

STATE OF NEW YORK

9110

IN SENATE

April 26, 2024

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

AN ACT to amend the criminal procedure law and the judiciary law, in relation to determination of appeals

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

1 Section 1. Subdivision 1 of section 470.05 of the criminal procedure
2 law is amended to read as follows:

3 1. (a) An appellate court must determine an appeal without regard to
4 technical errors or defects which do not affect the substantial rights
5 of the parties.

6 (b) When an appellate court considers errors which require a showing
7 of harm to the proceedings, the burden is on the party claiming harm-
8 lessness to show that the error was harmless beyond a reasonable doubt.

9 § 2. Section 470.15 of the criminal procedure law is amended by adding
10 two new subdivisions 7 and 8 to read as follows:

11 7. The court shall consider all errors or defects in the interest of
12 justice, even if they were not duly protested at trial as prescribed in
13 subdivision two of section 470.05 of this article so as to present a
14 question of law, where a defendant asserts that such failure to protest
15 is the result of ineffective assistance of counsel or where an error or
16 defect may have contributed to a jury verdict.

17 8. Where an appellate court considers an error or defect and deems it
18 to be technical and not affecting the substantial rights of the parties
19 as provided in subdivision one of section 470.05 of this article, it
20 shall record the race, ethnicity, national origin, age, and gender iden-
21 tity of the appellant. Such information shall then be included in the
22 annual report submitted to the legislature and governor pursuant to
23 paragraph (j) of subdivision one of section two hundred twelve of the
24 judiciary law, in a manner consistent with the provisions of paragraph
25 (ff) of subdivision two of such section.

26 § 3. Subdivision 2 of section 212 of the judiciary law is amended by
27 adding a new paragraph (ff) to read as follows:

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

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1 (ff) The chief administrator shall include the information required to
2 be recorded in subdivision eight of section 470.15 of the criminal
3 procedure law, both across all appellate courts and disaggregated by
4 county, in the annual report submitted to the legislature and the gover-
5 nor pursuant to paragraph (j) of subdivision one of this section. The
6 chief administrator shall also make such information available to the
7 public by posting it on the website of the office of court adminis-
8 tration and shall update such information on a yearly basis. The infor-
9 mation shall be posted in alphanumeric form that can be digitally trans-
10 mitted or processed and not in portable document format or scanned
11 copies of original documents.

12 § 4. This act shall take effect immediately and shall apply to all
13 appeals pending as of such effective date and to all appeals filed on
14 and after such date.