The Ohio Association
of
Criminal Defense Lawyers

Opponent Testimony to Senate Bill 48, Submitted by Blaise Katter, Public Policy Chair

May 16, 2019

Chairman Lang, Vice Chair Plummer and Ranking Member Leland, thank you for the opportunity to provide testimony on behalf of the Ohio Association of Criminal Defense Lawyers (OACDL), regarding Senate Bill 48.

Our membership has significant concerns with this bill, as it is altering and weakening one of the most cherished rights of defendants – to be brought to trial within a reasonably speedy time or have the case against them dismissed. Weakening the remedy with respect to a violation of speedy trial will only serve to harm the most vulnerable defendants, empower the State to delay or alter charges even more than they already can, and eviscerate meaningful speedy trial guarantees.

I. The State holds ALL the cards.

If there is one principle I can impart on members of this honorable committee, it is that the government holds **ALL** the cards in a criminal prosecution. The resources and power inherent in the State are unmatched. Practically speaking, this means the State is the master of their case. They choose when to bring an indictment, what charges to bring, whether to seek a warrant with an indictment, and what to request as bond. Once a case is instituted, the State has made several decisions that will shape the entire tenor of the case. Therefore, one of the few protections the Defense has is that bringing the case starts the speedy trial clock.

II. Our biggest concern is the effect of this bill on adding additional charges on the eve of trial.

The reason this proposal concerns the OACDL so deeply is that right now, the only check on the government's ability to alter the theory of the case pre-trial is speedy trial. The basic principle in Ohio is the State is always free to bring additional charges if they discover new evidence. However, if the government later adds additional charges that they could have brought before, speedy trial is the only protection the defendant has against that abusive practice.

This bill would completely upend that protection, allowing the State to add new charges the day of trial (well after speedy trial time would have run), thereby triggering the additional 14-day period to try the new cases. This bill would enable the possibility of abusive prosecutorial practices to punish a defendant for exercising their right to trial and allow prosecutors even more authority and discretion than they currently have.

Frankly, this power is sometimes abused by the government as a coercive tactic to pressure a defendant into pleading or punish a defendant who wishes to go to trial, by bringing additional charges on the eve

of trial. Under the language of this bill, the State could bring new charges at any time prior to trial without any concern for speedy trial; if the new charges violate speedy trial, who cares? – they would still have two weeks to try the case (or perhaps longer if the Defense was forced into requesting more time to review the new charges, thereby further tolling speedy trial time.)

This proposal seriously concerns our membership, who are on the front lines fighting these tactics every day. This would remove literally the last tool left to fight the piling on of additional charges **not based on new evidence** late in the game. As was said earlier, the government is the master of their case. They already have full authority to decide what charges to bring, and when. If this proposal were to pass, it would open up the potential for extreme gamesmanship with regard to that decision.

III. Speedy trial is not as broken or as difficult to comply with as the prosecutors would have you think.

Respectfully, we believe that this bill is a solution in search of a problem, as the State is perfectly capable of calculating speedy trial deadlines under current law. As even the prosecutors will admit, the frequency of cases dismissed under the speedy trial calculation is minuscule. There are several protections in place that make dismissals under speedy trial incredibly rare (and perfectly just and reasonable when they do).

First, nearly every action a defendant or defense counsel takes in a case serves to toll, or extend, speedy trial time. Making a motion, requesting a continuance, or even the simplest task of requesting discovery serves to toll speedy trial time. In a felony case, the government begins with a substantial 270 days to bring to trial even before considering tolling activities, which will significantly add to the total time. The government has more than enough leeway or "wiggle room" within this speedy trial period to bring the defendant to trial.

In addition, the defendant <u>frequently</u> waives time in felony cases. Even without the fact that every motion and continuance request extends the time to be tried, many defendants (typically ones not incarcerated) will waive time to allow the case to progress more slowly and defense counsel to be adequately prepared, thereby removing any danger of the State missing speedy trial time.

Finally, there are several layers to make sure that speedy trial time has been counted appropriately, reducing the risk that the remedy of dismissal is applied inappropriately. The State always has an appeal of right if the case is dismissed on speedy trial grounds, so there will be an opportunity for appellate review of any speedy trial issue prior to the defendant being discharged.

Thank you for consideration of our testimony. While I deeply regret that an oral argument at a Court of Appeals has prevented me from delivering this testimony in person, I respectfully request your consideration of this testimony, and ask you to not advance this bill.

Respectfully,

Blaise Katter, Esq.

OACDL Public Policy Chair