

**SENATE BILL No. 312**

By Committee on Judiciary

1-27

1 AN ACT concerning criminal procedure; relating to discharge of persons  
2 not brought promptly to trial; decision and disposition of case on  
3 appeal; amending K.S.A. 22-3605 and K.S.A. 2013 Supp. 22-3402 and  
4 repealing the existing sections.

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

7 Section 1. K.S.A. 2013 Supp. 22-3402 is hereby amended to read as  
8 follows: 22-3402. (a) If any person charged with a crime and held in jail  
9 solely by reason thereof shall not be brought to trial within ~~90~~ 150 days  
10 after such person's arraignment on the charge, such person shall be entitled  
11 to be discharged from further liability to be tried for the crime charged,  
12 unless the delay shall happen as a result of the application or fault of the  
13 defendant or a continuance shall be ordered by the court under subsection  
14 (e).

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

21 (c) If any trial scheduled within the time limitation prescribed by  
22 subsection (a) or (b) is delayed by the application of or at the request of the  
23 defendant, the trial shall be rescheduled within 90 days of the original trial  
24 deadline.

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

33 (e) For those situations not otherwise covered by subsection (a), (b)  
34 or (c), the time for trial may be extended for any of the following reasons:

35 (1) The defendant is incompetent to stand trial. If the defendant is  
36 subsequently found to be competent to stand trial, the trial shall be

1 scheduled as soon as practicable and in any event within 90 days of such  
2 finding;

3 (2) A proceeding to determine the defendant's competency to stand  
4 trial is pending. If the defendant is subsequently found to be competent to  
5 stand trial, the trial shall be scheduled as soon as practicable and in any  
6 event within 90 days of such finding. However, if the defendant was  
7 subject to the 180-day deadline prescribed by subsection (b) and more than  
8 90 days of the original time limitation remain, then the original time  
9 limitation remains in effect. The time that a decision is pending on  
10 competency shall never be counted against the state;

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

18 (4) Because of other cases pending for trial, the court does not have  
19 sufficient time to commence the trial of the case within the time fixed for  
20 trial by this section. Not more than one continuance of not more than 30  
21 days may be ordered upon this ground.

22 (f) In the event a mistrial is declared, a motion for new trial is granted  
23 or a conviction is reversed on appeal to the supreme court or court of  
24 appeals, the time limitations provided for herein shall commence to run  
25 from the date the mistrial is declared, the date a new trial is ordered or the  
26 date the mandate of the supreme court or court of appeals is filed in the  
27 district court.

28 (g) If a defendant, or defendant's attorney in consultation with the  
29 defendant, requests a delay and such delay is granted, the delay shall be  
30 charged to the defendant regardless of the reasons for making the request,  
31 unless there is prosecutorial misconduct related to such delay. If a delay is  
32 initially attributed to the defendant, but is subsequently charged to the state  
33 for any reason, such delay shall not be considered against the state under  
34 subsections (a), (b) or (c) and shall not be used as a ground for dismissing  
35 a case or for reversing a conviction unless not considering such delay  
36 would result in a violation of the constitutional right to a speedy trial or  
37 there is prosecutorial misconduct related to such delay.

38 (h) When a scheduled trial is scheduled within the period allowed by  
39 subsections (a), (b) or (c) and is delayed because a party has made or filed  
40 a motion, or because the court raises a concern on its own, the time  
41 elapsing from the date of the making or filing of the motion, or the court's  
42 raising a concern, until the matter is resolved by court order shall not be  
43 considered when determining if a violation under subsections (a), (b) or (c)

1 has occurred. If the resolution of such motion or concern by court order  
2 occurs at a time when less than 30 days remains under the provisions of  
3 subsections (a), (b) or (c), the time in which the defendant shall be brought  
4 to trial is extended 30 days from the date of the court order.

5 (i) If the state requests and is granted a delay for any reason provided  
6 in this statute, the time elapsing because of the order granting the delay  
7 shall not be subsequently counted against the state if an appellate court  
8 later determines that the district court erred by granting the state's request  
9 unless not considering such delay would result in a violation of the  
10 constitutional right to a speedy trial or there is prosecutorial misconduct  
11 related to such delay.

12 Sec. 2. K.S.A. 22-3605 is hereby amended to read as follows: 22-  
13 3605. (a) Any appellate court may reverse, affirm or modify the judgment  
14 or order appealed from, or may order a new trial in the district court. In  
15 either case the cause must be remanded to the district court with proper  
16 instructions, together with the decision of the appellate court, within the  
17 time and in the manner to be prescribed by rule of the supreme court.

18 (b) *In appeals from criminal actions and in other post-conviction*  
19 *actions arising from criminal prosecutions, the issuance of the mandate*  
20 *from the appellate court shall be automatically stayed when: (1) ~~The state~~*  
21 ***A party** files a notice with the appellate court that it intends to file a*  
22 *petition for writ of certiorari to the United States supreme court; and (2)*  
23 *the time has not expired for filing such a petition under applicable United*  
24 *States supreme court rules. If the mandate from the appellate court has*  
25 *already been issued when ~~the state~~ **a party** files its notice, the mandate*  
26 *from the appellate court shall be withdrawn and stayed. The stay shall be*  
27 *lifted when: (1) If a petition for writ of certiorari to the United States*  
28 *supreme court is filed, the court denies such petition or issues such court's*  
29 *final order following granting such petition; or (2) if no petition for writ of*  
30 *certiorari to the United States supreme court is filed, the time expires for*  
31 *filing such petition under applicable United States supreme court rules.*

32 Sec. 3. K.S.A. 22-3605 and K.S.A. 2013 Supp. 22-3402 are hereby  
33 repealed.

34 Sec. 4. This act shall take effect and be in force from and after its  
35 publication in the statute book.