

House Resolution No. 5

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MILLER.

4608H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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

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

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

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

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

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

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

WHEREAS, Section 545.780, RSMo, states:

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

2. The provisions of this section shall be enforceable by mandamus. Neither the failure 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

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

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

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

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

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