



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT  
ATTORNEY GENERAL

MEMORIAL HALL  
120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
[WWW.AG.KS.GOV](http://WWW.AG.KS.GOV)

**Testimony in Support of Senate Bill 57  
Amending the Speedy Trial Statute**

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

**February 4, 2021**

Chair Warren and Members of the Committee:

Thank you for the opportunity to provide written testimony in support of HB 2078 on behalf of Attorney General Derek Schmidt.

KCDAA, along with a number of district and county attorneys, have made it clear that COVID-19's impact on their ability to try cases in conjunction with the statutory speedy trial time limitations threaten to endanger numerous criminal convictions. This bill is one way to limit that danger and to avoid further situations that endanger convictions for things far outside of the control of the State.

To be clear, defendants have constitutional protections that protect their right to a speedy trial regardless of the existence of any statutory right. Admittedly, as currently written, the statute provides defendants greater protection than the constitutional right. This is most evident by the fact that defendants need not show any kind of prejudice prior to their charges being dismissed. In contrast, under the federal constitutional speedy trial right, whether the defendant is prejudiced by the delay is an important factor in determining whether a speedy trial violation occurs. *Barker v. Wingo*, 407 U.S. 514, 532 (1972). Further, federal caselaw recognizes “the reality that defendants may have incentives to employ delay as a ‘defense tactic’: delay may ‘work to the accused’s advantage’ because ‘witnesses may become unavailable or their memories may fade’ over time.” *Vermont v. Brillon*, 556 U.S. 81, 90 (2009). Thus, without revision, the benefits bestowed by statute on criminal defendants can act as a technical “get-out-of-jail” pass that risk endangering the safety of the public. In light of COVID-19, that risk should no longer be tolerated.

However, if the Legislature believes a repeal is not the best course of action, the Legislature should consider amendments covering the following to better ensure defendants are not entitled to dismissals on technicalities:

- Prejudice to the defendant from the delay should be required before dismissal is the remedy.
- The district court should be given more discretion to extend time for the “crowded docket” exception to include weather issues, issues regarding protecting the health of jurors, and the illness of the judge or counsel.
- The 30-day time limitation and limitation to one use for the “crowded docket” exception should be expanded in light of COVID-19’s backlog of cases.
- Require the defendant to invoke his or her statutory right to speedy trial before the time limitations apply.
- Require defense counsel to affirmatively object to a setting or continuance to preserve an argument that the speedy trial statute was violated.

For the above reasons, the Office of the Attorney General supports this Committee adopting this bill. Thank you for your time.