

STATE OF NEW YORK

7016

IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sen. BAILEY -- 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 the timely scheduling of criminal trials

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 30.30 of the criminal procedure law, as added by
2 chapter 184 of the laws of 1972, paragraph (a) of subdivision 3 as
3 amended by chapter 93 of the laws of 2006, paragraph (a) of subdivision
4 4 as amended by chapter 558 of the laws of 1982, paragraph (c) of subdivi-
5 sion 4 as amended by chapter 631 of the laws of 1996, paragraph (h) of
6 subdivision 4 as added by chapter 837 of the laws of 1986, paragraph (i)
7 of subdivision 4 as added by chapter 446 of the laws of 1993, paragraph
8 (j) of subdivision 4 as added by chapter 222 of the laws of 1994, para-
9 graph (b) of subdivision 5 as amended by chapter 109 of the laws of
10 1982, paragraphs (e) and (f) of subdivision 5 as added by chapter 209 of
11 the laws of 1990, is amended to read as follows:

12 § 30.30 Speedy trial; time limitations.

13 1. Except as otherwise provided in subdivision [~~three~~] four of this
14 section, a motion made pursuant to paragraph (e) of subdivision one of
15 section 170.30 of this chapter or paragraph (g) of subdivision one of
16 section 210.20 of this chapter must be granted where the people are not
17 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;

25 (c) sixty days of the commencement of a criminal action wherein the
26 defendant is accused of one or more offenses, at least one of which is a
27 misdemeanor punishable by a sentence of imprisonment of not more than

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

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

3 (d) thirty 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 violation or a vehicle and traffic law infraction and none of which is a
6 crime.

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

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

15 (b) thirty 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 misdemeanor
18 punishable by a sentence of imprisonment of more than three months and
19 none of which is a felony;

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

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

30 3. Whenever pursuant to this section a prosecutor states or otherwise
31 provides notice that the people are ready for trial, the court shall
32 make inquiry on the record as to their actual readiness. If, after
33 conducting its inquiry, the court determines that the people are not
34 ready to proceed to trial, the prosecutor's statement or notice of read-
35 iness shall not be valid for purposes of this section.

36 3-a. Any statement of readiness filed by the people on a day not sche-
37 duled for trial or other proceeding shall be filed by affidavit. Any
38 exclusion when a statement of unreadiness has followed such affidavit
39 made by the people must be accompanied by supporting facts and approved
40 by the court. The court shall inquire on the record as to the reasons
41 for the people's unreadiness.

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

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

54 (c) A motion made pursuant to subdivision two of this section shall
55 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 or she has been released, by failing to appear at a judicial
10 proceeding at which his or her presence is required or otherwise.

11 ~~[4.]~~ 5. In computing the time within which the people must be ready
12 for trial pursuant to subdivisions one and two of this section, the
13 following periods must 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 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 or
29 her consent; 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 or her location is unknown and he or she is attempting to avoid appre-
33 hension or prosecution, or his or her location cannot be determined by
34 due diligence. A defendant must be considered unavailable whenever his
35 or her location is known but his or her presence for trial cannot be
36 obtained by due diligence; or

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

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

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

53 (f) the period during which the defendant is without counsel through
54 no fault of the court; except when the defendant is proceeding as his or
55 her 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.

(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 subdivision one or two of this section. The court's ruling shall be noted in the court file.

7. Where the people state not ready for trial and seek an adjournment for a specific date, upon request of the defendant the court shall adjourn the matter for the date requested by the people or a date not more than ten days thereafter, unless doing so would not be in the interest of justice.

8. Where the people and defendant state ready for trial on the record in open court and the court is not able to accommodate commencement of the trial immediately, the court shall not adjourn for a date later than ten days thereafter, unless doing so would not be in the interest of justice.

9. Where the people file a statement of trial readiness on a day not scheduled for trial or other proceeding, upon request of the defendant and with notice to the people, the court shall place the matter on the court calendar within ten days of such request to schedule a date for trial.

~~[5-]~~ 10. 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;

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

(c) where a criminal action is commenced by the filing of a felony complaint, and thereafter, in the course of the same criminal action either the felony complaint is replaced with or converted to an information, prosecutor's information or misdemeanor complaint pursuant to article ~~[180]~~ one hundred eighty of this chapter or a prosecutor's information is filed pursuant to section 190.70 of this chapter, the period applicable for the purposes of subdivision one of this section must be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision ~~[four]~~ five of this section, already elapsed from the date of the filing of the felony complaint to the date of the filing of the new accusatory instrument exceeds six months, the period applicable to the charges in the felony complaint must remain applicable and continue as if the new accusatory instrument had not been filed;

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

(e) where a count of an indictment is reduced to charge only a misdemeanor or petty offense and a reduced indictment or a prosecutor's information is filed pursuant to subdivisions one-a and six of section 210.20 of this chapter, the period applicable for the purposes of subdivision one of this section must be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision ~~[four]~~ five of this section, already elapsed from the date of the filing of the indictment to the date of the filing of the new accusatory instrument exceeds six months, the period applicable to the charges in the indictment must remain applicable and continue as if the new accusatory instrument had not been filed;

(f) where a count of an indictment is reduced to charge only a misdemeanor or petty offense and a reduced indictment or a prosecutor's information is filed pursuant to subdivisions one-a and six of section 210.20 of this chapter, the period applicable for the purposes of subdivision two of this section must be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision ~~[four]~~ five of this section, already elapsed from the date of the filing of the indictment to the date of the filing of the new accusatory instrument exceeds ninety days, the period appli-

1 cable to the charges in the indictment must remain applicable and
2 continue as if the new accusatory instrument had not been filed.

3 [~~6~~] 11. The procedural rules prescribed in subdivisions one through
4 seven of section 210.45 of this chapter with respect to a motion to
5 dismiss an indictment are also applicable to a motion made pursuant to
6 subdivision two of this section.

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

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

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