



Kansas County & District Attorneys Association

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**Testimony Regarding SB 305
Submitted by Marc Bennett, Deputy District Attorney
On Behalf of Nola Tedesco Foulston, District Attorney
Eighteenth Judicial District
And the Kansas County and District Attorneys Association**

Honorable Chairman Owens and Members of the Senate Judiciary Committee:

Thank you for the opportunity to bring to your attention issues related to Senate Bill 305 on behalf of the Kansas County and District Attorneys Association.

Pursuant to the Sixth Amendment to the United States' Constitution, a defendant in a criminal case has a right to a "speedy and public trial." In addition to the constitutional right to a speedy trial, the same defendant holds a statutory right to speedy trial under K.S.A. 22-3402: 90 days if the defendant is in custody or one 180 days if the defendant is out of custody—with the exception of continuances of trial requested by the defendant.

The proposed addition of "or defendant's attorney" at new §(a) and §(b) is intended to clarify that defense counsel has explicit authority to seek a continuance – further clarified at §(g), see discussion below. The change would clarify that a defendant cannot demand a trial, for instance, at a time when his counsel is tied up in another trial, or otherwise unavailable, and then claim a violation of speedy trial.

The proposed language at new §(c) is an attempt to formalize the analysis in State v. Lawrence, 38 Kan.App.2d 473 (2007) wherein the court stated: "Logically, then, the term 'original trial deadline,' in subsection (3)[now §(c)], should mean the trial deadline date existing at the time the trial court considers the defendant's continuance request. In other words, the trial court, in granting a particular defense continuance, must reschedule the trial within 90 days of the then existing trial deadline date to comply with the mandates of subsection (3)."

The additional language at §(e)(2) is designed to clarify the application of speedy trial limitations to delays necessitated to determinations of competency. See also, State v. Davis, 277 Kan. 309 (2004).

The addition of §(g), especially the 2nd sentence, is designed to prevent the punitive reversals that occur when a defendant is permitted to argue—after the

fact—as to the propriety of a previous continuance that was granted by the court and detrimentally relied upon by the State. In these situations—though rare—when the speedy trial time has run, the case would be dismissed despite the state’s good-faith reliance on the previous categorization.

Finally, the new language at §(h) is intended to prevent the punitive reversals that occur when a defendant is permitted to argue that the time it takes a judge to rule on a motion or for a court to resolve a matter raised on its own motion should count against the state. See State v. Vaughn, 288 Kan. 140 (2009).

Note that none of the proposed changes will prevent a defendant from seeking relief under constitutional speedy trial. Under Barker v. Wingo, 407 U.S. 514 (1972), a defendant can always argue that based on (1) the length of the delay, (2) the reasons for the delay; (3) defendant’s assertion of his right to a speedy trial; and (4) the actual prejudice to the defendant, that his constitutional right to a speedy trial has been violated.

Thank you for your time, attention and consideration in this matter.

Respectfully submitted,

Marc Bennett
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