AEQUITAS

Statutory and Constitutional Speedy Trial Rights in the Wake of the COVID-19 Pandemic: Missouri

Question Presented

1. State-level Speedy Trial Statutes (Missouri Law Focus):
   a. Do public health crises/similar unusual circumstances that cause courts to close/delay indefinitely, toll the period dictated in states speedy trial statutes?
   b. Notwithstanding the tolling period, do such crises/similar circumstances have any effect on defendants' arguments of prejudice?

2. Constitutional Right to a Speedy Trial:
   a. Do public health crises/similar unusual circumstances that cause courts to close/delay indefinitely affect the right to a speedy trial? If so, how?

Short Answer/Research Points

Question 1a.

Some states (such as New York and Washington) have said that because COVID-19 has resulted in a state of emergency being declared, their speedy trial obligations have been tolled. Other states (such as Virginia and Missouri) have shut down court operations with some limited exceptions, which include doing what is necessary to ensure litigants constitutional/statutory right to a speedy trial are upheld. Missouri's Supreme Court issued its official response to the current COVID-19 crisis on March 22nd, stating that "[d]espite the suspension of in-person court proceedings, Missouri courts still must continue to carry out the core, constitutional functions of the Missouri judiciary as prescribed by law and ***continue to uphold the constitutional rights of litigants*** seeking redress in any Missouri court."[1] Those who wish to exercise their right to a speedy trial are told to contact their lawyer. However, it is hard to find any information (regarding what the exact process is for cases subject to a speedy trial claim to be heard during this time) on the Missouri Office of Public Defender's website or any of Missouri's courts' websites. When asked, the clerk's office said that there was no process in place as far as they knew and that the courts would be closed completely if necessary.

Question 1b.

A finding of delay in Missouri does not mean dismissal on speedy trial grounds is required unless the court finds that the defendant has been denied his or her "constitutional right to a speedy trial."[2] The factors weighed in making that determination are the four *Barker* factors: 1) the length of the delay; 2) the reason for the delay; 3) whether the defendant demanded a speedy trial and when; and 4) the prejudice or harm brought to the defendant's case as a result of the delay. The Supreme Court in *Barker* stated that "[t]he length of the delay is to some extent a triggering mechanism" and that "[u]ntil there is some delay which is presumptively prejudicial, there is no necessity for inquiry into

[1] Order of the Supreme Court of Missouri, In re: Response to the Coronavirus Disease (COVID-19) Pandemic (Mar. 22, 2020), https://www.courts.mo.gov/page.jsp?id=153093.
[2] *State v. Loewe*, 756 S.W.2d 177, 181 (Mo. App. 1988).

the other factors that go into the balance."[3] So courts never get to the defendant's specific argument that they were prejudiced (*Barke*r factor 4) if the delay is not held to be presumptively prejudicial (*Barker* factor 1).

Factor 1: The Length of the Delay

The Sixth Amendment doesn't provide any guidance on the time allowed for a trial to be considered "speedy." State statutes on the other hand, do. In Missouri for example, V.A.M.S. § 545.780 permits a motion for dismissal "if a defendant announces he or she is ready for a speedy trial" and the court fails to "set the case for trial as soon as reasonably possible thereafter." The statute also provides specific time limitations within which, absent excusable delays, arraignment and trial must be had. Arraignment must occur within ten days "from the filing of the information or the making public of the indictment."[4] If the defendant pleads not guilty, his trial must begin within 180 days of arraignment.[5] While what constitutes an "excusable delay" is not defined in the statute, it is not uncommon for Missouri courts to hold that delays of more than 180 days (not attributable to the defendant) are compatible with a defendant's right to a speedy trial being respected after analyzing the facts and circumstances of a particular case. Missouri courts have held that a delay of 8 months or more is presumptively prejudicial.[6] In determining the length of delay, any delays attributable to the defendant are subtracted from the total delay between the time of trial and the time a defendant was formally charged or actual restraints were imposed by arrest and between being held to answer criminal charges.[7]

Factor 2: Reason for the Delay

Barker says that deliberate attempts to delay the trial as a means of hampering the defense are weighed heavily against the government, whereas more neutral reasons such as negligence or overcrowded courts are weighed less heavily.[8] Valid reasons, such as a missing witness, according to *Barker*, should serve to justify appropriate delay.[9] Additionally, the charged crime's severity also factor into how heavily a delay is held to weigh against the government in one case versus another. Delays attributable to the defendant weigh heavily against them. Even when defense counsel requests a continuance without consulting their client or without their client's express permission, the delay is still deemed attributable to the defense rather than the court or prosecution and thus weighs heavily against the defendant's claim that their speedy trial right was violated. Meanwhile, while the ultimate responsibility for delay related to a defendant's legal demand for relief (ex an interlocutory appeal) rests with the state, a defendant can't use an appeal "as a sword and a shield" and

[3] *Barker v. Wingo*, 407 U.S. 514, 530 (1972).
[4] § 545.780(1).
[5] § 545.780(2).
[6] *See State v. Joos*, 966 S.W.2d 349, 352 (Mo. Ct. App. 1998); *Dillard v. State*, 931 S.W.2d 157, 162 (Mo. Ct. App. 1996); *State v. Farris*, 877 S.W.2d 657, 660 (Mo. Ct. App. 1994).
[7] *State v. Fleer*, 851 S.W.2d 582, 596 (Mo. App. 1993).
[8] *Barker,* 407 U.S. at 531.
[9] *Id.*

therefore, delays stemming from their legal demands for relief don't weigh heavily against the state. "In other words [a defendant] may not demand relief but then contend that the relief that he demanded took too long and that he, therefore, should have th[e] case dismissed for failure to receive a speedy trial."[10]

Even when the length of the delay is presumptively prejudicial and the record shows no indication that appellant caused any of the delay, if the record is also void of anything suggesting the State made a deliberate attempt to delay the trial to hamper the defense, the delay must be held to weigh against the state, but "not severely."[11]

Factor 3: Whether, When and How the Defendant Asserted Their Right to a Speedy Trial
It was held in *Bohannon* that when the defendant allowed 11 months to pass before asserting their right to a speedy trial and failed to assert the right until the eve of trial, that did not constitute immediately asserting the right.[12] In another case, when the defendant did not assert the right until 16 months after their arrest, the court determined this factor of the *Barker* test should weigh against the defendant, "although not heavily."[13]

Factor 4: Prejudice or Harm Brought to the Defendant's Case as a Result of the Delay.
In *Joos*, the delay was deemed presumptively prejudicial, excuses suggested by the state for its failure to bring the defendant to trial were deemed unpersuasive, and the defendant timely asserted his right to a speedy trial. In other words, all the other factors were satisfied. Still "the determinative factor….is whether defendant suffered actual prejudice from the delay and, if so, its effect."[14]

The common considerations when making this assessment include: 1) prevention of oppressive pretrial incarceration; 2) minimization of anxiety and concern of the accused; and 3) limitation of the possibility that the defense will be impaired.[15] Ultimately, to require reversal, resulting prejudice from violation of one's constitutional right to speedy trial must be actual prejudice apparent on record or by reasonable inference, not speculative or possible prejudice.[16]

1. The defendant in *Joos* argued that he was prejudiced due to the 33 months he was jailed between his arrest and trial, asserting that he served more jail time than he would have if the trial had been earlier. The court decided that because the defendant was convicted of two charges that were to be served concurrently, charges that exceeded 33 months, and the defendant received credit for his time served, that the record didn't support defendant's claim that he served additional jail time because of the delay.[17]

[10] *Fleer*, 851 S.W.2d at 597.
[11] *State v. Bohannon*, 793 S.W.2d 497, 504 (Mo. Ct. App. 1990).
[12] *Id.*
[13] *Fleer*, 851 S.W.2d at 596.
[14] *Joos*, 966 S.W.2d at 353; *see also* State v. Davis, 903 S.W.2d 930, 937 (Mo. Ct. App. 1995).
[15] Barker, 407 U.S. at 532; *see also State v. Buckles*, 636 S.W.2d 914, 419 (Mo. 1982), abrogated by *State v. Waller*, 816 S.W.2d 212 (Mo. 1991); *State v. Haddix*, 566 S.W.2d 266, 274 (Mo. Ct. App. 1978); *State v. Woodworth*, 941 S.W.2d 679 (Mo. Ct. App. 1997).
[16] Woodworth, 941 S.W.2d at 684-95.
[17] *Joos*, 966 S.W.2d at 353.

2. Because anxiety and concern exist in every criminal case, "that alone does not establish prejudice where, as here, the defendant neither asserts nor shows that the delay weighed particularly heavily on him in specific instances."[18] It's suggested in the *Joos* case that perhaps if the record revealed "specific instances of inordinate anxiety" that would be weighed differently.[19]

3. The most serious" form of prejudice that can be claimed is that one's defense was impaired because of the incarceration and delay.[20] In *Fleer*, the defendant alleged that his defense was impaired because the delay caused lapses in memory. In responding that that did not appear to be the case after a review of the trial transcripts, the court states that there is "no substantial evidence of memory lapse on the part of the witnesses" and that "Fleer does not contend that any witness died or disappeared or was otherwise unavailable to him."[21] However, even when the defendant in *Joos* contended that two witnesses who would have testified died between the time he was arrested and tried, the court cited the Loewe case to assert that "prejudice does not necessarily result from the unavailability of testimony presented at trial." [22]

Barker Factors Potential Application to COVID-19 Case Facts:
If an individual who has been arraigned and is awaiting trial at this time in Missouri moves to have their case dismissed on speedy trial grounds, the first step will be to calculate whether 8 months have passed or are likely to pass prior to trial commencing. If, subtracting days that are attributable to the defendant (recall that defense counsel moving for a continuance with or without consulting the defendant is attributable to the defendant), more than 8 months have passed, then the case will turn on a careful analysis of the specific facts of the case under the remaining three *Barker* factors. Delays pursuant to COVID-19 resulting in courts being temporarily shut down or severely limiting their dockets, will presumably not be considered a deliberate attempt to delay the trial as a means of hampering the defense, which is the primary way that delay is held to weigh heavily against the government. Additionally, defense counsel that move for continuances (*e.g*. for fear of their own safety, for fear of their clients safety, because they don't want to hold a jury trial amidst COVID for fear that those deemed healthy enough to serve won't be an equitable representation of the defendant's community/peers, for fear that the jury will rush to judgement to avoid having to break quarantine to continue to meet, for fear that witnesses won't be available to testify, etc.) even without consulting and/or getting the approval of their clients, will likely weigh against the defendant's claim of presumptively prejudicial delay. Case law suggests that there is no clear rule as to when a defendant must assert their right to a speedy trial for their assertion to weigh in their favor, but it's safe to say that unless a defendant is asserting the right on the eve of trial, the third *Barker* factor will likely be held to weigh in their favor. This will likely be the case during COVID-19 as trials are largely not occurring.

The fourth *Barker* factor is generally determinative and it is where the bulk of the analysis surrounding COVID-19 delays will occur. As detailed below, the Defense bar in NY has come down on the side of it being prejudicial to continue to hold jury trials during the COVID-19 crisis. Additionally, witnesses potentially being

[18] *Black*, 587 S.W.2d at 877 (quoting *Morris v. Wyrick*, 516 F.2d 1387, 1391 (8th Cir.), *cert. denied*, 423 U.S. 925 (1975).
[19] *Joos*, 966 S.W.2d at 353.
[20] *Barker*, 407 U.S. at 532.
[21] *Fleer*, 851 S.W.2d at 597.
[22] *Joos*, 966 S.W.2d at 353.

unavailable would seem to be a bigger concern during the COVID crisis as opposed to at a later date (though would-be witnesses in specific cases who end up passing away of COVID-19 might result in the defendant being deemed to have been prejudiced by the delay).

On the other hand, anxiety and concern associated with being incarcerated during a pandemic, where personal harm is less likely when appropriate social distancing is practiced, is undoubtedly at an all-time high. While there is no case law yet to support the argument that increased prejudice is deemed to exists as a result, the argument might well be made soon, and the defendant will have to show actual harm/instances of uncharacteristically high anxiety. If COVID-19 tears through prisons (expected) and it is handled poorly (also expected), then actual prejudice will likely be easier to demonstrate (re oppressive pretrial incarceration and anxiety and concern of the accused). Note also that determining whether a defendant's pretrial incarceration is considered prejudicial, courts have considered the potential jail time (sentencing guidelines) associated with their charges. As COVID-19 and the increased danger prisons pose/potential exacerbation of other prejudices weigh in the defendant's favor, criminal defendants who assert their right to a speedy trial has been denied will be more likely to be successful if their charges are non-violent/carry the potential for limited jail time if held guilty.

While this analysis of Missouri case law suggests that the majority of criminal defendants will not experience increased success in moving to dismiss their cases due to their constitutional/statutory rights being infringed due to COVID-19 associated court closures/trial delays, those incarcerated for petty crimes with no trial date likely to be set for the foreseeable future as a result of the pandemic, might have strong resultant speedy trial claims. This prediction coupled with public health considerations supports the release of all criminal defendants on bail who have been arraigned/are being held for non-violent crimes.

Note that after 9/11 and Katrina, courts were closed temporarily, but there is no speedy trial case law that raised these closures as a cause for the Barker prejudice calculation weighing in the defendant's favor.

Question 2a.

The Missouri speedy trial statute grants defendants greater protection than the Constitution requires. There is "no constitutional basis for holding that the speedy trial right can be quantified into a specified number of days or months."[23] Previous tolling of the periods dictated in speedy trial statutes during national emergencies (9/11 and Katrina) with no resultant finding that those closures weighing heavily against the government when analyzing the *Barker* factors in determining if a defendant's right to a speedy trial had been infringed, suggests that public health crises/similar unusual circumstances that cause courts to close/delay indefinitely affect the right to a speedy trial. However, Noah Feldman makes the textual argument in support of public health emergencies not being an acceptable reason for tolling constitutional speedy trials during pandemics. He writes, "[t]he Constitution says that habeas may not be suspended 'unless when in Cases of Rebellion or Invasion the public Safety may require it.' There's no mention of a public health hazard – a situation that was certainly imagined to the framers of the Constitution, who themselves encountered yellow fever and smallpox epidemics as a recurrent part of the 18th century life in North America."[24] However, it is feasible that the argument could be made that the virus constitutes an "invasion" of sorts.

Relevant Law Review Article:

Patrick Ellard, *Learning from Katrina: Emphasizing the Right to a Speedy Trial to Protect Constitutional Guarantees in Disasters,* 44 AM. CRIM. L. REV. 1207 (2007).

- This note's thesis is that jurisdictions should emphasize protection of the right to a speedy trial when planning for disaster.

[23] *Wingo*, 407 U.S. at 523.

[24] Noah Feldman, *Criminal Courts Can't Pause for Pandemics,* BLOOMBERG OPINION (Mar. 17, 2020), https://www.bloombergquint.com/gadfly/supreme-court-work-can-be-done-remotely-but-criminal-cases-can-t.

- Part IV details Katrina's aftermath in New Orleans and how the storm created a logistical breakdown in the city's criminal justice system threatening constitutional rights; Part V demonstrates how an application of the Barker factors to the situation in post-Katrina New Orleans demonstrates a violation of the right to a speedy trial for many accused; Part VI suggests how society, when planning for disaster, can better maintain criminal justice systems and constitutional rights by focusing on preserving the right to a speedy trial and the interests it protects.
- Part IV:
    - Number of public defenders decreased from 39 to 8% immediately after the storm. (1220)
    - "Many people arrested immediately before the storm were held for several months without court dates or formal charges. The Court closings caused a case backlog estimated at more than 3000 in New Orleans after the storm…Fourteen months passed before criminal courts returned to a full time schedule. The delays from court closings combined with the ***destruction of evidence*** and ***loss of witnesses*** raised concern that the ability of defendants who managed to break through the backlog to receive a fair trial." (1220)
    - "Factors such as the charged crime's severity can also determine whether a delay is prejudicial. For instance, in State v. Brown, the court found that a ten-month delay was not presumptively prejudicial because the crime involved was a felony. In contrast, in State v. Reaves, the court considered a three-and-a-half month delay prejudicial because the alleged crime was a misdemeanor."
    - The length of the delay prong should be construed liberally because it acts only as a triggering mechanism to consider the other Barker factors.

Speedy Trials Concerns Raised in the News:

Ryan Lucas, Federal Courts Scramble to Adapt to Disruptions From Coronavirus Pandemic, NAT'L PUB. RADIO (March 16, 2020), https://www.npr.org/2020/03/16/816501308/federal-courts-scramble-to-adapt-to-disruptions-from-coronavirus-pandemic.

- The 94 district courts and 13 circuit courts are grappling with how to handle the crisis. Each is crafting its own response in coordination with state and local health officials.

Kara Scannell, David Shortell, Evan Perez and Erica Orden, 'More Challenging Than 9/11': Pandemic Tests American Criminal Justice, March 17, 2020, http://www.wicz.com/story/41905571/more-challenging-than- 911-pandemic-tests-american-criminal-justice.

- The judge overseeing the trial of a man charged in a NY sex trafficking ring postponed the trial for at least 2 weeks midway through testimony after defense attorney Alan Nelson raised concerns that the jury will rush to judgement to avoid traveling to the courthouse as the coronavirus pandemic was multiplying in the city.
    - The National Association of Criminal Defense Lawyers joined in support of the defense lawyers and called the government's position (that the trial should continue) "dangerously obtuse."
- Courts were temporarily closed after the 9/11 terrorist attacks but some lawyers say the unknowns about the virus and how long it will last brings unprecedented challenges.
    - After 9/11 some cases were dismissed early and prosecutors were forced to reach premature settlements in others.
- A NY federal judge on Monday allowed a juror in a criminal trial to deliberate by video conferencing over the objections of prosecutors.
- In 2001 and this month, federal judges have turned to public interest exceptions in federal statures to ensure that courthouse disruptions would not count against deadlines guaranteed by a defendant's right to quick justice.
    - In the aftermath of 9/11, the chief justice in the Southern District of NY issued a blanket order discounting the time lost in cases from the initial closure against the "speedy trial" clock.

- Last week, Colleen McMahon made a similar judgement, excluding a time period through the end of next month.

Richard A. Oppel Jr. & Serge F. Kovaleski, *Justice is Blind. What if She Also Has the Coronavirus?*, N.Y. TIMES, (March 12, 2020), https://www.nytimes.com/2020/03/12/us/coronavirus-police-jails-courthouses.html.

- In New Hampshire all criminal cases in the state Superior Court were canceled for 30 days and juries were ordered not to report.
- Federal courthouses remain open in Seattle and Tacoma, but all other proceedings that require lawyers, jurors or anyone else to show up to a courtroom have been suspended.
- If too many people in high-risk categories were excused or unable to participate in jury duty, it could raise civil rights concerns about whether juries would be adequately representative.

Melissa Chan, *'It Will Have Effects for Months and Years.' From Jury Duty to Trials, Coronavirus Is Wreaking Havoc on Courts*, TIME (March 16, 2020), https://time.com/5803037/coronavirus-courts-jury-duty/

- On Monday, March 16th SCOTUS postponed oral arguments for the first time in over 100 years; the last time it did so was in 1918 in response to the Spanish flu epidemic.
- Courts in several states, including NY, Washington State, Texas, Connecticut, Missouri, Florida, Arizona, Ohio and Virginia have suspended jury trials.
- Michigan's Supreme Court issued an executive order on Monday, March 16th, granting trial judges the power to adjourn any civil and criminal matter if the defendant is not in custody and try to use videoconferencing if the defendant is in custody.
- In a statement on March 12, Dallas County Judge Clay Jenkins said he was suspending civil jury trials, but not criminal ones, because the 'inability to guarantee a speedy trial could result in cases being dismissed.'

Clare Riva, *COVID-19 Endangers Not Just Public Health, but the Constitution, Constitutional Accountability Center*, CONST. ACCOUNTABILITY CTR. (March 17, 2020), https://www.theusconstitution.org/blog/covid-19-endangers-not-just-public- health-but-the-constitution/.

- Courts are supposed to balance the four Barker factors for each particular defendant in deciding whether their right to a speedy trial has been infringed, but most courts that have addressed the speedy trial right during the coronavirus crises have issued or requested blanket waivers of the timelines attached to individuals' rights.
    - These broad proclamations fail to engage in the individualized speedy trial assessment that SCOTUS suggested the Constitution requires and that Congress passed legislation to protect.

Jim Franco, DA Soares Asks for Executive Order to Waive Speedy Trial During Pandemic, SPOTLIGHTNEWS.COM (March 17, 2020), https://www.spotlightnews.com/news/crime/2020/03/17/da-soares-asks-for-executive-order-to-waive-speedy-trial-during-pandemic/.

- There is precedent to such an order—Gov. George Pataki suspended the speedy trial requirements following 9/11. DA Soares argues that the current pandemic falls under the "exceptional circumstances."

State's Issuing Blanket Waivers of the Timelines Attached to Individuals' Right to a Speedy Trial:

- Washington State:
    - Order of the United States District Court Western District of Washington, In re: Court Operations Under the Exigent Circumstances Created by COVID-19 and Related Coronavirus (Mar. 6, 2020) https://www.wawd.uscourts.gov/sites/wawd/files/03-06-20General%20Order01-20.pdf.
        - "[T]he Court specifically finds that the ends of justice served by ordering the continuances outweigh the best interests of the public and *any defendant's right to a speedy trial*, pursuant

to 18 U.S.C. §3161(h)(7(A)….[c]ase-by case exceptions to the continuances…may be ordered for non-jury matters at the discretion of the Court after consultation with counsel."
        - The Court will vacate or amend this General Order no later than March 31, 2020.
- New York:
    - Order of the United States District Court Southern District of NY, In re: Coronavirus/Covid-19 Pandemic (Mar. 13, 2020), https://www.law360.com/articles/1253266/attachments/1.
        - "Effective March 16, 2020, all civil and criminal jury trials in the SDNY scheduled to begin before April 27, 2020, are continued pending further order of the Court."
        - "Nothing in this order is meant to affect jury trials that began prior to March 16, 2020, and have not yet concluded."
        - "The Court is cognizant of the right of criminal defendants to a speedy and public trial under the Sixth Amendment, and the particular application of that right in cases involving defendants who are detained pending trial. *Any motion by a criminal defendant seeking an exception to this order in order to exercise that right should be directed to the District Judge assigned to the matter in the first instance; provided, however, that no such exception may be ordered without the approval of the Chief Judge after consultation with the assigned judge."*
        - "Criminal matters before Magistrate Judges, such as initial appearances, arraignments, detention hearings, and the issuance of search warrants, shall continue to take place in the ordinary course."
    - Matthew Russell Lee, *In SDNY As Trials Pushed Back Details*, INNER CITY PRESS (Mar. 13, 2020), http://www.innercitypress.com/sdny3exclusivejailclose031320.html.
        - This source suggests that an email was sent out to SDNY lawyers that states: "The running of speedy trial time will be suspended effective today due to the now-declared state of emergency and medical crisis."

States (including Mo.) Handling COVID Response Differently (Language Suggesting Blanket Waivers are Not Being Considered and Acknowledging the Need to Continue to Uphold the Constitutional Rights of Litigants):

- Virginia:
  - Order of the Supreme Court of Virginia, In re: Order Declaring a Judicial Emergency in Response to COVID-19 Emergency (Mar. 6, 2020), http://www.vacourts.gov/2020_0316_scv_order_declaration_of_judicial_emergency.pdf.
    - This order is in effect from Monday, March 16, 2020 through April 6, 2020.
    - Non-essential, non-emergency court proceedings in all circuit and district courts are suspended and all deadlines are tolled and extended for 21 days, absent an exception listed in the order applying.
      - "Continue all…. criminal matters, including jury trials, *subject to a defendant's right to a speedy trial*, with the exception of emergency matters, including but not limited to quarantine or isolation matters, arraignments, bail reviews, protective order cases, emergency child custody or protective cases, and civil commitment hearings. Judges may exercise their discretion with regard to proceeding with ongoing jury trials, and in cases where the defendant is incarcerated."
      - "For jury trials that cannot be continued, excuse or postpone jury service for jurors who are ill, caring for someone who is ill, or in a high-risk category as defined by the CDC."
    - The order references the Pandemic Influenza Bench Book for VA's Court System, which can be found here: Supreme Court of Virginia's Pandemic Flu Preparedness Commission, Pandemic Influenza Bench Book for Virginia's Court System (July 2017), http://www.vacourts.gov/programs/pfp/benchbook.pdf.
    - The document references the speedy trial issue twice.
      - "Although the capacity to conduct jury trials will likely be impacted during a pandemic, the constitutional rights to a speedy trial and an impartial jury will require courts to continue to perform this function." (7-2)
      - "Reduce the number of jury trials scheduled by postponing civil and other jury trials where there is not a speedy trial issue." (7-2)
    - "Nothing in this Order shall preclude the chief district and chief circuit judges from implementing additional local policies as needed…. [T]o the extent possible, the courts and clerk's offices shall remain operational and provide essential services."
  - *COVID-19 Appellate and Local Court Information*, VA COURTS, http://www.vacourts.gov/news/items/covid_19.pdf (last visited September 3, 2020).
  - *City of Suffolk Coronavirus (COVID-19) Updates*, SUFFOLK VA, http://www.suffolkva.us/1399/Suffolk-Coronavirus-COVID-19-Updates (last visited September 3, 2020).
    - "All…criminal matters including jury trials are continued until after April 3, 2020. Any defendant with a speedy trial concern should contact their attorney and the court for further direction."

- Missouri:
    - Order of the Supreme Court of Missouri, In re: Response to the Coronavirus Disease (COVID-19) Pandemic (Mar. 22, 2020), https://www.courts.mo.gov/page.jsp?id=151973.
        - "All in-person proceedings in all appellate and circuit courts – including all associate, family, juvenile, municipal and probate divisions." The suspension will last from Tuesday, March 17, 2020, through Friday, April 17, 2020, and may be extended by order of this Court as circumstances may want.
            - There are some exceptions listed—notably *"proceedings necessary to protect the constitutional rights of criminal defendants and juveniles, including the right to a speedy trial*, and the rights afforded under 544.676.3," "criminal jury trials…already in progress as of March 16, 2020," and 'other exceptions approved by the Chief Justice of this Court."
            - "The presiding judge of each circuit court and the chief judges of each appellate court are authorized to determine the manner in which the listed in-person exceptions are to be conducted….The judge presiding over proceedings has the discretion to exercise his or her discretion in excusing jurors or other individuals that cannot or should not appear as a result of risks associated with COVID-19."
        - "Despite the suspension of in-person court proceedings, Missouri courts still must continue to carry out the core, constitutional functions of the Missouri judiciary as prescribed by law and *continue to uphold the constitutional rights of litigants* seeking redress in any Missouri court. Each courthouse should work with local law enforcement and county agencies to ensure that, to the extent possible, courthouses remain accessible to carry out essential constitutional functions and time-sensitive proceedings."
    - *Missouri Judiciary Responses to Coronavirus (COVID-19)*, COURTS MO., https://www.courts.mo.gov/pandemic/. (last visited September 3, 2020).
        - The website lists links to all the courts in Missouri to provide information about their approach to COVID-19.

Missouri's Speedy Trial Guarantee:

Mo. Const. art. I, § 18(a). Rights of accused in criminal prosecutions.

> "That in criminal prosecutions the accused shall have the right to appear and defend, in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf; and a speedy public trial by an impartial jury of the county.

Mo. Ann. Stat. § 545.780. Speedy trial, when—what constitutes—failure to comply not grounds for dismissal, exceptions.

1. If a defendant announced that he is ready for trial and files a request for a speedy trial then the court shall set the case for trial as soon as reasonably possible thereafter.
2. The provisions of this section shall be enforced by mandamus. Neither the failure to comply with this section nor the State's failure to prosecute shall be grounds for the dismissal of the indictment or information unless the court also finds that defendant has been denied his constitutional right to a speedy trial.

Pre-COVID Speedy Trial Concerns (Missouri):

Katie Moore, *Before their Day in Court, Poor People Charged with Crimes can Spend Years in Jail*, KAN. CITY STAR (Nov. 20, 2019), https://www.kansascity.com/news/local/crime/article237036709.html.

- "Bowman [who has spent five years—her case having been delayed more than 35 times— scheduled for April 20, 2020] is one of thousands of people failed by Missouri's chronically overloaded public defender system, historically one of the worst-funded in the nation. The public defenders were assigned more than 75, 000 cases last year."

- Anthony Cardarella, the district defender who oversees Clay, Clinton and Platte counties, is quoted as saying "'The constitutional right to a speedy trial is there and if it's just a theory then you might as well not have it.'"

THE BAR ASS'N OF METRO. ST. LOUIS, *Information Regarding Coronavirus (COVID-19)* (June 22, 2020), https://www.bamsl.org/covid19.

- No mention of speedy trial related concerns.

Statutes

- Mo. Ann. Stat. § 545.780. Speedy trial, when—what constitutes—failure to comply not grounds for dismissal, exceptions.

Case Law

Cited Cases:

Barker v. Wingo, 407 U.S. 514 (1972).

- The seminal SCOTUS decision discussing the right to a speedy trial. Justice Powell wrote that the right contemplates that "all accused persons be treated to decent and fair procedures," and protects three main interests: the prevention of oppressive pretrial incarceration, minimization of anxiety and concern of the accused; and the limitation of the possibility that the defense will be impaired. Barker sets out a balancing test, directing the consideration of the length of the delay, the reason for the delay, the defendant's assertion of his or her right and prejudice to the defendant.

State v. Reaves, 376 So. 2d 136, 138 (La. 1979).

- Reasoning that "the mere length of the delay does not determine the speedy trial issue".

State v. Brown, 929 So. 2d 182, 186 (La. Ct. App. 2006).

- Noting that the gravity of the crime should be considered in a speedy trial analysis.

Strunk v. United States, 412 U.S. 434 (1973).

- Reaffirming *Barker* in holding that the only possible remedy when a defendant's right to a speedy trial has been infringed, is dismissal. Overturning in part the Court of Appeals holding—that the defendant had been denied a speedy trial, but that the "extreme" remedy of dismissal of the charges was not warranted.

Other Cases of Interest:

Myszka v. State, 16 S.W.3d 652 (Mo. Ct. App. 2000).

- When defense counsel requests a continuance without discussing the request with their client and/or without receiving their client's express permission, the delay is still attributable to the defense rather than the court or the prosecution and weighs heavily against a claim that the defendant's right to a speedy trial has been violated.

State ex rel. Garcia v. Goldman, 316 S.W.3d 907 (Mo. 2010).

- The Supreme Court held that a seven-year period between defendant's indictment and arrest for assault in the first degree violated his right to a speedy trial.

State v. Woodworth, 941 S.W.2d 679 (Mo. Ct. App. 1997).

- To require reversal, resulting prejudice from violation of constitutional right to speedy trial must be actual prejudice apparent on record or by reasonable inference, not speculative or possible prejudice.
- Delay of 17 months between indictment and trial was not shown to actually prejudice defendant and did not violate constitutional right to speedy trial in prosecution for murder, first-degree assault, and armed criminal action, even if state was responsible for delay unconnected with defendant's motion for change of judge, and even though defendant claimed oppressive pretrial incarceration and unavailability to defense attorney; defendant failed to show that delay weighed particularly heavily on him and failed to explain how or why he was unavailable to attorney, and defendant first formally asserted right to speedy trial approximately seven months prior to trial.

State v. Mauldin, 669 S.W.2d 58 (Mo. Ct. App. 1984).

- Delays are not considered occasioned by State where defendant acquiesced or benefited from delay of his trial.

New York v. Hill, 528 U.S. 110 (2000); *see also Gibbs v. State*, 359 S.W.3d 529 (Mo. Ct. App. 2012)

- In general, defense counsel can waive the time limits imposed by the detainer laws, at least as to the scheduling of the trial, with or without affirmative participation of the defendant

State v. Sisco, 458 S.W.3d 304 (Mo. 2015).

- The federal and Missouri constitutions provide equivalent protections to a defendant's right to a speedy trial.

State v. Fisher, 509 S.W.3d 747 (Mo. Ct. App. 2016).

- In applying the four-part Barker test, the Appellate Court found that incarceration for 2,186 days after twice requesting a speedy trial and where the delays were attributable to the State violated the defendant's Sixth Amendment rights and that the defendant's charges were property dismissed.

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