

Pa. R. Crim. P. Rule 519(B)

How “The Five-Day Rule” affects DUI charging and prosecution.

Rule 519(B) spells out the procedure for handling the vast majority of DUI arrests. DUI offenders are to be released promptly following arrest unless: 1) they pose a danger to themselves or others; or 2) the arresting officer has reasonable grounds to believe they will **not** appear in court as required. Upon release, a criminal complaint **shall** be filed within 5 days.

This procedure serves the following purposes: “(1) eliminate the necessity for holding ... preliminary arraignments at ... late hours, thereby greatly reducing ... a district justice's workload; (2) avoid the possibility of prejudice at the ... preliminary hearing ... if the district justice observes the defendant drunk [on the night of the arrest] ; (3) enable the police officer to return to patrol duty more quickly ... ; and (4) benefit the defendant who ... may be so ... intoxicated as to be unable to understand the proceedings, or ... detained in jail for hours until sober.” *Com. v. Retvai*, 532 A.2d 1 (Pa. 1987), (quoting the Report of the Procedural Rules Committee)

The Retvai decision dealt with Rule 130, the previous “five-day rule” which has been replaced by Rule 519. In Retvai, numerous DUI charges were dismissed where complaints were filed outside the five days. The Supreme Court reinstated several of the complaints, even though the late filing was clearly a defect in violation of the rule. The Defendants were entitled to a hearing to decide whether the late filing caused them any prejudice, but they were not entitled to outright dismissal of the charges. The current “five-day rule” is similar to that in effect when Retvai was decided. Therefore, charges should not be dismissed simply because a complaint is filed outside of five days from the arrest.

Rule 109 states as follows: “A defendant shall not be discharged nor shall a case be dismissed because of a defect in the form or content of a complaint, citation, summons, or warrant, or a defect in the procedures of these rules, unless the defendant raises the defect before the conclusion of the trial in a summary case or before the conclusion of the preliminary hearing in a court case, and the defect is prejudicial to the rights of the defendant.” Thus, before a charge can be dismissed under the “five-day rule” a defendant must raise the defect at the preliminary hearing, **and** the court must decide that the defendant was prejudiced by any delay in filing the DUI complaint.

Officers need to understand the local policy in their jurisdiction regarding this issue. Many DAs and MDJs prefer to avoid “five-day rule” problems by filing *general impairment* charges within five days of arrest, and amending the complaint with additional charges once test results have been obtained. If an officer has probable cause to request chemical testing, s/he should also have probable cause to file *general impairment* charges. Other DAs and MDJs accept the practice of delayed filing where test results are not available within five days of arrest.

Perhaps the most important point to remember is that charges dismissed by an MDJ under Rule 519(B) **cannot** simply be re-filed. It is possible to appeal the MDJ's decision, and ask for a hearing to determine whether the delay in filing caused the defendant to suffer prejudice. But, if the original dismissal is not appealed, it remains in effect and bars further prosecution for the same conduct. *Com. v. Wolgemuth*, 737 A.2d 757 (Pa. Super. 1999)

Additionally, if the fifth day for filing falls on a weekend or holiday, the next available business day may be treated as the fifth day for the purposes of filing the complaint. *Com. v. Talarigo*, 530 A.2d 1375 (Pa. Super. 1987)

