

STATE OF NEW YORK

7006

IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sens. BAILEY, ADDABBO, ALCANTARA, BRESLIN, CARLUCCI, COMRIE -- read twice and ordered printed, and when printed to be committed 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 of this
15 section, a motion made pursuant to paragraph (e) of subdivision one of
16 section 170.30 or paragraph (g) of subdivision one of section 210.20 of
17 this chapter must be granted where the people are not ready for trial
18 within:

19 (a) six months of the commencement of a criminal action wherein a
20 defendant is accused of one or more offenses, at least one of which is a
21 felony;

22 (b) ninety days of the commencement of a criminal action wherein a
23 defendant is accused of one or more offenses, at least one of which is a
24 misdemeanor punishable by a sentence of imprisonment of more than three
25 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 or a vehicle and traffic law infraction and none of which is a
9 crime.

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

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

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

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

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

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

46 3-A. Upon a misdemeanor complaint, a statement of readiness shall not
47 be valid unless the prosecuting attorney certifies that all counts
48 charged in the accusatory instrument meet the requirements of sections
49 100.40 and 100.15 and, those counts not meeting the requirements of
50 sections 100.40 and 100.15 of this chapter have been dismissed.

51 4. (a) Subdivisions one and two do not apply to a criminal action
52 wherein the defendant is accused of an offense defined in sections
53 125.10, 125.15, 125.20, 125.25, 125.26 and 125.27 of the penal law.

54 (b) A motion made pursuant to subdivisions one or two upon expiration
55 of the specified period may be denied where the people are not ready for
56 trial if the people were ready for trial prior to the expiration of the

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

7 (c) A motion made pursuant to subdivision two of this section shall
8 not:

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

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

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

19 [4-] 5. In computing the time within which the people must be ready
20 for trial pursuant to subdivisions one and two of this section, the
21 following periods must be excluded:

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

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

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

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

52 (d) a reasonable period of delay when the defendant is joined for
53 trial with a co-defendant as to whom the time for trial pursuant to this
54 section has not run and good cause is not shown for granting a sever-
55 ance; 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; or (ii) the continuance is granted to allow the district attorney additional time to prepare the people's case and additional time is justified by the exceptional circumstances of the case. Any such exclusion when a statement of unreadiness has followed a statement of readiness made by the people must be accompanied by supporting facts and approved by the court. The court shall inquire on the record as to the reasons for the people's unreadiness; or

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

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

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

6. At each court appearance date preceding the commencement of trial in a criminal action, the court, whenever it is practicable to do so, shall rule on whether the adjournment period immediately following such court appearance date is to be included or excluded for the purposes of computing the time within which the people must be ready for trial within the meaning of this section; provided that such ruling shall not be binding on a determination of a motion made pursuant to subdivisions one or two of this section. The court's ruling shall be noted in the court file.

7. In computing the time within which the people must be ready for trial, pursuant to subdivision two of this section, no time attributable to court congestion shall be excluded.

8. In computing the time within which the people must be ready for trial, pursuant to paragraphs (b), (c) and (d) of subdivision one of this section, no time attributable to court congestion shall be excluded.

~~5-~~ 9. For purposes of this section, (a) where the defendant is to be tried following the withdrawal of the plea of guilty or is to be retried following a mistrial, an order for a new trial or an appeal or collateral attack, the criminal action and the commitment to the custody of the sheriff, if any, must be deemed to have commenced on the date the withdrawal of the plea of 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 of this chapter or a prosecutor's
9 information is filed pursuant to section 190.70 of this chapter, the
10 period applicable for the purposes of subdivision one must be the period
11 applicable to the charges in the new accusatory instrument, calculated
12 from the date of the filing of such new accusatory instrument; provided,
13 however, that when the aggregate of such period and the period of time,
14 excluding the periods provided in subdivision ~~[four]~~ five of this
15 section, already elapsed from the date of the filing of the felony
16 complaint to the date of the filing of the new accusatory instrument
17 exceeds six months, the period applicable to the charges in the felony
18 complaint must remain applicable and continue as if the new accusatory
19 instrument had not been filed;

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

36 (e) 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 of this chapter, the period applicable for the purposes of subdi-
40 vision one of this section must be the period applicable to the charges
41 in the new accusatory instrument, calculated from the date of the filing
42 of such new accusatory instrument; provided, however, that when the
43 aggregate of such period and the period of time, excluding the periods
44 provided in subdivision ~~[four]~~ five of this section, already elapsed
45 from the date of the filing of the indictment to the date of the filing
46 of the new accusatory instrument exceeds six months, the period applica-
47 ble to the charges in the indictment must remain applicable and continue
48 as if the new accusatory instrument had not been filed;

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

1 provided in subdivision [~~four~~] five of this section, already elapsed
2 from the date of the filing of the indictment to the date of the filing
3 of the new accusatory instrument exceeds ninety days, the period appli-
4 cable to the charges in the indictment must remain applicable and
5 continue as if the new accusatory instrument had not been filed.

6 [~~6-~~] 10. The procedural rules prescribed in subdivisions one through
7 seven of section 210.45 of this chapter with respect to a motion to
8 dismiss an indictment are also applicable to a motion made pursuant to
9 subdivision two of this section.

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

12 6. The period from the filing of a motion pursuant to this section
13 until entry of an order disposing of such motion shall not, by reason of
14 such motion, be considered a period of delay for purposes of subdivision
15 [~~four~~] five of section 30.30, nor shall such period, by reason of such
16 motion, be excluded in computing the time within which the people must
17 be ready for trial pursuant to such section 30.30.

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