Testimony by:

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Good afternoon. My name is Kevin Stadelmaier. I'm the Chief Attorney of the Criminal Defense Unit for the Legal Aid Bureau of Buffalo. I'm also a Board member and Chairperson of the Legislative and Lobbying Committee of the New York State Association of Criminal Defense Lawyers.

As an initial matter, I want to thank the Standing Committees for providing this forum to allow exploration of court re-opening during these unpreceded times. The Unified Court System, the Office of Court Administration and all judges, staff, attorneys and litigants have a joint responsibility to ensure that due process and court access is maintained while concurrently remaining laser focused on ensuring that those ideals are accomplished in the safest manner possible and with the maintenance of community health at the forefront.

As my expertise falls in the criminal defense realm, I'd like to focus on three areas where improvement could be made in ensuring access and due process while maintaining safety.

Currently, the Governor, by Executive Order, and not legislative action, has "paused" important sections of the Criminal Procedure Law. These include 30.30, 245, 170.70 among others. Although tolling of CPL 180.80 (governing time in pre-trial custody prior to preliminary hearings) and CPL 190 (regarding empaneling of grand juries) have recently been lifted, there

remains serious concerns relevant to the other paused sections. Substantial prejudice has, and will continue, to result until this Executive Order is lifted in total. In general, we respectfully call for the immediate lifting of this order. Specific concerns relevant to these paused provisions are the focus of this testimony.

First, the pause of Criminal Procedure Law 30.30 must end immediately. Since March 21st, 2020, the mandates of the CPL's speedy trial law have been tolled. This, along with the recent wrongheaded and disappointing rollback of the historic bail reforms implemented in January 2020, have resulted in a great many persons being held needlessly in pre-trial custody awaiting further court action.

Although District Attorneys have begun empaneling grand juries, the provisions of CPL 30.30 have not been re-started. All time on a defendant's criminal case has been tolled since March 21st. This tolling has de-incentivized prosecution as well as provision of discovery under CPL 245 as there is no external pressure to adjudicate cases. Presently, District Attorneys are not bound by the current timing mandates for provision of discovery under CPL 245. Although discovery is being provided where necessary to secure disposition, it is done for that purpose, and that purpose only. Regular, statutorily mandated provision of discovery is non-existent due to the Governor's Executive Order.

Although Superior Courts have begun limited re-opening across the state, prosecutors and Judges have been allowed to pick and choose those cases which they felt were ripe for disposition; instead of prudently focusing on those cases based upon a "time in pre-trial detention" model.

However, given the fact that Grand Juries have re-started, and the Superior Courts have developed protocols to re-open and hold limited "in person" appearances with substantial safety protocols in place, the re-starting of 30.30 must occur. To allow further delay in this re-start is to deny a multitude of defendants held pre-trial the right of due process.

Second, although the provisions of CPL 180.80 have re-started, mandating felony hearings be held within 120 or 144 hours after arrest; its sister provision, CPL 170.70, dealing with unconverted misdemeanor complaints, has not.

Again, with far more misdemeanor offenses now being eligible for cash bail, a great number of defendants have been held in jail far longer than they ever would have in pre-pandemic times. While a mechanism exists to have felonies brought before the court to be handled under the auspices of the preliminary hearing scheme outlined in 180.80, no automatic relief is currently available to those clients incarcerated pre-trial on unconverted misdemeanor complaints. This inequity must be rectified immediately. CPL 170.70 must be re-started to review and adjudicate those defendants held in custody pre-trial on unconverted misdemeanor complaints.

Finally, the Court must seriously consider the impacts of re-opening the courts and scheduling "non-essential" matters in person. The vast majority of criminal appearances by a defendant are uneventful. Many are simply status, scheduling or case review conferences between the

DA, Judge and defense counsel. The defendant's appearances are largely window dressing and done typically so the Judge can test the defendant's level of commitment to their case and their adherence to non-monetary bail conditions. Pre-COVID, there were also a great many "compliance" type appearances ordered, simply for the purpose of checking a defendant's adherence to post sentencing mandates such as drug treatment, participation in domestic violence counseling and the like. Where a defendant was compliant, these appearances were absolutely unnecessary, yet were nevertheless held.

The combined number of these "non-essential" proceedings served in pre-pandemic times, to overload court dockets and unnecessarily force crowded courtrooms. Given the new order of things, this can no longer be the norm.

Accordingly, we are calling on the courts and this body to be mindful of safety in considering whether these "non-essential" proceedings require the appearance of the defendant. In our view, unless it is for arraignment, hearing, trial, sentencing or post-sentencing non-compliance, the defendant need not appear.

The courts should defer to defense counsel and the prosecution in determining whether a defendant's appearance is necessary. If the court feels so inclined, the technology is available to allow defendants, and counsel in many circumstances, to appear virtually for these proceedings. The effect will be dramatically reduced traffic in the court, and the resultant "social distancing" will continue to allow NYS to maintain its extremely low rate of community spread.

In short, we appreciate the dilemma the courts face; attempting to balance safety with due process. However, in examine the above issues, it is clear that further work is required. The courts, with the proper precautions and practical considerations in mind can provide further access and due process while at the same time protecting all parties from exposure to COVID-19.

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Thank you for allowing me the opportunity to speak today.

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