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Chairman Coley, Vice Chair Seitz, Ranking Member Yuko, thank you for allowing me to speak in favor of SB 143. My name is Paul Dobson and I am the Wood County Prosecuting Attorney and Vice President of the Ohio Prosecuting Attorneys Association. I have served nearly all of my 21-year legal career as a prosecutor, and have been honored to serve as the elected official since 2009.

Since SB 143 is about the rights of a defendant to a speedy trial, it might be worthwhile to quickly review the law as it stands now. Article I, Section 10 of the Ohio Constitution guarantees a person accused of a crime the right to a speedy trial. The Revised Code says that anyone accused of a felony has the right to be brought to trial within 270 days of the date of their arrest. The law also states that for every day that an individual is held in custody for a crime or for multiple charges stemming from the same event, three days of speedy trial run. Now, by way of illustration and in no way making light of a criminal case, the speedy trial time runs like a sporting event. We know that a football game is made up of four 15 minute quarters, but no football game takes only an hour to play. That is because certain things happen to start and stop the clock. It is the same way with speedy trial time. There are many things that can stop, or toll, the time. Occasionally, the parties dispute whether a certain event has tolled the time. However, once the 270 days is reached the time is done. The Ohio Supreme Court has rightly determined that the statute means that, no matter how serious the case or innocent the reason, a case does not exist on day 271.

In my opinion, it is entirely appropriate that there be a specified time limit behind the constitutional protection. Further, there should be no exception, or "saving" statute, which swallows the original rule or renders it artificial or meaningless. However, there is no doubt that the absoluteness of the current statute encourages a certain amount of gamesmanship instead of effort to do substantial justice. A recent Wood County case will illustrate this point.

A couple of years ago, my office received two cases against a particular defendant. Because of the circumstances, the cases could not be joined into one case, but they were similar in time. The cases were indicted by one of my assistants, and followed a typical course, with speedy trial time being stopped and started for various activity. At one point the defendant failed to appear and a warrant was issued for several months. An event like that tolls time. When he was returned to custody, time re-started and negotiations continued. At some point, the defense attorney filed a couple of motions which also tolled time. Clearly the judge and the prosecutor were not keeping as close a tab on the speedy trial clock as was necessary, but the defense attorney was. Three days after he calculated the clock had run, he filed a motion to dismiss both cases. What he did not realize is that he had filed one of his earlier motions accidentally using only one of the case numbers. The court determined that this tolled speedy trial for seven days on one case and not on the other. The court therefore determined that one case should be dismissed and not the other. This caused confusion between the attorneys and the court where eventually the wrong case was dismissed and the wrong case resolved with a plea. It took the Clerk of Courts and I reviewing everything in the case to unravel the confusion. The point was, that if the defense attorney had not had such an incentive to remain quiet about the speedy trial clock, he could have contacted the prosecutor and put their collective efforts into resolving or trying the case, instead of arguing about speedy trial.

Mistakes by the court can also create speedy trial issues. One of our judges had a family emergency which took him off the bench while a trial was scheduled to occur. He issued an order continuing the trial. While this is a legitimate reason to toll speedy trial, the basis for the court's continuance must be stated clearly. It was later determined that the court did not state clearly enough its reason to continue the case and the case was dismissed for a speedy trial violation. Had the amendment offered by SB 143 been in place, that case could have been saved, allowing justice to be done and preventing embarrassment for the judge.

So what harm are we trying to address with SB 143? Are we trying to protect inept prosecutors from their own failure to count? Are we trying to allow prosecutors or judges to hold defendants indefinitely? My respectful answer to these questions is no. What we are hoping that you accomplish is to enact a statute which enforces the speedy trial requirement of the Ohio and US Constitutions while taking into consideration the practicalities of modern criminal law. Prosecutors, judges, and even public defenders, carry heavy caseloads. In my office, my five criminal prosecutors each carry in excess of 100 cases at a time. Yet, dismissals for speedy trial violations are an extreme rarity, happening far less than once per year. The issue is not regularity of occurrence, but that each criminal case is important. It's important to the defendant, important to the victim, important to law enforcement, important to the public. Both sides of each prosecution deserve to have a reliable timeframe to litigate the issues while ensuring that the issues, and not some timing game, remain at the forefront.

I am confident that the proposed statute does this. It diminishes the incentive of defense counsel to remain quiet while the speedy trial clock runs, provides some assurance to victims, police and the public that a case will not necessarily be dismissed because of the technical violation of a time limit, and still maintains the burden on prosecutors and judges to carefully observe the speedy trial clock. Two important factors maintain this burden. First, the immediate release of a defendant from pre-trial custody is a penalty to the prosecution that will ensure this provision is avoided. Second, in the practicality of criminal procedure, scheduling a felony trial in a two week window will expose the prosecutor to the anger of the judge, of his or supervisors and the very real possibility to such a timeframe just cannot be accomplished. The enactment of this statute will create no more of an incentive to judges or prosecutors to ignore the speedy trial clock than the presence of a life preserver creates an incentive to jump off a ship.

In short, we are asking for fairness. Prosecutors, judges, law enforcement officers are as steadfast in our belief in the speedy trial concept and provisions as are defendants and their attorneys. It is paramount that this constitutional provision have real meaning, real teeth and a real definition. I believe that it is also important and allowable to have a provision which provides the smallest window of protection in the extremely rare circumstance where a technical miscalculation could otherwise lead to the loss of a just resolution.