

5) Docket Bill

We have attached a proposed docket bill that the Commission believes takes into consideration the *State v. Langford* but also recognizes the proper role of the legislative, judicial and executive branches of government in South Carolina's criminal justice system. It is modeled after North Carolina's statute.

A BILL

TO AMEND SECTION 1-7-330, CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO CLARIFY THE ROLE OF THE CIRCUIT SOLICITOR IN THE DEVELOPMENT, DISSEMINATION AND EXECUTION OF THE GENERAL SESSIONS COURT DOCKET PLAN; TO PROVIDE THAT THE CIRCUIT SOLICITOR'S ABILITY TO ADMINISTER THE DOCKET SHALL NOT INTERFERE WITH A DEFENDANT'S RIGHT TO A SPEEDY TRIAL; 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.

Amend Title To Conform

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, 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 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 solicitor has the authority to call cases in such order and in such manner as will facilitate the efficient administration of his official duties, subject to the overall broad supervision of the trial judge. If a defendant feels that his rights are prejudiced by reason of the calling of his case at any particular time, he may apply to the judge for a continuance beyond the term or for postponement to a date later within term or move for a speedy trial. In the calling of cases for trial the solicitor has a broad discretion in the first instance, and the trial judge has a broad discretion in the final analysis.

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. The trial court also retains the ultimate authority of granting a speedy trial upon proper motion by the Defendant.

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

(a) Criminal Docketing Plan. Criminal cases in circuit court shall be calendared by the Solicitor according to a written criminal case docketing plan developed by the Solicitor for each circuit. Prior to developing the plan, the Solicitor should consult with the judges residing in that circuit and members of the circuit bar. Each criminal docketing plan shall be published on the Circuit Solicitor's website, if available, or at each circuit courthouse in the Solicitor's circuit if a website is unavailable. Each criminal docketing plan shall, at a minimum, include the provisions in this section, but may contain additional provisions not inconsistent with this section. The Solicitor may, at his or her sole discretion, develop an individual docketing plan for each county within the circuit.

(b) Administrative Appearances. If Administrative appearance(s) are established by the docketing plan they shall be scheduled and conducted by the Chief Administrative Circuit Judge for General Sessions or a Circuit Judge designated by the Chief Administrative Judge. Venue for administrative appearances may be in any county in the circuit; however, the presence of the defendant is only required for administrative appearances held in the county where the case originated. At an administrative appearance:

(1) The court shall determine the status of the defendant's representation by counsel and appoint counsel if necessary;

(2) The court shall determine the existence of any mental health issues that would require an order of the court;

(3) The court may hear any pending pretrial motions affecting the administrative aspects of the case, but no motion involving substantive evidentiary issues shall be heard without mutual consent of the parties; and

(4) Nothing in this section precludes the disposition of a criminal case by plea, deferred prosecution, or dismissal prior to an administrative setting.

(c) **Motions.** The Chief Judge for Administrative Purposes is responsible for scheduling of motions throughout a term of court. In no case, without consent of the parties, 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. In any case for which a Motion to Reconsider Sentence has been filed by a Defendant, the Chief Judge for Administrative Purposes shall schedule a hearing for the Motion if the matter has not been resolved within 90 days of the Motion's filing date.

(c) **Setting and Publishing of Court Term Calendar.** No less than thirty (30) days before the term of court, the Solicitor shall submit a proposed list of matters to the chief administrative judge and provide notice to defense counsel and pro se defendants who have cases on the proposed docket. The proposed docket should not contain cases that the Solicitor does not reasonably expect to be disposed of during the term of court. In counties in which multiple sessions of court are being held, the Solicitor may, at his or her discretion, publish a proposed list of matters for each session of court. Defense counsel or pro se defendants must file any motions for continuance with the court within five (5) business days of notice of the proposed docket. The Solicitor may give notice of the proposed docket to defense attorneys and pro se defendants by regular mail, electronic mail or hand delivery to their last known address. After the court rules on any continuance requests, or if there are no continuance motions, the proposed list of matters becomes the Docket. The Solicitor, after consultation with the parties, shall schedule a new court date for cases not reached during that term.

(1) If more than one session of court is scheduled for a court week, the circuit solicitor shall determine the number of plea sessions and trial sessions. The Chief Judge for Administrative Purposes shall determine which judges will preside over the solicitor designated sessions.

(e) **Speedy Trial Motions.** When a case has not otherwise been scheduled for trial within 1 year of indictment then upon motion for speedy trial by the defendant at any time thereafter, 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 and defense counsel's contribution to 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 pre-trial delay is arbitrary and unreasonable.

(f) **Motions for Date Certain.** If a defendant has an extraordinary need for a date certain trial or plea date, he may file a Motion for Date Certain. All filed Motions for Date Certain shall contain an affirmation that the defendant, prior to filing the motion, has communicated with the circuit solicitor and has attempted in good faith but failed to have the circuit solicitor docket the case in a manner that accommodated his extraordinary need. 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.

(g) Nothing in this section shall be construed to deprive any victim of any constitutional or statutory rights.