§ 460.40 Effect of taking of appeal upon judgment or order of courts below; when stayed.

1. The taking of an appeal by the defendant directly to the court of appeals, pursuant to subdivision one of section 450.70, from a superior court judgment including a sentence of death stays the execution of such sentence. Except as provided in subdivision two of this section, in no other case does the taking of an appeal, by either party, in and of itself stay the execution of any judgment, sentence or order of either a criminal court or an intermediate appellate court.

2. The taking of an appeal by the people to an intermediate appellate court pursuant to subdivision one-a of section 450.20, from an order reducing a count or counts of an indictment or dismissing an indictment and directing the filing of a prosecutor's information, stays the effect of such order. In addition, the taking of an appeal by the people to an intermediate appellate court pursuant to subdivision one of section 450.20, from an order dismissing a count or counts of an indictment charging murder in the first degree, stays the effect of such order.

3. Within six months of the effective date of this subdivision, the court of appeals shall adopt rules to ensure that a defendant is granted a stay of the execution of any death warrant issued pursuant to article twenty-two-B of the correction law to allow the defendant an opportunity to prepare and timely file an initial motion pursuant to section 440.10 or 440.20 seeking to set aside a sentence of death or vacate a judgment including a sentence of death and to allow the motion and any appeal from the denial thereof to be timely determined. The rules shall provide that in the event a defendant seeks to file any subsequent motion with respect to the judgment or sentence following a final determination of the defendant's initial motion pursuant to section 440.10 or 440.20, a motion for a stay of the execution of the death warrant may only be granted for good cause shown. The people and the defendant shall have a right to appeal to the court of appeals from orders granting or denying such stay motions and any rules adopted pursuant to this subdivision shall provide that the court of appeals may affirm such orders, reverse them or modify them upon such terms as the court deems appropriate and

shall provide for the expeditious perfection and determination of such appeals. Prior to adoption of the rules, the court of appeals shall issue proposed rules and receive written comments thereon from interested parties.