

Chap. 558 AN ACT ESTABLISHING IN THE SUPERIOR COURT AN APPELLATE DIVISION FOR THE REVIEW OF CERTAIN SENTENCES IN CRIMINAL CASES.

Be it enacted, etc., as follows:

G. L. (Ter. Ed.), 278, new §§ 28A-28D, added.

Appellate division of the superior court.

SECTION 1. Chapter two hundred and seventy-eight of the General Laws is hereby amended by inserting after section twenty-eight, as appearing in the Tercentenary Edition, the four following sections: — *Section 28A.* There shall be an appellate division of the superior court for the review of sentences to the state prison imposed by final judgments in criminal cases, except in any case in which a different sentence could not have been imposed. Said appellate division shall consist of three justices of the superior court to be designated from time to time by the chief justice of said court, and shall sit in Boston or at such other place as may be designated by the chief justice, and at such times as he shall determine. No justice shall sit or act on an appeal from a sentence imposed by him. Two justices shall constitute a quorum to decide all matters before the appellate division.

A designation by the chief justice of the members of the appellate division shall be recorded by the clerk for criminal business in Suffolk county who shall forthwith send copies thereof to the several clerks of the superior court.

Procedure before appellate division.

Section 28B. A person aggrieved by a sentence which may be reviewed may within three days after the date of the imposition thereof, notwithstanding any partial execution of such sentence, file with the clerk a request for leave of the justice who imposed the sentence to appeal to the appellate division for the review of such sentence. Upon the imposition of such a sentence to the state prison the clerk of the court shall notify the person sentenced of his right to request such leave. If such leave to appeal is not granted within ten days after such request, the person sentenced shall forthwith be notified by the clerk of his right to request said appellate division within ten days for leave to appeal for the review of such sentence. The justice imposing the sentence may grant such leave at any time before the request to the appellate division is considered. Whenever leave to appeal is granted the defendant shall be notified by the clerk, and the appeal shall be filed with the clerk for the county where the judgment was rendered within ten days after notice that leave is granted. Said division may for cause shown consider any late request for leave to appeal filed within one month from the imposition of sentence and may grant such leave. A request for leave to appeal or an appeal shall not stay the execution of a sentence. The clerk shall forthwith notify the chief justice, the justice who imposed the sentence appealed from and the appellate division of the filing of such an appeal. Such justice may transmit to the appellate division a statement of his reasons for imposing the sentence

and shall make such a statement within seven days if requested to do so by the appellate division.

If leave to appeal is granted in accordance with this section, the appellate division shall have jurisdiction to consider the appeal with or without a hearing, review the judgment so far as it relates to the sentence imposed, and also any other sentence imposed when the sentence appealed from was imposed, notwithstanding the partial execution of any such sentence, and shall have jurisdiction to amend the judgment by ordering substituted therefor a different appropriate sentence or sentences or any other disposition of the case which could have been made at the time of the imposition of the sentence or sentences under review, but no sentence shall be increased without giving the defendant an opportunity to be heard. If the appellate division decides that the original sentence or sentences should stand, it shall dismiss the appeal. Its decision shall be final. The clerk shall forthwith notify the chief justice and the justice who imposed the sentence appealed from of the final action by the appellate division on the appeal. The appellate division may require the production of any records, documents, exhibits or other thing connected with the proceedings. The superior court shall by rule establish forms for requests for leave to appeal and for appeals hereunder and may by rule make such other regulations of procedure relative thereto, consistent with law, as justice may require.

Section 28C. If an appeal is dismissed, the clerk for the county where the judgment was rendered shall forthwith notify the appellant and the warden of the state prison. If the judgment is amended by an order substituting a different sentence or sentences, or disposition of the case, the court sitting in any convenient county shall resentence the defendant or make any other disposition of the case ordered by the appellate division. Time served on a sentence appealed from shall be deemed to have been served on a substituted sentence.

Dismissal
of appeal.

Amendment
of judgment.

Section 28D. When an appeal is considered or heard in a county other than that in which the judgment was rendered, or when a defendant is brought before the court for resentence or other disposition in such a county, the clerk for such county or an assistant clerk shall act as clerk for the county in which the judgment was rendered and shall issue any process required, and shall transmit copies thereof with a statement of the proceedings to the last mentioned clerk.

Clerk of courts
for one county
to act as clerk
for other
county in
certain cases.

SECTION 2. This act shall become operative November first, nineteen hundred and forty-three, and shall apply only to sentences imposed on or after said date.

Effective date.

Approved June 12, 1943.