

(Corrected)

{As Amended by House on Final Action}

Session of 2020

House Substitute for SENATE BILL No. 102

By Committee on Judiciary

3-13

1 AN ACT concerning courts; relating to extension or suspension of  
2 deadlines or time limitations to secure the health and safety of court  
3 users, staff and judicial officers; amending K.S.A. 2019 Supp. 22-3402  
4 and 60-206 and repealing the existing sections.  
5

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

7 New Section 1. (a) Notwithstanding any other provisions of law,  
8 **{during any state of disaster emergency pursuant to K.S.A. 48-924,**  
9 **and amendments thereto,}** the chief justice of the Kansas supreme court  
10 may issue an order to extend or suspend any deadlines or time limitations  
11 established by statute when the chief justice determines such action is  
12 necessary to secure the health and safety of court users, staff and judicial  
13 officers.

14 (b) Notwithstanding any other provisions of law, **{during any state**  
15 **of disaster emergency pursuant to K.S.A. 48-924, and amendments**  
16 **thereto,}** the chief justice of the Kansas supreme court may issue an order  
17 to authorize the use of two-way electronic audio-visual communication in  
18 any court proceeding when the chief justice determines such action is  
19 necessary to secure the health and safety of court users, staff and judicial  
20 officers.

21 (c) **{Any order issued pursuant to this section may remain in**  
22 **effect for up to 150 days after a state of disaster emergency is**  
23 **terminated pursuant to K.S.A. 48-924, and amendments thereto. Any**  
24 **order in violation of this section shall be void.**

25 **{d)}** The provisions of this section shall expire on March 31, 2021.

26 Sec. 2. K.S.A. 2019 Supp. 22-3402 is hereby amended to read as  
27 follows: 22-3402. (a) If any person charged with a crime and held in jail  
28 solely by reason thereof shall not be brought to trial within 150 days after  
29 such person's arraignment on the charge, such person shall be entitled to be  
30 discharged from further liability to be tried for the crime charged, unless  
31 the delay shall happen as a result of the application or fault of the  
32 defendant or a continuance shall be ordered by the court under subsection  
33 (e).

34 (b) If any person charged with a crime and held to answer on an  
35 appearance bond shall not be brought to trial within 180 days after

1 arraignment on the charge, such person shall be entitled to be discharged  
2 from further liability to be tried for the crime charged, unless the delay  
3 shall happen as a result of the application or fault of the defendant, or a  
4 continuance shall be ordered by the court under subsection (e).

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

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

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

19 (1) The defendant is incompetent to stand trial. If the defendant is  
20 subsequently found to be competent to stand trial, the trial shall be  
21 scheduled as soon as practicable and in any event within 90 days of such  
22 finding;

23 (2) a proceeding to determine the defendant's competency to stand  
24 trial is pending. If the defendant is subsequently found to be competent to  
25 stand trial, the trial shall be scheduled as soon as practicable and in any  
26 event within 90 days of such finding. However, if the defendant was  
27 subject to the 180-day deadline prescribed by subsection (b) and more than  
28 90 days of the original time limitation remain, then the original time  
29 limitation remains in effect. The time that a decision is pending on  
30 competency shall never be counted against the state;

31 (3) there is material evidence which is unavailable; that reasonable  
32 efforts have been made to procure such evidence; and that there are  
33 reasonable grounds to believe that such evidence can be obtained and trial  
34 commenced within the next succeeding 90 days. Not more than one  
35 continuance may be granted the state on this ground, unless for good cause  
36 shown, where the original continuance was for less than 90 days, and the  
37 trial is commenced within 120 days from the original trial date; or

38 (4) because of other cases pending for trial, the court does not have  
39 sufficient time to commence the trial of the case within the time fixed for  
40 trial by this section. Not more than one continuance of not more than 30  
41 days may be ordered upon this ground.

42 (f) In the event a mistrial is declared, a motion for new trial is granted  
43 or a conviction is reversed on appeal to the supreme court or court of

1 appeals, the time limitations provided for herein shall commence to run  
2 from the date the mistrial is declared, the date a new trial is ordered or the  
3 date the mandate of the supreme court or court of appeals is filed in the  
4 district court.

5 (g) If a defendant, or defendant's attorney in consultation with the  
6 defendant, requests a delay and such delay is granted, the delay shall be  
7 charged to the defendant regardless of the reasons for making the request,  
8 unless there is prosecutorial misconduct related to such delay. If a delay is  
9 initially attributed to the defendant, but is subsequently charged to the state  
10 for any reason, such delay shall not be considered against the state under  
11 subsections (a), (b) or (c) and shall not be used as a ground for dismissing  
12 a case or for reversing a conviction unless not considering such delay  
13 would result in a violation of the constitutional right to a speedy trial or  
14 there is prosecutorial misconduct related to such delay.

15 (h) When a scheduled trial is scheduled within the period allowed by  
16 subsections (a), (b) or (c) and is delayed because a party has made or filed  
17 a motion, or because the court raises a concern on its own, the time  
18 elapsing from the date of the making or filing of the motion, or the court's  
19 raising a concern, until the matter is resolved by court order shall not be  
20 considered when determining if a violation under subsections (a), (b) or (c)  
21 has occurred. If the resolution of such motion or concern by court order  
22 occurs at a time when less than 30 days remains under the provisions of  
23 subsections (a), (b) or (c), the time in which the defendant shall be brought  
24 to trial is extended 30 days from the date of the court order.

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

32 (j) *The chief justice of the Kansas supreme court may issue an order*  
33 *to extend or suspend any deadlines or time limitations established in this*  
34 *section ~~when the chief justice determines such action is necessary to~~*  
35 *~~secure the health and safety of court users, staff and judicial officers. The~~*  
36 *~~provisions of this subsection shall expire on March 31, 2021~~ {pursuant to*  
37 **section 1, and amendments thereto. When an order issued pursuant to**  
38 **section 1, and amendments thereto, is terminated, any trial scheduled**  
39 **to occur during the time such order was in effect shall be placed back**  
40 **on the court schedule within 150 days}.**

41 Sec. 3. K.S.A. 2019 Supp. 60-206 is hereby amended to read as  
42 follows: 60-206. (a) *Computing time.* The following provisions apply in  
43 computing any time period specified in this chapter, in any local rule or

1 court order or in any statute or administrative rule or regulation that does  
2 not specify a method of computing time.

3 (1) *Period stated in days or a longer unit.* When the period is stated  
4 in days or a longer unit of time:

5 (A) Exclude the day of the event that triggers the period;

6 (B) count every day, including intermediate Saturdays, Sundays and  
7 legal holidays; and

8 (C) include the last day of the period, but if the last day is a Saturday,  
9 Sunday or legal holiday, the period continues to run until the end of the  
10 next day that is not a Saturday, Sunday or legal holiday.

11 (2) *Period stated in hours.* When the period is stated in hours:

12 (A) Begin counting immediately on the occurrence of the event that  
13 triggers the period;

14 (B) count every hour, including hours during intermediate Saturdays,  
15 Sundays and legal holidays; and

16 (C) if the period would end on a Saturday, Sunday or legal holiday,  
17 the period continues to run until the same time on the next day that is not a  
18 Saturday, Sunday or legal holiday.

19 (3) *Inaccessibility of the clerk's office.* Unless the court orders  
20 otherwise, if the clerk's office is inaccessible:

21 (A) On the last day for filing under subsection (a)(1), then the time  
22 for filing is extended to the first accessible day that is not a Saturday,  
23 Sunday or legal holiday; or

24 (B) during the last hour for filing under subsection (a)(2), then the  
25 time for filing is extended to the same time on the first accessible day that  
26 is not a Saturday, Sunday or legal holiday.

27 (4) *"Last day" defined.* Unless a different time is set by a statute, local  
28 rule or court order, the last day ends:

29 (A) For electronic or telefacsimile filing, at midnight in the court's  
30 time zone; and

31 (B) for filing by other means, when the clerk's office is scheduled to  
32 close.

33 (5) *"Next day" defined.* The "next day" is determined by continuing to  
34 count forward when the period is measured after an event and backward  
35 when measured before an event.

36 (6) *"Legal holiday" defined.* "Legal holiday" means any day declared  
37 a holiday by the president of the United States, the congress of the United  
38 States or the legislature of this state, or any day observed as a holiday by  
39 order of the Kansas supreme court. A half holiday is considered as other  
40 days and not as a holiday.

41 (b) *Extending time.* (1) *In general.* When an act may or must be done  
42 within a specified time, the court may, for good cause, extend the time:

43 (A) With or without motion or notice if the court acts, or if a request

1 is made, before the original time or its extension expires; or

2 (B) on motion made after the time has expired if the party failed to  
3 act because of excusable neglect.

4 (2) *Exceptions.* A court must not extend the time to act under K.S.A.  
5 60-250(b), ~~K.S.A. 60-252(b), K.S.A. 60-259(b), (e) and (f) and K.S.A. 60-~~  
6 260(b), and amendments thereto.

7 (c) *Motions, notices of hearing and affidavits or declarations.* (1) *In*  
8 *general.* A written motion and notice of the hearing must be served at least  
9 seven days before that time specified for the hearing with the following  
10 exceptions:

11 (A) When the motion may be heard ex parte;

12 (B) when these rules set a different time; or

13 (C) when a court order, which a party may, for good cause, apply for  
14 ex parte, sets a different time.

15 (2) *Supporting affidavit or declaration.* Any affidavit or declaration  
16 pursuant to K.S.A. 53-601, and amendments thereto, supporting a motion  
17 must be served with the motion. Except as otherwise provided in K.S.A.  
18 60-259(d), and amendments thereto, any opposing affidavit or declaration  
19 must be served at least one day before the hearing, unless the court permits  
20 service at another time.

21 (d) *Additional time after certain kinds of service.* When a party may  
22 or must act within a specified time after being served and service is made  
23 under K.S.A. 60-205(b)(2)(C) (mail), or (D) (leaving with the clerk), and  
24 amendments thereto, three days are added after the period would otherwise  
25 expire under subsection (a).

26 (e) *Extension or suspension of deadlines during times of emergency.*  
27 *The chief justice of the Kansas supreme court may issue an order to extend*  
28 *or suspend computation rules or time limitations established in this*  
29 ~~*section when the chief justice determines such action is necessary to*~~  
30 ~~*secure the health and safety of court users, staff and judicial officers. The*~~  
31 ~~*provisions of this subsection shall expire on March 31, 2021*~~ **{pursuant to**  
32 **section 1, and amendments thereto}.**

33 Sec. 4. K.S.A. 2019 Supp. 22-3402 and 60-206 are hereby repealed.

34 Sec. 5. This act shall take effect and be in force from and after its  
35 publication in the Kansas register.