

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 285 CS

Right to a Speedy Trial

SPONSOR(S): Hukill

TIED BILLS:

IDEN./SIM. BILLS: SB 214

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>7 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Justice Appropriations Committee</u>	<u>10 Y, 0 N, w/CS</u>	<u>Sneed</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 285 creates an unnumbered section of statute which provides that the state attorney may file a demand for speedy trial if a certain period of time has elapsed since the defendant was charged with a criminal offense and arrested. Upon the filing of a demand for speedy trial, the judge is required to schedule a calendar call within 5 days at which time the judge must schedule the trial to commence no sooner than 5 days or later than 45 days following the date of the calendar call. The bill allows the judge to postpone the trial date under specific circumstances. The bill, as amended, gives judicial discretion to the court to grant a continuance when necessary to prevent a defendant from being deprived of his or her right to due process.

This bill would appear to have an insignificant financial impact on state government and on the private sector. Since counties pay for the cost of detaining a prisoner in county jail awaiting trial, and to the extent that this bill results in criminal cases being more quickly resolved, it may decrease the financial burden on counties.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill creates a process by which a state attorney can file a demand for speedy trial under certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Constitutional provision: Article I, Section 16 of the Florida Constitution guarantees that an accused have the right to a “speedy and public trial” by an impartial jury.

Statutory provision: Section 918.015, F.S. provides the following:

(1) In all criminal prosecutions the state and the defendant shall each have the right to a speedy trial.

(2) The Supreme Court shall, by rule of said court, provide procedures through which the right to a speedy trial as guaranteed by subsection (1) and by s. 16, Art. I of the State Constitution, shall be realized.

Rule of procedure - speedy trial without demand: Florida Rule of Criminal Procedure 3.191(a) requires that every person charged with a crime by indictment or information be brought to trial within 90 days if the crime charged is a misdemeanor, or within 175 days if the crime charged is a felony. The time periods established begin when the defendant is taken into custody. If a trial is not begun within the appropriate time period, the defendant may file a “Notice of Expiration of Speedy Trial Time”. No later than five days from the date of this notice, the judge must conduct a hearing and unless the judge finds that a reason set forth by the rule exists, must order that the defendant be brought to trial within 10 days. If the defendant is not brought to trial within 10 days through no fault of the defendant, upon motion of the defendant or the judge, the defendant shall be forever discharged from the crime.

Rule of procedure - speedy trial upon demand: Rule 3.191(b) authorizes a defendant to demand a trial within 60 days of indictment or the filing of an information by filing a “Demand for Speedy Trial”. The trial court must then hold a calendar call within five days and at the calendar call, set the case for trial within 5 to 45 days. If the defendant is not brought to trial within 50 days of the filing of the demand, the defendant may then file a “Notice of Expiration of Speedy Trial Time”. No later than five days from the date of this notice, the judge must conduct a hearing and unless the judge finds that a reason set forth by the rule exists, must order that the defendant be brought to trial within 10 days. If the defendant is not brought to trial within 10 days through no fault of the defendant, upon motion of the defendant or the judge, the defendant shall be forever discharged from the crime.

There is no rule of procedure authorizing the state attorney to demand speedy trial. The constitution does not guarantee the state a right to speedy trial.

Discovery: Florida Rule of Criminal Procedure 3.220 governs the process of discovery in criminal cases. If the defendant files a notice of discovery, the state attorney is obligated to turn specific items over to the defendant such as a list of witnesses and reports of experts.

Provisions of HB 285: HB 285 creates an unnumbered section of statute which provides that the state attorney may file a demand for speedy trial if the state has met its obligations under the rules of discovery and the charge is a felony or misdemeanor and the court has granted at least three continuances upon the request of the defendant and over the objection of the state attorney and, either

- (a) if the charge is a felony and the charge is not resolved within 125 days after the date that formal charges are filed and the defendant is arrested or the date that notice to appear in lieu of arrest is served on the defendant; or
- (b) if the charge is a misdemeanor and the case is not resolved within 45 days after the date that formal charges are filed and the defendant is arrested or the date that notice to appear in lieu of arrest is served on the defendant.

After the state files a demand for speedy trial, the trial court must schedule a calendar call within 5 days, at which time the court must schedule the trial to begin no sooner than 5 days or later than 45 days following the calendar call. The bill provides that the trial court may postpone the trial date for up to 30 additional days if the defendant shows that a necessary witness who was properly served failed to attend a deposition and failed to attend a subsequently scheduled deposition following a court order to appear. The trial court may postpone the trial date for no fewer than 30 days but no more than 70 days if the court grants a motion by counsel to withdraw and the court appoints other counsel.

The bill adds that “the court may, however, grant whatever further extension may be required to prevent deprivation of the defendant’s right to due process” which provides the court judicial discretion to grant a continuance when needed.

C. SECTION DIRECTORY:

Section 1. Creates unnumbered section of statute creating right for state to demand speedy trial under certain circumstances.

Section 2. Provides effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Office of State Courts Administrator (OSCA), the bill will have a minimal fiscal impact on the court system. Only after the state objects to three continuances by the defense will the demand for speedy trial by the state be available. Since there is no limitation on the length of the continuances previously granted, it is not anticipated that this right of the state will be exercised often.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Counties pay for the cost of detaining a prisoner in county jail awaiting trial. To the extent that this bill results in criminal cases being more quickly resolved, it may decrease the financial burden on counties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

The bill does not appear to give a judge discretion on whether to order a defendant to be brought to trial but requires that, upon filing of a demand by the state, a defendant must be brought to trial within a specified period of time, unless the defendant can show that a witness has failed to attend a deposition or the court has granted a motion by counsel to withdraw. There could be cases in which these time standards would not allow a defendant adequate time, particularly in a complex case, to prepare for trial. However, the committee substitute remedies that by adding that the court may, however, grant whatever further extension may be required to prevent possible violation of a defendant's right to due process.

Currently, the remedy for a defendant who has complied with the provisions of the applicable rule of procedure and is not brought to trial within the prescribed amount of time, is the permanent dismissal of charges. Under the provisions of the bill, it is not clear what the remedy would be to the state if the case is not brought to trial within the time limits created. The remedy provided by the current rule of procedure – dismissal of the charges would obviously not be desirable to the state. It may be possible for the state to seek a petition for writ of mandamus from the appropriate District Court of Appeal. "Mandamus is a common law remedy that is used to enforce an established legal right by compelling a public officer to perform a duty required by law. The official duty in question must be ministerial and not discretionary." Caruso v. Baumle, 776 So.2d 371, 372 (Fla. 5th DCA 2001)(citations omitted); Woodland v. Lindsey, 586 So.2d 1255, 1256 (Fla. 4th DCA 1991)("In order for [a] petitioner to be entitled to the issuance of a writ of mandamus the petition must demonstrate the existence of a clear legal right to compel the performance of an indisputable duty."). It is not clear that an appellate court would be likely to order a trial court judge to begin a trial in cases in which there is a dispute over whether the trial can be conducted without violating the defendant's right to due process.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2005 the Justice Appropriations Committee adopted 2 amendments and 1 amendment to amendment to HB 285.

Amendment #1 by Reps. Kottkamp and Seiler— Provides for state demand for speedy trial if there have been three continuances over the objection of the State Attorney ***and*** the case has not been resolved within specified time frames for felonies and misdemeanors. The bill had provided that the demand for speedy trial could be brought if there were three continuances or the case had not been resolved within specified time frames.

Amendment #2 by Rep. Gelber—Provides judicial discretion to grant a continuance when needed to prevent deprivation of defendant's right to due process.

This analysis is drafted to the committee substitute.