

# OHIO PROSECUTING ATTORNEYS ASSOCIATION

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## **SB-32; Speedy Trial Proponent Testimony February 21, 2017 Senate Judiciary Committee**

Our association supports SB-32 to change the remedy for violation of the speedy trial statute. As noted by Sen. Eklund in his sponsor testimony, the current remedy, dismissal of the charges with prejudice, is unusually severe and in most cases grossly out of proportion to the violation. And the severity of the violation, the prejudice to the defendant, or lack thereof, or the seriousness of the charges is of no consequence - the remedy is always the same.

We are required to bring a defendant to trial on a felony charge within 270 days after arrest. But every day that the defendant is held in jail pending trial is counted as three days. This is complicated in cases where the defendant is in jail for part of the time, then out of jail on bail, and then perhaps rearrested on a probation or parole violation, or a bail violation, or perhaps a new charge. If arrested on a new charge, or for any reason that has nothing to do with the pending charge, the three for one does not count. But if rearrested for a bail violation on this offense, the three for one count resumes. Oftentimes these calculations can get quite complicated. And then there are cases where because of a breakdown of communication between the jail and the clerk's office, the clerk does not know that the defendant has been rearrested and is in jail.

Under current law there is no duty on the defendant or his counsel to take any action before the time expires. If a trial date is set that is beyond the expiration date, there is no duty on defendant or defense counsel to bring this to the attention of the court. So defense counsel can simply wait until the time expires and then file a motion to dismiss. Which will be granted, with prejudice.

Ohio is a distinct minority of states that have the dismissal with prejudice rule. Only twelve other states adhere to that rule. In the other 37 states, there are a variety of remedies, including simply release of the defendant if being held, dismissal without prejudice, or dismissal with or without prejudice, with the court taking into account various factors, similar to the federal rule, or an extension of time, such as proposed in SB-32.

In the federal courts, the court can dismiss with or without prejudice. In making that determination, the court is required to consider, among other factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of justice.

SB-32 seeks to change what is a harsh and inflexible rule with a remedy that is more reasonable while still retaining the basic purpose of the speedy trial statute.