§ 530.60 Certain modifications of a securing order.

1. Whenever in the course of a criminal action or proceeding a defendant is at liberty as a result of an order of recognizance, release under non-monetary conditions or bail issued pursuant to this chapter, and the court considers it necessary to review such order, whether due to a motion by the people or otherwise, the court may, and except as provided in subdivision two of section 510.50 of this title concerning a failure to appear in court, by a bench warrant if necessary, require the defendant to appear before the court. Upon such appearance, the court, for good cause shown, may revoke the order of recognizance, release under non-monetary conditions, or bail. If the defendant is entitled to recognizance, release under non-monetary conditions, or bail as a matter of right, the court must issue another such order. If the defendant is not, the court may either issue such an order or commit the defendant to the custody of the sheriff in accordance with this section.

Where the defendant is committed to the custody of the sheriff and is held on a felony complaint, a new period as provided in section 180.80 of this chapter shall commence to run from the time of the defendant's commitment under this subdivision.

2. (a) Whenever in the course of a criminal action or proceeding a defendant charged with the commission of a felony is at liberty as a result of an order of recognizance, release under non-monetary conditions or bail issued pursuant to this article it shall be grounds for revoking such order that the court finds reasonable cause to believe the defendant committed one or more specified class A or violent felony offenses or intimidated a victim or witness in violation of section 215.15, 215.16 or 215.17 of the penal law while at liberty.

(b) Except as provided in paragraph (a) of this subdivision or any other law, whenever in the course of a criminal action or proceeding a defendant charged with the commission of an offense is at liberty as a result of a securing order issued pursuant to this article it shall be grounds for revoking such order and imposing a new securing order in accordance with paragraph (d) of this subdivision, the basis for which shall be made on the record or in writing, in such criminal action or

proceeding when the court has found, by clear and convincing evidence, that the defendant:

(i) persistently and willfully failed to appear after notice of scheduled appearances in the case before the court; or

(ii) violated an order of protection in the manner prohibited by subdivision (b), (c) or (d) of section 215.51 of the penal law while at liberty; or

(iii) stands charged in such criminal action or proceeding with a misdemeanor or violation and, after being so charged, intimidated a victim or witness in violation of section 215.15, 215.16 or 215.17 of the penal law or tampered with a witness in violation of section 215.11, 215.12 or 215.13 of the penal law, law while at liberty; or

(iv) stands charged in such action or proceeding with a felony and, after being so charged, committed a felony while at liberty.

(c) Before revoking an order of recognizance, release under non-monetary conditions, or bail pursuant to this subdivision, the court must hold a hearing and shall receive any relevant, admissible evidence not legally privileged. The defendant may cross-examine witnesses and may present relevant, admissible evidence on his own behalf. Such hearing may be consolidated with, and conducted at the same time as, a felony hearing conducted pursuant to article one hundred eighty of this chapter. A transcript of testimony taken before the grand jury upon presentation of the subsequent offense shall be admissible as evidence during the hearing. The district attorney may move to introduce grand jury testimony of a witness in lieu of that witness' appearance at the hearing.

(d) Revocation of an order of recognizance, release under non-monetary conditions or bail and a new securing order fixing bail or commitment, as specified in this paragraph and pursuant to this subdivision shall be for the following periods:

(i) Under paragraph (a) of this subdivision, revocation of the order of recognizance, release under non-monetary conditions or, as the case may be, bail, and a new securing order fixing bail or committing the defendant to the custody of the sheriff shall be as follows:

(A) For a period not to exceed ninety days exclusive of any periods of adjournment requested by the defendant; or

(B) Until the charges contained within the accusatory instrument have

been reduced or dismissed such that no count remains which charges the defendant with commission of a felony; or

(C) Until reduction or dismissal of the charges contained within the accusatory instrument charging the subsequent offense such that no count remains which charges the defendant with commission of a class A or violent felony offense.

Upon expiration of any of the three periods specified within this subparagraph, whichever is shortest, the court may grant or deny release upon an order of bail or recognizance in accordance with the provisions of this article. Upon conviction to an offense the provisions of article five hundred thirty of this chapter shall apply;

(ii) Under subparagraph (i) of paragraph (b) of this subdivision, revocation of a previously issued securing order shall result in the issuance of a new securing order which may, if otherwise authorized by law, permit the principal's release on recognizance or release under non-monetary conditions, but shall also render the defendant eligible for an order fixing bail, or ordering non-monetary conditions in conjunction with fixing bail, provided, however, that in accordance with the principles in this title the court must impose a new securing order in accordance with subdivision one of section 510.10 of this title, and in imposing such order, may consider the circumstances warranting such revocation. Nothing in this subparagraph shall be interpreted as shortening the period of detention, or requiring or authorizing any less restrictive form of a securing order, which may be imposed pursuant to any other law; and

(iii) Under subparagraphs (ii), (iii), and (iv) of paragraph (b) of this subdivision, revocation of a previously issued securing order shall result in the issuance of a new securing order which may, if otherwise authorized by law, permit the principal's release on recognizance or release under non-monetary conditions, but shall also render the defendant eligible for an order fixing bail or ordering non-monetary conditions in conjunction with fixing bail. In issuing the new securing order, the court shall consider the kind and degree of control or restriction necessary to reasonably assure the principal's return to court and compliance with court conditions, and select a securing order consistent with its determination, taking into account the factors

required to be considered under subdivision one of section 510.10 of this title, the circumstances warranting such revocation, and the nature and extent of the principal's noncompliance with previously ordered non-monetary conditions of the securing order subject to revocation under this subdivision. Nothing in this subparagraph shall be interpreted as shortening the period of detention, or requiring or authorizing any less restrictive form of a securing order, which may be imposed pursuant to any other law.

(e) Notwithstanding the provisions of paragraph (a) or (b) of this subdivision a defendant, against whom a felony complaint has been filed which charges the defendant with commission of a class A or violent felony offense or violation of section 215.15, 215.16 or 215.17 of the penal law committed while he was at liberty as specified therein, may be committed to the custody of the sheriff pending a revocation hearing for a period not to exceed seventy-two hours. An additional period not to exceed seventy-two hours may be granted by the court upon application of the district attorney upon a showing of good cause or where the failure to commence the hearing was due to the defendant's request or occurred with his consent. Such good cause must consist of some compelling fact or circumstance which precluded conducting the hearing within the initial prescribed period.