

Current Interpretation of Executive Order 202.28

Based on a conversation between the Governor's and OCA's staff, the following is the current consensus regarding the intent of the recent Executive Order.

The key provisions of this Executive Order are as follows:

- 182.30 - The Court can take any type of plea by video appearance (but apparently certain types of sentences are still not permitted by video)
- 180.60 – We can conduct preliminary hearings by video and, for good cause shown, withhold the image and disguise the voice of a witness as long as a Judge can judge the demeanor of the witness
- 180.80 – between today and May 14th, the Court must determine on every pre-indictment case where the defendant is held whether there is good cause to continue to hold the defendant due to the inability to empanel a grand jury. **A specific application by the defendant is not required.**
- 190.80 – To the extent that a defendant continues to be held on a felony complaint beyond 45 days after preliminary hearing, due to the inability to empanel a Grand Jury, a good cause extension may be given as long as the defendant has been provided a preliminary hearing

Between now and May 14, 2020 we have to hear (or consider) 180.80 applications for release and the People's good cause application, if made. All good cause applications shall be heard by a Supervising Judge that is a Supreme Court Justice or Acting Supreme Court Justice. After listening to the good cause extensions, Judges can determine as follows:

1. There is good cause to extend 180.80 because there is no Grand Jury but they will grant the request of the defendant to have a preliminary hearing and adjourn for scheduling of the preliminary hearing before June 6, 2020;
2. There is good cause to extend 180.80 because there is no Grand Jury and they will not grant the request of the defendant to have a preliminary hearing because the People have shown additional good cause that a preliminary hearing cannot be scheduled (e.g., a key witness is sick with the virus or it involves multiple witnesses and complex evidence that the Court cannot handle at present); or
3. There is good cause to extend 180.80 because there is no Grand Jury and they will not grant the request of the defendant to have a preliminary hearing because the People have shown additional good cause that a preliminary hearing should not be scheduled (e.g., a key witness is at-risk (a stranger rape) and it would be more appropriate to present to a secret Grand Jury despite the Executive Order permitting the image and voice of a witness to be disguised during the electronic appearance or it involves a confidential informant that could be identified in spite of image and voice disguise);
4. The same procedures regarding good cause applications will be applicable on new arrests as are being followed on individuals that were in custody prior to the Executive Order.

Should the Judge make the determination according to #1 above, once a preliminary hearing has been done, it will be good cause to extend 190.80 after 45 days should a grand jury not be available.