



## MEMORANDUM OF SUPPORT

### S5988 (Squadron)/A7841 (Aubry) "Kalief's Law"

August 18, 2015

**Brooklyn Defender Services ("BDS") strongly supports S5988 (Squadron)/A7841 (Aubry) which would amend Section 30.30 of the Criminal Procedure Law (C.P.L. §30.30) to require prosecutors to prove readiness for trial by certifying compliance with disclosure requirements.** BDS is a comprehensive indigent legal service organization that provides innovative, multi-disciplinary, and client-centered criminal defense, family defense, immigration and civil legal services, and social work support to more than 45,000 indigent Brooklyn residents every year.

The U.S. Constitution provides criminal defendants with the right to a speedy trial. Yet the current iteration of New York's "Speedy Trial" Law (C.P.L. §30.30) subverts justice and the Constitution by allowing the People and the courts to delay cases for months or years at a time to the detriment of defendants and the community.

Kalief's Law is named in honor of Kalief Browder, a 16-year-old from the Bronx who spent three years on Riker's Island awaiting trial for allegedly stealing a backpack. At Riker's he suffered abuse at the hands of corrections officers and other inmates and spent two years in solitary confinement. The prosecution eventually dropped the charges against him, but his experiences continued to haunt him and, earlier this year, he committed suicide.

Kalief's Law would amend C.P.L. §30.30 to limit delays, resulting in a more swift resolution for defendants and witnesses and cost-savings for the courts and community. Too many people have been harmed by a system characterized by delay, inefficiency and abuse. Kalief's Law is an important step towards advancing the cause of justice in New York.

#### EXISTING LAW

Though Article 30 of the Criminal Procedure Law identifies Section 30.30 as a speedy trial statute, it is, by design and practice, a prosecution ready rule. This means that a

trial does not have to actually start within the time required to avoid dismissal of the case. Rather, the prosecution must merely claim to be “ready” for trial within that period.

Under C.P.L. § 30.30, a criminal defendant may file a motion to dismiss the charge(s) if the people are not ready for trial within 180 days of the commencement of the action for felonies, 90 days for high-level misdemeanors (punishable with jail sentences of over 3 months), 60 days for low-level misdemeanors (punishable with jail sentences less than 3 months), or 30 days for violations.

Despite these time limits, cases often go on for months or even years. One reason is a statutory exception to the readiness rule for “exceptional circumstances” such as the sudden unavailability of evidence material to the people’s case. The people also are able to drag cases on by filing an “off-calendar” statement of readiness. The prosecutor will obtain an adjournment on the date of trial because they are “not ready” and then a few days later will file an “off-calendar” statement of readiness on a day when no one is in court. This stops the speedy-trial clock for the rest of the adjournment period which may last for multiple months.

## **PROPOSED AMENDMENT**

This bill would amend § 30.30 by:

- Requiring a representative of the People to prove readiness for trial by affirming that the People's evidence is imminently available.
- Requiring that a valid statement of trial readiness be accompanied or preceded by a certification of compliance with the disclosure requirements set forth in section 240.20 of the Criminal Procedure Law.
- Requiring that exclusions to the computation of time, when a statement of unreadiness has followed a statement of readiness made by the People, be accompanied by supporting facts and approved by the court.

## **JUSTIFICATION**

Kalief Browder’s traumatic experience on Riker’s Island is not atypical. Earlier this year New York City announced that over 400 people had been locked up on Riker’s Island for more than two years without being convicted of a crime. Troublingly, the majority of inmates are not detained in Riker’s because they pose a threat to public safety. In New York City, roughly 45,000 people are jailed each year simply because they can’t pay their court-assigned bail. At any given time, BDS has around 1,000 clients awaiting trial or resolution of their cases on Riker’s, many of them for failure to meet bail amounts of less than \$5,000. While at Riker’s, our clients are subject to all manner of undue and excessive punishment,

including lack of access to health care and mental health services, physical and sexual violence, job loss, eviction, interrupted education, and the torture of solitary confinement. A recent lawsuit brought by the Legal Aid Society against the City of New York about deplorable conditions on the Island's facilities, which was joined by the U.S. Department of Justice and finally settled in June of this year, shed light on the routine and institutionalized culture of rape, sexual assault and beatings of inmates at the hands of corrections officers and other inmates. It is an open secret that prosecutors use pre-trial detention to extract plea agreements involving admissions of guilt from defendants. Reforming C.P.L. § 30.30 is necessary to promote justice by reducing the amount of time that defendants spend on the Island.

BDS clients fighting their cases from the outside are also harmed by delay. These are clients who were released on their own recognizance or were able to post bail. The average length of time from arraignment until trial for BDS felony clients is 464 days, up from the City average of 380 days in 2008. Our clients spend months or years with charges pending over them, inhibiting their ability to obtain a job or housing. Some clients lose their jobs because of either the pending charges or because they missed work due to court dates or pre-trial detention. Those with more flexible jobs or employers have to miss work, often well over a dozen times during the duration of their case, resulting in lost wages.

Complaining witnesses and other parties such as defendants' family members suffer when cases linger on without resolution. They too are required to return to court multiple times, taking time off work and away from their families. Parenting defendants may lose custody of their children, some of whom must enter the foster care system while their parent is detained pre-trial. Long delays by the prosecution and the courts serve no legitimate purpose and ultimately diminish the integrity of our court system.

Justice delayed is justice denied. Kalief's Law provides an important and cost-effective way to limit how long defendants are detained on Riker's Island, provides defendants and victims with faster resolution, and promote justice for all. For these reasons, Brooklyn Defender Services urges you to co-sponsor and support S. 5988/A. 8296.