Dennis M. Papp *Legislative Service Commission*

S.B. 49

123rd General Assembly
(As Reported by S. Judiciary)

Sens. Cupp, Latta

BILL SUMMARY

- Modifies the "speedy trial" statutes to specify that, when a person is charged with multiple offenses of different degrees, whether felonies, misdemeanors, or combinations of felonies and misdemeanors, all of which arose out of the same act or transaction, the person must be brought to trial within the time period required for the highest degree of offense charged.

CONTENT AND OPERATION

Introduction

Existing R.C. 2945.71 to 2945.73, generally referred to as the "speedy trial" statutes, specify periods of time within which a person who is charged with an offense must be brought to trial (see **COMMENT** 1) and, if the charge is a felony, must be accorded a preliminary hearing, and provide sanctions for failing to comply with the specified time periods.

General time periods

Existing law

R.C. 2945.71 prescribes the general periods of time within which a person must be brought to trial and accorded a preliminary hearing. It specifies that (R.C. 2945.71(A) to (C)):

(1) A person against whom a charge is pending in a court not of record (i.e., a mayor's court), or against whom a minor misdemeanor charge is pending in a court of record, must be brought to trial within 30 days after the person's arrest or the service of summons.

(2) A person against whom a misdemeanor charge, other than a minor misdemeanor, is pending in a court of record must be brought to trial within 45 days after the person's arrest or the service of summons, if the offense charged is a misdemeanor of the third or fourth degree or another misdemeanor for which the maximum penalty is imprisonment for not more than 60 days, or within 90 days after the person's arrest or the service of summons, if the offense charged is a misdemeanor of the first or second degree or another misdemeanor for which the maximum penalty is imprisonment for more than 60 days.

(3) A person against whom a charge of felony is pending must be accorded a preliminary hearing, notwithstanding any provision to the contrary in division (B) of Criminal Rule 5 (see **COMMENT** 2), within 15 consecutive days after the person's arrest if the accused is not held in jail in lieu of bail on the pending charge or within ten consecutive days after the person's arrest if the accused is held in jail in lieu of bail on the pending charge, and must be brought to trial within 270 days after the person's arrest.

Operation of the bill

The bill does not modify the general time periods described above. But it specifies that the time periods described in paragraphs (1) and (2), above, are subject to the bill's modifications to existing law's "***Time periods when multiple misdemeanor charges pending***," as described below. (R.C. 2945.71(A) and (B).)

Time periods when multiple charges pending

Existing law

R.C. 2945.71(D) provides that a person against whom one or more minor misdemeanor charges and one or more misdemeanor charges other than minor misdemeanor, all of which arose out of the same act or transaction, are pending, or against whom charges of misdemeanors of different degrees, other than minor misdemeanors, all of which arose out of the same act or transaction, are pending must be brought to trial within the time period required for the highest degree of misdemeanor charged, as determined under the provision described above in paragraph (2).

The "speedy trial" statutes do not address the situation in which a person is charged with both misdemeanors and felonies.

Operation of the bill

The bill modifies the portion of the "speedy trial" statutes that is used to determine the time within which a person charged with multiple misdemeanor

offenses must be brought to trial to make it apply in all situations in which a person is charged with multiple charges of different degrees. Under the bill, a person against whom one or more charges of different degrees, whether felonies, misdemeanors, or combinations of felonies and misdemeanors, all of which arose out of the same act or transaction, are pending must be brought to trial within the time period required for the highest degree of offense charged, as determined under the provisions of existing law that set forth the general periods of time within which a person charged with a criminal offense must be brought to trial, as described above in "***General time periods***." (R.C. 2945.71(D).)

Computation of time when person held in jail in lieu of bail

R.C. 2945.71(E) provides that, for purposes of computing time under the provisions described above in paragraphs (1), (2), and (3) of "***General time periods***" that prescribe the time within which a person must be brought to trial, each day during which the accused is held in jail in lieu of bail on the pending charge is counted as three days. This rule does not apply for purposes of computing time under the provision described above in paragraph (3) of "***General time periods***" that prescribes the time within which a person charged with a felony must be accorded a preliminary hearing.

The bill does not change these provisions.

Other relevant speedy trial provisions

Extension of time for hearing or trial

R.C. 2945.72, not in the bill, authorizes the extension, in limited, specified circumstances, of the period of time within which a person charged with a criminal offense must be brought to trial and accorded a preliminary hearing. It provides that the time periods may be extended only by any of the following: (1) any period during which the accused is unavailable for hearing or trial because of other criminal proceedings against him or her, because of his or her confinement in another state, or because of pending extradition proceedings, provided that the prosecution exercises reasonable diligence to secure his or her availability, (2) any period during which the accused is mentally incompetent to stand trial, his or her mental competence to stand trial is being determined, or he or she is physically incapable of standing trial, (3) any period of delay necessitated by the accused's lack of counsel, if the delay is not caused by lack of diligence in providing counsel to an indigent accused upon request as required by law, (4) any period of delay occasioned by the neglect or improper act of the accused, (5) any period of delay necessitated by a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused, (6) any period of delay necessitated by a removal or

change of venue pursuant to law, (7) any period during which trial is stayed under an express statutory requirement or an order of another court competent to issue such an order, (8) any period of a continuance granted on the accused's own motion, and any period of a reasonable continuance granted other than upon the accused's own motion, or (9) any period during which an appeal filed under R.C. 2945.67 is pending (an R.C. 2945.67 appeal is an appeal filed by the state regarding certain preliminary matters in a criminal action).

The bill does not modify these provisions.

Discharge for failure to comply with time period for trial or preliminary hearing

R.C. 2945.73, not in the bill, sets forth sanctions for failing to comply with the time periods for holding a trial or preliminary hearing that are prescribed by R.C. 2945.71 and 2945.72, as follows:

(1) A charge of felony must be dismissed if the accused is not accorded a preliminary hearing within the required time. The dismissal of a charge under this provision has the same effect as a *nolle prosequi* (see **COMMENT** 3).

(2) Upon motion made at or prior to the commencement of trial, a person charged with any offense must be discharged if he or she is not brought to trial within the required time. A discharge under this provision is a bar to any further criminal proceedings against the person based on the same conduct.

(3) Regardless of whether a longer time limit may be provided by R.C. 2945.71 and 2945.72, a person charged with a misdemeanor must be discharged if he or she is held in jail in lieu of bond awaiting trial on the pending charge for a total period equal to the maximum term of imprisonment that may be imposed for the most serious misdemeanor charged, or, when the offense or offenses charged are minor misdemeanors, for a total period equal to the term of imprisonment allowed in lieu of payment of the maximum fine that may be imposed for the most serious misdemeanor charged. A discharge under this provision is a bar to any further criminal proceedings against the person based on the same conduct.

The bill does not modify these provisions.

COMMENT

1. Article I, Section 10 of the Ohio Constitution provides, in relevant part, that in any trial, in any court, a person accused of a criminal offense has the right to ". . . a speedy public trial by an impartial jury of the county in which the offense

is alleged to have been committed. . . ." Similarly, the Sixth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, guarantees a person accused of a criminal offense ". . . the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. . . ." The Ohio Supreme Court has held that R.C. 2945.71 to 2945.73 constitute a rational effort to enforce the constitutional right to a speedy public trial of a person charged with a criminal offense and must be strictly enforced by Ohio's courts. *State v. Pachay* (1980), 64 Ohio St.2d. 218; *State v. Adams* (1989), 43 Ohio St.3d 67.

2. Criminal Rule 5(B), adopted by the Ohio Supreme Court pursuant to the portion of Article IV, Section 5(B) of the Ohio Constitution that requires the Court to adopt rules to govern the practice and procedure in all Oho courts, provides, in relevant part, as follows:

> (B) Preliminary hearing in felony cases; procedure
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> (1) In felony cases a defendant is entitled to a preliminary hearing unless waived in writing. If the defendant waives preliminary hearing, the judge or magistrate shall forthwith order the defendant bound over to the court of common pleas. If the defendant does not waive the preliminary hearing, the judge or magistrate *shall schedule a preliminary hearing within a reasonable time, but in any event no later than ten consecutive days following arrest or service of summons if the defendant is in custody and not later than fifteen consecutive days following arrest or service of summons if he is not in custody*. The preliminary hearing shall not be held, however, if the defendant is indicted. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this division may be extended. In the absence of such consent by the defendant, time limits may be extended only as required by law, or upon a showing that extraordinary circumstances exist and that delay is indispensable to the interest of justice. (Emphasis added.)

3. A *nolle prosequi* is a dismissal of a criminal charge by the state. Generally, under R.C. 2941.33 and Criminal Rule 48(A), a prosecutor who wishes to enter a *nolle prosequi* must obtain leave of the court, on good cause shown, in open court. Generally, the dismissal is without prejudice, and the determination of whether it is a bar to the reprosecution of the accused is governed by the rules that determine whether a person has been subjected to double jeopardy in violation of Article I, Section 10 of the Ohio Constitution and the Fifth Amendment to the United States Constitution. *State v. Dixon* (Cuyahoga Cty., 1984), 14 Ohio App.3d 396; *State v. Eberhardt* (Cuyahoga Cty., 1978), 56 Ohio App.2d 193.

HISTORY

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Introduced	02-02-99	p.	96
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