obtain a 90-day extension when evidence is unavailable.

> (D) Discharge for delay in trial—When may be refused—Extensions of time. If when application is made for discharge of a defendant under this rule, the court be satisfied that there is evidence for the state, which cannot then be had, that reasonable effort has been made to procure the same and there is just ground to believe that such evidence can be had within ninety (90) days, the cause may be continued, and the prisoner remanded or admitted to bail; and if he be not brought to trial by the state within such additional ninety (90) days, he shall then be discharged.

- Only applies when the unavailable evidence would result in a trial date beyond the Rule 4 limitation; does not apply to extend the Rule period when seeking continuance due to unavailable evidence earlier during the Rule period.

  Wilson v. State, 606 N.E.2d 1314, 1317 n.2 (Ind. Ct. App. 1993)

- The 90-day extension is added on to the original time period (it does not run from the time it is requested).

  Littrell v. State, 15 N.E.3d 646, 650-51 (Ind. Ct. App. 2014)

- Extension is only available when 3 requirements are met:

  1) need for extension is based on evidence that will be unavailable on the trial date;
  2) due diligence was used by the State to try to obtain the evidence by the trial date; and
  3) there is a reasonable basis for believing the State will be able to procure the evidence within 90 days.

  Chambers v. State, 848 N.E.2d 298, 303-04 (Ind. Ct. App. 2006)

- Mere fact that evidence is not in State's possession is not enough to show it cannot be had for the trial. Must be able to show that efforts were made to obtain the evidence without success.

  Chambers v. State, 848 N.E.2d 298, 304-05 (Ind. Ct. App. 2006) (State not entitled to the 90-day continuance where the laboratory test was completed but the prosecutor had not contacted the lab and found this out)

- Absence of key witness through no fault of the State is basis for obtaining extension under Rule 4(D).

  Wilhelmus v. State, 824 N.E.2d 405, 413 (Ind. Ct. App. 2005)
  Griffin v. State, 695 N.E.2d 1010, 1012-13 & n.2 (Ind. Ct. App. 1998)

F. Defendants Incarcerated in Foreign Jurisdictions

- Criminal Rule 4 does not apply while a person is incarcerated in a foreign jurisdiction/not in the exclusive custody of Indiana. The Interstate Agreement on Detainers applies in such circumstances instead.

  Smith v. State, 267 Ind. 167, 171, 368 N.E.2d 1154, 1156 (1977)
  Brown v. State, 497 N.E.2d 1049, 1050 (Ind. 1986)
  Howard v. State, 755 N.E.2d 242, 245 (Ind. Ct. App. 2001)
  Spaulding v. State, 992 N.E.2d 881, 884-85 (Ind. Ct. App. 2013)
  Fisher v. State, 933 N.E.2d 526, 529 (Ind. Ct. App. 2010)

  But see *McCloud v. State*, 959 N.E.2d 879, 884-86 (Ind. Ct. App. 2011) (applying Rule 4 to a defendant incarcerated in another jurisdiction, but finding the time that he was incarcerated there to be delay attributable to the defendant and thus not to count toward the one-year limitation)

- Exception: Criminal Rule 4 will apply if the State has brought the defendant into Indiana under a form of temporary custody but then voluntarily relinquishes control of that defendant to a foreign jurisdiction.

  Sweeney v. State, 704 N.E.2d 86, 99-100 (Ind. 1998)
  Howard v. State, 755 N.E.2d 242, 246-47 (Ind. Ct. App. 2001)
  Spaulding v. State, 992 N.E.2d 881, 886-87 (Ind. Ct. App. 2013)

- Rule 4 period will begin to run on the date the defendant is extradited to Indiana.

  Fuller v. State, 995 N.E.2d 661, 664 (Ind. Ct. App. 2013)
  Sweeney v. State, 704 N.E.2d 86, 100 (Ind. 1998)

II. Constitutional Right to a Speedy Trial

Indiana applies the 4-factor *Barker v. Wingo*, 470 U.S. 514 (1972) test to evaluate claims that a person's constitutional right (federal or state) to a speedy trial was violated.

Logan v. State, 16 N.E.3d 953, 961 (Ind. 2014)
Sweeney v. State, 704 N.E.2d 86, 102 (Ind. 1998)
Fisher v. State, 933 N.E.2d 526, 530 (Ind. Ct. App. 2010)

- *Barko v. Wingo* factors:

  1) the length of the delay;
  2) the reason(s) for the delay;
  3) the defendant's assertion of his right; and
  4) the prejudice to the defendant

  No one factor is necessary or sufficient; this is a balancing test in which all factors must be weighed. *Barker*, 407 U.S. at 530, 533.

A. Length of Delay

- Acts as a "triggering mechanism" – unless have period of delay long enough to be "presumptively prejudicial," do not need to go on to analyze the other four factors.

  Barker v. Wingo, 407 U.S. 514, 530 (1972)
  Doggett v. United States, 505 U.S. 647, 651-52 (1992)
  Davis v. State, 819 N.E.2d 91, 95-96 (Ind. Ct. App. 2004)
  Rivers v. State, 777 N.E.2d 51, 56 (Ind. Ct. App. 2002)

- Length of time to be "presumptively prejudicial" depends on particular circumstances of the case. However, as a general rule, delay of one year or more will be deemed presumptively prejudicial so as to trigger rest of analysis.

  McClellan v. State, 6 N.E.3d 1001, 1005 (Ind. Ct. App. 2014)
  Davis v. State, 819 N.E.2d 91, 96 (Ind. Ct. App. 2004)
  Doggett v. United States, 505 U.S. 647, 652 n.1 (1992)
  Barker v. Wingo, 407 U.S. 514, 530-31 (1972)

- Once analysis triggered, then use "length of delay" factor by considering extent to which delay exceeds that necessary to meet the threshold showing.

  Doggett v. United States, 505 U.S. 647, 652 (1992)
  Davis v. State, 819 N.E.2d 91, 96 (Ind. Ct. App. 2004)

B. Reason for Delay

- Delay caused or requested by the defendant weighs against a violation. Bad faith or deliberate attempts on the part of the State to delay the trial in order to prejudice the defendant weigh heavily in favor of a violation. More neutral reasons for delay such as court congestion are given less weight. Valid reasons for delay, such as absent witnesses (through no fault of the State), weigh against a violation.

  Barker v. Wingo, 407 U.S. 514, 531 (1972)
  Logan v. State, 16 N.E.3d 953, 962-63 (Ind. 2014)
  McClellan v. State, 6 N.E.3d 1001, 1005 (Ind. Ct. App. 2014)

- With respect to State's efforts to bring the case to trial, can classify as diligent prosecution, official negligence, or bad faith; bad faith weighs more heavily in favor of a violation than does official negligence.

  Danks v. State, 733 N.E.2d 474, 481 (Ind. Ct. App. 2000)
  Davis v. State, 819 N.E.2d 91, 97 (Ind. Ct. App. 2004)

- Policy on part of prosecutor to forego prosecution of a defendant serving time in a foreign jurisdiction until such time as he completed that sentence is not an acceptable justification for delay and will weigh in favor of finding a speedy trial violation.

  Fisher v. State, 933 N.E.2d 526, 531-32 (Ind. Ct. App. 2010)

C. Defendant's Assertion of his Speedy Trial Rights

- Looks to what point in the proceedings the defendant first asserted his speedy trial rights and how frequently he asserted them. Failing to assert the right promptly suggests that the defendant did not desire to go to trial quickly and/or was seeking a strategic advantage by not going to trial.

  Barker v. Wingo, 407 U.S. 514, 531-32, 534-35 (1972)
  Davis v. State, 819 N.E.2d 91, 97 (Ind. Ct. App. 2004)
  Sweeney v. State, 704 N.E.2d 86, 102 (Ind. 1998)
  Logan v. State, 16 N.E.3d 953, 963 (Ind. 2014)

D. Prejudice to Defendant

- "Presumptively prejudicial" delay for purposes of the first factor does not automatically equate to prejudice for purposes of the fourth factor.

  Danks v. State, 733 N.E.2d 474, 481 (Ind. Ct. App. 2000)

- Indiana law says the burden is on the defendant to prove "actual prejudice" under this prong.

  Lee v. State, 684 N.E.2d 1143, 1146 (Ind. 1997)
  Sweeney v. State, 704 N.E.2d 86, 103 (Ind. 1998)
  Sturgeon v. State, 683 N.E.2d 612, 617 (Ind. Ct. App. 1997)

  But the Supreme Court has said that "affirmative proof of particularized prejudice is not essential to every speedy trial claim" and that excessive delay can create presumptive prejudice that may be considered under this factor. *Doggett v. United States*, 505 U.S. 647, 655 (1992).

  And some Indiana cases have found this factor to weigh in favor of a speedy trial violation based only on presumptive prejudice without any showing of actual prejudice.

  Fisher v. State, 933 N.E.2d 526, 533 (Ind. Ct. App. 2010)

- Court will presume prejudice (relieving defendant of burden to prove actual prejudice) if the delay between the filing of the charge and the arrest of the defendant exceeds the statute of limitations period for the offense. State may rebut this presumption, and the presumptive prejudice does not constitute a *per se* speedy trial violation as it remains only one of the factors in the analysis.

  Scott v. State, 461 N.E.2d 141, 144-45 (Ind. Ct. App. 1984)
  McClellan v. State, 6 N.E.3d 1001, 1006 (Ind. Ct. App. 2014)

- Prejudice, for purposes of this factor, must be assessed in light of the interests the speedy trial right is designed to protect:

  1) prevent oppressive pretrial incarceration;
  2) minimize anxiety and concern of the accused; and
  3) limit the possibility that the defense will be impaired.

  Barker v. Wingo, 407 U.S. 514, 532 (1972)
  Logan v. State, 16 N.E.3d 953, 963-64 (Ind. 2014)

- Of these interests, the third is the most important and weighs the most heavily in the analysis.

  Barker, 407 U.S. at 532
  McClellan v. State, 6 N.E.3d 1001, 1006 (Ind. Ct. App. 2014)
  Lahr v. State, 615 N.E.2d 150, 153 (Ind. Ct. App. 1993)

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