MEMORANDUM OF SUPPORT

Speedy Trial Reform - "Kalief's Law"

A.3055-A (Aubry) & S.7006-B (Bailey)

April 16, 2018

Brooklyn Defender Services ("BDS") strongly supports A3055 (Aubry) and S7006-B (Bailey) 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. *In contrast, we strongly oppose the speedy trial proposal in the FY19 Executive Budget, which would not achieve the Governor's stated aim of decreasing the length of criminal cases in courts across the state.*

BDS is a comprehensive indigent legal service organization that provides multi-disciplinary, and client-centered criminal defense, family defense, immigration and civil legal services, and social work support to more than 30,000 indigent Brooklyn residents every year. Over the past 22 years we have represented close to half a million people in criminal matters in Kings County, New York.

I. THE PROBLEM

The U.S. and New York Constitutions provide 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.

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. Too often, the prosecution can rely on a number of exclusions to keep an incarcerated defendant in jail while awaiting a trial date.

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 month), 60 days for

Lisa Schreibersdorf
Executive Director

177 Livingston Street, 7th Floor
Brooklyn New York 11201

T (718) 254-0700
F (718) 254-0897

www.bds.org
@BklynDefender

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 delay cases by filing an "off-calendar" statement of readiness and then subsequently in court announce "not ready". The prosecutor can then easily stop the clock again by filing another "off-calendar" statement of readiness a few days laterwhen no one is in court. Thisaction stops the speedy-trial clock for the rest of the adjournment period and the cycle can continue for months.

In short, the current speedy trial statute fails to protect the rights of New Yorkers to their constitutional right to a speedy trial. Reform is necessary and urgent.

II. CLIENT STORIES[1] – REAL PEOPLE SUFFER UNDER THE CURRENT STATE OF THE LAW

a. Kevin – Innocent, But Lost His Union Job Because of Repeated Court Dates

Kevin was charged with a low-level felony that stemmed from a fight. One woman claimed that our client intentionally injured her, and our client and other witnesses disagreed that the woman was hurt at all and insisted that she was the one who yielded a weapon and posed a threat to others. Early on in the case the charges were reduced and Kevin was offered a plea to a misdemeanor and probation. But Kevin asserted his innocence – he wanted his day in court to tell his side of the story, but it never came. Kevin and his BDS attorney would have to appear in court nearly a dozen times over the course of 15 months before the prosecutor dismissed the case after finally, belatedly, turning over 911 recordings that substantiated Kevin's account of events. Because the prosecutor had announced ready without turning over this key evidence, they were able to use court congestion to delay the case for over a year. Prior to the evening that he intervened to break up a fight, Kevin had a high-paying union plumber job and a stable life. Yet because he had these unproved allegations of violent behavior hanging over him for more than a year, and because he was required to come to court and miss a day's work almost a dozen times over the duration of his case, our client lost his job, threatening his ability to care for his two young children. Though he was ultimately vindicated and his case was dismissed, justice came at a very high price.

b. *Albert – Separated from His Child for Over a Year Even Though the DA Had No Case*

Albert was arrested on a domestic violence charge. As is practice in Brooklyn, the prosecutor requested and the judge issued a full order of protection which required him to stay away from the mother of his child, over the mother's objections. Prior to his arrest, Albert took care of the baby during the day so that his domestic partner could work. Albert's partner did not want to prosecute the case and signed a waiver of prosecution in the DA's office. However, due to the speedy trial statute and court adjournments, the DA's office was able to keep the case alive for many months. In this particular case, the prosecutor simply answered "not ready" on every hearing and trial date and asked for a 5-7-day adjournment. Due to court congestion, the judge adjourned the case for more than a month on each adjournment date. Thus, the prosecution accrued only a short amount of speedy trial time but were able to extend the order of protection

[1] Names changed to protect client confidentiality.

for much longer than the 90 days of speedy trial time. Troublingly, the prosecutor knew that the family did not wish to proceed with the case but chose to continue prosecuting even though the prosecution and repeated court dates harmed Albert, his partner, and his child.

Until our current speedy trial statute is fixed, people like Kevin and Albert will be continued to be harmed by lengthy and unnecessary delays.

III. CONCERNS WITH THE PROPOSAL IN THE FY19 EXECUTIVE BUDGET – ARTICLE VII LEGISLATION

The Governor's FY19 speedy trial proposal inappropriately places blame for court delay on the defense, while ignoring the underlying problems of New York's "readiness rule," which does not count congestion in speedy trial calculations.

- Eliminates existing release provisions for incarcerated defendants. Thus, defendants may remain incarcerated for months and even years even when the prosecution is not ready for trial.
- Effectively increases excludable time in speedy trial calculations which will delay case dispositions even more.
- Unconstitutionally interferes with a defendant's right to counsel by requiring that defendants waive speedy trial time, themselves.

In short, the Governor's proposal will not fix the problems in our speedy trial system and would likely exacerbate the culture of prosecution delay. BDS strongly opposes this proposal.

IV. THE SOLUTION

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 charges of stealing a backpack. At Riker's he suffered abuse at the hands of corrections officers and other incarcerated people and spent two years in solitary confinement. The prosecution eventually dropped the charges against him, but his experiences continued to haunt him and, tragically, 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. Ultimately, BDS believes bail reform and discovery reform are paramount to reducing pre-trial detention and improving fairness and efficiency in criminal cases, respectively. Kalief's Law, in concert with these other two reforms, is also an important step towards ending case delays and advancing the cause of justice in New York.

Kalief's Law - A3055 (Aubry)

This bill is more aligned with constitutional due process standards and ensures that defendants do not languish in jail due to the labyrinth of "exclusions" provided by the existing framework. BDS supports A3055.

A3055 would amend Criminal Procedure Law § 30.30 and:

- Require 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.
- Require 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.
- Require the release of incarcerated defendants regardless of court congestion.
- Require speedy trial time to continue to accrue when the defense files a written motion to dismiss and the prosecution has not been ready for trial.

Kalief's Law – S.7006B (Bailey)

The Senate version of Kalief's law goes further than the Assembly version in terms of protecting the rights of the accused to a speedy trial. BDS strongly supports the amendments included in this version.

S.7006B would:

- Ensure that the existing speedy trial law applies to vehicle and traffic law infractions.
- Make minor changes related to Raise the Age to ensure that youth in the custody of the Office of Children and Family Services will be released on speedy trial grounds, just as adults in the custody of the sheriff are.
- Require the court to inquire and the prosecutors to accompany statements of unreadiness that follow a statement of readiness with supporting facts.
- Require 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.
- Clarify that a statement of readiness on a local criminal court accusatory instrument shall not be valid unless all counts meet the requirements of CPL § 100.40.
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- Exclude court congestion from the computation of trial readiness.
- Require the court to promptly decide whether a defendant should be released from custody based on speedy trial grounds.
- Allow decisions on C.P.L. § 30.30 motions to be reviewable upon appeal.

JUSTIFICATION

Kalief Browder's traumatic experience on Riker's Island is not atypical. In 2016, 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 people 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, most 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. 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. Our clients spend months 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.

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 A3055 (Aubry) and S7006B (Bailey).

Questions? Contact Andrea Nieves, Senior Policy Attorney, at anieves@bds.org or 718-254-0700 ext. 387.