§ 460.10 Appeal; how taken.

1. Except as provided in subdivisions two and three, an appeal taken as of right to an intermediate appellate court or directly to the court of appeals from a judgment, sentence or order of a criminal court is taken as follows:

(a) A party seeking to appeal from a judgment or a sentence or an order and sentence included within such judgment, or from a resentence, or from an order of a criminal court not included in a judgment, must, within thirty days after imposition of the sentence or, as the case may be, within thirty days after service upon such party of a copy of an order not included in a judgment, file with the clerk of the criminal court in which such sentence was imposed or in which such order was entered a written notice of appeal, in duplicate, stating that such party appeals therefrom to a designated appellate court.

(b) If the defendant is the appellant, he must, within such thirty day period, serve a copy of such notice of appeal upon the district attorney of the county embracing the criminal court in which the judgment or order being appealed was entered. If the appeal is directly to the court of appeals, the district attorney, following such service upon him, must immediately give written notice thereof to the public servant having custody of the defendant.

(c) If the people are the appellant, they must, within such thirty day period, serve a copy of such notice of appeal upon the defendant or upon the attorney who last appeared for him in the court in which the order being appealed was entered.

(d) Upon filing and service of the notice of appeal as prescribed in paragraphs (a), (b) and (c), the appeal is deemed to have been taken.

(e) Following the filing with him of the notice of appeal in duplicate, the clerk of the court in which the judgment, sentence or order being appealed was entered or imposed, must endorse upon such instruments the filing date and must transmit the duplicate notice of appeal to the clerk of the court to which the appeal is being taken.

2. An appeal taken as of right to a county court or to an appellate term of the supreme court from a judgment, sentence or order of a local criminal court in a case in which the underlying proceedings were

recorded by a court stenographer is taken in the manner provided in subdivision one; except that where no clerk is employed by such local criminal court the appellant must file the notice of appeal with the judge of such court, and must further file a copy thereof with the clerk of the appellate court to which the appeal is being taken.

3. An appeal taken as of right to a county court or to an appellate term of the supreme court from a judgment, sentence or order of a local criminal court in a case in which the underlying proceedings were not recorded by a court stenographer is taken as follows:

(a) Within thirty days after entry or imposition in such local criminal court of the judgment, sentence or order being appealed, the appellant must file with such court either (i) an affidavit of errors, setting forth alleged errors or defects in the proceedings which are the subjects of the appeal, or (ii) a notice of appeal. Where a notice of appeal is filed, the appellant must serve a copy thereof upon the respondent in the manner provided in paragraphs (b) and (c) of subdivision one, and, within sixty days after the appellant receives a transcript of the electronically recorded proceedings, must file with such court an affidavit of errors.

(b) Not more than three days after the filing of the affidavit of errors, the appellant must serve a copy thereof upon the respondent or the respondent's counsel or authorized representative. If the defendant is the appellant, such service must be upon the district attorney of the county in which the local criminal court is located. If the people are the appellant, such service must be upon the defendant or upon the attorney who appeared for him in the proceedings in the local criminal court.

(c) Upon filing and service of the affidavit of errors as prescribed in paragraphs (a) and (b), the appeal is deemed to have been taken.

(d) Within ten days after the appellant's filing of the affidavit of errors with the local criminal court, such court must file with the clerk of the appellate court to which the appeal has been taken both the affidavit of errors and the court's return, and must deliver a copy of such return to each party or a representative thereof as indicated in paragraph (b). The court's return must set forth or summarize evidence, facts or occurrences in or adduced at the proceedings resulting in the

judgment, sentence or order, which constitute the factual foundation for the contentions alleged in the affidavit of errors.

(e) If the local criminal court does not file such return within the prescribed period, or if it files a defective return, the appellate court, upon application of the appellant, must order such local criminal court to file a return or an amended return, as the case may be, within a designated time which such appellate court deems reasonable.

4. An appeal by a defendant to an intermediate appellate court by permission, pursuant to section 450.15, is taken as follows:

(a) Within thirty days after service upon the defendant of a copy of the order sought to be appealed, the defendant must make application, pursuant to section 460.15, for a certificate granting leave to appeal to the intermediate appellate court.

(b) If such application is granted and such certificate is issued, the defendant, within fifteen days after issuance thereof, must file with the criminal court in which the order sought to be appealed was rendered the certificate granting leave to appeal together with a written notice of appeal, or if the appeal is from a local criminal court in a case in which the underlying proceedings were not recorded by a court stenographer, either (i) an affidavit of errors, or (ii) a notice of appeal. In all other respects the appeal shall be taken as provided in subdivisions one, two and three.

5. An appeal to the court of appeals from an order of an intermediate appellate court is taken as follows:

(a) Within thirty days after service upon the appellant of a copy of the order sought to be appealed, the appellant must make application, pursuant to section 460.20, for a certificate granting leave to appeal to the court of appeals. The appellate division of each judicial department shall adopt rules governing the procedures for service of a copy of such order.

(b) If such application is granted, the issuance of the certificate granting leave to appeal shall constitute the taking of the appeal.

6. Where a notice of appeal, an affidavit of errors, an application for leave to appeal to an intermediate appellate court, or an

application for leave to appeal to the court of appeals is premature or contains an inaccurate description of the judgment, sentence or order being or sought to be appealed, the appellate court, in its discretion, may, in the interest of justice, treat such instrument as valid. Where an appellant files a notice of appeal within the prescribed period but, through mistake, inadvertence or excusable neglect, omits to serve a copy thereof upon the respondent within the prescribed period, the appellate court to which the appeal is sought to be taken may, in its discretion and for good cause shown, permit such service to be made within a designated period of time, and upon such service the appeal is deemed to be taken.