

5988

2015-2016 Regular Sessions

I N   S E N A T E

June 16, 2015

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Introduced by Sen. SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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     S 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    S 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;  
21    (b) ninety days of the commencement of a criminal action wherein a  
22    defendant is accused of one or more offenses, at least one of which is a  
23    misdemeanor punishable by a sentence of imprisonment of more than three  
24    months and none of which is a felony;

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

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1 (c) sixty days of the commencement of a criminal action wherein the  
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 not more than  
4 three months and none of which is a crime punishable by a sentence of  
5 imprisonment of more than three months;

6 (d) thirty days of the commencement of a criminal action wherein the  
7 defendant is accused of one or more offenses, at least one of which is a  
8 violation and none of which is a crime.

9 2. Except as provided in subdivision [three] FOUR, where a defendant  
10 has been committed to the custody of the sheriff in a criminal action he  
11 must be released on bail or on his own recognizance, upon such condi-  
12 tions as may be just and reasonable, if the people are not ready for  
13 trial in that criminal action within:

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

17 (b) thirty days from the commencement of his commitment to the custody  
18 of the sheriff in a criminal action wherein the defendant is accused of  
19 one or more offenses, at least one of which is a misdemeanor punishable  
20 by a sentence of imprisonment of more than three months and none of  
21 which is a felony;

22 (c) fifteen days from the commencement of his commitment to the custo-  
23 dy of the sheriff in a criminal action wherein the defendant is accused  
24 of one or more offenses, at least one of which is a misdemeanor punisha-  
25 ble by a sentence of imprisonment of not more than three months and none  
26 of which is a crime punishable by a sentence of imprisonment of more  
27 than three months;

28 (d) five days from the commencement of his commitment to the custody  
29 of the sheriff in a criminal action wherein the defendant is accused of  
30 one or more offenses, at least one of which is a violation and none of  
31 which is a crime.

32 3. FOR PURPOSES OF SUBDIVISIONS ONE AND TWO, THE PEOPLE ARE READY FOR  
33 TRIAL WHEN A REPRESENTATIVE OF THE PEOPLE AFFIRMS THAT THE PEOPLE'S  
34 EVIDENCE IS IMMINENTLY AVAILABLE FOR PRESENTATION TO THE TRIER OF FACT.  
35 A VALID STATEMENT OF TRIAL READINESS MUST BE ACCOMPANIED OR PRECEDED BY  
36 A CERTIFICATION OF COMPLIANCE WITH THE DISCLOSURE REQUIREMENTS OF  
37 SECTION 240.20. THIS SUBDIVISION SHALL NOT APPLY TO CASES WHERE THE  
38 DEFENSE HAS WAIVED DISCLOSURE REQUIREMENTS.

39 4. (a) Subdivisions one and two do not apply to a criminal action  
40 wherein the defendant is accused of an offense defined in sections  
41 125.10, 125.15, 125.20, 125.25, 125.26 and 125.27 of the penal law.

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

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

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

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

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

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

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

(b) the period of delay resulting from a continuance granted by the court at the request of, or with the consent of, the defendant or his counsel. The court [must] MAY grant such a continuance only if it is satisfied that postponement is in the interest of justice, taking into account the public interest in the prompt dispositions of criminal charges. A defendant without counsel must not be deemed to have consented to a continuance unless he has been advised by the court of his rights under these rules and the effect of his consent, WHICH MUST BE DONE ON THE RECORD IN OPEN COURT; or

(c) (i) the period of delay resulting from the absence or unavailability of the defendant. A defendant must be considered absent whenever his location is unknown and he is attempting to avoid apprehension or prosecution, or his location cannot be determined by due diligence. A defendant must be considered unavailable whenever his location is known but his presence for trial cannot be obtained by due diligence; or

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

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

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

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

(g) other periods of delay occasioned by exceptional circumstances, including but not limited to, the period of delay resulting from a continuance granted at the request of a district attorney if (i) the continuance is granted because of the unavailability of evidence material to the people's case, when the district attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available in a reasonable period;

1 or (ii) the continuance is granted to allow the district attorney addi-  
2 tional time to prepare the people's case and additional time is justi-  
3 fied by the exceptional circumstances of the case. ANY SUCH EXCLUSION  
4 WHEN A STATEMENT OF UNREADINESS HAS FOLLOWED A STATEMENT OF READINESS  
5 MADE BY THE PEOPLE MUST BE ACCOMPANIED BY SUPPORTING FACTS AND APPROVED  
6 BY THE COURT. SUCH EXCLUSIONS MUST BE DETERMINED BY THE COURT NO LATER  
7 THAN THE NEXT SUCCEEDING COURT DATE AFTER WHICH SUCH TIME WOULD BE  
8 EXCLUDED; OR

9 (h) the period during which an action has been adjourned in contem-  
10 plation of dismissal pursuant to sections 170.55, 170.56 and 215.10 of  
11 this chapter[.]; OR

12 (i) [The] THE period prior to the defendant's actual appearance for  
13 arraignment in a situation in which the defendant has been directed to  
14 appear by the district attorney pursuant to subdivision three of section  
15 120.20 or subdivision three of section 210.10[.]; OR

16 (j) the period during which a family offense is before a family court  
17 until such time as an accusatory instrument or indictment is filed  
18 against the defendant alleging a crime constituting a family offense, as  
19 such term is defined in section 530.11 of this chapter[.]; OR

20 (K) PRIOR TO THE COMMENCEMENT OF THE TRIAL IN A CRIMINAL ACTION, AT  
21 EACH COURT APPEARANCE DATE AT WHICH THE COURT GRANTS AN ADJOURNMENT  
22 REQUESTED BY THE PEOPLE, THE COURT SHALL RULE ON THE NUMBER OF DAYS  
23 BETWEEN THE APPEARANCE DATE AND THE ADJOURNED DATE THAT ARE TO BE  
24 INCLUDED AND EXCLUDED FOR THE PURPOSES OF COMPUTING THE TIME WITHIN  
25 WHICH THE PEOPLE MUST BE READY FOR TRIAL. THE COURT'S RULING SHALL BE  
26 NOTED ON THE RECORD AND IN THE COURT'S FILE; OR

27 (L) IN COMPUTING THE TIME WITHIN WHICH THE PEOPLE MUST BE READY FOR  
28 TRIAL, PURSUANT TO SUBDIVISION TWO OF THIS SECTION, ONLY PERIODS OF  
29 DELAY RESULTING FROM ACTIONS OF THE DEFENDANT SHALL BE EXCLUDED.

30 [5.] 6. For purposes of this section, (a) where the defendant is to be  
31 tried following the withdrawal of the plea of guilty or is to be retried  
32 following a mistrial, an order for a new trial or an appeal or collat-  
33 eral attack, the criminal action and the commitment to the custody of  
34 the sheriff, if any, must be deemed to have commenced on the date the  
35 withdrawal of the plea of guilty or the date the order occasioning a  
36 retrial becomes final;

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

40 (c) where a criminal action is commenced by the filing of a felony  
41 complaint, and thereafter, in the course of the same criminal action  
42 either the felony complaint is replaced with or converted to an informa-  
43 tion, prosecutor's information or misdemeanor complaint pursuant to  
44 article [180] ONE HUNDRED EIGHTY or a prosecutor's information is filed  
45 pursuant to section 190.70, the period applicable for the purposes of  
46 subdivision one must be the period applicable to the charges in the new  
47 accusatory instrument, calculated from the date of the filing of such  
48 new accusatory instrument; provided, however, that when the aggregate of  
49 such period and the period of time, excluding the periods provided in  
50 subdivision [four] FIVE, already elapsed from the date of the filing of  
51 the felony complaint to the date of the filing of the new accusatory  
52 instrument exceeds six months, the period applicable to the charges in  
53 the felony complaint must remain applicable and continue as if the new  
54 accusatory instrument had not been filed;

55 (d) where a criminal action is commenced by the filing of a felony  
56 complaint, and thereafter, in the course of the same criminal action

1 either the felony complaint is replaced with or converted to an informa-  
2 tion, prosecutor's information or misdemeanor complaint pursuant to  
3 article [180] ONE HUNDRED EIGHTY or a prosecutor's information is filed  
4 pursuant to section 190.70, the period applicable for the purposes of  
5 subdivision two must be the period applicable to the charges in the new  
6 accusatory instrument, calculated from the date of the filing of such  
7 new accusatory instrument; provided, however, that when the aggregate of  
8 such period and the period of time, excluding the periods provided in  
9 subdivision [four] FIVE, already elapsed from the date of the filing of  
10 the felony complaint to the date of the filing of the new accusatory  
11 instrument exceeds ninety days, the period applicable to the charges in  
12 the felony complaint must remain applicable and continue as if the new  
13 accusatory instrument had not been filed.

14 (e) where a count of an indictment is reduced to charge only a misde-  
15 meanor or petty offense and a reduced indictment or a prosecutor's  
16 information is filed pursuant to subdivisions one-a and six of section  
17 210.20, the period applicable for the purposes of subdivision one of  
18 this section must be the period applicable to the charges in the new  
19 accusatory instrument, calculated from the date of the filing of such  
20 new accusatory instrument; provided, however, that when the aggregate of  
21 such period and the period of time, excluding the periods provided in  
22 subdivision [four] FIVE of this section, already elapsed from the date  
23 of the filing of the indictment to the date of the filing of the new  
24 accusatory instrument exceeds six months, the period applicable to the  
25 charges in the indictment must remain applicable and continue as if the  
26 new accusatory instrument had not been filed;

27 (f) where a count of an indictment is reduced to charge only a misde-  
28 meanor or petty offense and a reduced indictment or a prosecutor's  
29 information is filed pursuant to subdivisions one-a and six of section  
30 210.20, the period applicable for the purposes of subdivision two of  
31 this section must be the period applicable to the charges in the new  
32 accusatory instrument, calculated from the date of the filing of such  
33 new accusatory instrument; provided, however, that when the aggregate of  
34 such period and the period of time, excluding the periods provided in  
35 subdivision [four] FIVE of this section, already elapsed from the date  
36 of the filing of the indictment to the date of the filing of the new  
37 accusatory instrument exceeds ninety days, the period applicable to the  
38 charges in the indictment must remain applicable and continue as if the  
39 new accusatory instrument had not been filed.

40 [6.] 7. The procedural rules prescribed in subdivisions one through  
41 seven of section 210.45 with respect to a motion to dismiss an indict-  
42 ment are also applicable to a motion made pursuant to subdivision two.

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

45 6. The period from the filing of a motion pursuant to this section  
46 until entry of an order disposing of such motion shall not, by reason of  
47 such motion, be considered a period of delay for purposes of subdivision  
48 [four] FIVE of section 30.30, nor shall such period, by reason of such  
49 motion, be excluded in computing the time within which the people must  
50 be ready for trial pursuant to such section 30.30.

51 S 4. This act shall take effect on the sixtieth day after it shall  
52 have become a law.