Speedy Trial

The Sixth Amendment to the United States proscribes numerous rights related to a defendant’s criminal trial; one of those, is the right to speedy trial. The right to a speedy trial ensures that a criminal defendant is brought to trial within a reasonable time after an arrest. The history of the right to speedy trial can be traced back to the Magna Carta, which prohibited the King from delaying justice to any person in the realm. A criminal defendant may challenge his/her right to a speedy trial at any time. Success on a motion for the right to a speedy trial could result in the court setting aside the conviction, vacating the sentence, and a dismissal of the charging document.

The right to speedy trial does not attach until a person is formally charged, accused of a crime, or indicted. And while the right to a speedy trial is a constitutional guarantee, the determination of a reasonable time is typically decided by state law. For example, in Georgia, a criminal defendant a criminal defendant must be brought to trial within the second term after his/her arrest.[[1]](#footnote-1) However, it should be noted, that the terms of court vary from county to county in the state of Georgia. To illustrate, a defendant in Fulton County will have a shorter period of time between terms of court, as opposed to a criminal defendant in Fannin County.

Establishing that a defendant was denied his/her right to a speedy trial is not as easy as establishing an unreasonable time between arrest and trial. Courts will almost always use a balancing test, weighing certain factors such as the length and reason(s) for delay, whether the defendant asserted his right to a speedy trial, and whether the wait compromised any defense the defendant may have had. However, these factors are typically only used when federal law is involved. Some states can be stricter about their speedy trial requirements while others are more similar to the federal requirements. In Georgia, a defendant must make a separate motion for a speedy trial, entitled “Demand for a Speedy Trial,” in order to preserve his/her right to a speedy trial.[[2]](#footnote-2)

It should also be noted, that the right to speedy trial only applies between the arrest and trial of a criminal defendant. Specifically, as the Supreme Court of the United States has stated, a criminal defendant is not entitled to a speedy trial between the conviction and sentencing phases of a criminal case.[[3]](#footnote-3) There are also further limitations on the right to speedy trial. For example, a defendant who does not raise a motion for a speedy trial within the prescribed time cannot raise the issue of speedy trial for the first time on appeal. One exception to this is if the failure to raise the speedy trial issue was due to his/her attorney’s negligence. Some courts have also stated that a defendant who files numerous pretrial motions could consequently waive his/her right to speedy trial. The Patriot Act of 2001 also creates other exemptions to the right to speedy trial; exemptions that are outside the purview of this article.

The Sixth Amendment right to a speedy trial, like most clauses under the Sixth Amendment has been deemed fundamental, and thus is applicable to state criminal proceedings under the due process and equal protection clauses of the Fourteenth Amendment. As the Supreme Court of Georgia has stated, it is a violation of due process if between the time a defendant is arrested and formally charged, the delay was prejudicial to the defendant and caused by the prosecution.[[4]](#footnote-4)

To reiterate, a reasonable time is usually defined by state law. Also, in Georgia, there are specific steps a criminal defendant must make in order to preserve his/her right to a speedy trial. For these reasons and all those not mentioned in this article, criminal defendants should consult with an experienced attorney. The attorneys at Bixon Law are verse in relevant case law and statutes to not only preserve your right to a speedy trial, but to also assist you in ensuring your case comes to trial as soon as possible.

1. O.C.G.A. 17-7-170. [↑](#footnote-ref-1)
2. O.C.G.A. 17-7-170(a) [↑](#footnote-ref-2)
3. Betterman v. Montana, 136 S.Ct. 1609, 1613. [↑](#footnote-ref-3)
4. Jones v. State 284 Ga. 320, 320-21. [↑](#footnote-ref-4)