AMENDED

April 9, 2019

**S. 444**

Introduced by Senators Hembree, Davis, Shealy, Young, Climer, Gregory, Harpootlian, Bennett, Verdin, Campsen and M.B. Matthews

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Read the first time January 29, 2019.

**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.

Amend Title To Conform

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. The circuit solicitor will determine the order in which the docketed cases are called subject to rulings of the court as outlined in subsection (B). A defendant may move for a speedy trial or he may make a motion 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) The trial court has the ultimate authority to determine whether a case on the published docket and called by the circuit solicitor will be tried by ruling on motions properly before it for continuances, dates certain, and speedy trials.

(C)(1) For purposes of this subsection and subsection (D), ‘consult’ means an interaction between two persons in which the initiating person:

(a) provides information to another person;

(b) provides the other person an opportunity to respond; and

(c) takes the other person’s response, if any, into consideration.

(2) 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 must consult with the chief administrative judge, the circuit public defender, and one member of the Circuit Public Defender Selection Panel within that circuit appointed by the panel. In developing the docketing plan, the circuit solicitor must consider processes that promote justice by maximizing efficient but thorough case preparation and resolution by and between circuit solicitors and the defense, and by maximizing the effective use of judges’ time.

(D)(1) A criminal docketing plan for each circuit must be developed by the circuit solicitor and made effective no later than January 1, 2020. Thereafter, a new docketing plan must be developed and made effective no later than the first day of the sixth month following the beginning of the circuit solicitor’s four‑year term of office and, upon consultation as required, continued or amended every four years after. If the circuit solicitor does not develop a criminal docketing plan before January 1, 2020, or fails to continue or amend the docketing plan before expiration, the chief administrative judge for general sessions court must either issue a new written criminal case docketing plan or continue or amend the plan last in effect, and such plan will be effective for one year or until the circuit solicitor takes action as required. In that event, all organizational and administrative tasks associated with the management of the trial docket in general sessions court shall become the duty and responsibility of the chief administrative judge until the circuit solicitor takes action and publishes a criminal docketing plan as authorized. Nothing in this section prohibits the circuit solicitor from amending the most recent criminal docketing plan at other such times additional to those required by this subsection, provided that the solicitor complies with any and all consultation requirements in subsection (C) prior to issuing any amendment.

(2) 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.

(E)(1) At least one administrative appearance must be established by the docketing plan, and any appearances must be scheduled and conducted by the chief administrative judge for general sessions court or his judicial designee. Venue for administrative appearances may be in any county in the circuit; however, the presence of the defendant must only be required for administrative appearances where the defendant is unrepresented by counsel or where the administrative appearance is held in the county where the case originated. A defendant that is represented by counsel must not be required to attend more than three administrative appearances. Administrative appearances must be scheduled at least twenty‑eight calendar days apart.

(2) Procedures for administrative appearances as to cases with unrepresented defendants must be included in the docketing plan and provide for:

(a) the circuit solicitor to notify the court of unrepresented defendants;

(b) the chief administrative judge or his judicial designee to schedule administrative appearances for the purpose of informing unrepresented defendants of his rights and the risks and disadvantages of self‑representation; and

(c) the court to establish, as to a defendant who voluntarily waives the right to counsel, a satisfactory court record demonstrating the decision to represent himself was made with a knowing and intelligent understanding of his rights and the risks of self‑representation.

(3) At an administrative appearance:

(a) the court shall, as the first order of business, determine the status of the defendant’s representation by counsel and appoint counsel if necessary; and

(b) the court may inquire as to the existence of any mental health issues that would require an order of the court.

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

(F) A status conference may be requested by any party at any time with the chief administrative judge to address issues including, but not limited to, plea negotiations, the scheduling of motions, compliance with discovery requests, or issues related to the defendant’s bond.

(G) Pretrial conferences for cases on the published trial docket must be established by the docketing plan and must be conducted by the chief administrative judge for general sessions court or his judicial designee. The chief administrative judge or his judicial designee will address administrative matters and issues affecting the published trial docket, which may include a review or discussion of the status of available discovery in compliance with Rule 5 of the Rules of Criminal Procedure.

(H) The chief administrative judge for general sessions court is responsible for the scheduling of motions throughout the terms of general sessions whether or not the case has been scheduled for trial in accordance with Rule 4 of the Rules of Criminal Procedure and the common law.

(I)(1) Not less than thirty‑five 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 representing defendants on the proposed trial docket. The proposed trial docket should not contain cases that the circuit solicitor does not reasonably expect to be disposed of during the term of court. At any time prior to the publishing of the proposed trial docket, a defendant may submit his case to the circuit solicitor for consideration, if the case has exhausted plea negotiations and is ready to be set for trial. In any county 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.

(2) The circuit solicitor must either post the proposed trial docket on his website or send the proposed trial docket to defense attorneys by regular mail, electronic mail or delivery, or hand delivery to the last known address. The circuit solicitor must also send the proposed trial docket to the clerk of court for each county within the circuit by electronic mail or delivery, or by such other method agreed to by the circuit solicitor and the clerk of court. The clerk of court must provide notice to defendants, including pro se defendants, pursuant to court requirements and by a delivery method approved by the court. Except by consent of the chief administrative judge, circuit solicitor, and defense counsel or pro se defendant, a case must not be added to the trial docket after it is published. Defense counsel or pro se defendants must file any motions for continuance with the court within seven business days of notice of the proposed trial docket. After the court rules on any continuance requests, or if there are no continuance motions, the proposed list of cases becomes the published trial docket. The filing of or the failure to file a motion for continuance within the seven business days does not affect a defendant’s right to file a motion for continuance at a later time. 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 judge will preside over the solicitor-designated sessions.

(3) The circuit solicitor, defense counsel, or a pro se defendant may file a motion with the court for protection or relief from a trial docket. A motion by defense counsel pursuant to this subsection shall contain an affirmation that the counsel, prior to filing the motion, has communicated or attempted to communicate with the circuit solicitor in good faith to request accommodation for protection or relief and an explanation of whether the request was unanswered or denied, or how the request was inadequately resolved. The chief administrative judge, or a circuit judge designated by the chief administrative judge, may schedule and hold a hearing for the purpose of determining whether a motion for protection or relief should be granted and must, in any such determination, consider the age and complexity of the involved cases, experience of counsel, prejudice to any party or victim, and other relevant factors as determined by the court provided, however, that such a hearing must not be scheduled in a manner that conflicts with hearings or trials scheduled or taking place on other docketed cases.

(4) The circuit solicitor, after consultation with the parties, shall schedule new court dates for cases not reached during that term. The notice requirements of subsection (I)(1) are satisfied for any case that is called for trial within four weeks of the end of the term of court for which the case was initially scheduled unless the court grants a motion pursuant to subsection (B).

(5) Cases, if called by the circuit solicitor, should be called in the order of the published docket unless circumstances arise affecting the fair administration of justice and the responsible allocation of resources. The circuit solicitor must provide written notice to the court, circuit public defender, and appropriate defense counsel of his intent to call a case out of the published docket order. If the defendant whose case is called out of order objects to the calling of his case, the court shall rule on the defendant’s objection to the change upon the defendant’s motion pursuant to subsection (B).

(J)(1) When a case has not otherwise been scheduled for trial within one year of indictment, the chief administrative judge, circuit solicitor, or defendant may call for a status conference to identify and discuss each party’s preparation level and any issues or obstacles slowing or preventing case preparation. The chief administrative judge shall schedule the status conference no later than sixty days following request.

(2) For any case that is still pending two years from the date of its indictment, the chief administrative judge, or his judicial designee, may require and hold a hearing sua sponte 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, pretrial detention, 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 order the placement of a case on a trial docket pursuant to this subsection within a reasonable, specified time period as determined after consultation with the parties, but not sooner than sixty days from the ruling on a hearing held pursuant to subsection (J)(2).

(K) A defendant may make a request to be placed on a trial or plea docket with the circuit solicitor and, if both parties agree on a date, the circuit solicitor shall calendar the case. If the parties cannot agree, the defendant may file a motion to be placed on the trial or plea docket. All filed motions to be placed on a trial or plea docket must establish the basis of the request 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 request. The chief administrative judge, or his judicial designee, may hold a hearing for the purpose of determining whether a trial or plea date should be set. The court may grant a motion to have a case placed on the trial docket within a reasonable specified time period as determined after consultation with the parties, but not sooner than sixty days from the ruling on the motion.

(L) Nothing in this section may be construed to deprive any victim or any defendant 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. Except as otherwise provided in SECTION 1, this act takes effect upon approval by the Governor.

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