§ 180.85 Termination of prosecution.

1. After arraignment of a defendant upon a felony complaint, other than a felony complaint charging an offense defined in section 125.10, 125.15, 125.20, 125.25, 125.26 or 125.27 of the penal law, either party or the local criminal court or superior court before which the action is pending, on its own motion, may move in accordance with the provisions of this section for an order terminating prosecution of the charges contained in such felony complaint on consent of the parties.

2. A motion to terminate a prosecution pursuant to this section may only be made where the count or counts of the felony complaint have not been presented to a grand jury or otherwise disposed of in accordance with this chapter. Such motion shall be filed in writing with the local criminal court or superior court in which the felony complaint is pending not earlier than twelve months following the date of arraignment on such felony complaint. Upon the filing of such motion, the court shall fix a return date and provide the parties with at least thirty days' written notice of the motion and return date.

3. Where, upon motion to terminate a prosecution pursuant to this section, both parties consent to such termination, the court, on the return date of such motion, shall enter an order terminating such prosecution. For purposes of this subdivision, a party that is given written notice of a motion to terminate a prosecution shall be deemed to consent to such termination unless, prior to the return date of such motion, such party files a notice of opposition thereto with the court. Except as otherwise provided in subdivision four, where such a notice of opposition is filed, the court, on the return date of the motion, shall enter an order denying the motion to terminate the prosecution.

4. Notwithstanding any other provision of this section, where the people file a notice of opposition pursuant to subdivision three, the court, on the return date of the motion, may defer disposition of such motion for a period of forty-five days. In such event, if the count or counts of such felony complaint are presented to a grand jury or otherwise disposed of within such period, the court, upon the expiration

thereof, shall enter an order denying the motion to terminate the prosecution. If such count or counts are not presented to a grand jury or otherwise disposed of within such period, the court, upon the expiration thereof, shall enter an order terminating the prosecution unless, within the forty-five day period, the people, on at least five days' written notice to the defendant, show good cause for their failure to present or otherwise dispose of such count or counts. If such good cause is shown, the court, upon expiration of the forty-five day period, shall enter an order denying the motion to terminate the prosecution.

5. Notwithstanding any other provision of law, the defendant's appearance in court on the return date of the motion or on any other date shall not be required as a prerequisite to entry of an order under this section.

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 of section 30.30, 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.

7. Where a prosecution is terminated pursuant to this section, nothing contained herein shall preclude the people from subsequently filing an indictment charging the same count or counts provided such filing is in accordance with the provisions of this section, article thirty and any other relevant provisions of this chapter. Where the people indicate their intention to seek an indictment following the entry of an order terminating a prosecution pursuant to this section, the court shall, notwithstanding any provision of section 160.50 to the contrary, stay sealing under that section for a reasonable period not to exceed thirty days to permit the people an opportunity to pursue such indictment.

8. Where an order denying a party's motion to terminate a prosecution is entered pursuant to this section, such party may not file a subsequent motion to terminate the prosecution pursuant to this section for at least six months from the date on which such order is entered.

9. Notwithstanding any other provision of this section, where a motion to terminate a prosecution is filed with a local criminal court pursuant to subdivision two, and, prior to the determination thereof, such court is divested of jurisdiction by the filing of an indictment charging the offense or offenses contained in the felony complaint, such motion shall be deemed to have been denied as of the date of such divestiture.

10. The chief administrator of the courts, in consultation with the director of the division of criminal justice services and representatives of appropriate prosecutorial and criminal defense organizations in the state, shall adopt forms for the motion to terminate a prosecution authorized by subdivision one and for the notice of opposition specified in subdivision three.