Senate Committee on Judiciary – Senate Bill 57
February 4, 2021

Kansas Appleseed Center for Law and Justice
Opponent

Dear Chairwoman Warren and Members of the Committee:

SB 57 would suspend K.S.A. 2020 Supp. 22-3402, the speedy trial statute, for all those presently charged with crimes until May 1, 2024 and would eliminate the speedy trial statute for all cases filed after the proposed statute comes into effect. Kansas Appleseed opposes entirely the elimination of our statutory speedy trial provision, and opposes the proposed suspension of statutory speedy trial as set forth in the amendment.

Defendants Have the Right to a Speedy Trial, and the Elimination of the Statute Will Not Eliminate that Right.

Both the Sixth Amendment of the United States Constitution and Section 10 of the Kansas Constitution provide for the right to speedy trial. That right is designed to protect those charged with a crime from undue delay that could prejudice their case by the loss of defense witnesses and evidence, or result in lengthy pre-trial incarceration of those presumed innocent. Thus, the right to a speedy trial is insured by the Kansas Constitution, regardless of whether there is a statute regarding speedy trial or not. The elimination of the statute would not eliminate Kansans' constitutional right to a speedy trial.

The Repeal of the Kansas Speedy Trial Statute Would Throw the Criminal Justice System into Disarray.

At least 44 states have enacted speedy trial statutes or court rules that provide guidance for prosecutors, defense counsel, and the judiciary by setting forth presumptive

timeframes that protect the right to speedy trial and protect the prosecution from endless claims of violation of the right to a speedy trial. Hamburg, D. "*A Broken Clock: Fixing New York's Speedy Trial Statute*." Columbia Journal of Law and Social Problems at 242 (2015). http://jlsp.law.columbia.edu/wp-content/uploads/sites/8/2017/03/48-hamburg.pdf; *SPEEDY TRIAL - A Selected Bibliography and Comparative Analysis of State Speedy Trial*, Midwest Research Institute, August 1978. The Kansas statute provides a baseline of 150 days for those held in custody, or 180 days after arraignment for those not in custody, which can be extended in several circumstances. K.S.A. 2020 Supp. 22-3402. This statute provides safeguards for the prosecution, in that they know that a conviction is presumptively within the speedy trial rights of the defendant as long as the trial is commenced within 150/180 days of the indictment or initial appearance before the Court, whichever is later, or as extended as set forth in the statute. It also provides safeguards for the defendants, in that they have an expectation, and protection, that their case will be tried within a reasonable time. Both the prosecution and the defense are protected from the prospect of stale evidence and lost witnesses. This timeframe also provides guidance for the judiciary in examining any claims of violation of the right of speedy trial.

The Kansas speedy trial statute is within the bounds of other state and federal statutory systems. The federal statute on speedy trial provides for a period of only 70 days after indictment for a speedy trial. 18 U.S. § 3161(c)(1). There are many states that provide far less time than Kansas, as little as 60 days for a misdemeanor, and 100 days for a felony, for instance, or some states that require a trial within a matter of weeks when the defendant invokes the right to a speedy trial. Other states are in line with Kansas's presumptive timeframe, usually no more than 180 days. This timeframe has been

routinely found to be within the bounds that do not constitute unreasonable delay. Extension beyond a reasonable timeframe in and of itself can violate the speedy trial protections. The defendant need not identify any specific prejudice from an unreasonable delay in bringing the defendant to trial after the speedy trial right has attached. *Moore v. Arizona*, 414 U.S. 25, 26 (1973). Instead, delay that is 'uncommonly long' triggers a presumption of prejudice, with the presumption intensifying as the delay increases. *Doggett v. United States*, 505 U.S. 647, 651-652, 656-657 (.)"

Should the legislature repeal and eliminate the statutory guidance on speedy trial, the 150/180 day presumption will be gone, and there will be no certainty for prosecutors or defendants and defense counsel, and little guidance for the Courts. The repeal of the statute does not extend the presumptive time for a speedy trial; it just leaves it wholly uncertain. Defendants will be much more able to point to other statutory systems and the federal law to argue for presumptions of far less than 150 days. Rather than eliminating the backlog that exists because of the pandemic, the repeal of the statute risks extending that backlog by opening up additional challenges based on the right to a speedy trial. And, because the Kansas Constitution enshrines the right to a speedy trial, there is a significant risk that more convictions will be overturned on the basis of violation of that right. If a defendant establishes a violation of the right to a speedy trial, the Court must overturn the conviction, vacate any sentence, and dismiss all charges. *United States v. Villareal*, 613 F.3d 1344 (11th Cir. 2010). Thus, the repeal of the statute may have exactly the opposite effect than the legislation intends.

An Arbitrary Suspension and Elimination of the Statute Is Far More Likely to Draw Constitutional Scrutiny than the 2020 Amendment.

Last session in 2020 S.B. 102, the Legislature provided the Chief Justice of the Kansas Supreme Court the ability to suspend the statutory speedy trial deadlines during a state of emergency pursuant to K.S.A. 48-924. This was factually and logically based, given the unprecedented emergency of the covid-19 pandemic. It also provided an important system of checks and balances for suspending such an important right by requiring action by the Chief Justice, the Governor, and the Legislature to recognize that the emergency is continuing and the suspension of deadlines is required.

In contrast, the arbitrarily chosen date of May 1, 2020 as the date of resumption of the timeframes in the speedy trial statute has no factual basis. It may be that the pandemic is under control before that date, and resumption of trials can commence. It may be that the pandemic has not yet abated, and the better course for the protection of the health of all involved mandates an additional extension of the emergency measures. The courts are in the best position to understand their backlogs, their capacities, and the best way to address those issues, mindful both of the legal rights of all parties and the efficiency of the system of justice. A reasoned action by the Judiciary, with the concurrence of the Governor and the Legislature, is far more likely to withstand constitutional scrutiny than an arbitrary act by one branch alone.

Sincerely,

Teresa A. Woody
Litigation Director
Kansas Appleseed Center for
Law and Justice, Inc.
twoody@kansasappleseed.org
(785) 251-8160