§ 170.25 Divestiture of jurisdiction by indictment; removal of case to superior court at defendant's instance.

1. At any time before entry of a plea of guilty to or commencement of a trial of a local criminal court accusatory instrument containing a charge of misdemeanor, a superior court having jurisdiction to prosecute such misdemeanor charge by indictment may, upon motion of the defendant made upon notice to the district attorney, showing good cause to believe that the interests of justice so require, order that such charge be prosecuted by indictment and that the district attorney present it to the grand jury for such purpose.

2. Such order stays the proceedings in the local criminal court pending submission of the charge to the grand jury. Upon the subsequent filing of an indictment in the superior court, the proceedings in the local criminal court terminate and the defendant must be required to appear for arraignment upon the indictment in the manner prescribed in subdivisions one and two of section 210.10. Upon the subsequent filing of a grand jury dismissal of the charge, the proceedings in the local criminal court terminate and the superior court must, if the defendant is not at liberty on his own recognizance, discharge him from custody or exonerate his bail, as the case may be.

3. At any time before entry of a plea of guilty to or commencement of a trial of or within thirty days of arraignment on an accusatory instrument specified in subdivision one, whichever occurs first, the defendant may apply to the local criminal court for an adjournment of the proceedings therein upon the ground that he intends to make a motion in a superior court, pursuant to subdivision one, for an order that the misdemeanor charge be prosecuted by indictment. In such case, the local criminal court must adjourn the proceedings to a date which affords the defendant reasonable opportunity to pursue such action, and may subsequently grant such further adjournments for that purpose as are reasonable under the circumstances. Following the granting of such adjournment or adjournments, the proceedings must be as follows:

(a) If a motion in a superior court is not made by the defendant within the designated period, the proceedings in the local criminal

court must continue.

(b) If a motion in a superior court is made by the defendant within the designated period, such motion stays the proceedings in the local criminal court until the entry of an order determining such motion.

(c) If the superior court enters an order granting the motion, such order stays the proceedings in the local criminal court as provided in subdivision two; and upon a subsequent indictment or dismissal of such charge by the grand jury, the proceedings in the local criminal court terminate as provided in subdivision two.

(d) If the superior court enters an order denying the motion, the proceedings in the local criminal court must continue.

4. Upon application of a defendant who on the basis of an order issued by a superior court pursuant to subdivision one is awaiting grand jury action, and who, at the time of such order or subsequent thereto, has been committed to the custody of the sheriff pending grand jury action, and who has been confined in such custody for a period of more than forty-five days without the occurrence of any grand jury action or disposition, the superior court which issued such order must release him on his own recognizance unless:

(a) The lack of a grand jury disposition during such period of confinement was due to the defendant's request, action or condition, or occurred with his consent; or

(b) The people have shown good cause why such order of release should not be issued. Such good cause must consist of some compelling fact or circumstance which precluded grand jury action within the prescribed period or rendered the same against the interest of justice.