

# STATE OF NEW YORK

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## IN SENATE

(Prefiled)

January 3, 2018

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Introduced by Sens. BAILEY, ADDABBO, ALCANTARA, BRESLIN, CARLUCCI, COMRIE, RIVERA -- 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 -- 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, a motion made  
15 pursuant to paragraph (e) of subdivision one of section 170.30 or para-  
16 graph (g) of subdivision one of section 210.20 must be granted where the  
17 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

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

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1 misdemeanor punishable by a sentence of imprisonment of more than three  
2 months and none of which is a felony;

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

8 (d) thirty 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 violation and none of which is a crime.

11 (e) for the purposes of this subdivision, the term offense shall  
12 include vehicle and traffic law infractions.

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

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

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

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

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

41 (e) for the purposes of this subdivision, the term offense shall  
42 include vehicle and traffic law infractions.

43 3. (a) Subdivisions one and two do not apply to a criminal action  
44 wherein the defendant is accused of an offense defined in sections  
45 125.10, 125.15, 125.20, 125.25, 125.26 and 125.27 of the penal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (g) other periods of delay occasioned by exceptional circumstances,  
56 including but not limited to, the period of delay resulting from a

1 continuance granted at the request of a district attorney if (i) the  
2 continuance is granted because of the unavailability of evidence materi-  
3 al to the people's case, when the district attorney has exercised due  
4 diligence to obtain such evidence and there are reasonable grounds to  
5 believe that such evidence will become available in a reasonable period;  
6 or (ii) the continuance is granted to allow the district attorney addi-  
7 tional time to prepare the people's case and additional time is justi-  
8 fied by the exceptional circumstances of the case. Any such exclusion

9 when a statement of unreadiness has followed a statement of readiness  
10 made by the people must be evaluated by the court after inquiry on the  
11 record as to the reasons for the people's unreadiness and shall only be  
12 approved upon a showing of sufficient supporting facts; or

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

16 (i) [~~The~~] the period prior to the defendant's actual appearance for  
17 arraignment in a situation in which the defendant has been directed to  
18 appear by the district attorney pursuant to subdivision three of section  
19 120.20 or subdivision three of section 210.10[-]; or

20 (j) the period during which a family offense is before a family court  
21 until such time as an accusatory instrument or indictment is filed  
22 against the defendant alleging a crime constituting a family offense, as  
23 such term is defined in section 530.11 of this chapter.

24 5. Whenever pursuant to this section a prosecutor states or otherwise  
25 provides notice that the people are ready for trial, the court shall  
26 make inquiry on the record as to their actual readiness. If, after  
27 conducting its inquiry, the court determines that the people are not  
28 ready to proceed to trial, the prosecutor's statement or notice of read-  
29 iness shall not be valid for purposes of this section. Following a  
30 demand to produce by a defendant pursuant to section 240.20, any state-  
31 ment of trial readiness must be accompanied or preceded by a certif-  
32 ication of good faith compliance with the disclosure requirements of  
33 section 240.20 and the defense shall be afforded an opportunity to be  
34 heard on the record as to whether the disclosure requirements have been  
35 met. This subdivision shall not apply to cases where the defense has  
36 waived disclosure requirements.

37 5-a. Upon a local criminal court accusatory instrument, a statement of  
38 readiness shall not be valid unless all counts charged in the accusatory  
39 instrument meet the requirements of subdivisions one, two or three of  
40 section 100.40 of this chapter and the prosecution moves to dismiss any  
41 counts not meeting such.

42 6. In computing the time within which the people must be ready for  
43 trial, pursuant to subdivision two of this section, no period of delay  
44 resulting from court congestion shall be excluded.

45 7. In computing the time within which the people must be ready for  
46 trial, pursuant to paragraphs (b), (c) and (d) of subdivision one of  
47 this section, no period of delay resulting from court congestion shall  
48 be excluded.

49 [~~5-~~] 8. For purposes of this section, (a) where the defendant is to be  
50 tried following the withdrawal of the plea of guilty or is to be retried  
51 following a mistrial, an order for a new trial or an appeal or collat-  
52 eral attack, the criminal action and the commitment to the custody of  
53 the sheriff or the office of children and family services, if any, must  
54 be deemed to have commenced on the date the withdrawal of the plea of  
55 guilty or the date the order occasioning a retrial becomes final;

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

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

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

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

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

1 instrument exceeds ninety days, the period applicable to the charges in  
2 the indictment must remain applicable and continue as if the new accusa-  
3 tory instrument had not been filed.

4 ~~[6.]~~ 9. The procedural rules prescribed in subdivisions one through  
5 seven of section 210.45 with respect to a motion to dismiss an indict-  
6 ment are ~~[also]~~ not applicable to a motion made pursuant to subdivision  
7 two. If, upon oral argument, a time period is in dispute, the court  
8 must promptly conduct a hearing in which the people must prove that the  
9 time period is excludable.

10 § 3. Section 180.85 of the criminal procedure law is amended by adding  
11 a new subdivision 6-a to read as follows:

12 6-a. An order finally denying a motion to dismiss pursuant to subdivi-  
13 sion one of this section shall be reviewable upon an appeal from an  
14 ensuing judgment of conviction notwithstanding the fact that such judg-  
15 ment is entered upon a plea of guilty.

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