~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 13, 2016

**S. 1126**

Introduced by Senator Hembree

S. Printed 4/13/16--S.

Read the first time February 25, 2016.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 1126) to amend Section 1‑7‑330, Code of Laws of South Carolina, 1976, relating to attendance at circuit court and preparation and publication of the docket, 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, page 3, by striking line 26, in Section 1-7-330(B)(2), as contained in SECTION 1 and inserting therein the following:

/ preside over the trial of that case, without the consent of the parties. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

LARRY A. MARTIN GREG HEMBREE

For Majority. MARGIE BRIGHT MATTHEWS

For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill would have no expenditure impact on the general fund, federal funds, or other funds.

**Explanation of Fiscal Impact**

**State Expenditure**

This bill amends Section 1-7-330 to authorize the circuit solicitor to administer the general sessions court docket plan, to require the solicitor to schedule pleas and motions, and to require the solicitor to publish the docket of defendants who must appear to enter pleas of guilt, reject plea offers, or address other preliminary matters before the court. It also requires the circuit solicitor to submit the trial docket to the chief administrative judge and to notify defendants and their counsel, if any, of the trial docket.  Further, it ensures that the circuit solicitor’s authority to administer the docket does not interfere with defendants’ constitutional rights and allows the circuit court to rule on issues arising from the administration of the docket. The bill also preserves all crime victims’ constitutional rights.

**Judicial Department and Commission on Prosecution Coordination.** These agencies report that this bill will have no expenditure impact on the general fund, federal funds, or other funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 1‑7‑330, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ATTENDANCE AT CIRCUIT COURT AND PREPARATION AND PUBLICATION OF THE DOCKET, SO AS TO CLARIFY THE ROLE OF THE CIRCUIT SOLICITOR IN THE DEVELOPMENT, DISSEMINATION, AND EXECUTION OF THE GENERAL SESSIONS COURT DOCKET PLAN; TO ALLOW FOR A MOTIONS PRACTICE TO ESTABLISH THE ORDER OF CASES ON THE GENERAL SESSIONS COURT DOCKET; TO PROVIDE THAT THE CIRCUIT SOLICITOR’S ABILITY TO ADMINISTER THE DOCKET MAY NOT INTERFERE WITH A DEFENDANT’S CONSTITUTIONAL RIGHTS; TO ALLOW FOR THE CIRCUIT COURT TO RULE ON CASES AND CONTROVERSIES ARISING FROM THE ADMINISTRATION OF THE DOCKET; AND TO PRESERVE ALL CRIME VICTIMS’ CONSTITUTIONAL RIGHTS.

Whereas, under Section 4, Article V of the South Carolina Constitution, 1895, the Supreme Court only may create rules governing practice and procedure in the courts of this State that are not in conflict with statutory law; and

Whereas, the General Assembly finds that pursuant to the South Carolina Constitution it is the legislature’s responsibility to establish laws concerning South Carolina’s criminal justice system; and

Whereas, the General Assembly finds that the judicial branch of government, as represented by the courts of this State, should be independent and rule on cases and controversies properly before it; and

Whereas, the General Assembly finds that the executive branch of government in the criminal justice system, as represented by the state’s Circuit Solicitors, is directly accountable to the people of South Carolina; and

Whereas, the General Assembly finds that developing and publishing a plan to properly proceed with the state’s criminal prosecutions, preparing the general session’s docket for the state’s prosecutions and determining the order in which the docketed cases are called for trial is an executive function of the government properly performed by the elected Circuit Solicitor; and

Whereas, the executive branch of government, as represented by the Circuit Solicitor, when exercising a discretionary official act such as preparing the general sessions court docket and determining the order in which docketed cases are called, should not be restrained or controlled by another branch of government; and

Whereas, the trial court retains the ultimate authority to determine whether a case called by the Circuit Solicitor will be tried at a particular juncture by ruling on motions or objections properly before it. Now, therefore,

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

SECTION 1. Section 1‑7‑330 of the 1976 Code is amended to read:

“Section 1‑7‑330. ~~The solicitors shall attend the courts of general sessions for their respective circuits. Preparation of the dockets for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial. Provided, however, that no later than seven days prior to the beginning of each term of general sessions court, the solicitor in each circuit shall prepare and publish a docket setting forth the cases to be called for trial during the term.~~

(A) Criminal cases in circuit court must be calendared by the Circuit Solicitor according to a written criminal case‑docketing plan developed by the Circuit Solicitor for each circuit. Each criminal docketing plan must be published on the Circuit Solicitor’s website, if available, or at each courthouse in the Circuit Solicitor’s circuit if a website is unavailable. The Circuit Solicitor, in his sole discretion, may develop an individual docketing plan for each county within the circuit.

(B)(1) The Circuit Solicitor has sole discretion of whether to make a defendant a plea offer. If the Circuit Solicitor makes a plea offer then he shall inform, in writing, defense counsel or the pro se defendant of the terms of the plea offer and the date by which the offer must be accepted. On or before the plea offer deadline, defense counsel or the pro se defendant shall respond, in writing, to the Circuit Solicitor confirming that the defense attorney has consulted the defendant, if represented by counsel, and whether the defendant wishes to accept or reject the offer. Failure by defense counsel or the pro se defendant to respond by the plea offer deadline constitutes a rejection of the plea offer. The court may conduct a plea conference if requested by either the State or the defense and supported by the interests of justice.

(2) Not less than fifteen calendar days prior to the term of court, the Circuit Solicitor shall publish a docket of those defendants who are required to appear with counsel to either enter pleas of guilt, reject a plea offer on the record, or deal with other preliminary matters such as bond motions, Schmerberhearings or other similar administrative matters. The Circuit Solicitor is responsible for scheduling of pleas and motions throughout a term of court subject to the authority of the court to continue for cause any plea or motion. In no case may any evidentiary motions such as motions to suppress be heard by any judge other than the judge who is assigned to preside over the trial of that case.

(C) Not less than fifteen days before the term of court that cases are calendared for trial, the Circuit Solicitor shall submit a trial docket to the chief administrative judge and provide notice to defense counsel and pro se defendants who have cases on the trial docket. The Circuit Solicitor may give notice of the trial docket to defense attorneys and pro se defendants by regular mail, electronic mail or hand delivery to the last known address. The trial docket should not contain cases that the Circuit Solicitor does not reasonably expect to be called for trial or otherwise disposed of during the term of court. In counties in which multiple sessions of court are held, the Circuit Solicitor, at his or her discretion, may publish a trial docket for each session of court. Defense counsel or pro se defendants must file any motions for continuance with the court within five business days of notice of the trial docket.

(D) When a case has not otherwise been scheduled for trial within one hundred and eighty calendar days of indictment, then upon motion for speedy trialby the defendant at any time afterwards, the chief administrative judge, or a circuit judge designated by the chief administrative judge, may hold a hearing for the purpose of determining whether a trial date should be set. In determining whether to grant the defendant’s motion and set a trial date, the court shall consider the length of the delay. If the court finds that the length of the delay is prejudicial, the court must consider the reason for the delay, the defendant’s assertion of the right, and the prejudice to the defendant along with any other relevant factors. The court may grant a motion for speedy trial only upon the specific finding that the pretrial delay is arbitrary and unreasonable.

(E) Nothing in this section may be construed to deprive any victim of any constitutional or statutory rights as provided by law.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑