



## **Speedy Trial Motions & Subpoenas**

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Instructor(s): Daniel M. Killelea, Esq.  
MCLE: 1.0 Professional Practice

This program has been approved for credit in  
New York State for all attorneys  
including those who are Newly Admitted  
(less than 24 months) and administered by  
the Onondaga County Bar Association.



Daniel M. Killelea, Esq. is an attorney based in Western New York who regularly practices in City, Town and Village Courts as well as County and State Supreme Courts and whose practice includes the defense of those charged with crimes and those facing professional discipline, as well as the representation of members of public safety labor unions. He is a former Assistant District Attorney and Special Assistant United States Attorney who is certified as a General Topics Instructor by the New York State Municipal Police Training Council, and is an instructor at the Erie County Central Police Services Law Enforcement Training Academy. Dan lectures regularly to attorneys, judges and court personnel on recent developments in the law as well as on matters of general interest to the legal community. He has been named an Upstate New York "Super Lawyer" and to the "Who's Who in Law" list by the Buffalo Law Journal, and he is a member of the Erie County, Wyoming County, Genesee County, and New York State Bar Associations.



# **Speedy Trial Motions & Subpoenas**

**New York State  
Magistrates' Association  
Saratoga Springs, New York  
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Presented By

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## Speedy Trial Motions

- I. Where Do We Find the “Right to a Speedy Trial”?
  - A. United States Constitution, Amendment VI
  - B. Criminal Procedure Law Article 30
  
- II. How is this Different from the “Statute of Limitations”?
  - A. Time to Commence an Action vs. Time Within Which to be Ready for Trial on that Action
  - B. CPL §30.10 Time Limitations (*Generally*)
    1. Class “A” felonies, Rape 1<sup>st</sup>, Criminal Sexual Act 1<sup>st</sup> (formerly Sodomy 1<sup>st</sup>), Aggravated Sexual Abuse 1<sup>st</sup>, Course of Sexual Conduct Against a Child 1<sup>st</sup>, or Incest 1<sup>st</sup> = NO TIME LIMIT
    2. Rape 2<sup>nd</sup>, Criminal Sexual Act 2<sup>nd</sup>, or Incest 2<sup>nd</sup> (where the underlying crime is Rape 2<sup>nd</sup> or Criminal Sexual Act 2<sup>nd</sup>) = 20 YEARS
    3. Rape 3<sup>rd</sup> or Criminal Sexual Act 3<sup>rd</sup> = 10 YEARS
    4. Any other felony = 5 YEARS
    5. A misdemeanor = 2 YEARS
    6. A “petty offense” = 1 YEAR
  - C. CPL §30.10(3)(b): Misconduct in Public Office can be charged at any time the person is still in public office, or

within 5 years of leaving public office—but no more than 5 years can be added to the Statutes of Limitations above.

- D. CPL §30.10(4)(a): Time is excluded when the Defendant is continuously out of state or can't be located—but no more than 5 years can be added to the Statutes of Limitations above.
- E. Guilty Plea Waives this Defense (People v. Parilla, 8 NY3d 654, 659 [2007]), as does Request for Lesser Included Defense Which Would Have Otherwise Been Time-Barred (People v. Mills, 1 NY3d 269, 274 [2003])

### III. How do we Know if Someone's Right to a Speedy Trial has been Violated?

- A. United States Constitution, Amendment VI
- B. In New York State, there are TWO Statutes
  - 1. CPL §30.20: Constitutional Right to a Speedy Trial
  - 2. CPL §30.30: Statutory Right to a Speedy Trial

### IV. Constitutional Right to a Speedy Trial (CPL §30.20)

- A. CPL §30.20(1): “After a criminal action is commenced, the defendant is entitled to a speedy trial.”
- B. People v. Taranovich (37 NY2d 442 [1975]): Factors to Consider
  - 1. The Extent of the Delay;
  - 2. The Reason for the Delay;

3. The Nature of the Underlying Charge;
  4. Whether or Not there has Been an Extended Period of Pre-Trial Incarceration; and
  5. Whether or Not there is Any Indication that the Defense has been Impaired by Reason of the Delay.
- C. There is no *per se* time limit
  - D. CPL §30.20 and the 6<sup>th</sup> Amendment apply to Traffic Violations
  - E. Guilty Plea does NOT Waive this Defense (People v. Callahan, 80 NY2d 273 [1992])
  - F. CPL §30.20(2): Criminal Trials Must be Given Preference over Civil Trials—and Criminal Trials with Incarcerated Defendants Must be Given Preference over other Criminal Trials
- V. Statutory Right to a Speedy Trial (CPL §30.30)
- A. Felonies: 6 Months (CPL §30.30[1][a])
  - B. Misdemeanors with a Sentence of More Than 90 Days: 90 Days CPL §30.30[1][b])
  - C. Misdemeanors with a Sentence of Up to 90 Days: 60 Days CPL §30.30[1][c])
  - D. Violations (Now Including Traffic Infractions): 30 Days (CPL §30.30[1][d] & [e])
  - E. Most Homicides: No Limit (CPL §30.30[3][a])—but Attempted Homicides are still subject to Statute



## F. “Chess Clock”

1. What starts it?
  - a. CPL §1.20(7): “A criminal action is commenced by the filing of an accusatory instrument against a defendant in a criminal court, and, if more than one accusatory instrument is filed in the course of the action, it commences when the first of such instruments is filed”
  - b. Appearance Tickets: It starts on the Date the Defendant First Appears (CPL §30.30[7][b])
  - c. Unexcused or Unreasonable Delays by Prosecution (*see*, CPL §30.30[4])
  - d. Post-Readiness Delay
2. What stops it?
  - a. Declaration of Readiness for Trial (CPL §30.30[1])
    - i. Court Inquiry is Required (CPL §30.30[5])
    - ii. Certificate of Compliance is Required (CPL §30.30[5-a])
    - iii. Pre-Arrest Declaration of Readiness
      - (a) May Be Illusory without Discovery (CPL §30.30[5-a]; *confer*, CPL §30.30[4][a]: “another proceeding involving defendant”), BUT...
      - (b) May be Valid if the People have done “everything required of them to bring

the case to trial” (People v. Carter, 91 NY2d 795 [1998])—but this has usually applied to indicted matters

iv. People v. Kendzia (64 NY2d 331 [1985]):  
An effective Declaration of Readiness Must be On the Record—either Stenographic or by Letter Sent to Defendant and Court for Inclusion in Case File, and People must Actually be Ready

b. Exclusions of Time (*Most Common*)

i. CPL §30.30(4)(a): “A reasonable period of delay resulting from other proceedings concerning the defendant” (i.e., competency proceedings, periods of incompetency, demands to produce [*still in the statute!*], requests for bills of particulars, pre-trial motions, appeals, trials of other charges, and time Court is considering matters)

ii. CPL §30.30(4)(b): Continuances requested by, or consented to, by Defendant

iii. CPL §30.30(4)(c): Unavailability of Defendant, or Issuance of BENCH Warrant

iv. CPL §30.30(4)(e): Defendant detained in another jurisdiction if DA has made diligent and reasonable efforts to obtain Defendant’s presence

- v. CPL §30.30(4)(f): Defendant is Without Counsel Through No Fault of the Court (except when acting *Pro Se*)
  - vi. CPL §30.30(4)(g): Exceptional Circumstances
  - vii. CPL §30.30(4)(h): Period of an ACD
3. Withdrawal of a Guilty Plea, or Retrial after a Mistrial or Order for a New Trial restarts the “Speedy Trial Clock” (CPL §30.30[7][a])
- G. Commencement of Trial waives defense (People v. Jordan, 62 NY2d 825 [1984]), and Guilty Plea waives defense (People v. Friscia, 51 NY2d 433 [1980]) UNLESS motion previously made (People v. Dudley, 28AD3d 1182 [4<sup>th</sup> Dept. 2006])

## VI. Motions

- A. Defense has Burden to File (CPL §210.20[1][g]; CPL §170.30[1][e])
- B. People Have Burden of Showing Time was Excludable (People v. Berkowitz, 50 NY2d 333 [1980])
- C. Can be Made Any Time Before Trial Commences or Guilty Plea is Entered (People v. Lawrence, 64 NY2d 200 [1984]; CPL §30.30[8]; CPL §170.30[2])
- D. Can be Granted Summarily if No Question(s) of Fact
- E. If Motion is Granted, Case is Dismissed

## Subpoenas

### I. Subpoena Duces Tecum

- A. Purpose is to compel the production of certain documents
- B. CPL §610.10(3): Directs the person who possesses evidence which is sought to be produced at trial to provide the evidence to the Court (CPL §610.25[1]); can also require testimony from this person to identify or authenticate the evidence

### II. Subpoena Ad Testificandum

- A. Directs the person whose testimony is sought to appear at trial to testify
- B. CPL §610.20(1): “Any criminal court may issue a subpoena for the attendance of a witness in any criminal action or proceeding.”
- C. Can also be issued by the District Attorney (CPL §610.20[2])
- D. Can also be issued by Defense Counsel, but if being served upon a State Agency must be subscribed by the Court (CPL §610.20[3])
- E. CPL §610.20(4): “The showing required to sustain any subpoena under this section is that the testimony or evidence sought is reasonably likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome.”

- F. CPL §610.30(1): “A subpoena of any criminal court, issued pursuant to section 610.20, may be served anywhere in the county of issuance or anywhere in an adjoining county.”
- G. CPL §610.30(2): “A subpoena of a superior court or of a superior court judge sitting as a local criminal court, issued pursuant to section 610.20, may be served anywhere in the state.”
- H. CPL 610.30(4): “A subpoena of a city court or a town court or a village court, issued pursuant to section 610.20, may be served in a county other than the one of issuance or an adjoining county if a judge of a superior court, upon application of the issuing court or the district attorney or an attorney for the defendant, endorses upon such subpoena an order for the attendance of the witness.”

### III. Grand Jury Subpoena: Returnable to the Grand Jury

- A. People, as Legal Advisor to the Grand Jury, may issue subpoena for a witness to attend the Grand Jury, or may issue a subpoena duces tecum for the production of evidence
- B. Grand Jury subpoena can be issued before the Grand Jury is empaneled, if it's returnable while the Grand Jury is sitting.
- C. Improper to make subpoena returnable to the Grand Jury after vote, or when Grand Jury is not in session (DA cannot issue “Office Subpoena”).

### IV. Court Subpoena: Returnable to Court

A. Court must issue subpoena when a party seeks production of incarcerated person, clinical records, original copy of any document (CPLR 2302)

B. Civil Matters

V. Administrative Subpoena: Returnable to Agency

VI. Motion to Quash Subpoena

A. Procedure for refusing to comply with a subpoena

B. CPLR §2304: “A motion to quash, fix conditions or modify a subpoena shall be made promptly in the court in which the subpoena is returnable.”

C. Should only occur where the futility of the process to uncover anything legitimate is inevitable or obvious (People v. Laughing, 113 AD3d 956 [3<sup>rd</sup> Dept. 2014])

D. The party who served the subpoena may be required to make a good-faith preliminary showing that any record sought contains relevant and exculpatory information (*see*, §610.20[4])

E. When ruling, consider reasonableness of request, relevance of the material, validity of subpoena, and jurisdiction of issuing authority (*see*, Constantine v. Solomon, 194 AD2d 538 [2<sup>nd</sup> Dept. 1993])