

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 477 w/CS Right to Speedy Trial

**SPONSOR(S):** Cusack

**TIED BILLS:** IDEN./SIM. BILLS: SB 288

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub)	5 Y, 0 N	Kramer	De La Paz
2) Public Safety & Crime Prevention	16 Y, 0 N w/CS	Kramer	De La Paz
3) Judicial Appropriations Subcommittee	6 Y, 0 N	Davis	DeBeaugrine
4) Appropriations			
5)			

---

### SUMMARY ANALYSIS

HB 477, with committee substitute, provides that after the court grants a third continuance requested by the defendant in any felony or misdemeanor case, the state attorney may file a demand for speedy trial. After filing of the demand, the trial court is required to schedule a "calendar call" within 5 days, at which time the trial must be scheduled for not less than 5 days or more than 45 days following the date of the calendar call.

This bill appears to have an insignificant fiscal impact on the state.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0477d.ap.doc

**DATE:** April 2, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### 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.

*Provisions of HB 477:* HB 477, with committee substitute, provides that after the court grants a third continuance requested by the defendant in any felony or misdemeanor case, the state attorney may file a demand for speedy trial. After filing of the demand, the trial court is required to schedule a “calendar call” within 5 days, at which time the trial must be scheduled for not less than 5 days or more than 45 days following the date of the calendar call.

C. SECTION DIRECTORY:

**Section 1.** Provides for right to speedy trial for state.

**Section 2.** Provides effective date of July 1, 2004.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Office of State Courts Administrator reports that this bill appears to have no impact on court operations.

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:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

The bill does not appear to give the judge discretion in 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 amount of time. 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 and may therefore be seen as violating 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. 5<sup>th</sup> DCA 2001)(citations omitted); Woodland v. Lindsey 586 So.2d 1255, 1256 (Fla. 4<sup>th</sup> 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 a District Court of Appeal 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 CHANGES

*Original bill:* As originally, HB 477 provided that in order to “ensure the right of crime victims and the people of this state to a prompt and timely disposition of cases, each person charged with a crime by indictment or information must 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, barring unforeseen or extraordinary circumstances.” The bill further provided that in order to meet this “time standard”, the state attorney could file a demand for speedy trial in any misdemeanor case that has not been resolved within 40 days after arrest or in any felony case that has not been resolved within 125 days after arrest. After filing of the demand, the trial court would be required to schedule a “calendar call” within 5 days, at which time the trial would be scheduled for not less than 5 days or more than 45 days following the date of the calendar call.

*Committee amendments:* The Committee on Public Safety & Crime Prevention adopted a strike-all amendment which provided that the state could demand speedy trial after a third continuance is requested by the defendant. The bill as amended was made a committee substitute.

The Subcommittee on Judicial Appropriations met on April 2, 2004, and recommended the following two amendments with the bill sponsor’s concurrence, before reporting the bill favorably.

- Redesignates the bill’s catchline from “Victim’s right” to “State’s entitlement”
- Amends the timeframe with which the trial court must schedule a calendar call and the subsequent trial date after a state attorney files a demand for speedy trial, and provides express discretion to the judge when good cause is shown