

STATE OF NEW YORK

37

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to establishing provisions for appeals by a non-party to an intermediate appellate court

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The criminal procedure law is amended by adding a new
2 section 450.25 to read as follows:

3 § 450.25 Appeal by non-party to intermediate appellate court; in what
4 cases authorized.

5 An appeal directly to the intermediate appellate court may be taken as
6 of right by a non-party from the following orders of a criminal court:

7 1. An order of a criminal court denying a non-party's motion to quash
8 a subpoena duces tecum on the grounds that the movant is protected from
9 compelled production by claim of privilege, immunity from disclosure, or
10 any other constitutional, common law, or statutory privilege, including
11 those set forth under article forty-five or subdivision (c) of section
12 thirty-one hundred one of the civil practice law and rules and section
13 seventy-nine-h of the civil rights law.

14 2. An order denying a motion to quash a subpoena ad testificandum on
15 the grounds that the movant is protected from compelled testimony by
16 claim of privilege, immunity from disclosure, or any other constitu-
17 tional, common law, or statutory privilege, including those set forth
18 under article forty-five or subdivision (c) of section thirty-one
19 hundred one of the civil practice law and rules and section seventy-
20 nine-h of the civil rights law.

21 3. An appeal taken pursuant to subdivision one or two of this section
22 shall be expeditiously filed, heard and determined in accordance with
23 the rules of the appellate division of the department in which such

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

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1 intermediate appellate court is located. Such appeal may be taken only
2 upon reasonable notice to the parties to the action or proceeding who
3 shall have an opportunity to be heard thereon.

4 4. The appellate division of each judicial department shall adopt
5 rules for providing notice to the parties pursuant to subdivisions one
6 and two of this section, and for the expeditious filing, briefing, hear-
7 ing, and determination of appeals under this section.

8 5. This section shall not apply where the subpoena that is the subject
9 of the motion to quash relates to a grand jury proceeding.

10 § 2. The opening paragraph of section 450.60 of the criminal procedure
11 law is amended to read as follows:

12 The particular intermediate appellate courts to which appeals author-
13 ized by sections 450.10 [~~and~~], 450.20 and 450.25 must be taken are as
14 follows:

15 § 3. Section 460.10 of the criminal procedure law is amended by adding
16 a new subdivision 4-a to read as follows:

17 4-a. An appeal by a non-party to an intermediate appellate court by
18 right, pursuant to section 450.25 of this title, shall be taken in
19 accordance with the rules of the appellate division of the department in
20 which such intermediate appellate court is located.

21 § 4. The section heading of section 460.50 of the criminal procedure
22 law is amended and a new subdivision 7 is added to read as follows:

23 Stay of judgment or proceedings pending appeal to intermediate appel-
24 late court.

25 7. (a) Where a non-party to a criminal action or proceeding has
26 appealed an order of a criminal court, pursuant to section 450.25 of
27 this title, such non-party may apply to the criminal court that issued
28 such order for an order staying such action or proceeding pending the
29 determination of such appeal.

30 (b) If an application brought pursuant to paragraph (a) of this subdi-
31 vision is denied, the non-party may apply to the intermediate appellate
32 court where the appeal is then pending for an order staying such action
33 or proceeding pending the determination of such appeal.

34 (c) An application brought pursuant to paragraph (a) or (b) of this
35 subdivision, shall be brought upon reasonable notice to the parties to
36 such action or proceeding and such parties shall be accorded adequate
37 opportunity to appear and be heard in support thereof or in opposition
38 thereto. Such application shall be made in a manner determined by the
39 rules of the appellate division of the department in which such interme-
40 diat appellate court is located.

41 § 5. This act shall take effect on the ninetieth day after it shall
42 have become a law.