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**Testimony in Support of House Bill 2078
Amending the Speedy Trial Statute**

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

March 11, 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 and its members 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.

However, the bill also merely postpones ongoing issues with the current speedy trial statute by merely extending the statutory time to May 1, 2024.

The Office of the Kansas Attorney General appreciates the critical need for a timely fix to the speedy trial statute due delays caused by COVID-19, and this bill accomplishes that goal. But it should also be acknowledged that this fix is merely a patch, and it should come as no surprise when future requests to amend the statute are presented to the Legislature.

Unresolved issues with the statute include:

- Not requiring prejudice to the defendant from the delay before dismissal is the remedy.
- A lack of discretion to extend the timeline due to weather issues, issues regarding protecting the health of jurors, and the illnesses of the judge, counsel, or witnesses, as well as the need to reschedule trials due to deaths in the family of judges, counsel, or witnesses.
- Not requiring the defendant to invoke his or her statutory right to speedy trial before the time limitations apply.
- Permitting defendant's counsel to agree to a trial date beyond the statutory speedy trial time and still obtain a dismissal of the case.

To be clear, defendants have constitutional protections that protect their right to a speedy trial regardless of the existence of any statutory right. Currently, Kansas's speedy trial 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). As written, 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. While this bill postpones that possibility until May 1, 2024, it does not eliminate that danger. Thus, future amendments to this bill should be considered when the need for the suspension is not as critical.

Further, as to the language agreed upon by KCDA and the Kansas Association of Defense Counsel before the House of Representatives, the Office of the Attorney General supports that language with the understanding that the consideration of the factors is not mandatory, but rather directory, and any failure to consider the factors will not result in the dismissal of charges under the statute.

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

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