

# House Resolution No. 5

## 98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MILLER.

4608H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

Relating to the investigation of an elected official for possible impeachment.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

**WHEREAS**, the Sixth Amendment of the United States Constitution states:

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3 "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial  
4 by an impartial jury of the state and district wherein the crime shall have been committed,  
5 which district shall have been previously ascertained by law, and to be informed of the  
6 nature and cause of the accusation; to be confronted with the witnesses against him; to  
7 have compulsory process for obtaining witnesses in his favor, and to have the assistance  
8 of counsel for his defense."; and

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10 **WHEREAS**, Article I, Section 18(a) of the Missouri Constitution states:

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12 "That in criminal prosecutions the accused shall have the right to appear and defend, in  
13 person and by counsel; to demand the nature and cause of the accusation; to meet the  
14 witnesses against him face to face; to have process to compel the attendance of witnesses  
15 in his behalf; and a speedy public trial by an impartial jury of the county."; and

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17 **WHEREAS**, Article VII, Section 1 of the Missouri Constitution states:

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19 "All elective executive officials of the state, and judges of the supreme court, courts of  
20 appeals and circuit courts shall be liable to impeachment for crimes, misconduct, habitual  
21 drunkenness, willful neglect of duty, corruption in office, incompetency, or any offense  
22 involving moral turpitude or oppression in office."; and

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24 **WHEREAS**, Section 545.780, RSMo, states:

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26 "1. If defendant announces that he is ready for trial and files a request for a speedy trial,  
27 then the court shall set the case for trial as soon as reasonably possible thereafter.

28 2. The provisions of this section shall be enforceable by mandamus. Neither the failure  
29 to comply with this section nor the state's failure to prosecute shall be grounds for the

30 dismissal of the indictment or information unless the court also finds that the defendant  
31 has been denied his constitutional right to a speedy trial."; and

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33 **WHEREAS**, on October 28, 2009, in Miller County, the state charged Aaron Michael  
34 Fisher with two counts of forcible sodomy involving a five-month-old child he was related to and  
35 caring for at the time of the alleged incident; and

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37 **WHEREAS**, both charges of forcible sodomy involved "deviate sexual intercourse" and,  
38 if convicted, carried a punishment of life in prison without the possibility of parole; and

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40 **WHEREAS**, on the state's motion, the case was continued from March 8, 2010 to April  
41 12, 2010 for a preliminary hearing; and

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43 **WHEREAS**, on the state's motion, the case was continued from March 24, 2010 to May  
44 17, 2010; and

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46 **WHEREAS**, on May 17, 2010, a preliminary hearing was held and the cause was bound  
47 over to circuit court for arraignment on June 9, 2010 before Circuit Judge Stanley Moore; and

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49 **WHEREAS**, on June 9, 2010, the arraignment was held and the cause was set for jury  
50 trial on January 10, 2011; and

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52 **WHEREAS**, on December 8, 2010, at a pretrial conference, cause was set to proceed to  
53 trial; and

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55 **WHEREAS**, on December 27, 2010, the state filed a motion for leave to endorse  
56 additional witnesses; and

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58 **WHEREAS**, on January 10, 2011, Judge Moore granted a continuance and cause was  
59 to be reset for a jury trial on September 12, 2011; and

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61 **WHEREAS**, on February 22, 2011, although represented by defense counsel Keith  
62 Halcomb, Aaron Fisher filed a handwritten request for discovery and for a speedy trial; and

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64 **WHEREAS**, Judge Moore reviewed the defendant's motion and reset the trial for May  
65 23, 2011, to abide by defendant's speedy trial request; and

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67 **WHEREAS**, on May 23, 2011, prior to the trial beginning, Judge Moore granted a  
68 continuance request by Aaron Fisher's attorney, Keith Halcomb; and

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70 **WHEREAS**, Aaron Fisher did not protest to the continuance, acknowledging that the  
71 continuance would waive or impinge his right to a speedy trial; and

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73           **WHEREAS**, Judge Moore reset the trial for September 12, 2011; and

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75           **WHEREAS**, on July 6, 2011, in a separate incident, Aaron Fisher pled guilty to  
76 damaging jail property in violation of Section 221.353, RSMo, and was sentenced to four years  
77 in prison; and

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79           **WHEREAS**, the jury trial was stricken several times, reset to January 9, 2012,  
80 September 10, 2012, and February 24, 2014, and then set for pretrial conference on August 6,  
81 2014; and

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83           **WHEREAS**, docket entries do not indicate which party asked for the continuances; and

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85           **WHEREAS**, on July 28, 2014, before Circuit Judge Kenneth Hayden, Aaron Fisher pled  
86 guilty to both charges of forcible sodomy; and

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88           **WHEREAS**, after accepting the guilty pleas, Judge Hayden ordered a presentence  
89 investigation and sentencing assessment report and set the case for sentencing on November 6,  
90 2014, and as said date approached, Aaron Fisher recanted his confession; and

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92           **WHEREAS**, Judge Hayden vacated Aaron Fisher's pleas and set the case for trial on  
93 November 23, 2015 before Judge Moore; and

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95           **WHEREAS**, on December 3, 2014, Judge Moore recused himself, and the case was  
96 assigned to Circuit Judge Patricia Joyce; and

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98           **WHEREAS**, on September 16, 2015, Jason Emmons, Aaron Fisher's appointed defense  
99 counsel after Keith Halcomb was excused from the case, filed a Motion to Dismiss stating Aaron  
100 Fisher's right to a speedy trial had been violated; and

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102           **WHEREAS**, on October 15, 2015, a hearing was scheduled on Aaron Fisher's Motion  
103 to Dismiss; and

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105           **WHEREAS**, on October 23, 2015, Judge Joyce ruled that Aaron Fisher should be  
106 released from prison and his case be dismissed with prejudice because his right to a speedy trial  
107 had been violated; and

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109           **WHEREAS**, the United States and Missouri Constitutions provide protection for a  
110 defendant's right to a speedy trial, and case law has made determinations when said rights are  
111 violated; and

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113           **WHEREAS**, in *Barker v. Wingo* 407 U.S. 514, 530 (1972), there is a balancing test in  
114 which the conduct of the prosecution and the defense are weighed to determine if a person's  
115 rights to a speedy trial were violated. To determine whether there has been a violation of speedy

116 trial rights, the court should weigh four factors: (1) length of stay; (2) the reason for the delay;  
117 (3) the defendant's assertion of his or her right; and (4) prejudice to the defendant. The triggering  
118 mechanism is the length of the delay for a trial because "[u]ntil there is some delay which is  
119 presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the  
120 balance." *Id.* When evaluating the second factor, different weights are assigned to different  
121 reasons for the delay. *Id.* at 530-531. Also, when considering the fourth factor, prejudice should  
122 be assessed in light of the defendant's interests. *Id.* at 532. These interests include: (1) preventing  
123 oppressive pretrial incarceration; (2) minimizing anxiety and concern of the accused; and (3)  
124 limiting the possibility that the defense may be impaired. *Id.*; and

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126 **WHEREAS**, in *State ex rel. McKee v. Riley*, 240 S.W.3d 725, 729 (Mo. 2007), Missouri  
127 courts have determined a delay greater than eight months is "presumptively prejudicial." The  
128 delay in Aaron Fisher's case was greater than eight months. Therefore, the first factor was  
129 present, and it should have triggered an inquiry to the other factors by Judge Joyce. *See Barker*,  
130 407 U.S. at 530; and

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132 **WHEREAS**, Judge Joyce acted incompetently performing her official duties, thereby  
133 violating the Missouri Constitution. In her Order Sustaining Defendant's Motion To Dismiss For  
134 Violation Of Statutory Right To A Speedy Trial, Judge Joyce only considered the length of the  
135 stay in determining that Aaron Fisher's right to a speedy trial was violated and blatantly ignored  
136 the other factors that needed to be considered according to case law. Judge Joyce overlooked  
137 the fact that Aaron Fisher was minimally prejudiced since he was serving a four-year sentence  
138 for a crime committed in June 2011, while in prison for the forcible sodomy charges, and said  
139 crime was committed within the speedy trial time frame. Judge Joyce also carelessly stated in  
140 her order that "the State has failed to bring the defendant to trial without any reason. The only  
141 evidence of the defendant's delay is on continuance request from May 23, 2011." In actuality,  
142 the record indicated that there was no evidence of who asked for the continuance, which she also  
143 acknowledged in such order stating the jury trial "was stricken without any record or  
144 documentation addressing the defendant's right to a speedy trial." Therefore, Judge Joyce  
145 carelessly jumped to the conclusion that the state made the motions for continuance. Judge Joyce  
146 also failed to recognize that Aaron Fisher delayed the matter by eventually pleading guilty and  
147 then requesting his pleas to be vacated; and

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149 **NOW THEREFORE BE IT RESOLVED** that the Missouri House of Representatives,  
150 Ninety-eighth General Assembly, Second Regular Session, requests that the House Judiciary  
151 Committee investigate the alleged actions by Judge Patricia Joyce related to the dismissal of  
152 charges against Aaron Michael Fisher for two counts of forcible sodomy involving a five-month-  
153 old child indicating she acted incompetently and which may constitute an impeachable offense  
154 under the Missouri Constitution.

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