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

3875

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. WALKER, CROUCH, SALADINO, KOLB -- Multi-Sponsored by -- M. of A. BURLING, CALHOUN, GIGLIO, McDONOUGH -- 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:

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

In recent decades, the populace has suffered from an unacceptably high incidence of dangerous criminal wrongdoing. Dangerous crimes have been committed by persons with a previous conviction for dangerous criminality who are awaiting trial on a charge involving another dangerous crime

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

LBD01541-01-9

when they indulge in such misconduct and by persons without a prior conviction released to await trial after being charged with a dangerous crime allegedly committed while on pretrial release in connection with a charge of having committed another dangerous crime. Some of these persons have been dangerous criminals who indulge in crime as a vocation or a way of life or compulsive lawbreakers driven by psychopathic tendencies, the dynamic thrust of neurotic maladjustment or the coercive stimulus of narcotic addiction to repetitive criminal behavior whenever they are at large in society.

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

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

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

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

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

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

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

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

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

4. WHERE A DETENTION HEARING HAS BEEN ORDERED PURSUANT TO SECTION 530.15 OF THIS CHAPTER, THE DEFENDANT AGAINST WHOM A FELONY COMPLAINT HAS BEEN FILED IN A LOCAL CRIMINAL COURT, AND WHO EITHER AT THE TIME OF ARRAIGNMENT THEREON OR PRIOR OR SUBSEQUENT THERETO, HAS BEEN COMMITTED TO THE CUSTODY OF THE SHERIFF PENDING DISPOSITION OF THE FELONY COMPLAINT OR DETENTION PROCEEDING, SHALL BE DETAINED IN CUSTODY PENDING THE HOLDING OF THE DETENTION HEARING AND THE DECISION OF THE JUDICIAL OFFICER THEREON IN ACCORDANCE WITH THE PROVISIONS OF SECTION 530.15 OF THIS CHAPTER UNLESS THE DEFENDANT IS RELEASED PENDING THE DETENTION HEARING PURSUANT TO THE PERMISSION OF SUCH SECTION. THE DETENTION HEARING MAY BE HELD AT THE SAME COURT SESSION AS AND IMMEDIATELY AFTER THE FELONY HEARING AND THE EVIDENCE OR INFORMATION PRESENTED AT THE FELONY HEARING MAY BE CONSIDERED BY THE JUDICIAL OFFICER PRESIDING AT THE DETENTION HEARING. THE RULES OF EVIDENCE AND THE LIMITATIONS ON THE INTRODUCTION OF EVIDENCE APPLICABLE TO THE FELONY HEARING SHALL NOT BE ENFORCED IN CONNECTION WITH THE DETENTION HEARING, WHICH SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 530.15 OF THIS CHAPTER. WHERE A JUDICIAL OFFICER BEFORE WHOM SUCH A FELONY HEARING HAS BEEN HELD RENDERS A DECISION ON SUCH HEARING FINDING THAT THERE IS NOT REASONABLE CAUSE TO HOLD THE DEFENDANT, THE DEFENDANT SHALL NOT BE HELD FOR A DETENTION HEARING AND SHALL BE RELEASED.

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

S 530.15 PRETRIAL DETENTION OR CONDITIONAL RELEASE OF CERTAIN PERSONS CHARGED WITH DANGEROUS CRIMES TO PROTECT COMMUNITY SAFETY AND PERSONS CHARGED WITH ANY CRIMINAL OFFENSE WHERE NECESSARY TO PROTECT A TRIAL WITNESS, JUROR OR EVIDENCE; POST TRIAL DETENTION OR CONDITIONAL RELEASE OF CERTAIN PERSONS CONVICTED OF A DANGEROUS CRIME.

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

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

(B) "DETENTION" MEANS TOTAL DETENTION OR PARTIAL DETENTION, THAT IS, DETENTION DURING A CERTAIN PORTION OF THE DAY, WEEK AND/OR MONTH AND RELEASE FOR THE REMAINDER OF THE TIME FOR EMPLOYMENT OR FAMILIAL PURPOSES OR TO ENABLE THE PERSON TO PREPARE HIS OR HER DEFENSE OR FOR OTHER LIMITED PURPOSES FOUND BY THE JUDICIAL OFFICER TO JUSTIFY SUCH RELEASE, WHETHER SUCH RELEASE IS UNSUPERVISED OR WHETHER THE JUDICIAL OFFICER PLACES THE PERSON IN THE PARTIAL OR TOTAL CUSTODY OR SUPERVISION

OF SOME DESIGNATED PERSON OR PUBLIC OFFICER OR ORGANIZATION DURING THE TIME WHEN THE ACCUSED PERSON IS NOT IN DETENTION.

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

(D) "DANGEROUS CRIME" MEANS THE FOLLOWING CRIMES DEFINED BY THE PENAL LAW OF THIS STATE: ASSAULT SECOND AND FIRST DEGREES; MANSLAUGHTER SECOND AND FIRST DEGREES; MURDER SECOND AND FIRST DEGREES; RAPE FIRST DEGREE; CRIMINAL SEXUAL ACT FIRST DEGREE; SEXUAL ABUSE FIRST DEGREE; KIDNAPPING SECOND AND FIRST DEGREES; CRIMINAL MISCHIEF FIRST DEGREE WHEN THE CHARGE IS DAMAGING PROPERTY BY MEANS OF EXPLOSIVES; ARSON THIRD, SECOND AND FIRST DEGREES; ROBBERY SECOND AND FIRST DEGREES; CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE WHEN THE CHARGE IS POSSESSION OF A MACHINE GUN OR LOADED FIREARM WITH INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER IN VIOLATION OF SECTION 265.03 OF THE PENAL LAW; CRIMINAL POSSESSION OF A DANGEROUS WEAPON IN THE FIRST DEGREE WHEN THE CHARGE IS POSSESSION OF ANY EXPLOSIVE SUBSTANCE WITH INTENT TO USE THE SAME UNLAWFULLY AGAINST THE PERSON OR PROPERTY OF ANOTHER IN VIOLATION OF SECTION 265.04 OF THE PENAL LAW; OR THE MANUFACTURE, TRANSPORT, DISPOSITION AND DEFACEMENT OF WEAPONS AND DANGEROUS INSTRUMENTS AND APPLIANCES WHEN THE CHARGE IS MANUFACTURE OF A MACHINE GUN OR THE CAUSING OF SUCH MANUFACTURE IN VIOLATION OF SUBDIVISION ONE OF SECTION 265.10 OF THE PENAL LAW OR THE TRANSPORTING OR SHIPPING OF ANY MACHINE GUN OR FIREARM SILENCER IN VIOLATION OF SUBDIVISION TWO OF SECTION 265.10 OF THE PENAL LAW.

(E) "SUBSTANTIAL PROBABILITY" MEANS A STANDARD OF PROOF REQUIRING MORE PROOF THAN THE "PROBABLE CAUSE" STANDARD AND LESS PROOF THAN THE "BEYOND A REASONABLE DOUBT" STANDARD AND CORRESPONDING TO THE "FAIR PREPONDERANCE OF THE EVIDENCE" RULE OF PROOF IN CIVIL CASES.

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

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

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

THE PROBATION DEPARTMENT OF A COUNTY IN WHICH SUCH A PARTICULAR PERSON IS RELEASED ON CONDITION OR UNDER RESTRICTIONS SHALL SUPERVISE SUCH PERSON AND REPORT PROMPTLY TO THE JUDICIAL OFFICER WHO ORDERED THE RELEASE OF SUCH PERSON OR THE COURT IN WHICH THE RELEASE WAS ORDERED WHENEVER SUCH PERSON VIOLATES THE CONDITIONS OF RELEASE. THE PROBATION

DEPARTMENT SHALL ALSO MAKE SUCH A PROMPT REPORT TO THE PROSECUTING AUTHORITY INVOLVED IN THE CASE.

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

(B) WHEN THE JUDICIAL OFFICER IS A JUDGE OF A CITY COURT, TOWN COURT OR VILLAGE COURT SITTING IN A LOCAL CRIMINAL COURT WHICH IS A CITY COURT, TOWN COURT OR VILLAGE COURT, HE MAY NOT ORDER RELEASE ON RECOGNIZANCE OR ON BAIL OR ON ANY OTHER CONDITION WHEN THE PERSON IS CHARGED WITH A CLASS A FELONY OR IT APPEARS THAT THE PERSON HAS TWO PREVIOUS FELONY CONVICTIONS. WHEN THE JUDGE OF A LOCAL CRIMINAL COURT IS PROHIBITED UNDER THIS PARAGRAPH FROM GRANTING THE RELEASE OF THE PERSON, A JUDGE OF A SUPERIOR COURT HOLDING A TERM THEREOF IN THE COUNTY, UPON APPLICATION OF THE PERSON, MAY ORDER RELEASE ON RECOGNIZANCE OR ON BAIL OR ON OTHER CONDITION OR CONDITIONS IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION. SUCH SUPERIOR COURT JUDGE MAY ALSO, UPON APPLICATION OF THE PROSECUTING ATTORNEY, ORDER THAT A DETENTION HEARING BE HELD IN SUPERIOR COURT WHEN SUCH A HEARING IS AUTHORIZED UNDER THE PROCEEDINGS OF SUBDIVISION FOUR OF THIS SECTION.

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

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

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

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

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

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

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

(5) IMPOSE A NIGHTTIME CURFEW.

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

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

(8) REQUIRE THE POSTING OF BAIL.

(F) IN DETERMINING WHICH CONDITIONS OF RELEASE, IF ANY, WILL REASONABLY ASSURE THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY, THE JUDICIAL OFFICER SHALL, ON THE BASIS OF AVAILABLE INFORMATION, TAKE INTO ACCOUNT SUCH MATTERS AS THE NATURE AND CIRCUMSTANCES OF THE OFFENSE CHARGED, THE WEIGHT OF THE EVIDENCE AGAINST THE PERSON BEFORE THE COURT, HIS OR HER FAMILY TIES, EMPLOYMENT, FINANCIAL RESOURCES, CHARACTER AND MENTAL CONDITIONS, PAST CONDUCT, PRESENT CRIMINAL PLANS OR INTENTION, LENGTH OF RESIDENCE IN THE COMMUNITY, RECORD OF CONVICTIONS, RECORD OF PREVIOUS ADJUDICATION AS A JUVENILE DELINQUENT OR YOUTHFUL OFFENDER AND ANY RECORD OF APPEARANCE AT COURT PROCEEDINGS, FLIGHT TO AVOID PROSECUTION, OR FAILURE TO APPEAR AT COURT PROCEEDINGS AS WELL AS OTHER RELEVANT MATTERS CONCERNING WHICH THE JUDICIAL OFFICER HAS INFORMATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) FINDS:

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

(II) THAT IN THE CASE OF A PERSON DESCRIBED IN SUBPARAGRAPH ONE OF PARAGRAPH (A) OF THIS SUBDIVISION, BASED ON THE FACTORS SET OUT IN PARAGRAPH (C) OF SUBDIVISION THREE OF THIS SECTION, THERE IS NO CONDITION OR COMBINATION OF CONDITIONS OF RELEASE WHICH WILL REASONABLY ASSURE THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY FROM DANGEROUS CRIME AND THAT IF RELEASED ON RECOGNIZANCE OR ON CONDITION OR CONDITIONS, THE PERSON WOULD COMMIT THE SAME DANGEROUS CRIME FOR WHICH HE OR SHE IS PRESENT BEFORE THE JUDICIAL OFFICER OR THE SAME DANGEROUS CRIME FOR WHICH HE OR SHE WAS PREVIOUSLY CONVICTED OR IN CONNECTION WITH WHICH HE OR SHE WAS ON BAIL, PROBATION, PAROLE OR RELEASE WHEN HE OR SHE ALLEGEDLY COMMITTED THE OFFENSE WITH WHICH HE OR SHE IS CURRENTLY CHARGED OR, BASED UPON INFORMATION BEFORE THE JUDICIAL OFFICER, INCLUDING INFORMATION AS TO THE PAST CONDUCT, CHARACTER, MENTAL CONDITIONS, RECORD OF CONVICTIONS OR PRESENT CRIMINAL PLANS OR INTENTION OF THE PERSON, AMONG OTHER THINGS, THE PERSON WOULD COMMIT ANOTHER DANGEROUS CRIME;

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

(IV) THAT, EXCEPT WITH RESPECT TO A PERSON DESCRIBED IN SUBPARAGRAPH TWO OF PARAGRAPH (A) OF THIS SUBDIVISION, ON THE BASIS OF INFORMATION OR EVIDENCE PRESENTED BY PROFFER OR OTHERWISE TO THE JUDICIAL OFFICER, THERE IS A SUBSTANTIAL PROBABILITY THAT THE PERSON COMMITTED THE OFFENSE FOR WHICH HE OR SHE IS PRESENT BEFORE THE JUDICIAL OFFICER AND, WHERE THE PERSON IS A PERSON DESCRIBED IN CLAUSE (II) OF SUBPARAGRAPH ONE OF PARAGRAPH (A) OF THIS SUBDIVISION THAT THERE IS A SUBSTANTIAL PROBABILITY THAT THE PERSON COMMITTED THE OFFENSE ALLEGED IN THE CHARGE FOR WHICH HE OR SHE WAS ON BAIL, PROBATION, PAROLE OR RELEASE AS DESCRIBED IN CLAUSE (II) OF SUBPARAGRAPH ONE OF PARAGRAPH (A) OF THIS SUBDIVISION WHEN HE OR SHE ALLEGEDLY COMMITTED THE OFFENSE FOR WHICH HE OR SHE IS PRESENT BEFORE THE JUDICIAL OFFICER;

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

(C) THE FOLLOWING PROCEDURES SHALL APPLY TO PRETRIAL DETENTION HEARINGS HELD PURSUANT TO THIS SUBDIVISION:

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

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

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

(3) THE PRETRIAL DETENTION HEARING SHALL NOT BE HELD UNLESS IT AFFIRMATIVELY APPEARS FROM ALLEGATIONS MADE BY THE PROSECUTING ATTORNEY OR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) APPEALS FROM ORDERS OF DETENTION MAY BE TAKEN PURSUANT TO SUBDIVISION FIVE OF THIS SECTION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) THE GIVING OF A WARNING TO THE PERSON WHEN RELEASED OF THE PENALTIES IMPOSED BY THIS SUBDIVISION SHALL NOT BE A PREREQUISITE TO THE APPLICATION OF THIS SUBDIVISION.

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

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

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

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

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

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

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

9. NOTHING IN THIS SECTION SHALL INTERFERE WITH OR PREVENT THE EXERCISE BY ANY COURT OF ITS POWER TO PUNISH FOR CONTEMPT.

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

11. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, AND EVEN AFTER RELEASE ON CONDITION OR DETENTION HAS BEEN ORDERED HEREUNDER, THE JUDICIAL OFFICER MAY ELECT TO APPLY EXISTING LAW, INCLUDING ITS PROVISIONS CONCERNING BAIL AND RECOGNIZANCE, INSTEAD OF THE PROVISIONS OF THIS SECTION.

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

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

S 6. Section 510.10 of the criminal procedure law, as amended by chapter 459 of the laws of 1984, is amended to read as follows:

S 510.10 Securing order; when required.

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

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

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

APPLICATION IS ADDRESSED SHALL, BEFORE DECIDING THE APPLICATION, ASCERTAIN WHAT ACTION HAS BEEN TAKEN OR ORDER ISSUED WITH RESPECT TO THE DEFENDANT UNDER SECTION 530.15 OF THIS TITLE, IF ANY, WHETHER AN APPEAL HAS BEEN TAKEN FROM SUCH AN ORDER, WHETHER IT HAS BEEN DENIED, OR WHETHER ANY MOTION OR APPLICATION HAS BEEN MADE TO VACATE OR MODIFY SUCH AN ORDER OR TO RELIEVE THE DEFENDANT PARTIALLY OR COMPLETELY FROM ITS TERMS.

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

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

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

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

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

(b) Grants the application and fixes bail; or

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

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

S 530.10 ORDER OF RECOGNIZANCE OR BAIL; IN GENERAL.

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

(A) A CRIMINAL ACTION; OR

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

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

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

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

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

S 11. The opening paragraph of section 530.20 of the criminal procedure law, as amended by chapter 531 of the laws of 1975, is amended to read as follows:

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

INVOKED. IF SUCH SECTION IS NOT INVOKED, upon application of a defendant, SUCH COURT must or may order recognizance or bail as follows:

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

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

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

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

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

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

(C) MAY, INSTEAD OF ACTING UNDER PARAGRAPH (A) OR (B) OF THIS SUBDIVISION, INVOKE SECTION 530.15 OF THIS ARTICLE IN THE EXERCISE OF DISCRETION IN THOSE CIRCUMSTANCES IN WHICH SECTION 530.15 OF THIS ARTICLE PERMITS ITS REMEDIES TO BE INVOKED WHEN THE LOCAL CRIMINAL COURT HAS NOT INVOKED SECTION 530.15 OF THIS ARTICLE AND WHEN THE LOCAL CRIMINAL COURT:

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

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

(III) HAS FIXED BAIL WHICH IS EXCESSIVE.

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

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

S 14. The opening paragraph of section 530.40 of the criminal procedure law is amended to read as follows:

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

S 15. 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] EXCEPT WHEN SECTION 530.15 OF THIS ARTICLE IS INVOKED, AND PROVIDES TO THE CONTRARY, 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 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 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 eigh-

teen 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 16. 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] EXCEPT WHEN SECTION 530.15 OF THIS ARTICLE IS INVOKED, AND PROVIDES TO THE CONTRARY, 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 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 17. Subdivision 1 of section 530.60 of the criminal procedure law, as designated by chapter 788 of the laws of 1981, is amended to read as follows:

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

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