

HB2078

January 26

Nick Reinecker

Opponent

House Judiciary

Chairman: Fred Patton

This bill, at first blush, appears to not only suspend and eliminate statutory rights but constitutional and natural rights, as well. I oppose any action that would attempt to negate or limit rights that are supposed to be defended. This is in addition to my concerns with the validity of K.S.A. 2020 Supp. 22-172 and parts of the original statute.

AN ACT concerning criminal procedure; **relating to discharge of persons not brought promptly to trial; suspension and elimination of statutory deadlines; amending K.S.A. 2020 Supp. 22-3402 and repealing the existing section.**

Section 1. K.S.A. 2020 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...
- (b) If any person charged with a crime and held to answer on an appearance bond...
- (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...
- 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.
- (f) In the event a mistrial is declared.....
- 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.

(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.

To Be Stricken

(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 K.S.A. 2020 Supp. 20-172, and amendments thereto. When an order issued pursuant to K.S.A. 2020 Supp. 20-172, 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

To Be Added

(j) The provisions of this section shall be suspended until May 1, 2024, in all criminal cases filed prior to the effective date of this act. {Who chose and What is significance of May 1, 2024?}

(k) The provisions of this section shall not apply in any criminal case filed on or after the effective date of this act. {Does this mean a-i is no longer part of criminal procedure?}

(l) The amendments made to this section by this act are procedural in nature and shall be construed and applied retroactively.

Sec. 2. K.S.A. 2020 Supp. 22-3402 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

20-172. Orders issued by chief justice to secure health and safety; suspension of deadlines or time limitations during a state of disaster emergency; authorized use of two-way electronic audio-visual communication. (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, 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.

{Contingency beyond two-way electronic audio-visual communications?}

(c) Any order issued pursuant to subsection (a) 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**. {Significance of date and Who chose?}
History: L. 2020, ch. 4, § 1; L. 2020, ch. 1, § 24 (Special Session); June 9.

Office of Revisor as Reference

http://www.kslegislature.org/li_2012/b2011_12/committees/misc/ctte_s_jud_1_20120126_02_other.pdf