

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/SB 214

SPONSOR: Judiciary Committee and Senator Lynn

SUBJECT: Right to Speedy Trial

DATE: April 21, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute authorizes the state attorney to file a demand for speedy trial if the state has met discovery obligations and the court has granted at least three defense continuances over the state's objection, and the following circumstances exist:

- The case is a felony that is not resolved within 125 days from the date formal charges are filed and the defendant is arrested or served with a notice to appear; or
- The case is a misdemeanor that is not resolved within 45 days after the date that formal charges are filed and the defendant is arrested or served with a notice to appear.

When a demand for speedy trial is filed, the court is required to schedule a calendar call within five days, on which day the court is required to schedule the trial to begin between five and 45 days after the date of the calendar call.

The trial court is authorized to delay the trial date as follows:

- For up to 30 additional days upon a showing by the defendant that a necessary witness who was properly served failed to appear at deposition, and also failed to attend a second scheduled deposition after a court order to appear;
- For between 30 and 70 days if the court grants a defense counsel's motion to withdraw, and the court appoints other counsel.

Additionally, this committee substitute authorizes the court to grant further extensions to provide due process safeguards to the defendant.

This committee substitute creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Right to Speedy Trial

Florida Constitution

Article I, Section 16 of the Florida Constitution provides, in part:

(a) In all criminal prosecutions the accused shall...have the right to...have a speedy and public trial by impartial jury in the county where the crime was committed.

Florida Statutes

Section 918.015(1), F.S., provides: “In all criminal prosecutions the state and the defendant shall each have the right to a speedy trial.”

Florida Rules of Criminal Procedure

Where a defendant charged with a crime by indictment or information does not file a demand for speedy trial, Florida Rule of Criminal Procedure 3.191(a) requires the trial to take place within 90 days of arrest if the crime charged is a misdemeanor, or within 175 days if the crime charged is a felony, to begin from the date the defendant is taken into custody.

Where a defendant charged with a crime by indictment or information files a “Demand for Speedy Trial,” Florida Rule of Criminal Procedure 3.191(b) requires the trial to commence within 60 days.

No later than five days after the filing of a demand for speedy trial, the court is required to hold a calendar call, after noticing all parties, to schedule a trial date from five to 45 days later. The court is authorized to order an extension upon a showing of exceptional circumstances.

The defendant is authorized to file a “Notice of Expiration of Speedy Trial Time” any time after the expiration of the prescribed time period. The court is required to hold a hearing no later than five days from the date that the defendant files a notice of expiration and order that the trial commence within ten days, unless the court finds that:

- A time extension has been ordered for the purpose of determining mental competency or the physical ability of the defendant to stand trial, pursuant to stipulation, based on grounds that exceptional circumstances exist, or that good cause is shown by the accused;
- The defendant, co-defendant, or defense counsel is the cause of the failure to hold trial;

- The accused is unavailable for trial; or
- The demand for speedy trial is invalid.

A defendant not brought to trial within the ten-day time frame, through no fault of the defendant, is forever discharged from the crime.

Case Law

Just as a defendant may file a demand for speedy trial, a defendant may also waive speedy trial. A defense waiver of speedy trial is not absolute, however. In *State v. Moss*, although the defendant made two motions to continue and signed a written waiver of speedy trial, the defendant was permitted to reassert the right to speedy trial.¹ When constitutional speedy trial rights are waived by a defendant for an indefinite time period, they can be reinstated through a subsequent filing of a demand for speedy trial.

If the time to commence trial has tolled and the defense files a motion for discharge, where the state objects, the state must present evidence that the defendant was unavailable for trial. The defendant must then present competent evidence to show continuous availability.²

III. Effect of Proposed Changes:

This committee substitute authorizes the state attorney to file a demand for speedy trial if the state has met discovery obligations and the court has granted at least three defense continuances over the state's objection, and the following circumstances exist:

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- For between 30 and 70 days if the court grants a defense counsel's motion to withdraw, and the court appoints other counsel.

¹ 395 So.2d 561, 562-563 (Fla. 5th DCA 1981).

² *State v. Antonietti*, 558 So.2d 192, 194 (Fla. 4th DCA 1990).

Additionally, this committee substitute authorizes the court to grant further extensions to provide due process safeguards to the defendant.

This committee substitute creates an unnumbered section of the Florida Statutes with an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Due Process

The Sixth Amendment of the Federal Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor....

A defendant subject to time limitations under a state demand for speedy trial may not have sufficient time to take depositions, which may impede the right to confrontation provided for in the federal constitution, assuming that deposition excerpts will be admitted under cross-examination. Likewise, the defendant may not have sufficient time to secure defense witnesses. The inclusion of language in the committee substitute which allows the court to extend beyond the delineated time frames helps ensure due process.

Separation of Powers

Article V, Section 2 of the Florida Constitution provides that the “supreme court shall adopt rules for the practice and procedure in all courts.” This provision is typically interpreted to grant the Supreme Court the authority to regulate procedure in contrast to the role of the Legislature, which is to pass laws relating to substance. To the extent that the argument can be made that speedy trial provisions relate to procedure, a potential constitutional challenge based on separation of powers may be made.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Cases may be expedited, resulting in a reduced burden on the court docket.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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