

STATE OF NEW YORK

1738

2019-2020 Regular Sessions

IN SENATE

January 16, 2019

Introduced by Sens. BAILEY, ADDABBO, BIAGGI, BRESLIN, CARLUCCI, COMRIE, KAVANAGH, KRUEGER, MONTGOMERY, RIVERA -- 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, 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
23 misdemeanor punishable by a sentence of imprisonment of more than three
24 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; or

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 and none of which is a crime.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (g) other periods of delay occasioned by exceptional circumstances,
54 including but not limited to, the period of delay resulting from a
55 continuance granted at the request of a district attorney if (i) the
56 continuance is granted because of the unavailability of evidence materi-

1 al to the people's case, when the district attorney has exercised due
2 diligence to obtain such evidence and there are reasonable grounds to
3 believe that such evidence will become available in a reasonable period;
4 or (ii) the continuance is granted to allow the district attorney addi-
5 tional time to prepare the people's case and additional time is justi-
6 fied by the exceptional circumstances of the case. Any such exclusion
7 when a statement of unreadiness has followed a statement of readiness
8 made by the people must be evaluated by the court after inquiry on the
9 record as to the reasons for the people's unreadiness and shall only be
10 approved upon a showing of sufficient supporting facts; or

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

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

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

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

35 5-a. Upon a local criminal court accusatory instrument, a statement of
36 readiness shall not be valid unless all counts charged in the accusatory
37 instrument meet the requirements of subdivisions one, two or three of
38 section 100.40 of this chapter and the prosecution moves to dismiss any
39 counts not meeting such.

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

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

47 ~~[5-]~~ 8. For purposes of this section, (a) where the defendant is to be
48 tried following the withdrawal of the plea of guilty or is to be retried
49 following a mistrial, an order for a new trial or an appeal or collat-
50 eral attack, the criminal action and the commitment to the custody of
51 the sheriff or the office of children and family services, if any, must
52 be deemed to have commenced on the date the withdrawal of the plea of
53 guilty or the date the order occasioning a retrial becomes final;

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

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

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

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

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

1 ~~6.~~ 9. The procedural rules prescribed in subdivisions one through
2 seven of section 210.45 with respect to a motion to dismiss an indict-
3 ment are ~~also~~ not applicable to a motion made pursuant to subdivision
4 two. If, upon oral argument, a time period is in dispute, the court
5 must promptly conduct a hearing in which the people must prove that the
6 time period is excludable.

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

9 6-a. An order finally denying a motion to dismiss pursuant to subdivi-
10 sion one of this section shall be reviewable upon an appeal from an
11 ensuing judgment of conviction notwithstanding the fact that such judg-
12 ment is entered upon a plea of guilty.

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