

Substitute for HOUSE BILL No. 2121

By Committee on Judiciary

2-22

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to trials; speedy trial; extending the suspension and providing that time
3 during the COVID-19 public health emergency shall not be assessed
4 against the state; amending K.S.A. 2022 Supp. 22-3402 and repealing
5 the existing section.

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

8 Section 1. K.S.A. 2022 Supp. 22-3402 is hereby amended to read as
9 follows: 22-3402. (a) If any person charged with a crime and held in jail
10 solely by reason thereof shall not be brought to trial within 150 days after
11 such person's arraignment on the charge, such person shall be entitled to be
12 discharged from further liability to be tried for the crime charged, unless
13 the delay shall happen as a result of the application or fault of the
14 defendant or a continuance shall be ordered by the court under subsection
15 (e).

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

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

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

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

36 (1) The defendant is incompetent to stand trial. If the defendant is

1 subsequently found to be competent to stand trial, the trial shall be
2 scheduled as soon as practicable and in any event within 90 days of such
3 finding;

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

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

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

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

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

39 (h) When a scheduled trial is scheduled within the period allowed by
40 ~~subsections~~ subsection (a), (b) or (c) and is delayed because a party has
41 made or filed a motion, or because the court raises a concern on its own,
42 the time elapsing from the date of the making or filing of the motion, or
43 the court's raising a concern, until the matter is resolved by court order

1 shall not be considered when determining if a violation under ~~subsections~~
2 *subsection* (a), (b) or (c) has occurred. If the resolution of such motion or
3 concern by court order occurs at a time when less than 30 days remains
4 under the provisions of ~~subsections~~ *subsection* (a), (b) or (c), the time in
5 which the defendant shall be brought to trial is extended 30 days from the
6 date of the court order.

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

14 (j) The provisions of this section shall be suspended until ~~May 1,~~
15 ~~2023~~ *March 1, 2024*, in all criminal cases.

16 (k) When prioritizing cases for trial, trial courts shall consider
17 relevant factors, including, but not limited to, the:

- 18 (1) Trial court's calendar;
- 19 (2) relative prejudice to the defendant;
- 20 (3) defendant's assertion of the right to speedy trial;
- 21 (4) calendar of trial counsel;
- 22 (5) availability of witnesses; and
- 23 (6) relative safety of the proceedings to participants as a result of the
24 response to the COVID-19 public health emergency in the judicial district.

25 (l) The office of judicial administration shall prepare and submit a
26 report to the senate standing committee on judiciary and the house of
27 representatives standing committee on judiciary on or before January 17,
28 2022, and January 16, 2023, containing the following information
29 disaggregated by judicial district:

- 30 (1) The number of pending criminal cases on January 1, 2022, and
31 January 1, 2023, respectively;
- 32 (2) the number of criminal cases resolved during fiscal years 2021
33 and 2022, respectively, and the method of disposition in each case;
- 34 (3) the number of jury trials conducted in criminal cases during fiscal
35 years 2021 and 2022, respectively; and
- 36 (4) the number of new criminal cases filed in fiscal years 2021 and
37 2022, respectively.

38 (m) *No time between March 19, 2020, and March 1, 2024, shall be*
39 *assessed against the state for any reason. Any person arraigned before*
40 *March 1, 2024, shall be deemed to have been arraigned on March 1,*
41 *2024, for the application of the time limitations provided in subsection (a),*
42 *(b) or (c).*

43 (n) The amendments made to this section by ~~this act~~ *section 1 of*

1 *chapter 12 of the 2021 Session Laws of Kansas* are procedural in nature
2 and shall be construed and applied retroactively.

3 Sec. 2. K.S.A. 2022 Supp. 22-3402 is hereby repealed.

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