



**Senate Judiciary Committee  
March 16, 2023**

**House Bill 2121  
Testimony of the BIDS Legislative Committee  
Presented by Clayton J. Perkins  
Opponent**

Chairperson Warren and Members of the Committee:

Due to the Covid-19 pandemic, the statutory protections of the right to speedy trial were temporarily suspended until May 1, 2023. Substitute for HB 2121 would now extend that suspension to March 1, 2024 to resolve the backlog of cases that built up during the original extension. However, the suspension of speedy trial itself has contributed to the backlog, allowing the slower resolution of cases, and exacerbating the shortages of criminal defense counsel throughout the state. As such, the BIDS Legislative Committee and the BIDS Board believes the end of these pandemic-era suspensions of rights should occur as expeditiously as possible, and the right to a speedy trial should return to normal pre-pandemic operation.

**Why we have a right to a speedy trial.**

The Sixth Amendment of the Federal Bill of Rights and Section 10 of Kansas' Bill of Rights both guarantee an accused the right to a speedy trial. Since our earliest days of statehood, the Kansas Legislature has provided a statute for the purpose of guaranteeing and guarding those Constitutional rights.<sup>1</sup> We, like the vast majority of states<sup>2</sup>, have consistently had these statutory protections throughout Kansas' history for many reasons.

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<sup>1</sup> The statutory right was first codified at statehood and required a case be discharged if not brought to trial before the end of the second term of the district court following indictment. See Ch. 32, Sec. 199, pg 265, of the General Laws of the State of Kansas (1862). The provision was subsequently codified at Sec. 62-1432 of the Revised Statutes, before taking its present form in the 1970s at K.S.A. 22-3402. See also *In re McMicken*, 39 Kan. 406 (1888) ("Section 10, of the bill of rights in the constitution of the state declares that, in all prosecutions, the accused shall be allowed a speedy public trial. The statute is intended practically to carry out that right by prescribing a definite and uniform rule for the government of courts in their practice.").

<sup>2</sup> In preparing this testimony, the BIDS Legislative Committee identified speedy trial statutes present in 44 states.



First and foremost, is protecting our Constitutional rights that were enacted by our founders to prevent the harm of long trial delays both to the accused and to the public. The accused, of course, is in the unique position to be harmed by excessive pretrial incarceration should they be unable to make bail, or have their liberty infringed by pretrial release conditions if they do make bail. These are people who have not yet had the ability to exercise their right to a jury trial that could determine their innocence or guilt. These are people who are presumed innocent under our system of laws, who will be harmed by excessive pretrial delays our speedy trial rules have historically prevented.

Just as importantly, both the accused and the public, share many interests in maintaining the orderly and speedy processing of our court system. As time passes, evidence stales, and the memories of witnesses gets cloudy. This weakens both the prosecution's potential evidence of guilt as well as the accused's potential evidence of innocence. It weakens the reliability of our jury trials. Even further, excessive delays extend the anxiety felt by witnesses, and especially crime victims, who may have to re-live trauma at trial. The interest of crime victims in prompt results is also recognized in the Kansas bill of rights for victims of crime. Ensuring speedy trials helps prevent those harms.

The speedy trial statute has protected these interests, throughout our state's history, by setting a specific and reasonable period of time in which the prosecution has to bring the accused to trial or else a case will be dismissed. The statutory standards are easy to understand, and easy for the prosecution to comply with. Dismissals due to violations of the speedy trial statute are already extraordinarily rare, and easily avoidable by the standard practice of checking a calendar. The statute protects the Constitutional speedy trial right from being violated, and it has worked throughout Kansas' history.

### **Speedy Trial Ensures the Orderly Administration of Justice in Kansas**

The statute also ensures that cases proceed in an orderly manner, without a backlog of cases awaiting jury trial building up. This is clearly illustrated by our present situation. In 2020, statutory speedy trial was suspended due to the unprecedented Covid-19 pandemic. When that happened, trials stopped happening, cases stopped proceeding in an orderly manner, and a backlog of cases awaiting trial has built up. That backlog is now being used to justify further delays of the right to a speedy trial coming back.

And, while the initial delays were attributable solely to the pandemic, we are now dealing with cascading consequences from the suspension itself. For example, before the pandemic, it was often being on the verge of trial, reinforced by the speedy trial deadlines, that caused the prosecution and defense to reach a plea agreement and resolve



a case. Without the pressure of the speedy trial deadline, however, defense counsel has found cases are more likely to stagnate without resolution as the trial deadline can just be pushed back by the prosecution without limit, and the backlog builds up. Likewise, the backlog of cases exacerbated by speedy trial delays has also significantly contributed to the overloading of the capacity of the criminal defense system to handle the volume of cases charged by local prosecutors, contributing to shortages of counsel throughout the state. Those shortages of defense counsel, then, contribute to cases not being able to resolve in an orderly manner because attorneys are unavailable to take new cases due to their backed up caseloads.

The best method to fix the backlog is to get back to trials and the orderly processing of cases as quickly and safely as possible. The end of the suspension of the speedy trial statute has provided an incentive to work through those backlogs, and it does appear cases are resolving more expeditiously as that deadline nears. In contrast, extending the suspension of speedy trial will weaken the incentives to resolve the backlog and risk letting it build up further.

### **Conclusion**

It is critical to the rights of Kansans currently awaiting trial, and the orderly administration of justice, that the suspension of speedy trial due to the Covid-19 pandemic ends, and an enforceable statutory speedy trial right resumes. As such, the BIDS Legislative Committee and the BIDS Board believes the end of these pandemic-era suspensions of rights should occur as expeditiously as possible, and the right to a speedy trial should return to normal pre-pandemic operation.

Thank you for your time.

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