

House Corrections and Juvenile Justice Committee
House Bill 2535
Testimony of the Kansas Association of Criminal Defense Lawyers
Presented by Jennifer Roth
Proponent
February 5, 2018

The Kansas Association of Criminal Defense Lawyers is a 350+ member organization dedicated to justice and due process for people accused of crimes. HB 2535 would restore the 90-day speedy trial deadline for people in custody, while maintaining all present exceptions to the deadline. We support the undoing of the increase to 150 days that passed in 2014.

Background on K.S.A. 22-3402 and speedy trial right

The United States and Kansas Constitutions guarantee an accused person the right to a speedy trial (the Sixth Amendment and Section 10 of the Bill of Rights, respectively). Over 40 years ago, the Legislature passed K.S.A. 22-3402, the statute at issue in HB 2535. While Legislature has the power to set the number of days an incarcerated defendant has to wait for his/her speedy trial, the statutory speedy trial right is still separate from and can be trumped by the constitutional right. See *State v. Waldrup*, 46 Kan.App.2d 656, 677 (2011).

The responsibility for watching the speedy trial clock is on the prosecution. “A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process. Moreover, for the reasons earlier expressed, society has a particular interest in bringing swift prosecutions, and society’s representatives are the ones who should protect that interest.” *Barker v. Wingo*, 407 U.S. 514 (1972).

Before 2014, as well as today, K.S.A. 22-3402 sets out exceptions to speedy trial timeframes, including delays caused by the defendant, unavailability on the court’s calendar, and unavailable material evidence. For example, the exceptions cover a court with a crowded calendar (can move the trial another 30 days) and a prosecutor who is waiting for forensic evidence results (can move the trial at least another 90 days). See K.S.A. 22-3402(e)(1)-(4), (g)-(h).

Restoring the 90-day provision is good policy

We opposed the change to 150 days in 2014. As predicted, the 150-day provision has proven costly for some jurisdictions. (There will be other conferees who will address this.) As explained above, there are exceptions to the 90-day rule that cover the areas of concern (i.e. awaiting lab results, court’s calendar, etc.)

The 2014 change to 150 days did nothing to address the root issues

In 2014, the Kansas Sheriffs Association and other law enforcement groups, the Attorney General, and the Kansas County and District Attorneys Association all advocated for the increase to 150 days, pointing to backlogs at forensic labs, congested court dockets, and inadequate time for prosecutors to prepare for trial. For example, the Kansas Sheriffs Association's testimony in support of SB 312 from February 5, 2014, pointed out that "most notably felony DUI cases" have been dismissed because of the current 90 days. The change would give more time for test results and for officers to prepare reports. The Attorney General's position, as expressed in its testimony from the same date, was a "justified and reasonable effort to ease the difficulty in getting criminal cases to trial on time in an era of heavily congested court dockets."

It makes more sense to address the problems with the system. The change to 150 days was a band-aid at best – a costly bandage as far as local governments are concerned. We had an opportunity to talk about how to best use limited resources and redirect funding into forensic labs and the courts (as well as prosecutors and indigent defense) rather than dressing the wounds created by the status quo. It is time to rip off the band-aid and have those conversations as necessary. We look forward to the opportunity to be a part of those conversations.

Thank you for your consideration,

Jennifer C. Roth, Legislative Committee co-chairperson
Kansas Association of Criminal Defense Lawyers
jrothlegislative@gmail.com
785.550.5365