



House Judiciary Committee

February 7, 2023

Testimony Regarding HB 2121

**Submitted on behalf of the Kansas Association of Criminal Defense
Lawyers by Keith Edwards, Legislative Chair.**

Chairman Patton and Members of the Committee,

HB 2121 as proposed does not increase the efficiency or fairness of the judicial process. Statutory speedy trial is a protection against unnecessary delay. That protection was suspended due to the COVID-19 pandemic, which caused a necessary delay. This legislation does not seek to restore the court system to its pre-pandemic state, rather, it would provide courts and prosecutors with the tools needed to delay proceedings for convenience instead of necessity. Instead of voting for HB 2121 to become law this committee should instead merely extend the current statutory speedy trial suspension through May 1, 2024.

The changes contained between Page 2, lines 31 through Page 3, line 1 allow for unlimited continuances premised on factors having nothing to do with the impact of the COVID-19 pandemic. The law as it stands without the proposed amendment already contains provisions for addressing issues with the trial court's availability, the prejudice of a delay, trial counsel's availability, the needs of recently appointed counsel to prepare for trial, and the availability of witnesses. The changes contained in HB 2121 would only serve to weaken those protections.

The current law allows the court to extend the speedy trial deadline by 30 days if needed due to other cases scheduled for trial. The proposed legislation allows for unlimited 90 day continuances based solely on the "trial court's availability" with no requirement that their unavailability be based on other pending matters.

The current law allows for prosecutors to obtain a continuance due to issues procuring material evidence, with the option for additional continuances upon a

good cause showing. In nearly all cases, this continuance is related to the availability of witnesses. The proposed legislation requires no good cause showing to obtain continuances nor does it limit the number of continuances requested on the basis of “witness availability.”

The current law addresses delays and their prejudice to the defendant in subsection (g). That same subsection has governed continuances by recently appointed counsel, as well as recently retained counsel, though HB 2121 does not contemplate such an event.

Presumably, the proposed change on Page 2, line 41, permitting continuances based on the availability of trial counsel, is meant to allow for continuances based on the unavailability of a prosecutor. There is a long period of time between an arraignment and a trial setting that should not make this change necessary. Prosecutors are agents of the State, they have the full power of the government to push their cases forward. There is sufficient time under the current law for them to adjust their calendars, to find someone else in their office, to bring in a prosecutor from another jurisdiction, or even to hire a defense attorney to take their place.

The COVID-19 pandemic caused delays in the court system, those delays are still noticeable, but those delays do not provide sufficient grounds to permanently weaken our State’s speedy trial right. HB 2121 would allow for arbitrary and unlimited continuances. It would hinder efforts to resolve cases. It should not be made into law. The correct course of action is to extend the current speedy trial suspension through May 1, 2024, then reevaluate whether further changes are needed once we are further out of the pandemic’s shadow.

Sincerely,



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