# 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:**

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

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

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

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

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

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

§ 3. Subdivision 2 of section 212 of the judiciary law is amended by 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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**(ff) The chief administrator shall include the information required to be recorded in subdivision eight of section 470.15 of the criminal procedure law, both across all appellate courts and disaggregated by county, in the annual report submitted to the legislature and the governor pursuant to paragraph (j) of subdivision one of this section. The chief administrator shall also make such information available to the public by posting it on the website of the office of court administration and shall update such information on a yearly basis. The information shall be posted in alphanumeric form that can be digitally transmitted or processed and not in portable document format or scanned copies of original documents.**

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