



**STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL**

**KRIS W. KOBACH**  
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

**Written Testimony In Support of HB 2121  
Amending the speedy trial statute**

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

**February 8, 2023**

Chairman Patton and Members of the Committee:

The speedy trial statute acts as “a get out of jail free card.” *State v. Queen*, 313 Kan. 12, 16 (2021). One goal of this bill is to ensure cases are not dismissed when the defendant has suffered no substantial prejudice by any delay by the State.

In *Queen*, the judge made a mistake about when the speedy trial time limit ran, and the prosecutor did not catch the mistake. The trial was then set outside of the limit. The defense then waited until the time ran to raise a statutory speedy trial issue. The district court found no violation, and then defense counsel sought and obtained a continuance because they had not yet completed a full investigation of the case. The appellate courts subsequently dismissed Queen’s convictions for second degree murder, attempted second degree murder, and attempted voluntary manslaughter, finding that his statutory speedy trial right was violated since the crowded docket exception was not properly invoked.

This case, in particular, highlights a major difference between the statutory speedy trial right and a defendant’s constitutional speedy trial right. For a constitutional violation to be found, the defendant must establish prejudice. See *State v. Gutierrez-Fuentes*, 315 Kan. 341, 345 (2022). No such requirement currently exists in the statutory speedy trial right. This, then, can lead to dismissals like that in *Queen* even when there is no indication that the defendant would actually have been willing to go to trial.

Subsection (c) of the proposed bill is a direct response to the facts of *Queen*. Defense counsel and the defendant will no longer be able to stand silent and let the clock expire without an objection. Further, a dismissal of the case will not be required unless excessive delay by the State resulted in substantial prejudice to the defendant’s ability to present a defense. These changes more closely mirror the factors weighed in a constitutional speedy trial analysis.

Then subsection (e)'s changes give the court more flexibility in continuing trials when good cause requires a continuance. This alleviates problems such as a defendant asserting his or her right to a speedy trial even though defense counsel has a death in the family or is newly appointed to the case. Likewise, it permits rescheduling for health issues by the prosecutor or the judge. It also accounts for things like weather issues, such as blizzards, that prevent court from occurring. In other words, the changes are attempts to make the ability to reschedule trials be reasonable rather than nothing more than gamesmanship by the defendant. This too will help less defendants be able to use their statutory speedy trial rights as a technical get out of jail free card.

Finally, subsection (k) clearly explains how the speedy trial time limitations will be handled going forward. No time will count against the State during the time the speedy trial statute was suspended by this legislature. And the time for all defendants previously arraigned during that suspension will begin on May 1, 2023.

If, however, this Committee is interested in modifying the language, the Office of the Kansas Attorney General has two suggestions. First, the "and" in subsection (e)(4)(E) should probably be an "or." That way the court only needs to consider relevant factors, and it is possible that not all of the factors will be present in each case. This is especially true for (e)(4)(F).

Further, there have been a number of appellate briefs that question what the Legislature meant when it added the term "prosecutor misconduct" to the statute. The courts have not yet settled that issue. The term currently has a specific meaning, but prior caselaw can be read to consider almost any error by a prosecutor to amount to prosecutorial misconduct. See *State v. Sherman*, 305 Kan. 88, 107, 114-15 (2016) (discussing the change in terminology from prosecutorial misconduct to prosecutorial error). Thus, this committee may want to consider adding a subsection defining the term. One suggestion is: "As used in this section, prosecutorial misconduct is error that exceeds mere negligence and demonstrates a knowingly malicious or gross disregard for the fair trial rights of the defendant."

But even without those changes, this bill is an important step in balancing a defendant's right to a timely trial and the victims' right to justice by ending the gamesmanship that some defendants engage in even though their ability to obtain a fair trial was never at issue.

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