House Substitute for SENATE BILL No. 102

AN ACT concerning courts; relating to extension or suspension of deadlines or time limitations to secure the health and safety of court users, staff and judicial officers; amending K.S.A. 2019 Supp. 22-3402 and 60-206 and repealing the existing sections.

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

New Section 1. (a) Notwithstanding any other provisions of law, during any state of disaster emergency pursuant to K.S.A. 48-924, and amendments thereto, the chief justice of the Kansas supreme court may issue an order to extend or suspend any deadlines or time limitations established by statute when the chief justice determines such action is necessary to secure the health and safety of court users, staff and judicial officers.

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

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

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

Sec. 2. K.S.A. 2019 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 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 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 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 (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 (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 (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 (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, 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 chief justice of the Kansas supreme court may issue an order to extend or suspend any deadlines or time limitations established in this section pursuant to section 1, and amendments thereto. When an order issued pursuant to section 1, and amendments thereto, is terminated, any trial scheduled to occur during the time such order was in effect shall be placed back on the court schedule within 150 days.

Sec. 3. K.S.A. 2019 Supp. 60-206 is hereby amended to read as

follows: 60-206. (a) *Computing time.* The following provisions apply in computing any time period specified in this chapter, in any local rule or court order or in any statute or administrative rule or regulation that does not specify a method of computing time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Extension or suspension of deadlines during times of emergency. The chief justice of the Kansas supreme court may issue an order to extend or suspend computation rules or time limitations established in this section pursuant to section 1, and amendments thereto.

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

Sec. 5. 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 SENATE, and passed that body

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SENATE concurred in

HOUSE amendments _____

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President of the Senate.

_____

Secretary of the Senate.

Passed the HOUSE

as amended _____

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Speaker of the House.

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Chief Clerk of the House.

APPROVED _____

_____

Governor.