~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

February 6, 2013

**H. 3247**

Introduced by Reps. Harrell, Lucas, Delleney, Bannister, Ott, Rutherford, Weeks, G.M. Smith, Pope, Merrill, McCoy, Atwater, Erickson, Henderson, Kennedy, Loftis, Tallon, Bedingfield, Daning, Forrester, Hixon, Lowe, D.C. Moss, V.S. Moss, Murphy, Sottile, Stringer, Gagnon, Herbkersman, Newton, Wells, J.R. Smith, Taylor, Riley, Pitts, White, Vick, Clemmons, Barfield, Goldfinch, Spires and Hart

S. Printed 2/6/13--H.

Read the first time January 9, 2013.

**A** **BILL**

TO AMEND SECTION 1‑7‑330, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ADMINISTRATION OF THE DOCKET BY THE CIRCUIT SOLICITOR IN GENERAL SESSIONS COURT, SO AS TO CLARIFY THE ROLE OF THE CIRCUIT SOLICITOR IN THE ADMINISTRATION OF THE GENERAL SESSIONS COURT DOCKET AND PROVIDE THAT THIS ABILITY TO ADMINISTER THE DOCKET SHALL NOT INTERFERE WITH THE COURT’S ABILITY TO PROTECT A LITIGANT’S RIGHTS.

Amend Title To Conform

Whereas, the General Assembly finds that the circuit solicitor must have discretion in choosing how to proceed with a case, and the circuit solicitor is the person most knowledgeable about the status of a case and its readiness for trial; and

Whereas, the circuit solicitor bears the burden of proof in every case and should not ordinarily be compelled to call his case before he is ready to proceed; and

Whereas, the provisions of Section 1‑7‑330 represent the reasonable delegation of preparing the general sessions court docket and determining the order in which docketed cases are called to the circuit solicitor; and

Whereas, 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, coerced, or controlled by a branch of government; and

Whereas, Section 4, Article V of the South Carolina Constitution unequivocally states that, subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in the courts of the State; 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.

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. (A) 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~~ he 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. Notwithstanding the provisions of this section, the circuit solicitor’s ability to administer the general sessions court docket shall not interfere with the court’s ability to safeguard a litigant’s rights including, but not limited to, as provided in subsection (B).

(B) Notwithstanding the provisions of this section and pursuant to Section 14, Article I of the Constitution of South Carolina, 1895, which provides that any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury:

(1) if an arrest warrant is not presented to the county grand jury within ninety days after the solicitor receives the warrant from the clerk of court, upon motion by the defendant, the chief administrative judge shall hold a hearing for the purpose of determining whether the State should be compelled to have the case presented to the grand jury during its next term.  If the state is instructed by the court at that time to present the case to the grand jury and the state fails to do so, the court may issue any remedy it deems appropriate; and

(2) if a case has not otherwise been scheduled for trial within one hundred eighty days after indictment, then upon motion by the defendant at any time thereafter, the chief administrative judge shall hold a hearing for the purpose of establishing a scheduling order in the case.”

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

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