§ 460.50 Stay of judgment pending appeal to intermediate appellate court.

1. Upon application of a defendant who has taken an appeal to an intermediate appellate court from a judgment or from a sentence of a criminal court, a judge designated in subdivision two may issue an order both (a) staying or suspending the execution of the judgment pending the determination of the appeal, and (b) either releasing the defendant on his own recognizance or fixing bail pursuant to the provisions of article five hundred thirty. That phase of the order staying or suspending execution of the judgment does not become effective unless and until the defendant is released, either on his own recognizance or upon the posting of bail.

2. An order as prescribed in subdivision one may be issued by the following judges in the indicated situations:

(a) If the appeal is to the appellate division from a judgment or a sentence of either the supreme court or the New York City criminal court, such order may be issued by (i) a justice of the appellate division of the department in which the judgment was entered, or (ii) a justice of the supreme court of the judicial district embracing the county in which the judgment was entered;

(b) If the appeal is to the appellate division from a judgment or a sentence of a county court, such order may be issued by (i) a justice of such appellate division, or (ii) a justice of the supreme court of the judicial district embracing the county in which the judgment was entered, or (iii) a judge of such county court;

(c) If the appeal is to an appellate term of the supreme court from a judgment or sentence of the New York City criminal court, such order may be issued by a justice of the supreme court of the judicial district embracing the county in which the judgment was entered;

(d) With respect to appeals to county courts from judgments or sentences of local criminal courts, and with respect to appeals to appellate terms of the supreme court from judgments or sentences of any criminal courts located outside of New York City, the judges who may issue such orders in any particular situation are determined by rules of the appellate division of the department embracing the appellate court

to which the appeal has been taken.

3. An application for an order specified in this section must be made upon reasonable notice to the people, and the people must be accorded adequate opportunity to appear in opposition thereto. Not more than one application may be made pursuant to this section.

4. Notwithstanding the provisions of subdivision one, if within one hundred twenty days after the issuance of such an order the appeal has not been brought to argument in or submitted to the intermediate appellate court, the operation of such order terminates and the defendant must surrender himself to the criminal court in which the judgment was entered in order that execution of the judgment be commenced or resumed; except that this subdivision does not apply where the intermediate appellate court has (a) extended the time for argument or submission of the appeal to a date beyond the specified period of one hundred twenty days, and (b) upon application of the defendant, expressly ordered that the operation of the order continue until the date of the determination of the appeal or some other designated future date or occurrence.

5. Where the defendant is at liberty during the pendency of an appeal as a result of an order issued pursuant to this section, the intermediate appellate court, upon affirmance of the judgment, must by appropriate certificate remit the case to the criminal court in which such judgment was entered. The criminal court must, upon at least two days notice to the defendant, his surety and his attorney, promptly direct the defendant to surrender himself to the criminal court in order that execution of the judgment be commenced or resumed, and if necessary the criminal court may issue a bench warrant to secure his appearance.

6. Upon application of a defendant who has been granted a certificate granting leave to appeal pursuant to section 460.15 of this chapter, and in accordance with the procedures set forth in subdivisions three, four and five of this section, the intermediate appellate court may issue an order both (a) staying or suspending the execution of the judgment pending the determination of the appeal, and (b) either releasing the

defendant on his own recognizance or fixing bail pursuant to the provisions of article five hundred thirty. That phase of the order staying or suspending execution of the judgment does not become effective unless and until the defendant is released, either on his own recognizance or upon the posting of bail.