S T A T E O F N E W Y O R K

3413

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. PRETLOW, GALEF, PHEFFER -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, HOYT, MAYERSOHN, WRIGHT -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to extending the time period for which a person may be held in custody for drug related violations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 170.70 of the criminal procedure law is amended to read as follows:

S 170.70 Release of defendant upon failure to replace misdemeanor complaint by information.

Upon application of a defendant against whom a misdemeanor complaint is pending in a local criminal court, and who, either at the time of his arraignment thereon or subsequent thereto, has been committed to the custody of the sheriff pending disposition of the action, and who has been confined in such custody for a period of more than five days, not including Sunday, without any information having been filed in replacement of such misdemeanor complaint, the criminal court must release the defendant on his own recognizance unless:

1. THE COMPLAINT CHARGES A VIOLATION OF ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, IN SUCH CASE, NO APPLICATION MAY BE MADE UNLESS SUCH DEFENDANT HAS BEEN CONFINED AND IS IN CUSTODY FOR A PERIOD OF MORE THAN TEN DAYS, NOT INCLUDING SUNDAY; OR

2. The defendant has waived prosecution by information and consented to be prosecuted upon the misdemeanor complaint, pursuant to subdivision three of section 170.65; or

[2.] 3. The court is satisfied that there is good cause why such order of release should not be issued. Such good cause must consist of some compelling fact or circumstance which precluded replacement of the

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

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misdemeanor complaint by an information or a prosecutor's information within the prescribed period.

S 2. Section 180.80 of the criminal procedure law, as amended by chapter 556 of the laws of 1982 and subdivision 2 as amended by chapter 557 of the laws of 1982, is amended to read as follows:

S 180.80 Proceedings upon felony complaint; release of defendant from custody upon failure of timely disposition.

Upon application of a defendant against whom a felony complaint has been filed with a local criminal court, and who, since the time of his arrest or subsequent thereto, has been held in custody pending disposition of such felony complaint, and who has been confined in such custody for a period of more than one hundred twenty hours or, in the event that a Saturday, Sunday or legal holiday occurs during such custody, one hundred forty-four hours, without either a disposition of the felony complaint or commencement of a hearing thereon, the local criminal court must release him on his own recognizance unless:

1. THE FELONY COMPLAINT CHARGES A VIOLATION OF ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, IN SUCH CASE, NO APPLICATION MAY BE MADE UNLESS SUCH DEFENDANT HAS BEEN CONFINED, AND IS IN CUSTODY, FOR A PERIOD OF MORE THAN TWO HUNDRED FORTY HOURS OR, IN THE EVENT THAT A SATURDAY, SUNDAY OR LEGAL HOLIDAY OCCURS DURING SUCH CUSTODY, TWO HUNDRED SIXTY-FOUR HOURS; OR

2. The failure to dispose of the felony complaint or to commence a hearing thereon during such period of confinement was due to the defendant's request, action or condition, or occurred with his consent; or

[2.] 3. Prior to the application:

(a) The district attorney files with the court a written certification that an indictment has been voted; or

(b) An indictment or a direction to file a prosecutor's information charging an offense based upon conduct alleged in the felony complaint was filed by a grand jury; or

[3.] 4. The court is satisfied that the people have shown good cause why such order of release should not be issued. Such good cause must consist of some compelling fact or circumstance which precluded disposition of the felony complaint within the prescribed period or rendered such action against the interest of justice.

S 3. This act shall take effect on the first of September next succeeding the date on which it shall have become a law.