



The Kansas District Judges' Association



House Committee on Corrections and Juvenile Justice

Hon. Rep. Russ Jennings, Chair
Hon. Rep. John Whitmer, Vice Chair
Hon. Rep. Boog Highberger, R. M. Member
February 5, 2018 at 1:30 p.m.
Room 152-S

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TESTIMONY IN OPPOSITION TO HOUSE BILL 2535

Members of the Committee on Corrections and Juvenile Justice:

As a co-chair of the Kansas District Judges Association's Legislative Committee, I address you today to present the Association's position in opposition of the passage of HB 2535. This bill seeks to return the duration of our statutory speedy trial deadline to 90 days from the current 150 days. Normally, it is the position of our Association that we will not address legislative matters that establish the criminal procedures of this state. However, when proposed legislation has the potential to pose risk to the community or impair the ability of judges to properly conduct the business before the courts, we feel compelled to bring some matters to your attention.

It came as a bit of surprise to us that a change of the speedy trial period would again be considered so soon after the Legislature's adoption in 2014 of a change from 90 to 150 days. That change was endorsed by a number of groups and officials, including the Kansas Attorney General, Kansas County and District Attorneys Association, Kansas Sheriffs Association, Kansas Association of Police Chiefs and the Kansas Peace Officers Association. While there was some opposition and even understanding by neutral parties that a potential increased cost could occur, the apparent overwhelming support in 2014 of the additional period causes us to pause and ask what has changed so dramatically that this issue should be again considered.

We understand that there are those who contend that the longer deadline for the commencement of a trial forces individuals awaiting trials and unable to afford bond to spend more time in jail cells and that some now contend that overcrowding and additional costs are now the result. I cannot dispute that there is some evidence to indicate that lengths of stay in some instances have increased. Unfortunately, blaming the claimed increase on one factor alone is an oversimplification of a problem and we do not believe that a change in the speedy trial deadline would necessarily accomplish the objective sought for a variety of reasons.

Overall, felony case filings in this state have increased 8.68% in the past 10 years, but in some areas, such as the 6th Judicial District the felony caseload has increased 60.79% in the same time period. Keeping in mind that felonies are the most serious of crimes, the time for processing cases naturally is longer. Unfortunately, judicial

resources necessary to process these cases have not changed in that same time period. For example, in the 28th Judicial District, in 1980 there were 4 district court judges, 2 part-time county attorneys and 1 full time public defender. Fast forward to 2018, there are still 4 district judges, but now 7 full time county attorneys and 7 full time public defenders. Despite the recommendations coming from our case load studies which recommended 3 additional judges, there have been no additional judicial resources provided that would enable the courts to process matters more quickly. Simply put, there have been no more hours added to the days of these 4 district judges that would permit quicker processing of cases. This fact was recognized in 2014 and has not since changed.

A large number of our judicial districts engage in the practice of stacking when scheduling criminal cases in order to avoid loss of trial time when cases are resolved at the last minute due to plea bargains or pleas. For example, in Shawnee County it is reported that the judges handling criminal matters are setting at least 4-8 jury trials post-arraignment each Monday. The result is that each week they then scramble to find a judge to handle a second trial needing to be tried because of the trial deadline. Much the same report comes from the chief judge in Wyandotte and other counties, including my own, Lyon County.

There are many reasons for the struggle we have to timely try criminal cases, most of which are beyond the control of the courts and mitigate against the attempt to speed the process. These include the following:

--A shortage of forensic services. It is routine in my district that cases are continued because the KBI does not have resources to conduct the forensic investigations in a more timely manner, or even if the exams are done, that the examiner cannot be in multiple courts at the same time (what I call the competing subpoena syndrome).

--Work load of available defense attorneys. Statewide and particularly in my district we are seeing a decline in the number of attorneys not employed in public defender's offices that are willing to provide appointed counsel defense services, particularly in serious or complex cases. With felony filings increasing, this naturally creates a bottleneck in case processing. This is in large part due to the fact that compensation paid is in most cases is less than the overhead expense of the attorney and far less than the compensation that can be earned doing non-criminal matters.

--Amazingly, we even often see defendants engaging in delay tactics hoping that victims or witnesses will become unavailable for trial.

--A shortage of mental health services. A significant number of our defendants and jail population are individuals suffering from mental illness. Mental illness is certainly not a crime, but often leads to behaviors that result in criminal charges. When encountering these persons often competency to stand trial means that state hospital evaluations must be done before the case can proceed, but it is not uncommon for us to see an individual with profound mental illness issues in a county jail for 60-90 days or more before Larned State Security Hospital will make bed space available to even begin a competency evaluation. This naturally leads to longer stays, even for individuals that may never suffer a conviction.

--Despite the fact that prosecutors' staffs have grown significantly in recent years, we also see many areas where insufficient prosecution staffing leads to delays in processing of cases.

--Judges across the state are reporting that the cases being tried are of higher level crimes and result in additional trial time needs.

Our experience is that increased jail populations for longer periods of time is not solely a function of the inability of individuals to make bond. If this was the case, we could solve the problem by simply lowering

bonds, but that would put our communities at significant risk because we do not have effective means of supervising dangerous individuals who are free on bond awaiting trial.

There is one very detrimental effect that I would suggest will occur if the speedy trial times are decreased. While courts would likely find ways to timely process cases with a shorter time limit, it would be done so at the expense of timely processing our civil, domestic, probate, child in need of care, care and treatment, or other case types that do not have the protection of either a constitutional or statutory speedy trial limit. I suppose the question that should be asked is what expense in time and delay are we willing to impose on our citizens who seek resolution of cases other than criminal matters?

Our Judicial Branch has suffered for years from underfunding and understaffing. Pleas for additional judges or adequate compensation for our non-judge staff so that we can attract and retain the quality of assistance we need to process cases or supervise adult and juvenile offenders have gone unheeded for years.

As one older gentleman used to remind me, you cannot stuff 10 pounds of sugar into a five pound sack. True, but that is exactly what has been attempted with our Judiciary. The problem of jail overcrowding which vexes our county commissions is not just due to a speedy trial deadline. It is a systemic issue that needs analysis and attention from this Legislature far beyond the simple act shortening trial deadlines.

Judges will, as a whole, make every effort to comply with whatever time limit you decide is appropriate. It is not going to come without cost to the counties, though perhaps in ways other than jail expense. As told to me by the chief judge in the 8th Judicial District, they are also limited in Geary County by a lack of available jury capable courtrooms. A change back to 90 days would likely have the impact of asking those county commissioners to build and equip additional courtrooms. If the state will not or cannot provide the resources to effectively process cases, we will undoubtedly turn to our county commissions for assistance. Our county commissioners have been most gracious to provide funding for projects, staffing and space to engage in activities that make our case processing more effective, but now is not the time to add to that burden.

Thank you for your time and attention.

Hon. Merlin G. Wheeler