

HOUSE BILL No. 2078

By Committee on Judiciary

1-20

1 AN ACT concerning criminal procedure; relating to discharge of persons
2 not brought promptly to trial; suspension ~~and elimination~~ of statutory
3 deadlines; **providing guidelines for prioritizing trials; requiring the**
4 **office of judicial administration to prepare and submit a report to the**
5 **legislature in 2022 and 2023**; amending K.S.A. 2020 Supp. 22-3402
6 and repealing the existing section.
7

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

9 Section 1. K.S.A. 2020 Supp. 22-3402 is hereby amended to read as
10 follows: 22-3402. (a) If any person charged with a crime and held in jail
11 solely by reason thereof shall not be brought to trial within 150 days after
12 such person's arraignment on the charge, such person shall be entitled to be
13 discharged from further liability to be tried for the crime charged, unless
14 the delay shall happen as a result of the application or fault of the
15 defendant or a continuance shall be ordered by the court under subsection
16 (e).

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

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

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

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

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

7 (2) a proceeding to determine the defendant's competency to stand
8 trial is pending. If the defendant is subsequently found to be competent to
9 stand trial, the trial shall be scheduled as soon as practicable and in any
10 event within 90 days of such finding. However, if the defendant was
11 subject to the 180-day deadline prescribed by subsection (b) and more than
12 90 days of the original time limitation remain, then the original time
13 limitation remains in effect. The time that a decision is pending on
14 competency shall never be counted against the state;

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

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

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

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

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 filed

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

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

16 (j) ~~The chief justice of the Kansas supreme court may issue an order~~
17 ~~to extend or suspend any deadlines or time limitations established in this~~
18 ~~section pursuant to K.S.A. 2020 Supp. 20-172, and amendments thereto.~~
19 ~~When an order issued pursuant to K.S.A. 2020 Supp. 20-172, and~~
20 ~~amendments thereto, is terminated, any trial scheduled to occur during the~~
21 ~~time such order was in effect shall be placed back on the court schedule~~
22 ~~within 150 days. The provisions of this section shall be suspended until~~
23 ~~May 1, 2024 2023, in all criminal cases filed prior to the effective date of~~
24 ~~this act.~~

25 (k) *The provisions of this section shall not apply in any criminal case*
26 *filed on or after the effective date of this act* **When prioritizing cases for**
27 **trial, trial courts shall consider relevant factors, including, but not**
28 **limited to, the:**

29 (1) **Trial court's calendar;**
30 (2) **relative prejudice to the defendant;**
31 (3) **defendant's assertion of the right to speedy trial;**
32 (4) **calendar of trial counsel;**
33 (5) **availability of witnesses; and**
34 (6) **relative safety of the proceedings to participants as a result of**
35 **the response to the COVID-19 public health emergency in the judicial**
36 **district.**

37 (l) *The office of judicial administration shall prepare and submit a*
38 *report to the senate standing committee on judiciary and the house of*
39 *representatives standing committee on judiciary on or before January*
40 *17, 2022, and January 16, 2023, containing the following information*
41 *disaggregated by judicial district:*

42 (1) *The number of pending criminal cases on January 1, 2022, and*
43 *January 1, 2023, respectively;*

1 ***(2) the number of criminal cases resolved during fiscal years 2021***
2 ***and 2022, respectively, and the method of disposition in each case;***

3 ***(3) the number of jury trials conducted in criminal cases during***
4 ***fiscal years 2021 and 2022, respectively; and***

5 ***(4) the number of new criminal cases filed in fiscal years 2021 and***
6 ***2022, respectively.***

7 ***(m) The amendments made to this section by this act are procedural***
8 ***in nature and shall be construed and applied retroactively.***

9 Sec. 2. K.S.A. 2020 Supp. 22-3402 is hereby repealed.

10 Sec. 3. This act shall take effect and be in force from and after its
11 publication in the Kansas register.