

HOUSE BILL No. 2743

By Committee on Taxation

3-13

1 AN ACT concerning courts; relating to alteration or suspension of
2 deadlines to secure the health and safety of court users, staff and
3 judicial officers; amending K.S.A. 2019 Supp. 22-3402 and 60-206 and
4 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 alter 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 Sec. 2. K.S.A. 2019 Supp. 22-3402 is hereby amended to read as
18 follows: 22-3402. (a) If any person charged with a crime and held in jail
19 solely by reason thereof shall not be brought to trial within 150 days after
20 such person's arraignment on the charge, such person shall be entitled to be
21 discharged from further liability to be tried for the crime charged, unless
22 the delay shall happen as a result of the application or fault of the
23 defendant or a continuance shall be ordered by the court under subsection
24 (e).

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

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

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

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

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

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

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

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

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

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

38 (g) If a defendant, or defendant's attorney in consultation with the
39 defendant, requests a delay and such delay is granted, the delay shall be
40 charged to the defendant regardless of the reasons for making the request,
41 unless there is prosecutorial misconduct related to such delay. If a delay is
42 initially attributed to the defendant, but is subsequently charged to the state
43 for any reason, such delay shall not be considered against the state under

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

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

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

22 (j) *The chief justice of the Kansas supreme court may issue an order*
23 *to alter or suspend any deadlines established in this section when the chief*
24 *justice determines such action is necessary to secure the health and safety*
25 *of court users, staff and judicial officers.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (2) *Exceptions.* A court must not extend the time to act under K.S.A.
33 60-250(b), ~~K.S.A.~~ 60-252(b), ~~K.S.A.~~ 60-259(b), (e) and (f) and ~~K.S.A.~~ 60-
34 260(b), and amendments thereto.

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

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

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

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

43 (2) *Supporting affidavit or declaration.* Any affidavit or declaration

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

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

11 (e) *Alteration of deadlines during times of emergency.* The chief
12 justice of the Kansas supreme court may issue an order to alter or suspend
13 computation rules established in this section when the chief justice
14 determines such action is necessary to secure the health and safety of
15 court users, staff and judicial officers.

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

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