



**New York State Office of Court Administration**  
**CITY, TOWN AND VILLAGE COURTS RESOURCE CENTER**  
**187 Wolf Road, Suite 103**  
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**MEMORANDUM**  
*Confidential – For Internal Court Use Only*

**To:** All City, Town and Villages Judges  
**From:** Brendon D. Dupree, Esq. – Senior Counsel *BDD*  
**Date:** October 12, 2011  
**Re:** Amendment to CPL § 530.60  
**Attached:** L 2011, ch 565 (§ 4469), as amended.

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Effective October 23, 2011, Chapter 565 of the laws of 2011 amended section 530.60 (1) of the Criminal Procedure Law to require that a new 180.80 period be commenced when bail or ROR has been revoked on a defendant charged with any felony offense.

CPL §180.80 requires that a local criminal court order recognizance of a defendant who is charged with a felony and has been held in custody for a period of more than 120 hours without disposition of the felony complaint or commencement of a felony preliminary hearing (This so-called “180.80 time” is extended to 144 hours where a Saturday, Sunday or legal holiday occurs during the custodial period).

Upon arraignment of a felony offense, a local criminal court may order bail or recognizance, unless the defendant is charged with a class A felony or appears to have two prior felony convictions. *See* CPL § 530.20(2)(a). After arraignment, when a defendant is out on his or her recognizance or has posted bail and subsequently fails to appear in court on the felony charge, courts customarily issue a bench warrant to secure the defendant’s attendance.

When that defendant is ultimately picked up on the bench warrant and brought before the court, the CPL in its current form does not specifically require that a new 180.80 time be commenced when the defendant is remanded to the county facility or cannot make bail. Chapter 565 of the Laws of 2011 seeks to remedy this discrepancy by incorporating the time requirements of CPL §180.80 into the revocation provisions CPL §530.60. Furthermore, this amendment codifies the long-standing practice of many justice courts of scheduling an appearance date that coincides with the 180.80 time after an order of bail or ROR has been revoked against a defendant charged with a felony offense.

It should be noted that when a defendant is picked up on a bench warrant law enforcement is required to return that defendant to the court that issued said warrant without unnecessary delay. However when the issuing court is unavailable, CPL §530.70 (2) provides that law enforcement must bring the defendant before another local criminal court as is set forth in CPL § 120.90 (5). The adjoining local criminal court is thereby authorized to “arraign” the defendant on the bench warrant. When the charge(s) at issue is a felony offense and the defendant is remanded or cannot make bail, the amendment to CPL §530.60 will require the adjoining court to schedule an appearance in the court of original jurisdiction within the time constraints of CPL §180.80. For this reason, it is recommended that courts contact their fellow justice courts within the county to obtain the respective court-calendars from one another.

This amendment effectively ensures prompt disposition of a defendant’s felony complaint at the local criminal court level at any time the defendant is held in custody during the pendency of the case, and not just after initial arraignment where a defendant has been remanded or cannot make bail.

A copy of Chapter 565 of the Laws of 2011 is attached for your reference. Please do not hesitate to contact the Resource Center if you have any questions or concerns.

4469  
2011-2012 Regular Sessions  
IN SENATE  
April 6, 2011

Introduced by Sen. NOZZOLIO -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to revocation of orders of recognizance

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 530.60 of the criminal procedure  
2 law, as designated by chapter 788 of the laws of 1981, is amended to  
3 read as follows:

4 1. Whenever in the course of a criminal action or proceeding a defend-  
5 ant is at liberty as a result of an order of recognizance or bail issued  
6 pursuant to this ~~article~~ CHAPTER, and the court considers it necessary  
7 to review such order, it may, and by a bench warrant if necessary,  
8 require the defendant to appear before the court. Upon such appearance,  
9 the court, for good cause shown, may revoke the order of recognizance or  
10 bail. If the defendant is entitled to recognizance or bail as a matter  
11 of right, the court must issue another such order. If he OR SHE is not,  
12 the court may either issue such an order or commit the defendant to the  
13 custody of the sheriff. WHERE THE DEFENDANT IS COMMITTED TO THE CUSTODY  
14 OF THE SHERIFF AND IS HELD ON A FELONY COMPLAINT, A NEW PERIOD AS  
15 PROVIDED IN SECTION 180.80 OF THIS CHAPTER SHALL COMMENCE TO RUN FROM  
16 THE TIME OF THE DEFENDANT'S COMMITMENT UNDER THIS SUBDIVISION.

17 S 2. This act shall take effect on the thirtieth day after it shall  
18 have become law.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD09512-01-1

Creates new procedures in relation to revocation of orders of recognizance.

**Sponsor:** NOZZOLIO

**Law Section:** Criminal Procedure Law / **Law:** Amd S530.60, CPL

#### S4469-2011 Actions

- Sep 23, 2011: SIGNED CHAP.565
- Sep 12, 2011: DELIVERED TO GOVERNOR
- Jun 16, 2011: returned to senate
- Jun 16, 2011: passed assembly
- Jun 16, 2011: ordered to third reading rules cal.339
- Jun 16, 2011: substituted for a7464
- Jun 14, 2011: referred to codes
- Jun 14, 2011: DELIVERED TO ASSEMBLY
- Jun 14, 2011: PASSED SENATE
- Jun 13, 2011: ORDERED TO THIRD READING CAL.1155
- Jun 11, 2011: COMMITTEE DISCHARGED AND COMMITTED TO RULES
- Apr 6, 2011: REFERRED TO CODES

#### S4469-2011 Meetings

Rules: Jun 13, 2011, Rules: Jun 14, 2011, Rules: Jun 15, 2011, Rules: Jun 16, 2011, Rules: Jun 17, 2011

#### S4469-2011 Calendars

Active List: Jun 14, 2011, Floor Calendar: Jun 13, 2011

#### S4469-2011 Votes

**VOTE: COMMITTEE VOTE: - Rules - Jun 13, 2011**

**Ayes (19):** Skelos, Alesi, Farley, Johnson, Larkin, LaValle, Libous, Marcellino, Maziarz, Nozzolio, Saland, Seward, Sampson, Breslin, Dilan, Parker, Perkins, Smith, Stewart-Cousins

**Ayes W/R (4):** Hannon, Duane, Krueger, Montgomery

**Nays (1):** Hassell-Thompson

**VOTE: FLOOR VOTE: - Jun 14, 2011**

**Ayes (62):** Adams, Addabbo, Alesi, Avella, Ball, Bonacic, Breslin, Carlucci, DeFrancisco, Diaz, Dilan, Duane, Espaillet, Farley, Flanagan, Fuschillo, Gallivan, Gianaris, Golden, Griffo, Grisanti, Hannon, Hassell-Thompson, Huntley, Johnson, Kennedy, Klein, Krueger, Kruger, Lanza, Larkin, LaValle, Libous, Little, Marcellino, Martins, Maziarz, McDonald, Montgomery, Nozzolio, O'Mara, Oppenheimer, Parker, Peralta, Perkins, Ranzenhofer, Ritchie, Rivera, Robach, Saland, Sampson, Savino, Serrano, Seward, Skelos, Smith, Squadron, Stavisky, Stewart-Cousins, Valesky, Young, Zeldin

#### S4469-2011 Memo

BILL NUMBER: S4469

TITLE OF BILL:

An act  
to amend the criminal procedure law, in relation to revocation of orders  
of recognizance

This is one in a series of measures being introduced at the request of  
the Chief Administrative Judge upon the recommendation of her  
Advisory Committee on Criminal Law and Procedure.

This measure would amend the Criminal Procedure Law ("CPL") to  
authorize a court to review an order of recognizance issued pursuant  
to section 180.80 when the defendant subsequently fails to appear in  
court as required. It also provides that a new section 180.80 period  
apply if the court revokes the order of recognizance and commits the  
defendant to the custody of the sheriff.

CPL 180.80 currently provides that a court must release a defendant  
"on his own recognizance" where the defendant has been held in  
custody on a felony complaint for more than 120 hours without a  
disposition of the felony complaint or commencement of a felony  
hearing (the period is extended to 144 hours where a Saturday, Sunday  
or legal holiday occurs during the custodial period). However, when a  
defendant released pursuant to CPL 180.80 fails to appear in court at  
a subsequent time, courts customarily issue a bench warrant to compel  
a defendant's appearance. When the defendant is ultimately returned  
to court, a new securing order is then issued. In many cases, courts  
will then fix a new CPL 180.80 period, giving the prosecution

additional time to dispose of the felony complaint by plea or indictment, or else commence a preliminary hearing.

While this approach is practical, it is not expressly authorized by any provision in the Criminal Procedure Law. In the absence of any express authorization, many courts adopt the procedures used to revoke orders of recognizance under CPL 530.60. That section, however provides that "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 article, 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. . . ." (emphasis added). Orders of recognizance issued pursuant to Article 180, however, do not come within the ambit of Article 530.

Additionally, when a defendant is ultimately returned to court and a new securing order is issued, it is unclear whether the court is required to issue a new release order if the prosecution again does not timely dispose of the felony complaint or commence a preliminary hearing. Arguably, by failing to return to court as required, a defendant has waived any right to the protection of CPL 180.80. However, the underlying purpose of CPL 180.80 is to insure that a person is not

unreasonably held in custody on the basis of a hearsay felony complaint. When a person is initially released from custody because the People were unable to secure an indictment or commence a preliminary hearing in a timely manner, any significant additional delay suggests that the People may be unable to present competent evidence that the defendant has committed an offense.

We believe that it is appropriate to limit the People to an additional 120 hours (144 hours if defendant is held over a Saturday, Sunday or legal holiday) to either dispose of the felony complaint or commence a preliminary hearing. However, in order to reduce the risk that the People will not learn that a defendant has been picked up on a warrant or is otherwise in custody on another matter, this measure provides for the new period to commence from the time the court revokes the order of recognizance and commits the defendant to the custody of the sheriff.

This measure, which would have no meaningful fiscal impact on the State, would take effect 30 days after it shall have become law.

2011 LEGISLATIVE HISTORY:  
None. New proposal.