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**Testimony Regarding HB 2078
Submitted by Marc Bennett, District Attorney
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Chairman Patton and members of the House Judiciary Committee, thank you for the opportunity to address HB 2078, regarding K.S.A. 22-3402, statutory speedy trial.

In March of 2020, when the scope of the COVID pandemic and its potential impact on Kansas began to take shape, the Kansas legislature passed House Substitute for Senate Bill 102, giving the Chief Justice of the Kansas Supreme Court the authority to suspend deadlines within the justice system including, among others, statutory speedy trial set forth in K.S.A. 22-3402.

On March 18, 2020, Chief Justice Luckert issued Administrative Order 202-PR-016 suspending jury trials and statutory speedy trial and instituting several protective steps to ensure the safety of court personnel and litigants. Since that time, only a few jurisdictions in Kansas have held jury trials, due to social-distancing and cleaning protocols in place across the state.

In September of 2020, two Sedgwick County courtrooms were outfitted with plexiglass, which were then approved by the county health director and the Kansas Supreme Court to begin holding up to two jury trials weekly--down from up to five weekly trials prior to the pandemic. Since November 30, 2020, Sedgwick has resolved 120 cases off the jury trial calendar.

In 2020, Sedgwick County filed 2400 felony cases and had tried 26 jury trials prior to the shutdown. By way of comparison, in 2019 Sedgwick County filed 3,714 adult criminal cases and resolved 2,265 cases (based on journal entries of sentence). There were 16,017 separate settings for preliminary hearings and 80 cases tried to a jury in 2019 as well.

Constitutional Speedy Trial: The 6th Amendment of the United States Constitution and §10 of the Kansas Constitution guarantee an accused the right to a speedy trial. While no bright line rule exists as to how many days may pass before a violation of Constitutional speedy trial is found, at some point an extended delay may be "presumptively prejudicial." If so, the courts must then engage in the "sensitive balancing process" weighing the 4 "nonexclusive" factors set forth in

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Barker v. Wingo, 407 U.S. 514 (1972): (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his or her right, and (4) prejudice to the defendant. For example, in *State v. Owens*, 310 Kan. 865 (2019), a 19 month delay was determined to be "presumptively prejudicial," but when the *Wingo* factors were then considered, the Kansas Supreme Court concluded the delay did not violate the Constitution and the case was not dismissed.

The *Wingo* Court added that the complexity of the case is an important factor in Constitutional analysis: "the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." *Barker v. Wingo*, 407 U.S. at 531.

Statutory Speedy Trial: In Kansas, K.S.A. 22-3402 affords the further protection of "statutory speedy trial." With certain exceptions, a person held in custody solely on the case in question who is not brought to trial within 150 days will have their case dismissed with prejudice. Out-of-custody defendants must be brought to trial within 180 days or, again, have their case dismissed with prejudice.

The statute is unforgiving. A judge's illness is not a viable exception (*State v. Vaughn*, 288 Kan. 140 [2009]); nor is defense counsel's agreement to set the trial after statutory speedy trial had run (*State v. Adams*, 283 Kan. 365 [2007]); nor is a miscalculation by the court of speedy trial time (*State v. Queen*, [2019])(wherein a Douglas County homicide conviction was reversed in 2019, because the trial court miscalculated speedy trial by three days).

I was unable to determine exactly how many states have speedy trial statutes, but not all do. The CJS §820 observes, "a number of states have enacted statutes or rules which pertain to an accused's speedy trial rights," noting that while some are mandatory, others are not. Likewise, the remedy is not uniform across the states. In Wisconsin, for instance, the remedy for a violation of that state's speedy trial statute is release from custody, not dismissal of the case.

Stats: In conferring with other prosecutors around the state, there are thousands of cases awaiting trial currently in Kansas. Because not all cases are in the same posture, I asked for numbers related only to cases that have been arraigned and were ready for jury trial as of January 21, 2021.

Butler County - 86	McPherson County - 45
Dickinson County - 12	Pottawatomie County - 11
Finney County - 35	Reno County - 121
Franklin County - 35	Riley County - 92
Geary - 95	Sedgwick - 468
Johnson County - 400-500	Shawnee County - 647
Lyon County - 62	Sumner County - 18
Leavenworth County - 163	

In addition to the numbers set forth above, many counties have hundreds more cases that have been filed but not yet arraigned (Reno: 200+; Lyon: 90-100; Sedgwick 1,896), as well as stacks of cases ready to file with no space in the system to file the case (ex: Finney: 350; Butler 100+).

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Many counties have a single judge to handle all their cases, while also attending to the other business of the court, from traffic dockets, to divorce proceedings to civil matters, further limiting the number of days each week the judge can handle criminal cases.

The raw numbers above do not tell the whole story. The severity of the crimes impacts not only the number of jurors necessary to handle the backlog, but also who is qualified to handle the backlog. Not every defense attorney handles murder cases or child sex cases. How many such trials can an attorney be expected to competently handle in one year?

In Sedgwick County, we have 138 pending off grid and severity level 1, 2 or 3 cases that have been arraigned and are simply awaiting jury trial. That means not less than 39 qualified jurors are necessary for each trial if we seat just 1 alternate juror: a total of **5,382** jurors. We have a total of 211 defendants awaiting trial on off grid to severity level 5 cases. Meanwhile, in Wichita, crime does not stop. We had a record 59 homicides in 2020. There are 113 defendants sitting in jail currently here awaiting trial on some level of homicide.

Proposal: The proposed language at §(j) would stay statutory speedy trial until May 1, 2024 for all cases already on file at the time of the passage of this legislation. Until the vaccine is widely available, social distancing rules are lifted and courts can bring personnel, litigants and jurors back into the courtrooms of this state at pre-covid levels, working down the back log while attending to the new business coming in the door is going to take significant time.

Additionally, the proposed language at §(k) would repeal speedy trial for all new criminal cases filed *after* the effective date of the bill. Under the current system, if the trial court's first available date on the court's trial calendar is 120 days after arraignment, that 120 days counts against the prosecution. If we have one witness not show up, get sick, be away on training, et cetera, we then have 30 days to get that case squeezed back into the court's calendar or risk dismissal with prejudice. The KCDA has no interest in delaying prosecution. But when these situations come up, we ask whether dismissal with prejudice is an equitable public policy?

Finally, there is some urgency to this matter. House Substitute for SB 102 made clear that the provisions of that bill will expire on March 31, 2021. Without further legislative action, the courts of this state will have 150 to 180 days to try these case or face dismissal of hundreds if not thousands of cases with prejudice.

Thank you for your time and attention.

Sincerely,



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