

HOUSE BILL No. 2121

By Committee on Judiciary

Proposed Amendments to HB 2121 - extension and time assessment only
House Judiciary Committee
Prepared by the Office of Revisor of Statutes
February 21, 2023

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to trials; speedy trial; providing reasons for granting a request to be
3 discharged from criminal liability; addressing time assessed during the
4 COVID-19 public health emergency; amending K.S.A. 2022 Supp. 22-
5 3402 and repealing the existing section.

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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 in-
13 accordance with subsection (c), unless the delay shall happen as a result of
14 the application or fault of the defendant or a continuance shall be ordered
15 by the court under subsection (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 in-accordance with
20 subsection (c), unless the delay shall happen as a result of the application
21 or fault of the defendant; or a continuance shall be ordered by the court
22 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. A request to be discharged from further liability to be tried for the
27 crime charged pursuant to subsection (a) or (b) shall be made before trial
28 commences or before the applicable time limitation is set to expire,
29 whichever date is earlier. Failure to make such request in a timely manner
30 shall constitute a waiver of the rights provided in this section. Such
31 request shall be granted if the court finds that the defendant has
32 established by a preponderance of the evidence that any excessive delay
33 attributed to the state will result in substantial prejudice to the defendant's
34 ability to present a defense at trial.

35 (d) After any trial date has been set within the time limitation
36 prescribed by subsection (a); or (b) or (c), if the defendant fails to appear

strike

If any trial scheduled within the time limitation provided 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

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or (c)

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

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

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

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

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

31 (4) ~~because of other cases pending for trial, the court does not have~~
 32 ~~sufficient time to commence the trial of the case within the time fixed for~~
 33 ~~trial by this section. Not more than one continuance of not more than 30~~
 34 ~~days may be ordered upon this ground at the request of either party or as~~
 35 ~~otherwise necessary, the court finds good cause to reschedule trial within~~
 36 ~~the succeeding 90 days. When determining whether good cause exists, the~~
 37 ~~court may consider any relevant factors, including, but not limited to:~~

38 ~~(A) The trial court's availability;~~

39 ~~(B) any relative prejudice asserted by the defendant caused by such~~
 40 ~~delay;~~

41 ~~(C) the availability of trial counsel;~~

42 ~~(D) the time needed for recently appointed counsel to prepare for~~
 43 ~~trial;~~

trial shall be rescheduled within 90 days after

has appeared

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

(c)

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.

, where the original continuance was for less than 90 days, and the trial is commenced within 120 days from the original trial date

1 ~~(E) the availability of witnesses; and~~
 2 ~~(F) the relative safety of the proceedings or participants as a result of~~
 3 ~~a public health emergency, natural disaster or any other emergency that~~
 4 ~~prevents the court from proceeding.~~

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 on this ground

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

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

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 or (c)

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

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 or (c)

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 or (c)

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 or (c)

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

39 (j) ~~The provisions of this section shall be suspended until May 1,~~
 40 ~~2023, in all criminal cases. If a defendant waives the rights provided by this~~
 41 ~~section, the defendant may revoke such waiver only after providing the~~
 42 ~~state and the court notice of such revocation in open court. When the court~~
 43 ~~finds that such waiver is properly revoked, the trial shall be scheduled~~

~~1 within 90 days or within the original time limitation applicable to the
2 case, whichever date is later.~~

The provisions of this section shall be suspended until
March 1, 2024, in all criminal cases

~~3 (k) When prioritizing cases for trial, trial courts shall consider
4 relevant factors, including, but not limited to, the:~~

- ~~5 (1) Trial court's calendar;~~
- ~~6 (2) relative prejudice to the defendant;~~
- ~~7 (3) defendant's assertion of the right to speedy trial;~~
- ~~8 (4) calendar of trial counsel;~~
- ~~9 (5) availability of witnesses; and~~
- ~~10 (6) relative safety of the proceedings to participants as a result of the~~

~~11 response to the COVID-19 public health emergency in the judicial district.~~

~~12 (l) The office of judicial administration shall prepare and submit a
13 report to the senate standing committee on judiciary and the house of
14 representatives standing committee on judiciary on or before January 17,
15 2022, and January 16, 2023, containing the following information
16 disaggregated by judicial district:~~

~~17 (1) The number of pending criminal cases on January 1, 2022, and
18 January 1, 2023, respectively;~~

~~19 (2) the number of criminal cases resolved during fiscal years 2021
20 and 2022, respectively, and the method of disposition in each case;~~

~~21 (3) the number of jury trials conducted in criminal cases during fiscal
22 years 2021 and 2022, respectively; and~~

March 1, 2024

~~23 (4) the number of new criminal cases filed in fiscal years 2021 and
24 2022, respectively. No time between March 19, 2020, and May 1, 2023,
25 shall be assessed against the state for any reason. Any person arraigned
26 before May 1, 2023, shall be deemed to have been arraigned on May 1,
27 2023, for the application of the time limitations provided in subsection (a)
28 or (b).~~

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or (c)

~~29 (m)(l) The amendments made to this section by section 1 of chapter
30 12 of the 2021 Session Laws of Kansas and this act are procedural in
31 nature and shall be construed and applied retroactively.~~

~~32 Sec. 2. K.S.A. 2022 Supp. 22-3402 is hereby repealed.~~

~~33 Sec. 3. This act shall take effect and be in force from and after its
34 publication in the statute book.~~

Kansas register