The Ohio Association of Criminal Defense Lawyers

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Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for the opportunity to testify 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 today, 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 the bringing of the case starts the speedy trial clock.

II. Speedy Trial is critical because it is the ONLY (partial) check on the Government changing their theory of the case pre-trial.

The reason this proposal concerns the OACDL so deeply is that right now, literally 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 discovery 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.

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Frankly, senators, 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.)

Senators, 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. We have significant concerns about this.

III. Speedy trial is a constitutional, not just a statutory, right;

Remember too that the Defendant's right to a speedy trial is more than just a legislative guarantee; it is a constitutional right separate and apart from the statutory language this Committee advances. If this proposal were to become law, it would lead to incongruous results, whereby courts would be required to draw the line between the language of the proposed statute and constitutional principles that guaranteed citizens the fundamental right to have their case tried in a timely manner, without gamesmanship.

The constitutional remedy for a speedy trial violation is dismissal with prejudice. If this proposal were to pass, it would lead to statutorily interfering with a constitutional right and would be ripe for challenge. It would lead to making speedy trial a second-class right, whereby statutory language weakening the right would have to be weighed against the constitutional commands.

For the sake of constitutional harmony, there should not be tension and contradictions between the statutory language and constitutional commands.

IV. Speedy Trial is not as broken or 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 most simple 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 frequently 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.

Simply put, Senators, with the long period of time provided for the government, plus all the tolling actions, it is simply irresponsible for the State to need additional time to try a speedy trial case. If the statutory speedy trial is violated, then it is clearly through the government's gross negligence and mismanagement of the case rather than any legitimate reason. That is not a good enough rationale to change the law and eviscerate a constitutional right.

V. Dismissal with prejudice is, and has always been, the appropriate remedy for a speedy trial violation.

The speedy trial right prohibits the government from causing unnecessary delays; because memories fade; evidence spoils; and, theories of the case change. The remedy for a speedy trial violation has been, and should remain, dismissal with prejudice.

The purpose of the dismissal with prejudice is to ensure that the government has prepared their case thoroughly. The government may dismiss the charges against an accused without prejudice at any time prior to trial, and as discussed above, defendants often waive speedy trial in order to allow more thorough preparation.

Again, remember that the speedy trial right is constitutional in nature, not just statutory. A violation of the constitutional right to speedy trial will remain dismissal with prejudice, thereby leading to an odd incongruity within this proposal and leading to significant constructional concerns.

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Public Policy Chair

OACDL