

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2078

As Amended by Senate Committee on Judiciary

Brief*

HB 2078, as amended, would suspend the provisions of the speedy trial statute in the Kansas Code of Criminal Procedure until May 1, 2023, in all criminal cases and would remove a provision in the statute authorizing the Chief Justice to issue an order to extend or suspend any deadlines or time limitations and requiring trials to be scheduled within 150 days of termination of such order.

Additionally, the bill would add a provision requiring trial courts to consider relevant factors when prioritizing cases for trial, including, but not limited to:

- The trial court's calendar;
- Relative prejudice to the defendant;
- The defendant's assertion of the right to speedy trial;
- The calendar of trial counsel;
- Availability of witnesses; and
- The relative safety of the proceedings to participants as a result of the response to the COVID-19 public health emergency in the judicial district.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would require the Office of Judicial Administration to prepare and submit a report to the Senate Committee on Judiciary and the House Committee on Judiciary on or before January 17, 2022, and January 16, 2023, containing the following information disaggregated by judicial district:

- Number of pending criminal cases on January 1, 2022, and January 1, 2023, respectively;
- Number of criminal cases resolved during FY 2021 and FY 2022, respectively, and the method of disposition in each case;
- Number of jury trials conducted in criminal cases during FY 2021 and FY 2022, respectively; and
- Number of new criminal cases filed in FY 2021 and FY 2022, respectively.

The bill would state the amendments made by the bill are procedural in nature and shall be construed and applied retroactively.

The bill would be in effect upon publication in the *Kansas Register*.

Background

On March 19, 2020, the Governor signed 2020 House Sub. for SB 102 into law. Among other provisions, House Sub. for SB 102 amended the speedy trial statute to authorize the Chief Justice to issue an order to extend or suspend any deadlines or time limitations in the statute pursuant to other provisions of House Sub. for SB 102 and required, upon termination of such order, any trial scheduled during the time such order was in effect to be placed back on the court schedule within 150 days.

HB 2078 was introduced by the House Committee on Judiciary at the request of Representative Patton on behalf of the Kansas County and District Attorneys Association (KCDAA). As introduced, the bill did not contain the factors for prioritization and also would have made the statutory speedy trial provisions inapplicable to any criminal cases filed on or after the effective date of the bill.

House Committee on Judiciary

In the House Committee hearing on January 26, 2021, the Sedgwick County District Attorney and representatives of the KCDAA and the Kansas Sheriffs Association testified as **proponents** of the bill, stating the statutory speedy trial protections addressed by the bill are separate from constitutional speedy trial protections, and the time limits under the speedy trial statute could result in the dismissal of numerous criminal cases due to the jury trial backlog created by the COVID-19 pandemic. The Johnson County District Attorney and representatives of the Johnson County Sheriffs Office and the Office of the Attorney General provided written-only **proponent** testimony.

Representatives of ACLU of Kansas and the Kansas Association of Criminal Defense Lawyers (KACDL) testified as **opponents** of the bill, stating the statutory speedy trial right should not be eliminated and there are alternative ways to address the delays caused by the pandemic. A private citizen provided written-only **opponent** testimony.

No other testimony was provided.

On February 18, 2021, the House Committee adopted an agreed amendment proposed by the KACDL and KCDAA, removing the provision that would make the speedy trial provisions inapplicable to cases filed on or after the effective date of the bill and adding the list of factors to be considered in prioritizing cases for trial. [*Note*: The amendment retained the provision from the bill, as introduced, that would suspend

the provisions of the statute until May 1, 2024. This date was subsequently modified by the Senate Committee.]

Senate Committee on Judiciary

In the Senate Committee hearing on March 11, 2021, the Sedgwick County District Attorney, Johnson County District Attorney, and representatives of the KACDL and Kansas Sheriffs Association testified as **proponents** of the bill. Representatives of the Johnson County Sheriff's Office and the Office of the Attorney General provided written-only **proponent** testimony. No other testimony was provided.

On March 11 and 15, 2021, the Senate Committee amended the bill to change the ending date for the suspension of the statute's provisions to May 1, 2023, and to require reports in January 2022 and January 2023 regarding numbers of criminal cases and jury trials.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Office of Judicial Administration states there would be a negligible fiscal effect on Judicial Branch operations resulting from enactment of the bill.

The Office of the Attorney General states arguments could be raised regarding constitutional speedy trial violations because of case delays during the COVID-19 pandemic. The agency estimates these issues would be raised in appeals, regardless of whether the statutory provision is suspended, and the appeals could be handled within existing resources.

The Kansas Association of Counties indicates enactment of the bill could have a fiscal effect on Kansas counties if the counties are forced to hold defendants in the county jail while awaiting trial.

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Statutory speedy trial; suspension; prioritization of cases for trial; criminal case reporting