



STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

STEPHEN M. HOWE, DISTRICT ATTORNEY

February 8, 2023

House Judiciary Committee
Attention: Chairman Patton
State Capitol, Room 166W
Topeka, Kansas 66612

Re: House Bill 2121

Dear Chairman Patton and members of the House Judiciary Committee,

Two years ago, I stood before you asking that you enact an amendment to K.S.A. 22-2402, which stayed the statutory timeline granting a person a speedy trial. This was in response to the pandemic shutdowns of the Criminal Justice system. Granting our request was essential to the public safety sector of the executive branch. I am here asking for further assistance.

I am asking you to extend the stay of statutory speedy trial clock for another year. I am also asking that you amend the current statute so it is consistent with the ruling of the U.S. Supreme Court.

First, I will provide a reminder on how we got to this point. Second, I will explain our efforts and the impediments, which impacted our ability to meet our goals of eliminating the backlog of criminal cases within the last two years. Finally, I will discuss why the additional amendments are needed so Kansas can conform to established law.

Background

The constitutional right to a speedy trial is guaranteed by both the Sixth Amendment to the U.S. Constitution and Section 10 of the Kansas Bill of Rights. Prosecutors, as administrators of justice, have a duty to ensure that cases are brought to trial in a timely manner. Kansas has provided additional safeguards through the enactment of K.S.A. 22-2402. While constitutional protections have the flexibility to evaluate all facts, in determining if an individual's sixth amendment rights were protected, K.S.A. 22-2402 is inflexible in considering all facts and just looks at raw number of days. It was unable to consider the impact of a national pandemic and the subsequent shutdowns of the courts. Without the passing of a bill by this legislative body two years ago, offenders would have escaped justice through a simple calculation of days. Thus, an unforeseen crisis that was at no fault of any of

the parties, would have subverted the true meaning of the Federal and State law. We asked the legislature for a three year stay of the statutory speedy trial law. At that time, we were told if additional time was needed, we should come back armed with data and an explanation of what efforts were taken to eliminate the backlog.

We have no interest in delaying justice. Frankly, delays do not help prosecutors, but instead hinder us in presenting our cases. Prosecutors and the judiciary across this State have been working very hard over the last two years to bring about justice for all. However, the backlog still exists. This is not just a problem in Johnson County, or the State of Kansas. It is a problem that exists throughout the country. It is a problem that is occurring in both rural and urban areas. Why hasn't the backlog been eliminated? I will provide you the factors that have slowed this process.

What we have accomplished

In Johnson County, we have ten courts assigned to handle criminal cases. My office files over 6,000 criminal cases a year. While we were able to resolve cases during the pandemic, it was not at the pace we were accustomed to. Many court hearings require that the defendant and victims and witnesses be physically present, not virtually, to protect an individual's constitutional rights (right to confrontation under the 6th amendment). That includes all substantive hearings, including a right to jury trial. Because of pandemic shutdowns, we were unable to conduct in-person hearings for 15 months. I would note that after you passed the amendment to stay the speedy trial clock, we had several subsequent shutdowns that impacted our ability to have these necessary hearings. This caused a backlog of cases. By early 2022, Johnson County had gone from the normal 3,500 active cases in the system at any one time, to over 5,500. This backlog of over 2,000 cases was and still is a priority of my office and the Johnson County Courts. By the end of 2022 we decreased the backlog to 1,300 cases. In 2022, 429 cases were set for jury trial, with 269 being resolved by some disposition. Additionally, the number of cases set for jury trial at any one time, which prior to the pandemic averaged around 90 cases, has ballooned to 260 cases. The extra year will allow us to complete our work on eroding the backlog. This scenario is echoed throughout the State.

Factors that impact the elimination of the backlog

There are limits on how fast cases can be processed through our criminal justice system. Every single criminal court cannot conduct a jury trial every single week, whether in a large, medium, or small jurisdiction. The following factors prevent this.

- Holidays are mixed in throughout the year.
- Some jury trials take a week or more to complete.
- Even the large courthouses can only handle so many jurors in the building at one time.
- While Judges hear jury trials, they must also handle all other required hearings. Our office handles over 350 hearings a day, including, pleas, sentencings, revocations of probation hearings, trials to the court, motion hearings, preliminary hearings, and a variety of other types of hearings.
- The 350 hearings do not include first appearances hearings every day and the 11,000 traffic cases handled per year, involuntary commitments hearings and expungement hearings.
- Because of the volume of other hearings, the courts are required to rotate the weeks they schedule jury trials. This takes place throughout the State.

Another factor that has occurred statewide and has slowed our ability to eliminate the backlog, is the lack of competent criminal defense attorneys. Prosecutors and District Courts across this state have experienced this problem. In western Kansas Judges are pulling defense attorneys from several counties over to handle important criminal cases. This has been compounded by repeated shutdowns of our Public Defender Offices across this State. This has happened because of their heavy caseloads. This has resulted in these offices refusing to accept additional cases that come before the court. This leaves Judges to overload the remaining criminal defense attorneys in their communities.

A shortage of defense attorneys has slowed down our ability to process cases. Because of the time needed for them to adequately prepare for hearings and trials, there are limits on how many cases an attorney can competently handle and still adequately protect the rights of their clients. In my jurisdiction 85 % of the continuances of jury trials were requested by the defendant/defense counsel. The court in many instances must grant the defense continuances if the attorney indicates they are not prepared for trial. To do otherwise would most certainly result in the conviction being overturned for ineffective assistance of counsel. This not the fault of defense attorneys, it is just reality that there are too few attorneys to handle these cases. This is not an isolated problem but one experience throughout the State, whether your county's population is small, medium, or large.

There is also a shortage of prosecutors across this State. Many prosecutors currently have caseloads at double the numbers they had prior to the pandemic and are handling this backlog with a reduced number of staff.

As you can see, the criminal justice system is still stressed by the lack of attorneys and resources to process this pandemic backlog within the last two years. Despite our staffing shortages, Judicial and Public Defender shutdowns, prosecutors have continued to reduce the backlogs across this State and provide justice to the people of Kansas.

The stay of the statutory speedy trial has been critical in allowing us to achieve justice for victims, the community, and defendants. Failure to extend the statutory stay will jeopardize our ability to provide justice. Those who commit crimes would potentially avoid justice which not only impacts the victims but the community in general.

These are the reasons why an extension of the stay on the statutory speedy trial clock is warranted. I am asking you to either extend the stay till the end of 2023 or till May of 2024.

Modifying the existing statute

As discussed above, the current statute is inflexible in its ability to apply all relevant facts in protecting a person's sixth amendment rights. This includes situations like a pandemic, fires, blizzards, tornados, other natural disasters and a simple illness by an attorney or Judge. The proposed changes to K.S.A. 22-2402 takes away no constitutional or statutory rights. These changes again provide language that is consistent with the rulings by the U.S. Supreme Court. If a defendant truly wants a speedy trial under these changes, then it will happen. There is nothing in this bill which would prevent this. The amendments proposed add flexibility to the State statute and therein permits all relevant facts to be considered by the Court. These changes will allow for a fairer application of the law. They

will also move our statute forward to be consistent with existing state and federal court decisions on sixth amendment rights.

Conclusion

This request has nothing to do with politics. It's not a democratic or republican issue. It is an issue impacting all Kansans. The passage of HB 2121 is needed to afford justice to victims, the accused, and the community. Without its passage many victims will not receive justice and there is a potential for dangerous criminals not being held accountable. These modifications to the existing statute will bring Kansas forward so it can be consistent with United States Constitution and sixth amendment decisions by the U.S. Supreme Court. While still protecting citizens sixth amendment rights. I urge you do the right thing for all Kansans and pass this bill.

Respectfully,

A handwritten signature in black ink, appearing to read "Steve Howe", written in a cursive style.

Stephen M. Howe
Johnson County District Attorney