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**Testimony in Support of House Bill 2479
Providing for Automatic Stays in a Prosecution's Appeal from Habeas Relief**

**Presented to the Senate Judiciary Committee
By Assistant Solicitor General Natalie Chalmers**

March 7, 2018

Chairman Wilborn and Members of the Committee:

Thank you for the opportunity to testify on behalf of Attorney General Derek Schmidt in support of House Bill 2479. This bill balances the right of the State to appeal adverse decisions reversing criminal convictions or sentences and the right of criminal defendants to be able to seek release during the State's appeal.

In some recent cases, the State has had difficulties obtaining stays necessary to permit the State to pursue an appeal of district court decisions reversing a defendant's conviction. While the State has the statutory authority to appeal district court decisions erroneously finding a defendant received ineffective assistance of counsel in a K.S.A. 60-1507 proceeding, a stay is crucial to the State's ability to proceed with an appeal rather than having to immediately retry the defendant. The inability to get a stay effectively forces the State to forfeit its right to appeal an adverse decision because of the defendant's statutory right to a speedy trial.

Rather than being repeatedly forced to attempt to get a stay that is crucial for the State's appeal to proceed, and risk a forfeiture of the right to appeal if no stay is granted, this bill provides for an automatic stay of the underlying criminal case while the prosecution's appeal proceeds.

It also provides criminal defendants crucial protections. First, it permits criminal defendants to seek release on bond while the State's appeal proceeds. Under current statutory language, it is questionable whether defendants have such a right because the right to seek bond is conditioned on the *defendant* filing a notice of appeal.¹

Further, if the criminal defendant can prove through an appellate motion that the defendant has made a strong showing that he or she is entitled to relief and that a stay would cause irreparable

¹ K.S.A. 22-2804.

harm, then the appellate court can lift the stay. At this point, the defendant would be entitled to a new bond hearing, and the underlying criminal case could proceed despite the State's pending appeal. However, the protection of the defendant's statutory right to a speedy trial would not apply, so it is at least theoretically possible that the State could complete its appeal prior to the commencement of the defendant's new trial.

Because the State should not be forced to retry criminal cases when there was no actual error during the original trial, stays of the underlying criminal case are warranted when the State exercises its statutory right to appeal the reversal of a conviction or sentence in a K.S.A. 60-1507 proceeding. This bill seeks to balance the State's right to appeal erroneous decisions while still providing defendants necessary protections in the interest of justice.

The Office of the Attorney General encourages adopting the proposed bill for the above reasons. Thank you for your time.