

Substitute for HOUSE BILL No. 2121

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

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

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

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

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

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

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

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

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

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

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

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

court of appeals is filed in the district court.

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

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

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

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

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

- (1) Trial court's calendar;
- (2) relative prejudice to the defendant;
- (3) defendant's assertion of the right to speedy trial;
- (4) calendar of trial counsel;
- (5) availability of witnesses; and

(6) relative safety of the proceedings to participants as a result of the response to the COVID-19 public health emergency in the judicial district.

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

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

(m) *No time between March 19, 2020, and March 1, 2024, shall*

be assessed against the state for any reason. Any person arraigned before March 1, 2024, shall be deemed to have been arraigned on March 1, 2024, for the application of the time limitations provided in subsection (a), (b) or (c).

(n) The amendments made to this section by ~~this act~~ *section 1 of chapter 12 of the 2021 Session Laws of Kansas* are procedural in nature and shall be construed and applied retroactively.

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

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE

President of the Senate.

Secretary of the Senate.

APPROVED

Governor.