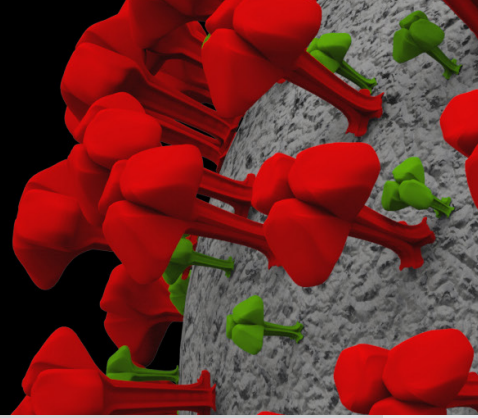


COVID-19

Statutory Speedy Trial Suspension Q&A



CNA and the National District Attorneys Association (NDAA) have partnered to actively develop and disseminate useful COVID-19 response resources to prosecutors and courts to support them during the COVID-19 pandemic. In recent months, we have received many questions focusing on case backlogs and prioritization of cases. On **February 4, 2021**, and **March 9, 2021**, the Sedgwick County District Attorney, Marc Bennett, located in Wichita, Kansas, submitted testimony to the Senate Judiciary Committee. This Q&A focuses on his experiences advocating for this legislation and case prioritization.

QUESTION: FIRST, CAN YOU PLEASE PROVIDE US WITH SOME BACKGROUND INFORMATION ABOUT YOUR OFFICE?

The Sedgwick County District Attorney's Office is located in Wichita, Kansas, and employs approximately 55 attorneys and over 70 support staff. In a typical year, the office prosecutes approximately 3,750 criminal cases (3,500 felony cases and 250 misdemeanor cases). The office also handles approximately 1,000 juvenile cases, 22,000 traffic cases, and 700 child in need of care cases each year.

QUESTION: KANSAS'S SPEEDY TRIAL LAW (K.S.A. § 22-3402) PROVIDES THE SPEEDY TRIAL REQUIREMENTS IN KANSAS. CAN YOU PROVIDE US WITH THE SPEEDY REQUIREMENTS PRIOR TO COVID-19?

K.S.A. § 22-3402 requires, from the date of arraignment, that felony cases where the defendant is in custody be tried within 150 days. When the defendant is not in custody, felony cases must be tried within 180 days of arraignment. The remedy for a violation of this statute is dismissal with prejudice.

QUESTION: DID THE STATE COURTS TOLL SPEEDY TRIAL TIME AT THE ONSET OF THE COVID-19 PANDEMIC?

In March 2020, the DA's Association contacted the legislature and requested that a bill be pushed through to allow the courts the ability to suspend certain deadlines—including speedy trial. We felt this was necessary as K.S.A. § 22-3402 does not contain a provision for suspension of the statute for either natural disasters or incapacity of the court. The bill we requested was passed just before the legislature closed the session March 18, 2020, due to COVID-19.

QUESTION: HAVE YOUR LOCAL COURTS RESUMED CALENDAR CALLS AND HEARINGS? IF SO, HOW PRODUCTIVE HAVE THE COURTS BEEN AT HEARING CASES?

Our local courts shut down for several weeks in March 2020 and April 2020, but began having hearings (on a small scale) both in person and via Zoom by May 2020. This continued to increase throughout the summer of 2020.

During 2020, we resolved over 1,900 cases by plea and the court documented 15,000 hearings that were held before our 10 criminal judges.

QUESTION: HAS YOUR OFFICE TRIED ANY JURY TRIALS SINCE THE ONSLAUGHT OF THE COVID-19 PANDEMIC?

Yes. Jury trials have been more difficult. We outfitted two courtrooms with Plexiglas and started calling jurors in for two trials per week in late September 2020. For context, our office tried 26 jury trials between the January 1, 2020, and March 18, 2020, but only six from September 2020 to the end of the year.

QUESTION: AS A RESULT OF THIS, HAS YOUR OFFICE EXPERIENCED ANY CASE BACKLOGS?

Yes. As of March 12, 2021, we had approximately 2,500 cases pending. We have over 700 additional cases reviewed and approved for charging that we are holding back. We have not filed the charging documents on these 700 cases yet to avoid overloading the system.

QUESTION: TO YOUR KNOWLEDGE, ARE OTHER COUNTIES AROUND THE STATE EXPERIENCING SIMILAR CASE BACKLOGS?

Yes. This has been the topic of much discussion among prosecutors throughout the state. Some, like Kansas City and Topeka, have the same issue with high caseloads.

The smaller, rural jurisdictions also face a shortage of judges, as many judges are on a circuit and only available in a given county a few days each month. This is coupled with a lack of lawyers. Several of the 105 counties in Kansas have only one or two lawyers and, last I knew, two counties did not have a licensed lawyer living in the county.

QUESTION: CAN YOU TELL US ABOUT SENATE BILL 57 (HOUSE BILL 2078) THAT RECENTLY PASSED IN THE KANSAS STATE LEGISLATURE?

The State Prosecutors Association (the Kansas County and District Attorneys Association) initially put forth this bill. During testimony on the bill before the Kansas Senate, the Kansas Defense Attorneys Association objected to the first draft, but acknowledged the need for a statutory fix.

The two associations sat down and compromised on an approach. Initially, the two associations agreed to a three-year stay, but the Senate thought that was too long. The final bill, Governor Kelly finally signed into law on March 31, 2021, included a two-year stay (until May of 2023). The Senate also added in a provision requiring courts to update the legislature about how cases are moving.

QUESTION: HOW DOES THIS AMENDMENT TO K.S.A. § 22-3402 HANDLE CASE PRIORITIZATION?

Borrowing heavily from *Barker v. Wingo*, 407 U.S. 514, (1972), we added the following language to the statute to prioritize upcoming jury trials:

- (k) When prioritizing cases for trial, trial courts shall consider relevant factors, including, but not limited to, the:
- (1) Trial court's calendar;
 - (2) relative prejudice to the defendant;
 - (3) defendant's assertion of the right to speedy trial;
 - (4) calendar of trial counsel;
 - (5) availability of witnesses; and
 - (6) relative safety of the proceedings to participants as a result of the response to the COVID-19 public health emergency in the judicial district.

QUESTION: PRIOR TO THIS BEING INTRODUCED, HOW DID YOUR OFFICE WORK WITH OTHER CRIMINAL JUSTICE AGENCIES TO ADVOCATE FOR BILL'S PASSAGE?

The Kansas DA's Association lead these efforts with the Kansas Peace Officers Association, Chiefs of Police Association and Sheriffs' Association all offering supportive testimony. The Kansas Criminal Defense Attorneys Association also worked with the prosecutor's association to determine the details of the final bill. Further, the Chief of the State Supreme Court also testified in favor of the initial bill last spring.

However, this issue quickly took on a political angle. Initially, the bill was tied to the governor's emergency powers (Kansas has an overwhelmingly Republican legislature but a Democratic governor, and there is longstanding legislative discontent with the courts). When political problems emerged, the prosecutors took the lead on advocating for the bill in the 2021 legislative session, which removed the courts—and the surrounding politics—from the equation.

QUESTION: WHAT STEPS DID YOU TAKE TO ENSURE PASSAGE OF THIS BILL?

Personally, I provided written and live testimony and reached out to legislators via telephone and email to ensure they understood the importance of this bill.

QUESTION: HOW WILL THESE CHANGES TO SPEEDY TRIAL TIME IMPACT YOUR OFFICE?

This bill provides my office time to work out an efficient, rational approach to reducing the number of cases. It also allows us to prioritize cases based on the criteria above. Our prosecutors can remind defense counsel (who can, in turn tell their clients) that we do not have to force our case backlog through the system on a first come, first served basis over the next few months.

QUESTION: BASED ON THE GUIDELINES LAID OUT IN THE BILL, WHAT TYPES OF CASES DO YOU ANTICIPATE TRYING FIRST WHEN JURY TRIALS RESUMES?

The oldest cases will obviously get the first opportunity. Then, following the lead of *Barker v. Wingo* (1972), those who ask first will get priority. As much as we want to prioritize certain crimes (such as rape cases, murders, and child abuse), under the established criteria, we have to remember to not ignore the simpler cases. These cases will be intermixed with some of our more serious cases as we move forward.

Locally, we are working with our judges and bar association to set up a master calendar. This would ensure that our 10 judges are not calendaring cases in a silo without respect to what the other judges are doing. In other words, we are trying to ensure that individual attorney schedules are considered when judges calendar their cases. Thus, we can avoid a scenario where the same attorneys (prosecutors or defense attorneys) are expected to be in trial 8 weeks in a row on 4 separate cases, or trying 15 murder cases in one year.

QUESTION: WHAT DO YOU THINK WILL BE THE MOST CHALLENGING PART OF WORKING THROUGH THE CASE BACKLOGS?

Ensuring that all of the criminal justice actors remain on the same page. For example, if Judge A wants to try a specific murder case, but the attorney is ready to try a different case, which case gets priority? We need to ensure that all of the criminal justice actors are aware of how this will impact the work of other criminal justice actors. For example, if forensic witnesses are needed in trial week after week, this will, inevitably, slow down their ongoing laboratory work, which will also impact future cases.

Another big concern of ours is the lack of qualified defense attorneys capable of handling the most serious cases. We had a record number of homicides in 2020 and, without the ability to try cases, the attorneys who would normally handle 1 or 2 murders now have 5, 10, or even 15 murder cases (prosecution and defense). For example, I currently have 12 murder cases.

QUESTION: DO YOU HAVE ANY ADVICE OR TIPS FOR JURISDICTIONS THAT MAY BE CONSIDERING ADVOCATING FOR A SIMILAR LAW?

Taking this route requires a time commitment. I would advise others to commit to being there, to answering the legislators' questions (who may need to be educated on the difference between constitutional and statutory speedy trial), the media, and even reaching out to the defense bar.

The defense bar may not want exactly the same provisions as the prosecutor's office, but defense attorneys are also loathe to put themselves in situations where they have to try cases 10 to 12 weeks in a row (and risk being ineffective) due to statutory speedy trial. Defense bars also recognize the need to ensure the rights of the defendant are being met while ensuring that we are handling our case backlogs effectively.

QUESTION: HAS YOUR OFFICE ENACTED ANY OTHER PRACTICES TO HELP REDUCE CASE BACKLOGS?

We also instituted a policy focusing on lower level drug cases and property cases, where our goal was to get defendants suffering from addiction into appropriate treatment and to obtain restitution for victims. We worked with our court administrator to use Coronavirus Aid, Relief, and Economic Security Act (CARES) funding to hire two experienced defense attorneys (each with over 25 years' experience) to agree to take approximately 200 cases each over the course of the next year. My office then filed the approximately 400 low-level drug (possession only) and property crime felony cases.

I also worked with our local mental health care provider and the most reputable addiction treatment provider to ensure that they would offer reduced-cost treatment to these targeted defendants. We provided discovery to the two defense attorneys and, over the course of two to three weeks, we calendared these cases on various dockets. Defendants in about half of the 400 cases attended when they were summonsed and, of these, only 33 decided they wanted to fight to charges. The remaining 188 defendants agreed to plead to misdemeanors—paraphernalia charges for the drug offenders and misdemeanor theft for the property crimes offenders.

The primary condition for drug offenders was to attend treatment. The primary condition for the property offenders was to pay restitution. Once these defendants have either completed treatment and/or paid restitution, we agreed to terminate their probation early by an agreed-to journal entry. We will continue to work with the two defense attorneys and their respective clients as the remaining cases trickle into the system over the next year or so.

QUESTION: WHAT WERE THE PRACTICAL CONSIDERATIONS YOU HAD TO WORK THROUGH REGARDING THIS INITIATIVE?

Our Public Defenders' Office has not been able to take cases for several months due to rising caseloads. I needed to ensure that we had qualified attorneys to handle the remaining felonies. These attorneys needed to be able to devote time to these dockets and clients and explain to their new clients who needed drug treatment why this was a viable option.

QUESTION: HOW IS THIS INITIATIVE FUNDED?

CARES funding paid for the two defense attorneys. Our assistant district attorney and several support staff time was simply absorbed in normal course of business.

QUESTION: DO YOU HAVE ANY ADVICE OR TIPS FOR JURISDICTIONS THAT MAY BE A SIMILAR INITIATIVE TO RESOLVE LOW-LEVEL CASES?

If your case outcomes involve a treatment program, ensure availability ahead of time. Unless your community has more readily available treatment options than we have, defendants may not be able to procure appropriate treatment on their own.

Try to get financial help from your local courts. I told our court administrator that I could not fund the defense attorneys (this is an obvious ethical conflict). Our probation department also sent staff to the dockets to have a smooth handoff after the misdemeanor pleas. We worked with all necessary parties to ensure that the probation was straightforward. Our thinking was

that if the defendant has dozens of other conditions and fees associated with probation—when our overarching goal was to get addicts into treatment and victims paid restitution—the focus on treatment and restitution would be overshadowed and the initiative would fail. We had several meetings with all relevant parties to ensure everyone had the same expectations.

QUESTION: DO YOU HAVE ANY CONCERNS ABOUT LONG TERM IMPACTS TO EITHER AS A RESULT OF EITHER THE LAW CHANGE OR THE INITIATIVE YOU DISCUSSED?

No. Even without our initiative, these defendants were going to end up on probation under our system anyway. It would have taken us another year to get them into the system given the current backlog of more serious, violent crimes.

As it is, victims are getting restitution sooner rather than later and individuals suffering from addiction are receiving treatment now, instead of waiting for over a year before their cases are resolved.

FOR QUESTIONS, CONTACT US AT COVID19_COURTS@CNA.ORG.