~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

January 25, 2012

**H. 4463**

Introduced by Reps. Harrison, Clyburn, Murphy and McLeod

S. Printed 1/25/12--H.

Read the first time January 10, 2012.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4463) to amend Section 22‑3‑545, Code of Laws of South Carolina, 1976, relating to the transfer of certain criminal cases from general sessions court to magistrates, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words, and inserting:

/ SECTION 1. Section 22‑3‑545 of the 1976 Code is amended to read:

“Section 22‑3‑545.(A) Notwithstanding the provisions of Sections 22‑3‑540 and 22‑3‑550, a criminal case, the penalty for which the crime in the case does not exceed five thousand five hundred dollars or one‑year imprisonment, or both, either as originally charged or as charged pursuant to the terms of a plea agreement, may be transferred from general sessions court if the provisions of this section are followed.

(B)(1) The solicitor, upon ten days’ written notice to the defendant, may petition a circuit court judge in the circuit to transfer one or more cases from the general sessions court docket to a docket of a ~~magistrate’s~~ magistrates or municipal court in the circuit for disposition. The solicitor’s notice must fully apprise the defendant of his right to have his case heard in general sessions court. The notice must include the difference in jury size in ~~magistrate’s~~ magistrates or municipal court and in general sessions court. ~~Both parties must have the opportunity to be heard by the circuit court judge and~~ The case may be transferred from the general sessions court unless the defendant objects after notification by the solicitor pursuant to the provisions of this item. The objection may be made orally or in writing at any time prior to the trial of the case or prior to the entry of a guilty plea. The objection may be made to the ~~circuit court judge who granted the petition~~ chief judge for administrative purposes in the judicial circuit where the charges are pending, the trial judge, or the solicitor. Before ~~impanelling~~ impaneling the jury or accepting the guilty plea of the defendant, the trial judge must receive an affirmative waiver by the defendant, if present, of his right to have the case tried in general sessions court. The defendant must be informed that, if tried in general sessions court, the case would be tried in front of twelve jurors who must reach a unanimous verdict before a finding of guilty of the offense can be rendered in his case, and that if tried in ~~magistrate’s~~ magistrates or municipal court, the case would be tried in front of six jurors who must reach a unanimous verdict before a finding of guilty of the offense can be reached in his case. The defendant may waive any and all of the rights provided in this subsection, in writing, prior to the impaneling of the jury or the acceptance of the defendant’s guilty plea.

(2) ~~The judge must consider, but is not limited to, the following factors in granting the petition for transfer:~~

~~(a)~~ ~~case workload;~~

~~(b)~~ ~~age of the case;~~

~~(c)~~ ~~the speedy disposition of the case.~~

~~(3)~~ A case transferred to a ~~magistrate’s~~ magistrates or municipal court not disposed of in one hundred eighty days from the date of transfer automatically reverts to the docket of the general sessions court.

(C) All cases transferred to the ~~magistrate’s~~ magistrates or municipal court must be prosecuted by the solicitor’s office. ~~The chief judge for administrative purposes for the court of general sessions shall retain administrative supervision of cases transferred pursuant to this section.~~ The chief magistrate of the county or the chief municipal judge of the municipality, upon petition of the solicitor, ~~and approval of the chief judge for administrative purposes for the court of general sessions,~~ shall set the terms of court and order the magistrates and municipal judges to hold terms of court on specific times and dates for the disposition of these cases.

(D) Provision for an adequate record must be made by the solicitor’s office.

(E) Notwithstanding another provision of law, all fines and assessments imposed by a magistrate or municipal judge presiding pursuant to this section must be distributed as if the fine and assessment were imposed by a circuit court pursuant to Sections 14‑1‑205 and 14‑1‑206. This section must not result in increased compensation to a magistrate presiding over a trial or hearing pursuant to this section or in other additional or increased costs to the county.”

SECTION 2. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND SECTION 22‑3‑545, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TRANSFER OF CERTAIN CRIMINAL CASES FROM GENERAL SESSIONS COURT TO MAGISTRATES OR MUNICIPAL COURT, SO AS TO CLARIFY THE TYPES OF CASES THAT MAY BE TRANSFERRED INCLUDES CRIMINAL CASES ORIGINALLY CHARGED AND THOSE IN WHICH THE CHARGES ARE REDUCED FOR PURPOSES OF A GUILTY PLEA, TO ALLOW DEFENDANTS TO WAIVE CERTAIN RIGHTS, AND TO REQUIRE THE APPROVAL OF A CIRCUIT COURT JUDGE REGARDING TERMS OF COURT OF THE MAGISTRATES AND MUNICIPAL COURTS FOR THE DISPOSITION OF TRANSFERRED CASES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 22‑3‑545 of the 1976 Code is amended to read:

“Section 22‑3‑545. (A) Notwithstanding the provisions of Sections 22‑3‑540 and 22‑3‑550, a criminal case, the penalty for which the crime in the case does not exceed five thousand five hundred dollars or one‑year imprisonment, or both, either as originally charged or as a reduced charge for purposes of a guilty plea, may be transferred from general sessions court if the provisions of this section are followed.

(B)(1) The solicitor, upon ten days’ written notice to the defendant, may petition a circuit court judge in the circuit to transfer one or more cases from the general sessions court docket to a docket of a ~~magistrate’s~~ magistrates or municipal court in the circuit for disposition. The solicitor’s notice must fully apprise the defendant of his right to have his case heard in general sessions court. The notice must include the difference in jury size in ~~magistrate’s~~ magistrates or municipal court and in general sessions court. Both parties must have the opportunity to be heard by the circuit court judge and the case may be transferred from the general sessions court unless the defendant objects after notification by the solicitor pursuant to the provisions of this item. The objection may be made orally or in writing at any time prior to the trial of the case or prior to the entry of a guilty plea. The objection may be made to the circuit court judge who granted the petition, the trial judge, or the solicitor. Before ~~impanelling~~ impaneling the jury or accepting the guilty plea of the defendant, the ~~trial~~ judge must receive an affirmative waiver by the defendant, if present, of his right to have the case tried in general sessions court. The defendant must be informed that, if tried in general sessions court, the case would be tried in front of twelve jurors who must reach a unanimous verdict before a finding of guilty of the offense can be rendered in his case, and that if tried in ~~magistrate’s~~ magistrates or municipal court, the case would be tried in front of six jurors who must reach a unanimous verdict before a finding of guilty of the offense can be reached in his case. The defendant may waive any and all of the rights provided in this subsection, in writing, prior to the impaneling of the jury or the acceptance of the defendant’s guilty plea.

(2) The judge ~~must~~ may consider, but is not limited to, the following factors in granting the petition for transfer:

(a) case workload;

(b) age of the case;

(c) the speedy disposition of the case.

(3) A case transferred to a ~~magistrate’s~~ magistrates or municipal court not disposed of in one hundred eighty days from the date of transfer automatically reverts to the docket of the general sessions court.

(C) All cases transferred to the ~~magistrate’s~~ magistrates or municipal court must be prosecuted by the solicitor’s office. The chief judge for administrative purposes for the court of general sessions shall retain administrative supervision of cases transferred pursuant to this section. The chief magistrate of the county or the chief municipal judge of the municipality, upon petition of the solicitor, and approval of ~~the chief judge for administrative purposes for the court of general sessions~~ a circuit court judge in the circuit, shall set the terms of court and order the magistrates and municipal judges to hold terms of court on specific times and dates for the disposition of these cases.

(D) Provision for an adequate record must be made by the solicitor’s office.

(E) Notwithstanding another provision of law, all fines and assessments imposed by a magistrate or municipal judge presiding pursuant to this section must be distributed as if the fine and assessment were imposed by a circuit court pursuant to Sections 14‑1‑205 and 14‑1‑206. This section must not result in increased compensation to a magistrate presiding over a trial or hearing pursuant to this section or in other additional or increased costs to the county.”

SECTION 2. This act takes effect upon approval by the Governor.

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