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

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I N A S S E M B L Y

March 26, 2014

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

AN ACT to amend the criminal procedure law, in relation to lenient bail and sentencing determinations

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

Section 1. Section 450.10 of the criminal procedure law is amended by adding a new subdivision 6 to read as follows:

6. AN ORDER, ENTERED PURSUANT TO SECTION 530.42, GRANTING IN WHOLE OR IN PART AN APPLICATION OF THE PEOPLE.

S 2. Subdivision 4 of section 450.20 of the criminal procedure law is amended to read as follows:

4. A sentence other than one of death, as prescribed in subdivisions two and three of section 450.30, UNLESS THE APPEAL IS BASED SOLELY UPON THE GROUND THAT A SENTENCE WAS UNDULY LENIENT WHEN SUCH SENTENCE WAS PREDICATED UPON ENTRY OF A PLEA OF GUILTY AND THE SENTENCE IMPOSED WAS NOT LESS THAN THAT WHICH WAS AGREED TO BY THE PEOPLE AS A CONDITION OF THE PLEA AND SET FORTH IN THE RECORD OR FILED WITH THE COURT AS REQUIRED BY SUBDIVISION FIVE OF SECTION 220.50 OR SUBDIVISION FOUR OF SECTION 340.20;

S 3. Section 450.20 of the criminal procedure law is amended by adding a new subdivision 12 to read as follows:

12. AN ORDER, ENTERED PURSUANT TO SECTION 530.42, DENYING IN WHOLE OR IN PART AN APPLICATION OF THE PEOPLE.

S 4. Subdivision 2 of section 450.30 of the criminal procedure law is amended to read as follows:

2. An appeal by the people from a sentence, as authorized by subdivision four of section 450.20, may be based [only] upon the ground that such sentence EITHER was (A) invalid as a matter of law OR (B) UNDULY LENIENT.

S 5. Paragraph (c) of subdivision 2 and paragraph (b) of subdivision 6 of section 470.15 of the criminal procedure law are amended to read as follows:

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

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(c) Upon a determination that a sentence imposed upon a valid conviction is illegal [or], unduly harsh or severe OR UNDULY LENIENT, the court may modify the judgment by reversing it with respect to the sentence and by otherwise affirming it.

(b) That a sentence, though legal, was EITHER (I) unduly harsh or severe OR (II) UNDULY LENIENT.

S 6. Subdivision 6 of section 470.20 of the criminal procedure law is amended to read as follows:

6. Upon modifying a judgment or reversing a sentence as a matter of discretion in the interest of justice upon the ground that the sentence is unduly harsh or severe OR UNDULY LENIENT, the court must itself impose some legally authorized lesser OR GREATER sentence.

S 7. Subdivision 3 of section 530.30 of the criminal procedure law is renumbered subdivision 6 and three new subdivisions 3, 4 and 5 are added to read as follows:

3. 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, UPON APPLICATION OF THE PEOPLE, MAY REVOKE AN ORDER OF RECOGNIZANCE OR BAIL ENTERED BY A LOCAL CRIMINAL COURT AND FIX BAIL IN AN AMOUNT THE COURT DETERMINES SUFFICIENT OR, IF THE DEFENDANT IS CHARGED WITH ONE OR MORE CRIMES AT LEAST ONE OF WHICH IS A FELONY, COMMIT THE DEFENDANT TO THE CUSTODY OF THE SHERIFF.

4. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION, A SUPERIOR COURT JUDGE MAY NOT VACATE AN ORDER OF RECOGNIZANCE OR BAIL AND FIX BAIL OR COMMIT THE DEFENDANT TO THE CUSTODY OF THE SHERIFF UNLESS AND UNTIL:

(A) THE DEFENDANT HAS HAD AN OPPORTUNITY TO BE HEARD IN THE MATTER OR, AFTER KNOWLEDGE OR NOTICE TO THE DEFENDANT OR HIS OR HER COUNSEL OF THE APPLICATION AND REASONABLE OPPORTUNITY TO BE HEARD, HAS FAILED TO APPEAR AT THE PROCEEDING OR HAS OTHERWISE WAIVED HIS OR HER RIGHT TO DO SO; AND

(B) SUCH JUDGE HAS BEEN FURNISHED WITH A REPORT AS DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION 530.20 OF THIS ARTICLE.

5. WHEN A CRIMINAL ACTION IS PENDING IN A LOCAL CRIMINAL COURT AND AN ORDER FIXING BAIL HAS BEEN ENTERED, AND THEREAFTER A LOCAL CRIMINAL COURT ENTERS AN ORDER RELEASING THE DEFENDANT ON HIS OR HER OWN RECOGNIZANCE OR FIXING BAIL IN A LESSER AMOUNT OR IN A LESS BURDENSOME MANNER, THE PEOPLE MAY FILE WITH THE LOCAL CRIMINAL COURT A NOTICE OF INTENTION TO APPLY TO A SUPERIOR COURT JUDGE PURSUANT TO SUBDIVISION THREE OF THIS SECTION. THE FILING OF SUCH A NOTICE SHALL STAY THE EFFECT OF THE ORDER RELEASING THE DEFENDANT ON HIS OR HER OWN RECOGNIZANCE OR FIXING BAIL IN A LESSER AMOUNT OR IN A LESS BURDENSOME MANNER. A STAY PURSUANT TO THIS SUBDIVISION SHALL REMAIN IN EFFECT FOR A PERIOD OF SEVENTY-TWO HOURS UNLESS EXTENDED OR VACATED BY THE JUDGE OF THE SUPERIOR COURT TO WHOM THE PEOPLE APPLY PURSUANT TO SUBDIVISION THREE OF THIS SECTION.

S 8. The criminal procedure law is amended by adding a new section 530.42 to read as follows:

S 530.42 ORDER OF RECOGNIZANCE OR BAIL; REVIEW BY SUPERIOR COURT.

1. WHEN A CRIMINAL ACTION IS PENDING IN A LOCAL CRIMINAL COURT OR A SUPERIOR COURT, AND THE COURT HAS ORDERED RECOGNIZANCE OR BAIL, A JUDGE OF THE SUPERIOR COURT HOLDING A TERM THEREOF IN THE COUNTY, UPON APPLICATION OF THE PEOPLE, MAY REVIEW AN ORDER OF RECOGNIZANCE OR BAIL PREVIOUSLY ENTERED IN THE ACTION AND FIX BAIL IN AN AMOUNT THE COURT DETERMINES SUFFICIENT OR, IF THE DEFENDANT IS CHARGED WITH ONE OR MORE CRIMES

AT LEAST ONE OF WHICH IS A FELONY, COMMIT THE DEFENDANT TO THE CUSTODY OF THE SHERIFF.

2. UPON AN APPLICATION FOR REVIEW PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE SUPERIOR COURT JUDGE MAY GRANT THE APPLICATION ONLY UPON A DETERMINATION THAT THE ORDER OF RECOGNIZANCE OR BAIL UNDER REVIEW CONSTITUTES AN ABUSE OF DISCRETION.

3. AN APPLICATION PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL BE ACCOMPANIED BY AN AFFIDAVIT OR AFFIRMATION WHICH SHALL STATE THE DATE, AND THE COURT OR JUDGE TO WHOM MADE, OF EVERY PREVIOUS APPLICATION, THE DISPOSITION OF EACH SUCH APPLICATION AND OF ANY APPEAL TAKEN, AND THE NEW FACTS PRESENTED IN THE APPLICATION THAT WERE NOT PRESENTED IN ANY PREVIOUS APPLICATION.

4. WHEN A CRIMINAL ACTION IS PENDING IN A SUPERIOR COURT AND AN ORDER IS ENTERED RELEASING THE DEFENDANT ON HIS OR HER OWN RECOGNIZANCE OR FIXING BAIL, THE PEOPLE MAY APPLY ON AN EMERGENCY BASIS TO THE COURT TO WHICH AN APPLICATION PURSUANT TO SUBDIVISION ONE OF THIS SECTION WOULD BE MADE FOR AN INTERIM ORDER FIXING BAIL OR COMMITTING THE DEFENDANT TO THE CUSTODY OF THE SHERIFF. SUCH AN ORDER SHALL REMAIN IN EFFECT FOR A PERIOD OF SEVENTY-TWO HOURS UNLESS EXTENDED OR VACATED BY THE COURT TO WHICH THE PEOPLE APPLY PURSUANT TO SUBDIVISION ONE OF THIS SECTION.

5. THE CHIEF ADMINISTRATOR OF THE COURTS, WITH THE ADVICE AND CONSENT OF THE ADMINISTRATIVE BOARD OF THE COURTS, SHALL ADOPT PROCEDURES REGULATING THE COURT OR COURTS IN THE COUNTY TO WHICH AN APPLICATION PURSUANT TO SUBDIVISION ONE OF THIS SECTION MAY BE MADE.

S 9. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.