

STATE OF NEW YORK

1998--A

2017-2018 Regular Sessions

IN SENATE

January 11, 2017

Introduced by Sens. SQUADRON, ADDABBO, AVELLA, BRESLIN, CARLUCCI, COMRIE, DILAN, GIANARIS, HAMILTON, HOYLMAN, KENNEDY, KLEIN, KRUEGER, LATIMER, MONTGOMERY, PARKER, PERALTA, PERKINS, PERSAUD, RIVERA, SANDERS, SERRANO, STAVISKY, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to time limits for a speedy trial

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as "Kalief's law".
2 § 2. Section 30.30 of the criminal procedure law, as added by chapter
3 184 of the laws of 1972, paragraph (a) of subdivision 3 as amended by
4 chapter 93 of the laws of 2006, paragraph (a) of subdivision 4 as
5 amended by chapter 558 of the laws of 1982, paragraph (c) of subdivision
6 4 as amended by chapter 631 of the laws of 1996, paragraph (h) of subdi-
7 vision 4 as added by chapter 837 of the laws of 1986, paragraph (i) of
8 subdivision 4 as added by chapter 446 of the laws of 1993, paragraph (j)
9 of subdivision 4 as added by chapter 222 of the laws of 1994, paragraph
10 (b) of subdivision 5 as amended by chapter 109 of the laws of 1982,
11 paragraphs (e) and (f) of subdivision 5 as added by chapter 209 of the
12 laws of 1990, is amended to read as follows:
13 § 30.30 Speedy trial; time limitations.
14 1. Except as otherwise provided in subdivision [~~three~~] four, a motion
15 made pursuant to paragraph (e) of subdivision one of section 170.30 or
16 paragraph (g) of subdivision one of section 210.20 must be granted where
17 the people are not ready for trial within:
18 (a) six months of the commencement of a criminal action wherein a
19 defendant is accused of one or more offenses, at least one of which is a
20 felony;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (b) ninety days of the commencement of a criminal action wherein a
2 defendant is accused of one or more offenses, at least one of which is a
3 misdemeanor punishable by a sentence of imprisonment of more than three
4 months and none of which is a felony;

5 (c) sixty days of the commencement of a criminal action wherein the
6 defendant is accused of one or more offenses, at least one of which is a
7 misdemeanor punishable by a sentence of imprisonment of not more than
8 three months and none of which is a crime punishable by a sentence of
9 imprisonment of more than three months;

10 (d) thirty days of the commencement of a criminal action wherein the
11 defendant is accused of one or more offenses, at least one of which is a
12 violation or a vehicle and traffic law infraction and none of which is a
13 crime.

14 2. Except as provided in subdivision [~~three~~] four, where a defendant
15 has been committed to the custody of the sheriff in a criminal action he
16 must be released on bail or on his or her own recognizance, upon such
17 conditions as may be just and reasonable, if the people are not ready
18 for trial in that criminal action within:

19 (a) ninety days from the commencement of his or her commitment to the
20 custody of the sheriff in a criminal action wherein the defendant is
21 accused of one or more offenses, at least one of which is a felony;

22 (b) thirty days from the commencement of his or her commitment to the
23 custody of the sheriff in a criminal action wherein the defendant is
24 accused of one or more offenses, at least one of which is a misdemeanor
25 punishable by a sentence of imprisonment of more than three months and
26 none of which is a felony;

27 (c) fifteen days from the commencement of his or her commitment to the
28 custody of the sheriff in a criminal action wherein the defendant is
29 accused of one or more offenses, at least one of which is a misdemeanor
30 punishable by a sentence of imprisonment of not more than three months
31 and none of which is a crime punishable by a sentence of imprisonment of
32 more than three months;

33 (d) five days from the commencement of his or her commitment to the
34 custody of the sheriff in a criminal action wherein the defendant is
35 accused of one or more offenses, at least one of which is a violation or
36 a vehicle and traffic law infraction and none of which is a crime.

37 3. Whenever pursuant to this section a prosecutor states or otherwise
38 provides notice that the people are ready for trial, the court may make
39 inquiry on the record as to their actual readiness. If, after conducting
40 its inquiry, the court determines that the people are not ready to
41 proceed to trial, the prosecutor's statement or notice of readiness
42 shall not be valid for purposes of this section. Following a demand to
43 produce by a defendant pursuant to section 240.20, any statement of
44 trial readiness must be accompanied or preceded by a certification of
45 good faith compliance with the disclosure requirements of section 240.20
46 and the defense shall be afforded an opportunity to be heard on the
47 record as to whether the disclosure requirements have been met. This
48 subdivision shall not apply to cases where the defense has waived
49 disclosure requirements.

50 3-A. Upon a misdemeanor complaint, a statement of readiness shall not
51 be valid unless the prosecuting attorney certifies that all counts
52 charged in the accusatory instrument meet the requirements of sections
53 100.40 and 100.15 and, those counts not meeting the requirements of
54 sections 100.40 and 100.15 have been dismissed.

1 4. (a) Subdivisions one and two do not apply to a criminal action
2 wherein the defendant is accused of an offense defined in sections
3 125.10, 125.15, 125.20, 125.25, 125.26 and 125.27 of the penal law.

4 (b) A motion made pursuant to subdivisions one or two upon expiration
5 of the specified period may be denied where the people are not ready for
6 trial if the people were ready for trial prior to the expiration of the
7 specified period and their present unreadiness is due to some excep-
8 tional fact or circumstance, including, but not limited to, the sudden
9 unavailability of evidence material to the people's case, when the
10 district attorney has exercised due diligence to obtain such evidence
11 and there are reasonable grounds to believe that such evidence will
12 become available in a reasonable period.

13 (c) A motion made pursuant to subdivision two shall not:

14 (i) apply to any defendant who is serving a term of imprisonment for
15 another offense;

16 (ii) require the release from custody of any defendant who is also
17 being held in custody pending trial of another criminal charge as to
18 which the applicable period has not yet elapsed;

19 (iii) prevent the redetention of or otherwise apply to any defendant
20 who, after being released from custody pursuant to this section or
21 otherwise, is charged with another crime or violates the conditions on
22 which he has been released, by failing to appear at a judicial proceed-
23 ing at which his presence is required or otherwise.

24 ~~[4-]~~ 5. In computing the time within which the people must be ready
25 for trial pursuant to subdivisions one and two, the following periods
26 must be excluded:

27 (a) a reasonable period of delay resulting from other proceedings
28 concerning the defendant, including but not limited to: proceedings for
29 the determination of competency and the period during which defendant is
30 incompetent to stand trial; demand to produce; request for a bill of
31 particulars; pre-trial motions; appeals; trial of other charges; and the
32 period during which such matters are under consideration by the court;
33 or

34 (b) the period of delay resulting from a continuance granted by the
35 court at the request of, or with the consent of, the defendant or his or
36 her counsel. The court ~~[must]~~ may grant such a continuance only if it is
37 satisfied that postponement is in the interest of justice, taking into
38 account the public interest in the prompt dispositions of criminal
39 charges. A defendant without counsel must not be deemed to have
40 consented to a continuance unless he or she has been advised by the
41 court of his or her rights under these rules and the effect of his or
42 her consent, which must be done on the record in open court; or

43 (c) (i) the period of delay resulting from the absence or unavailabil-
44 ity of the defendant. A defendant must be considered absent whenever his
45 location is unknown and he is attempting to avoid apprehension or prose-
46 cution, or his location cannot be determined by due diligence. A defend-
47 ant must be considered unavailable whenever his location is known but
48 his presence for trial cannot be obtained by due diligence; or

49 (ii) where the defendant has either escaped from custody or has failed
50 to appear when required after having previously been released on bail or
51 on his own recognizance, and provided the defendant is not in custody on
52 another matter, the period extending from the day the court issues a
53 bench warrant pursuant to section 530.70 because of the defendant's
54 failure to appear in court when required, to the day the defendant
55 subsequently appears in the court pursuant to a bench warrant or volun-
56 tarily or otherwise; or

1 (d) a reasonable period of delay when the defendant is joined for
2 trial with a co-defendant as to whom the time for trial pursuant to this
3 section has not run and good cause is not shown for granting a sever-
4 ance; or

5 (e) the period of delay resulting from detention of the defendant in
6 another jurisdiction provided the district attorney is aware of such
7 detention and has been diligent and has made reasonable efforts to
8 obtain the presence of the defendant for trial; or

9 (f) the period during which the defendant is without counsel through
10 no fault of the court; except when the defendant is proceeding as his
11 own attorney with the permission of the court; or

12 (g) other periods of delay occasioned by exceptional circumstances,
13 including but not limited to, the period of delay resulting from a
14 continuance granted at the request of a district attorney if (i) the
15 continuance is granted because of the unavailability of evidence materi-
16 al to the people's case, when the district attorney has exercised due
17 diligence to obtain such evidence and there are reasonable grounds to
18 believe that such evidence will become available in a reasonable period;
19 or (ii) the continuance is granted to allow the district attorney addi-
20 tional time to prepare the people's case and additional time is justi-
21 fied by the exceptional circumstances of the case. Any such exclusion
22 when a statement of unreadiness has followed a statement of readiness
23 made by the people must be accompanied by supporting facts and approved
24 by the court. The court shall inquire on the record as to the reasons
25 for the people's unreadiness; or

26 (h) the period during which an action has been adjourned in contem-
27 plation of dismissal pursuant to sections 170.55, 170.56 and 215.10 of
28 this chapter[~~+~~]; or

29 (i) [~~The~~] the period prior to the defendant's actual appearance for
30 arraignment in a situation in which the defendant has been directed to
31 appear by the district attorney pursuant to subdivision three of section
32 120.20 or subdivision three of section 210.10[~~+~~]; or

33 (j) the period during which a family offense is before a family court
34 until such time as an accusatory instrument or indictment is filed
35 against the defendant alleging a crime constituting a family offense, as
36 such term is defined in section 530.11 of this chapter[~~+~~]; or

37 6. at each court appearance date preceding the commencement of trial
38 in a criminal action, the court, whenever it is practicable to do so,
39 shall rule on whether the adjournment period immediately following such
40 court appearance date is to be included or excluded for the purposes of
41 computing the time within which the people must be ready for trial with-
42 in the meaning of this section; provided that such ruling shall not be
43 binding on a determination of a motion made pursuant to subdivisions one
44 or two. The court's ruling shall be noted in the court file; or

45 7. in computing the time within which the people must be ready for
46 trial, pursuant to subdivision two of this section, no time attributable
47 to court congestion shall be excluded.

48 8. In computing the time within which the people must be ready for
49 trial, pursuant to paragraphs (b), (c) and (d) of subdivision one of
50 this section, no time attributable to court congestion shall be
51 excluded.

52 [~~5-~~] 9. For purposes of this section, (a) where the defendant is to be
53 tried following the withdrawal of the plea of guilty or is to be retried
54 following a mistrial, an order for a new trial or an appeal or collat-
55 eral attack, the criminal action and the commitment to the custody of
56 the sheriff, if any, must be deemed to have commenced on the date the

1 withdrawal of the plea of guilty or the date the order occasioning a
2 retrial becomes final;

3 (b) where a defendant has been served with an appearance ticket, the
4 criminal action must be deemed to have commenced on the date the defend-
5 ant first appears in a local criminal court in response to the ticket;

6 (c) where a criminal action is commenced by the filing of a felony
7 complaint, and thereafter, in the course of the same criminal action
8 either the felony complaint is replaced with or converted to an informa-
9 tion, prosecutor's information or misdemeanor complaint pursuant to
10 article [~~180~~] one hundred eighty or a prosecutor's information is filed
11 pursuant to section 190.70, the period applicable for the purposes of
12 subdivision one must be the period applicable to the charges in the new
13 accusatory instrument, calculated from the date of the filing of such
14 new accusatory instrument; provided, however, that when the aggregate of
15 such period and the period of time, excluding the periods provided in
16 subdivision [~~four~~] five, already elapsed from the date of the filing of
17 the felony complaint to the date of the filing of the new accusatory
18 instrument exceeds six months, the period applicable to the charges in
19 the felony complaint must remain applicable and continue as if the new
20 accusatory instrument had not been filed;

21 (d) where a criminal action is commenced by the filing of a felony
22 complaint, and thereafter, in the course of the same criminal action
23 either the felony complaint is replaced with or converted to an informa-
24 tion, prosecutor's information or misdemeanor complaint pursuant to
25 article [~~180~~] one hundred eighty or a prosecutor's information is filed
26 pursuant to section 190.70, the period applicable for the purposes of
27 subdivision two must be the period applicable to the charges in the new
28 accusatory instrument, calculated from the date of the filing of such
29 new accusatory instrument; provided, however, that when the aggregate of
30 such period and the period of time, excluding the periods provided in
31 subdivision [~~four~~] five, already elapsed from the date of the filing of
32 the felony complaint to the date of the filing of the new accusatory
33 instrument exceeds ninety days, the period applicable to the charges in
34 the felony complaint must remain applicable and continue as if the new
35 accusatory instrument had not been filed.

36 (e) where a count of an indictment is reduced to charge only a misde-
37 meanor or petty offense and a reduced indictment or a prosecutor's
38 information is filed pursuant to subdivisions one-a and six of section
39 210.20, the period applicable for the purposes of subdivision one of
40 this section must be the period applicable to the charges in the new
41 accusatory instrument, calculated from the date of the filing of such
42 new accusatory instrument; provided, however, that when the aggregate of
43 such period and the period of time, excluding the periods provided in
44 subdivision [~~four~~] five of this section, already elapsed from the date
45 of the filing of the indictment to the date of the filing of the new
46 accusatory instrument exceeds six months, the period applicable to the
47 charges in the indictment must remain applicable and continue as if the
48 new accusatory instrument had not been filed;

49 (f) where a count of an indictment is reduced to charge only a misde-
50 meanor or petty offense and a reduced indictment or a prosecutor's
51 information is filed pursuant to subdivisions one-a and six of section
52 210.20, the period applicable for the purposes of subdivision two of
53 this section must be the period applicable to the charges in the new
54 accusatory instrument, calculated from the date of the filing of such
55 new accusatory instrument; provided, however, that when the aggregate of
56 such period and the period of time, excluding the periods provided in

1 subdivision [~~four~~ five] of this section, already elapsed from the date
2 of the filing of the indictment to the date of the filing of the new
3 accusatory instrument exceeds ninety days, the period applicable to the
4 charges in the indictment must remain applicable and continue as if the
5 new accusatory instrument had not been filed.

6 [~~6-~~ 10.] The procedural rules prescribed in subdivisions one through
7 seven of section 210.45 with respect to a motion to dismiss an indict-
8 ment are also applicable to a motion made pursuant to subdivision two.

9 § 3. Subdivision 6 of section 180.85 of the criminal procedure law, as
10 added by chapter 518 of the laws of 2004, is amended to read as follows:

11 6. The period from the filing of a motion pursuant to this section
12 until entry of an order disposing of such motion shall not, by reason of
13 such motion, be considered a period of delay for purposes of subdivision
14 [~~four~~ five] of section 30.30, nor shall such period, by reason of such
15 motion, be excluded in computing the time within which the people must
16 be ready for trial pursuant to such section 30.30.

17 § 4. This act shall take effect on the sixtieth day after it shall
18 have become a law.