

Speedy Trial Issues Pursuant to CPL 30.30
An Outline, Overview and Approach

by
Rick Howard, Esq.

This statute is designed to penalize unreasonable and excessive prosecutorial delay.

If the People are not “effectively” ready for trial, the defendant can be released from custody or the case can be dismissed.

There are specific time periods provided for release and others for dismissal depending on the most serious offense charged.

Homicide, Manslaughter and Murder (P.L. §§125.10, 125.15,125.20, 125.25 and 125.27) are specifically excluded from sanction by the statute (CPL §30.30 subd. 3[a]). Traffic infractions are not mentioned in the statute and have also been held exempt. See, People v. Gonzalez, 168 Misc2d 136, appeal denied 88 NY2d 936.

Time Limits

The case can be dismissed if the People are not ready within 6 months of commencing an action wherein the highest charge is a felony; 90 days where the highest charge is misdemeanor punishable by more than 3 months imprisonment; 60 days where the highest charge is a misdemeanor punishable by not more than 3 months imprisonment and 30 days where the most serious offense is a violation. See, CPL §30.30, subd. 1.

The defendant can be released if the People are not ready within 90 days of the defendant’s incarceration on a felony; 30 days for a misdemeanor punishable by over 3 months jail time, 15 days for a misdemeanor punishable by no more than 3 months jail and 5 days for a violation. See, CPL §30.30, subd.2.

The release provisions do not apply to defendants who are being held on any other charge for which speedy trial time has not elapsed or are serving a term of imprisonment on another case. These provisions also do not apply to defendants previously released for any reason who are re-detained for failing to appear, violating the conditions of release or charged with committing another crime. See, CPL §30.30, subd.3(c).

Calculation

According to CPL §1.20, subd. 16 and 17, a criminal action commences with the filing of an accusatory instrument against a defendant. Pursuant to People v. Stiles, 70 NY2d 765, the first day of calculation for CPL §30.30, begins the day after the initial filing. When a defendant receives an appearance ticket, rather than being subjected to custodial arrest, the time begins

when the defendant first appears in court in answer to it. See, People v. Stirrup, 91 NY2d 434, People v. Parris, 79 NY2d 69.

Successive criminal actions for the same incident relate back to the first one filed for determining speedy trial time. See, People v. Sinistaj, 67 NY2d 236; People v. Druskovic, 139 Misc2d 318.

If charges are elevated from misdemeanor to felony, the People have a new 6 month period to be ready. See, People v. Cooper, 90 NY2d 292.

If an action begins with a felony and is reduced to a misdemeanor, CPL §30.30, subd. 5 provides that a new misdemeanor speedy trial period commences which can then shorten the original 6 month limit but not exceed it. See, People v. Ferrera, 102 Misc2d 253.

The statute is silent as to reductions from a higher level misdemeanor to a lesser level. The Court of Appeals has held that when an A misdemeanor is reduced to a B misdemeanor the 90 day period still applies. People v. Cooper, 98 NY2d 541.

In People v. Gonzalez, supra, the Appellate Term, 1st Dept. held that when misdemeanor charges are removed from an instrument leaving only an infraction, the speedy trial time no longer applies. It might be noted that a hearsay instrument is still a complaint and there is no provision in CPL 100.10 for (filing) a complaint containing solely an infraction. See, e.g., People v. Blake, 154 Misc2d 660 (nullifying a violation complaint).

The reduction provisions of CPL §30.30, subd. 5 are not applicable where a defendant is arraigned on a felony complaint and subsequently indicted for a misdemeanor. See, People v. Tychanski, 78 NY2d 909.

Unlike other pretrial motions, speedy trial does not lie until the applicable limit has been exceeded. For misdemeanors and violations the number of days is specific. For felonies it is the amount of days in the 6 months from which the action began which can differ in their exact number. See, People v. Rhee, 111 AD2d 655; People v. Delacruz, 241 AD2d 328, appeal denied 90 NY2d 939.

The Appellate Term, 2nd Department has held that if the last day falls on a Sunday, the People can announce ready on Monday. See, People v. Dowell, 179 Misc2d 1047.

The actual calculation is generally done from adjournment through adjournment. So in practice, the first day after arraignment begins the count and the next appearance date is included in each period.

The motion must be in writing pursuant to CPL §210.45 and the People's failure to

answer results in a granting of the motion. See, People v. Cole, 73 NY2d 957. Oral applications are unacceptable unless the People agree to it. However, a co-defendant can orally join in another's written motion as long as the time is the same. See, People v. Mezon, 80 NY2d 155 and People v. Weaver, 162 AD2d 486. Concessions may not always be controlling and there is authority for a court to decide the issues on their merits. See, People v. Brown, 207 AD2d 556; People v. Strong, 276 AD2d 271 and People v. Eliopoulos, 290 AD2d 301.

A worksheet which can be used to make these calculations is included for reproduction.

Effective Readiness

In order to be ready for trial, the People must have an instrument sufficient for trial. In the Criminal Court, this means an information pursuant to CPL §100.40. See, People v. Colon, 59 NY2d 921.

A complaint must therefore be converted to an information by non-hearsay corroboration in order for the People to proclaim readiness. The proclamation must be based on present readiness and not a claim to be ready on a future date. The actual communication can be made during a court appearance or by filing a written "Statement of Readiness" between adjournments along with any necessary corroboration necessary and sending it to the defense. See, People v. Kendzia, 64 NY2d 333.

In People v. Van Hoesen, 12 AD3d 5, the Third Department discussed the issue of the prima facie case rule in terms of readiness.

It has been held that when multiple charges are contained in the same accusatory instrument, each stands alone for readiness as well as (facial) sufficiency purposes. See, People v. Minor, 144 Misc2d 846, appeal denied 74 NY2d 666. Note, People v. ex rel. Ortiz, 93 NY2d 959.

Some courts have held that delay caused by unready charges in an instrument can operate as post-readiness delay against the ready ones. The Appellate Term, First Department has rejected this analysis. See, People v. Gray, 7 Misc2d 127 (A), 2004 NY Slip Op. 51864[U] and People v. Castro, 2001 NY Slip Op. 50084[U].

It is now settled that the defendant does not have to be arraigned for the People to effectively announce ready, which is often the case when the People file Statements of Readiness along with Indictments in Supreme Court. See, People v. Goss, 87 NY2d 797. *Cf.*, People v. England, 84 NY2d 1 [CPL §30.30, subd. 4 (i)].

It should be noted that the People's assertion that they are "ready" for a pretrial hearing is not the same as readiness for trial. See, People v. Chavis, 91 NY2d 500.

The People's obligation to communicate their readiness requires that they notify the

defense when they use a statement of readiness between adjournments. The chargeable speedy trial time however, stops when the statement is filed with the court and has been held not to be subject to the 3 day mailing rule used in civil actions, although the communication should be as immediate as possible. See, People v. Cenat, 176 Misc2d 39; People v. Todd , 184 Misc2d 381; People v. Collins, 186 Misc2d 818.

The People need not reiterate their readiness at every adjournment thereafter unless there is a “substantial break” in the proceeding, such as the filing of a new instrument. People v. Cortes, 80 NY2d 201 at 214.

Actual readiness does not require the prosecutor to have witnesses in the courtroom, only that they be available. See, People v. Wilson, 86 NY2d 753; People v. Dushain, 239 AD2d 151. Further discussion of the factors required to establish readiness may be found in People v. Caussade, 162 AD2d 284, appeal denied 76 NY2d 989.

Excludable Periods

The major problem with speedy trial calculations is determining what is chargeable against the prosecution and what is not.

CPL §30.30, subd. 4 provides a number of “excludable” periods which are not to be counted against the prosecution.

People v. Worley, 66 NY2d 523 holds that excludable time is still applicable whether the People have announced ready or not. People v. Anderson, 66 NY2d 529 holds that the prosecution can still be charged with time after they are ready, but limits what can be charged thereafter to specific types of delay such as failure to produce an incarcerated defendant for a court appearance or in People v. McKenna, 76 NY2d 59, failure to provide Grand Jury minutes.

Excludable periods apply to both the release and dismissal provisions of the statute.

Time excluded during the same case based on an earlier accusatory instrument remains excludable for any new instrument replacing or superseding it. See, People v. Kopciowski, 68 NY2d 615.

Initially, the defense must go forth with a showing that the statutory time limit has been exceeded. Once the motion has been made, the People’s response must argue that certain time periods are excludable. The burden then shifts back to the defense to demonstrate what time is, in fact, chargeable. See, People v. Berkowitz, 50 NY2d 333; People v. Santos, 68 NY2d 859; People v. Goode, 87 NY2d 1045 and People v. Luperon, 85 NY2d 71; People v. Simpkins, 193 Misc2d 148, aff’d 193 Misc2d 447, lv. denied 99 NY2d 585.

Notations on adjournment sheets are not dispositive, so an effort should be made to place

the reasons for every adjournment on the record, so the Court can review the minutes in deciding the motion. See, People v. Gonzalez, 181 Misc2d 105; People v. Teachey, 181 Misc2d 988..

CPL §30.30, subd. 4 contains several subsections which delineate the applicable exclusions.

CPL §30.30, subd. 4(a) allows a “reasonable” period for competency determinations, discovery, motion practice, trial of other cases and court decisions concerning such matters.

It has been held that even notions made by the prosecutor are excludable. See, People v. Sivano, 174 Misc2d 427 (App. Term, 2nd Department).

CPL §30.30, subd. 4(b) excludes adjournments requested or consented to by the defendant. Silence by the defense cannot be equated with consent. See, People v. Mierdiercks, 68 NY2d 613; People v. Liotta, 79 NY2d 841. If the defendant is without counsel, he cannot be deemed to have consented unless his rights are explained. See, also, CPL §30.30 subd. 4(f).

CPL §30.30, subd.4(c) excludes absences occasioned by the defendant while attempting to avoid apprehension or prosecution. If the defendant’s whereabouts are known, the People must make an effort to produce him. If a defendant at liberty fails to appear and a bench warrant is issued, the time is excludable. The time is also excludable when the issuance of a warrant is “stayed” for the defendant’s benefit. See, People v. Toro, 151 AD2d 142, appeal dismissed 75 NY2d 88; People v. Notholt, 242 AD2d 251; People v. Medina, 198 AD2d 146, appeal denied 83 NY2d 836. When a defendant returns on a warrant, the subsequent adjournment may also be excluded. See, People v. Roberts, 236 AD2d 233; People v. Muhanimac, 181 AD2d 464; People v. Degro, 141 Misc2d 810.

CPL §30.30, subd. 4(c) has been revised twice to overcome court decisions requiring a showing of due diligence to locate defendants even where a bench warrant has been issued. See, e.g., People v. Bolden, 81 NY2d 146. Although due diligence is also required where the defendant is incarcerated on another matter within the state’s jurisdiction, it is relieved if the defendant has used aliases to avoid prosecution. See, People v. Sigismundi, 89 NY2d 587.

CPL §30.30, subd. 4(d) excludes a reasonable period of delay when the defendant is joined for trial with another defendant for whom speedy trial has not run. The period excluded still applies even if the case is later severed. See, People v. Vidal, 180 AD2d 447, appeal denied 80 NY2d 839.

CPL §30.30, subd. 4(f) excludes periods during which the defendant is without counsel through no fault of the court. Where counsel must be appointed by the court, failure and delay are chargeable, but not in post readiness. See, People v. Cortes, 80 NY2d 201. If defendant is without counsel through no fault of the court, the advisement under CPL §30.30, subd. 4(b) may not be required. See, e.g., People v. DeLarosa, 184 AD2d 302. Time may also be excluded where

the case is adjourned for the defendant to hire private counsel. See, People v. Drake, 205 AD2d 996. Defendants acting as their own counsel with Court permission are also expressly excepted.

CPL §30.30, subd. 4(g) excuses delays occasioned by exceptional circumstances such as a reasonable continuance needed by the district attorney to obtain the presence of a witness. See, People v. Morgan, 259 AD2d 771, appeal denied 93 NY2d 975; People v. Chambers, 226 AD2d 284, appeal denied 88 NY2d 981.

CPL §30.30, subd. 4(h) excludes time during adjournments in contemplation of dismissal, so if the case is put back on the calendar the People will not face a speedy trial dismissal.

CPL §30.30, subd. 4(i) makes clear that when the Court issues a summons directing the defendant to appear for arraignment, the time is excludable. See, also, People v. Goss, supra.

CPL §30.30, subd. 4(j) excludes proceedings which take place in Family Court on any matter prior to the actual filing of an indictment or other accusatory instrument alleging a crime constituting a family offense under CPL §530.11.

Postreadiness Revisited

As noted above, postready delay is not always charged the same as pre-ready delay. People v. Anderson, supra, indicates that once the People are effectively ready with their case, delays which affect the defendants ability to proceed to trial should not be charged. In such instance, lesser remedies should be sought, such as discovery sanctions pursuant to CPL §240.70. Nevertheless, delays entirely within the control of the People and not otherwise remediable may still be “tacked” to any preready delay which has already been charged.

CPL §30.30, subd. 3(b) addresses delays after effective readiness due to exceptional circumstances such as the unavailability of material evidence when the district attorney has made an effort to obtain it and there is reason to believe it will become available within a “reasonable” period.

Once the People are ready, their request for delays may be chargeable only to the extent of the number of days they specify and not for any further time the court may adjourn the case. See, People v. Smith, 82 NY2d 676; People v. Urraea, 214 AD2d 378; People v. Dushain, 239 AD2d 151, appeal denied 91 NY2d 1007.

Even though the People have requested a post ready delay they may be able to stop the time running against them by filing a statement of readiness during the adjournment. See, People v. Stirrup, 91 NY2d 434 at 440.

If the People have requested an adjournment and the case is put over for additional time

which was to be excluded and they are again not prepared to proceed on the adjourned date, they may not be charged with the time. See, People v. Camillo, 279 AD2d 326; People v. Douglas, 264 AD2d 671.

Other Delay

There are, of course, numerous other situations and circumstances creating speedy trial issues. Some of the more common ones recur on a regular basis.

Prereadiness transfers to other court parts and court scheduling delays are generally chargeable in the absence of defense requests or consent. See, People v. Collins, 82 NY2d 177.

If defense counsel actively “participates” in setting an adjournment date when the People are not ready it could be found excludable. See, People v. Matthews, 227 AD2d 313. However, indicating to the court that certain proposed dates are inconvenient may not be considered consent. See, People v. Smith, 82 NY2d 676.

Time for defendants to consider plea offers has been found excludable. See, People v. Rodriguez, 184 AD2d 317. The time following such an adjournment has also been held excludable. See, People v. Delvalle, 265 AD2d 174; People v. Osorio, 294 AD2d 139 and People v. Jenkins, 302 AD2d 978.

Adjournments for hearings or trial are generally excludable. See, People v. Greene, 223 AD2d 474; People v. Jaswinder, 165 Misc2d 371; People v. Hernandez, 268 AD2d 344, leave denied 95 NY2d 853.

Delays for obtaining court minutes to answer a speedy trial motion are not generally chargeable. See, People v. Lacey, 260 AD2d 309, leave denied 93 NY2d 1003.

CPL §30.30 motions may be considered untimely if not properly made by the eve of trial. See, People v. Lawrence, 64 NY2d 200; People v. Harvall, 196 AD2d 553; People v. Baxter, 216 AD2d 931.

In closing, it should be noted that all of the excludable periods are based on reasonability and excessive delay may still be charged at the discretion of the court. See, e.g., People v. Daley, 265 AD2d 566.

It is an obvious conclusion that as clear a record as possible should be made of the reason for every adjournment and speedy trial considerations appropriately noted, so that any future motions made under CPL §30.30 can be decided with as little confusion and difficulty as possible.

Speedy Trial under CPL §30.30

<u>Offense (Top Count In Instrument)</u>	<u>Time Limit</u>
PL §§125.10, 125.15, 125.20, 125.25, 125.27	None
All other Felonies	6 months (Number of days after filing)
Misdemeanor w/ sentence over 3 months	90 Days
Misdemeanor w/ sentence of 3 months or less	60 days
Violation	30 days
Traffic Infraction	None (Ordinarily charged in Simplified Information and subject to CPL §100.25)

PL §55.10 Designation of Offenses

Felonies classified as AI, AII, B, C, D or E
If outside Penal Law and not classified = E

Misdemeanors in Penal Law are A or B
If declared a misdemeanor outside Penal Law and no sentence given = A
If outside Penal Law and sentence is over 15 days but not over 1 year = unclassified misdemeanor

Violations - designated in Penal Law
Anything outside Penal Law and sentence not over 15 days
Note: Traffic Infraction - defined as such is not anything else- regardless of sentence

INSTRUCTIONS FOR WORKSHEET

1. Get the court file and list the court appearance dates therein.
2. Note any reason for adjournments or time excluded or charged in the court's notations.
3. Check filing dates for supporting depositions, statements of readiness, motions, etc. contained in the court papers.
4. Compare the time in controversy between the defendant's motion and the People's answer.
5. Where necessary, check the official stenographic minutes.
6. Count the number of days in each potentially chargeable adjournment period using a monthly calendar.
7. Support all reasons for charging or excluding time with reference to statute or caselaw.
8. Add up the chargeable periods against the statutory limit to determine the outcome.

CPL §30.30 WORKSHEET

<u>DATE</u>	<u>ACTION</u>	<u>ADJ. TO</u>	<u>CHARGE TO</u>	<u>NO. OF DAYS</u>

