STATE OF NEW YORK

7034

2023-2024 Regular Sessions

IN ASSEMBLY

May 10, 2023

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

AN ACT to amend the criminal procedure law, in relation to providing judges more discretion regarding securing orders and limiting the lengths of certain orders; to repeal certain provisions of the criminal procedure law relating thereto; to amend the criminal procedure law and the penal law, in relation to establishing new criminal discovery rules; to repeal article 245 of the criminal procedure law relating thereto; and to repeal certain provisions of the judiciary law and the executive law relating to securing orders and criminal discovery

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

Section 1. Subdivision 3 of section 150.10 of the criminal procedure law is REPEALED.

§ 2. Subdivision 1 of section 150.20 of the criminal procedure law, as amended by section 1-a of part JJJ of chapter 59 of the laws of 2019, subparagraph (viii) as amended and subparagraphs (ix), (x) and (xi) of paragraph (b) as added by section 1 of subpart B of part UU of chapter 56 of the laws of 2022, is amended to read as follows:

1. [~~(a)~~] Whenever a police officer is authorized pursuant to section 140.10 of this title to arrest a person without a warrant for an offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law, he [~~shall, except as set out in paragraph (b) of this subdivision~~] **or she may**, subject to the provisions of subdivisions three and four of section 150.40 of this [~~title~~] **article**, instead issue to and serve upon such person an appearance ticket.

[~~(b) An officer is not required to issue an appearance ticket if:~~

~~(i) the person has one or more outstanding local criminal court or superior court warrants;~~

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

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~~(ii) the person has failed to appear in court proceedings in the last two years;~~

~~(iii) the person has been given a reasonable opportunity to make their verifiable identity and a method of contact known, and has been unable or unwilling to do so, so that a custodial arrest is necessary to subject the individual to the jurisdiction of the court. For the purposes of this section, an officer may rely on various factors to determine a person's identity, including but not limited to personal knowledge of such person, such person's self-identification, or photographic identification. There is no requirement that a person present photographic identification in order to be issued an appearance ticket in lieu of arrest where the person's identity is otherwise verifiable; however, if offered by such person, an officer shall accept as evidence of identity the following: a valid driver's license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government or municipal government within the United States or a provincial government of the dominion of Canada; a valid passport issued by the United States government or any other country; an identification card issued by the armed forces of the United States; a public benefit card, as defined in paragraph (a) of subdivision one of section 158.00 of the penal law;~~

~~(iv) the person is charged with a crime between members of the same family or household, as defined in subdivision one of section 530.11 of this chapter;~~

~~(v) the person is charged with a crime defined in article 130 of the penal law;~~

~~(vi) it reasonably appears the person should be brought before the court for consideration of issuance of an order of protection, pursuant to section 530.13 of this chapter, based on the facts of the crime or offense that the officer has reasonable cause to believe occurred;~~

~~(vii) the person is charged with a crime for which the court may suspend or revoke his or her driver license;~~

~~(viii) it reasonably appears to the officer, based on the observed behavior of the individual in the present contact with the officer and facts regarding the person's condition that indicates a sign of distress to such a degree that the person would face harm without immediate medical or mental health care, that bringing the person before the court would be in such person's interest in addressing that need; provided, however, that before making the arrest, the officer shall make all reasonable efforts to assist the person in securing appropriate services;~~

~~(ix) the person is eighteen years of age or older and charged with criminal possession of a weapon on school grounds as defined in section 265.01-a of the penal law;~~

~~(x) the person is eighteen years of age or older and charged with a hate crime as defined in section 485.05 of the penal law; or~~

~~(xi) the offense is a qualifying offense pursuant to paragraph (t) of subdivision four of section 510.10 of this chapter, or pursuant to paragraph (t) of subdivision four of section 530.40 of this chapter.~~]

§ 3. The criminal procedure law is amended by adding a new section 150.30 to read as follows:

§ 150.30 Appearance ticket; issuance and service thereof after arrest upon posting of pre-arraignment bail.

1. Issuance and service of an appearance ticket by a police officer following an arrest without a warrant, as prescribed in subdivision two

of section 150.20 of this article, may be made conditional upon the posting of a sum of money, known as pre-arraignment bail. In such case, the bail becomes forfeit upon failure of such person to comply with the directions of the appearance ticket. The person posting such bail must complete and sign a form which states (a) the name, residential address and occupation of each person posting cash bail; and (b) the title of the criminal action or proceeding involved; and (c) the offense or offenses which are the subjects of the action or proceeding involved, and the status of such action or proceeding; and (d) the name of the principal and the nature of his or her involvement in or connection with such action or proceeding; and (e) the date of the principal's next appearance in court; and (f) an acknowledgement that the cash bail will be forfeited if the principal does not comply with the directions of the appearance ticket; and (g) the amount of money posted as cash bail. Such pre-arraignment bail may be posted as provided in subdivision two or three of this section.

2. A desk officer in charge at a police station, county jail, or police headquarters, or any of his or her superior officers, may in such place, fix pre-arraignment bail, in an amount prescribed in this subdivision, and upon the posting thereof must issue and serve an appearance ticket upon the arrested person, give a receipt for the bail, and release such person from custody. Such pre-arraignment bail may be fixed in the following amounts:

(a) If the arrest was for a class E felony, any amount not exceeding seven hundred fifty dollars.

(b) If the arrest was for a class A misdemeanor, any amount not exceeding five hundred dollars.

(c) If the arrest was for a class B misdemeanor or an unclassified misdemeanor, any amount not exceeding two hundred fifty dollars.

(d) If the arrest was for a petty offense, any amount not exceeding one hundred dollars.

3. A police officer, who has arrested a person without a warrant pursuant to subdivision two of section 150.20 of this article for a traffic infraction, may, where he or she reasonably believes that such arrested person is not licensed to operate a motor vehicle by this state or any state covered by a reciprocal compact guaranteeing appearance as is provided in section five hundred seventeen of the vehicle and traffic law, fix pre-arraignment bail in the amount of fifty dollars; provided, however, such bail shall be posted by means of a credit card or similar device. Upon the posting thereof, said officer must issue and serve an appearance ticket upon the arrested person, give a receipt for the bail, and release such person from custody.

4. The chief administrator of the courts shall establish a system for the posting of pre-arraignment bail by means of credit card or similar device, as is provided by section two hundred twelve of the judiciary law. The head of each police department or police force and of any state department, agency, board, commission or public authority having police officers who fix pre-arraignment bail as provided herein may elect to use the system established by the chief administrator or may establish such other system for the posting of pre-arraignment bail by means of credit card or similar device as he or she may deem appropriate.

§ 4. Subdivision 1 of section 150.40 of the criminal procedure law, as amended by section 8 of part UU of chapter 56 of the laws of 2020, is amended to read as follows:

1. An appearance ticket must be made returnable [~~at a date as soon as possible, but in no event later than twenty days from the date of issu-~~

~~ance; or at the next scheduled session of the appropriate local criminal court if such session is scheduled to occur more than twenty days from the date of issuance; or at a later date, with the court's permission due to enrollment in a pre-arraignment diversion program. The appearance ticket shall be made returnable~~] in a local criminal court designated in section 100.55 of this title as one with which an information for the offense in question may be filed.

§ 5. Section 150.80 of the criminal procedure law is REPEALED.

§ 6. Subdivisions 3-a, 3-b, 21 and 22 of section 500.10 of the criminal procedure law are REPEALED.

§ 7. Subdivisions 5, 6, 7 and 9 of section 500.10 of the criminal procedure law, as amended by section 1-e of part JJJ of chapter 59 of the laws of 2019, are amended to read as follows:

5. "Securing order" means an order of a court committing a principal to the custody of the sheriff or fixing bail, [~~where authorized,~~] or releasing the principal on the principal's own recognizance [~~or releasing the principal under non-monetary conditions~~].

6. "Order of recognizance or bail" means a securing order releasing a principal on the principal's own recognizance or [~~under non-monetary conditions or, where authorized,~~] fixing bail.

7. "Application for recognizance or bail" means an application by a principal that the court, instead of committing the principal to or retaining the principal in the custody of the sheriff, either release the principal on the principal's own recognizance[~~, release under non-monetary conditions, or, where authorized,~~] **or** fix bail.

9. "Bail" means cash bail[~~,~~] **or** a bail bond [~~or money paid with a credit card~~].

§ 8. Section 510.10 of the criminal procedure law, as amended by section 2 of part JJJ of chapter 59 of the laws of 2019, subdivision 1 as amended by section 1 of subpart C of part UU of chapter 56 of the laws of 2022, subdivision 4 as amended by section 2 of part UU of chapter 56 of the laws of 2020, and paragraphs (s) and (t) as amended and paragraph (u) of subdivision 4 as added by section 2 of subpart B of part UU of chapter 56 of the laws of 2022, is amended to read as follows:

§ 510.10 Securing order; when required; alternatives available[~~; standard to be applied~~].

[~~1.~~] 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 shall, [~~in accordance with this title,~~] by a securing order **either** release the principal on the principal's own recognizance, [~~release the principal under non-monetary conditions,~~] or, where authorized, fix bail or commit the principal to the custody of the sheriff. [~~In all such cases, except where another type of securing order is shown to be required by law, the court shall release the principal pending trial on the principal's own recognizance, unless it is demonstrated and the court makes an individualized determination that the principal poses a risk of flight to avoid prosecution. If such a finding is made, the court must select the least restrictive alternative and condition or conditions that will reasonably assure the principal's return to court. The court shall explain its choice of release, release with conditions, bail or remand on the record or in writing. In making its determination, the court must consider and take into account available information about the principal, including:~~

~~(a) The principal's activities and history;~~

~~(b) If the principal is a defendant, the charges facing the principal;~~

~~(c) The principal's criminal conviction record if any;~~

~~(d) The principal's record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.1 of the family court act, or, of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any;~~

~~(e) The principal's previous record with respect to flight to avoid criminal prosecution;~~

~~(f) If monetary bail is authorized, according to the restrictions set forth in this title, the principal's individual financial circumstances, and, in cases where bail is authorized, the principal's ability to post bail without posing undue hardship, as well as his or her ability to obtain a secured, unsecured, or partially secured bond;~~

~~(g) Any violation by the principal of an order of protection issued by any court;~~

~~(h) The principal's history of use or possession of a firearm;~~

~~(i) Whether the charge is alleged to have caused serious harm to an individual or group of individuals; and~~

~~(j) If the principal is a defendant, in the case of an application for a securing order pending appeal, the merit or lack of merit of the appeal.~~

~~2. A principal is entitled to representation by counsel under this chapter in preparing an application for release, when a securing order is being considered and when a securing order is being reviewed for modification, revocation or termination. If the principal is financially unable to obtain counsel, counsel shall be assigned to the principal.~~

~~3. In cases other than as described in subdivision four of this section the court shall release the principal pending trial on the principal's own recognizance, unless the court finds on the record or in writing that release on the principal's own recognizance will not reasonably assure the principal's return to court. In such instances, the court shall release the principal under non-monetary conditions, selecting the least restrictive alternative and conditions that will reasonably assure the principal's return to court. The court shall explain its choice of alternative and conditions on the record or in writing.~~

~~4. Where the principal stands charged with a qualifying offense, the court, unless otherwise prohibited by law, may in its discretion release the principal pending trial on the principal's own recognizance or under non-monetary conditions, fix bail, or, where the defendant is charged with a qualifying offense which is a felony, the court may commit the principal to the custody of the sheriff. A principal stands charged with a qualifying offense for the purposes of this subdivision when he or she stands charged with:~~

~~(a) a felony enumerated in section 70.02 of the penal law, other than robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, provided, however, that burglary in the second degree as defined in subdivision two of section 140.25 of the penal law shall be a qualifying offense only where the defendant is charged with entering the living area of the dwelling;~~

~~(b) a crime involving witness intimidation under section 215.15 of the penal law;~~

~~(c) a crime involving witness tampering under section 215.11, 215.12 or 215.13 of the penal law;~~

~~(d) a class A felony defined in the penal law, provided that for class A felonies under article two hundred twenty of the penal law, only class A-I felonies shall be a qualifying offense;~~

~~(e) a sex trafficking offense defined in section 230.34 or 230.34-a of the penal law, or a felony sex offense defined in section 70.80 of the penal law, or a crime involving incest as defined in section 255.25, 255.26 or 255.27 of such law, or a misdemeanor defined in article one hundred thirty of such law;~~

~~(f) conspiracy in the second degree as defined in section 105.15 of the penal law, where the underlying allegation of such charge is that the defendant conspired to commit a class A felony defined in article one hundred twenty-five of the penal law;~~

~~(g) money laundering in support of terrorism in the first degree as defined in section 470.24 of the penal law; money laundering in support of terrorism in the second degree as defined in section 470.23 of the penal law; money laundering in support of terrorism in the third degree as defined in section 470.22 of the penal law; money laundering in support of terrorism in the fourth degree as defined in section 470.21 of the penal law; or a felony crime of terrorism as defined in article four hundred ninety of the penal law, other than the crime defined in section 490.20 of such law;~~

~~(h) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law, criminal contempt in the first degree as defined in subdivision (b), (c) or (d) of section 215.51 of the penal law or aggravated criminal contempt as defined in section 215.52 of the penal law, and the underlying allegation of such charge of criminal contempt in the second degree, criminal contempt in the first degree or aggravated criminal contempt is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this title;~~

~~(i) facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of the penal law, use of a child in a sexual performance as defined in section 263.05 of the penal law or luring a child as defined in subdivision one of section 120.70 of the penal law, promoting an obscene sexual performance by a child as defined in section 263.10 of the penal law or promoting a sexual performance by a child as defined in section 263.15 of the penal law;~~

~~(j) any crime that is alleged to have caused the death of another person;~~

~~(k) criminal obstruction of breathing or blood circulation as defined in section 121.11 of the penal law, strangulation in the second degree as defined in section 121.12 of the penal law or unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, and is alleged to have committed the offense against a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this title;~~

~~(l) aggravated vehicular assault as defined in section 120.04-a of the penal law or vehicular assault in the first degree as defined in section 120.04 of the penal law;~~

~~(m) assault in the third degree as defined in section 120.00 of the penal law or arson in the third degree as defined in section 150.10 of the penal law, when such crime is charged as a hate crime as defined in section 485.05 of the penal law;~~

~~(n) aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law or criminal possession of a weapon on school grounds as defined in section 265.01-a of the penal law;~~

~~(o) grand larceny in the first degree as defined in section 155.42 of the penal law, enterprise corruption as defined in section 460.20 of the penal law, or money laundering in the first degree as defined in section 470.20 of the penal law;~~

~~(p) failure to register as a sex offender pursuant to section one hundred sixty-eight-t of the correction law or endangering the welfare of a child as defined in subdivision one of section 260.10 of the penal law, where the defendant is required to maintain registration under article six-C of the correction law and designated a level three offender pursuant to subdivision six of section one hundred sixty-eight-l of the correction law;~~

~~(q) a crime involving bail jumping under section 215.55, 215.56 or 215.57 of the penal law, or a crime involving escaping from custody under section 205.05, 205.10 or 205.15 of the penal law;~~

~~(r) any felony offense committed by the principal while serving a sentence of probation or while released to post release supervision;~~

~~(s) a felony, where the defendant qualifies for sentencing on such charge as a persistent felony offender pursuant to section 70.10 of the penal law;~~

~~(t) any felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, where such charge arose from conduct occurring while the defendant was released on his or her own recognizance, released under conditions, or had yet to be arraigned after the issuance of a desk appearance ticket for a separate felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, provided, however, that the prosecutor must show reasonable cause to believe that the defendant committed the instant crime and any underlying crime. For the purposes of this subparagraph, any of the underlying crimes need not be a qualifying offense as defined in this subdivision. For the purposes of this paragraph, "harm to an identifiable person or property" shall include but not be limited to theft of or damage to property. However, based upon a review of the facts alleged in the accusatory instrument, if the court determines that such theft is negligible and does not appear to be in furtherance of other criminal activity, the principal shall be released on his or her own recognizance or under appropriate non-monetary conditions; or~~

~~(u) criminal possession of a weapon in the third degree as defined in subdivision three of section 265.02 of the penal law or criminal sale of a firearm to a minor as defined in section 265.16 of the penal law.~~

~~5. Notwithstanding the provisions of subdivisions three and four of this section, with respect to any charge for which bail or remand is not ordered, and for which the court would not or could not otherwise require bail or remand, a defendant may, at any time, request that the court set bail in a nominal amount requested by the defendant in the form specified in paragraph (a) of subdivision one of section 520.10 of this title; if the court is satisfied that the request is voluntary, the court shall set such bail in such amount.~~

~~6.~~] 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 the principal 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.

§ 9. Section 510.20 of the criminal procedure law, as amended by section 3 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 510.20 Application for [~~a change in securing order~~] recognizance or bail; making and determination thereof in general.

1. Upon any occasion when a court [~~has issued~~] is required to issue a securing order with respect to a principal [~~and the~~], or at any time when a principal is confined in the custody of the sheriff as a result of the securing order or a previously issued securing order, the principal may make an application for recognizance[~~, release under non-monetary conditions~~] or bail.

2. [~~(a) The principal is entitled to representation by counsel in the making and presentation of such application. If the principal is financially unable to obtain counsel, counsel shall be assigned to the principal.~~

~~(b)~~] Upon such application, the principal must be accorded an opportunity to be heard[~~, present evidence~~] and to contend that an order of recognizance[~~, release under non-monetary conditions~~] or[~~, where authorized,~~] bail must or should issue, that the court should release the principal on the principal's own recognizance [~~or under non-monetary conditions~~] rather than fix bail, and that if bail is [~~authorized and~~] fixed it should be in a suggested amount and form.

§ 10. Section 510.30 of the criminal procedure law, as amended by section 5 of part JJJ of chapter 59 of the laws of 2019, and subdivision 1 as amended by section 2 of subpart C of part UU of chapter 56 of the laws of 2022, is amended to read as follows:

§ 510.30 Application for [~~securing order~~] recognizance or bail; rules of law and criteria controlling determination.

1. Determinations of applications for recognizance or bail are not in all cases discretionary but are subject to rules, prescribed in article five hundred thirty of this title and other provisions of law relating to specific kinds of criminal actions and proceedings, providing (a) that in some circumstances such an application must as a matter of law be granted, (b) that in others it must as a matter of law be denied and the principal committed to or retained in the custody of the sheriff, and (c) that in others the granting or denial thereof is a matter of judicial discretion.

2. To the extent that the issuance of an order of recognizance or bail and the terms thereof are matters of discretion rather than of law, an application is determined on the basis of the following factors and criteria:

(a) With respect to any principal, the court [~~in all cases, unless otherwise provided by law,~~] must [~~impose the least restrictive~~] consider the kind and degree of control or restriction that is necessary to secure the principal's return to court when required. In determining that matter, the court must, on the basis of available information, consider and take into account [~~information about the principal that is relevant to the principal's return to court, including:~~

~~(a) The principal's activities and history;~~

~~(b) If the principal is a defendant, the charges facing the principal;~~

~~(c)~~]:

(i) The principal's character, reputation, habits and mental condition;

(ii) the principal's employment and financial resources;

(iii) The principal's family ties and the length of his or her residence if any in the community;
(iv) The principal's criminal [~~conviction~~] record if any;
[~~(d)~~] (v) The principal's record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.2 of the family court act, or, of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any;
[~~(e)~~] (vi) The principal's previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution;
[~~(f) If monetary bail is authorized, according to the restrictions set forth in this title, the principal's individual financial circumstances, and, in cases where bail is authorized, the principal's ability to post bail without posing undue hardship, as well as his or her ability to obtain a secured, unsecured, or partially secured bond;~~
~~(g) any~~] (vii) Any violation by the principal of an order of protection issued by any court;
[~~(h) the~~] (viii) The principal's history of use or possession of a firearm;
[~~(i) whether~~] (ix) Whether the charge is alleged to have caused serious harm to an individual or group of individuals; [~~and~~
~~(j)~~] (x) If the principal is a defendant, the weight of the evidence against him or her in the pending criminal action and any other factor indicating probability or improbability of conviction; or, in the case of an application for [~~a securing order~~] bail or recognizance pending appeal, the merit or lack of merit of the appeal; and
(xi) If he or she is a defendant, the sentence which may be or has been imposed upon conviction.
[~~2.~~] (b) Where the principal is a defendant-appellant in a pending appeal from a judgment of conviction, the court must also consider the likelihood of ultimate reversal of the judgment. A determination that the appeal is palpably without merit alone justifies, but does not require, a denial of the application, regardless of any determination made with respect to the factors specified in paragraph (a) of this subdivision [~~one of this section~~].
3. When bail or recognizance is ordered, the court shall inform the principal, if the principal is a defendant charged with the commission of a felony, that the release is conditional and that the court may revoke the order of release and may be authorized to commit the principal to the custody of the sheriff in accordance with the provisions of subdivision two of section 530.60 of this [~~chapter~~] title if the principal commits a subsequent felony while at liberty upon such order.
§ 11. Section 510.40 of the criminal procedure law, as amended by section 6 of part JJJ of chapter 59 of the laws of 2019 and paragraph (c) of subdivision 4 as amended by section 7 of part UU of chapter 56 of the laws of 2020, is amended to read as follows:
§ 510.40 [~~Court notification to principal of conditions of release and of alleged violations of conditions of release~~] Application for recognizance or bail; determination thereof, form of securing order and execution thereof.
1. 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 or her own recognizance; or
(b) Grants the application and fixes bail; or

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

2. Upon ordering that a principal be released on the principal's own recognizance, [~~or released under non-monetary conditions, or, if bail has been fixed, upon the posting of bail,~~] the court must direct the principal to appear in the criminal action or proceeding involved whenever the principal's attendance may be required and to [~~be~~] **render the principal** at all times amenable to the orders and processes of the court. If such principal is in the custody of the sheriff or at liberty upon bail at the time of the order, the court must direct that the principal be discharged from such custody or, as the case may be, that the principal's bail be exonerated.

[~~2.~~] **3.** Upon the issuance of an order fixing bail[~~, where authorized,~~] and upon the posting thereof, the court must examine the bail to determine whether it complies with the order. If it does, the court must, in the absence of some factor or circumstance which in law requires or authorizes disapproval thereof, approve the bail and must issue a certificate of release, authorizing the principal to be at liberty, and, if the principal is in the custody of the sheriff at the time, directing the sheriff to discharge the principal therefrom. If the bail fixed is not posted, or is not approved after being posted, the court must order that the principal be committed to the custody of the sheriff. [~~In the event of any such non-approval, the court shall explain promptly in writing the reasons therefor.~~

~~3. Non-monetary conditions of release shall be individualized and established in writing by the court. At future court appearances, the court shall consider a lessening of conditions or modification of conditions to a less burdensome form based on the principal's compliance with such conditions of release. In the event of alleged non-compliance with the conditions of release in an important respect, pursuant to this subdivision, additional conditions may be imposed by the court, on the record or in writing, only after notice of the facts and circumstances of such alleged non-compliance, reasonable under the circumstances, affording the principal and the principal's attorney and the people an opportunity to present relevant, admissible evidence, relevant witnesses and to cross-examine witnesses, and a finding by clear and convincing evidence that the principal violated a condition of release in an important respect. Following such a finding, in determining whether to impose additional conditions for non-compliance, the court shall consider and may select conditions consistent with the court's obligation to impose the least restrictive condition or conditions that will reasonably assure the defendant's return to court. The court shall explain on the record or in writing the reasons for its determination and for any changes to the conditions imposed.~~

~~4. (a) Electronic monitoring of a principal's location may be ordered only if the court finds, after notice, an opportunity to be heard and an individualized determination explained on the record or in writing, that the defendant qualifies for electronic monitoring in accordance with subdivision twenty-one of section 500.10 of this title, and no other realistic non-monetary condition or set of non-monetary conditions will suffice to reasonably assure a principal's return to court.~~

~~(b) The specific method of electronic monitoring of the principal's location must be approved by the court. It must be the least restrictive procedure and method that will reasonably assure the principal's return to court, and unobtrusive to the greatest extent practicable.~~

~~(c) Electronic monitoring of the location of a principal may be conducted only by a public entity under the supervision and control of a county or municipality or a non-profit entity under contract to the county, municipality or the state. A county or municipality shall be authorized to enter into a contract with another county or municipality in the state to monitor principals under non-monetary conditions of release in its county, but counties, municipalities and the state shall not contract with any private for-profit entity for such purposes. Counties, municipalities and the state may contract with a private for-profit entity to supply electronic monitoring devices or other items, provided that any interaction with persons under electronic monitoring or the data produced by such monitoring shall be conducted solely by employees of a county, municipality, the state, or a non-profit entity under contract with such county, municipality or the state.~~

~~(d) Electronic monitoring of a principal's location may be for a maximum period of sixty days, and may be renewed for such period, after notice, an opportunity to be heard and a de novo, individualized determination in accordance with this subdivision, which shall be explained on the record or in writing.~~

~~A defendant subject to electronic location monitoring under this subdivision shall be considered held or confined in custody for purposes of section 180.80 of this chapter and shall be considered committed to the custody of the sheriff for purposes of section 170.70 of the chapter, as applicable.~~

~~5. If a principal is released under non-monetary conditions, the court shall, on the record and in an individualized written document provided to the principal, notify the principal, in plain language and a manner sufficiently clear and specific:~~

~~(a) of any conditions to which the principal is subject, to serve as a guide for the principal's conduct; and~~

~~(b) that the possible consequences for violation of such a condition may include revocation of the securing order and the ordering of a more restrictive securing order.~~]

§ 12. Sections 510.43 and 510.45 of the criminal procedure law are REPEALED.

§ 13. Section 510.50 of the criminal procedure law, as amended by section 9 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 510.50 Enforcement of securing order.

[~~1.~~] When the attendance of a principal confined in the custody of the sheriff is required at the criminal action or proceeding at a particular time and place, the court may compel such attendance by directing the sheriff to produce the principal at such time and place. If the principal is at liberty on the principal's own recognizance [~~or non-monetary conditions~~] or on bail, the principal's attendance may be achieved or compelled by various methods, including notification and the issuance of a bench warrant, prescribed by law in provisions governing such matters with respect to the particular kind of action or proceeding involved.

[~~2. Except when the principal is charged with a new crime while at liberty, absent relevant, credible evidence demonstrating that a principal's failure to appear for a scheduled court appearance was willful, the court, prior to issuing a bench warrant for a failure to appear for a scheduled court appearance, shall provide at least forty-eight hours notice to the principal or the principal's counsel that the principal is required to appear, in order to give the principal an opportunity to appear voluntarily.~~]

§ 14. Paragraph (b) of subdivision 2 of section 520.10 of the criminal procedure law, as amended by section 10 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

(b) The court [~~shall~~] may direct that the bail be posted in any one of [~~three~~] two or more of the forms specified in subdivision one of this section, designated in the alternative, and may designate different amounts varying with the forms[~~, except that one of the forms shall be either an unsecured or partially secured surety bond, as selected by the court~~].

§ 15. Section 530.10 of the criminal procedure law, as amended by section 11 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 530.10 Order of recognizance [~~release under non-monetary conditions~~] or bail; in general.

Under circumstances prescribed in this article, a court, upon application of a defendant charged with or convicted of an offense, is required [~~to issue a securing order~~] or authorized to order bail or recognizance for the release or prospective release of such defendant during the pendency of either:

1. A criminal action based upon such charge; or

2. 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.

§ 16. Subdivision 4 of section 530.11 of the criminal procedure law, as amended by section 12 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

4. When a person is arrested for an alleged family offense or an alleged violation of an order of protection or temporary order of protection or arrested pursuant to a warrant issued by the supreme or family court, and the supreme or family court, as applicable, is not in session, such person shall be brought before a local criminal court in the county of arrest or in the county in which such warrant is returnable pursuant to article one hundred twenty of this chapter. Such local criminal court may issue any order authorized under subdivision eleven of section 530.12 of this article, section one hundred fifty-four-d or one hundred fifty-five of the family court act or subdivision three-b of section two hundred forty or subdivision two-a of section two hundred fifty-two of the domestic relations law, in addition to discharging other arraignment responsibilities as set forth in this chapter. In making such order, the local criminal court shall consider [~~de novo~~] the bail recommendation [~~and securing order~~], if any, made by the supreme or family court as indicated on the warrant or certificate of warrant. Unless the petitioner or complainant requests otherwise, the court, in addition to scheduling further criminal proceedings, if any, regarding such alleged family offense or violation allegation, shall make such matter returnable in the supreme or family court, as applicable, on the next day such court is in session.

§ 17. Subdivision 11 of section 530.12 of the criminal procedure law, as amended by section 15 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

11. If a defendant is brought before the court for failure to obey any lawful order issued under this section, or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, and if, after hearing, the court is satisfied by competent proof that the defendant has willfully failed to obey any such order, the court may:

(a) revoke an order of recognizance [~~or release under non-monetary conditions~~] or revoke an order of bail or order forfeiture of such bail and commit the defendant to custody; or

(b) restore the case to the calendar when there has been an adjournment in contemplation of dismissal and commit the defendant to custody; or

(c) revoke a conditional discharge in accordance with section 410.70 of this chapter and impose probation supervision or impose a sentence of imprisonment in accordance with the penal law based on the original conviction; or

(d) revoke probation in accordance with section 410.70 of this chapter and impose a sentence of imprisonment in accordance with the penal law based on the original conviction. In addition, if the act which constitutes the violation of the order of protection or temporary order of protection is a crime or a violation the defendant may be charged with and tried for that crime or violation.

§ 18. The opening paragraph of subdivision 1 of section 530.13 of the criminal procedure law, as amended by section 14 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

When any criminal action is pending, and the court has not issued a temporary order of protection pursuant to section 530.12 of this article, the court, in addition to the other powers conferred upon it by this chapter, may for good cause shown issue a temporary order of protection in conjunction with any securing order **committing the defendant to the custody of the sheriff or as a condition of a pre-trial release, or as a condition of release on bail** or an adjournment in contemplation of dismissal. In addition to any other conditions, such an order may require that the defendant:

§ 19. Paragraph (a) of subdivision 8 of section 530.13 of the criminal procedure law, as amended by section 13 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

(a) revoke an order of recognizance[~~, release under non-monetary conditions~~] or bail and commit the defendant to custody; or

§ 20. Section 530.20 of the criminal procedure law is REPEALED and a new section 530.20 is added to read as follows:

§ 530.20 Order of recognizance or bail; by local criminal court when action is pending therein.

When a criminal action is pending in a local criminal court, such court, upon application of a defendant, must or may order recognizance or bail as follows:

1. When the defendant is charged, by information, simplified information, prosecutor's information or misdemeanor complaint, with an offense or offenses of less than felony grade only, the court must order recognizance or bail.

2. When the defendant is charged, by felony complaint, with a felony, the court may, in its discretion, order recognizance or bail except as otherwise provided in this subdivision:

(a) A city court, a town court or a village court may not order recognizance or bail when (i) the defendant is charged with a class A felony, or (ii) it appears that the defendant has two previous felony convictions;

(b) No local criminal court may order recognizance or bail with respect to a defendant charged with a felony unless and until:

(i) The district attorney has been heard in the matter or, 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 or her right to do so; and

(ii) The court has been furnished with a report of the division of criminal justice services concerning the defendant's criminal record if any or with a police department report with respect to the defendant's prior arrest record. If neither report is available, the court, with the consent of the district attorney, may dispense with this requirement; provided, however, that in an emergency, including but not limited to a substantial impairment in the ability of such division or police department to timely furnish such report, such consent shall not be required if, for reasons stated on the record, the court deems it unnecessary. When the court has been furnished with any such report or record, it shall furnish a copy thereof to counsel for the defendant or, if the defendant is not represented by counsel, to the defendant.

§ 21. The section heading and subdivisions 1 and 2 of section 530.30 of the criminal procedure law, as amended by section 17 of part JJJ of chapter 59 of the laws of 2019, are amended to read as follows:

Order of recognizance[~~, release under non-monetary conditions~~] or bail; by superior court judge when action is pending in local criminal court.

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, upon application of a defendant, may order recognizance[~~, release under non-monetary conditions~~] or[~~, where authorized,~~] bail when such local criminal court:

(a) Lacks authority to issue such an order, pursuant to the relevant provisions of section 530.20 of this article; or

(b) Has denied an application for recognizance[~~, release under non-monetary conditions~~] or bail; or

(c) Has fixed bail[~~, where authorized,~~] which is excessive[~~; or~~

~~(d) Has set a securing order of release under non-monetary conditions which are more restrictive than necessary to reasonably assure the defendant's return to court~~].

In such case, such superior court judge may vacate the order of such local criminal court and release the defendant on his or her own recognizance [~~or under non-monetary conditions,~~] or [~~where authorized,~~] fix bail in a lesser amount or in a less burdensome form[~~, whichever are the least restrictive alternative and conditions that will reasonably assure the defendant's return to court. The court shall explain its choice of alternative and conditions on the record or in writing~~].

2. Notwithstanding the provisions of subdivision one of this section, when the defendant is charged with a felony in a local criminal court, a superior court judge may not order recognizance, [~~release under non-monetary conditions~~] or[~~, where authorized,~~] bail unless and until the district attorney has had an opportunity to be heard in the matter and such judge [~~and counsel for the defendant have~~] has been furnished with a report as described in subparagraph (ii) of paragraph (b) of subdivision two of section 530.20 of this article.

§ 22. Section 530.40 of the criminal procedure law is REPEALED and a new section 530.40 is added to read as follows:

§ 530.40 Order of recognizance or bail; by superior court when action is pending therein.

When a criminal action is pending in a superior court, such court, upon application of a defendant, must or may order recognizance or bail as follows:

1. When the defendant is charged with an offense or offenses of less than felony grade only, the court must order recognizance or bail.

2. When the defendant is charged with a felony, the court may, in its discretion, order recognizance or bail. In any such case in which an indictment (a) has resulted from an order of a local criminal court holding the defendant for the action of the grand jury, or (b) was filed at a time when a felony complaint charging the same conduct was pending in a local criminal court, and in which such local criminal court or a superior court judge has issued an order of recognizance or bail which is still effective, the superior court's order may be in the form of a direction continuing the effectiveness of the previous order.

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

4. Notwithstanding the provisions of subdivision two of this section, a superior court may not order recognizance or bail when the defendant is charged with a felony unless and until the district attorney has had an opportunity to be heard in the matter and such court has been furnished with a report as described in subparagraph (ii) of paragraph (b) of subdivision two of section 530.20 of this article.

§ 23. Subdivision 1 of section 530.45 of the criminal procedure law, as amended by section 19 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

1. When the defendant is at liberty in the course of a criminal action as a result of a prior order of recognizance[~~, release under non-monetary conditions~~] or bail and the court revokes such order and then[~~, where authorized,~~] 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, [~~or issues a more restrictive securing order,~~] a judge designated in subdivision two of this section, 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 as defined in article one hundred thirty of the penal law committed or attempted to be committed by a person eighteen years of age or older against a person less than eighteen years of age, and before sentencing, may issue a securing order and either release the defendant on the defendant's own recognizance, [~~release the defendant under non-monetary conditions,~~] or[~~, where authorized,~~] fix bail or fix bail in a lesser amount or in a less burdensome form[~~, or issue a less restrictive securing order,~~] than fixed by the court in which the conviction was entered.

§ 24. Subdivision 2-a of section 530.45 of the criminal procedure law is REPEALED.

§ 25. Section 530.50 of the criminal procedure law, as amended by chapter 264 of the laws of 2003, subdivision 1 as designated and subdivision 2 as added by section 10 of part UU of chapter 56 of the laws of 2020, and subdivision 3 as added by section 4 of subpart D of part UU of chapter 56 of the laws of 2022, is amended to read as follows:

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

1. A judge who is otherwise authorized pursuant to section 460.50 or section 460.60 **of this chapter** 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.

2. [~~Notwithstanding the provisions of subdivision four of section 510.10, paragraph (b) of subdivision one of section 530.20 and subdivision four of section 530.40 of this title, when a defendant charged with an offense that is not such a qualifying offense applies, pending determination of an appeal, for an order of recognizance or release on non-monetary conditions, where authorized, or fixing bail, a judge identified in subdivision two of section 460.50 or paragraph (a) of subdivision one of section 460.60 of this chapter may, in accordance with law, and except as otherwise provided by law, issue a securing order releasing the defendant on the defendant's own recognizance or under non-monetary conditions where authorized, fixing bail, or remanding the defendant to the custody of the sheriff where authorized.~~

~~3.~~] Where an appeal by the people has been taken from an order dismissing one or more counts of an accusatory instrument for failure to comply with a discovery order pursuant to subdivision twelve of section 450.20 of this chapter and the defendant is charged with a qualifying offense in the remaining counts in the accusatory instrument, pending determination of an appeal, the defendant may apply for an order of recognizance or [~~release on non-monetary conditions, where authorized, or~~] fixing bail. A judge identified in subdivision two of section 460.50 of this chapter or paragraph (a) of subdivision one of section 460.60 of this chapter may, in accordance with law, and except as otherwise provided by law, issue a securing order releasing the defendant on the defendant's own recognizance [~~or under non-monetary conditions where authorized~~], fixing bail, or remanding the defendant to the custody of the sheriff where authorized.

§ 26. Section 530.60 of the criminal procedure law, as amended by section 20 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 530.60 [~~Certain modifications of a securing order~~] **Order of recognizance or bail; revocation thereof**.

1. Whenever in the course of a criminal action or proceeding a defendant is at liberty as a result of an order of recognizance[~~, release under non-monetary conditions~~] or bail issued pursuant to this chapter, and the court considers it necessary to review such order, [~~whether due to a motion by the people or otherwise,~~] the court may, and [~~except as provided in subdivision two of section 510.50 of this title concerning a failure to appear in court,~~] 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[~~, release under non-monetary conditions,~~] or bail. If the defendant is entitled to recognizance[~~, release under non-monetary conditions,~~] or bail as a matter of right, the court must issue another such order. If the defendant is not, the court may either issue such an order or commit the defendant to the custody of the sheriff in accordance with this section.

Where the defendant is committed to the custody of the sheriff and is held on a felony complaint, a new period as provided in section 180.80

of this chapter shall commence to run from the time of the defendant's commitment under this subdivision.

2. (a) Whenever in the course of a criminal action or proceeding a defendant charged with the commission of a felony is at liberty as a result of an order of recognizance, [~~release under non-monetary conditions~~] or bail issued pursuant to this article it shall be grounds for revoking such order that the court finds reasonable cause to believe the defendant committed one or more specified class A or violent felony offenses or intimidated a victim or witness in violation of section 215.15, 215.16 or 215.17 of the penal law while at liberty.

[~~(b) Except as provided in paragraph (a) of this subdivision or any other law, whenever in the course of a criminal action or proceeding a defendant charged with the commission of an offense is at liberty as a result of an order of recognizance, release under non-monetary conditions or bail issued pursuant to this article it shall be grounds for revoking such order and fixing bail in such criminal action or proceeding when the court has found, by clear and convincing evidence, that the defendant:~~

~~(i) persistently and willfully failed to appear after notice of scheduled appearances in the case before the court; or~~

~~(ii) violated an order of protection in the manner prohibited by subdivision (b), (c) or (d) of section 215.51 of the penal law while at liberty; or~~

~~(iii) stands charged in such criminal action or proceeding with a misdemeanor or violation and, after being so charged, intimidated a victim or witness in violation of section 215.15, 215.16 or 215.17 of the penal law or tampered with a witness in violation of section 215.11, 215.12 or 215.13 of the penal law, law while at liberty; or~~

~~(iv) stands charged in such action or proceeding with a felony and, after being so charged, committed a felony while at liberty.~~

~~(c)~~] Before revoking an order of recognizance[~~, release under non-monetary conditions,~~] or bail pursuant to this subdivision, the court must hold a hearing and shall receive any relevant, admissible evidence not legally privileged. The defendant may cross-examine witnesses and may present relevant, admissible evidence on his own behalf. Such hearing may be consolidated with, and conducted at the same time as, a felony hearing conducted pursuant to article one hundred eighty of this chapter. A transcript of testimony taken before the grand jury upon presentation of the subsequent offense shall be admissible as evidence during the hearing. The district attorney may move to introduce grand jury testimony of a witness in lieu of that witness' appearance at the hearing.

[~~(d)~~] **(b)** Revocation of an order of recognizance[~~, release under non-monetary conditions~~] or bail and [~~a new securing order fixing bail or~~] commitment[~~, as specified in this paragraph and~~] pursuant to this subdivision shall be for the following periods**, either**:

[~~(i) Under paragraph (a) of this subdivision, revocation of the order of recognizance, release under non-monetary conditions or, as the case may be, bail, and a new securing order fixing bail or committing the defendant to the custody of the sheriff shall be as follows:~~

~~(A)~~] **(i)** For a period not to exceed ninety days exclusive of any periods of adjournment requested by the defendant; or

[~~(B)~~] **(ii)** Until the charges contained within the accusatory instrument have been reduced or dismissed such that no count remains which charges the defendant with commission of a felony; or

[~~(c)~~] (iii) Until reduction or dismissal of the charges contained within the accusatory instrument charging the subsequent offense such that no count remains which charges the defendant with commission of a class A or violent felony offense.

Upon expiration of any of the three periods specified within this [~~subparagraph~~] paragraph, whichever is shortest, the court may grant or deny release upon an order of bail or recognizance in accordance with the provisions of this article. Upon conviction to an offense the provisions of this article [~~five hundred thirty of this chapter~~] shall apply[~~; and~~

~~(ii) Under paragraph (b) of this subdivision, revocation of the order of recognizance, release under non-monetary conditions or, as the case may be, bail shall result in the issuance of a new securing order which may, if otherwise authorized by law, permit the principal's release on recognizance or release under non-monetary conditions, but shall also render the defendant eligible for an order fixing bail provided, however, that in accordance with the principles in this title the court must select the least restrictive alternative and condition or conditions that will reasonably assure the principal's return to court. Nothing in this subparagraph shall be interpreted as shortening the period of detention, or requiring or authorizing any less restrictive form of a securing order, which may be imposed pursuant to any other law~~].

[~~(c)~~] (c) Notwithstanding the provisions of paragraph (a) [~~or (b)~~] of this subdivision a defendant, against whom a felony complaint has been filed which charges the defendant with commission of a class A or violent felony offense [~~or violation of section 215.15, 215.16 or 215.17 of the penal law~~] committed while he or she was at liberty as specified therein, may be committed to the custody of the sheriff pending a revocation hearing for a period not to exceed seventy-two hours. An additional period not to exceed seventy-two hours may be granted by the court upon application of the district attorney upon a showing of good cause or where the failure to commence the hearing was due to the defendant's request or occurred with his or her consent. Such good cause must consist of some compelling fact or circumstance which precluded conducting the hearing within the initial prescribed period.

§ 27. Paragraph (a) of subdivision 9 of section 216.05 of the criminal procedure law, as amended by chapter 435 of the laws of 2021, is amended to read as follows:

(a) If at any time during the defendant's participation in the judicial diversion program, the court has reasonable grounds to believe that the defendant has violated a release condition [~~in an important respect~~] or has [~~willfully~~] failed to appear before the court as requested, the court [~~except as provided in subdivision two of section 510.50 of this chapter regarding a failure to appear,~~] shall direct the defendant to appear or issue a bench warrant to a police officer or an appropriate peace officer directing him or her to take the defendant into custody and bring the defendant before the court without unnecessary delay; provided, however, that under no circumstances shall a defendant who requires treatment for opioid use be deemed to have violated a release condition on the basis of his or her participation in medically prescribed drug treatments under the care of a health care professional licensed or certified under title eight of the education law, acting within his or her lawful scope of practice. The [~~relevant~~] provisions of subdivision one of section 530.60 of this chapter relating to [~~issuance of securing orders~~] revocation of recognizance or bail shall apply to such proceedings under this subdivision.

§ 28. Section 410.60 of the criminal procedure law, as amended by section 23 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

§ 410.60 Appearance before court.

A person who has been taken into custody pursuant to section 410.40 or [~~section~~] 410.50 of this article for violation of a condition of a sentence of probation or a sentence of conditional discharge must forthwith be brought before the court that imposed the sentence. Where a violation of probation petition and report has been filed and the person has not been taken into custody nor has a warrant been issued, an initial court appearance shall occur within ten business days of the court's issuance of a notice to appear. If the court has reasonable cause to believe that such person has violated a condition of the sentence, it may commit such person to the custody of the sheriff[~~,~~] **or** fix bail[~~, release such person under non-monetary conditions~~] or release such person on such person's own recognizance for future appearance at a hearing to be held in accordance with section 410.70 of this article. If the court does not have reasonable cause to believe that such person has violated a condition of the sentence, it must direct that such person be released.

§ 29. Subdivision 3 of section 620.50 of the criminal procedure law, as amended by section 24 of part JJJ of chapter 59 of the laws of 2019, is amended to read as follows:

3. A material witness order must be executed as follows:

(a) If the bail is posted and approved by the court, the witness must, as provided in subdivision [~~two~~] **three** of section 510.40 of this part, be released and be permitted to remain at liberty; provided that, where the bail is posted by a person other than the witness himself **or herself**, he **or she** may not be so released except upon his **or her** signed written consent thereto;

(b) If the bail is not posted, or if though posted it is not approved by the court, the witness must, as provided in subdivision [~~two~~] **three** of section 510.40 of this part, be committed to the custody of the sheriff.

§ 30. Article 245 of the criminal procedure law is REPEALED.

§ 31. The criminal procedure law is amended by adding a new article 240 to read as follows:

ARTICLE 240
DISCOVERY

Section 240.10 Definition of terms.
240.20 Upon demand of defendant.
240.30 Upon demand of prosecutor.
240.35 Refusal of demand.
240.40 Upon court order.
240.43 Disclosure of prior uncharged criminal, vicious or immoral acts.
240.44 Upon pre-trial hearing.
240.45 Upon trial, of prior statements and criminal history of witnesses.
240.50 Protective orders.
240.60 Continuing duty to disclose.
240.70 Sanctions; fees.
240.75 Certain violations.
240.80 When demand, refusal and compliance made.
240.90 Motion procedure.

§ 240.10 Definition of terms. The following definitions are applicable to this article:

1. "Demand to produce" means a written notice served by and on a party to a criminal action, without leave of the court, demanding to inspect property pursuant to this article and giving reasonable notice of the time at which the demanding party wishes to inspect the property designated.

2. "Attorneys' work product" means property to the extent that it contains the opinions, theories or conclusions of the prosecutor, defense counsel or members of their legal staffs.

3. "Property" means any existing tangible personal or real property, including, but not limited to, books, records, reports, memoranda, papers, photographs, tapes or other electronic recordings, articles of clothing, fingerprints, blood samples, fingernail scrapings or handwriting specimens, but excluding attorneys' work product.

4. "At the trial" means as part of the people's or the defendant's direct case.

§ 240.20 Upon demand of defendant.

1. Except to the extent protected by court order, upon a demand to produce by a defendant against whom an indictment, superior court information, prosecutor's information, information, or simplified information charging a misdemeanor is pending, the prosecutor shall disclose to the defendant and make available for inspection, photographing, copying or testing, the following property:

(a) Any written, recorded or oral statement of the defendant, and of a co-defendant to be tried jointly, made, other than in the course of the criminal transaction, to a public servant engaged in law enforcement activity or to a person then acting under his direction or in cooperation with him or her;

(b) Any transcript of testimony relating to the criminal action or proceeding pending against the defendant, given by the defendant, or by a co-defendant to be tried jointly, before any grand jury;

(c) Any written report or document, or portion thereof, concerning a physical or mental examination, or scientific test or experiment, relating to the criminal action or proceeding which was made by, or at the request or direction of a public servant engaged in law enforcement activity, or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the people intend to introduce at trial;

(d) Any photograph or drawing relating to the criminal action or proceeding which was made or completed by a public servant engaged in law enforcement activity, or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the people intend to introduce at trial;

(e) Any photograph, photocopy or other reproduction made by or at the direction of a police officer, peace officer or prosecutor of any property prior to its release pursuant to the provisions of section 450.10 of the penal law, irrespective of whether the people intend to introduce at trial the property or the photograph, photocopy or other reproduction;

(f) Any other property obtained from the defendant, or a co-defendant to be tried jointly;

(g) Any tapes or other electronic recordings which the prosecutor intends to introduce at trial, irrespective of whether such recording was made during the course of the criminal transaction;

(h) Anything required to be disclosed, prior to trial, to the defendant by the prosecutor, pursuant to the constitution of this state or of the United States;

(i) The approximate date, time and place of the offense charged and of defendant's arrest;

(j) In any prosecution under section 156.05 or 156.10 of the penal law, the time, place and manner of notice given pursuant to subdivision six of section 156.00 of such law; and

(k) In any prosecution commenced in a manner set forth in this subdivision alleging a violation of the vehicle and traffic law, in addition to any material required to be disclosed pursuant to this article, any other provision of law, or the constitution of this state or of the United States, any written report or document, or portion thereof, concerning a physical examination, a scientific test or experiment, including the most recent record of inspection, or calibration or repair of machines or instruments utilized to perform such scientific tests or experiments and the certification certificate, if any, held by the operator of the machine or instrument, which tests or examinations were made by or at the request or direction of a public servant engaged in law enforcement activity or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the people intend to introduce at trial.

2. The prosecutor shall make a diligent, good faith effort to ascertain the existence of demanded property and to cause such property to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control; provided, that the prosecutor shall not be required to obtain by subpoena duces tecum demanded material which the defendant may thereby obtain.

§ 240.30 Upon demand of prosecutor.

1. Except to the extent protected by court order, upon a demand to produce by the prosecutor, a defendant against whom an indictment, superior court information, prosecutor's information, information, or simplified information charging a misdemeanor is pending shall disclose and make available for inspection, photographing, copying or testing, subject to constitutional limitations:

(a) any written report or document, or portion thereof, concerning a physical or mental examination, or scientific test, experiment, or comparisons, made by or at the request or direction of, the defendant, if the defendant intends to introduce such report or document at trial, or if the defendant has filed a notice of intent to proffer psychiatric evidence and such report or document relates thereto, or if such report or document was made by a person, other than defendant, whom defendant intends to call as a witness at trial; and

(b) any photograph, drawing, tape or other electronic recording which the defendant intends to introduce at trial.

2. The defense shall make a diligent good faith effort to make such property available for discovery where it exists but the property is not within its possession, custody or control, provided, that the defendant shall not be required to obtain by subpoena duces tecum demanded material that the prosecutor may thereby obtain.

§ 240.35 Refusal of demand.

Notwithstanding the provisions of sections 240.20 and 240.30 of this article, the prosecutor or the defendant, as the case may be, may refuse to disclose any information which he or she reasonably believes is not discoverable by a demand to produce, pursuant to section 240.20 or 240.30 of this article as the case may be, or for which he or she

reasonably believes a protective order would be warranted. Such refusal shall be made in a writing, which shall set forth the grounds of such belief as fully as possible, consistent with the objective of the refusal. The writing shall be served upon the demanding party and a copy shall be filed with the court.

§ 240.40 Upon court order.

Notwithstanding the provisions of sections 240.20 and 240.30 of this article, the prosecutor or the defendant, as the case may be, may refuse to disclose any information which he or she reasonably believes is not discoverable by a demand to produce, pursuant to section 240.20 or 240.30 of this article as the case may be, or for which he or she reasonably believes a protective order would be warranted. Such refusal shall be made in a writing, which shall set forth the grounds of such belief as fully as possible, consistent with the objective of the refusal. The writing shall be served upon the demanding party and a copy shall be filed with the court.

§ 240.43 Disclosure of prior uncharged criminal, vicious or immoral acts.

1. Upon motion of a defendant against whom an indictment, superior court information, prosecutor's information, information, or simplified information charging a misdemeanor is pending, the court in which such accusatory instrument is pending: (a) must order discovery as to any material not disclosed upon a demand pursuant to section 240.20 of this article, if it finds that the prosecutor's refusal to disclose such material is not justified; (b) must, unless it is satisfied that the people have shown good cause why such an order should not be issued, order discovery or any other order authorized by subdivision one of section 240.70 of this article as to any material not disclosed upon demand pursuant to section 240.20 of this article where the prosecutor has failed to serve a timely written refusal pursuant to section 240.35 of this article; (c) may order discovery with respect to any other property, which the people intend to introduce at the trial, upon a showing by the defendant that discovery with respect to such property is material to the preparation of his or her defense, and that the request is reasonable; and (d) where property in the people's possession, custody, or control that consists of a deoxyribonucleic acid ("DNA") profile obtained from probative biological material gathered in connection with the investigation or prosecution of the defendant and the defendant establishes that such profile complies with federal bureau of investigation or state requirements, whichever are applicable and as such requirements are applied to law enforcement agencies seeking a keyboard search or similar comparison, and that the data meets state DNA index system or national DNA index system criteria as such criteria are applied to law enforcement agencies seeking such a keyboard search or similar comparison, the court may order an entity that has access to the combined DNA index system or its successor system to compare such DNA profile against DNA databanks by keyboard searches, or a similar method that does not involve uploading, upon notice to both parties and the entity required to perform the search, upon a showing by the defendant that such a comparison is material to the presentation of his or her defense and that the request is reasonable. For purposes of this paragraph, a "keyboard search" shall mean a search of a DNA profile against the databank in which the profile that is searched is not uploaded to or maintained in the databank. Upon granting the motion pursuant to paragraph (c) of this subdivision, the court shall, upon motion of the people showing such to be material to the preparation of

their case and that the request is reasonable, condition its order of discovery by further directing discovery by the people of property, of the same kind or character as that authorized to be inspected by the defendant, which he or she intends to introduce at the trial.

2. Upon motion of the prosecutor, and subject to constitutional limitation, the court in which an indictment, superior court information, prosecutor's information, information, or simplified information charging a misdemeanor is pending: (a) must order discovery as to any property not disclosed upon a demand pursuant to section 240.30 of this article, if it finds that the defendant's refusal to disclose such material is not justified; and (b) may order the defendant to provide non-testimonial evidence. Such order may, among other things, require the defendant to:

(i) Appear in a line-up;

(ii) Speak for identification by witness or potential witness;

(iii) Be fingerprinted;

(iv) Pose for photographs not involving reenactment of an event;

(v) Permit the taking of samples of blood, hair or other materials from his or her body in a manner not involving an unreasonable intrusion thereof or a risk of serious physical injury thereto;

(vi) Provide specimens of his or her handwriting;

(vii) Submit to a reasonable physical or medical inspection of his or her body.

This subdivision shall not be construed to limit, expand, or otherwise affect the issuance of a similar court order, as may be authorized by law, before the filing of an accusatory instrument consistent with such rights as the defendant may derive from the constitution of this state or of the United States. This section shall not be construed to limit or otherwise affect the administration of a chemical test where otherwise authorized pursuant to section one thousand one hundred ninety-four-a of the vehicle and traffic law.

3. An order pursuant to this section may be denied, limited or conditioned as provided in section 240.50 of this article.

§ 240.44 Upon pre-trial hearing.

Subject to a protective order, at a pre-trial hearing held in a criminal court at which a witness is called to testify, each party, prior to the commencement of the direct examination of each of its witnesses, shall, upon request of the other party, make available to that party to the extent not previously disclosed:

1. Any written or recorded statement, including any testimony before a grand jury, made by such witness other than the defendant which relates to the subject matter of the witness's testimony.

2. A record of a judgment of conviction of such witness other than the defendant if the record of conviction is known by the prosecutor or defendant, as the case may be, to exist.

3. The existence of any pending criminal action against such witness other than the defendant if the pending criminal action is known by the prosecutor or defendant, as the case may be, to exist.

§ 240.45 Upon trial, of prior statements and criminal history of witnesses.

1. After the jury has been sworn and before the prosecutor's opening address, or in the case of a single judge trial after commencement and before submission of evidence, the prosecutor shall, subject to a protective order, make available to the defendant:

(a) Any written or recorded statement, including any testimony before a grand jury and an examination videotaped pursuant to section 190.32 of

this part, made by a person whom the prosecutor intends to call as a witness at trial, and which relates to the subject matter of the witness's testimony;

(b) A record of judgment of conviction of a witness the people intend to call at trial if the record of conviction is known by the prosecutor to exist;

(c) The existence of any pending criminal action against a witness the people intend to call at trial, if the pending criminal action is known by the prosecutor to exist.

The provisions of paragraphs (b) and (c) of this subdivision shall not be construed to require the prosecutor to fingerprint a witness or otherwise cause the division of criminal justice services or other law enforcement agency or court to issue a report concerning a witness.

2. After presentation of the people's direct case and before the presentation of the defendant's direct case, the defendant shall, subject to a protective order, make available to the prosecutor:

(a) any written or recorded statement made by a person other than the defendant whom the defendant intends to call as a witness at the trial, and which relates to the subject matter of the witness's testimony;

(b) a record of judgment of conviction of a witness, other than the defendant, the defendant intends to call at trial if the record of conviction is known by the defendant to exist;

(c) the existence of any pending criminal action against a witness, other than the defendant, the defendant intends to call at trial, if the pending criminal action is known by the defendant to exist.

§ 240.50 Protective orders.

1. The court in which the criminal action is pending may, upon motion of either party, or of any affected person, or upon determination of a motion of either party for an order of discovery, or upon its own initiative, issue a protective order denying, limiting, conditioning, delaying or regulating discovery pursuant to this article for good cause, including constitutional limitations, danger to the integrity of physical evidence or a substantial risk of physical harm, intimidation, economic reprisal, bribery or unjustified annoyance or embarrassment to any person or an adverse effect upon the legitimate needs of law enforcement, including the protection of the confidentiality of informants, or any other factor or set of factors which outweighs the usefulness of the discovery.

2. An order limiting, conditioning, delaying or regulating discovery may, among other things, require that any material copied or derived therefrom be maintained in the exclusive possession of the attorney for the discovering party and be used for the exclusive purpose of preparing for the defense or prosecution of the criminal action.

3. A motion for a protective order shall suspend discovery of the particular matter in dispute.

4. Notwithstanding any other provision of this article, the personal residence address of a police officer or correction officer shall not be required to be disclosed except pursuant to an order issued by a court following a finding of good cause.

§ 240.60 Continuing duty to disclose.

If, after complying with the provisions of this article or an order pursuant thereto, a party finds, either before or during trial, additional material subject to discovery or covered by such order, he or she shall promptly comply with the demand or order, refuse to comply with the demand where refusal is authorized, or apply for a protective order.

§ 240.70 Sanctions; fees.

1. If, during the course of discovery proceedings, the court finds that a party has failed to comply with any of the provisions of this article, the court may order such party to permit discovery of the property not previously disclosed, grant a continuance, issue a protective order, prohibit the introduction of certain evidence or the calling of certain witnesses or take any other appropriate action.

2. The failure of the prosecution to call as a witness a person specified in subdivision one of section 240.20 of this article or of any party to introduce disclosed material at the trial shall not, by itself, constitute grounds for any sanction or for adverse comment thereupon by any party in summation to the jury or at any other point.

3. A fee for copies of records required to be disclosed may be charged. Such fee shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.

§ 240.75 Certain violations.

The failure of the prosecutor or any agent of the prosecutor to disclose statements that are required to be disclosed under subdivision one of section 240.44 of this article or paragraph (a) of subdivision one of section 240.45 of this article shall not constitute grounds for any court to order a new pre-trial hearing or set aside a conviction, or reverse, modify or vacate a judgment of conviction in the absence of a showing by the defendant that there is a reasonable possibility that the non-disclosure materially contributed to the result of the trial or other proceeding; provided, however, that nothing in this section shall affect or limit any right the defendant may have to a re-opened pre-trial hearing when such statements were disclosed before the close of evidence at trial.

§ 240.80 When demand, refusal and compliance made.

1. A demand to produce shall be made within thirty days after arraignment and before the commencement of trial. If the defendant is not represented by counsel, and has requested an adjournment to obtain counsel or to have counsel assigned, the thirty-day period shall commence, for purposes of a demand by the defendant, on the date counsel initially appears on his or her behalf. However, the court may direct compliance with a demand to produce that, for good cause shown, could not have been made within the time specified.

2. A refusal to comply with a demand to produce shall be made within fifteen days of the service of the demand to produce, but for good cause may be made thereafter.

3. Absent a refusal to comply with a demand to produce, compliance with such demand shall be made within fifteen days of the service of the demand or as soon thereafter as practicable.

§ 240.90 Motion procedure.

1. A motion by a prosecutor for discovery shall be made within forty-five days after arraignment, but for good cause shown may be made at any time before commencement of trial.

2. A motion by a defendant for discovery shall be made as prescribed in section 255.20 of this title.

3. Where the interests of justice so require, the court may permit a party to a motion for an order of discovery or a protective order, or other affected person, to submit papers or to testify ex parte or in camera. Any such papers and transcript of such testimony shall be sealed, but shall constitute a part of the record on appeal.

§ 32. Subdivision 9 of section 65.20 of the criminal procedure law, as amended by section 4 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

9. (a) Prior to the commencement of the hearing conducted pursuant to subdivision six of this section, the district attorney shall, subject to a protective order, comply with the provisions of subdivision one of section [~~245.20~~] 240.45 of this chapter as they concern any witness whom the district attorney intends to call at the hearing and the child witness.

(b) Before a defendant calls a witness at such hearing, he or she must, subject to a protective order, comply with the provisions of subdivision [~~four~~] two of section [~~245.20~~] 240.45 of this chapter as they concern all the witnesses the defendant intends to call at such hearing.

§ 33. Subdivision 5 of section 200.95 of the criminal procedure law, as amended by section 5 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

5. Court ordered bill of particulars. Where a prosecutor has timely served a written refusal pursuant to subdivision four of this section and upon motion, made in writing, of a defendant, who has made a request for a bill of particulars and whose request has not been complied with in whole or in part, the court must, to the extent a protective order is not warranted, order the prosecutor to comply with the request if it is satisfied that the items of factual information requested are authorized to be included in a bill of particulars, and that such information is necessary to enable the defendant adequately to prepare or conduct his or her defense and, if the request was untimely, a finding of good cause for the delay. Where a prosecutor has not timely served a written refusal pursuant to subdivision four of this section the court must, unless it is satisfied that the people have shown good cause why such an order should not be issued, issue an order requiring the prosecutor to comply or providing for any other order authorized by [~~section 245.80 of this part~~] subdivision one of section 240.70 of this part.

§ 34. Paragraph (c) of subdivision 1 of section 255.10 of the criminal procedure law, as amended by section 6 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

(c) granting discovery pursuant to article [~~245~~]two hundred forty; or

§ 35. Subdivision 1 of section 255.20 of the criminal procedure law, as amended by section 7 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

1. Except as otherwise expressly provided by law, whether the defendant is represented by counsel or elects to proceed pro se, all pre-trial motions shall be served or filed within forty-five days after arraignment and before commencement of trial, or within such additional time as the court may fix upon application of the defendant made prior to entry of judgment. In an action in which [~~either (a) material or information has been disclosed pursuant to paragraph (m) or (n) of subdivision one of section 245.20 of this title, (b)~~] an eavesdropping warrant and application have been furnished pursuant to section 700.70 of this chapter, or [~~(c)~~] a notice of intention to introduce evidence has been served pursuant to section 710.30 of this chapter, such period shall be extended until forty-five days after the last date of such service. If the defendant is not represented by counsel and has requested an adjournment to obtain counsel or to have counsel assigned, such forty-five day period shall commence on the date counsel initially appears on defendant's behalf.

§ 36. Section 340.30 of the criminal procedure law, as amended by section 8 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

§ 340.30 Pre-trial discovery and notices of defenses.

The provisions of article two hundred [~~forty-five~~] forty of this part, concerning pre-trial discovery by a defendant under indictment in a superior court, and article two hundred fifty of this part, concerning pre-trial notice to the people by a defendant under indictment in a superior court who intends to advance a trial defense of mental disease or defect or of alibi, apply to a prosecution of an information in a local criminal court.

§ 37. Subdivision 14 of section 400.27 of the criminal procedure law, as amended by section 9 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

14. (a) At a reasonable time prior to the sentencing proceeding or a [~~mental retardation~~] competency hearing:

(i) the prosecutor shall, unless previously disclosed and subject to a protective order, make available to the defendant the statements and information specified in subdivision one of section [~~245.20~~] 240.45 of this part and make available for inspection, photographing, copying or testing the property specified in subdivision one of section [~~245.20~~] 240.20 of this part; and

(ii) the defendant shall, unless previously disclosed and subject to a protective order, make available to the prosecution the statements and information specified in subdivision [~~four~~] two of section [~~245.20~~] 240.20 of this part and make available for inspection, photographing, copying or testing, subject to constitutional limitations, the reports, documents and other property specified in [~~section 245.20~~] subdivision one of section 240.30 of this part.

(b) Where a party refuses to make disclosure pursuant to this section, the provisions of [~~section 245.70, 245.75 and/or 245.80~~] sections 240.35, 240.40 and 240.50 of this part shall apply.

(c) If, after complying with the provisions of this section or an order pursuant thereto, a party finds either before or during a sentencing proceeding or [~~mental retardation~~] competency hearing, additional material subject to discovery or covered by court order, the party shall promptly make disclosure or apply for a protective order.

(d) If the court finds that a party has failed to comply with any of the provisions of this section, the court may [~~employ~~] enter any of the [~~remedies or sanctions~~] orders specified in subdivision one of section [~~245.80~~] 240.70 of this part.

§ 38. The opening paragraph of paragraph (b) of subdivision 1 of section 440.30 of the criminal procedure law, as amended by section 10 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

In conjunction with the filing or consideration of a motion to vacate a judgment pursuant to section 440.10 of this article by a defendant convicted after a trial, in cases where the court has ordered an evidentiary hearing upon such motion, the court may order that the people produce or make available for inspection property, as defined in subdivision three of section 240.10 of this part, in its possession, custody, or control that was secured in connection with the investigation or prosecution of the defendant upon credible allegations by the defendant and a finding by the court that such property, if obtained, would be probative to the determination of defendant's actual innocence, and that the request is reasonable. The court shall deny or limit such a request

upon a finding that such a request, if granted, would threaten the integrity or chain of custody of property or the integrity of the processes or functions of a laboratory conducting DNA testing, pose a risk of harm, intimidation, embarrassment, reprisal, or other substantially negative consequences to any person, undermine the proper functions of law enforcement including the confidentiality of informants, or on the basis of any other factor identified by the court in the interests of justice or public safety. The court shall further ensure that any property produced pursuant to this paragraph is subject to a protective order, where appropriate. The court shall deny any request made pursuant to this paragraph where:

§ 39. Subdivision 3 of section 610.20 of the criminal procedure law, as amended by section 3 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

3. An attorney for a defendant in a criminal action or proceeding, as an officer of a criminal court, may issue a subpoena of such court, subscribed by himself **or herself**, for the attendance in such court of any witness whom the defendant is entitled to call in such action or proceeding. An attorney for a defendant may not issue a subpoena duces tecum of the court directed to any department, bureau or agency of the state or of a political subdivision thereof, or to any officer or representative thereof[~~, unless the subpoena is indorsed by the court and provides at least three days for the production of the requested materials. In the case of an emergency, the court may by order dispense with the three-day production period~~]. **Such a subpoena duces tecum may be issued in behalf of a defendant upon order of a court pursuant to the rules applicable to civil cases as provided in section twenty-three hundred seven of the civil practice law and rules.**

§ 40. Subdivision 4 of section 610.20 of the criminal procedure law is REPEALED.

§ 41. Subdivision 10 of section 450.10 of the penal law, as amended by section 11 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

10. Where there has been a failure to comply with the provisions of this section, and where the district attorney does not demonstrate to the satisfaction of the court that such failure has not caused the defendant prejudice, the court shall instruct the jury that it may consider such failure in determining the weight to be given such evidence and may also impose any other sanction set forth in subdivision one of section [~~245.80~~] **240.70** of the criminal procedure law; provided, however, that unless the defendant has convinced the court that such failure has caused him **or her** undue prejudice, the court shall not preclude the district attorney from introducing into evidence the property, photographs, photocopies, or other reproductions of the property or, where appropriate, testimony concerning its value and condition, where such evidence is otherwise properly authenticated and admissible under the rules of evidence. Failure to comply with any one or more of the provisions of this section shall not for that reason alone be grounds for dismissal of the accusatory instrument.

§ 42. Section 460.80 of the penal law, as amended by section 12 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

§ 460.80 Court ordered disclosure.

Notwithstanding the provisions of article two hundred [~~forty-five~~] **forty** of the criminal procedure law, when forfeiture is sought pursuant to section 460.30 of this article, the court may order discovery of any

property not otherwise disclosed which is material and reasonably necessary for preparation by the defendant with respect to the forfeiture proceeding pursuant to such section. The court may issue a protective order denying, limiting, conditioning, delaying or regulating such discovery where a danger to the integrity of physical evidence or a substantial risk of physical harm, intimidation, economic reprisal, bribery or unjustified annoyance or embarrassment to any person or an adverse effect upon the legitimate needs of law enforcement, including the protection of the confidentiality of informants, or any other factor or set of factors outweighs the usefulness of the discovery.

§ 43. Subdivision 5 of section 480.10 of the penal law, as amended by section 13 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

5. In addition to information required to be disclosed pursuant to article two hundred [~~forty-five~~] **forty** of the criminal procedure law, when forfeiture is sought pursuant to this article, and following the defendant's arraignment on the special forfeiture information, the court shall order discovery of any information not otherwise disclosed which is material and reasonably necessary for preparation by the defendant with respect to a forfeiture proceeding brought pursuant to this article. Such material shall include those portions of the grand jury minutes and such other information which pertain solely to the special forfeiture information and shall not include information which pertains to the criminal charges. Upon application of the prosecutor, the court may issue a protective order pursuant to section [~~245.70~~] **240.40** of the criminal procedure law with respect to any information required to be disclosed pursuant to this subdivision.

§ 44. Subdivision 5 of section 216 of the judiciary law is REPEALED.

§ 45. Section 837-u of the executive law is REPEALED.

§ 46. This act shall take effect immediately; provided, however, that the amendments to subdivision 9 of section 65.20 of the criminal procedure law made by section thirty-two of this act shall not affect the repeal of such section and shall be deemed repealed therewith.