S T A T E O F N E W Y O R K

1709

2009-2010 Regular Sessions

I N A S S E M B L Y

January 9, 2009

Introduced by M. of A. ENGLEBRIGHT, WEISENBERG, HOOPER, KOON, COLTON, EDDINGTON -- Multi-Sponsored by -- M. of A. CLARK, CYMBROWITZ, DelMONTE, GALEF, MAYERSOHN, PHEFFER, WRIGHT -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to prohibiting issuance of an order of recognizance or bail to certain persons upon conviction of a sex offense and expediting the perfection of appeals of convictions of sex offenses against persons under the age of 18 years

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 3 of section 530.40 of the criminal procedure law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

3. Notwithstanding the provisions of subdivision two, a superior court may not order recognizance or bail, or permit a defendant to remain at liberty pursuant to an existing order, after he has been convicted of either: (a) a class A felony or (b) any class B [or], class C, CLASS D OR CLASS E felony defined in article one hundred thirty of the penal law committed or attempted to be committed by a person eighteen years of age or older against a person less than eighteen years of age. In either case the court must commit or remand the defendant to the custody of the sheriff.

S 2. Subdivision 1 of section 530.45 of the criminal procedure law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

1. When the defendant is at liberty in the course of a criminal action as a result of a prior order of recognizance or bail and the court revokes such order and then either fixes no bail or fixes bail in a greater amount or in a more burdensome form than was previously fixed and remands or commits defendant to the custody of the sheriff, a judge

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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designated in subdivision two, upon application of the defendant following conviction of an offense other than a class A felony or a class B [or], class C, CLASS D OR CLASS E felony offense defined in article one hundred thirty of the penal law committed or attempted to be committed by a person eighteen years of age or older against a person less than eighteen years of age, and before sentencing, may issue a securing order and either release defendant on his own recognizance, or fix bail, or fix bail in a lesser amount or in a less burdensome form than fixed by the court in which the conviction was entered.

S 3. Section 530.50 of the criminal procedure law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

S 530.50 Order of recognizance or bail; during pendency of appeal.

A judge who is otherwise authorized pursuant to section 460.50 or section 460.60 to issue an order of recognizance or bail pending the determination of an appeal, may do so unless the defendant received a class A felony sentence or a sentence for any class B [or], class C, CLASS D OR CLASS E felony offense defined in article one hundred thirty of the penal law committed or attempted to be committed by a person eighteen years of age or older against a person less than eighteen years of age.

S 4. Subdivisions 1 and 3 of section 460.70 of the criminal procedure law, subdivision 1 as amended by chapter 83 of the laws of 1995 and subdivision 3 as amended by chapter 695 of the laws of 1977, are amended to read as follows:

1. Except as provided in subdivision two, the mode of and time for perfecting an appeal which has been taken to an intermediate appellate court from a judgement, sentence or order of a criminal court are determined by rules of the appellate division of the department in which such appellate court is located. Among the matters to be determined by such court rules are the times when the appeal must be noticed for and brought to argument, the content and form of the records and briefs to be served and filed, and the time when such records and briefs must be served and filed. SUCH RULES SHALL ALSO PROVIDE THAT AN APPEAL RELATING TO ANY CONVICTION OF A FELONY OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED OR ATTEMPTED TO BE COMMITTED AGAINST A PERSON UNDER EIGHTEEN YEARS OF AGE SHALL BE PERFECTED ON AN EXPEDITED BASIS COMPLETED WITHIN SIXTY DAYS OF THE FILING OF THE NOTICE OF APPEAL AND SHALL BE HEARD WITHIN ONE HUNDRED TWENTY DAYS OF THE FILING OF THE NOTICE OF APPEAL.

When an appeal is taken by a defendant pursuant to section 450.10, a transcript shall be prepared and settled and shall be filed with the criminal court by the court reporter. The expense for such transcript and any reproduced copies of such transcript shall be paid by the defendant. Where the defendant is granted permission to proceed as a poor person by the appellate court, the court reporter shall promptly make and file with the criminal court a transcript of the stenographic minutes of such proceedings as the appellate court shall direct. The expense of transcripts and any reproduced copies of transcripts prepared for poor persons under this section shall be a state charge payable out of funds appropriated to the office of court administration for that purpose. The appellate court shall where such is necessary for perfection of the appeal, order that the criminal court furnish a reproduced copy of such transcript to the defendant or his counsel.

3. The mode of and time for perfecting any appeal which has been taken to the court of appeals are determined by the rules of the court of appeals. Among the matters to be determined by such court rules are the

times when the appeal must be noticed for and brought to argument, the content, form and number of the records and briefs and copies thereof to be served and filed, and the times when such records and briefs must be served and filed. SUCH RULES SHALL ALSO PROVIDE THAT AN APPEAL RELATING TO ANY CONVICTION OF A FELONY OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED OR ATTEMPTED TO BE COMMITTED AGAINST A PERSON UNDER EIGHTEEN YEARS OF AGE SHALL BE PERFECTED ON AN EXPEDITED BASIS COMPLETED WITHIN SIXTY DAYS OF THE FILING OF THE NOTICE OF APPEAL AND SHALL BE HEARD WITHIN ONE HUNDRED TWENTY DAYS OF THE FILING OF THE NOTICE OF APPEAL.

When an appeal is taken by a defendant pursuant to section 450.70, the defendant shall cause to be prepared and printed or otherwise duplicated pursuant to rules of the court of appeals the record on appeal and the required number of copies thereof. If the defendant is granted permission to appeal as a poor person, the expense thereof shall be a state charge payable out of funds appropriated to the office of court administration for that purpose.

S 5. This act shall take effect immediately.