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March 9, 2021

**Testimony Regarding HB 2078
Submitted by Marc Bennett, District Attorney
Eighteenth Judicial District**

Chairwoman Warren and members of the Senate Judiciary Committee, thank you for the opportunity to address HB 2078 as amended by the House Judiciary Committee and passed by the Kansas House of Representatives, regarding K.S.A. 22-3402, statutory speedy trial.

Under the authority granted by House Substitute for SB 102 during the shortened 2020 legislative session, Chief Justice Luckert of the Kansas Supreme Court issued Administrative Order 202-PR-016 on March 18, 2020 suspending jury trials and statutory speedy trial and instituting several protective steps to ensure the safety of court personnel and litigants during the covid pandemic. Since that time, Judges, court staff and attorneys have worked diligently within these limitations utilizing both in-person hearings and, where appropriate, video platforms. For example, in calendar year 2020 Sedgwick County conducted 15,586 separate hearings and resolved 1,903 cases by plea.

But the right to Confrontation set forth in both the 6th Amendment of the U.S. Constitution and in the Kansas Constitution Bill of Rights, § 10(which specifically provides a criminal defendant the right "*to meet the witnesses face to face*") require that jury trials be conducted in open court with all participants physically present. Given covid restrictions, we have been unable to provide jury trials across the state at pre-covid levels.

HB 2078 and its mirror effort, SB 57, were submitted early in the 2021 session to put this issue to the legislature before the expiration date of House Substitute for SB 102, currently scheduled to sunset on March 31, 2021. Though the conferees generally agreed that K.S.A. 22-3402 needed to be amended to address the pandemic, we differed on the details. Chairwoman Warren specifically asked the parties to work toward an acceptable compromise. HB 2028, as amended by the House Judiciary Committee and subsequently passed by the full House, is the product of the compromise arrived at between the Kansas Association of Criminal Defense Lawyers and the Kansas County and District Attorneys Association.

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The amendment to HB 2078 strikes §(k), which had sought to repeal K.S.A. 22-3402 for cases filed after the passage of the bill. At §(j), the amendment removes the issue from the political specter by untying speedy trial from the Governor's emergency declaration, while utilizing language drawn from long-established United State Supreme Court case law to ensure Kansas trial courts have uniform guidance as to the prioritization of cases being set back on jury trial calendars:

~~(j) The chief justice of the Kansas supreme court may issue an order to extend or suspend any deadlines or time limitations established in this section pursuant to K.S.A. 2020 Supp. 20-172, and amendments thereto. When an order issued pursuant to K.S.A. 2020 Supp. 20-172, and amendments thereto, is terminated, any trial scheduled to occur during the time such order was in effect shall be placed back on the court schedule within 150 days. The provisions of this section shall be suspended until May 1, 2024, in all criminal cases filed prior to the effective date of this act. When prioritizing cases for trial, trial courts shall consider relevant factors, including but not limited to:~~

- ~~(1) the trial court's calendar;~~
- ~~(2) the relative prejudice to the defendant;~~
- ~~(3) the defendant's assertion of the right to speedy trial;~~
- ~~(4) the calendar of trial counsel;~~
- ~~(5) the availability of witnesses; and~~
- ~~(6) the relative safety of the proceedings to participants as a result of the covid response of the judicial district.~~

Final points:

1. **Factors:** The six factors for prioritization were drawn from both the unique realities of the current pandemic (ex: factor #6) as well as language from the "nonexclusive" factors set forth in *Barker v. Wingo*, 407 U.S. 514 (1972) (see lengthy discussion in my written testimony in support of SB57, the Senate's original speedy trial bill this session).

2. **Effective Date:** The words "*filed prior to the effective date of this act*" were struck and replaced by "in all criminal cases." Without this change, all criminal cases filed after the bill's passage would still be subject to the 150 or 180 day speedy trial clock. The effect of such an oversight would have been that newly filed cases would have to be given priority over older cases to ensure the 150 or 180 day statutory speedy trial clock was protected on the new cases.

3. **Constitutional Speedy Trial:** As was discussed at length during the testimony on SB 57 (the Senate's earlier speedy trial bill), "Constitutional" Speedy trial is guaranteed by the 6th Amendment of the United States Constitution and §10 of the Kansas Constitution. HB 2078 cannot change in any way the protection afforded by either the state or federal Constitution. Any lingering concern that HB 2078 constitutes an infringement on Constitutional rights is unequivocally incorrect. HB 2078 simply places a stay on a clock created by Kansas law.

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4. **Two vs three year stay:** During testimony in both the House and Senate, the issue was raised as to the need for a three year vs a two year stay of speedy trial. The proponents argued initially that given on-going uncertainty as to when public gatherings would be fully open, the uncertainty as to whether the necessary number of jurors would respond *en masse* to jury summons and the practical limitations as to how many trials a finite number of lawyers, forensic experts, court reporters and judges could realistically try in the course of one, two or three years--staying statutory speedy trial until May of 2024 was a practical necessity. The compromise arrived at by the KACDL and the KCDAAs kept the three year stay intact, which the House then passed. Given the relatively short timeline to get the matter to the Governor for signature (March 31, 2021), we ask that the Senate adopt HB 2078 as currently written rather than amending the bill which would then necessitate further delay by sending the matter to conference committee.

Finally, the KACDL and the KCDAAs have further agreed to sit down at the conclusion of the session to work toward a long term update to the speedy trial statute that could be submitted to the Kansas legislature during an upcoming session.

Thank you to Senator Warren and the members of the Judiciary Committee for giving our associations the time to work out the compromise now contained in HB 2078. Thank you to Jessica Glendening and the KACDL for their willingness to work with the KCDAAs on this compromise.

Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Bennett". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Marc Bennett
District Attorney

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