§ 460.60 Stay of judgment pending appeal to court of appeals from intermediate appellate court.

1. (a) A judge who, pursuant to section 460.20 of this chapter, has received an application for a certificate granting a defendant leave to appeal to the court of appeals from an order of an intermediate appellate court affirming or modifying a judgment including a sentence of imprisonment, a sentence of imprisonment, or an order appealed pursuant to section 450.15 of this chapter, of a criminal court, may, upon application of such defendant-appellant issue an order both (i) staying or suspending the execution of the judgment pending the determination of the application for leave to appeal, and, if that application is granted, staying or suspending the execution of the judgment pending the determination of the appeal, and (ii) either releasing the defendant on his own recognizance or continuing bail as previously determined or fixing bail pursuant to the provisions of article five hundred thirty. Such an order is effective immediately and 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.

(b) If the application for leave to appeal is denied, the stay or suspension pending the application automatically terminates upon the signing of the certificate denying leave. Upon such termination, the certificate denying leave must be sent to the criminal court in which the original judgment was entered, and the latter must proceed in the manner provided in subdivision five of section 460.50 of this chapter.

2. An application pursuant to subdivision one must be made upon reasonable notice to the people, and the people must be accorded adequate opportunity to appear in opposition thereto. Such an application may be made immediately after the entry of the order sought to be appealed or at any subsequent time during the pendency of the appeal. Not more than one application may be made pursuant to this section.

3. Notwithstanding the provisions of subdivision one, if within one hundred twenty days after the issuance of a certificate granting leave

to appeal, the appeal or prospective appeal has not been brought to argument in or submitted to the court of appeals, the operation of an order issued pursuant to subdivision one of this section terminates and the defendant must surrender himself to the criminal court in which the original judgment was entered in order that execution of such judgment be commenced or resumed; except that this subdivision does not apply where the court of appeals 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 such order continue until the date of the determination of the appeal or some other designated future date or occurrence.

4. Where the defendant is at liberty during the pendency of an appeal as a result of an order issued pursuant to this section, the court of appeals upon affirmance of the judgment or order, must, by appropriate certificate, remit the case to the criminal court in which the judgment was entered, and the latter must proceed in the manner provided in subdivision five of section 460.50 of this chapter.