

**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,  
8 **{during any state of disaster emergency pursuant to K.S.A. 48-924,**  
9 **and amendments thereto,}** the chief justice of the Kansas supreme court  
10 may issue an order to extend or suspend any deadlines or time limitations  
11 established by statute when the chief justice determines such action is  
12 necessary to secure the health and safety of court users, staff and judicial  
13 officers.

14 (b) Notwithstanding any other provisions of law, **{during any state**  
15 **of disaster emergency pursuant to K.S.A. 48-924, and amendments**  
16 **thereto,}** the chief justice of the Kansas supreme court may issue an order  
17 to authorize the use of two-way electronic audio-visual communication in  
18 any court proceeding when the chief justice determines such action is  
19 necessary to secure the health and safety of court users, staff and judicial  
20 officers.

21 (c) **{Any order issued pursuant to this section may remain in**  
22 **effect for up to 150 days after a state of disaster emergency is**  
23 **terminated pursuant to K.S.A. 48-924, and amendments thereto. Any**  
24 **order in violation of this section shall be void.**

25 **{d)}** The provisions of this section shall expire on March 31, 2021.

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

34 (b) If any person charged with a crime and held to answer on an  
35 appearance bond shall not be brought to trial within 180 days after  
36 arraignment on the charge, such person shall be entitled to be discharged

1 from further liability to be tried for the crime charged, unless the delay  
2 shall happen as a result of the application or fault of the defendant, or a  
3 continuance shall be ordered by the court under subsection (e).

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

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

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

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

22 (2) a proceeding to determine the defendant's competency to stand  
23 trial is pending. If the defendant is subsequently found to be competent to  
24 stand trial, the trial shall be scheduled as soon as practicable and in any  
25 event within 90 days of such finding. However, if the defendant was  
26 subject to the 180-day deadline prescribed by subsection (b) and more than  
27 90 days of the original time limitation remain, then the original time  
28 limitation remains in effect. The time that a decision is pending on  
29 competency shall never be counted against the state;

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

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

41 (f) In the event a mistrial is declared, a motion for new trial is granted  
42 or a conviction is reversed on appeal to the supreme court or court of  
43 appeals, the time limitations provided for herein shall commence to run

1 from the date the mistrial is declared, the date a new trial is ordered or the  
2 date the mandate of the supreme court or court of appeals is filed in the  
3 district court.

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

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

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

31 (j) *The chief justice of the Kansas supreme court may issue an order*  
32 *to extend or suspend any deadlines or time limitations established in this*  
33 *section ~~when the chief justice determines such action is necessary to~~*  
34 *~~secure the health and safety of court users, staff and judicial officers. The~~*  
35 *~~provisions of this subsection shall expire on March 31, 2021~~ {pursuant to*  
36 **section 1, and amendments thereto. When an order issued pursuant to**  
37 **section 1, and amendments thereto, is terminated, any trial scheduled**  
38 **to occur during the time such order was in effect shall be placed back**  
39 **on the court schedule within 150 days}.**

40 Sec. 3. K.S.A. 2019 Supp. 60-206 is hereby amended to read as  
41 follows: 60-206. (a) *Computing time*. The following provisions apply in  
42 computing any time period specified in this chapter, in any local rule or  
43 court order or in any statute or administrative rule or regulation that does

1 not specify a method of computing time.

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

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

5 (B) count every day, including intermediate Saturdays, Sundays and  
6 legal holidays; and

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

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

11 (A) Begin counting immediately on the occurrence of the event that  
12 triggers the period;

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (2) *Exceptions.* A court must not extend the time to act under K.S.A.  
4 60-250(b), ~~K.S.A. 60-252(b), K.S.A. 60-259(b),~~ (e) and (f) and ~~K.S.A. 60-~~  
5 260(b), and amendments thereto.

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

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

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

12 (C) when a court order, which a party may, for good cause, apply for  
13 ex parte, sets a different time.

14 (2) *Supporting affidavit or declaration.* Any affidavit or declaration  
15 pursuant to K.S.A. 53-601, and amendments thereto, supporting a motion  
16 must be served with the motion. Except as otherwise provided in K.S.A.  
17 60-259(d), and amendments thereto, any opposing affidavit or declaration  
18 must be served at least one day before the hearing, unless the court permits  
19 service at another time.

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

25 (e) *Extension or suspension of deadlines during times of emergency.*  
26 *The chief justice of the Kansas supreme court may issue an order to extend*  
27 *or suspend computation rules or time limitations established in this*  
28 *section* ~~*when the chief justice determines such action is necessary to*~~  
29 ~~*secure the health and safety of court users, staff and judicial officers. The*~~  
30 ~~*provisions of this subsection shall expire on March 31, 2021*~~ **{pursuant to**  
31 **section 1, and amendments thereto}.**

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

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