The Constitutional and Statutory Provisions Relating to Bail in the State of New York

The staff at North Country Bail Bonds, LLC has compiled the applicable statute and constitutional amendments pertaining to bail which govern all New York State prosecutions. They are set forth below for the convenience of North Country Bail Bonds clients, their attorneys and the Courts handling their cases.

The Constitution of the United States of America

The Eighth Amendment to the United States Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The New York statutory law relating to pre-trial release, bail and bail bonds are contained in Articles 500, 510, 520 and 530 of the Criminal Procedure Law. These sections of law have been reproduced below by the staff at North Country Bail Bonds.

Criminal Procedure Law
Article 500 Recognizance, Bail and Commitment-Definition of Terms

Criminal Procedure Law §500.10 Recognizance, bail and commitment; definitions of terms

As used in this title, and in this chapter generally, the following terms have the following meanings:

1. "Principal" means a defendant in a criminal action or proceeding, or a person adjudged a material witness therein, or any other person so involved therein that he may by law be compelled to appear before a court for the purpose of having such court exercise control over his person to secure his future attendance at the action or proceeding when required, and who in fact either is before the court for such purpose or has been before it and been subjected to such control.
2. "Release on own recognizance." A court releases a principal on his own recognizance when, having acquired control over his person, it permits him to be at liberty during the pendency of the criminal action or proceeding involved upon condition that he will appear thereat whenever his attendance may be required and will at all times render himself amenable to the orders and processes of the court.
3. "Fix bail." A court fixes bail when, having acquired control over the person of a principal, it designates a sum of money and stipulates that, if bail in such amount is posted on behalf of the principal and approved, it will permit him to be at liberty during the pendency of the criminal action or proceeding involved.

4. “Commit to the custody of the sheriff.” A court commits a principal to the custody of the sheriff when, having acquired control over his person, it orders that he be confined in the custody of the sheriff during the pendency of the criminal action or proceeding involved.
5. “Securing order” means an order of a court committing a principal to the custody of the sheriff, or fixing bail, or releasing him on his own recognizance.
6. “Order of recognizance or bail” means a securing order releasing a principal on his own recognizance or fixing bail.
7. “Application for recognizance or bail” means an application by a principal that the court, instead of committing him to or retaining him in the custody of the sheriff, either release him on his own recognizance or fix bail.
8. “Post bail” means to deposit bail in the amount and form fixed by the court, with the court or with some other authorized public servant or agency.
9. “Bail” means cash bail or a bail bond.
10. “Cash bail” means a sum of money, in the amount designated in an order fixing bail, posted by a principal or by another person on his behalf with a court or other authorized public servant or agency, upon the condition that such money will become forfeit to the people of the state of New York if the principal does not comply with the directions of a court requiring his attendance at the criminal action or proceeding involved or does not otherwise render himself amenable to the orders and processes of the court.
11. “Obligor” means a person who executes a bail bond on behalf of a principal and thereby assumes the undertaking described therein. The principal himself may be an obligor.
12. “Surety” means an obligor who is not a principal.
13. “Bail bond” means a written undertaking, executed by one or more obligors, that the principal designated in such instrument will, while at liberty as a result of an order fixing bail and of the posting of the bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and processes of the court, and that in the event that he fails to do so the obligor or obligors will pay to the people of the state of New York a specified sum of money, in the amount designated in the order fixing bail.
14. “Appearance bond” means a bail bond in which the only obligor is the principal.
15. “Surety bond” means a bail bond in which the obligor or obligors consist of one or more sureties or of one or more sureties and the principal.
16. “Insurance company bail bond” means a surety bond, executed in the form prescribed by the superintendent of financial services, in which the surety-obligor is a corporation licensed by the superintendent of financial services to engage in the business of executing bail bonds.
17. “Secured bail bond” means a bail bond secured by either:
(a) Personal property which is not exempt from execution and which, over and above all liabilities and encumbrances, has a value equal to or greater than the total amount of the undertaking; or
(b) Real property having a value of at least twice the total amount of the undertaking. For purposes of this paragraph, value of real property is determined by either:
(i) dividing the last assessed value of such property by the last given equalization rate or in a special assessing unit, as defined in article eighteen of the real property tax law, the appropriate

class ratio established pursuant to section twelve hundred two of such law of the assessing municipality wherein the property is situated and by deducting from the resulting figure the total amount of any liens or other encumbrances upon such property; or
(ii) the value of the property as indicated in a certified appraisal report submitted by a state certified general real estate appraiser duly licensed by the department of state as provided in section one hundred sixty-j of the executive law, and by deducting from the appraised value the total amount of any liens or other encumbrances upon such property. A lien report issued by a title insurance company licensed under article sixty-four of the insurance law, that guarantees the correctness of a lien search conducted by it, shall be presumptive proof of liens upon the property.
18. "Partially secured bail bond" means a bail bond secured only by a deposit of a sum of money not exceeding ten percent of the total amount of the undertaking.
19. "Unsecured bail bond" means a bail bond, other than an insurance company bail bond, not secured by any deposit of or lien upon property.
20. "Court" includes, where appropriate, a judge authorized to act as described in a particular statute, though not as a court.

Criminal Procedure Law
Article 510 Recognizance, Bail and Commitment
Determination of Application for Recognizance or Bail

Criminal Procedure Law §510.10 Securing order; when required

When a principal, whose future court attendance at a criminal action or proceeding is or may be required, initially comes under the control of a court, such court must, by a securing order, either release him on his own recognizance, fix bail or commit him to the custody of the sheriff. When a securing order is revoked or otherwise terminated in the course of an uncompleted action or proceeding but the principal's future court attendance still is or may be required and he is still under the control of a court, a new securing order must be issued. When the court revokes or otherwise terminates a securing order which committed the principal to the custody of the sheriff, the court shall give written notification to the sheriff of such revocation or termination of the securing order.

Criminal Procedure Law §510.15 Commitment of principal under sixteen
1. When a principal who is under the age of sixteen is committed to the custody of the sheriff the court must direct that the principal be taken to and lodged in a place certified by the state division for youth as a juvenile detention facility for the reception of children. Where such a direction is made the sheriff shall deliver the principal in accordance therewith and such person shall although lodged and cared for in a juvenile detention facility continue to be deemed to be in the custody of the sheriff. No principal under the age of sixteen to whom the provisions of this section may apply shall be detained in any prison, jail, lockup, or other place used for adults

convicted of a crime or under arrest and charged with the commission of a crime without the approval of the state division for youth in the case of each principal and the statement of its reasons therefor. The sheriff shall not be liable for any acts done to or by such principal resulting from negligence in the detention of and care for such principal, when the principal is not in the actual custody of the sheriff.
2. Except upon consent of the defendant or for good cause shown, in any case in which a new securing order is issued for a principal previously committed to the custody of the sheriff pursuant to this section, such order shall further direct the sheriff to deliver the principal from a juvenile detention facility to the person or place specified in the order.

Criminal Procedure Law §510.20 Application for recognizance or bail; making and determination thereof in general

1. Upon any occasion when a court is required to issue a securing order with respect to a principal, or at any time when a principal is confined in the custody of the sheriff as a result of a previously issued securing order, he may make an application for recognizance or bail.
2. Upon such application, the principal must be accorded an opportunity to be heard and to contend that an order of recognizance or bail must or should issue, that the court should release him on his own recognizance rather than fix bail, and that if bail is fixed it should be in a suggested amount and form.

Criminal Procedure Law §510.30 Application for recognizance or bail; rules of law and criteria controlling determination

-

1. Determinations of applications for recognizance or bail are not in all cases discretionary but are subject to rules, prescribed in article five hundred thirty and other provisions of law relating to specific kinds of criminal actions and proceedings, providing (a) that in some circumstances such an application must as a matter of law be granted, (b) that in others it must as a matter of law be denied and the principal committed to or retained in the custody of the sheriff, and (c) that in others the granting or denial thereof is a matter of judicial discretion.

2. To the extent that the issuance of an order of recognizance or bail and the terms thereof are matters of discretion rather than of law, an application is determined on the basis of the following factors and criteria:

(a) With respect to any principal, the court must consider the kind and degree of control or restriction that is necessary to secure his court attendance when required. In determining that matter, the court must, on the basis of available information, consider and take into account:

(i) The principal's character, reputation, habits and mental condition;

(ii) His employment and financial resources; and

(iii) His family ties and the length of his residence if any in the community; and

(iv) His criminal record if any; and

(v) His record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.21 of the family court act, or, of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any; and

(vi) His previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution; and

(vii) Where the principal is charged with a crime or crimes against a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, the following factors:

(A) any violation by the principal of an order of protection issued by any court for the protection of a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, whether or not such order of protection is currently in effect; and

(B) the principal's history of use or possession of a firearm; and

(viii) If he is a defendant, the weight of the evidence against him in the pending criminal action and any other factor indicating probability or improbability of conviction; or, in the case of an application for bail or recognizance pending appeal, the merit or lack of merit of the appeal; and

(ix) If he is a defendant, the sentence which may be or has been imposed upon conviction.

(b) Where the principal is a defendant-appellant in a pending appeal from a judgment of conviction, the court must also consider the likelihood of ultimate reversal of the judgment. A determination that the appeal is palpably without merit alone justifies, but does not require, a denial of the application, regardless of any determination made with respect to the factors specified in paragraph (a).

3. When bail or recognizance is ordered, the court shall inform the principal, if he is a defendant charged with the commission of a felony, that the release is conditional and that the court may revoke the order of release and commit the principal to the custody of the sheriff in accordance with the provisions of subdivision two of section 530.60 of this chapter if he commits a subsequent felony while at liberty upon such order.

Criminal Procedure Law §510.40 Application for recognizance or bail; determination thereof, form of securing order and execution thereof

-

1. An application for recognizance or bail must be determined by a securing order which either:

(a) Grants the application and releases the principal on his own recognizance; or

(b) Grants the application and fixes bail; or

(c) Denies the application and commits the principal to, or retains him in, the custody of the sheriff.

2. Upon ordering that a principal be released on his own recognizance, the court must direct him to appear in the criminal action or proceeding involved whenever his attendance may be required and to render himself at all times amenable to the orders and processes of the court. If such principal is in the custody of the sheriff or at liberty upon bail at the time of the order, the court must direct that he be discharged from such custody or, as the case may be, that his bail be exonerated.

3. Upon the issuance of an order fixing bail, and upon the posting thereof, the court must examine the bail to determine whether it complies with the order. If it does, the court must, in the absence of some factor or circumstance which in law requires or authorizes disapproval thereof, approve the bail and must issue a certificate of release, authorizing the principal to be at liberty, and, if he is in the custody of the sheriff at the time, directing the sheriff to discharge him therefrom. If the bail fixed is not posted, or is not approved after being posted, the court must order that the principal be committed to the custody of the sheriff.

Criminal Procedure Law §510.50 Enforcement of securing order

-

When the attendance of a principal confined in the custody of the sheriff is required at the criminal action or proceeding at a particular time and place, the court may compel such attendance by directing the sheriff to produce him at such time and place. If the principal is at liberty on his own recognizance or on bail, his attendance may be achieved or compelled by various methods, including notification and the issuance of a bench warrant, prescribed by law in provisions governing such matters with respect to the particular kind of action or proceeding involved.

Criminal Procedure Law
Article 520
Bail and Bail Bonds

Criminal Procedure Law §520.10 Bail and bail bonds; fixing of bail and authorized forms thereof

1. The only authorized forms of bail are the following:

(a) Cash bail.

(b) An insurance company bail bond.

(c) A secured surety bond.

(d) A secured appearance bond.

(e) A partially secured surety bond.

(f) A partially secured appearance bond.

(g) An unsecured surety bond.

(h) An unsecured appearance bond.

(i) Credit card or similar device; provided, however, that notwithstanding any other provision of law, any person posting bail by credit card or similar device also may be required to pay a reasonable administrative fee. The amount of such administrative fee and the time and manner of its payment shall be in accordance with the system established pursuant to subdivision four of section 150.30 of this chapter or paragraph (j) of subdivision two of section two hundred twelve of the judiciary law, as appropriate.

2. The methods of fixing bail are as follows:

(a) A court may designate the amount of the bail without designating the form or forms in which it may be posted. In such case, the bail may be posted in either of the forms specified in paragraphs (g) and (h) of subdivision one;

(b) The court may direct that the bail be posted in any one of two or more of the forms specified in subdivision one, designated in the alternative, and may designate different amounts varying with the forms;[1]

Criminal Procedure Law §520.15 Bail and bail bonds; posting of cash bail

1. Where a court has fixed bail pursuant to subdivision two of section 520.10, at any time after the principal has been committed to the custody of the sheriff pending the posting thereof, cash bail in the amount designated in the order fixing bail may be posted even though such bail was not specified in such order. Cash bail may be deposited with (a) the county treasurer of the

county in which the criminal action or proceeding is pending or, in the city of New York with the commissioner of finance, or (b) the court which issued such order, or (c) the sheriff in whose custody the principal has been committed. Upon proof of the deposit of the designated amount the principal must be forthwith released from custody.

2. The person posting cash bail must complete and sign a form which states (a) the name, residential address and occupation of each person posting cash bail; and (b) the title of the criminal action or proceeding involved; and (c) the offense or offenses which are the subjects of the action or proceeding involved, and the status of such action or proceeding; and (d) the name of the principal and the nature of his involvement in or connection with such action or proceeding; and (e) that the person or persons posting cash bail undertake that the principal will appear in such action or proceeding whenever required and will at all times render himself amenable to the orders and processes of the court; and (f) the date of the principal's next appearance in court; and (g) an acknowledgement that the cash bail will be forfeited if the principal does not comply with any requirement or order of process to appear in court; and (h) the amount of money posted as cash bail.

3. Money posted as cash bail is and shall remain the property of the person posting it unless forfeited to the court.

Criminal Procedure Law §520.20 Bail and bail bonds; posting of bail bond and justifying affidavits; form and contents thereof

-

1. (a) Except as provided in paragraph (b) when a bail bond is to be posted in satisfaction of bail, the obligor or obligors must submit to the court a bail bond in the amount fixed, executed in the form prescribed in subdivision two, accompanied by a justifying affidavit of each obligor, executed in the form prescribed in subdivision four.

(b) When a bail bond is to be posted in satisfaction of bail fixed for a defendant charged by information or simplified information or prosecutor's information with one or more traffic infractions and no other offense, the defendant may submit to the court, with the consent of the court, an insurance company bail bond covering the amount fixed, executed in a form prescribed by the superintendent of financial services.

2. Except as provided in paragraph (b) of subdivision one, a bail bond must be subscribed and sworn to by each obligor and must state:

(a) The name, residential address and occupation of each obligor; and

(b) The title of the criminal action or proceeding involved; and

(c) The offense or offenses which are the subjects of the action or proceeding involved, and the status of such action or proceeding; and

(d) The name of the principal and the nature of his involvement in or connection with such action or proceeding; and

(e) That the obligor, or the obligors jointly and severally, undertake that the principal will appear in such action or proceeding whenever required and will at all times render himself amenable to the orders and processes of the court; and

(f) That in the event that the principal does not comply with any such requirement, order or process, such obligor or obligors will pay to the people of the state of New York a designated sum of money fixed by the court.

3. A bail bond posted in the course of a criminal action is effective and binding upon the obligor or obligors until the imposition of sentence or other termination of the action, regardless of whether the action is dismissed in the local criminal court after an indictment on the same charge or charges by a superior court, and regardless of whether such action is partially conducted or prosecuted in a court or courts other than the one in which the action was pending when such bond was posted, unless prior to such termination such order of bail is vacated or revoked or the principal is surrendered, or unless the terms of such bond expressly limit its effectiveness to a lesser period; provided, however, the effectiveness of such bond may only be limited to a lesser period if the obligor or obligors submit notice of the limitation to the court and the district attorney not less than fourteen days before effectiveness ends.

4. A justifying affidavit must be subscribed and sworn to by the obligor-affiant and must state his name, residential address and occupation. Depending upon the kind of bail bond which it justifies, such affidavit must contain further statements as follows:

(a) An affidavit justifying an insurance company bail bond must state:

(i) The amount of the premium paid to the obligor; and

(ii) All security and all promises of indemnity received by the surety-obligor in connection with its execution of the bond, and the name, occupation and residential and business addresses of every person who has given any such indemnifying security or promise.

An action by the surety-obligor against an indemnitor, seeking retention of security deposited by the latter with the former or enforcement of any indemnity agreement of a kind described in this sub-paragraph, will not lie except with respect to agreements and security specified in the justifying affidavit.

(b) An affidavit justifying a secured bail bond must state every item of personal property deposited and of real property pledged as security, the value of each such item, and the nature and amount of every lien or encumbrance thereon.

(c) An affidavit justifying a partially secured bail bond or an unsecured bail bond must state the place and nature of the obligor-affiant's business or employment, the length of time he has been engaged therein, his income during the past year, and his average income over the past five years.

Criminal Procedure Law §520.20 Bail and bail bonds; posting of bail bond and justifying affidavits; form and contents thereof

-

1. (a) Except as provided in paragraph (b) when a bail bond is to be posted in satisfaction of bail, the obligor or obligors must submit to the court a bail bond in the amount fixed, executed in the form prescribed in subdivision two, accompanied by a justifying affidavit of each obligor, executed in the form prescribed in subdivision four.

(b) When a bail bond is to be posted in satisfaction of bail fixed for a defendant charged by information or simplified information or prosecutor's information with one or more traffic infractions and no other offense, the defendant may submit to the court, with the consent of the court, an insurance company bail bond covering the amount fixed, executed in a form prescribed by the superintendent of financial services.

2. Except as provided in paragraph (b) of subdivision one, a bail bond must be subscribed and sworn to by each obligor and must state:

(a) The name, residential address and occupation of each obligor; and

(b) The title of the criminal action or proceeding involved; and

(c) The offense or offenses which are the subjects of the action or proceeding involved, and the status of such action or proceeding; and

(d) The name of the principal and the nature of his involvement in or connection with such action or proceeding; and

(e) That the obligor, or the obligors jointly and severally, undertake that the principal will appear in such action or proceeding whenever required and will at all times render himself amenable to the orders and processes of the court; and

(f) That in the event that the principal does not comply with any such requirement, order or process, such obligor or obligors will pay to the people of the state of New York a designated sum of money fixed by the court.

3. A bail bond posted in the course of a criminal action is effective and binding upon the obligor or obligors until the imposition of sentence or other termination of the action, regardless of whether the action is dismissed in the local criminal court after an indictment on the same charge or charges by a superior court, and regardless of whether such action is partially conducted or

prosecuted in a court or courts other than the one in which the action was pending when such bond was posted, unless prior to such termination such order of bail is vacated or revoked or the principal is surrendered, or unless the terms of such bond expressly limit its effectiveness to a lesser period; provided, however, the effectiveness of such bond may only be limited to a lesser period if the obligor or obligors submit notice of the limitation to the court and the district attorney not less than fourteen days before effectiveness ends.

4. A justifying affidavit must be subscribed and sworn to by the obligor-affiant and must state his name, residential address and occupation. Depending upon the kind of bail bond which it justifies, such affidavit must contain further statements as follows:

(a) An affidavit justifying an insurance company bail bond must state:

(i) The amount of the premium paid to the obligor; and

(ii) All security and all promises of indemnity received by the surety-obligor in connection with its execution of the bond, and the name, occupation and residential and business addresses of every person who has given any such indemnifying security or promise.

An action by the surety-obligor against an indemnitor, seeking retention of security deposited by the latter with the former or enforcement of any indemnity agreement of a kind described in this sub-paragraph, will not lie except with respect to agreements and security specified in the justifying affidavit.

(b) An affidavit justifying a secured bail bond must state every item of personal property deposited and of real property pledged as security, the value of each such item, and the nature and amount of every lien or encumbrance thereon.

(c) An affidavit justifying a partially secured bail bond or an unsecured bail bond must state the place and nature of the obligor-affiant's business or employment, the length of time he has been engaged therein, his income during the past year, and his average income over the past five years.

Criminal Procedure Law §520.30 Bail and bail bonds; examination as to sufficiency

-

1. Following the posting of a bail bond and the justifying affidavit or affidavits or the posting of cash bail, the court may conduct an inquiry for the purpose of determining the reliability of the obligors or person posting cash bail, the value and sufficiency of any security offered, and whether any feature of the undertaking contravenes public policy; provided that before undertaking an inquiry, of a person posting cash bail the court, after application of the district attorney, must have had reasonable cause to believe that the person posting cash bail is not in

rightful possession of money posted as cash bail or that such money constitutes the fruits of criminal or unlawful conduct. The court may inquire into any matter stated or required to be stated in the justifying affidavits, and may also inquire into other matters appropriate to the determination, which include but are not limited to the following:

(a) The background, character and reputation of any obligor, and, in the case of an insurance company bail bond, the qualifications of the surety-obligor and its executing agent; and

(b) The source of any money or property deposited by any obligor as security, and whether any such money or property constitutes the fruits of criminal or unlawful conduct; and

(c) The source of any money or property delivered or agreed to be delivered to any obligor as indemnification on the bond, and whether any such money or property constitutes the fruits of criminal or unlawful conduct; and

(d) The background, character and reputation of any person who has indemnified or agreed to indemnify an obligor upon the bond; and whether any such indemnitor, not being licensed by the superintendent of financial services in accordance with the insurance law, has within a period of one month prior to such indemnity transaction given indemnification or security for like purpose in more than two cases not arising out of the same transaction; and

(e) The source of any money posted as cash bail, and whether any such money constitutes the fruits of criminal or unlawful conduct; and

(f) The background, character and reputation of the person posting cash bail.

2. Upon such inquiry, the court may examine, under oath or otherwise, the obligors and any other persons who may possess material information. The district attorney has a right to attend such inquiry, to call witnesses and to examine any witness in the proceeding. The court may, upon application of the district attorney, adjourn the proceeding for a reasonable period to allow him to investigate the matter.

3. At the conclusion of the inquiry, the court must issue an order either approving or disapproving the bail.

Criminal Procedure Law § 520.40 Transfer of cash bail from local criminal court to superior court

-

When a local criminal court acquires control over the person of an accused and such court designates the amount of bail that the accused may post and such bail is posted in cash and subsequently the accused is arraigned in superior court where bail is fixed by such court, the accused may request that the cash bail posted in the local criminal court be transferred to the superior court. Notice of such request must be given to the person who posted cash bail. Upon

such a request the superior court shall make an order directing the local criminal court to transfer the cash bail that it holds to the superior court for use in the superior court. If there is an overage, the superior court shall order it be paid over to the person who posted the cash bail in the local criminal court. If there is a deficiency, the accused shall post additional bail as directed by the superior court.

Criminal Procedure Law
Article 530
Orders of Recognizance or Bail

Criminal Procedure Law §530.10 Order of recognizance or bail; in general

-

Under circumstances prescribed in this article, a court, upon application of a defendant charged with or convicted of an offense, is required or authorized to order bail or recognizance for the release or prospective release of such defendant during the pendency of either:

1. A criminal action based upon such charge; or

2. An appeal taken by the defendant from a judgment of conviction or a sentence or from an order of an intermediate appellate court affirming or modifying a judgment of conviction or a sentence.

Criminal Procedure Law §530.11 Procedures for family offense matters

1. Jurisdiction. The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree or coercion in the second degree as set forth in subdivisions one, two and three of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be

criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. For purposes of this section, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this section, "members of the same family or household" with respect to a proceeding in the criminal courts shall mean the following:

(a) persons related by consanguinity or affinity;

(b) persons legally married to one another;

(c) persons formerly married to one another regardless of whether they still reside in the same household;

(d) persons who have a child in common, regardless of whether such persons have been married or have lived together at any time; and

(e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship".

2. Information to petitioner or complainant. The chief administrator of the courts shall designate the appropriate probation officers, warrant officers, sheriffs, police officers, district attorneys or any other law enforcement officials, to inform any petitioner or complainant bringing a proceeding under this section before such proceeding is commenced, of the procedures available for the institution of family offense proceedings, including but not limited to the following:

(a) That there is concurrent jurisdiction with respect to family offenses in both family court and the criminal courts;

(b) That a family court proceeding is a civil proceeding and is for the purpose of attempting to stop the violence, end family disruption and obtain protection. That referrals for counseling, or counseling services, are available through probation for this purpose;

(c) That a proceeding in the criminal courts is for the purpose of prosecution of the offender and can result in a criminal conviction of the offender;

(d) That a proceeding or action subject to the provisions of this section is initiated at the time of the filing of an accusatory instrument or family court petition, not at the time of arrest, or request for arrest, if any;

(e) Repealed.

(f) That an arrest may precede the commencement of a family court or a criminal court proceeding, but an arrest is not a requirement for commencing either proceeding.

(g) Repealed by L.1997, c, 186, § 7, eff. July 8, 1997.

(h) At such time as the complainant first appears before the court on a complaint or information, the court shall advise the complainant that the complainant may: continue with the proceeding in criminal court; or have the allegations contained therein heard in a family court proceeding; or proceed concurrently in both criminal and family court. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section;

(i) Nothing herein shall be deemed to limit or restrict complainant's rights to proceed directly and without court referral in either a criminal or family court, or both, as provided for in section one hundred fifteen of the family court act and section 100.07 of this chapter;

(j) Repealed by L.1997, c, 186, § 9, eff. July 8, 1997.

2-a. Upon the filing of an accusatory instrument charging a crime or violation described in subdivision one of this section between members of the same family or household, as such terms are defined in this section, or as soon as the complainant first appears before the court, whichever is sooner, the court shall advise the complainant of the right to proceed in both the criminal and family courts, pursuant to section 100.07 of this chapter.

3. Official responsibility. No official or other person designated pursuant to subdivision two of this section shall discourage or prevent any person who wishes to file a petition or sign a complaint from having access to any court for that purpose.

4. When a person is arrested for an alleged family offense or an alleged violation of an order of protection or temporary order of protection or arrested pursuant to a warrant issued by the supreme or family court, and the supreme or family court, as applicable, is not in session, such person shall be brought before a local criminal court in the county of arrest or in the county in which such warrant is returnable pursuant to article one hundred twenty of this chapter. Such local criminal court may issue any order authorized under subdivision eleven of section 530.12 of this article, section one hundred fifty-four-d or one hundred fifty-five of the family court act or subdivision three-b of section two hundred forty or subdivision two-a of section two hundred fifty-two of the domestic relations law, in addition to discharging other arraignment responsibilities as set forth in this chapter. In making such order, the local criminal court shall

consider the bail recommendation, if any, made by the supreme or family court as indicated on the warrant or certificate of warrant. Unless the petitioner or complainant requests otherwise, the court, in addition to scheduling further criminal proceedings, if any, regarding such alleged family offense or violation allegation, shall make such matter returnable in the supreme or family court, as applicable, on the next day such court is in session.

5. Filing and enforcement of out-of-state orders of protection. A valid order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be accorded full faith and credit and enforced as if it were issued by a court within the state for as long as the order remains in effect in the issuing jurisdiction in accordance with sections two thousand two hundred sixty-five and two thousand two hundred sixty-six of title eighteen of the United States Code.

(a) An order issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be deemed valid if:

(i) the issuing court had personal jurisdiction over the parties and over the subject matter under the law of the issuing jurisdiction;

(ii) the person against whom the order was issued had reasonable notice and an opportunity to be heard prior to issuance of the order; provided, however, that if the order was a temporary order of protection issued in the absence of such person, that notice had been given and that an opportunity to be heard had been provided within a reasonable period of time after the issuance of the order; and

(iii) in the case of orders of protection or temporary orders of protection issued against both a petitioner, plaintiff or complainant and respondent or defendant, the order or portion thereof sought to be enforced was supported by: (A) a pleading requesting such order, including, but not limited to, a petition, cross-petition or counterclaim; and (B) a judicial finding that the requesting party is entitled to the issuance of the order which may result from a judicial finding of fact, judicial acceptance of an admission by the party against whom the order was issued or judicial finding that the party against whom the order was issued had given knowing, intelligent and voluntary consent to its issuance.

(b) Notwithstanding the provisions of article fifty-four of the civil practice law and rules, an order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, accompanied by a sworn affidavit that upon information and belief such order is in effect as written and has not been vacated or modified, may be filed without fee with the clerk of the court, who shall transmit information regarding such order to the statewide registry of orders of protection and warrants established pursuant to section two hundred twenty-one-a of the executive law; provided, however, that such filing and registry entry shall not be required for enforcement of the order.

6. Notice. Every police officer, peace officer or district attorney investigating a family offense under this article shall advise the victim of the availability of a shelter or other services in the community, and shall immediately give the victim written notice of the legal rights and remedies available to a victim of a family offense under the relevant provisions of the criminal procedure law, the family court act and the domestic relations law. Such notice shall be prepared in Spanish and English and if necessary, shall be delivered orally, and shall include but not be limited to the following statement:

“If you are the victim of domestic violence, you may request that the officer assist in providing for your safety and that of your children, including providing information on how to obtain a temporary order of protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you, or assist in making arrangements to take you, and your children to a safe place within such officer's jurisdiction, including but not limited to a domestic violence program, a family member's or a friend's residence, or a similar place of safety. When the officer's jurisdiction is more than a single county, you may ask the officer to take you or make arrangements to take you and your children to a place of safety in the county where the incident occurred. If you or your children are in need of medical treatment, you have the right to request that the officer assist you in obtaining such medical treatment. You may request a copy of any incident reports at no cost from the law enforcement agency. You have the right to seek legal counsel of your own choosing and if you proceed in family court and if it is determined that you cannot afford an attorney, one must be appointed to represent you without cost to you.

You may ask the district attorney or a law enforcement officer to file a criminal complaint. You also have the right to file a petition in the family court when a family offense has been committed against you. You have the right to have your petition and request for an order of protection filed on the same day you appear in court, and such request must be heard that same day or the next day court is in session. Either court may issue an order of protection from conduct constituting a family offense which could include, among other provisions, an order for the respondent or defendant to stay away from you and your children. The family court may also order the payment of temporary child support and award temporary custody of your children. If the family court is not in session, you may seek immediate assistance from the criminal court in obtaining an order of protection.

Criminal Procedure Law § 530.12 Protection for victims of family offenses

1. When a criminal action is pending involving a complaint charging any crime or violation between spouses, former spouses, parent and child, or between members of the same family or household, as members of the same family or household are defined in subdivision one of section

530.11 of this article, the court, in addition to any other powers conferred upon it by this chapter may issue a temporary order of protection in conjunction with any securing order committing the defendant to the custody of the sheriff or as a condition of any order of recognizance or bail or an adjournment in contemplation of dismissal.

(a) In addition to any other conditions, such an order may require the defendant: (1) to stay away from the home, school, business or place of employment of the family or household member or of any designated witness, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this paragraph, provided further, however, that failure to make such a determination shall not affect the validity of such temporary order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the temporary order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, past or present injury, threats, drug or alcohol abuse, and access to weapons;

(2) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

(3) to refrain from committing a family offense, as defined in subdivision one of section 530.11 of this article, or any criminal offense against the child or against the family or household member or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons;

(4) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety and welfare of a child, family or household member's life or health;

(5) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this chapter, the family court act or the domestic relations law;

(6)(A) to refrain from intentionally injuring or killing, without justification, any companion animal the defendant knows to be owned, possessed, leased, kept or held by the victim or a minor child residing in the household.

(B) “Companion animal”, as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law;

(7)(A) to promptly return specified identification documents to the protected party, in whose favor the order of protection or temporary order of protection is issued; provided, however, that such order may: (i) include any appropriate provision designed to ensure that any such document is available for use as evidence in this proceeding, and available if necessary for legitimate use by the party against whom such order is issued; and (ii) specify the manner in which such return shall be accomplished.

(B) For purposes of this subparagraph, “identification document” shall mean any of the following: (i) exclusively in the name of the protected party: birth certificate, passport, social security card, health insurance or other benefits card, a card or document used to access bank, credit or other financial accounts or records, tax returns, any driver's license, and immigration documents including but not limited to a United States permanent resident card and employment authorization document; and (ii) upon motion and after notice and an opportunity to be heard, any of the following, including those that may reflect joint use or ownership, that the court determines are necessary and are appropriately transferred to the protected party: any card or document used to access bank, credit or other financial accounts or records, tax returns, and any other identifying cards and documents.

(b) The court may issue an order, pursuant to section two hundred twenty-seven-c of the real property law, authorizing the party for whose benefit any order of protection has been issued to terminate a lease or rental agreement pursuant to section two hundred twenty-seven-c of the real property law.

2. Notwithstanding any other provision of law, a temporary order of protection issued or continued by a family court pursuant to section eight hundred thirteen of the family court act shall continue in effect, absent action by the appropriate criminal court pursuant to subdivision three of this section, until the defendant is arraigned upon an accusatory instrument filed pursuant to section eight hundred thirteen of the family court act in such criminal court.

3. The court may issue a temporary order of protection ex parte upon the filing of an accusatory instrument and for good cause shown. When a family court order of protection is modified, the criminal court shall forward a copy of such modified order to the family court issuing the original order of protection; provided, however, that where a copy of the modified order is transmitted to the family court by facsimile or other electronic means, the original copy of such modified order and accompanying affidavit shall be forwarded immediately thereafter.

3-a. Emergency powers when family court not in session; issuance of temporary orders of protection. Upon the request of the petitioner, a local criminal court may on an ex parte basis issue a temporary order of protection pending a hearing in family court, provided that a sworn affidavit, verified in accordance with subdivision one of section 100.30 of this chapter, is submitted: (i) alleging that the family court is not in session; (ii) alleging that a family offense, as defined in subdivision one of section eight hundred twelve of the family court act and subdivision one of section 530.11 of this article, has been committed; (iii) alleging that a family offense petition has been filed or will be filed in family court on the next day the court is in session; and (iv) showing good cause. Upon appearance in a local criminal court, the petitioner shall be advised that he or she may continue with the proceeding either in family court or upon the filing of a local criminal court accusatory instrument in criminal court or both. Upon issuance of a temporary order of protection where petitioner requests that it be returnable in family court, the local criminal court shall transfer the matter forthwith to the family court and shall make the

matter returnable in family court on the next day the family court is in session, or as soon thereafter as practicable, but in no event more than four calendar days after issuance of the order. The local criminal court, upon issuing a temporary order of protection returnable in family court pursuant to this subdivision, shall immediately forward, in a manner designed to insure arrival before the return date set in the order, a copy of the temporary order of protection and sworn affidavit to the family court and shall provide a copy of such temporary order of protection to the petitioner; provided, however, that where a copy of the temporary order of protection and affidavit are transmitted to the family court by facsimile or other electronic means, the original order and affidavit shall be forwarded to the family court immediately thereafter. Any temporary order of protection issued pursuant to this subdivision shall be issued to the respondent, and copies shall be filed as required in subdivisions six and eight of this section for orders of protection issued pursuant to this section. Any temporary order of protection issued pursuant to this subdivision shall plainly state the date that such order expires which, in the case of an order returnable in family court, shall be not more than four calendar days after its issuance, unless sooner vacated or modified by the family court. A petitioner requesting a temporary order of protection returnable in family court pursuant to this subdivision in a case in which a family court petition has not been filed shall be informed that such temporary order of protection shall expire as provided for herein, unless the petitioner files a petition pursuant to subdivision one of section eight hundred twenty-one of the family court act on or before the return date in family court and the family court issues a temporary order of protection or order of protection as authorized under article eight of the family court act. Nothing in this subdivision shall limit or restrict the petitioner's right to proceed directly and without court referral in either a criminal or family court, or both, as provided for in section one hundred fifteen of the family court act and section 100.07 of this chapter.

3-b. Emergency powers when family court not in session; modifications of orders of protection or temporary orders of protection. Upon the request of the petitioner, a local criminal court may on an ex parte basis modify a temporary order of protection or order of protection which has been issued under article four, five, six or eight of the family court act pending a hearing in family court, provided that a sworn affidavit verified in accordance with subdivision one of section 100.30 of this chapter is submitted: (i) alleging that the family court is not in session and (ii) showing good cause, including a showing that the existing order is insufficient for the purposes of protection of the petitioner, the petitioner's child or children or other members of the petitioner's family or household. The local criminal court shall make the matter regarding the modification of the order returnable in family court on the next day the family court is in session, or as soon thereafter as practicable, but in no event more than four calendar days after issuance of the modified order. The court shall immediately forward a copy of the modified order, if any, and sworn affidavit to the family court and shall provide a copy of such modified order, if any, and affidavit to the petitioner; provided, however, that where copies of such modified order and affidavit are transmitted to the family court by facsimile or other electronic means, the original

copies of such modified order and affidavit shall be forwarded to the family court immediately thereafter. Any modified temporary order of protection or order of protection issued pursuant to this subdivision shall be issued to the respondent and copies shall be filed as required in subdivisions six and eight of this section for orders of protection issued pursuant to this section.

4. The court may issue or extend a temporary order of protection ex parte or on notice simultaneously with the issuance of a warrant for the arrest of defendant. Such temporary order of protection may continue in effect until the day the defendant subsequently appears in court pursuant to such warrant or voluntarily or otherwise.

5. [Eff. until Sept. 1, 2017, pursuant to L.1995, c. 3, § 74, par. d. See, also, opening paragraph below.] Upon sentencing on a conviction for any crime or violation between spouses, between a parent and child, or between members of the same family or household as defined in subdivision one of section 530.11 of this article, the court may in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and: (A) in the case of a felony conviction, shall not exceed the greater of: (i) eight years from the date of such sentencing, except where the sentence is or includes a sentence of probation on a conviction for a felony sexual assault, as provided in subparagraph (iii) of paragraph (a) of subdivision three of section 65.00 of the penal law, in which case, ten years from the date of such sentencing, or (ii) eight years from the date of the expiration of the maximum term of an indeterminate or the term of a determinate sentence of imprisonment actually imposed; or (B) in the case of a conviction for a class A misdemeanor, shall not exceed the greater of: (i) five years from the date of such sentencing, except where the sentence is or includes a sentence of probation on a conviction for a misdemeanor sexual assault, as provided in subparagraph (ii) of paragraph (b) of subdivision three of section 65.00 of the penal law, in which case, six years from the date of such sentencing, or (ii) five years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed; or (C) in the case of a conviction for any other offense, shall not exceed the greater of: (i) two years from the date of sentencing, or (ii) two years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions, such an order may require the defendant:

5. [Eff. Sept. 1, 2017, pursuant to L.1995, c. 3, § 74, par. d. See, also, opening paragraph above.] Upon sentencing on a conviction for any crime or violation between spouses, between a parent and child, or between members of the same family or household as defined in subdivision one of section 530.11 of this article, the court may in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a

temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and, in the case of a felony conviction, shall not exceed the greater of: (i) five years from the date of such sentencing, or (ii) three years from the date of the expiration of the maximum term of an indeterminate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed three years from the date of such sentencing; or in the case of a conviction for any other offense, shall not exceed one year from the date of sentencing. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions, such an order may require the defendant: :

(a) to stay away from the home, school, business or place of employment of the family or household member, the other spouse or the child, or of any witness designated by the court, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this paragraph, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons;

(b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

(c) to refrain from committing a family offense, as defined in subdivision one of section 530.11 of this article, or any criminal offense against the child or against the family or household member or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons; or

(d) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety and welfare of a child, family or household member's life or health;

(e) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this chapter, the family court act or the domestic relations law.

6. An order of protection or a temporary order of protection issued pursuant to subdivision one, two, three, four or five of this section shall bear in a conspicuous manner the term “order of protection” or “temporary order of protection” as the case may be and a copy shall be filed by the clerk of the court with the sheriff's office in the county in which the complainant resides, or, if the complainant resides within a city, with the police department of such city. The order of protection or temporary order of protection shall also contain the following notice: “This order of

protection will remain in effect even if the protected party has, or consents to have, contact or communication with the party against whom the order is issued. This order of protection can only be modified or terminated by the court. The protected party cannot be held to violate this order nor be arrested for violating this order.". The absence of such language shall not affect the validity of such order. A copy of such order of protection or temporary order of protection may from time to time be filed by the clerk of the court with any other police department or sheriff's office having jurisdiction of the residence, work place, and school of anyone intended to be protected by such order. A copy of the order may also be filed by the complainant at the appropriate police department or sheriff's office having jurisdiction. Any subsequent amendment or revocation of such order shall be filed in the same manner as herein provided.

Such order of protection shall plainly state the date that such order expires.

6-a. The court shall inquire as to the existence of any other orders of protection between the defendant and the person or persons for whom the order of protection is sought.

7. A family offense subject to the provisions of this section which occurs subsequent to the issuance of an order of protection under this chapter shall be deemed a new offense for which the complainant may seek to file a new accusatory instrument and may file a family court petition under article eight of the family court act as provided for in section 100.07 of this chapter.

8. In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the complainant and defendant and defense counsel and to any other person affected by the order a copy of the order of protection or temporary order of protection and ensure that a copy of the order of protection or temporary order of protection be transmitted to the local correctional facility where the individual is or will be detained, the state or local correctional facility where the individual is or will be imprisoned, and the supervising probation department or department of corrections and community supervision where the individual is under probation or parole supervision. The presentation of a copy of such order or a warrant to any peace officer acting pursuant to his or her special duties or police officer shall constitute authority for him or her to arrest a person who has violated the terms of such order and bring such person before the court and, otherwise, so far as lies within his or her power, to aid in securing the protection such order was intended to afford. The protected party in whose favor the order of protection or temporary order of protection is issued may not be held to violate an order issued in his or her favor nor may such protected party be arrested for violating such order.

9. If no warrant, order or temporary order of protection has been issued by the court, and an act alleged to be a family offense as defined in section 530.11 of this chapter is the basis of the arrest, the magistrate shall permit the complainant to file a petition, information or accusatory instrument and for reasonable cause shown, shall thereupon hold such respondent or defendant, admit to, fix or accept bail, or parole him or her for hearing before the family court or

appropriate criminal court as the complainant shall choose in accordance with the provisions of section 530.11 of this chapter.

10. Punishment for contempt based on a violation of an order of protection or temporary order of protection shall not affect the original criminal action, nor reduce or diminish a sentence upon conviction for the original crime or violation alleged therein or for a lesser included offense thereof.

11. If a defendant is brought before the court for failure to obey any lawful order issued under this section, or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, and if, after hearing, the court is satisfied by competent proof that the defendant has willfully failed to obey any such order, the court may:

(a) revoke an order of recognizance or revoke an order of bail or order forfeiture of such bail and commit the defendant to custody; or

(b) restore the case to the calendar when there has been an adjournment in contemplation of dismissal and commit the defendant to custody; or

(c) revoke a conditional discharge in accordance with section 410.70 of this chapter and impose probation supervision or impose a sentence of imprisonment in accordance with the penal law based on the original conviction; or

(d) revoke probation in accordance with section 410.70 of this chapter and impose a sentence of imprisonment in accordance with the penal law based on the original conviction. In addition, if the act which constitutes the violation of the order of protection or temporary order of protection is a crime or a violation the defendant may be charged with and tried for that crime or violation.

(e) Repealed.

12. The chief administrator of the courts shall promulgate appropriate uniform temporary orders of protection and orders of protection forms to be used throughout the state. Such forms shall be promulgated and developed in a manner to ensure the compatability[1] of such forms with the statewide computerized registry established pursuant to section two hundred twenty-one-a of the executive law.

13. Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection when applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section 530.11 of this article.

14. The people shall make reasonable efforts to notify the complainant alleging a crime constituting a family offense when the people have decided to decline prosecution of such crime, to dismiss the criminal charges against the defendant or to enter into a plea agreement. The

people shall advise the complainant of the right to file a petition in the family court pursuant to section 100.07 of this chapter and section one hundred fifteen of the family court act.

In any case where allegations of criminal conduct are transferred from the family court to the criminal court pursuant to paragraph (ii) of subdivision (b) of section eight hundred forty-six of the family court act, the people shall advise the family court making the transfer of any decision to file an accusatory instrument against the family court respondent and shall notify such court of the disposition of such instrument and the sentence, if any, imposed upon such respondent.

Release of a defendant from custody shall not be delayed because of the requirements of this subdivision.

15. Any motion to vacate or modify an order of protection or temporary order of protection shall be on notice to the non-moving party, except as provided in subdivision three-b of this section.

Criminal Procedure Law §530.13 Protection of victims of crimes, other than family offenses

1. When any criminal action is pending, and the court has not issued a temporary order of protection pursuant to section 530.12 of this article, the court, in addition to the other powers conferred upon it by this chapter, may for good cause shown issue a temporary order of protection in conjunction with any securing order committing the defendant to the custody of the sheriff or as a condition of a pre-trial release, or as a condition of release on bail or an adjournment in contemplation of dismissal. In addition to any other conditions, such an order may require that the defendant:

(a) stay away from the home, school, business or place of employment of the victims of, or designated witnesses to, the alleged offense;

(b) refrain from harassing, intimidating, threatening or otherwise interfering with the victims of the alleged offense and such members of the family or household of such victims or designated witnesses as shall be specifically named by the court in such order;

(c) 1. to refrain from intentionally injuring or killing, without justification, any companion animal the defendant knows to be owned, possessed, leased, kept or held by such victim or victims or a minor child residing in such victim's or victims' household.

2. “Companion animal”, as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law.

In addition to the foregoing provisions, the court may issue an order, pursuant to section two hundred twenty-seven-c of the real property law, authorizing the party for whose benefit any order of protection has been issued to terminate a lease or rental agreement pursuant to section two hundred twenty-seven-c of the real property law.

2. The court may issue a temporary order of protection under this section ex parte upon the filing of an accusatory instrument and for good cause shown.

3. The court may issue or extend a temporary order of protection under this section ex parte simultaneously with the issuance of a warrant for the arrest of the defendant. Such temporary order of protection may continue in effect until the day the defendant subsequently appears in court pursuant to such warrant or voluntarily or otherwise.

4. [Eff. until Sept. 1, 2017, pursuant to L.1995, c. 3, § 74, par. d. See, also, opening paragraph below.] Upon sentencing on a conviction for any offense, where the court has not issued an order of protection pursuant to section 530.12 of this article, the court may, in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and; (A) in the case of a felony conviction, shall not exceed the greater of: (i) eight years from the date of such sentencing, except where the sentence is or includes a sentence of probation on a conviction for a felony sexual assault, as provided in subparagraph (iii) of paragraph (a) of subdivision three of section 65.00 of the penal law, in which case, ten years from the date of such sentencing, or (ii) eight years from the date of the expiration of the maximum term of an indeterminate or the term of a determinate sentence of imprisonment actually imposed; or (B) in the case of a conviction for a class A misdemeanor, shall not exceed the greater of: (i) five years from the date of such sentencing, except where the sentence is or includes a sentence of probation on a conviction for a misdemeanor sexual assault, as provided in subparagraph (ii) of paragraph (b) of subdivision three of section 65.00 of the penal law, in which case, six years from the date of such sentencing or (ii) five years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed; or (C) in the case of a conviction for any other offense, shall not exceed the greater of: (i) two years from the date of sentencing, or (ii) two years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions such an order may require that the defendant:

4. [Eff. Sept. 1, 2017, pursuant to L.1995, c. 3, § 74, par. d. See, also, opening paragraph above.] Upon sentencing on a conviction for any offense, where the court has not issued an order of protection pursuant to section 530.12 of this article, the court may, in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and, in the case of a felony conviction, shall not exceed the greater of: (i) five years from the date of such sentencing, or (ii) three years from the date of the expiration of

the maximum term of an indeterminate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed three years from the date of such sentencing; or in the case of a conviction for any other offense, shall not exceed one year from the date of sentencing. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions such an order may require that the defendant:

(a) stay away from the home, school, business or place of employment of the victim or victims, or of any witness designated by the court, of such offense;

(b) refrain from harassing, intimidating, threatening or otherwise interfering with the victim or victims of the offense and such members of the family or household of such victim or victims as shall be specifically named by the court in such order;

(c) 1. to refrain from intentionally injuring or killing, without justification, any companion animal the defendant knows to be owned, possessed, leased, kept or held by such victim or victims or a minor child residing in such victim's or victims' household.

2. “Companion animal”, as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law.

5. The court shall inquire as to the existence of any other orders of protection between the defendant and the person or persons for whom the order of protection is sought. An order of protection issued under this section shall plainly state the date that such order expires. Orders of protection issued to protect victims of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, shall be on uniform statewide forms that shall be promulgated by the chief administrator of the courts in a manner to ensure the compatibility of such forms with the statewide registry of orders of protection and warrants established pursuant to section two hundred twenty-one-a of the executive law. A copy of an order of protection or a temporary order of protection issued pursuant to subdivision one, two, three, or four of this section shall be filed by the clerk of the court with the sheriff's office in the county in which such victim or victims reside, or, if the victim or victims reside within a city, with the police department of such city. A copy of such order of protection or temporary order of protection may from time to time be filed by the clerk of the court with any other police department or sheriff's office having jurisdiction of the residence, work place, and school of anyone intended to be protected by such order. A copy of the order may also be filed by the victim or victims at the appropriate police department or sheriff's office having jurisdiction. Any subsequent amendment or revocation of such order shall be filed in the same manner as herein provided.

6. In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the victim and the defendant and defense counsel and to any other person affected by the order, a copy of the order

of protection or temporary order of protection and ensure that a copy of the order of protection or temporary order of protection be transmitted to the local correctional facility where the individual is or will be detained, the state or local correctional facility where the individual is or will be imprisoned, and the supervising probation department or department of corrections and community supervision where the individual is under probation or parole supervision. The presentation of a copy of such order or a warrant to any police officer or peace officer acting pursuant to his or her special duties shall constitute authority for him or her to arrest a person who has violated the terms of such order and bring such person before the court and, otherwise, so far as lies within his or her power, to aid in securing the protection such order was intended to afford.

7. Punishment for contempt based upon a violation of an order or[1] protection or temporary order of protection issued under this section shall not affect a pending criminal action, nor reduce or diminish a sentence upon conviction for any other crimes or offenses.

8. If a defendant is brought before the court for failure to obey any lawful order issued under this section and if, after hearing, the court is satisfied by competent proof that the defendant has willfully failed to obey any such order, the court may:

(a) revoke an order of recognizance or bail and commit the defendant to custody; or

(b) restore the case to the calendar when there has been an adjournment in contemplation of dismissal and commit the defendant to custody or impose or increase bail pending a trial of the original crime or violation; or

(c) revoke a conditional discharge in accordance with section 410.70 of this chapter and impose probation supervision or impose a sentence of imprisonment in accordance with the penal law based on the original conviction; or

(d) revoke probation in accordance with section 410.70 of this chapter and impose a sentence of imprisonment in accordance with the penal law based on the original conviction. In addition, if the act which constitutes the violation of the order of protection or temporary order of protection is a crime or a violation the defendant may be charged with and tried for that crime or violation.

9. The chief administrator of the courts shall promulgate appropriate uniform temporary order of protection and order of protection forms to be used throughout the state.

Criminal Procedure Law §530.14 Suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms pursuant to section 400.00 of the penal law and ineligibility for such a license; order to surrender firearms

1. Suspension of firearms license and ineligibility for such a license upon issuance of temporary order of protection. Whenever a temporary order of protection is issued pursuant to subdivision one of section 530.12 or subdivision one of section 530.13 of this article:

(a) the court shall suspend any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender of any or all firearms owned or possessed where the court receives information that gives the court good cause to believe that (i) the defendant has a prior conviction of any violent felony offense as defined in section 70.02 of the penal law; (ii) the defendant has previously been found to have willfully failed to obey a prior order of protection and such willful failure involved (A) the infliction of physical injury, as defined in subdivision nine of section 10.00 of the penal law, (B) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (C) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iii) the defendant has a prior conviction for stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and

(b) the court shall where the court finds a substantial risk that the defendant may use or threaten to use a firearm unlawfully against the person or persons for whose protection the temporary order of protection is issued, suspend any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed.

2. Revocation or suspension of firearms license and ineligibility for such a license upon issuance of an order of protection. Whenever an order of protection is issued pursuant to subdivision five of section 530.12 or subdivision four of section 530.13 of this article:

(a) the court shall revoke any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender of any or all firearms owned or possessed where such action is required by section 400.00 of the penal law; and

(b) the court shall where the court finds a substantial risk that the defendant may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection is issued, (i) revoke any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender of any or all firearms owned or possessed or (ii) suspend or continue to suspend any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed.

3. Revocation or suspension of firearms license and ineligibility for such a license upon a finding of a willful failure to obey an order of protection. Whenever a defendant has been found pursuant to subdivision eleven of section 530.12 or subdivision eight of section 530.13 of this article to have willfully failed to obey an order of protection issued by a court of competent jurisdiction in this state or another state, territorial or tribal jurisdiction, in addition to any other remedies available pursuant to subdivision eleven of section 530.12 or subdivision eight of section 530.13 of this article:

(a) the court shall revoke any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender of any or all firearms owned or possessed where the willful failure to obey such order involved (i) the infliction of physical injury, as defined in subdivision nine of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iv) behavior constituting stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and

(b) the court shall where the court finds a substantial risk that the defendant may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection was issued, (i) revoke any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed or (ii) suspend any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed.

4. Suspension. Any suspension order issued pursuant to this section shall remain in effect for the duration of the temporary order of protection or order of protection, unless modified or vacated by the court.

5. Surrender. (a) Where an order to surrender one or more firearms has been issued, the temporary order of protection or order of protection shall specify the place where such firearms shall be surrendered, shall specify a date and time by which the surrender shall be completed and, to the extent possible, shall describe such firearms to be surrendered, and shall direct the authority receiving such surrendered firearms to immediately notify the court of such surrender.

(b) The prompt surrender of one or more firearms pursuant to a court order issued pursuant to this section shall be considered a voluntary surrender for purposes of subparagraph (f) of paragraph one of subdivision a of section 265.20 of the penal law. The disposition of any such firearms shall be in accordance with the provisions of subdivision six of section 400.05 of the penal law.

(c) The provisions of this section shall not be deemed to limit, restrict or otherwise impair the authority of the court to order and direct the surrender of any or all pistols, revolvers, rifles, shotguns or other firearms owned or possessed by a defendant pursuant to sections 530.12 or 530.13 of this article.

6. Notice. (a) Where an order of revocation, suspension or ineligibility has been issued pursuant to this section, any temporary order of protection or order of protection issued shall state that such firearm license has been suspended or revoked or that the defendant is ineligible for such license, as the case may be.

(b) The court revoking or suspending the license, ordering the defendant ineligible for such a license, or ordering the surrender of any firearm shall immediately notify the duly constituted police authorities of the locality concerning such action and, in the case of orders of protection and temporary orders of protection issued pursuant to section 530.12 of this article, shall immediately notify the statewide registry of orders of protection.

(c) The court revoking or suspending the license or ordering the defendant ineligible for such a license shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

(d) Where an order of revocation, suspension, ineligibility or surrender is modified or vacated, the court shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality concerning such action and shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

7. Hearing. The defendant shall have the right to a hearing before the court regarding any revocation, suspension, ineligibility or surrender order issued pursuant to this section, provided that nothing in this subdivision shall preclude the court from issuing any such order prior to a hearing. Where the court has issued such an order prior to a hearing, it shall commence such hearing within fourteen days of the date such order was issued.

8. Nothing in this section shall delay or otherwise interfere with the issuance of a temporary order of protection or the timely arraignment of a defendant in custody.

Criminal Procedure Law §530.20 Order of recognizance or bail; by local criminal court when action is pending therein

When a criminal action is pending in a local criminal court, such court, upon application of a defendant, must or may order recognizance or bail as follows:

1. When the defendant is charged, by information, simplified information, prosecutor's information or misdemeanor complaint, with an offense or offenses of less than felony grade only, the court must order recognizance or bail.

2. When the defendant is charged, by felony complaint, with a felony, the court may, in its discretion, order recognizance or bail except as otherwise provided in this subdivision:

(a) A city court, a town court or a village court may not order recognizance or bail when (i) the defendant is charged with a class A felony, or (ii) it appears that the defendant has two previous felony convictions;

(b) No local criminal court may order recognizance or bail with respect to a defendant charged with a felony unless and until:

(i) The district attorney has been heard in the matter or, after knowledge or notice of the application and reasonable opportunity to be heard, has failed to appear at the proceeding or has otherwise waived his right to do so; and

(ii) The court has been furnished with a report of the division of criminal justice services concerning the defendant's criminal record if any or with a police department report with respect to the defendant's prior arrest record. If neither report is available, the court, with the consent of the district attorney, may dispense with this requirement; provided, however, that in an emergency, including but not limited to a substantial impairment in the ability of such division or police department to timely furnish such report, such consent shall not be required if, for reasons stated on the record, the court deems it unnecessary. When the court has been furnished with any such report or record, it shall furnish a copy thereof to counsel for the defendant or, if the defendant is not represented by counsel, to the defendant.

Criminal Procedure Law §530.30 Order of recognizance or bail; by superior court judge when action is pending in local criminal court

1. When a criminal action is pending in a local criminal court, other than one consisting of a superior court judge sitting as such, a judge of a superior court holding a term thereof in the county, upon application of a defendant, may order recognizance or bail when such local criminal court:

(a) Lacks authority to issue such an order, pursuant to paragraph (a) of subdivision two of section 530.20; or

(b) Has denied an application for recognizance or bail; or

(c) Has fixed bail which is excessive. In such case, such superior court judge may vacate the order of such local criminal court and release the defendant on his own recognizance or fix bail in a lesser amount or in a less burdensome form.

2. Notwithstanding the provisions of subdivision one, when the defendant is charged with a felony in a local criminal court, a superior court judge may not order recognizance or bail unless and until the district attorney has had an opportunity to be heard in the matter and such judge has been furnished with a report as described in subparagraph (ii) of paragraph (b) of subdivision two of section 530.20.

3. Not more than one application may be made pursuant to this section.

Criminal Procedure Law §530.40 Order of recognizance or bail; by superior court when action is pending therein

When a criminal action is pending in a superior court, such court, upon application of a defendant, must or may order recognizance or bail as follows:

1. When the defendant is charged with an offense or offenses of less than felony grade only, the court must order recognizance or bail.

2. When the defendant is charged with a felony, the court may, in its discretion, order recognizance or bail. In any such case in which an indictment (a) has resulted from an order of a local criminal court holding the defendant for the action of the grand jury, or (b) was filed at a time when a felony complaint charging the same conduct was pending in a local criminal court, and in which such local criminal court or a superior court judge has issued an order of recognizance or bail which is still effective, the superior court's order may be in the form of a direction continuing the effectiveness of the previous order.

3. Notwithstanding the provisions of subdivision two, a superior court may not order recognizance or bail, or permit a defendant to remain at liberty pursuant to an existing order, after he has been convicted of either: (a) a class A felony or (b) any class B or class C felony defined in article one hundred thirty of the penal law committed or attempted to be committed by a person eighteen years of age or older against a person less than eighteen years of age. In either case the court must commit or remand the defendant to the custody of the sheriff.

4. Notwithstanding the provisions of subdivision two, a superior court may not order recognizance or bail when the defendant is charged with a felony unless and until the district attorney has had an opportunity to be heard in the matter and such court has been furnished with a report as described in subparagraph (ii) of paragraph (b) of subdivision two of section 530.20.

Criminal Procedure Law §530.45 Order of recognizance or bail; after conviction and before sentence

1. When the defendant is at liberty in the course of a criminal action as a result of a prior order of recognizance or bail and the court revokes such order and then either fixes no bail or fixes bail in a greater amount or in a more burdensome form than was previously fixed and remands or commits defendant to the custody of the sheriff, a judge designated in subdivision two, upon application of the defendant following conviction of an offense other than a class A felony or a class B or class C felony offense defined in article one hundred thirty of the penal law committed or attempted to be committed by a person eighteen years of age or older against a person less than eighteen years of age, and before sentencing, may issue a securing order and either release defendant on his own recognizance, or fix bail, or fix bail in a lesser amount or in a less burdensome form than fixed by the court in which the conviction was entered.

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

(a) If the criminal action was pending in supreme court or county court, such order may be issued by a justice of the appellate division of the department in which the conviction was entered.

(b) If the criminal action was pending in a local criminal court, such order may be issued by a judge of a superior court holding a term thereof in the county in which the conviction was entered.

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. Defendant must allege in his application that he intends to take an appeal to an intermediate appellate court immediately after sentence is pronounced.

4. Notwithstanding the provisions of subdivision one, if within thirty days after sentence the defendant has not taken an appeal to an intermediate appellate court from the judgment or sentence, 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.

5. Notwithstanding the provisions of subdivision one, if within one hundred twenty days after the filing of the notice of appeal such 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.

6. 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.

Criminal Procedure Law §530.50 Order of recognizance or bail; during pendency of appeal

A judge who is otherwise authorized pursuant to section 460.50 or section 460.60 to issue an order of recognizance or bail pending the determination of an appeal, may do so unless the defendant received a class A felony sentence or a sentence for any class B or class C felony offense defined in article one hundred thirty of the penal law committed or attempted to be committed by a person eighteen years of age or older against a person less than eighteen years of age.

Criminal Procedure Law §530.60 Order of recognizance or bail; revocation thereof

1. Whenever in the course of a criminal action or proceeding a defendant is at liberty as a result of an order of recognizance or bail issued pursuant to this chapter, and the court considers it necessary to review such order, it may, and 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 or bail. If the defendant is entitled to recognizance or bail as a matter of right, the court must issue another such order. If he or she is not, the court may either issue such an order or commit the defendant to the custody of the sheriff. 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 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 sections 215.15, 215.16 or 215.17 of the penal law while at liberty. Before revoking an order of recognizance 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.

(b) Revocation of an order of recognizance or bail and commitment pursuant to this subdivision shall be for the following periods, either:

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

(ii) 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

(iii) 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 paragraph, 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.

(c) Notwithstanding the provisions of paragraph (a) 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 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.

Criminal Procedure Law § 530.70 Order of recognizance or bail; bench warrant

1. A bench warrant issued by a superior court, by a district court, by the New York City criminal court or by a superior court judge sitting as a local criminal court may be executed anywhere in the state. A bench warrant issued by a city court, a town court or a village court may be executed in the county of issuance or any adjoining county; and it may be executed anywhere else in the state upon the written endorsement thereon of a local criminal court of the county in which the defendant is to be taken into custody. When so endorsed, the warrant is deemed the process of the endorsing court as well as that of the issuing court.

2. A bench warrant may be addressed to: (a) any police officer whose geographical area of employment embraces either the place where the offense charged was allegedly committed or the locality of the court by which the warrant is issued; or (b) any uniformed court officer for a court

in the city of New York, the county of Nassau, the county of Suffolk or the county of Westchester or for any other court that is part of the unified court system of the state for execution in the building wherein such court officer is employed or in the immediate vicinity thereof. A bench warrant must be executed in the same manner as a warrant of arrest, as provided in section 120.80, and following the arrest, such executing police officer or court officer must without unnecessary delay bring the defendant before the court in which it is returnable; provided, however, if the court in which the bench warrant is returnable is a city, town or village court, and such court is not available, and the bench warrant is addressed to a police officer, such executing police officer must without unnecessary delay bring the defendant before an alternate local criminal court, as provided in subdivision five of section 120.90; or if the court in which the bench warrant is returnable is a superior court, and such court is not available, and the bench warrant is addressed to a police officer, such executing police officer may bring the defendant to the local correctional facility of the county in which such court sits, to be detained there until not later than the commencement of the next session of such court occurring on the next business day.

2-a. A court which issues a bench warrant may attach thereto a summary of the basis for the warrant. In any case where, pursuant to subdivision two of this section, a defendant arrested upon a bench warrant is brought before a local criminal court other than the court in which the warrant is returnable, such local criminal court shall consider such summary before issuing a securing order with respect to the defendant.

3. A bench warrant may be executed by (a) any officer to whom it is addressed, or (b) any other police officer delegated to execute it under circumstances prescribed in subdivisions four and five.

4. The issuing court may authorize the delegation of such warrant. Where the issuing court has so authorized, a police officer to whom a bench warrant is addressed may delegate another police officer to whom it is not addressed to execute such warrant as his or her agent when:

(a) He or she has reasonable cause to believe that the defendant is in a particular county other than the one in which the warrant is returnable; and

(b) The geographical area of employment of the delegated police officer embraces the locality where the arrest is to be made.

5. Under circumstances specified in subdivision four, the police officer to whom the bench warrant is addressed may inform the delegated officer, by telecommunication, mail or any other means, of the issuance of the warrant, of the offense charged in the underlying accusatory instrument and of all other pertinent details, and may request him or her to act as his or her agent in arresting the defendant pursuant to such bench warrant. Upon such request, the delegated police officer is to the same extent as the delegating officer, authorized to make such arrest pursuant to the bench warrant within the geographical area of such delegated officer's

employment. Upon so arresting the defendant, he or she must without unnecessary delay deliver the defendant or cause him or her to be delivered to the custody of the police officer by whom he or she was so delegated, and the latter must then without unnecessary delay bring the defendant before the court in which such bench warrant is returnable.

6. A bench warrant may be executed by an officer of the state department of corrections and community supervision or a probation officer when the person named within the warrant is under the supervision of the department of corrections and community supervision or a department of probation and the probation officer is authorized by his or her probation director, as the case may be. The warrant must be executed upon the same conditions and in the same manner as is otherwise provided for execution by a police officer.

Criminal Procedure Law §530.80 Order of recognizance or bail; surrender of defendant

1. At any time before the forfeiture of a bail bond, an obligor may surrender the defendant in his exoneration, or the defendant may surrender himself, to the court in which his case is pending or to the sheriff to whose custody he was committed at the time of giving bail, in the following manner:

(a) A certified copy of the bail bond must be delivered to the sheriff, who must detain the defendant in his custody thereon, as upon a commitment. The sheriff must acknowledge the surrender by a certificate in writing, and must forthwith notify the court in which the case is pending that such surrender has been made.

(b) Upon the bail bond and the certificate of the sheriff, or upon the surrender to the court in which the case is pending, such court must, upon five days notice to the district attorney, order that the bail be exonerated. On filing such order, the bail is exonerated accordingly.

2. For the purpose of surrendering the defendant, an obligor or the person who posted cash bail for the defendant may take him into custody at any place within the state, or he may, by a written authority indorsed on a certified copy of the bail bond, empower any person over twenty years of age to do so.

3. At any time before the forfeiture of cash bail, the defendant may surrender himself or the person who posted bail for the defendant may surrender the defendant in the manner prescribed in subdivision one. In such case, the court must order a return of the money to the person who posted it, upon producing the certificate of the sheriff showing the surrender, and upon a notice of five days to the district attorney.

Criminal Procedure Law
Article 540

Forfeiture of Bail and Remission Thereof

Criminal Procedure Law §540.10 Forfeiture of bail; generally

1. If, without sufficient excuse, a principal does not appear when required or does not render himself amenable to the orders and processes of the criminal court wherein bail has been posted, the court must enter such facts upon its minutes and the bail bond or the cash bail, as the case may be, is thereupon forfeited.

2. If the principal appears at any time before the final adjournment of the court, and satisfactorily excuses his neglect, the court may direct the forfeiture to be discharged upon such terms as are just. If the forfeiture is not so discharged and the forfeited bail consisted of a bail bond, the district attorney, within one hundred twenty days after the adjournment of the court at which such bond was directed to be forfeited, must proceed against the obligor or obligors who executed such bond, in the manner prescribed in subdivision three. If the forfeited bail consisted of cash bail, the county treasurer with whom it is deposited shall give written notice of the forfeiture to the person who posted cash bail for the defendant[1] may at any time after the final adjournment of the court or forty-five days after notice of forfeiture required herein has been given, whichever comes later, apply the money deposited to the use of the county.

3. A bail bond or cash bail, upon being forfeited, together with a certified copy of the order of the court forfeiting the same, must be filed by the district attorney in the office of the clerk of the county wherein such order was issued. Such clerk must docket the same in the book kept by him for docketing of judgments and enter therein a judgment against the obligor or obligors who executed such bail bond for the amount of the penalty of said bond or against the person who posted the cash bail for the amount of the cash bail, and the bond and the certified copy of the order of the court forfeiting the bond or the cash bail constitutes the judgment roll. Such judgment constitutes a lien on the real estate of the obligor or obligors who executed such bail bond from the time of the entry of the judgment. An execution may be issued to collect the amount of said bail bond in the same form and with the same effect as upon a judgment recovered in an action in said county upon a debt in favor of the people of the state of New York against such obligor or obligors.

Criminal Procedure Law §540.20 Forfeiture of bail; certain local criminal courts

Notwithstanding the provisions of section 540.10, when bail has been posted in a city court, town court or village court in connection with a local criminal court accusatory instrument, other than a felony complaint, and thereafter such bail is forfeited, the following rules are applicable:

1. If such bail consists of a bail bond, the financial officer of such city, town or village must promptly commence an action for the recovery of the sum of money specified in such bond, and upon collection thereof shall pay the same over to the treasurer or financial officer of the city, the supervisor of the town or the treasurer of the village. Any amount recovered in such action, unless otherwise provided by law, shall be the property of the city, town or village in which the offense charged is alleged to have been committed.

2. If such bail consists of cash bail, the local criminal court must:

(a) If it is a city court, pay the forfeited bail to the treasurer or other financial officer of the city. Such forfeited bail, unless otherwise provided by law, is the property of such city.

(b) If it is a town court or a village court, pay the forfeited bail to the state comptroller on or before the tenth day of the month next succeeding such forfeiture. Such forfeited bail, unless otherwise provided by law, is the property of the town or village in which the offense charged is alleged to have been committed; provided, however, that when (i) a single amount of bail is posted for more than a single offense charged, and (ii) the town or village justice court does not attribute a specific amount of bail to each offense, and (iii) forfeited bail for at least two of the offenses would be the property of different governmental entities, the entire amount of forfeited bail shall be the property of the town or village in which the offenses charged are alleged to have been committed, except that, when forfeited bail for at least one of the offenses would be the property of the state, the entire amount of forfeited bail shall be the property of the state.

Criminal Procedure Law §540.30 Remission of forfeiture

1. After the forfeiture of a bail bond or cash bail, as provided in section 540.10, an application for remission of such forfeiture may be made to a court as follows:

(a) If the forfeiture has been ordered by a superior court, the application must be made in such court;

(b) If the forfeiture has been ordered by a local criminal court, the application must be made to a superior court in the county, except that if the local criminal court which ordered the forfeiture was a district court, the application may alternatively be made to that district court.

2. The application must be made within one year after the forfeiture of the bail is declared upon at least five days notice to the district attorney and service of copies of the affidavits and papers upon which the application is founded. The court may grant the application and remit the forfeiture or any part thereof, upon such terms as are just. The application may be granted only upon payment of the costs and expenses incurred in the proceedings for the enforcement of the forfeiture.