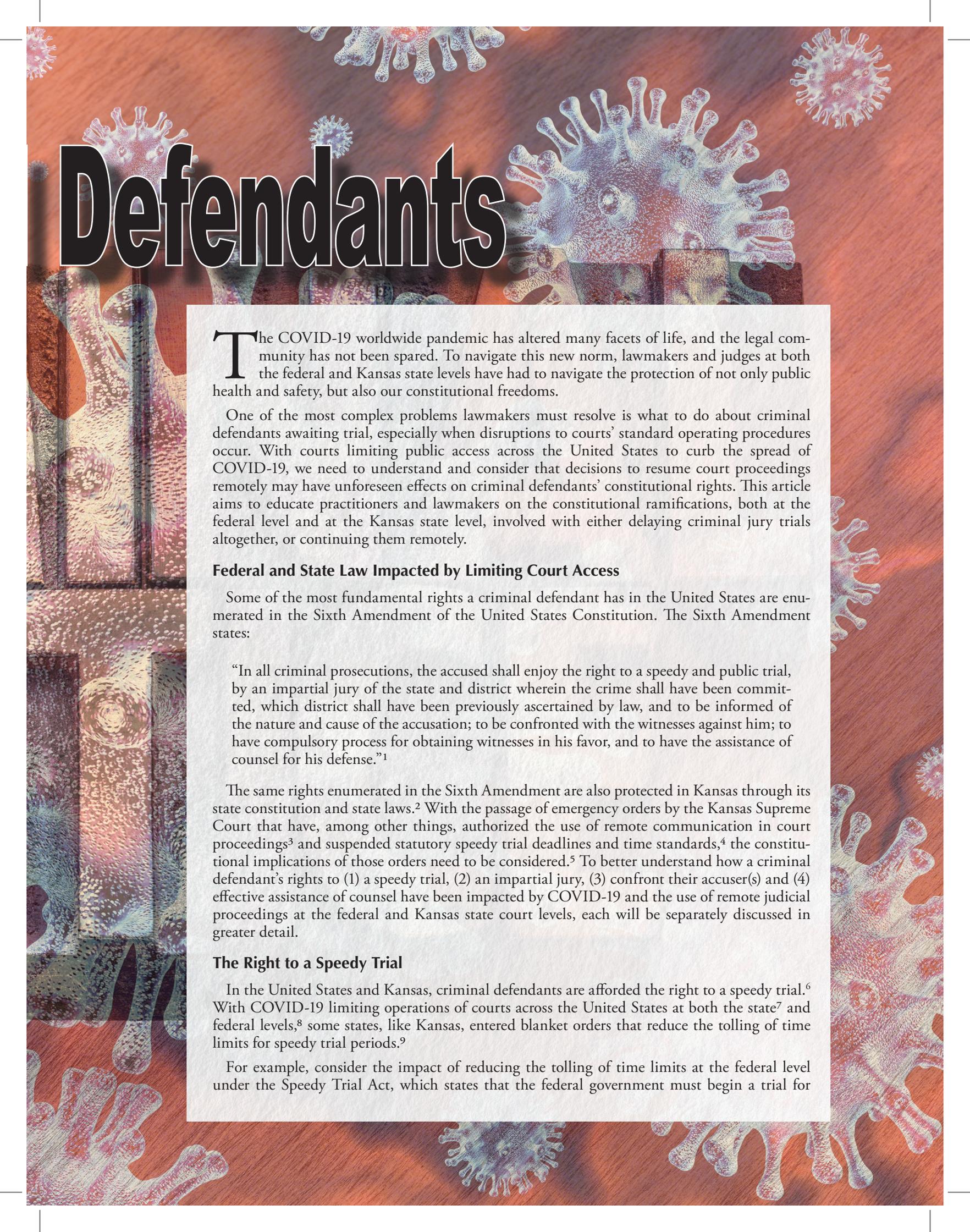
The background features a 3D illustration of the letters 'COVID-19' on wooden blocks. The letters are rendered in a dark, textured font. Surrounding the letters are numerous virus particles, some appearing as red and white spheres with spikes, and others as blue and white handprints. The overall scene is set against a warm, reddish-brown wooden background.

COVID-19 v. Criminal

by **John Eric Rapp**
& **Ben Bigham**



Defendants

The COVID-19 worldwide pandemic has altered many facets of life, and the legal community has not been spared. To navigate this new norm, lawmakers and judges at both the federal and Kansas state levels have had to navigate the protection of not only public health and safety, but also our constitutional freedoms.

One of the most complex problems lawmakers must resolve is what to do about criminal defendants awaiting trial, especially when disruptions to courts' standard operating procedures occur. With courts limiting public access across the United States to curb the spread of COVID-19, we need to understand and consider that decisions to resume court proceedings remotely may have unforeseen effects on criminal defendants' constitutional rights. This article aims to educate practitioners and lawmakers on the constitutional ramifications, both at the federal level and at the Kansas state level, involved with either delaying criminal jury trials altogether, or continuing them remotely.

Federal and State Law Impacted by Limiting Court Access

Some of the most fundamental rights a criminal defendant has in the United States are enumerated in the Sixth Amendment of the United States Constitution. The Sixth Amendment states:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”¹

The same rights enumerated in the Sixth Amendment are also protected in Kansas through its state constitution and state laws.² With the passage of emergency orders by the Kansas Supreme Court that have, among other things, authorized the use of remote communication in court proceedings³ and suspended statutory speedy trial deadlines and time standards,⁴ the constitutional implications of those orders need to be considered.⁵ To better understand how a criminal defendant's rights to (1) a speedy trial, (2) an impartial jury, (3) confront their accuser(s) and (4) effective assistance of counsel have been impacted by COVID-19 and the use of remote judicial proceedings at the federal and Kansas state court levels, each will be separately discussed in greater detail.

The Right to a Speedy Trial

In the United States and Kansas, criminal defendants are afforded the right to a speedy trial.⁶ With COVID-19 limiting operations of courts across the United States at both the state⁷ and federal levels,⁸ some states, like Kansas, entered blanket orders that reduce the tolling of time limits for speedy trial periods.⁹

For example, consider the impact of reducing the tolling of time limits at the federal level under the Speedy Trial Act, which states that the federal government must begin a trial for



federal charges either no later than 70 days after either (1) the indictment or (2) after the defendant's first appearance in court, whichever is later.¹⁰ The orders made by federal courts to sus-

pend in-court proceedings¹¹ may be permissible in the Speedy Trial Act's catch-all provision, which allows extensions for the tolling of those time periods.¹² However, nowhere in the Act are those orders definitively permissible.¹³ Even though a continuance may be granted when "...continuation of such proceeding [is] impossible[...]" there is no way to determine if the limiting of in-person court proceedings as a result of a pandemic would constitute a finding that court proceedings are impossible.¹⁴ Until federal precedent is available on the constitutionality of such orders in the wake of a pandemic, the uncertainty of their validity will remain.¹⁵

Concurrently, in Kansas, administrative orders have been entered by the Kansas Supreme Court, which limit the expiration of speedy trial protections enumerated in K.S.A. 22-3402.¹⁶ Normally, a criminal defendant in Kansas must go to trial within 150 days of the defendant's arraignment on the charges.¹⁷ However, this period can be extended without violation of the Sixth Amendment of the United States Constitution so long as it does not fail the four-factor *Barker* test recently adopted by the Kansas Supreme Court. To pass this test, the following four factors must be evaluated "... (1) length of delay, (2) reason for the delay, (3) defendant's assertion of his or her right, and (4) prejudice to the defendant."¹⁸ Without a concrete end date to the COVID-19 pandemic in sight, prosecutors will have to hope criminal defendants either (1) consent to continuing their trials remotely and avoid this issue entirely, or (2) entrust that the orders suspending the expiration of speedy trial times will pass the four-factor *Barker* test.

Further, unlike jurors and court staff who can remain at home while these orders delay criminal proceedings, many criminal defendants are subject to lengthened stays in prisons and jails while awaiting trial. Unfortunately, the places where criminal defendants are held is where the risk of contracting the COVID-19 virus is often the highest.¹⁹ "Incarcerated people are infected by the coronavirus at a rate more than five times higher than the nation's overall rate."²⁰ This also opens a Pandora's Box of Eighth Amendment issues related to holding those accused in an environment where they are at a higher risk of becoming infected with COVID-19.²¹

Generally speaking, officials overseeing the holding of accused criminals must "respond reasonably" to substantial risks

to inmate health and safety to ensure they do not infringe on their Eighth Amendment rights.²² If institutions holding people with pending criminal charges fail to (1) implement proper holding policies (such as allowing for proper social distancing), (2) maintain reasonably sanitary conditions, (3) identify and take additional precautions for high-risk inmates, (4) quarantine sick inmates, or (5) provide treatment for those diagnosed with COVID-19, those institutions have potentially violated inmates' Eighth Amendment rights and may be liable for the violations.²³

The Right to an Impartial Jury

Criminal defendants are also afforded the right to an impartial jury under the Sixth Amendment of the United States Constitution²⁴ and Kansas's state constitution.²⁵ One of the most important components of an impartial jury is that it accurately reflect the diversity of the community from which it is selected.²⁶ Areas where courts have resumed jury trials during the COVID-19 pandemic are experiencing decreases in the number of people willing to report for jury duty due to fear of contracting COVID-19.²⁷ Those individuals who do not report for duty because of this fear are most often those medically or economically vulnerable to the virus.²⁸ This results in jury pools being underrepresented by the following demographics: elderly people, immuno-compromised individuals, racial and ethnic minorities, and even women (likely due to more children staying at home because of remote schooling.)²⁹ With the lessened availability or altogether lack of availability within these demographics for the jury selection process, jury pools are a much less accurate representation of the community from which they are selected.³⁰ The less diverse the jury pool, the lower the likelihood that a criminal defendant will have their case tried before an impartial jury.³¹

Additionally, if the solution to in-person jury concerns is to switch to remote criminal jury trials—either through Zoom or other equivalent video conferencing programs—it can still be damaging to criminal defendants. No court has ruled on the constitutionality of remote jury trials in criminal proceedings. The Supreme Court has only allowed virtual witness testimony in narrow circumstances completely unrelated to a pandemic.³² Studies have shown that with less proximity to a criminal defendant, the less empathy jurors will feel when evaluating the charges against the accused.³³ Current courtroom policies such as the accused wearing a mask or barriers placed between the accused and the courtroom have the potential to further dehumanize criminal defendants to jurors hearing their case, and may influence their sentencing negatively.³⁴ Moreover, the software programs used to conduct these remote trials have been shown to decrease the retention of information and attention spans of those utilizing them.³⁵ This may inhibit a fair trial because jurors will pay less attention to the evidence presented and resulting verdicts may not be as informed as they would have been traditionally at an in-person jury trial.³⁶

The Right to Confront the Accuser(s)

Under the Sixth Amendment of the United States Constitution (and incorporated in the Kansas State Constitution under the Fourteenth Amendment),³⁷ criminal defendants are afforded the right to “see[] the witness[es] face to face, and [] subject[] [them] to the ordeal of a cross-examination.”³⁸ Although remote trials could require the government’s witnesses to be present in a video conference call for the defendant to see them, is this actually equivalent to the physical appearance traditionally required to satisfy the accused’s Sixth Amendment right to confrontation?³⁹ Further, many nonverbal forms of communication have been proven to be lost over remote means of trial, such as eye contact, facial expressions and body language.⁴⁰ All of those forms of communication are imperative for jurors and the accused to determine a witness’s credibility and overall demeanor, which are core principles of the accused’s Sixth Amendment right to confrontation.⁴¹



Kansas’s state constitution also more explicitly enumerates these same rights through incorporation of the language that identifies an accused’s right to (1) “...appear and defend **in person...**” and (2) “...meet the witness **face to face...**”⁴² If criminal jury trials are conducted remotely as allowed by the administrative orders passed in May by Kansas’s Supreme Court,⁴³ how would lower courts reconcile compliance with those constitutional rights of the accused in a remote trial setting? Traditionally, the only way the accused’s right to confront witnesses offering testimonial statements is if a defendant voluntarily waives this right either: (1) through their own actions or (2) in consideration of advice from their counsel.⁴⁴ That begs the question, if the accused can watch a witness testify over Zoom, is it the same as being physically “face-to-face” with a testifying witness? Kansas case law does allow for introduction of testimonial statements without physically confronting the accused if a witness is unavailable at trial and was available for cross-examination by the accused prior to the statements.⁴⁵ Thus, to even have a chance of success of presenting testimonial statements made by witnesses not physically present at trial, prosecutors will have to either (1) establish that a witness’s absence at trial is due to their unavailability as defined in K.S.A. 60-459,⁴⁶ or (2) in a remote trial setting, determine whether the live video of a

witness offering testimonial statements satisfies the accused’s right to confront the witnesses.⁴⁷

The Right to Effective Assistance of Counsel

The last Sixth Amendment constitutional right impacted by any disruption to standard operating procedures within criminal courts is the right to effective assistance of counsel.⁴⁸ Ineffective assistance of counsel occurs when both (1) an accused’s counsel has fallen below an objective standard of reasonableness, and (2) the ineffective counsel resulted in an objectively reasonable probability that the outcome of the criminal proceeding would have been different without the ineffectiveness.⁴⁹

This leaves two questions that must be answered: first, what is an objectively reasonable standard of representation during the COVID-19 pandemic or in remote court proceedings? Second, what types of deviations from this reasonable standard of representation are severe enough to alter the outcome of a criminal proceeding? The answers to these questions are one and the same and are very simple: no one knows. Without precedent to look to, the attorneys’ decisions during this primarily remote age of representation may unknowingly undermine their client’s right to effective counsel, leaving practitioners exposed to liability for their ineffective decisions.⁵⁰ Further, even if counsel is not found constitutionally ineffective, they may be subject to potential liability under their state bar.⁵¹

Even in the absence of participation in a remote jury trial, the risk of ineffective counsel is compounded if an attorney cannot be physically present with their clients. If conversations that would normally occur in a private setting are instead occurring remotely via video technology, there is a heightened risk of these programs being infiltrated and confidential communications becoming public.⁵² Client and attorney safety also becomes an issue when their correspondence is no longer privately conducted and is at a heightened risk of being intercepted.⁵³

Moreover, traditionally well-funded prosecutors and their offices may be better equipped than lesser funded public defenders to manage cases in a remote age of litigation where access to technology is necessary.⁵⁴ This may result in access to resources being even more influential in conviction rates than it already has been historically.⁵⁵ Additionally, if the criminally accused is subjected to lengthened periods of holding due to suspension of court proceedings, prosecutors and other state actors are in a much better bargaining position for plea deals than those that represent the accused.⁵⁶ For example, in order to escape environments where the risk of contracting COVID-19 is much higher, public defenders may be commanded by their clients to enter plea agreements that may not be as favorable as they would have received in a pre-pandemic setting just to avoid the risk of contracting the virus.⁵⁷

Lastly, in the event that remote or in-person criminal jury trials begin after a disruption such as a pandemic, it is difficult to appropriately weigh the benefits and risks of participating in a remote trial versus waiting for normal court proceedings to resume. For every potential benefit, e.g., a faster resolution of the accused's charges, there is an endless number of uncharted risks, e.g., safety of those involved in any in-person court proceedings.⁵⁸ Because the issues presented are unprecedented, the information available to attorneys to make informed decisions in this era of remote representation is unfortunately lacking.⁵⁹

Conclusion

The Sixth Amendment ensures fundamental rights for the criminally accused in state and federal courts, as well as attorneys on both sides of a criminal proceeding that are well-versed in its requirements in their standard practice. But when “normal” is disrupted, all parties involved need to be aware of the above considerations during that disruption. Ultimately, the current COVID-19 pandemic has presented a plethora of new complications that lawmakers must consider before deciding how to move forward with criminal trials. Lessons learned and case law developed from the current disruption will hopefully ensure that the methods and procedures utilized to promote judicial efficiency both ensure participant safety and preserve the rights of criminal defendants enumerated in the Sixth Amendment. ■

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1. U.S. Const. amend. VI.

2. Kan. Const. Bill of Rts. § 10; *State v. Lawson*, 296 Kan. 1084, 1088, 297 P.3d 1164, 1168 (2013).

3. Administrative Order No. 2020-PR-056 (May 27, 2020), <https://www.kscourts.org/KSCourts/media/KsCourts/Orders/2020-PR-056.pdf>. This order allows for remote proceedings in “...any essential or nonessential court proceeding or any portion of a proceeding, including all criminal, juvenile offender, civil, probate, child in need of care, or other proceeding under the jurisdiction of Kansas district courts or appellate courts.” *Id.*

4. Administrative Order No. 2020-PR-057 (May 27, 2020), <https://www.kscourts.org/KSCourts/media/KsCourts/Orders/2020-PR-057.pdf>.

5. *See, e.g.*, Administrative Order No. 2020-PR-056 (May 27, 2020), <https://www.kscourts.org/KSCourts/media/KsCourts/Orders/2020-PR-056.pdf>; *see also* Administrative Order No. 2020-PR-057 (May 27, 2020), <https://www.kscourts.org/KSCourts/media/KsCourts/Orders/2020-PR-057.pdf>.

6. K.S.A. § 22-3402 (2020); *State v. Rivera*, 277 Kan. 109, 113, 83 P.3d 169, 173 (2004) (Four factor test adopted in Kansas used to determine if a defendant's rights to a speedy trial have been violated); *State v. Brownlee*, 302 Kan. 491, 509, 354 P.3d 525, 539 (2015) (Evaluation of when an amendment to the speedy trial rights are valid); *State v. Petrin*, 213 Kan. 258, 261, 515 P.2d 748, 751 (1973) (any continuances authorized by statute are made in the discretion of the trial court).

7. *State Court Closures in Response to the Coronavirus (COVID-19) Pandemic*, 2020, BALLOTPEdia (April 15, 2020), [https://ballotpedia.org/State_court_closures_in_response_to_the_coronavirus_\(COVID-19\)_pandemic_2020](https://ballotpedia.org/State_court_closures_in_response_to_the_coronavirus_(COVID-19)_pandemic_2020). At the start of the COVID-19 pandemic, thirty-four states suspended in-person proceedings throughout the entire state, including Kansas. *Id.*

8. *See The S. Dist. of N.Y., Response to COVID-19 (Coronavirus)*, U.S. DIST. COURT S. DIST. OF N.Y., <https://www.nysd.uscourts.gov/covid-19-coronavirus> (last visited July 20, 2020).

9. Administrative Order No. 2020-PR-057 (May 27, 2020), <https://www.kscourts.org/KSCourts/media/KsCourts/Orders/2020-PR-057.pdf>. “All deadlines and time limitation to bring a defendant to trial established by K.S.A. 2019 Supp. 22-3402 and its amendments are suspended until further order or this order's expiration under H. Sub. for S.B. 102.” *Id.*

10. 18 U.S.C. § 3161(b)–(c) (2020).

11. *See Court Orders and Updates During COVID-19 Pandemic*, UNITED STATES COURTS, <https://www.uscourts.gov/about-federal-courts/court-website-links/court-orders-and-updates-during-covid19-pandemic> (last visited Oct. 11, 2020). Each court has a different delay enforced for in person proceedings. *Id.* For example, the First Circuit extended the deadlines for non-emergency filings by thirty days, while the Fourth Circuit didn't grant extensions but moved to remote proceedings. *Id.*

12. 18 U.S.C. § 3161(h)(1)–(8).

13. *See id.*

14. 18 U.S.C. § 3161(h)(7)(B)(ii).

15. White Collar Defense and Investigations, *Criminal Statutes of Limitations and Speedy Trial Act Considerations During the COVID-19 Pandemic*, COVINGTON, at 3 (April 3, 2020), <https://www.cov.com/-/media/files/corporate/publications/2020/04/criminal-statutes-of-limitations-and-speedy-trial-act-considerations-during-the-covid-19-pandemic.pdf>; *see also* Jordan S. Rubin, *Coronavirus Containment Collides With U.S. Constitutional Rights*, BLOOMBERG LAW (March 31, 2020) <https://news.bloomberglaw.com/us-law-week/coronavirus-containment-collides-with-u-s-constitutional-rights>. The president of the National Association of Criminal Defense Lawyers commented on the recent federal orders suspending court proceedings as “completely new territory” to navigate with Sixth Amendment issues. *Id.*

16. *Compare* Administrative Order No. 2020-PR-057 (May 27, 2020), <https://www.kscourts.org/KSCourts/media/KsCourts/Orders/2020-PR-057.pdf>, *with* § 22-3402.

17. K.S.A. 22-3402(a).

18. *Rivera*, 277 Kan. at 113.
19. *Covid-19's Impact on People in Prison*, EQUAL JUSTICE INITIATIVE (August 21, 2020), <https://eji.org/news/covid-19s-impact-on-people-in-prison/>.
20. *Id.*
21. See U.S. Const. amend. VII. (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”)
22. *Farmer v. Brennan*, 511 U.S. 825, 834, 844–45 (1994).
23. Michael J. Bentley *et al.*, *The Coronavirus (COVID-19), Prisons, and the Eighth Amendment*, BRADLEY (March 24, 2020), <https://www.bradley.com/insights/publications/2020/03/the-coronavirus-covid19-prisons-and-the-eighth-amendment>.
24. U.S. Const. amend. VII; *Taylor v. Louisiana*, 419 U.S. 522 (1975).
25. Kan. Const. Bill of Rts. § 10; *State v. Miller*, 308 Kan. 1119, 1119, 427 P.3d 907 (2018).
26. *Smith v. Texas*, 311 U.S. 128, 130, 61 S. Ct. 164, 165, 85 L. Ed. 84 (1940); *State v. Robinson*, 303 Kan. 11, 74, 363 P.3d 875 (2015).
27. Kate Larsen, *Coronavirus Impact: Pandemic creates challenges as San Francisco tries to resume jury trials*, ABC (July 2, 2020), <https://abc7news.com/san-francisco-jury-duty-coronavirus-court-can-you-get-out-of-for/6290711/>. Only 60% of jurors called to duty reported in the month of June in San Mateo County in San Francisco, California. *Id.* Additionally, in a survey involving 241 participants, around 40% said they would not serve jury duty due to their fear of contracting COVID-19. *Who Will Show Up for Jury Duty?*, DISPUTE DYNAMICS, <https://caemploymentlaw-update.proskauer.com/files/2020/05/COVID-jury-differences.pdf> (last visited July 20, 2020).
28. Nina J. Ginsberg *et al.*, *Criminal Court Reopening and Public Health in the COVID-19 Era*, NACDL, at 10 (June 2, 2020) <https://nacdl.org/getattachment/56802001-1bb9-4edd-814d-c8d5c41346f3/criminal-court-reopening-and-public-health-in-the-covid-19-era.pdf>.
29. See *id.* at 10–11.
30. See *id.*
31. See *id.* at 11.
32. See *Maryland v. Craig*, 497 U.S. 836, 848, 110 S. Ct. 3157, 3165, 111 L. Ed. 2d 666 (1990) (only in limited situations may an otherwise available witness testify remotely, such as “...to safeguard the physical and psychological well-being of child victims” in criminal child abuse proceedings. Even in those limited situations, the least restrictive remote methods must still be employed.)
33. Ginsberg, *supra* note 28, at 9–10 (finding that virtual mechanisms that separate and place distance between the accused and the jury “... reduce [] juror empathy.”).
34. *Id.* at 10 (concluding that depriving the jury the full experience of seeing a defendant physically in person, many of the non-verbal cues that jurors use to assess credibility will be lost and not considered during the trial, potentially impacting verdicts issued).
35. See *id.*
36. See *id.*
37. *Pointer v. Texas*, 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923 (1965); *State v. Laturner*, 289 Kan. 727, 218 P.3d 23, 26 (2009); *State v. Miller*, 293 Kan. 535, 556, 264 P.3d 461, 476 (2011) (held the right of the accused to confront witnesses in criminal trials is similarly recognized under both the United State and Kansas constitutions).
38. *Crawford v. Wash.*, 541 U.S. 36, 57, 124 S. Ct. 1354, 1367, 158 L. Ed. 2d 177 (2004); U.S. Const. amend. VI.
39. *Compare Coy v. Iowa*, 487 U.S. 1012, 1020, 108 S. Ct. 2798, 2803, 101 L. Ed. 2d 857 (1988), with *State v. Wedgeworth*, No. 88,903, 2006 WL 319338, at *3 (Kan. 2006) (unpublished opinion). The United States Supreme Court refused to even allow a screen between an accused and a child, when the child was one of the accused’s alleged victims of sexual assault crimes because it unconstitutionally restricted the accused’s right to confrontation. *Coy*, 487 U.S. at 1020. In Kansas, the Kansas Supreme Court thought a similar situation was permissible in the limited situation when enumerated by statute for children who testified against the person accused of sexually abusing them. *Wedgeworth*, 2006 WL 319338, at *3.
40. Ginsberg, *supra* note 28, at 10.
41. *How Body Language Can Impact Witness Credibility*, LITIGATION INSIGHTS (Jan. 31, 2018) <https://www.litigationinsights.com/body-language-can-impact-witness-credibility/>.
42. Kan. Const. Bill of Rts. § 10; *Miller*, 293 Kan. at 556 (holding that any witness’ testimonial statements presented in a criminal trial by the prosecution are inadmissible unless “[1] the witness appears at trial or, [2] if the witness is unavailable to testify at trial, the defendant had a prior opportunity for cross-examination.”). The only time a Kansas court has not required physical presence at a criminal trial of an otherwise available witness offering testimonial statements was in *Wedgeworth*, where the court permitted live video testimony for children testifying against their alleged sexual abuser. 2006 WL 319338, at *3. Even in this situation, the court clarified that the only reason for allowing the remote testimony instead of live in-person testimony was because of the existence of a statute (K.S.A. 22-3434) that permitted it and the requirements under the statute were fully satisfied. *Id.*
43. Administrative Order No. 2020-PR-056 (May 27, 2020), <https://www.kscourts.org/KSCourts/media/KsCourts/Orders/2020-PR-056.pdf>. This order allows for remote proceedings in “...any essential or nonessential court proceeding or any portion of a proceeding, including all criminal, juvenile offender, civil, probate, child in need of care, or other proceeding under the jurisdiction of Kansas district courts or appellate courts.” *Id.*
44. *Kenreck v. State*, 198 Kan. 21, 23, 422 P.2d 894, 897 (1967) (holding that a voluntary forfeiture of this right is if a prisoner escapes prison prior to their trial date); *State v. Maxwell*, 151 Kan. 951, 102 P.2d 109, 109 (1940) (holding that when a defendant fails to attend trial when presented the opportunity to, the right to confrontation is waived).
45. *Miller*, 293 Kan. at 556
46. See *State v. Jefferson*, 287 Kan. 28, 35, 194 P.3d 557, 560 (2008) (holding that unavailability can be established under K.S.A. §60-459(g)); See also K.S.A. 60-459(g)(1)-(5) (2020). The most likely exception for COVID-19 related unavailability in this statute is (3), which defines a witness as unavailable if they are “unable to be present or to testify at the hearing because of death or then existing physical or medical illness.” Even under this exception, the success of establishing such unavailability is still low.
47. In Kansas, this has only has been established where a statute contemplated the need and reasons for remote testimony. See *Wedgeworth*, 2006 WL 319338, at *3. No such statute exists in a post-COVID era for generally allowing live remote testimony.
48. U.S. Const. amend. VI.
49. *Strickland v. Wash.*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984).
50. See Ginsberg, *supra* note 28, at 11 (The study proposed an interesting hypothetical as follows: “[Imagine] an accused who is detained pre-trial must not be compelled to choose between the right to a speedy trial (potentially motivated by threat of contagion in detention), on one hand, and the right to confront prosecution witnesses and be physically present and participate in the trial, on the other.” There is no way to know which of these decisions is reasonable in light of the other alternative until practitioners have more information to base these decisions on.
51. See KRCP 1.1 (2020 Kan. S. Ct. R. 226) (“A lawyer shall provide competent representation to a client.”).
52. See Nick Statt, *‘Zoombombing’ is a federal offense that could result in imprisonment, prosecutors warn*, THE VERGE (Apr. 3, 2020) <https://www.theverge.com/2020/4/3/21207260/zoombombing-crime-zoom-video-conference-hacking-pranks-doj-fbi>.
53. See Winston & Strawn LLP, *Problems With Tolling The Speedy Trial Act During Pandemic* (May 6, 2020), <https://www.winston.com/en/thought-leadership/problems-with-tolling-the-speedy-trial-act-during-pandemic.html>.
54. Ginsberg, *supra* note 28, at 12.
55. See *id.*
56. *Id.* at 11.
57. See *id.*
58. See Winston & Strawn, *supra* note 53.
59. See *Five trial-court circuits chosen for “virtual” civil jury trial pilot program due to pandemic*, FLA. SUPREME COURT (June 3, 2020), <https://www.floridasupremecourt.org/News-Media/Court-News/Five-trial-court-circuits-chosen-for-virtual-civil-jury-trial-pilot-program-due-to-pandemic>. Pilot programs in Florida for starting civil jury trials remotely are still in very early stages of development and have yet to be started for criminal jury trials.