

# STATE OF NEW YORK

3055

2017-2018 Regular Sessions

## IN ASSEMBLY

January 25, 2017

Introduced by M. of A. AUBRY, PERRY, ARROYO, BARRON, BLAKE, COOK, CRESPO, DAVILA, KIM, PICHARDO, PRETLOW, RICHARDSON, BICHOTTE, GOTTFRIED, SEPULVEDA, OTIS, JEAN-PIERRE, SKARTADOS, JOYNER, ROSENTHAL, MOSLEY, PEOPLES-STOKES, ROZIC, KAVANAGH, RODRIGUEZ, HYNDMAN, HARRIS -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, FARRELL, RAMOS, SIMON -- read once and referred to the Committee on Codes

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 and none of which is a crime.

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

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

21 (b) thirty 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 misdemeanor punishable  
24 by a sentence of imprisonment of more than three months and none of  
25 which is a felony;

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

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

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

47 4. (a) Subdivisions one and two do not apply to a criminal action  
48 wherein the defendant is accused of an offense defined in sections  
49 125.10, 125.15, 125.20, 125.25, 125.26 and 125.27 of the penal law.

50 (b) A motion made pursuant to subdivisions one or two upon expiration  
51 of the specified period may be denied where the people are not ready for  
52 trial if the people were ready for trial prior to the expiration of the  
53 specified period and their present unreadiness is due to some excep-  
54 tional fact or circumstance, including, but not limited to, the sudden  
55 unavailability of evidence material to the people's case, when the  
56 district attorney has exercised due diligence to obtain such evidence

1 and there are reasonable grounds to believe that such evidence will  
2 become available in a reasonable period.

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

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

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

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

14 [4-] 5. In computing the time within which the people must be ready  
15 for trial pursuant to subdivisions one and two, the following periods  
16 must be excluded:

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

24 (b) the period of delay resulting from a continuance granted by the  
25 court at the request of, or with the consent of, the defendant or his  
26 counsel. The court [~~must~~ may] grant such a continuance only if it is  
27 satisfied that postponement is in the interest of justice, taking into  
28 account the public interest in the prompt dispositions of criminal  
29 charges. A defendant without counsel must not be deemed to have  
30 consented to a continuance unless he has been advised by the court of  
31 his rights under these rules and the effect of his consent, which must  
32 be done on the record in open court; or

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

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

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

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

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

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

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

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

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

29 (k) at each court appearance date preceding the commencement of trial  
30 in a criminal action, the court, whenever it is practicable to do so,  
31 shall rule on whether the adjournment period immediately following such  
32 court appearance date is to be included or excluded for the purposes of  
33 computing the time within which the people must be ready for trial with-  
34 in the meaning of this section. The court's ruling shall be noted in the  
35 court file; or

36 (l) in computing the time within which the people must be ready for  
37 trial, pursuant to subdivision two of this section, no time attributable  
38 to court congestion shall be excluded.

39 ~~5-~~ 6. For purposes of this section, (a) where the defendant is to be  
40 tried following the withdrawal of the plea of guilty or is to be retried  
41 following a mistrial, an order for a new trial or an appeal or collat-  
42 eral attack, the criminal action and the commitment to the custody of  
43 the sheriff, if any, must be deemed to have commenced on the date the  
44 withdrawal of the plea of guilty or the date the order occasioning a  
45 retrial becomes final;

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

49 (c) where a criminal action is commenced by the filing of a felony  
50 complaint, and thereafter, in the course of the same criminal action  
51 either the felony complaint is replaced with or converted to an informa-  
52 tion, prosecutor's information or misdemeanor complaint pursuant to  
53 article ~~180~~ one hundred eighty or a prosecutor's information is filed  
54 pursuant to section 190.70, the period applicable for the purposes of  
55 subdivision one must be the period applicable to the charges in the new  
56 accusatory instrument, calculated from the date of the filing of such

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

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

23 (e) where a count of an indictment is reduced to charge only a misde-  
24 meanor or petty offense and a reduced indictment or a prosecutor's  
25 information is filed pursuant to subdivisions one-a and six of section  
26 210.20, the period applicable for the purposes of subdivision one of  
27 this section 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** of this section, already elapsed from the date  
32 of the filing of the indictment to the date of the filing of the new  
33 accusatory instrument exceeds six months, the period applicable to the  
34 charges in the indictment must remain applicable and continue as if the  
35 new accusatory instrument had not been filed;

36 (f) 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 two 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 ninety days, 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 [~~6-~~ **7.** The procedural rules prescribed in subdivisions one through  
50 seven of section 210.45 with respect to a motion to dismiss an indict-  
51 ment are also applicable to a motion made pursuant to subdivision two.

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

54 6. The period from the filing of a motion pursuant to this section  
55 until entry of an order disposing of such motion shall not, by reason of  
56 such motion, be considered a period of delay for purposes of subdivision

1 [~~four~~] **five** of section 30.30, nor shall such period, by reason of such  
2 motion, be excluded in computing the time within which the people must  
3 be ready for trial pursuant to such section 30.30.  
4 § 4. This act shall take effect on the sixtieth day after it shall  
5 have become a law.