**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 PROVIDE THAT THE ABILITY OF THE CIRCUIT SOLICITOR TO ADMINISTER THE DOCKET MAY 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.

Whereas, the General Assembly finds that pursuant to the South Carolina Constitution, 1895, 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 elected 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 sessions 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 elected 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 burden of proof is upon the State to establish the guilt of a defendant beyond a reasonable doubt and is a responsibility delegated to the circuit solicitor as a constitutional officer of this State; and

Whereas, the circuit solicitor is the most knowledgeable concerning the status of cases and, in particular, whether multiple defendants or charges are a result of connected transactions, which affects the timing and order cases should most effectively be placed on the docket to maximize available court terms; and

Whereas, the circuit solicitor also manages unique challenges in each case affecting the ability to proceed to trial if placed on the docket including locating, subpoenaing, and marshaling victims, law enforcement officers, eyewitnesses, experts, and other witnesses, many of whom are noncompliant or hostile; 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. The trial court also retains the ultimate authority of granting speedy trials upon proper motion. 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) The circuit 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. A defendant may move for a speedy trial or, if a defendant feels that his rights are prejudiced by reason of the calling of his case during a specific term, he may apply to the judge for a continuance beyond the term or for postponement to a date later within the term. In the calling of cases for trial, the circuit solicitor has broad discretion in the first instance, and the trial judge has broad discretion in the final analysis.

(B) 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. Before developing the plan, the circuit solicitor should consult with the judges and circuit public defender residing in that circuit and members of the county bars within that 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. Each criminal docketing plan, at a minimum, must include the provisions required pursuant to this section but may contain additional provisions not inconsistent with this section. The circuit solicitor may, in his sole discretion, develop an individual docketing plan for each county within the circuit.

(C)If administrative appearances are established by the docketing plan, they must be defined, scheduled, and conducted by the chief administrative judge for general sessions court or his designee. 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 may be heard without mutual consent of the parties; and

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

(D) The chief administrative judge for general sessions court is responsible for the scheduling of motions throughout a term of court. Evidentiary motions including, but not limited to, motions to suppress may not be heard by any judge other than the judge who is assigned to preside over the trial of that case without the consent of the parties. When a motion to reconsider sentence or other post‑plea or trial motion is filed by a defendant, the chief administrative judge must schedule a hearing for the motion if the matter has not been resolved within ninety days of the filing date of the motion and must assign the hearing with the sentencing judge if still serving.

(E) Not less than thirty days before the term of court, the circuit solicitor shall submit a proposed list of cases to the appropriate 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 circuit 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 circuit solicitor, in his discretion, may publish a proposed list of cases 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 proposed docket. The circuit solicitor may give notice of the proposed docket by posting it on his website or to defense attorneys and pro se defendants by regular mail, electronic mail, or hand delivery to the last known address. After the court rules on any continuance requests, or if there are no continuance motions, the proposed list of cases becomes the docket. The circuit solicitor, after consultation with the parties, shall schedule new court dates for cases not reached during that term. 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 administrative judge shall determine which judges will preside over the solicitor designated sessions.

(F) When a case has not otherwise been scheduled for trial within one year of indictment, the defendant may file a motion to have the case placed on the trial docket. The chief administrative judge, or his designee, shall hold a hearing for the purpose of determining whether a trial date should be set. Factors to be considered by the judge include the age of the case, other cases pending before the court, other charges pending against the defendant, and the status of witnesses and evidence for both the defendant and the circuit solicitor. The court may grant a motion to have a case placed on the trial docket pursuant to this subsection only upon the specific finding that nonplacement on the trial docket schedule is arbitrary and unreasonable.

(G) If a defendant has an extraordinary need for a date certain trial or plea date, he may make a request with the circuit solicitor and, if both parties agree on a date, the circuit solicitor will submit a consent order, signed by all counsel and the defendant, to the chief administrative judge. If the parties cannot agree, the defendant may file a motion for a date certain. All filed motions for date certain must establish the basis of the extraordinary need and 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 his designee, may hold a hearing for the purpose of determining whether a trial date should be set.

(H) Nothing in this section may be construed to deprive any victim of any constitutional or statutory rights.”

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. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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