
Judiciary Committee

HB 2704

Title: An act relating to the right to a speedy trial.

Brief Description: Revising speedy trial provisions.

Sponsors: Representatives Bush, Carrell, Casada, Lantz, Talcott, Kirby, Morell, O'Brien, Schoesler, Ballasiotes, Nixon, Lovick, Mielke, Rockefeller, Boldt, Hunt, Esser, Conway, Woods and Delvin.

Brief Summary of Bill
<ul style="list-style-type: none">Establishes rules regarding the time period for bringing a criminal defendant to trial in superior court, courts of limited jurisdiction, and juvenile court, which are similar to existing court rules with a number of differences.

Hearing Date: 2/5/02

Staff: Edie Adams (786-7180).

Background:

A defendant in a criminal case is entitled to a speedy trial. This right is established in both the federal and state constitutions and in court rules. There is currently no statutory provision governing speedy trial requirements, although until its repeal in 1984, a Washington statute provided that if a defendant was not brought to trial within 60 days after indictment or filing of the information, the court had to dismiss the case, unless good cause was shown.

Constitutional Right to a Speedy Trial

Both the Sixth Amendment of the United States Constitution and Article 1, Section 22 of the Washington Constitution guarantee a defendant in a criminal case the right to a speedy trial. Jurisprudence under both the federal and state constitutional provisions has established that a determination of whether a defendant's constitutional right to a speedy trial has been violated must be made on a case by case basis considering a four-part balancing test: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his or her speedy trial right; and (4) the prejudice to the defendant caused by the delay. There is no

constitutional requirement for a specific speedy trial time period. The constitutional right is violated at the expiration of a reasonable time, not at the expiration of a fixed time.

Court Rules

Superior Court Criminal Rule (CrR) 3.3, called the time for trial rule, contains detailed provisions regarding when a criminal defendant must be arraigned and brought to trial. The speedy trial time period is 60 days for a defendant who is detained, and 90 days for a defendant who is not detained. The speedy trial period starts on the date of arraignment, which must occur within 14 days of the filing of the charge if the defendant is detained. If the defendant is not detained, he or she must be arraigned within 14 days following the defendant's first appearance in court after the filing of charges. Under court interpretation of the rule, however, if the state fails to use due diligence to bring the defendant before the court for his or her first appearance, the speedy trial period starts from a constructive date of arraignment of 14 days after the date of filing.

A defendant must object to a trial date that does not comply with the speedy trial period or the defendant waives the right to object. A criminal charge that is not brought to trial within the speedy trial period must be dismissed with prejudice.

CrR 3.3 provides extensions of the speedy trial time period under a number of circumstances, such as if there is a mistrial or for the disqualification of a prosecutor or judge. Five-day extensions may be granted because of unavoidable or unforeseen circumstances. In addition, the court may grant continuances if both parties agree, or if required in the administration of justice and the defendant's case will not be substantially prejudiced. CrR 3.3 also provides for certain periods that are excluded from the calculation of the speedy trial period, such as competency proceedings and the time a defendant is detained outside the state.

The speedy trial court rule for courts of limited jurisdiction (CrRLJ 3.3) is substantially the same as CrR 3.3. Proceedings in juvenile court are governed by Juvenile Court Rule (JuCR) 7.8. It provides that a juvenile who is detained must be brought to trial within 30 days following arraignment, or within 60 days if the juvenile is not detained.

Summary of Bill:

Rules regarding the time period for bringing a criminal defendant to trial in superior court, courts of limited jurisdiction, and juvenile court are created. These provisions generally codify the existing time for trial court rules, with a number of changes that are described below within the summary of the provisions of the act.

Speedy Trial Period and Arraignment: The speedy trial time period is 60 days after arraignment for an accused who is detained in jail. If the accused is released from jail at any time prior to trial, even if subject to conditions of release and even if the release is revoked prior to trial, then the accused must be brought to trial within 90 days from arraignment. Arraignment means the date on which a plea is entered.

There is no requirement that an accused be arraigned within a certain time period of the

filing of the charge. This contrasts with CrR 3.3, which requires that an accused be arraigned within 14 days of the filing of the charge if the accused is detained or subject to conditions of release. If an accused is not detained, the arraignment must happen within 14 days after the accused's first appearance in court after the filing of the charge. Another contrast with the court rule is that the 90 day period applies if release is revoked at any time prior to trial. Under the court rule, if the release is revoked, the accused must be brought to trial within such a time period so that the accused spends no more than 60 days in jail and is tried not later than a total of 90 days after arraignment.

A juvenile who is charged with an offense in juvenile court must be brought to trial within 30 days after arraignment if the juvenile is detained pending adjudication. If the juvenile is released from detention at any time prior to the adjudication, whether or not subject to conditions of release and whether or not the release is revoked, he or she must be brought to trial within 60 days of arraignment.

Setting of Trial Date: The court must set, within 15 days after arraignment, a trial or adjudication date that is within the speedy trial time period. The court must provide notice to the parties which must set forth the proper date of arraignment and the trial date.

A party who objects that the trial or adjudication date is not within the speedy trial time period must make a motion, within 10 days after the notice is mailed, that the court set a trial or adjudication date that is within the speedy trial period. A party who fails to make the motion waives the objection to the trial or adjudication date, or a properly granted extension of the date.

Failure to Comply with Speedy Trial Period: The failure to comply with a speedy trial time period may result in dismissal with prejudice only if: the accused objected to the date set for trial or adjudication; the accused shows that his or her ability to put forth a defense has been substantially prejudiced by the violation; and the state fails to bring the case to trial within ten days after the hearing on the accused's objection to the trial date, or within the speedy trial time limits, whichever is later. In addition, the court must find that arbitrary action or governmental misconduct has prejudiced the rights of the accused to an extent that materially affects the right to a fair trial, and that the dismissal is necessary for the furtherance of justice.

A violation of the speedy trial period that does not result in dismissal of the case with prejudice must result in discipline of the attorneys or court administrators causing the delay.

This provision differs substantially from the existing court rule which requires dismissal of the case with prejudice if the accused's right to a speedy trial under the rule is violated. In addition, the rule does not provide the state the opportunity to "cure" by setting a trial date within 10 days after the accused objects to the time set for trial.

Excluded Periods: The following periods are excluded from the computation of the speedy trial period:

- The time between the filing of the charge and arraignment;
- Proceedings relating to the accused's competency or capacity;
- Preliminary proceedings, trial, adjudication, post-trial motions, and sentencing or

- disposition on another charge;
- Continuances granted by the court;
- The time between the dismissal of a charge and the accused's arraignment or re-arraignment following the refiling of the same charge;
- The time a defendant is detained in a facility outside the county in which the accused is charged, or in a federal detention facility, and the time during which an accused is subject to conditions of release not imposed by a Washington court;
- The time between a motion for revision of a court commissioner's ruling and the entry of a decision by a judge; and
- Proceedings relating to whether a juvenile court will retain jurisdiction.

These exclusions are substantially the same as the existing court rule with the following exceptions: (1) the court rule excludes time from filing to arraignment only if the arraignment happens within specified time periods. If the actual date of arraignment is after the date arraignment should have occurred (constructive arraignment date), the period between constructive arraignment and actual arraignment is not excluded; and (2) the court rule does not exclude periods for post-trial motions or sentencing or disposition on another charge.

Restarting Speedy Trial Period: The speedy trial time periods start anew following: a mistrial, the granting of a new trial or adjudication, a remand from an appellate court or a federal court for trial or adjudication, the withdrawal of a guilty plea, the withdrawal of a petition for deferred prosecution, or an accused's first appearance following a failure to appear at a trial or adjudication or preliminary proceeding where his or her presence is required. The existing court rule provisions regarding extending the speedy trial period are substantially the same, although they do not provide an extension for the withdrawal of a petition for deferred prosecution.

If a change of venue is granted or if the prosecuting attorney or judge becomes disqualified, the accused must be brought to trial no later than 60 days after the entry of the order for a change of venue or disqualification. Under the existing court rules, this period is 30 days.

Continuances: The court may grant a continuance if the accused consents and good cause is shown or if required in the due administration of justice and the accused will not be substantially prejudiced in the presentation of a defense. In addition, the court may grant a continuance if evidence is presently unavailable, the party making the motion has exercised due diligence, and there are reasonable grounds to believe the evidence will become available within a reasonable time. These provisions differ from the existing court rules in that the court rules do not provide a continuance when evidence is presently unavailable, except in the juvenile court rules. In addition, the court rules allow a continuance without a showing of good cause if both parties agree in writing.

Waiver by the Accused: An accused may waive his or her speedy trial rights by signing a written waiver. The waiver must be to a date certain beyond the speedy trial expiration date.

Court Rules Superseded: The provisions of the act supersede Superior Court Criminal Rule 3.3, Criminal Rule for Courts of Limited Jurisdiction 3.3, and Juvenile Court Rule 7.8 to the extent they are inconsistent with the provisions of the act.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.