



STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

STEPHEN M. HOWE, DISTRICT ATTORNEY

January 26, 2021

House Judiciary Committee
Attention: Rep. Patton, Chairman
State Capitol, Room 519N-C
Topeka, Kansas 66612

Re: House Bill 2078

Dear Chairman Patton and members of the House Judiciary Committee,

Please consider this to be supplemental testimony in favor of the Kansas County and District Attorney's proposal, by means of HB2078, to repeal K.S.A. 22-3402, 'statutory speedy trial.' I write separately but echo the arguments made by District Attorney Marc Bennett, KCDA President Brandon Jones, and the Association.

Our criminal justice system is faced with a crisis of backlogged cases due to an international pandemic. We must move forward in an efficient and fair manner to make sure that all participants—victims, witnesses and defendants—are offered the opportunity for justice. With that in mind, please consider the following:

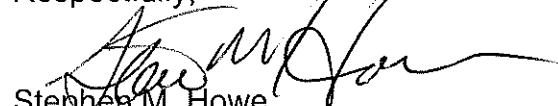
- I. A speedy, public trial is guaranteed by both the Sixth Amendment to the U.S. Constitution and Section 10 of the Kansas Bill of Rights. There is extensive case law to guide courts in applying these protections. The protections are flexible enough to take into consideration such things as snowstorms and pandemics when considering the definition of the word "speedy." There is no need to further define the term by associating it with an arbitrary number. A criminal defendant is well-protected against a nefarious prosecutor seeking to delay the defendant's day in court by the powerful constitutions of our State and our Nation.
- II. K.S.A. 22-3402 is a cumbersome and poorly-worded statute that has never served the purpose for which it was designed. Passed into law in 1970, it sought to codify the rights already protected by the Kansas and U.S. Constitution. It quickly degenerated into a

numbers game. As early as 1974, the Kansas Supreme Court was calculating days: "The issue is whether as many as 13 of those days are chargeable to the defendant..." See *State v. Powell*, 215 Kan. 624 (1974). Under this statute it is not simply a matter of bringing the defendant to trial in "X" number of days. A defendant could continue his case multiple times, beyond "X" days and still have his case dismissed because the *total* number of days "attributable" to the State is greater than X. It is not about bringing the defendant to trial in X days, it is a numbers game of 3 days here, 10 days here and a guess by the Judge as to who gets what. Last summer, the Court of Appeals dismissed a murder case because the judge miscalculated speedy trial by *three days*. See *State v. Queen*, 456 P. 3d 1158 (2020) In none of these cases is the issue of whether the defendant is placed at some disadvantage by the delay discussed; it is simply a matter of math. Delays caused by the court's calendar are charged to the State when calculating speedy trial, even though the State has no control over the court's calendar. The State could ask for and receive a single one week continuance during a case and still have its case dismissed on speedy trial grounds.

- III. The pandemic has caused such a backlog of criminal cases that it will be impossible to try them all within the existing statutory speedy trial scheme. Johnson County has hundreds of cases awaiting trial and will need to summon thousands of potential jurors in order to try them. Our Courthouse has been closed to in-person hearings since March 2020 and we have conducted zero jury trials.
- IV. K.S.A. 22-3402 has never had a mechanism for dealing with snowstorms, power outages, illness or any other life circumstances. It is a mindless math problem. We cannot operate under an emergency order forever. Repealing this statute will allow us to try all of our cases in an efficient manner without the possibility of a math error resulting in a miscarriage of justice.

I urge this body to approve and pass HB2078.

Respectfully,



Stephen M. Howe
Johnson County District Attorney