Criminal Curiosity Question: Waiver of Time

Question for the criminal defense types: can anyone explain the reasoning or costs and benefits of waiving time?

I've been taking minor criminal defense cases and in sitting in court notice that every defendant routinely waives time to a speedy trial. I've only seen one case where time was not waived and it was where the defendant was in court on one minor offense (e.g. driving on a suspended license) and it was determined he was supposed to have formal probation on another case and hadn't checked in with his probation officer in months. The judge remanded him right then and there and explicitly said time was not waived.

I get the feeling waiving time is something so routine that it's just done out of reflex. My thinking of it from the defense perspective is that if you don't waive time, you force the prosecutor to file or dismiss and it's possible that the charges filed could be more serious than they should be.
However, the opposite could be true as well, right?

I'm in California, but I doubt the answer is state-specific.

I have always seen the non waiver used as a specific tactic which is to deny the DA time to gather evidence.

But you have to be pretty sure that the evidence they have is lacking (or missing and such) and have your ducks in a row in case they don't dismiss.

This was because if the defendant asked for a continuance that was an automatic waiver of the speedy trial.

Erin M. Schmidt, Ohio

My life of crime has gone from petty crimes to really serious felonies. It's been my experience if the Defense asks for the continuance you waive time. After all you're the one holding things up. Also as long as your client isn't in jail. He's in no rush. Now often I ask for continuance for lack of discovery we waive. I'm thinking

next time I'm there because the DA hasn't provided discovery asking they eat the time.
Then again most of the judges here are former DAs I'm don't think that will flush.

John Davidson, Pennsylvania

As a former prosecutor, I have to say that, from the perspective of a prosecutor AND as a newly minted defense attorney, it is generally in your client's best interest to waie time. The only caveat to that is, at the px stage (felonies), once you waive time for px, you CANNOT "pull your time waiver." Once waived, it stays waived (a lot of defense attorneys and judges don't understand that). That is unlike the trial right where you can waive time for trial, but then pull your waiver.

The reason I think that it is in the client's best interest is for the following reasons:

1. Discovery, discovery, discovery. Despite what the defense bar and judges think, DAs have a helluva time getting all of the discovery from LEAs in a timely manner. Once the DA gets it, then it gets processed and then you get it. You will want to sit with the discovery for a bit and then have your client sit with it for a bit before you know whether you want to go to px or trial 2. The older the case, generally, the better for the defense. The DA can get jammed up with other cases, witness coordination becomes problematic, the victim can soften…happens all the time 3. The older the case, the more likely you will get a better offer to resolve for all the reasons in #2

I can go on and on and on…but, I always kinda liked when the defense atty (or, more likely the defendant) thought that jamming the case through quickly was the best strategy. It ALWAYS worked in my favor, when I was a DA.

Hope that helps.

Debb Reece

The only caveat to what Debb said is that sometimes the local defense bar will decide to not waive time on any case. If the local DA becomes unreasonable on offers, the defense bar will stop waiving time and it creates issues for the DA. However, normally it makes sense to waive time.

Jonathan G. Stein, California

Waiving a speedy trial is almost always in your client's best interest if you are a defense attorney. It allows the defense more time to gather evidence, interview witnesses, and generally put together a good defense. Remember, insisting on a speedy trial places the defendant at a considerable disadvantage since the prosecutor usually has far greater resources than the defendant and has captured much of the evidence and information it needs to effectively prosecute the case by the time the defendant is indicted.

Waiving speedy trial is particularly advantageous if the defendant is out of jail (bail, ROR'd etc.) because s(he) has time to locate potential witnesses and speak to people who might aid in defending the case. Further, the attorney has more time to prepare for trial, do legal research, and carry out the plethora of other strategic matters necessary to put on a good defense. It is almost always a good strategic choice to waive a speedy trial.

Rashida Ayers, New York

Hi everyone:

Thank you for the replies. I think the flip-side question would have been a better one to ask -- why would a defendant not want to waive time?

Curious in California

Can't the prosecutor move to dismiss without prejudice if pressured by time?

P. Jayson Thibodaux, Washington

Only for a felony (and under certain, very rare circumstances for a misdo).
The DA can refile a felony if the case has to be dismissed prior to jeopardy attaching. However, that is not considered best practices and is generally avoided.

Debb Reece

Yes, prosecutor can dismiss without prejudice and pay costs. Could be used for irresolvable conflicts, but not a best practice. Duty of prosecutor is to promote justice, not play games. Defense attorneys rely on prosecutor to offer a fair plea offer and prosecutors rely on defense attorneys to have good client control and teach their clients enough to make a wise choice.

Your reputation on either side is gold. Playing games is a sure way to destroy your reputation.

Duke Drouillard, Nebraska

In CA, a DA who dismisses for insufficiency of the evidence or interest of justice (the most oft cited reasons to dismiss), does not have to pay costs.

Debb Reece

In NE, we don't need to recite a reason.

Duke Drouillard

This was a tactic used in the St. Louis city courts on a lot of cases filed against protesters and such. The reasoning was that the prosecutors did not have their ducks in a row and would, for example, want more time to interview all the witness, watch footage etc. Because of the number of defendants there was no way the DA could try all the cases within 2 to 3 weeks.

It was also used in some courts because the DA would never have lab reports in a timely manner (aka sometimes still not having the reports 2 years later), which meant the DA could not proceed with case because they lacked the evidence needed to prove the case.

It isn't something you do often, but there are some strategic times it will help a case

Erin Schmidt