

As Amended by Senate Committee

Session of 2012

SENATE BILL No. 305

By Committee on Judiciary

1-19

1 AN ACT concerning criminal procedure; relating to trials; time
2 limitations; competency proceedings; amending K.S.A. 22-3402 and
3 repealing the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 22-3402 is hereby amended to read as follows: 22-
7 3402. ~~(1)~~ (a) If any person charged with a crime and held in jail solely by
8 reason thereof shall not be brought to trial within 90 days after such
9 person's arraignment on the charge, such person shall be entitled to be
10 discharged from further liability to be tried for the crime charged, unless
11 the delay shall happen as a result of the application or fault of the
12 defendant *or defendant's attorney*, or a continuance shall be ordered by the
13 court under subsection ~~(5)~~ (e).

14 ~~(2)~~ (b) If any person charged with a crime and held to answer on an
15 appearance bond shall not be brought to trial within 180 days after
16 arraignment on the charge, such person shall be entitled to be discharged
17 from further liability to be tried for the crime charged, unless the delay
18 shall happen as a result of the application or fault of the defendant *or*
19 *defendant's attorney*, or a continuance shall be ordered by the court under
20 subsection ~~(5)~~ (e).

21 ~~(3)~~ (c) If any trial scheduled within the time limitation prescribed by
22 subsection ~~(1) or (2)~~ (a) or (b) is delayed by the application of or at the
23 request of the defendant, ~~the trial shall be rescheduled within 90 days of~~
24 ~~the original trial deadline~~ *or defendant's attorney, the deadline for trial*
25 *shall be the original trial deadline plus 90 days and the time tolled as a*
26 *result of such delay. The original trial deadline is the date of arraignment*
27 *plus either the 90 days prescribed by subsection (a) or the 180 days*
28 *prescribed by subsection (b), before any tolled time is considered.*

29 ~~(4)~~ (d) After any trial date has been set within the time limitation
30 prescribed by subsection ~~(1) or (2)~~ (a), (b) or (c), if the defendant fails to
31 appear for the trial or any pretrial hearing, and a bench warrant is ordered,
32 the trial shall be rescheduled within 90 days after the defendant has ~~been~~
33 ~~surrendered~~ *appeared in court after apprehension or surrender* on such
34 warrant. However, if the defendant was subject to the 180-day deadline
35 prescribed by subsection ~~(2)~~ (b) and more than 90 days of the original time
36 limitation remain, then the original time limitation remains in effect.

1 ~~(5)~~ (e) *For those situations not otherwise covered by subsections (a),*
2 *(b) or (c), the time for trial may be extended beyond the limitations of*
3 *subsections (1) and (2) for any of the following reasons:*

4 ~~(a)~~ (1) *The defendant is incompetent to stand trial. If the defendant is*
5 *subsequently found to be competent to stand trial, the trial shall be*
6 *scheduled within 90 days of such finding;*

7 ~~(b)~~ (2) *A proceeding to determine the defendant's competency to*
8 *stand trial is pending and a determination thereof may not be completed*
9 *within the time limitations fixed for trial by this section. If the defendant is*
10 *subsequently found to be competent to stand trial, the trial shall be*
11 *scheduled within 90 days of such finding . However, if the defendant was*
12 *subject to the 180-day deadline prescribed by subsection (b) and more*
13 *than 90 days of the original time limitation remain, then the original time*
14 *limitation remains in effect. The time that a decision is pending on*
15 *competency shall never be counted against the state;*

16 ~~(c)~~ (3) *There is material evidence which is unavailable; that*
17 *reasonable efforts have been made to procure such evidence; and that there*
18 *are reasonable grounds to believe that such evidence can be obtained and*
19 *trial commenced within the next succeeding 90 days. Not more than one*
20 *continuance may be granted the state on this ground, unless for good cause*
21 *shown, where the original continuance was for less than 90 days, and the*
22 *trial is commenced within 120 days from the original trial date;*

23 ~~(d)~~ (4) *Because of other cases pending for trial, the court does not*
24 *have sufficient time to commence the trial of the case within the time fixed*
25 *for trial by this section. Not more than one continuance of not more than*
26 *30 days may be ordered upon this ground.*

27 ~~(e)~~ (f) *In the event a mistrial is declared , a motion for new trial is*
28 *granted or a conviction is reversed on appeal to the supreme court or court*
29 *of appeals, the time limitations provided for herein shall commence to run*
30 *from the date the mistrial is declared , the date a new trial is ordered or the*
31 *date the mandate of the supreme court or court of appeals is filed in the*
32 *district court.*

33 (g) *The defendant's attorney may request a delay in any proceeding*
34 *without consulting the defendant and may do so over the defendant's*
35 *objection. If the defendant or defendant's attorney requests a delay and*
36 *such delay is granted, the delay shall be charged to the defendant*
37 *regardless of the reasons for making the request. If a delay is initially*
38 *attributed to the defendant, but is subsequently charged to the state for any*
39 *reason, such delay shall not be considered against the state under*
40 *subsections (a), (b) or (c) and shall not be used as a ground for dismissing*
41 *a case or for reversing a conviction.*

42 (h) *When a scheduled trial is scheduled within the period allowed by*
43 *subsections (a), (b) or (c) and is delayed because a party has made or*

1 filed a motion, or because the court raises a concern on its own, the time
2 elapsing from the date of the making or filing of the motion, or the court's
3 raising a concern, until the matter is resolved by court order shall not be
4 considered when determining if a violation under subsections (a), (b) or
5 (c) has occurred. If the resolution of such motion or concern by court
6 order occurs at a time when less than 30 days remains under the
7 provisions of subsections (a), (b) or (c), the time in which the defendant
8 shall be brought to trial is extended 30 days from the date of the court
9 order.

10 (i) If the state requests and is granted a delay for any reason
11 provided in this statute, the time elapsing because of the order granting
12 the delay shall not be subsequently counted against the state if an
13 appellate court later determines that the district court erred by granting
14 the state's request.

15 ~~(j) The provisions of this section shall be applied retroactively in any~~
16 ~~legal challenge or proceeding that comes before a district court or an~~
17 ~~appellate court.~~

18 Sec. 2. K.S.A. 22-3402 is hereby repealed.

19 Sec. 3. This act shall take effect and be in force from and after its
20 publication in the statute book.

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