

Effective May 8, 2020 and pursuant to the Governor's Executive Order No. 202.28 modifying CPL 180.60, preliminary hearings in New York City Criminal Court will be conducted by electronic appearance of all parties using Skype for Business. By the same executive order, the Governor has directed a process for defendants to make applications pursuant to CPL 180.80 and for the prosecutor to make a good cause extension applications under the same provision. Criminal Court has developed a procedure for scheduling the over 300 felony matters adjourned and pending CPL 180.80 action for either one of these actions during the period of the Governor's Executive Order.

Court Staffing

Central Administrative Scheduling Team responsible for

- Coordinating initial aggregate scheduling of preliminary hearings

Each Court will staff the preliminary hearing process with the following personnel:

- 1 or 2 clerk researcher/coordinator (depending on volume) – responsible for the following:
 - o determining appropriate participants and their contact information;
 - o pulling court file and scanning court back;
 - o receiving documentary evidence and Rosario material from parties
 - o scheduling video appearances using Skype for Business and distributing documents (court back, complaint, RAP sheet, documentary evidence and Rosario material), including:
 - judge
 - court reporter
 - court interpreter, if necessary
 - Assistant district attorney (ADA)
 - Defense attorney(s)
 - Witness(es)
 - o scheduling defendant video appearance with Department of Correction
- 1 or 2 part clerk(s) per virtual preliminary hearing part (depending on volume) – responsible for the following:
 - o Coordinating and assuring appearance of all scheduled parties, particularly defendant
 - o Monitoring and coordinating Skype connection
 - o Swearing-in witnesses
 - o If necessary, displaying documentary evidence and placing documents in evidence
 - o Executing orders (changes in securing orders)

- Updating Universal Case Management System (UCMS)
- Court Reporter
- Court Interpreter, if necessary

Parts

Each County will create the requisite number of preliminary hearing parts necessary to conduct simultaneous hearings; and take dispositions. Plea dispositions will be taken in PH1. The designations for the preliminary hearing parts will be PH2, PH3, etc.

Group Email Boxes

The Court will use the Preliminary Hearing Group Email Boxes to communicate with the parties

| | |
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| Bronx | bxprelim@nycourts.gov |
| Kings | knprelim@nycourts.gov |
| New York | nyprelim@nycourts.gov |
| Queens | qnprelim@nycourts.gov |
| Richmond | riprelim@nycourts.gov |

Local Coordination

Each Supervising Judge may coordinate outside of the framework listed herein with the county's District Attorney and defender organizations to facilitate plea bargains and initial scheduling of preliminary hearings. However, the final scheduling of preliminary hearings, particularly scheduling of the defendant's appearance, must be coordinated through the Central Administrative Scheduling Team.

CPL 180.80 Applications

To initiate a CPL 180.80 application with the Court on cases pre-dating EO 202.28 within the time frame indicated therein, the defense attorney must submit a written application attached to an email sent to the appropriate group email box listed above no later than 10:00 AM on Monday, May 11, 2020 with a copy to the People with the following information in the subject heading line of the email – "180.80 Application – "Defendant's Name" "Docket Number."

A court attorney will monitor the group preliminary hearing email box listed above and ensure the People have been served with the defendant's application and, if necessary, forward the application to the appropriate District Attorney supervisor.

The People must reply to the defendant's application by attaching their response to an email to the appropriate preliminary hearing group email box listed above with a copy to the defense attorney no later than 10:00 AM on Tuesday, May 12, 2020.

The defense attorney, if he or she feels necessary, may respond to the People's response by attaching the response to an email to the appropriate group preliminary hearing email box with a copy to the People no later than close of business on Tuesday, May 12, 2020.

The Court will issue its decision on the application and good cause extension on Wednesday, May 13, 2020.

On new cases arraigned after today, CPL 180.80 applications must be submitted in writing pursuant to the procedure listed above by noon on the next business day after the arraignment. The People's response should be submitted by email to the Court with a copy to defense counsel by 10:00 AM one day after receipt of the application. The defense attorney may, if he or she feels necessary, make further response to the People's reply by the close of business on the day the People's response is received. The Court will issue a decision within 144 hours of the defendant's arrest.

Preliminary Hearing

Simultaneously to the submission of the CPL 180.80 applications, the Court will work with the District Attorney's offices to begin the scheduling of matters in which they will, even prior to a Court ruling, conduct a preliminary hearing or offer a plea bargain.

To initiate this process, the District Attorney's office should email the attached spreadsheet to the chief clerk at jbarry@nycourts.gov with the following information:

1. Defendant Name
2. Docket #
3. NYSID #
4. Jail location – if known
5. Arraignment Date
6. Securing Order – including forms and amount of bail
7. Interpreter language – if known
8. Top Charge
9. ADA Name
10. ADA Phone #
11. ADA email address
12. Plea offer – “yes” or “no”
13. Def Atty Name
14. Def Atty Agency – if defense attorney is indigent defender (e.g., LAS, NYCDS, 18b)
15. Def Atty Phone # - if known
16. Def Atty email – if known
17. PW1 Name – first witness' name
18. PW1 NYPD/Civ – is the first witness a police officer or civilian
19. PW1 Req. Ct Unit (yes/no) – does the first witness require a court-located skype unit
20. PW1 Phone # - first witness' phone number (if civilian is appearing at District Attorney's office, not required)

21. PW1 email – first witness’ email (if civilian is appearing at District Attorney’s office, not required)
22. PW2 Name – second witness’ name, if required
23. PW2 NYPD/Civ – is the second witness a police officer or civilian
24. PW2 Req. Ct Unit (yes/no) – does the second witness require a court-located skype unit
25. PW2 Phone # - second witness’ phone number (if civilian is appearing at District Attorney’s office, not required)
26. PW2 email – second witness’ email (if civilian is appearing at District Attorney’s office, not required)
27. PW3 Name – third witness’ name, if required
28. PW3 NYPD/Civ – is the third witness a police officer or civilian
29. PW3 Req. Ct Unit (yes/no) – does the third witness require a court-located skype unit
30. PW3 Phone # - first witness’ phone number (if civilian is appearing at District Attorney’s office, not required)
31. PW3 email – third witness’ email (if civilian is appearing at District Attorney’s office, not required)
32. P Documents (yes or no) – this indicates whether documents will be required to be entered into evidence
33. Bad dates – dates up to June 5 in which witness(es) are unavailable
34. Note – any additional information necessary for scheduling

Initial Central Administrative Scheduling Team Review and Action

Upon receipt of each District Attorney’s spreadsheet, the Central Administrative Scheduling Team will conduct an initial review to determine that all information is accurate and the defendant remains incarcerated.

If the People indicate on the spreadsheet they are offering a plea disposition, the Central Administrative Scheduling Team will not schedule a preliminary hearing but, upon confirming the identity and contact information of the defense attorney, will send an email to the ADA and defense attorney with the subject heading “Plea – “Defendant’s Name” “Docket Number” with the following information – “The People have indicated they will offer a plea bargain on this matter. Please confer and indicate whether the offer is acceptable. Upon conferral, the ADA should respond to this email indicating whether the matter should be scheduled for plea or preliminary hearing.”

Preliminary Hearing Scheduling

If no plea offer is indicated on the spreadsheet, the Central Administrative Scheduling Team will coordinate with the appropriate defender agency to ensure defense attorney’s name and contact information are correct and other necessary information. The Central Administrative Scheduling Team will locate the defendant and coordinate scheduling of each defendant’s virtual appearance with Department of Correction’s Video Unit.

The Central Administrative Scheduling Team will send the preliminary hearing Skype invitation, at least two business days in advance of the hearing, to the judge assigned to preside over the preliminary hearing part, assigned ADA, assigned defense attorney, court reporter, and court interpreter, if necessary. If a witness or witnesses will be appearing on their own computer, the Skype invitation will be sent to them. If a witness will be appearing at the District Attorney's office, no invitation will be sent to the witness. If a witness or witnesses are police officers, the clerk researcher/coordinator will confirm with the ADA where the officer will be logging onto the Skype meeting.

Preliminary hearings will be scheduled for two hour time slots.

On the first day of preliminary hearings, only one preliminary hearing part per county should be scheduled. A maximum number of three preliminary hearings should be scheduled in each part – one at 9:00 AM; one at 11:30 AM and one at 2:30 PM. As the Court gains experience with the process, it will add additional PH parts and, possibly, additional time slots.

The "Title" of the Skype invitation will use the following convention: "PH3 (or other PH part) Hearing – "Defendant's Name" "Docket Number."

The narrative portion of the Skype invitation should contain the following narrative and information:

"This matter has been scheduled for a preliminary hearing. The defense attorney should log onto the Skype meeting ten minutes prior to the scheduled start time. The first half hour of the scheduled Skype meeting will be devoted to confidential attorney-client consultation. The clerk will log on at the start of the Skype meeting to ensure the defendant is produced, the defense attorney is present and there are no communication issues and then log off. All other parties should log on a half hour after the start of the scheduled Skype meeting to commence the preliminary hearing."

1. Defendant Name
2. Docket #
3. NYSID #
4. Arraignment Date
5. Jail location – e.g., AMKC
6. Securing Order – including forms and amount of bail
7. Interpreter language – if known
8. Top Charge
9. ADA Name
10. ADA Phone #
11. ADA email address
12. Defense Attorney's Name
13. Defense Attorney's Agency
14. Defense Attorney's Phone #
15. Defense Attorney's email

16. Defense Attorney Supervisor's Name
17. Defense Attorney Supervisor's Phone #
18. Defense Attorney Supervisor's email
19. For each witness
 - a. Name of Witness
 - b. NYPD or Civ
 - c. Req. Ct Unit – email address of court video unit that will be used for witness, if requested
 - d. DA Unit –email address of DA unit, if witness is participating from DA's Office
 - e. Mobile phone number of the witness where court staff may reach witness to troubleshoot connection issues (not required if witness is participating from video unit at DA's office or will participate with ADA at court location)
 - f. Email address of witness to which court personnel will send Skype invite (not required if witness is participating from video unit at DA's office or will participate with ADA at court location)

Evidence and Rosario Delivery

The assistant district attorney and defense attorney must upload any required documentary evidence and/or Rosario material to the web-based document delivery system in the Criminal Record Information System (CRIS) at least twenty-four hours in advance of the scheduled hearing.

At least one day prior to the preliminary hearing, local clerk researcher/coordinator will send an email attaching the following items from the document delivery system available in the CRIS with the subject heading "PH# Documents – Preliminary Hearing – "Defendant's Name" "Docket Number."":

- the complaint;
- the defendant's RAP sheet;
- any documentary evidence; and
- any Rosario material

Preliminary Hearing Virtual Appearance

The first half hour of each two-hour time slot will be reserved for attorney-client consultation.

The part clerk will add the defendant into the Skype appearance by using the "Add Participant" feature using the email address associated with booth in the location at which the defendant will be produced. The part clerk will ensure that the defense attorney has logged on to the Skype appearance and that the attorney and defendant are able to see and talk to each other and then log off for the remainder of the half hour.

At the conclusion of the half hour, the part clerk will log on again and ensure that all other participants have logged onto the Skype appearance and share any documentary evidence and Rosario material using that Skype feature.

The part clerk will indicate whether any members of the public have requested to view the appearance and identify those individuals making the request (see below). The presiding judge will listen to argument, if any, from the parties as to whether the courtroom should be closed. Upon direction from the judge if the part has not been closed, the part clerk will invite the member of the public into the Skype meeting.

At the start of the court appearance, along with any other preliminary instructions, the presiding judge will indicate on the record that “Recording of this proceeding is prohibited without an application and express permission from the Court.”

The ADA will indicate the first witness and the part clerk will add the witness to the Skype appearance. Upon a check of the witness’s audio and video, the clerk will swear in the witness.

If there are additional witnesses, the part clerk will add them as necessary and swear them in.

At the conclusion of the hearing the judge will make one of the following findings:

1. The evidence supports a felony, in which case the clerk will annotate the action sheet accordingly; enter the appropriate information in UCMS and close out the case; and transfer the matter to the appropriate Supreme Court intake part;
2. The evidence only supports a misdemeanor or violation, in which case the clerk will annotate the action sheet accordingly; enter the appropriate information in UCMS; transfer the matter to the appropriate Criminal Court AP part; and take appropriate action on any modification the judge may make on the defendant’s securing order; or
3. The evidence does not support that any crime has been committed, in which case the clerk will annotate the action sheet accordingly; enter the appropriate information in UCMS and close out the case; and submit the appropriate Change in Status form to Department of Correction.

Public Viewing of Hearing

Any member of the public requesting to view the preliminary hearing must make the request by email to the appropriate group email box at least twenty-four hours in advance of the scheduled preliminary hearing containing the following information:

1. Name of defendant
2. Docket Number
3. Date and time of hearing

New York City Criminal Court
EO 202.28 CPL 180.80 Application and Virtual Preliminary Hearing Process
May 8, 2020 (Revised)

The clerk researcher/coordinator will respond that viewing can only be conducted at the courthouse and may be limited by the judge at the request of the parties and send instructions where the member of the public should report to review the proceedings should the judge approve the request.

The clerk researcher/coordinator will arrange ahead of time with technology to set up a viewing monitor in the designated courthouse location. If the judge approves the viewing, the member of the public will be logged on by the part clerk.