

5988--A

2015-2016 Regular Sessions

I N S E N A T E

June 16, 2015

Introduced by Sens. SQUADRON, ADDABBO, AVELLA, BRESLIN, CARLUCCI, COMRIE, DILAN, ESPAILLAT, GIANARIS, HAMILTON, HOYLMAN, KLEIN, KRUEGER, LATIMER, MONTGOMERY, PANEPINTO, PARKER, PERALTA, PERKINS, SANDERS, SAVINO, SERRANO, STAVISKY, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- 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 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:

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

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1 (a) six months 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 felony;

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

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

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

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

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

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

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

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

39 3. WHENEVER PURSUANT TO THIS SECTION A PROSECUTOR STATES OR OTHERWISE
40 PROVIDES NOTICE THAT THE PEOPLE ARE READY FOR TRIAL, THE COURT MAY MAKE
41 INQUIRY ON THE RECORD AS TO THEIR ACTUAL READINESS. IF, AFTER CONDUCTING
42 ITS INQUIRY, THE COURT DETERMINES THAT THE PEOPLE ARE NOT READY TO
43 PROCEED TO TRIAL, THE PROSECUTOR'S STATEMENT OR NOTICE OF READINESS
44 SHALL NOT BE VALID FOR PURPOSES OF THIS SECTION. FOLLOWING A DEMAND TO
45 PRODUCE BY A DEFENDANT PURSUANT TO SECTION 240.20, ANY STATEMENT OF
46 TRIAL READINESS MUST BE ACCOMPANIED OR PRECEDED BY A CERTIFICATION OF
47 GOOD FAITH COMPLIANCE WITH THE DISCLOSURE REQUIREMENTS OF SECTION
48 240.20. THIS SUBDIVISION SHALL NOT APPLY TO CASES WHERE THE DEFENSE HAS
49 WAIVED DISCLOSURE REQUIREMENTS.

50 4. (a) Subdivisions one and two do not apply to a criminal action
51 wherein the defendant is accused of an offense defined in sections
52 125.10, 125.15, 125.20, 125.25, 125.26 and 125.27 of the penal law.

53 (b) A motion made pursuant to subdivisions one or two upon expiration
54 of the specified period may be denied where the people are not ready for
55 trial if the people were ready for trial prior to the expiration of the
56 specified period and their present unreadiness is due to some excep-

1 tional fact or circumstance, including, but not limited to, the sudden
2 unavailability of evidence material to the people's case, when the
3 district attorney has exercised due diligence to obtain such evidence
4 and there are reasonable grounds to believe that such evidence will
5 become available in a reasonable period.

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

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

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

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

17 [4.] 5. In computing the time within which the people must be ready
18 for trial pursuant to subdivisions one and two, the following periods
19 must be excluded:

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

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

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

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

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

54 (e) the period of delay resulting from detention of the defendant in
55 another jurisdiction provided the district attorney is aware of such

1 detention and has been diligent and has made reasonable efforts to
2 obtain the presence of the defendant for trial; or

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

6 (g) other periods of delay occasioned by exceptional circumstances,
7 including but not limited to, the period of delay resulting from a
8 continuance granted at the request of a district attorney if (i) the
9 continuance is granted because of the unavailability of evidence materi-
10 al to the people's case, when the district attorney has exercised due
11 diligence to obtain such evidence and there are reasonable grounds to
12 believe that such evidence will become available in a reasonable period;
13 or (ii) the continuance is granted to allow the district attorney addi-
14 tional time to prepare the people's case and additional time is justi-
15 fied by the exceptional circumstances of the case. ANY SUCH EXCLUSION
16 WHEN A STATEMENT OF UNREADINESS HAS FOLLOWED A STATEMENT OF READINESS
17 MADE BY THE PEOPLE MUST BE ACCOMPANIED BY SUPPORTING FACTS AND APPROVED
18 BY THE COURT. THE COURT SHALL INQUIRE ON THE RECORD AS TO THE REASONS
19 FOR THE PEOPLE'S UNREADINESS; OR

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

23 (i) [The] THE period prior to the defendant's actual appearance for
24 arraignment in a situation in which the defendant has been directed to
25 appear by the district attorney pursuant to subdivision three of section
26 120.20 or subdivision three of section 210.10[.]; OR

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

31 (K) AT EACH COURT APPEARANCE DATE PRECEDING THE COMMENCEMENT OF TRIAL
32 IN A CRIMINAL ACTION, THE COURT, WHENEVER IT IS PRACTICABLE TO DO SO,
33 SHALL RULE ON WHETHER THE ADJOURNMENT PERIOD IMMEDIATELY FOLLOWING SUCH
34 COURT APPEARANCE DATE IS TO BE INCLUDED OR EXCLUDED FOR THE PURPOSES OF
35 COMPUTING THE TIME WITHIN WHICH THE PEOPLE MUST BE READY FOR TRIAL WITH-
36 IN THE MEANING OF THIS SECTION. THE COURT'S RULING SHALL BE NOTED IN THE
37 COURT FILE; OR

38 (L) IN COMPUTING THE TIME WITHIN WHICH THE PEOPLE MUST BE READY FOR
39 TRIAL, PURSUANT TO SUBDIVISION TWO OF THIS SECTION, NO TIME ATTRIBUTABLE
40 TO COURT CONGESTION SHALL BE EXCLUDED.

41 [5.] 6. For purposes of this section, (a) where the defendant is to be
42 tried following the withdrawal of the plea of guilty or is to be retried
43 following a mistrial, an order for a new trial or an appeal or collat-
44 eral attack, the criminal action and the commitment to the custody of
45 the sheriff, if any, must be deemed to have commenced on the date the
46 withdrawal of the plea of guilty or the date the order occasioning a
47 retrial becomes final;

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

51 (c) where a criminal action is commenced by the filing of a felony
52 complaint, and thereafter, in the course of the same criminal action
53 either the felony complaint is replaced with or converted to an informa-
54 tion, prosecutor's information or misdemeanor complaint pursuant to
55 article [180] ONE HUNDRED EIGHTY or a prosecutor's information is filed
56 pursuant to section 190.70, the period applicable for the purposes of

1 subdivision one must be the period applicable to the charges in the new
2 accusatory instrument, calculated from the date of the filing of such
3 new accusatory instrument; provided, however, that when the aggregate of
4 such period and the period of time, excluding the periods provided in
5 subdivision [four] FIVE, already elapsed from the date of the filing of
6 the felony complaint to the date of the filing of the new accusatory
7 instrument exceeds six months, the period applicable to the charges in
8 the felony complaint must remain applicable and continue as if the new
9 accusatory instrument had not been filed;

10 (d) where a criminal action is commenced by the filing of a felony
11 complaint, and thereafter, in the course of the same criminal action
12 either the felony complaint is replaced with or converted to an informa-
13 tion, prosecutor's information or misdemeanor complaint pursuant to
14 article [180] ONE HUNDRED EIGHTY or a prosecutor's information is filed
15 pursuant to section 190.70, the period applicable for the purposes of
16 subdivision two must be the period applicable to the charges in the new
17 accusatory instrument, calculated from the date of the filing of such
18 new accusatory instrument; provided, however, that when the aggregate of
19 such period and the period of time, excluding the periods provided in
20 subdivision [four] FIVE, already elapsed from the date of the filing of
21 the felony complaint to the date of the filing of the new accusatory
22 instrument exceeds ninety days, the period applicable to the charges in
23 the felony complaint must remain applicable and continue as if the new
24 accusatory instrument had not been filed.

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

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

51 [6.] 7. The procedural rules prescribed in subdivisions one through
52 seven of section 210.45 with respect to a motion to dismiss an indict-
53 ment are also applicable to a motion made pursuant to subdivision two.

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

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

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