STATE OF NEW YORK

4052

2019-2020 Regular Sessions

IN ASSEMBLY

January 31, 2019

Introduced by M. of A. AUBRY -- read once and referred 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:

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

§ 30.30 Speedy trial; time limitations.

1. Except as otherwise provided in subdivision [~~three~~] **four of this section**, a motion made pursuant to paragraph (e) of subdivision one of section 170.30 **of this chapter** or paragraph (g) of subdivision one of section 210.20 **of this chapter** must be granted where the people are not ready for trial within:

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

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

(d) thirty days of the commencement of a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a violation **or a vehicle and traffic law infraction** and none of which is a crime.

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

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

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

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

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

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

3-a. Any statement of readiness filed by the people on a day not scheduled for trial or other proceeding shall be filed by affidavit. Any exclusion when a statement of unreadiness has followed such affidavit 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.

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

(b) A motion made pursuant to subdivisions one or two upon expiration of the specified period may be denied where the people are not ready for trial if the people were ready for trial prior to the expiration of the specified period and their present unreadiness is due to some exceptional fact or circumstance, including, but not limited to, the sudden 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.

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

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

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

(iii) prevent the redetention of or otherwise apply to any defendant who, after being released from custody pursuant to this section or otherwise, is charged with another crime or violates the conditions on which he **or she** has been released, by failing to appear at a judicial proceeding at which his **or her** presence is required or otherwise.

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

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

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

(c) (i) the period of delay resulting from the absence or unavailability of the defendant. A defendant must be considered absent whenever his **or her** location is unknown and he **or she** is attempting to avoid apprehension or prosecution, or his **or her** location cannot be determined by due diligence. A defendant must be considered unavailable whenever his **or her** location is known but his **or her** presence for trial cannot be obtained by due diligence; or

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

(d) a reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom the time for trial pursuant to this section has not run and good cause is not shown for granting a severance; 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 **or 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 applicable to the charges in the indictment must remain applicable and continue as if the new accusatory instrument had not been filed.

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

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

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

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