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Senate Bill 791 (as introduced 2-13-20)  
Sponsor: Senator Peter J. Lucido  
Committee: Judiciary and Public Safety

Date Completed: 11-19-20

## **CONTENT**

**The bill would amend Chapter 8 (Trials) of the Code of Criminal Procedure to prescribe time limits before which a defendant would have to be brought to trial.**

Under Chapter 8 of the Code, the people of the State and individual charged with a crime are entitled to and must have a speedy trial. The Code also states that it is the duty of all public officers having duties to perform in a criminal case to bring the case to a final determination without delay except as needed to secure to the accused a fair and impartial trial.

Under the bill, subject to the tolling provisions provided for in Michigan Court Rules (MCR) 6.004(C)(1) to (6) (see **BACKGROUND**) or any successor rule, all of the following would apply to all criminal cases:

- If a person were in jail awaiting trial for a misdemeanor violation of the laws of the State, or a political subdivision of the State, he or she would have to be brought to trial within seven days after he or she was taken into custody.
- If a person were in jail awaiting trial for a felony violation of the laws of the State, and was not to be released within seven days after having been taken to custody, he or she would have to be brought to trial within 90 days after he or she was taken into custody.
- A person awaiting trial for a misdemeanor violation of the laws of the State, or a political subdivision of the State, who was not in custody could assert by motion his or her right to a speedy trial at any time; if this motion were filed, the person would have to be brought to trial within 90 days after the filing of the motion.
- A person awaiting trial for a felony violation of State law who was not in custody could assert by motion his or her right to a speedy trial at any time; if this motion were filed, the person would have to be brought to trial within 180 days after the filing of the motion.

MCL 768.1

## **BACKGROUND**

The United States and Michigan Constitutions guarantee a right to a speedy trial.<sup>1</sup> Generally, the right to a speedy trial balances the State's need to prepare and present its case and a defendant's concerns against oppressive pretrial incarceration, anxiety, and the possibility that his or her defense will be impaired.<sup>2</sup> Ultimately, this balance is meant to ensure that

<sup>1</sup> US Const, amend VI; MI Const, art I, sec 20.

<sup>2</sup> *People v Casteli*, 370 Mich 147 (1963); *People v White*, 54 MichApp 342 (1974).

guilty verdicts result from valid foundations in fact.<sup>3</sup> When considering whether a defendant has been denied his or her right to a speedy trial, a court considers the length of the delay, the reason for the delay, whether the defendant has asserted the right to a speedy trial, and the prejudice to the defendant.<sup>4</sup>

Michigan Court Rules 6.004 also states that a defendant and the people are entitled to a speedy trial and that if a defendant's right to a speedy trial is violated, the defendant is entitled to dismissal of the charge with prejudice (meaning the charge is dismissed permanently). Michigan Court Rule 6.004(C) pertain to delays in felony and misdemeanor cases. Under the rule, in a felony case in which a defendant has been incarcerated for 180 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, or in a misdemeanor case in which the defendant has been incarcerated for 28 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, the defendant must be released on personal recognizance, unless the court finds by clear and convincing evidence that the defendant is likely either to fail to appear for future proceedings or to present a danger to any other person or the community. The MCR further specifies how the 28-day and 180-day periods must be computed (namely by excluding certain periods of delay from the computation).

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bill likely would have an indeterminate, negative fiscal impact on State and local court systems.

While the Michigan Constitution and the MCR both mandate a speedy trial for defendants in criminal matters, neither document specifies the maximum length of time that may pass before the trial begins when the defendant is not in custody. Currently, for defendants who are in custody, the trial must begin within 180 days after a request for final disposition under MCR 6.004(D).

The bill would substantially shorten the time period during which a defendant must be brought to trial. While this could decrease costs for pretrial incarceration, it is likely that the processes for local courts would have to be revised to accommodate the prescribed time limits. It also is possible the Supreme Court would have to amend several of the Michigan Court Rules to accommodate the new time limits, including, for example, the 21-day notice of intent to seek an enhanced sentence under MCR 6.112(F), the 28-day window to amend a witness list under MCR 6.201(A), the 21-day discovery compliance requirements under MCR 6.201(F), and the 14-day release of forensic reports under MCR 6.202(B). Revision of the Michigan Court Rules is a process that often includes public comment and the cost to do so likely would depend upon the scope of the revision.

Fiscal Analyst: Joe Carrasco  
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<sup>3</sup> *People v Cain*, 238 MichApp 95.

<sup>4</sup> See *People v Mackle*, 241 MichApp 583 (2000).

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.