

10564

I N A S S E M B L Y

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Introduced by M. of A. MONTESANO -- read once and referred to the
Committee on Codes

AN ACT to amend the criminal procedure law, in relation to permitting a judicial officer on application of a prosecuting attorney to deny bail or pretrial release to certain persons accused of dangerous crimes or to release such persons on condition in certain circumstances or to deny bail or pretrial release to persons accused of a crime when necessary to protect trial witnesses, jurors or evidence or to detain or release or release on condition persons convicted of a dangerous crime who are awaiting sentence or the decision on an appeal and repealing certain provisions of such law relating thereto

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

1 Section 1. Declaration of policy. The originating purpose and overriding
2 objective of government is the creation of those conditions of
3 public order in which the law-abiding citizen is protected from the
4 depredations of lawless forces seeking to violate the boundaries of his
5 personal freedom. For the democratic society guarantees to each individual
6 within the scope of its jurisdiction an area of personal liberty as
7 free from the transgressions of malignant private power as from the
8 overweening claims of the organized state. The legislative branch, no
9 less than other departments of government, must devote itself to securing
10 those desirable circumstances of social life within which the democratic
11 promise of freedom to the public at large may become a day to day
12 reality and to combating those threats to freedom which arise from the
13 encroachments of criminal forces.

14 In recent decades, the populace has suffered from an unacceptably high
15 incidence of dangerous criminal wrongdoing. Dangerous crimes have been
16 committed by persons with a previous conviction for dangerous criminality
17 who are awaiting trial on a charge involving another dangerous crime
18 when they indulge in such misconduct and by persons without a prior
19 conviction released to await trial after being charged with a dangerous
20 crime allegedly committed while on pretrial release in connection with a
21 charge of having committed another dangerous crime. Some of these

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

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1 persons have been dangerous criminals who indulge in crime as a vocation
2 or a way of life or compulsive lawbreakers driven by psychopathic tend-
3 encies, the dynamic thrust of neurotic maladjustment or the coercive
4 stimulus of narcotic addiction to repetitive criminal behavior whenever
5 they are at large in society.

6 Moreover, some criminals abuse the privilege of pretrial liberty by
7 threatening, attacking or intimidating witnesses or jurors or interfer-
8 ing with trial evidence. Sometimes a defendant's intention to engage in
9 such activity is manifest when the court first confronts the task of
10 making a pretrial release determination with respect to him or her. At
11 other times, it becomes known when the defendant misbehaves during the
12 period of pretrial release. In either case, the court should be provided
13 with remedies adequate to vindicating the integrity of the trial proc-
14 ess.

15 The person accused of a crime has no absolute constitutional right to
16 pretrial release and the individual and social interests supporting the
17 pretrial release of persons accused of a dangerous crime who have a
18 prior conviction for a dangerous crime or who allegedly perpetrated the
19 dangerous crime while on pretrial or post trial release in connection
20 with a prior charge of committing a dangerous crime are overbalanced by
21 the individual and social interests in protecting society and its
22 members from the prospective criminal conduct of that element of such
23 accused persons who pose the danger of pretrial recidivism. And where a
24 person charged with any criminal offense has interfered with a witness,
25 juror or trial evidence after release or has indicated an intention to
26 do so if released to await trial, the social interest in protecting the
27 integrity of the criminal justice system from the interfering pressures
28 exerted by such a person and persons similarly motivated overrides his
29 or her interest and the interests of similarly motivated persons in
30 pretrial liberty and justifies a mechanism for detaining such persons.

31 It is thus hereby declared to be the policy of the state of New York
32 to create a mechanism for denying bail or any other form of pretrial
33 release to accused persons of such type when necessary to safeguard the
34 safety of any other person or the community or the integrity of the
35 criminal justice system and when detention is not necessary for the
36 achievement of these goals, to impose such a condition or conditions on
37 release as is or are necessary to protect the safety of any other person
38 or the community or the integrity of the criminal justice system.

39 S 2. The criminal procedure law is amended by adding a new section
40 180.05 to read as follows:

41 S 180.05 PROCEEDINGS UPON FELONY COMPLAINT SUBJECT TO PROVISIONS OF
42 SECTION 530.15 OF THIS CHAPTER.

43 NOTWITHSTANDING THE PROVISIONS OF ANY OTHER SECTION OF THIS ARTICLE,
44 WHERE A DEFENDANT IS SUBJECT TO THE PROVISIONS OF SECTION 530.15 OF THIS
45 CHAPTER AND SUCH SECTION IS INVOKED BY THE COURT IN ACCORDANCE WITH ITS
46 PROVISIONS, THE RELEASE OF THE DEFENDANT AT THE ARRAIGNMENT UPON AN
47 ADJOURNMENT FOR THE PURPOSE OF OBTAINING COUNSEL OR PENDING THE HOLDING
48 OF A FELONY HEARING OR DURING A PERIOD OF ADJOURNMENT OF THE FELONY
49 HEARING OR AT ANY TIME FOR ANY OTHER PURPOSE IN CONNECTION WITH THE
50 PROCEEDINGS OF A FELONY COMPLAINT SHALL BE SUBJECT TO THE PROVISIONS OF
51 SECTION 530.15 OF THIS CHAPTER AND THE COURT MAY DENY RELEASE WHERE SUCH
52 SECTION AUTHORIZES SUCH DENIAL.

53 S 3. The opening paragraph of section 180.80 of the criminal procedure
54 law, as amended by chapter 556 of the laws of 1982, is amended to read
55 as follows:

1 Upon application of a defendant, EXCEPT A DEFENDANT FOR WHOM A
2 DETENTION HEARING HAS BEEN ORDERED UNDER SECTION 530.15 OF THIS CHAPTER,
3 OR WHO HAS BEEN ORDERED DETAINED UNDER SUCH SECTION, against whom a
4 felony complaint has been filed with a local criminal court, and who,
5 since the time of his arrest or subsequent thereto, has been held in
6 custody pending disposition of such felony complaint, and who has been
7 confined in such custody for a period of more than one hundred twenty
8 hours or, in the event that a Saturday, Sunday or legal holiday occurs
9 during such custody, one hundred forty-four hours, without either a
10 disposition of the felony complaint or commencement of a hearing there-
11 on, the local criminal court must release him on his own recognizance
12 unless:

13 S 4. Section 180.80 of the criminal procedure law is amended by adding
14 a new subdivision 4 to read as follows:

15 4. WHERE A DETENTION HEARING HAS BEEN ORDERED PURSUANT TO SECTION
16 530.15 OF THIS CHAPTER, THE DEFENDANT AGAINST WHOM A FELONY COMPLAINT
17 HAS BEEN FILED IN A LOCAL CRIMINAL COURT, AND WHO EITHER AT THE TIME OF
18 ARRAIGNMENT THEREON OR PRIOR OR SUBSEQUENT THERETO, HAS BEEN COMMITTED
19 TO THE CUSTODY OF THE SHERIFF PENDING DISPOSITION OF THE FELONY
20 COMPLAINT OR DETENTION PROCEEDING, SHALL BE DETAINED IN CUSTODY PENDING
21 THE HOLDING OF THE DETENTION HEARING AND THE DECISION OF THE JUDICIAL
22 OFFICER THEREON IN ACCORDANCE WITH THE PROVISIONS OF SECTION 530.15 OF
23 THIS CHAPTER UNLESS THE DEFENDANT IS RELEASED PENDING THE DETENTION
24 HEARING PURSUANT TO THE PERMISSION OF SUCH SECTION. THE DETENTION HEAR-
25 ING MAY BE HELD AT THE SAME COURT SESSION AS AND IMMEDIATELY AFTER THE
26 FELONY HEARING AND THE EVIDENCE OR INFORMATION PRESENTED AT THE FELONY
27 HEARING MAY BE CONSIDERED BY THE JUDICIAL OFFICER PRESIDING AT THE
28 DETENTION HEARING. THE RULES OF EVIDENCE AND THE LIMITATIONS ON THE
29 INTRODUCTION OF EVIDENCE APPLICABLE TO THE FELONY HEARING SHALL NOT BE
30 ENFORCED IN CONNECTION WITH THE DETENTION HEARING, WHICH SHALL BE
31 CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 530.15 OF THIS
32 CHAPTER. WHERE A JUDICIAL OFFICER BEFORE WHOM SUCH A FELONY HEARING HAS
33 BEEN HELD RENDERS A DECISION ON SUCH HEARING FINDING THAT THERE IS NOT
34 REASONABLE CAUSE TO HOLD THE DEFENDANT, THE DEFENDANT SHALL NOT BE HELD
35 FOR A DETENTION HEARING AND SHALL BE RELEASED.

36 S 5. The criminal procedure law is amended by adding a new section
37 530.15 to read as follows:

38 S 530.15 PRETRIAL DETENTION OR CONDITIONAL RELEASE OF CERTAIN PERSONS
39 CHARGED WITH DANGEROUS CRIMES TO PROTECT COMMUNITY SAFETY
40 AND PERSONS CHARGED WITH ANY CRIMINAL OFFENSE WHERE NECES-
41 SARY TO PROTECT A TRIAL WITNESS, JUROR OR EVIDENCE; POST
42 TRIAL DETENTION OR CONDITIONAL RELEASE OF CERTAIN PERSONS
43 CONVICTED OF A DANGEROUS CRIME.

44 1. DEFINITIONS. AS USED IN THIS SECTION THE TERM:

45 (A) "JUDICIAL OFFICER" MEANS, UNLESS OTHERWISE INDICATED, A JUDGE OF A
46 SUPERIOR COURT OR A JUDGE OF A LOCAL CRIMINAL COURT.

47 (B) "DETENTION" MEANS TOTAL DETENTION OR PARTIAL DETENTION, THAT IS,
48 DETENTION DURING A CERTAIN PORTION OF THE DAY, WEEK AND/OR MONTH AND
49 RELEASE FOR THE REMAINDER OF THE TIME FOR EMPLOYMENT OR FAMILIAL
50 PURPOSES OR TO ENABLE THE PERSON TO PREPARE HIS OR HER DEFENSE OR FOR
51 OTHER LIMITED PURPOSES FOUND BY THE JUDICIAL OFFICER TO JUSTIFY SUCH
52 RELEASE, WHETHER SUCH RELEASE IS UNSUPERVISED OR WHETHER THE JUDICIAL
53 OFFICER PLACES THE PERSON IN THE PARTIAL OR TOTAL CUSTODY OR SUPERVISION
54 OF SOME DESIGNATED PERSON OR PUBLIC OFFICER OR ORGANIZATION DURING THE
55 TIME WHEN THE ACCUSED PERSON IS NOT IN DETENTION.

1 (C) "DETAINED" MEANS THAT A PERSON CHARGED WITH A CRIME IS SUBJECTED
2 TO DETENTION AS DEFINED IN THIS SUBDIVISION.

3 (D) "DANGEROUS CRIME" MEANS THE FOLLOWING CRIMES DEFINED BY THE PENAL
4 LAW OF THIS STATE: ASSAULT SECOND AND FIRST DEGREES; MANSLAUGHTER
5 SECOND AND FIRST DEGREES; MURDER SECOND AND FIRST DEGREES; RAPE FIRST
6 DEGREE; CRIMINAL SEXUAL ACT FIRST DEGREE; SEXUAL ABUSE FIRST DEGREE;
7 KIDNAPPING SECOND AND FIRST DEGREES; CRIMINAL MISCHIEF FIRST DEGREE WHEN
8 THE CHARGE IS DAMAGING PROPERTY BY MEANS OF EXPLOSIVES; ARSON THIRD,
9 SECOND AND FIRST DEGREES; ROBBERY SECOND AND FIRST DEGREES; CRIMINAL
10 POSSESSION OF A WEAPON IN THE SECOND DEGREE WHEN THE CHARGE IS
11 POSSESSION OF A MACHINE GUN OR LOADED FIREARM WITH INTENT TO USE THE
12 SAME UNLAWFULLY AGAINST ANOTHER IN VIOLATION OF SECTION 265.03 OF THE
13 PENAL LAW; CRIMINAL POSSESSION OF A DANGEROUS WEAPON IN THE FIRST DEGREE
14 WHEN THE CHARGE IS POSSESSION OF ANY EXPLOSIVE SUBSTANCE WITH INTENT TO
15 USE THE SAME UNLAWFULLY AGAINST THE PERSON OR PROPERTY OF ANOTHER IN
16 VIOLATION OF SECTION 265.04 OF THE PENAL LAW; OR THE MANUFACTURE, TRANS-
17 PORT, DISPOSITION AND DEFAACEMENT OF WEAPONS AND DANGEROUS INSTRUMENTS
18 AND APPLIANCES WHEN THE CHARGE IS MANUFACTURE OF A MACHINE GUN OR THE
19 CAUSING OF SUCH MANUFACTURE IN VIOLATION OF SUBDIVISION ONE OF SECTION
20 265.10 OF THE PENAL LAW OR THE TRANSPORTING OR SHIPPING OF ANY MACHINE
21 GUN OR FIREARM SILENCER IN VIOLATION OF SUBDIVISION TWO OF SECTION
22 265.10 OF THE PENAL LAW.

23 (E) "SUBSTANTIAL PROBABILITY" MEANS A STANDARD OF PROOF REQUIRING MORE
24 PROOF THAN THE "PROBABLE CAUSE" STANDARD AND LESS PROOF THAN THE "BEYOND
25 A REASONABLE DOUBT" STANDARD AND CORRESPONDING TO THE "FAIR PREPONDER-
26 ANCE OF THE EVIDENCE" RULE OF PROOF IN CIVIL CASES.

27 (F) "CONVICTION" MEANS THE VERDICT OF A JURY IN A JURY TRIAL OR THE
28 DECISION OF A JUDGE IN A NON-JURY TRIAL FINDING THE ACCUSED PERSON GUILTY
29 AFTER A TRIAL ON A CRIMINAL CHARGE OR A PLEA OF GUILTY TO A CRIMINAL
30 CHARGE BY THE PERSON ACCUSED IN THE CHARGE.

31 (G) "CONVICTED" MEANS THAT A PERSON ACCUSED IN A CRIMINAL CHARGE HAS
32 SUFFERED A CONVICTION.

33 2. PROBATION DEPARTMENT'S DUTY TO SUPPLY INFORMATION ON REQUEST AND TO
34 SUPERVISE PERSONS RELEASED ON CONDITION. A JUDICIAL OFFICER BEFORE WHOM
35 THERE IS PENDING A MOTION OR PROCEEDING TO DETAIN A PARTICULAR PERSON
36 UNDER THE AUTHORITY OF THIS SECTION MAY REQUEST FROM THE PROBATION
37 DEPARTMENT OF THE COUNTY IN WHICH THE MOTION OR PROCEEDING IS PENDING
38 INFORMATION CONCERNING THE SAID PERSON AND THIS INFORMATION SHALL BE
39 SUPPLIED BY THE PROBATION DEPARTMENT IN THE FORM OF A PROMPT REPORT TO
40 THE JUDICIAL OFFICER. THE JUDICIAL OFFICER MAY CONSIDER THIS INFORMATION
41 IN MAKING THE DECISION AS TO WHETHER OR NOT TO DETAIN THE PERSON AND IN
42 DECIDING WHAT FORM OF DETENTION OR RELEASE TO ORDER. THE JUDICIAL OFFI-
43 CER MAY ALSO ASK THE PROBATION DEPARTMENT TO RENDER TO THE JUDICIAL
44 OFFICER AN OPINION IN WRITING AS TO WHETHER SUCH A PARTICULAR PERSON
45 SHOULD BE DETAINED AND, IF DETENTION IS RECOMMENDED, WHAT FORM OF
46 DETENTION SHOULD BE ORDERED. THE OPINION OF THE PROBATION DEPARTMENT OR
47 ANY OFFICER OF SUCH DEPARTMENT SHALL NOT BE BINDING UPON THE JUDICIAL
48 OFFICER.

49 THE PROBATION DEPARTMENT OF A COUNTY IN WHICH SUCH A PARTICULAR PERSON
50 IS RELEASED ON CONDITION OR UNDER RESTRICTIONS SHALL SUPERVISE SUCH
51 PERSON AND REPORT PROMPTLY TO THE JUDICIAL OFFICER WHO ORDERED THE
52 RELEASE OF SUCH PERSON OR THE COURT IN WHICH THE RELEASE WAS ORDERED
53 WHENEVER SUCH PERSON VIOLATES THE CONDITIONS OF RELEASE. THE PROBATION
54 DEPARTMENT SHALL ALSO MAKE SUCH A PROMPT REPORT TO THE PROSECUTING
55 AUTHORITY INVOLVED IN THE CASE.

1 3. RELEASE OR CONDITIONAL RELEASE IN ABSENCE OF DETENTION. (A) WHEN
2 ANY PERSON CHARGED WITH BUT NOT YET CONVICTED OF A DANGEROUS CRIME
3 APPEARS FOR THE FIRST TIME BEFORE A JUDICIAL OFFICER, THE JUDICIAL OFFI-
4 CER, UNLESS THE PROSECUTING ATTORNEY MOVES TO DETAIN THE PERSON PENDING
5 TRIAL AND THE JUDICIAL OFFICER ORDERS A DETENTION HEARING IN ACCORDANCE
6 WITH THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION, MAY EITHER
7 RELEASE THE PERSON ON RECOGNIZANCE OR, IN ORDER TO ASSURE THE SAFETY OF
8 ANY OTHER PERSON OR THE COMMUNITY FROM DANGEROUS CRIME, MAY RELEASE THE
9 PERSON ON ONE OR MORE OF THE CONDITIONS SPECIFIED IN PARAGRAPH (B) OF
10 THIS SUBDIVISION EXCEPT AS PROVIDED IN SUBDIVISIONS ELEVEN AND THIRTEEN
11 OF THIS SECTION.

12 (B) WHEN THE JUDICIAL OFFICER IS A JUDGE OF A CITY COURT, TOWN COURT
13 OR VILLAGE COURT SITTING IN A LOCAL CRIMINAL COURT WHICH IS A CITY
14 COURT, TOWN COURT OR VILLAGE COURT, HE MAY NOT ORDER RELEASE ON RECOGNI-
15 ZANCE OR ON BAIL OR ON ANY OTHER CONDITION WHEN THE PERSON IS CHARGED
16 WITH A CLASS A FELONY OR IT APPEARS THAT THE PERSON HAS TWO PREVIOUS
17 FELONY CONVICTIONS. WHEN THE JUDGE OF A LOCAL CRIMINAL COURT IS PROHIB-
18 ITED UNDER THIS PARAGRAPH FROM GRANTING THE RELEASE OF THE PERSON, A
19 JUDGE OF A SUPERIOR COURT HOLDING A TERM THEREOF IN THE COUNTY, UPON
20 APPLICATION OF THE PERSON, MAY ORDER RELEASE ON RECOGNIZANCE OR ON BAIL
21 OR ON OTHER CONDITION OR CONDITIONS IN ACCORDANCE WITH THE PROVISIONS OF
22 THIS SUBDIVISION. SUCH SUPERIOR COURT JUDGE MAY ALSO, UPON APPLICATION
23 OF THE PROSECUTING ATTORNEY, ORDER THAT A DETENTION HEARING BE HELD IN
24 SUPERIOR COURT WHEN SUCH A HEARING IS AUTHORIZED UNDER THE PROCEEDINGS
25 OF SUBDIVISION FOUR OF THIS SECTION.

26 (C) THE JUDICIAL OFFICER MAY IMPOSE SUCH CONDITION OR CONDITIONS AS
27 IS OR ARE REASONABLY NECESSARY, AND NONE BEYOND THAT REASONABLY NECES-
28 SARY, TO ASSURE THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY FROM
29 DANGEROUS CRIME. HOWEVER, WHEN THE JUDICIAL OFFICER FINDS THAT A
30 DETENTION HEARING IS AUTHORIZED UNDER THE PROVISIONS OF SUBDIVISION FOUR
31 OF THIS SECTION, THE JUDICIAL OFFICER MAY ORDER THAT SUCH A HEARING BE
32 HELD IF THE PROSECUTING ATTORNEY MOVES FOR THE HOLDING OF SUCH A HEAR-
33 ING.

34 (D) NOTWITHSTANDING THE FOREGOING PROVISIONS, THE JUDICIAL OFFICER
35 MAY NOT ISSUE AN ORDER UNDER THIS SUBDIVISION RELEASING THE PERSON
36 ACCUSED OF A DANGEROUS CRIME ON RECOGNIZANCE OR ON ONE OR MORE CONDI-
37 TIONS UNLESS AND UNTIL THE PROSECUTING ATTORNEY HAS HAD AN OPPORTUNITY
38 TO BE HEARD IN THE MATTER, OR, IF THE MATTER IS WITHIN THE COGNIZANCE OF
39 A LOCAL CRIMINAL COURT, AFTER KNOWLEDGE OR NOTICE OF THE APPLICATION AND
40 REASONABLE OPPORTUNITY TO BE HEARD, HAS FAILED TO APPEAR AT THE PROCEED-
41 ING OR HAS OTHERWISE WAIVED HIS RIGHT TO DO SO AND UNLESS AND UNTIL THE
42 JUDICIAL OFFICER HAS BEEN FURNISHED WITH A REPORT OF THE DIVISION OF
43 CRIMINAL JUSTICE SERVICES CONCERNING THE PERSON'S CRIMINAL RECORD, IF
44 ANY, OR WITH A POLICE DEPARTMENT REPORT WITH RESPECT TO THE PERSON'S
45 PRIOR ARREST RECORD. WHEN THE JUDICIAL OFFICER HAS BEEN FURNISHED WITH
46 ANY SUCH REPORT OR RECORD, IT SHALL FURNISH A COPY THEREOF TO COUNSEL
47 FOR THE PERSON OR, IF THE PERSON IS NOT REPRESENTED BY COUNSEL, TO THE
48 PERSON.

49 (E) IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (D) OF THIS
50 SUBDIVISION, THE JUDICIAL OFFICER MAY ORDER ONE OR MORE OF THE FOLLOWING
51 CONDITIONS OF RELEASE:

52 (1) PLACE THE PERSON IN THE CUSTODY OF A DESIGNATED PERSON OR PERSONS
53 OR ORGANIZATION OR ORGANIZATIONS AGREEING TO SUPERVISE HIM OR HER OR IN
54 THE CUSTODY OF A PUBLIC OFFICER OR PUBLIC OFFICERS.

1 (2) PLACE RESTRICTIONS ON THE TRAVEL, ASSOCIATION, EMPLOYMENT, PLACES
2 OF VISITATION OR PLACE OF ABODE OF THE PERSON DURING THE PERIOD OF
3 RELEASE.

4 (3) PROHIBIT ABSENCE FROM RESIDENCE OR EMPLOYMENT FOR A PERIOD OF
5 MORE THAN TWO HOURS WITHOUT PRIOR PERMISSION OF THE COURT OR THE
6 PROBATION DEPARTMENT HAVING JURISDICTION.

7 (4) REQUIRE CHECK-IN WITH A PROBATION OFFICER OR AT A POLICE PRECINCT
8 EITHER BY PHONE OR IN PERSON, EITHER PERIODICALLY AS PROVIDED BY THE
9 JUDICIAL OFFICER OR AT SUCH TIME OR TIMES AS THE JUDICIAL OFFICER MAY
10 DIRECT.

11 (5) IMPOSE A NIGHTTIME CURFEW.

12 (6) REQUIRE THE REPORTING OF A CHANGE IN BUSINESS, FINANCIAL, EMPLOY-
13 MENT, HEALTH OR MARITAL STATUS, THE DOCKETING OF ANY JUDGMENT OR LIEN OR
14 THE FILING OF AN ADDITIONAL CRIMINAL CHARGE AGAINST THE PERSON IN ANY
15 JURISDICTION WHERE THE SAME IS KNOWN TO THE PERSON OR THE REPORTING OF
16 ANY OTHER MATTER RELEVANT TO ASSURING THE SAFETY OF ANY OTHER PERSON OR
17 THE COMMUNITY FROM DANGEROUS CRIME.

18 (7) REQUIRE PARTICIPATION IN A TREATMENT PROGRAM FOR ALCOHOLICS OR
19 FOR DRUG OR NARCOTIC ADDICTS AND REGULAR CHECK-IN AT A HOSPITAL OR OTHER
20 TREATMENT FACILITY.

21 (8) REQUIRE THE POSTING OF BAIL.

22 (F) IN DETERMINING WHICH CONDITIONS OF RELEASE, IF ANY, WILL REASON-
23 ABLY ASSURE THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY, THE JUDI-
24 CIAL OFFICER SHALL, ON THE BASIS OF AVAILABLE INFORMATION, TAKE INTO
25 ACCOUNT SUCH MATTERS AS THE NATURE AND CIRCUMSTANCES OF THE OFFENSE
26 CHARGED, THE WEIGHT OF THE EVIDENCE AGAINST THE PERSON BEFORE THE COURT,
27 HIS OR HER FAMILY TIES, EMPLOYMENT, FINANCIAL RESOURCES, CHARACTER AND
28 MENTAL CONDITIONS, PAST CONDUCT, PRESENT CRIMINAL PLANS OR INTENTION,
29 LENGTH OF RESIDENCE IN THE COMMUNITY, RECORD OF CONVICTIONS, RECORD OF
30 PREVIOUS ADJUDICATION AS A JUVENILE DELINQUENT OR YOUTHFUL OFFENDER AND
31 ANY RECORD OF APPEARANCE AT COURT PROCEEDINGS, FLIGHT TO AVOID PROSE-
32 CUTION, OR FAILURE TO APPEAR AT COURT PROCEEDINGS AS WELL AS OTHER RELE-
33 VANT MATTERS CONCERNING WHICH THE JUDICIAL OFFICER HAS INFORMATION.

34 (G) A JUDICIAL OFFICER AUTHORIZING THE RELEASE OF A PERSON UNDER THIS
35 SUBDIVISION SHALL ISSUE AN APPROPRIATE ORDER CONTAINING A STATEMENT OF
36 THE CONDITIONS IMPOSED, IF ANY, AND SHALL SET FORTH IN WRITING THE
37 REASON FOR REQUIRING THE CONDITIONS IMPOSED. THE JUDICIAL OFFICER SHALL
38 INFORM SUCH PERSON OF THE PENALTIES APPLICABLE TO VIOLATIONS OF THE
39 CONDITIONS OF HIS OR HER RELEASE, SHALL ADVISE HIM OR HER THAT A WARRANT
40 FOR HIS OR HER ARREST WILL BE ISSUED IMMEDIATELY UPON ANY SUCH
41 VIOLATIONS, AND SHALL WARN SUCH PERSON OF THE PENALTIES PROVIDED IN THIS
42 SECTION. THE WORD, "CONDITIONS" IN THIS PARAGRAPH AND IN PARAGRAPHS (H)
43 AND (I) OF THIS SUBDIVISION MEANS ONE OR MORE CONDITIONS.

44 (H) A PERSON FOR WHOM CONDITIONS OF RELEASE ARE IMPOSED MAY APPEAL
45 FROM THE ORDER IMPOSING SUCH CONDITIONS PURSUANT TO SUBDIVISION FIVE OF
46 THIS SECTION.

47 (I) A JUDICIAL OFFICER ORDERING THE RELEASE OF A PERSON ON ANY CONDI-
48 TION SPECIFIED IN THIS SUBDIVISION MAY AT ANY TIME AMEND HIS OR HER
49 ORDER TO IMPOSE ADDITIONAL OR DIFFERENT CONDITIONS OF RELEASE, EXCEPT
50 THAT IF AN ORDER IMPOSING CONDITIONS HAS BEEN APPEALED PURSUANT TO
51 SUBDIVISION FIVE OF THIS SECTION AND AN APPELLATE COURT HAS APPROVED OR
52 DISAPPROVED ANY CONDITIONS IMPOSED PURSUANT TO THIS SUBDIVISION OR HAS
53 IMPOSED DIFFERENT OR ADDITIONAL CONDITIONS, THE JUDICIAL OFFICER MAY NOT
54 THEREAFTER IMPOSE CONDITIONS DIFFERENT FROM THOSE APPROVED OR IMPOSED BY
55 THE APPELLATE COURT OR IMPOSE CONDITIONS DISAPPROVED BY THE APPELLATE
56 COURT EXCEPT WHERE THE JUDICIAL OFFICER IS ACTING ON THE BASIS OF NEW

1 INFORMATION WHICH WAS NOT CONSIDERED BY THE JUDICIAL OFFICER IN IMPOSING
2 THE CONDITIONS OF RELEASE WHICH WERE THE SUBJECT OF THE APPEAL. IN SUCH
3 A CASE, THE ORDER IMPOSING THE ADDITIONAL OR DIFFERENT CONDITIONS MUST
4 SPECIFY THE NEW INFORMATION ON WHICH THOSE CONDITIONS ARE BASED.

5 (J) IF THE PERSON IS SUBSEQUENTLY CONVICTED OF THE OFFENSE CHARGED,
6 HE OR SHE SHALL RECEIVE CREDIT TOWARD SERVICE OF SENTENCE FOR THE TIME
7 HE OR SHE WAS DETAINED FOR FAILURE TO MEET A CONDITION OR CONDITIONS OF
8 RELEASE IMPOSED PURSUANT TO THIS SUBDIVISION.

9 (K) INFORMATION OR TESTIMONY STATED IN, OR OFFERED IN CONNECTION
10 WITH, ANY ORDER ENTERED PURSUANT TO THIS SUBDIVISION NEED NOT CONFORM TO
11 THE RULES PERTAINING TO THE ADMISSIBILITY OF EVIDENCE IN A COURT OF LAW.
12 THE ACCUSED PERSON SHALL HAVE THE OPPORTUNITY TO PRESENT SUCH INFORMA-
13 TION THROUGH AN ORAL STATEMENT MADE TO THE JUDICIAL OFFICER BY THE
14 PERSON'S ATTORNEY OR BY THE PERSON HIMSELF OR HERSELF, IF HE OR SHE
15 APPEARS PRO SE, AND BY PROFFER OF WRITTEN OR OTHER MATTER, WHEN IT IS
16 RELEVANT, AND THE PROSECUTING ATTORNEY SHALL HAVE THE SAME OPPORTUNITY
17 TO MAKE AN ORAL STATEMENT AND TO PRESENT WRITTEN OR OTHER MATTER.
18 NEITHER THE ACCUSED PERSON NOR THE PROSECUTING ATTORNEY SHALL HAVE THE
19 RIGHT TO PRESENT ORAL TESTIMONY BUT THE JUDICIAL OFFICER MAY, IN HIS OR
20 HER DISCRETION, REQUIRE THE PRESENTATION OF SUCH TESTIMONY UNDER OATH.

21 (1) WHERE ONE PARTY IS PERMITTED TO PRESENT SUCH ORAL TESTIMONY, THE
22 ADVERSARY PARTY SHALL ALSO BE PERMITTED TO PRESENT ORAL TESTIMONY. EACH
23 PARTY SHALL HAVE THE RIGHT OF CROSS EXAMINATION WHEN THE COURT, IN ITS
24 DISCRETION, GRANTS THE PARTIES THE OPPORTUNITY TO PRESENT ORAL TESTIMO-
25 NY.

26 (2) NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO PREVENT
27 THE DISPOSITION OF ANY CASE OR CLASS OF CASES BY FORFEITURE OF COLLAT-
28 ERAL SECURITY WHERE SUCH DISPOSITION IS AUTHORIZED BY THE COURT.

29 4. DETENTION PRIOR TO TRIAL. (A) SUBJECT TO THE PROVISIONS OF THIS
30 SECTION, A JUDICIAL OFFICER, BEFORE WHOM AN ACCUSED PERSON APPEARS FOR
31 THE FIRST TIME ON A CRIMINAL CHARGE IS AUTHORIZED TO ORDER PRETRIAL
32 DETENTION OF SUCH A PERSON WHEN THE PERSON IS:

33 (1) A PERSON CHARGED WITH A DANGEROUS CRIME IF:

34 (I) THE PERSON HAS BEEN CONVICTED OF A DANGEROUS CRIME WITHIN THE TEN
35 YEAR PERIOD IMMEDIATELY PRECEDING THE PERSON'S FIRST APPEARANCE BEFORE A
36 JUDICIAL OFFICER IN CONNECTION WITH THE OFFENSE WITH WHICH THE PERSON IS
37 CURRENTLY CHARGED; OR

38 (II) THE DANGEROUS CRIME WAS ALLEGEDLY COMMITTED WHILE THE PERSON WAS,
39 WITH RESPECT TO ANOTHER DANGEROUS CRIME, ON BAIL OR OTHER PRETRIAL
40 RELEASE OR ON PROBATION OR PAROLE OR MANDATORY RELEASE PENDING
41 COMPLETION OF A SENTENCE OR AT LARGE AFTER SUCH RELEASE, PROBATION OR
42 PAROLE WAS REVOKED; OR

43 (2) A PERSON CHARGED WITH ANY OFFENSE IF SUCH PERSON, FOR THE PURPOSE
44 OF OBSTRUCTING OR ATTEMPTING TO OBSTRUCT JUSTICE, THREATENS, INJURES,
45 INTIMIDATES OR ATTEMPTS TO THREATEN, INJURE OR INTIMIDATE ANY WITNESS OR
46 JUROR OR PROSPECTIVE WITNESS OR JUROR OR EVINCES AN INTENTION BY WORDS
47 OR DEEDS TO DO ANY OF THE FOREGOING ACTS OR DESTROYS, TAMPERS WITH,
48 SECRETES OR INTERFERES WITH EVIDENCE IN HIS OR HER CRIMINAL CASE OR
49 ATTEMPTS TO DESTROY, TAMPERS WITH, SECRETE OR INTERFERE WITH SUCH
50 EVIDENCE OR EVINCES AN INTENTION BY WORDS OR DEEDS TO DO SO.

51 (B) NO PERSON DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION MAY BE
52 ORDERED DETAINED UNLESS THE JUDICIAL OFFICER:

53 (1) HOLDS A PRETRIAL DETENTION HEARING IN ACCORDANCE WITH THE
54 PROVISIONS OF PARAGRAPH (C) OF THIS SUBDIVISION;

55 (2) FINDS:

1 (I) THAT THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE PERSON IS A
2 PERSON DESCRIBED IN SUBPARAGRAPH ONE OR TWO OF PARAGRAPH (A) OF THIS
3 SUBDIVISION;

4 (II) THAT IN THE CASE OF A PERSON DESCRIBED IN SUBPARAGRAPH ONE OF
5 PARAGRAPH (A) OF THIS SUBDIVISION, BASED ON THE FACTORS SET OUT IN PARA-
6 GRAPH (C) OF SUBDIVISION THREE OF THIS SECTION, THERE IS NO CONDITION OR
7 COMBINATION OF CONDITIONS OF RELEASE WHICH WILL REASONABLY ASSURE THE
8 SAFETY OF ANY OTHER PERSON OR THE COMMUNITY FROM DANGEROUS CRIME AND
9 THAT IF RELEASED ON RECOGNIZANCE OR ON CONDITION OR CONDITIONS, THE
10 PERSON WOULD COMMIT THE SAME DANGEROUS CRIME FOR WHICH HE OR SHE IS
11 PRESENT BEFORE THE JUDICIAL OFFICER OR THE SAME DANGEROUS CRIME FOR
12 WHICH HE OR SHE WAS PREVIOUSLY CONVICTED OR IN CONNECTION WITH WHICH HE
13 OR SHE WAS ON BAIL, PROBATION, PAROLE OR RELEASE WHEN HE OR SHE ALLEGED-
14 LY COMMITTED THE OFFENSE WITH WHICH HE OR SHE IS CURRENTLY CHARGED OR,
15 BASED UPON INFORMATION BEFORE THE JUDICIAL OFFICER, INCLUDING INFORMA-
16 TION AS TO THE PAST CONDUCT, CHARACTER, MENTAL CONDITIONS, RECORD OF
17 CONVICTIONS OR PRESENT CRIMINAL PLANS OR INTENTION OF THE PERSON, AMONG
18 OTHER THINGS, THE PERSON WOULD COMMIT ANOTHER DANGEROUS CRIME;

19 (III) THAT IN THE CASE OF A PERSON DESCRIBED IN SUBPARAGRAPH TWO OF
20 PARAGRAPH (A) OF THIS SUBDIVISION, BASED ON THE FACTORS SET OUT IN PARA-
21 GRAPH (C) OF SUBDIVISION THREE OF THIS SECTION, THERE IS NO CONDITION
22 OR COMBINATION OF CONDITIONS OF RELEASE WHICH WILL REASONABLY ASSURE
23 THAT THE PERSON WILL NOT DO AN ACT WITH RESPECT TO A WITNESS, JUROR OR
24 TRIAL EVIDENCE OF A TYPE DESCRIBED IN SUBPARAGRAPH TWO OF PARAGRAPH (A)
25 OF THIS SUBDIVISION AND THAT IF RELEASED, THE PERSON WOULD DO AN ACT
26 WITH RESPECT TO A WITNESS OR JUROR OR TRIAL EVIDENCE OF A TYPE DESCRIBED
27 IN SUBPARAGRAPH TWO OF PARAGRAPH (A) OF THIS SUBDIVISION;

28 (IV) THAT, EXCEPT WITH RESPECT TO A PERSON DESCRIBED IN SUBPARAGRAPH
29 TWO OF PARAGRAPH (A) OF THIS SUBDIVISION, ON THE BASIS OF INFORMATION OR
30 EVIDENCE PRESENTED BY PROFFER OR OTHERWISE TO THE JUDICIAL OFFICER,
31 THERE IS A SUBSTANTIAL PROBABILITY THAT THE PERSON COMMITTED THE OFFENSE
32 FOR WHICH HE OR SHE IS PRESENT BEFORE THE JUDICIAL OFFICER AND, WHERE
33 THE PERSON IS A PERSON DESCRIBED IN CLAUSE (II) OF SUBPARAGRAPH ONE OF
34 PARAGRAPH (A) OF THIS SUBDIVISION THAT THERE IS A SUBSTANTIAL PROBABI-
35 LITY THAT THE PERSON COMMITTED THE OFFENSE ALLEGED IN THE CHARGE FOR WHICH
36 HE OR SHE WAS ON BAIL, PROBATION, PAROLE OR RELEASE AS DESCRIBED IN
37 CLAUSE (II) OF SUBPARAGRAPH ONE OF PARAGRAPH (A) OF THIS SUBDIVISION
38 WHEN HE OR SHE ALLEGEDLY COMMITTED THE OFFENSE FOR WHICH HE OR SHE IS
39 PRESENT BEFORE THE JUDICIAL OFFICER;

40 (3) ISSUES AN ORDER OF DETENTION ACCOMPANIED BY WRITTEN FINDINGS OF
41 FACT AND THE REASONS FOR ITS ENTRY.

42 (C) THE FOLLOWING PROCEDURES SHALL APPLY TO PRETRIAL DETENTION HEAR-
43 INGS HELD PURSUANT TO THIS SUBDIVISION:

44 (1) WHENEVER THE PERSON IS BEFORE A JUDICIAL OFFICER, THE HEARING MAY
45 BE INITIATED ON ORAL MOTION BY THE PROSECUTING ATTORNEY, AND SHALL NOT
46 BE HELD IN THE ABSENCE OF A MOTION BY THE PROSECUTING ATTORNEY.

47 (2) WHENEVER THE PERSON HAS BEEN RELEASED PURSUANT TO SUBDIVISION
48 THREE OF THIS SECTION AND IT SUBSEQUENTLY APPEARS THAT SUCH PERSON MAY
49 BE SUBJECT TO PRETRIAL DETENTION, THE PROSECUTING ATTORNEY MAY INITIATE
50 A PRETRIAL DETENTION HEARING BY EX PARTE WRITTEN MOTION. SUCH A HEARING
51 MAY NOT BE HELD IN THE ABSENCE OF A MOTION BY THE PROSECUTING ATTORNEY.

52 UPON SUCH A MOTION, THE JUDICIAL OFFICER MAY ISSUE A WARRANT FOR THE
53 ARREST OF THE PERSON OR A SUMMONS DIRECTING THE PERSON TO APPEAR IN
54 COURT AT A PARTICULAR TIME AND PLACE.

55 (3) THE PRETRIAL DETENTION HEARING SHALL NOT BE HELD UNLESS IT AFFIR-
56 MATIVELY APPEARS FROM ALLEGATIONS MADE BY THE PROSECUTING ATTORNEY OR

1 FROM INFORMATION WITHIN THE KNOWLEDGE OF THE JUDICIAL OFFICER REFERRED
2 TO IN SUBPARAGRAPH TWO OF THIS PARAGRAPH THAT THE PERSON COMES WITHIN
3 ONE OF THE DETENTION CATEGORIES DESCRIBED IN PARAGRAPH (A) OF THIS
4 SUBDIVISION. WHERE A PRETRIAL DETENTION HEARING IS AUTHORIZED UNDER THE
5 PROVISIONS OF THIS SUBDIVISION, THE JUDICIAL OFFICER MAY ORDER IT HELD.
6 IF THE JUDICIAL OFFICER ORDERS IT HELD, IT SHALL BE HELD IMMEDIATELY
7 UPON THE PERSON BEING BROUGHT BEFORE THE JUDICIAL OFFICER FOR THE FIRST
8 TIME IN CONNECTION WITH THE OFFENSE WITH WHICH THE PERSON IS CHARGED
9 UNLESS:

10 (I) THE COURT RULES THAT IT SHALL BE HELD AT A SUBSEQUENT TIME OR
11 POSTPONES A DECISION AS TO WHETHER IT SHOULD BE HELD, WHICH DECISION
12 SHALL NOT BE POSTPONED FOR A PERIOD OF MORE THAN THREE DAYS AND WHICH
13 HEARING SHALL NOT BE ORDERED TO TAKE PLACE ON A DATE MORE THAN THREE
14 DAYS AFTER THE TIME OF THE PERSON'S FIRST APPEARANCE BEFORE THE JUDICIAL
15 OFFICER EXCEPT AS HEREINAFTER PROVIDED WITH RESPECT TO THE GRANTING OF A
16 CONTINUANCE TO THE PERSON IN EXTENUATING CIRCUMSTANCES; OR

17 (II) THE PERSON OR THE PROSECUTING ATTORNEY MOVES FOR A CONTINUANCE
18 WHICH IS GRANTED BY THE JUDICIAL OFFICER. A CONTINUANCE GRANTED ON
19 MOTION OF THE PERSON SHALL NOT EXCEED FIVE CALENDAR DAYS UNLESS THERE
20 ARE EXTENUATING CIRCUMSTANCES. A CONTINUANCE ON MOTION OF THE PROSECUT-
21 ING ATTORNEY SHALL BE GRANTED UPON GOOD CAUSE SHOWN AND SHALL NOT EXCEED
22 THREE CALENDAR DAYS. THE PERSON MAY BE DETAINED PENDING THE HEARING
23 EXCEPT THAT THE PERSON MUST BE RELEASED UNDER THE PROVISIONS OF SUBDIVI-
24 SION THREE OF THIS SECTION IF THE JUDICIAL OFFICER BEFORE WHOM THE
25 MATTER IS PENDING FINDS THAT SOME FORM OF RELEASE WILL NOT ENDANGER THE
26 SAFETY OF ANY OTHER PERSON OR THE COMMUNITY DURING THE PERIOD OF THE
27 CONTINUANCE, POSTPONEMENT OR DELAY.

28 (4) WHENEVER THE PERSON IS CHARGED WITH A DANGEROUS CRIME WITHIN THE
29 DEFINITION OF THIS SECTION IN A CITY COURT, TOWN COURT OR VILLAGE COURT:

30 (I) IF THE CRIME THE PERSON IS CHARGED WITH IS A CLASS A FELONY OR IT
31 APPEARS THAT THE PERSON HAS TWO PREVIOUS FELONY CONVICTIONS, A CITY
32 COURT, TOWN COURT OR VILLAGE COURT MAY NOT ENTERTAIN AN APPLICATION FROM
33 THE PROSECUTING ATTORNEY TO ORDER A PRETRIAL DETENTION HEARING FOR SUCH
34 PERSON OR TO DETAIN SUCH PERSON PURSUANT TO THIS SUBDIVISION. IN SUCH
35 CIRCUMSTANCES, THE PROSECUTING ATTORNEY MAY APPLY ORALLY AND EX PARTE TO
36 A JUDGE OF A SUPERIOR COURT HOLDING A TERM THEREOF IN THE COUNTY FOR AN
37 ORDER DIRECTING THAT SUCH A DETENTION HEARING BE HELD AND IF SUCH A
38 HEARING IS ORDERED BY A JUDGE OF THE SUPERIOR COURT, IT SHALL BE HELD IN
39 SUPERIOR COURT. WHENEVER THE PROSECUTING ATTORNEY MAKES APPLICATION TO A
40 CITY COURT, A TOWN COURT OR A VILLAGE COURT FOR A DETENTION HEARING OR
41 FOR DETENTION OF A PERSON UNDER THIS SECTION AND SUCH COURT IS BARRED
42 UNDER THIS SUBDIVISION FROM ENTERTAINING THE APPLICATION, THE CITY
43 COURT, TOWN COURT OR VILLAGE COURT SHALL TRANSFER THE APPLICATION TO THE
44 SUPERIOR COURT OF THE COUNTY AND IT SHALL BE ENTERTAINED BY THE SUPERIOR
45 COURT. IF THE APPLICATION IS GRANTED IN SUPERIOR COURT, THE DETENTION
46 HEARING SHALL BE HELD IN SUPERIOR COURT.

47 (II) WHEN THE PROSECUTING ATTORNEY INTENDS TO MAKE SUCH AN APPLICA-
48 TION TO A JUDGE OF THE SUPERIOR COURT, HE MAY APPLY ORALLY AND EX PARTE
49 TO THE CITY COURT, TOWN COURT OR VILLAGE COURT TO TRANSFER CUSTODY OF
50 THE PERSON TO THE SUPERIOR COURT AND THE CITY COURT, TOWN COURT OR
51 VILLAGE COURT SHALL THEN ORDER THE TRANSFER OF THE CUSTODY OF THE PERSON
52 TO THE SUPERIOR COURT FORTHWITH. INSTEAD OF APPLYING TO THE CITY COURT,
53 TOWN COURT OR VILLAGE COURT TO ORDER SUCH TRANSFER OF CUSTODY TO THE
54 SUPERIOR COURT, THE PROSECUTING ATTORNEY MAY MAKE AN EX PARTE ORAL
55 APPLICATION TO A JUDGE OF THE SUPERIOR COURT HOLDING A TERM THEREOF IN
56 THE COUNTY FOR AN ORDER TRANSFERRING CUSTODY OF THE PERSON TO THE SUPE-

1 RIOR COURT. THE ORAL APPLICATION SHALL STATE THE FACTS WHICH MAKE THE
2 RELIEF SOUGHT APPROPRIATE AND EITHER SHALL ALLEGE THAT THE PROSECUTING
3 ATTORNEY INTENDS TO APPLY FOR A DETENTION HEARING AS SOON AS CUSTODY IS
4 TRANSFERRED TO SUPERIOR COURT OR SHALL REQUEST THAT THE ORDER TRANS-
5 FERRING CUSTODY SHALL ALSO ORDER THE HOLDING OF A DETENTION HEARING.

6 (III) WHEN SUCH APPLICATION HAS BEEN MADE BY THE PROSECUTING ATTORNEY
7 TO A SUPERIOR COURT JUDGE OR WHEN THE PROSECUTING ATTORNEY HAS REPRESENTED
8 TO THE CITY COURT OR TOWN COURT OR VILLAGE COURT HIS OR HER INTENTION
9 TO MAKE SUCH AN APPLICATION, THE CITY COURT OR TOWN COURT OR
10 VILLAGE COURT SHALL, UPON EX PARTE ORAL APPLICATION OF THE PROSECUTING
11 ATTORNEY, ORDER THE PERSON COMMITTED TO THE CUSTODY OF THE SHERIFF OR
12 OTHER APPROPRIATE OFFICIAL FOR TWENTY-FOUR HOURS TO GIVE THE PROSECUTING
13 ATTORNEY SUFFICIENT TIME IN WHICH TO MAKE SUCH AN APPLICATION TO A SUPERIOR
14 COURT JUDGE. THE SUPERIOR COURT JUDGE MAY POSTPONE THE DETENTION
15 HEARING OR A DECISION AS TO WHETHER OR NOT A DETENTION HEARING SHOULD BE
16 HELD IN ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPH THREE OF THIS
17 PARAGRAPH AND MAY ORDER THE PERSON DETAINED OR RELEASED ON CONDITION
18 PENDING THE HEARING OR DECISION ON THE PROSECUTING ATTORNEY'S MOTION
19 REQUESTING THE HEARING IN ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPH
20 THREE OF THIS PARAGRAPH.

21 (5) THE PERSON SHALL BE ENTITLED TO REPRESENTATION BY COUNSEL AND
22 SHALL BE ENTITLED TO PRESENT INFORMATION OR EVIDENCE BY PROFFER OR
23 OTHERWISE, TO TESTIFY, TO PRESENT WITNESSES IN HIS OR HER OWN BEHALF AND
24 CROSS EXAMINE WITNESSES PRESENTED AGAINST HIM OR HER. THE PROSECUTING
25 ATTORNEY SHALL APPEAR EITHER IN PERSON OR BY AN ASSISTANT PROSECUTING
26 ATTORNEY AT THE PRETRIAL DETENTION HEARING AND SHALL HAVE RIGHTS EQUIV-
27 ALENT TO THOSE ACCORDED THE ACCUSED PERSON IN THIS PARAGRAPH. WHEN THE
28 PROSECUTING ATTORNEY SEEKS TO PROVE THAT THE PERSON PREVIOUSLY HAS BEEN
29 CONVICTED OF A DANGEROUS CRIME, THE PROSECUTING ATTORNEY MAY USE A COURT
30 FINDING TO THAT EFFECT MADE AGAINST THE PERSON IN A PROCEEDING CONDUCTED
31 UNDER SECTION 400.15 OF THIS CHAPTER TO DETERMINE WHETHER THE PERSON WAS
32 A VIOLENT FELONY OFFENDER OR UNDER SECTION 400.16 OF THIS CHAPTER TO
33 DETERMINE WHETHER THE PERSON WAS A PERSISTENT VIOLENT FELONY OFFENDER OR
34 UNDER SECTION 400.21 OF THIS CHAPTER TO DETERMINE WHETHER THE PERSON WAS
35 A SECOND FELONY OFFENDER.

36 (6) INFORMATION STATED IN, OR INFORMATION OR EVIDENCE IN CONNECTION
37 WITH, ANY ORDER ENTERED PURSUANT TO THIS SUBDIVISION NEED NOT CONFORM TO
38 THE RULES PERTAINING TO THE ADMISSIBILITY OF EVIDENCE IN THE COURT OF
39 LAW.

40 (7) TESTIMONY OF THE PERSON GIVEN DURING THE HEARING SHALL NOT BE
41 ADMISSIBLE ON THE ISSUE OF GUILT IN ANY OTHER JUDICIAL PROCEEDING, BUT
42 SUCH TESTIMONY SHALL BE ADMISSIBLE IN PROCEEDINGS UNDER SUBDIVISIONS
43 SEVEN AND EIGHT OF THIS SECTION AND IN PERJURY PROCEEDINGS.

44 (8) THE PROSECUTING ATTORNEY HAS THE BURDEN OF PROOF UPON ALL THE
45 ISSUES IN THE DETENTION PROCEEDING.

46 (I) IF, AT THE CONCLUSION OF THE HEARING, THE PROSECUTING ATTORNEY HAS
47 MADE OUT A CASE FOR DETENTION AND THE JUDICIAL OFFICER DETERMINES THAT
48 NO CONDITION OR COMBINATION OF CONDITIONS OF RELEASE WILL REASONABLY
49 ASSURE THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY FROM DANGEROUS
50 CRIME, THE JUDICIAL OFFICER MAY EITHER:

51 (A) DETAIN THE PERSON UNDER AN ORDER OF TOTAL DETENTION; OR

52 (B) ORDER PARTIAL DETENTION BY PROVIDING THAT THE PERSON SHALL RETURN
53 TO DETENTION AFTER A SPECIFIED RELEASE PERIOD OR PERIODS OF HOURS, DAYS,
54 OR WEEKS OR ANY COMBINATION THEREOF, WITH THE PERSON EITHER BEING
55 RELEASED WITHOUT SUPERVISION OR CUSTODIAL CONTROL OR PLACED UNDER THE
56 SUPERVISION OF SOME DESIGNATED ORGANIZATION OR ORGANIZATIONS, PRIVATE

1 INDIVIDUAL OR INDIVIDUALS OR PUBLIC OFFICER OR OFFICERS DURING THE TIME
2 WHEN THE PERSON IS NOT IN DETENTION OR DURING A PORTION OF SUCH TIME.
3 THE RELEASE MAY BE ORDERED FOR EMPLOYMENT OR FAMILIAL OR OTHER LIMITED
4 PURPOSE OR TO ENABLE THE PERSON TO PREPARE HIS OR HER DEFENSE.

5 (II) THE JUDICIAL OFFICER SHALL CHOOSE THE FORM OF DETENTION APPROPRI-
6 ATE TO THE SITUATION BUT HE OR SHE SHALL NOT DETERMINE THE FORM OF
7 DETENTION UNTIL THE PROSECUTING ATTORNEY HAS HAD AN OPPORTUNITY TO BE
8 HEARD IN THE MATTER AND THE JUDICIAL OFFICER HAS BEEN FURNISHED WITH A
9 REPORT BY THE DIVISION OF CRIMINAL JUSTICE SERVICES CONCERNING THE
10 PERSON'S CRIMINAL RECORD, IF ANY, OR WITH A POLICE DEPARTMENT REPORT
11 WITH RESPECT TO THE PERSON'S PRIOR ARREST RECORD, IF ANY.

12 (III) AT THE CONCLUSION OF THE HEARING, IF THE PROSECUTING ATTORNEY
13 HAS NOT MADE OUT A CASE FOR DETENTION OF THE PERSON, THE JUDICIAL OFFI-
14 CER MAY NOT DETAIN THE PERSON AND SHALL TREAT HIM OR HER IN ACCORDANCE
15 WITH THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION.

16 (9) APPEALS FROM ORDERS OF DETENTION MAY BE TAKEN PURSUANT TO SUBDI-
17 VISION FIVE OF THIS SECTION.

18 (D) THE FOLLOWING SHALL BE APPLICABLE TO PERSONS DETAINED PURSUANT TO
19 THIS SUBDIVISION:

20 (1) THE CASE OF SUCH PERSON SHALL BE PLACED ON AN EXPEDITED CALENDAR
21 AND, CONSISTENT WITH THE SOUND ADMINISTRATION OF JUSTICE, HIS OR HER
22 TRIAL SHALL BE GIVEN PRIORITY.

23 (2) SUCH PERSON SHALL BE TREATED IN ACCORDANCE WITH SUBDIVISION THREE
24 OF THIS SECTION IN THE FOLLOWING SITUATIONS:

25 (I) UPON THE EXPIRATION OF SIXTY CALENDAR DAYS, UNLESS THE TRIAL IS
26 IN PROGRESS OR THE TRIAL HAS BEEN DELAYED AT THE REQUEST OF THE PERSON
27 OTHER THAN BY THE FILING OF TIMELY MOTIONS EXCLUDING MOTIONS FOR CONTIN-
28 UANCES; OR

29 (II) WHENEVER A JUDICIAL OFFICER FINDS THAT A SUBSEQUENT EVENT HAS
30 ELIMINATED THE BASIS FOR SUCH DETENTION.

31 (3) THE PERSON SHALL BE DEEMED DETAINED PURSUANT TO SUBDIVISION SIX
32 OF THIS SECTION IF HE OR SHE IS CONVICTED.

33 (4) IF THE PERSON IS SUBSEQUENTLY CONVICTED OF THE OFFENSE CHARGED,
34 HE OR SHE SHALL RECEIVE CREDIT TOWARD SERVICE OF SENTENCE FOR THE TIME
35 HE OR SHE WAS DETAINED PURSUANT TO THIS SUBDIVISION.

36 5. APPEAL FROM A DETENTION ORDER OR FROM CONDITIONS OF RELEASE. IN
37 ANY CASE WHERE A CONDITION OR CONDITIONS OF RELEASE IS OR ARE IMPOSED
38 PURSUANT TO SUBDIVISION THREE OF THIS SECTION OR WHERE A PERSON IS
39 DETAINED FOR FAILURE TO MEET A CONDITION OR CONDITIONS OF RELEASE
40 IMPOSED PURSUANT TO SUBDIVISION THREE OF THIS SECTION OR PURSUANT TO AN
41 ORDER OF A JUDICIAL OFFICER ISSUED AFTER A HEARING AS PROVIDED IN SUBDI-
42 VISION FOUR OF THIS SECTION, AN APPEAL MAY BE TAKEN TO THE COURT HAVING
43 APPELLATE JURISDICTION OVER SUCH JUDICIAL OFFICER. ANY ORDER SO APPEALED
44 SHALL BE AFFIRMED IF IT IS SUPPORTED BY THE PROCEEDINGS BELOW. IF THE
45 ORDER IS NOT SO SUPPORTED, (A) THE COURT MAY REMAND THE CASE FOR A
46 FURTHER HEARING, OR (B) MAY, WITH OR WITHOUT ADDITIONAL EVIDENCE, ORDER
47 THE PERSON RELEASED PURSUANT TO PARAGRAPH (A) OF SUBDIVISION THREE OF
48 THIS SECTION, CHANGING THE TERMS OR CONDITIONS OF RELEASE, IF ANY, IN
49 ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION. THE
50 APPEAL SHALL BE PLACED ON AN EXPEDITED CALENDAR, GIVEN PRIORITY AND
51 DETERMINED PROMPTLY.

52 6. RELEASE AFTER CONVICTION. (A) A PERSON WHO HAS BEEN CONVICTED OF
53 A DANGEROUS CRIME WHICH IS A CLASS A FELONY, EXCEPT A PERSON WHO IS A
54 JUVENILE OFFENDER IN AN ACTION WHICH HAS BEEN REMOVED TO THE FAMILY
55 COURT AFTER VERDICT, MUST BE DETAINED AND COMMITTED OR REMANDED TO THE
56 CUSTODY OF THE SHERIFF OR APPROPRIATE OFFICIAL. A PERSON CONVICTED OF A

1 DANGEROUS CRIME WHICH IS NOT A CLASS A FELONY AND AWAITING SENTENCE,
2 EXCEPT A PERSON WHO IS A JUVENILE OFFENDER IN AN ACTION WHICH HAS BEEN
3 REMOVED TO THE FAMILY COURT AFTER VERDICT, MAY BE LIKEWISE DETAINED
4 UNLESS THE JUDICIAL OFFICER FINDS BY CLEAR AND CONVINCING EVIDENCE THAT
5 HE IS NOT LIKELY TO POSE A DANGER TO ANY OTHER PERSON OR TO THE PROPERTY
6 OF ANOTHER PERSON. UPON SUCH FINDING, THE JUDICIAL OFFICER SHALL TREAT
7 THE PERSON IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION THREE OF
8 THIS SECTION.

9 (B) A PERSON WHO HAS BEEN CONVICTED OF A DANGEROUS CRIME OTHER THAN A
10 CLASS A FELONY, OR FOUND TO BE A YOUTHFUL OFFENDER FOR HAVING COMMITTED
11 SUCH A CRIME, AND SENTENCED TO A TERM OF CONFINEMENT OR IMPRISONMENT AND
12 HAS FILED AN APPEAL MAY BE DETAINED UNLESS THE JUDICIAL OFFICER FINDS BY
13 CLEAR AND CONVINCING EVIDENCE THAT (1) THE PERSON IS NOT LIKELY TO POSE
14 A DANGER TO ANY OTHER PERSON OR TO THE PROPERTY OF ANOTHER PERSON, AND
15 (2) THE APPEAL RAISES A SUBSTANTIAL QUESTION OF LAW OR FACT LIKELY TO
16 RESULT IN A REVERSAL OR AN ORDER FOR A NEW TRIAL. UPON SUCH FINDINGS,
17 THE JUDICIAL OFFICER SHALL TREAT THE PERSON IN ACCORDANCE WITH THE
18 PROVISIONS OF SUBDIVISION THREE OF THIS SECTION. FOR THE PURPOSES OF
19 THIS SUBDIVISION, THE TERM "APPEAL" MEANS AN APPEAL FROM A JUDGMENT OF
20 CONVICTION OR SENTENCE OR FROM AN ORDER OF AN INTERMEDIATE APPELLATE
21 AFFIRMING OR MODIFYING A JUDGMENT OF CONVICTION OR A SENTENCE.

22 (C) NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO EXTINGUISH OR
23 LIMIT THE PROVISIONS OF EXISTING LAW PROHIBITING THE RELEASE OF A PERSON
24 ACCUSED, CONVICTED OR SENTENCED ON A CRIMINAL CHARGE.

25 (D) IN DETERMINING WHETHER TO RELEASE A PERSON CONVICTED OF A DANGER-
26 OUS CRIME PENDING SENTENCING OR APPEAL, THE JUDICIAL OFFICER MAY APPLY
27 EITHER THIS SUBDIVISION OR SECTIONS 530.45 AND 530.50 OF THIS ARTICLE.

28 7. PENALTIES FOR OFFENSES COMMITTED DURING RELEASE. (A) ANY PERSON
29 CONVICTED OF AN OFFENSE COMMITTED WHILE RELEASED PENDING TRIAL, SENTENCE
30 OR APPEAL PURSUANT TO THIS SECTION SHALL BE SUBJECT TO THE FOLLOWING
31 PENALTIES IN ADDITION TO ANY OTHER APPLICABLE PENALTIES:

32 (1) A TERM OF IMPRISONMENT OF NOT LESS THAN ONE YEAR AND NOT MORE
33 THAN FIVE YEARS IF CONVICTED OF COMMITTING A FELONY WHILE SO RELEASED;
34 AND

35 (2) A TERM OF IMPRISONMENT OF NOT LESS THAN NINETY DAYS AND NOT MORE
36 THAN ONE YEAR IF CONVICTED OF COMMITTING A MISDEMEANOR WHILE SO
37 RELEASED.

38 (B) THE GIVING OF A WARNING TO THE PERSON WHEN RELEASED OF THE PENAL-
39 TIES IMPOSED BY THIS SUBDIVISION SHALL NOT BE A PREREQUISITE TO THE
40 APPLICATION OF THIS SUBDIVISION.

41 (C) ANY TERM OF IMPRISONMENT IMPOSED PURSUANT TO THIS SUBDIVISION
42 SHALL BE CONSECUTIVE TO ANY OTHER SENTENCE OF IMPRISONMENT.

43 8. PENALTIES FOR VIOLATION OF CONDITIONS OF RELEASE. (A) A PERSON WHO
44 HAS BEEN CONDITIONALLY RELEASED PURSUANT TO SUBDIVISION THREE OF THIS
45 SECTION AND WHO HAS VIOLATED A CONDITION OF RELEASE SHALL BE SUBJECT TO
46 REVOCATION OF RELEASE, ON ORDER OF DETENTION AND PROSECUTION FOR
47 CONTEMPT OF COURT.

48 (B) PROCEEDINGS FOR REVOCATION OF RELEASE MAY BE INITIATED ON MOTION
49 OF THE PROSECUTING ATTORNEY. THE PROVISIONS OF PARAGRAPHS (C) AND (D) OF
50 SUBDIVISION FOUR OF THIS SECTION SHALL APPLY TO THIS SUBDIVISION. A
51 WARRANT FOR THE ARREST OF A PERSON CHARGED WITH VIOLATING A CONDITION OF
52 RELEASE MAY BE ISSUED BY A JUDICIAL OFFICER OF THE COURT IN WHICH THE
53 RELEASE WAS ORDERED. A PROCEEDING FOR REVOCATION AND DETENTION MAY BE
54 INITIATED BY THE PROSECUTING ATTORNEY BEFORE ANY JUDICIAL OFFICER OF THE
55 COURT IN WHICH RELEASE WAS ORDERED. NO ORDER OF REVOCATION AND DETENTION

1 SHALL BE ENTERED UNLESS, AFTER A HEARING, THE JUDICIAL OFFICER FINDS
2 THAT:

3 (1) THERE IS CLEAR AND CONVINCING EVIDENCE THAT SUCH PERSON HAS
4 VIOLATED A CONDITION OF HIS RELEASE; AND

5 (2) BASED ON THE FACTORS SET OUT IN PARAGRAPH (C) OF SUBDIVISION THREE
6 OF THIS SECTION, THERE IS NO CONDITION OR COMBINATION OF CONDITIONS OF
7 RELEASE WHICH WILL REASONABLY ASSURE THAT SUCH PERSON WILL NOT POSE A
8 DANGER TO ANY OTHER PERSON OR THE COMMUNITY.

9 (C) CONTEMPT SANCTIONS MAY BE IMPOSED IF, UPON A HEARING AND IN
10 ACCORDANCE WITH PRINCIPLES APPLICABLE TO PROCEEDINGS FOR CRIMINAL
11 CONTEMPT, IT IS ESTABLISHED THAT SUCH PERSON HAS INTENTIONALLY VIOLATED
12 A CONDITION OF HIS RELEASE. SUCH CONTEMPT PROCEEDINGS SHALL BE EXPEDITED
13 AND HEARD BY THE COURT WITHOUT A JURY. ANY PERSON FOUND GUILTY OF CRIMI-
14 NAL CONTEMPT FOR VIOLATION OF A CONDITION OF RELEASE SHALL BE IMPRISONED
15 FOR NOT MORE THAN SIX MONTHS, OR FINED NOT MORE THAN ONE THOUSAND
16 DOLLARS, OR BOTH.

17 9. NOTHING IN THIS SECTION SHALL INTERFERE WITH OR PREVENT THE EXER-
18 CISE BY ANY COURT OF ITS POWER TO PUNISH FOR CONTEMPT.

19 10. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE JUDICIAL
20 POWER UNDER EXISTING LAW TO DENY BAIL OR DENY RELEASE ON RECOGNIZANCE OR
21 TO ORDER AND FIX BAIL TO ASSURE THE APPEARANCE OF A DEFENDANT ACCUSED OF
22 A CRIME AT JUDICIAL PROCEEDINGS RELATED TO THAT CRIME OR TO ORDER SUCH
23 DEFENDANT RELEASED ON RECOGNIZANCE WHEN BAIL IS JUDGED UNNECESSARY TO
24 ASSURE HIS OR HER APPEARANCE.

25 11. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, AND EVEN AFTER
26 RELEASE ON CONDITION OR DETENTION HAS BEEN ORDERED HEREUNDER, THE JUDI-
27 CIAL OFFICER MAY ELECT TO APPLY EXISTING LAW, INCLUDING ITS PROVISIONS
28 CONCERNING BAIL AND RECOGNIZANCE, INSTEAD OF THE PROVISIONS OF THIS
29 SECTION.

30 12. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT OR INTERFERE WITH
31 THE POWER OF A COURT OR JUDGE TO GRANT HABEAS CORPUS RELIEF.

32 13. NOTHING IN THIS SECTION SHALL BE DEEMED TO EXTINGUISH OR LIMIT THE
33 PROVISIONS OF EXISTING LAW PROHIBITING THE RELEASE OF A PERSON ACCUSED,
34 CONVICTED OR SENTENCED ON A CRIMINAL CHARGE.

35 S 6. Section 510.10 of the criminal procedure law, as amended by chap-
36 ter 459 of the laws of 1984, is amended to read as follows:

37 S 510.10 Securing order; when required.

38 [When] EXCEPT AS PROVIDED IN SECTION 530.15 OF THIS TITLE, WHEN a
39 principal, whose future court attendance at a criminal action or
40 proceeding is or may be required, initially comes under the control of a
41 court, such court must, by a securing order, either release him on his
42 own recognizance, fix bail or commit him to the custody of the sheriff.
43 When a securing order is revoked or otherwise terminated in the course
44 of an uncompleted action or proceeding but the principal's future court
45 attendance still is or may be required and he is still under the control
46 of a court, a new securing order must be issued. When the court revokes
47 or otherwise terminates a securing order which committed the principal
48 to the custody of the sheriff, the court shall give written notification
49 to the sheriff of such revocation or termination of the securing order.

50 S 7. Section 510.20 of the criminal procedure law is amended by adding
51 a new subdivision 3 to read as follows:

52 3. A DEFENDANT CHARGED WITH A DANGEROUS CRIME WITHIN THE DEFINITION OF
53 SECTION 530.15 OF THIS TITLE OR CONDITIONALLY RELEASED OR DETAINED UNDER
54 SUCH SECTION SHALL HAVE THE SAME RIGHTS TO APPLY FOR RELEASE ON RECOGNI-
55 ZANCE OR ON BAIL AND TO BE HEARD ON SUCH APPLICATION AS ARE GRANTED IN
56 SUBDIVISIONS ONE AND TWO OF THIS SECTION. HOWEVER, THE COURT TO WHOM THE

1 APPLICATION IS ADDRESSED SHALL, BEFORE DECIDING THE APPLICATION, ASCER-
2 TAIN WHAT ACTION HAS BEEN TAKEN OR ORDER ISSUED WITH RESPECT TO THE
3 DEFENDANT UNDER SECTION 530.15 OF THIS TITLE, IF ANY, WHETHER AN APPEAL
4 HAS BEEN TAKEN FROM SUCH AN ORDER, WHETHER IT HAS BEEN DENIED, OR WHETH-
5 ER ANY MOTION OR APPLICATION HAS BEEN MADE TO VACATE OR MODIFY SUCH AN
6 ORDER OR TO RELIEVE THE DEFENDANT PARTIALLY OR COMPLETELY FROM ITS
7 TERMS.

8 S 8. Section 510.30 of the criminal procedure law is amended by adding
9 a new subdivision 4 to read as follows:

10 4. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY IN THE CASE OF A
11 DEFENDANT WITH RESPECT TO WHOM THE PROVISIONS OF SECTION 530.15 OF THIS
12 TITLE HAVE BEEN INVOKED.

13 S 9. Subdivision 1 of section 510.40 of the criminal procedure law is
14 amended to read as follows:

15 1. [An] EXCEPT WHEN SECTION 530.15 OF THIS TITLE IS INVOKED, AN appli-
16 cation for recognizance or bail must be determined by a securing order
17 which either:

18 (a) Grants the application and releases the principal on his own
19 recognizance; or

20 (b) Grants the application and fixes bail; or

21 (c) Denies the application and commits the principal to, or retains
22 him in, the custody of the sheriff.

23 S 10. Section 530.10 of the criminal procedure law is REPEALED and a
24 new section 530.10 is added to read as follows:

25 S 530.10 ORDER OF RECOGNIZANCE OR BAIL; IN GENERAL.

26 1. A COURT IS AUTHORIZED, IN THE EXERCISE OF ITS DISCRETION, TO INVOKE
27 SECTION 530.15 OF THIS ARTICLE, IN CIRCUMSTANCES IN WHICH SUCH SECTION
28 PERMITS ITS REMEDIES TO BE INVOKED, DURING THE PENDENCY OF EITHER:

29 (A) A CRIMINAL ACTION; OR

30 (B) AN APPEAL TAKEN BY THE DEFENDANT FROM A JUDGMENT OF CONVICTION OR
31 A SENTENCE OR FROM AN ORDER OF AN INTERMEDIATE APPELLATE COURT AFFIRMING
32 OR MODIFYING A JUDGMENT OF CONVICTION OR A SENTENCE.

33 2. WHETHER OR NOT THE CIRCUMSTANCES ARE SUCH THAT SECTION 530.15 OF
34 THIS ARTICLE IS AUTHORIZED TO BE INVOKED UNDER THE PROVISIONS OF SUBDI-
35 VISION ONE OF THIS SECTION, A COURT, UNDER CIRCUMSTANCES PRESCRIBED IN
36 THIS ARTICLE, AND UPON APPLICATION OF A DEFENDANT CHARGED WITH OR
37 CONVICTED OF ANY OFFENSE, IS AUTHORIZED OR REQUIRED TO ORDER BAIL OR
38 RECOGNIZANCE FOR THE RELEASE OR PROSPECTIVE RELEASE OF SUCH DEFENDANT
39 DURING THE PENDENCY OF EITHER:

40 (A) A CRIMINAL ACTION BASED ON SUCH CHARGE; OR

41 (B) AN APPEAL TAKEN BY THE DEFENDANT FROM A JUDGMENT OF CONVICTION OR
42 SENTENCE OR FROM AN ORDER OF AN INTERMEDIATE APPELLATE COURT AFFIRMING
43 OR MODIFYING A JUDGMENT OF CONVICTION OR A SENTENCE.

44 3. THE REMEDIES PROVIDED IN SUBDIVISION TWO OF THIS SECTION CONSTITUTE
45 AN ALTERNATIVE TO THE REMEDIES ESTABLISHED IN SUBDIVISION ONE IN THOSE
46 CIRCUMSTANCES IN WHICH BOTH ARE AVAILABLE AND, IN SUCH CIRCUMSTANCES, A
47 COURT, IN THE EXERCISE OF ITS DISCRETION, MAY DECIDE IN EACH PARTICULAR
48 CASE WHETHER THE PROVISIONS OF SUBDIVISION ONE OR SUBDIVISION TWO SHALL
49 BE INVOKED.

50 S 11. The opening paragraph of section 530.20 of the criminal proce-
51 dure law, as amended by chapter 531 of the laws of 1975, is amended to
52 read as follows:

53 When a criminal action is pending in a local criminal court, such
54 court, EXCEPT A CITY COURT, TOWN COURT OR VILLAGE COURT, MAY, IN THE
55 EXERCISE OF ITS DISCRETION, INVOKE SECTION 530.15 OF THIS ARTICLE IN
56 THOSE CIRCUMSTANCES IN WHICH SUCH SECTION PERMITS ITS REMEDIES TO BE

1 INVOKED. IF SUCH SECTION IS NOT INVOKED, upon application of a defend-
2 ant, SUCH COURT must or may order recognizance or bail as follows:

3 S 12. Subdivision 1 of section 530.30 of the criminal procedure law is
4 REPEALED and a new subdivision 1 is added to read as follows:

5 1. WHEN A CRIMINAL ACTION IS PENDING IN A LOCAL CRIMINAL COURT, OTHER
6 THAN ONE CONSISTING OF A SUPERIOR COURT JUDGE SITTING AS SUCH, A JUDGE
7 OF A SUPERIOR COURT, HOLDING A TERM THEREOF IN THE COUNTY:

8 (A) MAY, UPON APPLICATION OF A DEFENDANT, ORDER RECOGNIZANCE OR BAIL
9 WHEN SUCH LOCAL CRIMINAL COURT LACKS AUTHORITY TO ISSUE SUCH AN ORDER,
10 PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION 530.20 OF THIS
11 ARTICLE; OR

12 (B) MAY, EXCEPT WHEN SECTION 530.15 OF THIS ARTICLE HAS BEEN INVOKED
13 BY THE LOCAL CRIMINAL COURT, ORDER RECOGNIZANCE OR BAIL UPON APPLICATION
14 OF A DEFENDANT WHEN SUCH LOCAL CRIMINAL COURT:

15 (I) HAS DENIED AN APPLICATION FOR RECOGNIZANCE OR BAIL; OR

16 (II) HAS FIXED BAIL WHICH IS EXCESSIVE. IN SUCH CASE, SUCH SUPERIOR
17 COURT JUDGE MAY VACATE THE ORDER OF SUCH LOCAL CRIMINAL COURT AND
18 RELEASE THE DEFENDANT ON HIS OWN RECOGNIZANCE OR FIX BAIL IN A LESSER
19 AMOUNT OR IN A LESS BURDENSOME FORM.

20 (C) MAY, INSTEAD OF ACTING UNDER PARAGRAPH (A) OR (B) OF THIS SUBDI-
21 VISION, INVOKE SECTION 530.15 OF THIS ARTICLE IN THE EXERCISE OF
22 DISCRETION IN THOSE CIRCUMSTANCES IN WHICH SECTION 530.15 OF THIS ARTI-
23 CLE PERMITS ITS REMEDIES TO BE INVOKED WHEN THE LOCAL CRIMINAL COURT HAS
24 NOT INVOKED SECTION 530.15 OF THIS ARTICLE AND WHEN THE LOCAL CRIMINAL
25 COURT:

26 (I) LACKS AUTHORITY TO ISSUE AN ORDER FOR RECOGNIZANCE OR BAIL,
27 PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION 530.20 OF THIS
28 ARTICLE; OR

29 (II) HAS DENIED AN APPLICATION FOR RECOGNIZANCE OR BAIL; OR

30 (III) HAS FIXED BAIL WHICH IS EXCESSIVE.

31 S 13. Subdivision 3 of section 530.30 of the criminal procedure law is
32 amended to read as follows:

33 3. Not more than one application may be made BY A DEFENDANT pursuant
34 to this section.

35 S 14. The opening paragraph of section 530.40 of the criminal proce-
36 dure law is amended to read as follows:

37 When a criminal action is pending in a superior court, such court MAY,
38 IN THE EXERCISE OF ITS DISCRETION, INVOKE SECTION 530.15 OF THIS ARTICLE
39 IN THOSE CIRCUMSTANCES IN WHICH SUCH SECTION PERMITS ITS REMEDIES TO BE
40 INVOKED. IF SECTION 530.15 OF THIS ARTICLE IS NOT INVOKED, SUCH COURT,
41 upon application of a defendant, must or may order recognizance or bail
42 as follows:

43 S 15. Subdivision 1 of section 530.45 of the criminal procedure law,
44 as amended by chapter 264 of the laws of 2003, is amended to read as
45 follows:

46 1. [When] EXCEPT WHEN SECTION 530.15 OF THIS ARTICLE IS INVOKED, AND
47 PROVIDES TO THE CONTRARY, WHEN the defendant is at liberty in the course
48 of a criminal action as a result of a prior order of recognizance or
49 bail and the court revokes such order and then either fixes no bail or
50 fixes bail in a greater amount or in a more burdensome form than was
51 previously fixed and remands or commits defendant to the custody of the
52 sheriff, a judge designated in subdivision two, upon application of the
53 defendant following conviction of an offense other than a class A felony
54 or a class B or class C felony offense defined in article one hundred
55 thirty of the penal law committed or attempted to be committed by a
56 person eighteen years of age or older against a person less than eigh-

1 teen years of age, and before sentencing, may issue a securing order and
2 either release defendant on his own recognizance, or fix bail, or fix
3 bail in a lesser amount or in a less burdensome form than fixed by the
4 court in which the conviction was entered.

5 S 16. Section 530.50 of the criminal procedure law, as amended by
6 chapter 264 of the laws of 2003, is amended to read as follows:

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

8 [A] EXCEPT WHEN SECTION 530.15 OF THIS ARTICLE IS INVOKED, AND
9 PROVIDES TO THE CONTRARY, A judge who is otherwise authorized pursuant
10 to section 460.50 or section 460.60 to issue an order of recognizance or
11 bail pending the determination of an appeal, may do so unless the
12 defendant received a class A felony sentence or a sentence for any class
13 B or class C felony offense defined in article one hundred thirty of the
14 penal law committed or attempted to be committed by a person eighteen
15 years of age or older against a person less than eighteen years of age.

16 S 17. Subdivision 1 of section 530.60 of the criminal procedure law,
17 as designated by chapter 788 of the laws of 1981, is amended to read as
18 follows:

19 1. [Whenever] EXCEPT WHEN SECTION 530.15 OF THIS ARTICLE HAS BEEN
20 INVOKED AND PROVIDES TO THE CONTRARY, WHENEVER in the course of a crimi-
21 nal action or proceeding a defendant is at liberty as a result of an
22 order of recognizance or bail issued pursuant to this article, and the
23 court considers it necessary to review such order, it may, and by a
24 bench warrant if necessary, require the defendant to appear before the
25 court. Upon such appearance, the court, for good cause shown, may
26 revoke the order of recognizance or bail. If the defendant is entitled
27 to recognizance or bail as a matter of right, the court must issue
28 another such order. If he is not, the court may either issue such an
29 order or commit the defendant to the custody of the sheriff.

30 S 18. This act shall take effect on the first of November next
31 succeeding the date on which it shall have become a law.