

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, the
8 chief justice of the Kansas supreme court may issue an order to extend or
9 suspend any deadlines or time limitations established by statute when the
10 chief justice determines such action is necessary to secure the health and
11 safety of court users, staff and judicial officers.

12 (b) Notwithstanding any other provisions of law, the chief justice of
13 the Kansas supreme court may issue an order to authorize the use of two-
14 way electronic audio-visual communication in any court proceeding when
15 the chief justice determines such action is necessary to secure the health
16 and safety of court users, staff and judicial officers.

17 (c) The provisions of this section shall expire on March 31, 2021.

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

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

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

36 (d) After any trial date has been set within the time limitation

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

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

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

14 (2) a proceeding to determine the defendant's competency to stand
15 trial is pending. If the defendant is subsequently found to be competent to
16 stand trial, the trial shall be scheduled as soon as practicable and in any
17 event within 90 days of such finding. However, if the defendant was
18 subject to the 180-day deadline prescribed by subsection (b) and more than
19 90 days of the original time limitation remain, then the original time
20 limitation remains in effect. The time that a decision is pending on
21 competency shall never be counted against the state;

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

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

33 (f) In the event a mistrial is declared, a motion for new trial is granted
34 or a conviction is reversed on appeal to the supreme court or court of
35 appeals, the time limitations provided for herein shall commence to run
36 from the date the mistrial is declared, the date a new trial is ordered or the
37 date the mandate of the supreme court or court of appeals is filed in the
38 district court.

39 (g) If a defendant, or defendant's attorney in consultation with the
40 defendant, requests a delay and such delay is granted, the delay shall be
41 charged to the defendant regardless of the reasons for making the request,
42 unless there is prosecutorial misconduct related to such delay. If a delay is
43 initially attributed to the defendant, but is subsequently charged to the state

1 for any reason, such delay shall not be considered against the state under
2 subsections (a), (b) or (c) and shall not be used as a ground for dismissing
3 a case or for reversing a conviction unless not considering such delay
4 would result in a violation of the constitutional right to a speedy trial or
5 there is prosecutorial misconduct related to such delay.

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

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

23 (j) *The chief justice of the Kansas supreme court may issue an order*
24 *to extend or suspend any deadlines or time limitations established in this*
25 *section when the chief justice determines such action is necessary to*
26 *secure the health and safety of court users, staff and judicial officers. The*
27 *provisions of this subsection shall expire on March 31, 2021.*

28 Sec. 3. K.S.A. 2019 Supp. 60-206 is hereby amended to read as
29 follows: 60-206. (a) *Computing time.* The following provisions apply in
30 computing any time period specified in this chapter, in any local rule or
31 court order or in any statute or administrative rule or regulation that does
32 not specify a method of computing time.

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

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

36 (B) count every day, including intermediate Saturdays, Sundays and
37 legal holidays; and

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

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

42 (A) Begin counting immediately on the occurrence of the event that
43 triggers the period;

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

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

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

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

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

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

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

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

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

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

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

30 (A) With or without motion or notice if the court acts, or if a request
31 is made, before the original time or its extension expires; or

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

34 (2) *Exceptions.* A court must not extend the time to act under K.S.A.
35 60-250(b), ~~K.S.A. 60-252(b)~~, ~~K.S.A. 60-259(b)~~, (e) and (f) and ~~K.S.A. 60-~~
36 260(b), and amendments thereto.

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

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

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

43 (C) when a court order, which a party may, for good cause, apply for

1 ex parte, sets a different time.

2 (2) *Supporting affidavit or declaration.* Any affidavit or declaration
3 pursuant to K.S.A. 53-601, and amendments thereto, supporting a motion
4 must be served with the motion. Except as otherwise provided in K.S.A.
5 60-259(d), and amendments thereto, any opposing affidavit or declaration
6 must be served at least one day before the hearing, unless the court permits
7 service at another time.

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

13 (e) *Extension or suspension of deadlines during times of emergency.*
14 *The chief justice of the Kansas supreme court may issue an order to extend*
15 *or suspend computation rules or time limitations established in this*
16 *section when the chief justice determines such action is necessary to*
17 *secure the health and safety of court users, staff and judicial officers. The*
18 *provisions of this subsection shall expire on March 31, 2021.*

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

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