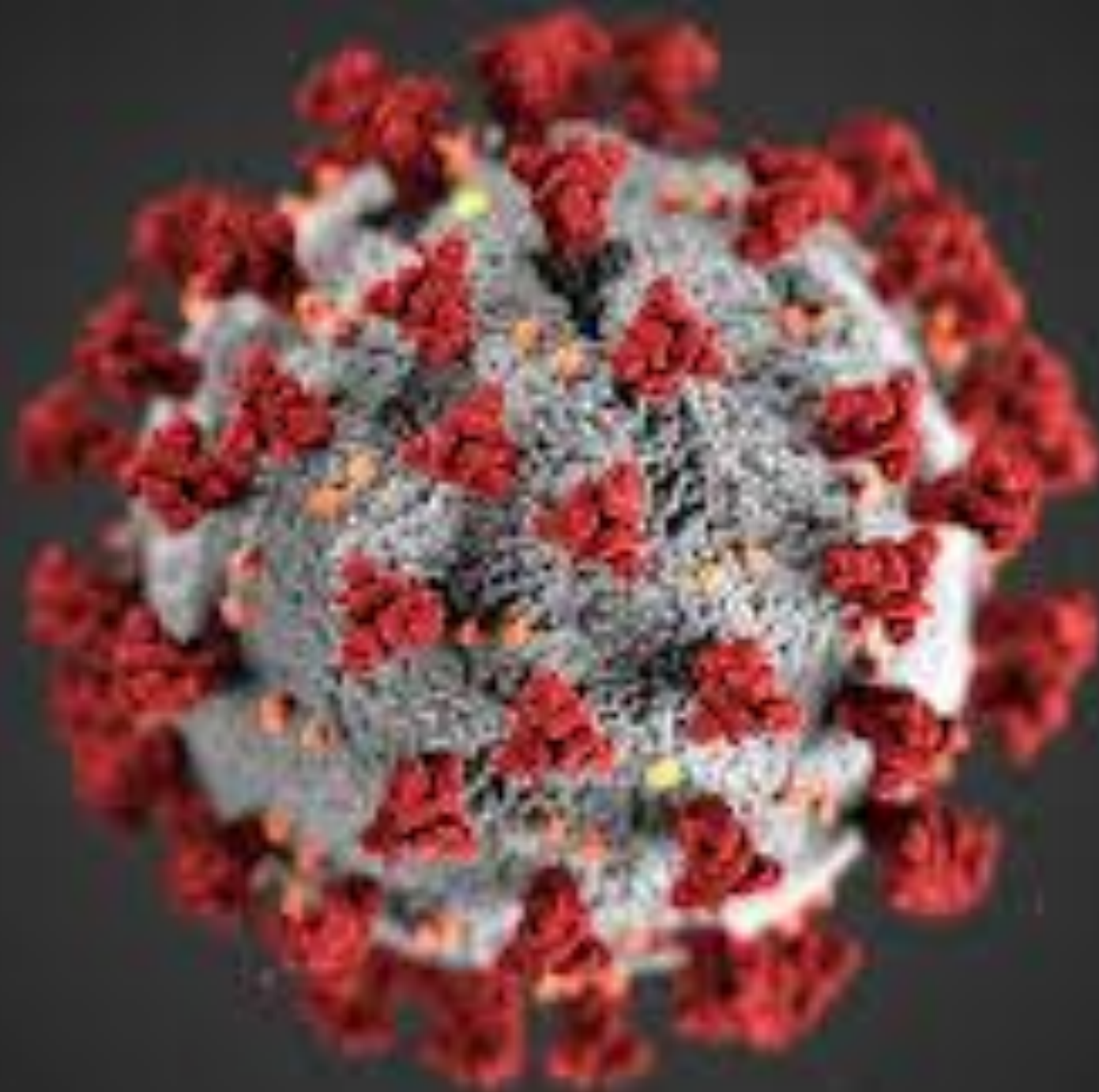


SPEEDY TRIAL IN THE AGE OF COVID-19 AND 50-A DISCOVERY UPDATE

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▶ Executive Order 202.8, issued March 20th, 2020

“ In Accordance with the directive of the Chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement, filing or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedural law...is hereby tolled from the date of this Executive Order....”

PANDEMIC EXECUTIVE ORDER



- ▶ CPL 30.30 SPEEDY TRIAL TIMES
- ▶ STATUTES OF LIMITATION
- ▶ CPL 180.80 PRELIMINARY HEARINGS
- ▶ CPL 245 MANDATORY DISCOVERY

WHAT DID THIS STOP?

- ▶ CPL 30.30 mandates the time in which the District Attorney must “declare ready for trial” in order to prosecute a criminal case.
 - ▶ Following the commencement of a criminal action by the filing of an accusatory instrument, the People must be ready for trial within:
 - ▶ 30 days on a violation
 - ▶ 60 days on a “B” Misdemeanor
 - ▶ 90 days on an “A” Misdemeanor
 - ▶ 6 months on a felony

CPL 30.30 AND CPL 245 PRIMER

- ▶ In January 2020, due to changes in the Discovery Law, it became much more difficult for the People to declare ready for trial.
- ▶ Prior to Discovery Reform
 - ▶ On the record or *Kendzia* Letter
- ▶ After Discovery Reform
 - ▶ Required provision of all discovery within specified time limits AND the filing and receipt by the Court of a “Certificate of Compliance” attesting to readiness that can be filed ONLY AFTER all discovery was provided.

INTERPLAY OF CPL 30.30 AND CPL 245

▶ Between March 20th, 2020 and October 5th, 2020

- ▶ All CPL 30.30/245 time on cases arraigned prior to the pause stopped.
- ▶ All CPL time on cases arraigned during the pause never started
- ▶ Cases simply piled up and remained in limbo

SO, WHAT HAPPENED?



OCTOBER 4TH, 2020: EO 202.67

- ▶ Reinstated CPL 30.30 Speedy Trial
- ▶ Reinstated CPL 245 Discovery

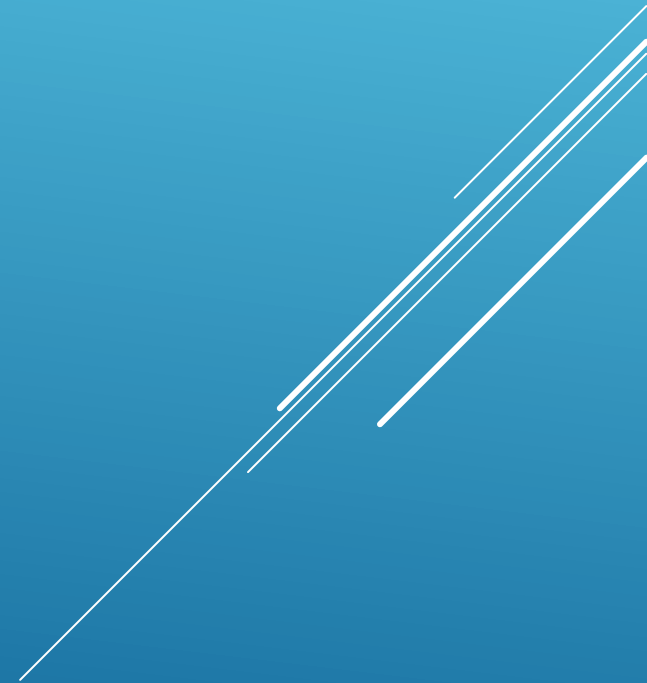
EXECUTIVE ORDER 202.67

- ▶ Without complete provision of CPL 245 Discovery and a Certificate of Compliance attesting to readiness, CPL 30.30 would expire for:
 - ▶ Violations arraigned during the pause on November 5th
 - ▶ “B” Misdemeanors arraigned during the pause on December 5th
 - ▶ “A” Misdemeanors arraigned during the pause on January 5th
 - ▶ All cases arraigned before the pause had clocks re-started
 - ▶ Felonies would have been April 5th, but....

LETS DO THE MATH...



WHAT DID THIS MEAN?



- ▶ Close Tracking
- ▶ Weekly Meetings
- ▶ Discovery Reviews
- ▶ 30.30 Motion Drafting in Advance
- ▶ Mass filings once the time periods expired

WHAT WE DID....

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THE RESULT...



- ▶ The DA's office responded to our mass dismissal blitz with a 30.30(g) defense, claiming that the pandemic and resulting office/court closures was an "exceptional circumstance"
- ▶ Our office filed a counterbrief (attached in materials)
- ▶ Many files are still awaiting decision, but at least two BCC Judges have rejected the "Exceptional Circumstances" argument
- ▶ Mass Discovery Filings
- ▶ Compilation of Dismissal and RC

DA RESPONSE AND AFTERMATH

▶ What's CRL 50-a?

CPL 245 AND THE CRL 50-A REPEAL

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- ▶ On June 12th, 2020, after years of work, 50-a was repealed. This opened for public inspection/discovery most disciplinary records for law enforcement personnel.
- ▶ Pursuant to Public Officer's Law 86(6), the repeal of 50-a made all of these records discoverable by the defense under CPL 245.20.
- ▶ Lawsuits were filed in both State and Federal Court seeking to continue shielding these records. Some are still pending.

WHAT HAPPENED TO 50-A?

- ▶ With the repeal and amendment of the Public Officer's Law, records relating to officer misconduct, to be used in cross examination, are specifically discoverable under CPL 245.20(1)(k) as well as pursuant to the People's obligations pursuant to *Brady v. United States* and *Giglio v. United States*.

WHAT DOES THIS HAVE TO DO WITH
DISCOVERY?

- ▶ Because it is specifically discoverable, and because the material is in the possession of law enforcement (CPL 245.20(2)), the People MUST turn it over to be able to file a valid Certificate of Compliance under 245.50.

AND....

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- ▶ The People have alleged that the information is FOILable and/or can be obtained by subpoena...so, they should not have to turn it over...only mention that it exists...

DA OBJECTIONS

- ▶ COC Objections
- ▶ Litigation (Article 78s on FOIL)
- ▶ Written decision in *People v. Cooper* (Hon. Susan Eagan, J.C.C.) SO to Brittney Penberthy!
- ▶ Compilation, Police Accountability Project, NACDL Full Disclosure Project

WHAT'S GOING ON IN ERIE COUNTY
AND AT LEGAL AID?

- ▶ Carefully track time limits for any case arraigned during the pause
- ▶ Make motions to dismiss for 30.30 where applicable
- ▶ Review COCs for compliance with CPL 245, with special emphasis on LEO records under CPL 245.20.

BOLO AND WRAP UP!

QUESTIONS/THOUGHTS

