

## SPEEDY TRIAL CHEAT SHEET

By Chris Greene, Esq. with assistance from Robert Walton, Esq. (5-11-21)

<u>Charges</u>	<u>Time</u>	<u>Start</u>
MM	30 days	Arrest*/Service of Summons
M4/M3/	45 days	Arrest*/Service of Summons
M2/M1/	90 days	Arrest*/Service of Summons
UM <60 days	45 days	Arrest*/Service of Summons
UM>60 days	90 days	Arrest*/Service of Summons

### Note

\*The date of arrest is not counted. Count starts day after arrest.

\* If Defendant is arrested on two or more charges, the trial period corresponds to the highest level charge- Ex. M1, M2, MM- all charges on 90 day trial period.

\* If Defendant is incarcerated, **on the charge in question**, Defendant is entitled to 3 days speedy trial time for 1 day incarceration.

\* Transfer from Mayor's Court- Time tolled from arrest/summons date to **date of Mayor Court certification.**

\* New Charge based on facts known at time of original charges- Speedy Trial on new charge is same date as original charges.

\* New Charge based on facts **not** known at time of original charge- Speedy Trial on new charge starts upon arrest/service of summons of that charge.

### Tolling

1. Accused unavailable due to other criminal proceedings.
2. Any term of mental incompetence.
3. Lack of Counsel.
4. Neglect or improper act of the accused.
5. Plea in bar or abatement, motion, proceeding or action made by the defendant
6. Change of venue
7. Any period during which trial is stayed pursuant to an express statutory requirement, or pursuant to an order of another court competent to issue such order.

8. The period of any continuance granted on the accused's own motion,
9. Any reasonable continuance granted other than upon the accused's own motion.
10. Any period of appeal.
11. Defendant or Defendant's Counsel sign Written Waiver or makes affirmative waiver on the record. Waiver must be KVI. ( Blanket Waivers/ Time Restrictions Waivers) **Any Time waiver can be revoked.** Revocation does not start a new speedy trial period. If revoked- continuation from the original speedy start date.

#### Defendant's Motions that toll time-

Motion to Suppress, Motion to Dismiss, Motion to Quash, Motion to Compel Grand Jury Testimony, Motion in Limine, Request for Severance of Charges or Severance of Defendant's, Motion for Change of Venue (as long as Motion is in accordance with the law). Time tolled until court rules or reasonable period.

\*\*\*\*\* Co-Defendants- If one defendant files a motion to suppress that does not necessarily toll time of the co-defendant. (Case by case basis/ Reasonableness requirement).

Defendant's Request for Discovery tolls time until discovery is granted or for a reasonable period. Courts have determined that 30 days to respond is reasonable. Reasonableness is a case to case determination.

Prosecution motion can toll time if the courts record affirmatively demonstrates the necessity of the continuance and its reasonableness.

Prosecution motion for continuance for lack of a witness tolls if the prosecutor made **reasonable attempts to secure the attendance of the witness (subpoena)** and the continuance is for a **reasonable period**.

If court continues upon its own motion- must have JE setting forth the reasoning and a time parameter for the continuance.

Court conflicts in scheduling will toll time (reasonableness again applies).

Defendant has a warrant for non-appearance for untried indictment. If defendant files a Notice of Availability then: A) Defendant in Ohio county/city jail and unavailable- 2945.72 applies. Defendant in Ohio prison and unavailable- 2941.401 applies; Defendant in jail/prison in another state and unavailable- 2963.30 applies.

## **Constitutional Right**

Right lies in 6<sup>th</sup> and 14<sup>th</sup> Amendments.

14<sup>th</sup> Amendment typically applies to pre-indictment delay. (Defendant must show actual prejudice)

6<sup>th</sup> Amendment applies to post indictment. (Four factors- 1. Length of delay, 2. Reason for delay, 3. Defendant's assertion of right, 4. Prejudice to defendant. )

Ohio Constitution Article 1 Section 10. Identical to Federal above

## **IMPORTANT CASES**

City of Cleveland v. Collins , 8<sup>th</sup> Dist., 2018-Ohio-958 (Discovery delays, Prosecution motions and tolling of time.

City of Cleveland Hts. V. Coleman, 8<sup>th</sup> Dist., 2021-Ohio-846 (County jail not Term of imprisonment triggering 2941.401/Waiver issues)

City of Cleveland v. Beach, 8<sup>th</sup> Dist., 2021- Ohio-577 (Excellent chart on time calculation)

State of Ohio v. Shavers, 11<sup>th</sup> Dist., 2019- Ohio- 3059 (Sentencing does not qualify as an untried indictment)

State v. Ramey, slip opinion No. 2012-Ohio-2904 (Co- Defendant motions/ tolling time)

Brecksville v. Cook (1996), 75 Ohio St. 3d. 53

Olmsted Falls v. O' Brien, 2005-Ohio-1317 (Mayor Court must certify transfer)

Brook Park v. Wright 2018-ohio-953 (Municipal Court must dismiss if Mayor Court violates Speedy Trial).

Barker v. Wingo (1972) 407 US 514.

State v. O'Brien (1987) 34 Ohio St. 3d. 7 (Ohio Constitutional Provision)

## **STATUTES/RULES**

Ohio Revised Code 2945.71 et. seq.

Ohio Revised Code 2941.401

Ohio Revised Code Section 2963.30

Criminal Rule 45 (A) (Computation of Time)