

[CAPTION]

**MOTION FOR SPEEDY TRIAL**

The Defendant, by counsel, respectfully requests the Court for a speedy trial within 70 days pursuant to Criminal Rule 4(B) (1) of the Indiana Rules of Procedure, and for all other relief just and proper in the premises.

(Signature)

## REFERENCES

## CASEBANK B.5.c.2

C.R. 4(B) (1) Indiana Rules of Procedure (defendant in jail — motion for early trial)

### CASES:

McGowen v. State, 599 N.E.2d 589 (Ind. 1992) (although rules do not require motion for early trial to be in writing, where the trial court so ordered, the time began to run for CR 4(B) when written, not oral motion was made).

Williams v. State, 387 N.E.2d 1317 (Ind. 1979) (right to a speedy trial applies to Defendants who are being held in prison or under recognizance and who either have made a request for a speedy trial or have never been given a chance to make such a request).

Poore v. State, 685 N.E.2d 36 (Ind. 1997) (time limits for speedy trial provided for in CR 4(B) apply to a retrial of a habitual offender enhancement).

State v. Roth, 585 N.E.2d 717 (Ind.Ct.App. 1992) (CR 4(B) applies to re-trials).

Dubinon v. State, 600 N.E.2d 136 (Ind.Ct.App. 1992) (Defendant who is released from custody is required to file a new speedy trial motion if he is re-incarcerated).

Young v. State, 482 N.E.2d 246 (Ind. 1985) (request for speedy trial must be renewed upon re-trial after mistrial).

Butts v. State, 545 N.E.2d 1120 (Ind.Ct.App. 1989) (when information is amended to add another charge which is separate and distinct from original charges, CR 4(C) time period for additional charge begins to run from date of amendment, rather than from filing date of original charges).

Rutledge v. State, 426 N.E.2d 638 (Ind. 1981) (Defendant making motion for early trial within 70 calendar days pursuant to this rule is required to maintain position which is reasonably consistent with the request that he has made; failure at any point to do so constitutes abandonment of request, and motion by which it was made ceases to have legal viability).

Barnett v. State, 637 N.E.2d 826 (Ind.Ct.App. 1994) (where the Defendant pled guilty prior to expiration of 70-day speedy trial period under CR4(B), the Defendant's right to speedy trial was waived, even though the trial court subsequently refused the plea agreement; once the Defendant entered the plea, a new motion was required to invoke his speedy trial right).

Wright v. State, 593 N.E.2d 1192 (Ind. 1992), *cert. den'd*, 113 S.Ct. 605 121 L.Ed.2d 540 (purpose of motion for speedy trial made pursuant to criminal rule is served when the Defendant makes motion and the trial court takes action by setting the cause for trial, and if the Defendant causes the delay, he must file a motion requesting immediate commencement of trial in order to invoke his rights under the rule), *abrogated on other grounds by* Fajardo v. State, 859 N.E.2d 1201 (Ind. 2007).

Crosby v. State, 567 N.E.2d 984 (Ind.Ct.App. 1992) (only justification for not bringing the Defendant to trial within 70 days of his motion for early trial is court congestion; in all other circumstances, the Defendant shall be discharged if not brought to trial within 70 days following his motion). See also Clark v. State, 659 N.E.2d 548 (Ind. 1995).

Brown v. State, 835 N.E.2d 978 (Ind.Ct.App. 2005) (speedy trial clock starts running at the time of the

filing of request for speedy trial, regardless of whether the request occurs prior to service of the warrant; where the Defendant incarcerated on unrelated charges discovered the instant charges and filed a request for speedy trial, the clock began running even though warrant not served on him yet).

Fletcher v. State, 959 N.E.2d 922 (Ind.Ct.App. 2012) (Defendant's pro se request for a speedy trial within the 70-day time limit of Ind. Crim. Rule 4 (B), made after the court appointed counsel but before counsel entered an appearance, and which was not rejected or stricken by the trial court, was effective to invoke his speedy trial rights).

Black v. State, 7 N.E.3d 333 (Ind.Ct.App. 2014) (where Defendant's pro se motion for early trial was made after counsel was appointed at his initial hearing, trial court was not required to respond to it. And because a public defender had been appointed, that decision was a matter of strategy allocated to defense counsel).

Robinson v. State, 918 N.E.2d 692 (Ind.Ct.App. 2009) (State's failure to bring Defendant to trial within seventy days of his pro se motion for speedy trial filed before his initial hearing required dismissal).