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MEMORANDUM

To: House Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 8, 2023
Subject: Bill Brief on HB 2121

HB 2121 addresses how speedy trial time is assessed during the COVID-19 public health emergency and provides reasons for granting a request to be discharged from criminal liability.

The bill amends K.S.A. 22-3402, the statute providing criminal defendants a right to speedy trial in addition to the constitutional right. Current law in subsection (c) provides that if any trial scheduled within the required limit limitation is delayed at the request of the defendant, it shall be rescheduled within 90 days of the original trial deadline. This bill strikes that provision and provides that a request to be discharged from criminal liability shall be made before trial commences or before the applicable speedy trial deadline is set to expire, whichever date is earlier. Failure to make such request shall constitute waiver of the rights provided by the section. Such request shall be granted if the court finds that the defendant has established by a preponderance of the evidence that any excessive delay attributed to the state will result in substantial prejudice to the defendant's ability to present a defense at trial.

Current law in subsection (d) provides that after the trial date is set, if the defendant fails to appear the trial shall be reschedule within 90 days after the defendant appears, except if the defendant was subject to the 180-day deadline and more than 90 days remain, the original time limitation remains in effect. This standard is changed to provide that if the defendant fails to appear, the applicable time limitation shall start over after the defendant appears. If the defendant was undergoing competency proceedings and is found to be competent, the trial shall be schedule within 90 days after such finding. Current law provides that if the defendant was subject to the 180 day deadline and more than 90 days remain, the original time limitations remain in effect, and this provisions is stricken.

House Judiciary Committee
February 8 2023
Attachment 1

A ground in current law for extending the time limitations is because of other cases pending for trial, the court does not have sufficient time to commence the trial within the time limitation. Not more than one continuance of not more than 30 days may be granted under this ground. This bill removes this ground and provides that at the request of either party or as otherwise necessary, the court may find good cause to reschedule the trial within the succeeding 90 days. When determining whether good cause exists, the court may consider any relevant factor including (1) the trial court's availability, (2) any relative prejudice asserted by the defendant caused by such delay, (3) the availability of trial counsel, (4) the time needed for recently appointed counsel to prepare for trial, (5) the availability of witnesses, and (6) the relative safety of the proceedings or participants as a result of a public health emergency, natural disaster or any other emergency that prevents the court from proceeding. If a defendant waives the rights provided by this section, the defendant may revoke such waiver only after providing the state and the court notice of such revocation in open court. When the court finds that such waiver is properly revoked, the trial shall be scheduled within 90 days or within the original time limitation applicable to the case, whichever date is later.

The bill strikes provisions regarding prioritization of cases that were stalled during the COVID-19 public health emergency, which are set to expire on May 1 of this year. The bill also provides that no time between March 19, 2020, and May 1, 2023, shall be assessed against the state for any reason. Any person arraigned before May 1, 2023, shall be deemed to have been arraigned on May 1, 2023, for the application of the time limitations in this section. Finally, subsection (1) is amended to provided that these changes are intended to apply retroactively.