



NYSACDL

NEW YORK STATE ASSOCIATION
OF CRIMINAL DEFENSE LAWYERS

An Affiliate of the National Association of Criminal Defense Lawyers | Founded in 1986

PRESIDENT

TIMOTHY W. HOOVER, BUFFALO

PRESIDENT-ELECT

ALICE FONTIER, MANHATTAN

FIRST VICE PRESIDENT

BRIAN MELBER, BUFFALO

VICE PRESIDENTS

STEVEN B. EPSTEIN, GARDEN CITY

JAMES W. GRABLE, JR., BUFFALO

YUNG-MI LEE, BROOKLYN

TIMOTHY P. MURPHY, BUFFALO

RUSSELL A. SCHINDLER, KINGSTON

SECRETARY

EDGAR DE LEON, MANHATTAN

TREASURER

ALAN S. LEWIS, MANHATTAN

DIRECTORS

DEREK ANDREWS, ALBANY

STEPHANIE BATCHELLER, ALBANY

LAURA A. FIORENZA, SYRACUSE

RENEE HILL, BRONX

JESSICA HORANI, MANHATTAN

MICHAEL HUESTON, BROOKLYN

JOHN INGRASSIA, NEWBURGH

SCOTT ISEMAN, ALBANY

LINDSAY LEWIS, MANHATTAN

GREG LUBOW, TANNERSVILLE

ALLISON M. MCGAHAY, LAKE PLACID

CHERYL MEYERS BUTH, BUFFALO

KENNETH MOYNIHAN, SYRACUSE

KAREN A. NEWIRTH, MANHATTAN

GRAINNE E. O'NEILL, BROOKLYN

JILL PAPERNO, ROCHESTER

DONALD G. REHKOPF, JR., ROCHESTER

KEVIN M. STADELMAIER, BUFFALO

DONALD M. THOMPSON, ROCHESTER

CLAUDIA TRUPP, NEW YORK

MARK S. WILLIAMS, OLEAN

PAST PRESIDENTS

LAWRENCE S. GOLDMAN, MANHATTAN

PAUL J. CAMBRIA, JR., BUFFALO

LORI COHEN, GREENPORT

JACK T. LITMAN, MANHATTAN

MARK J. MAHONEY, BUFFALO

DAVID L. LEWIS, MANHATTAN

WILLIAM I. ARONWALD, WHITE PLAINS

THOMAS F. LIOTTI, GARDEN CITY

IRA D. LONDON, MANHATTAN

JEANNE E. METTLER, COPAKE

MURRAY RICHMAN, BRONX

GERARD M. DAMIANI, NEW CITY

MARVIN E. SCHECHTER, MANHATTAN

KATHRYN M. KASE, HOUSTON, TEXAS

RUSSELL M. GIOIELLA, MANHATTAN

JAMES P. HARRINGTON, BUFFALO

RICHARD J. BARBUTO, GARDEN CITY

MARTIN B. ADELMAN, MANHATTAN

JOSHUA L. DRATEL, MANHATTAN

RAY KELLY, ALBANY

DANIEL N. ARSHACK, MANHATTAN

LISA SCHREIBERSDORF, BROOKLYN

CRAIG SCHLANGER, SYRACUSE

GEORGE R. GOLTZER, MANHATTAN

KEVIN D. O'CONNELL, MANHATTAN

RICHARD D. WILLSTATTER,

WHITE PLAINS

BENJAMIN OSTREER, CHESTER

AARON MYSLIWIEC, NEW YORK

WAYNE C. BODDEN, BROOKLYN

ANDREW KOSSOVER, NEW PALTZ

JOHN S. WALLENSTEIN, GARDEN CITY

ROBERT G. WELLS, SYRACUSE

EXECUTIVE DIRECTOR

JENNIFER CIULLA VAN ORT, ALBANY

March 24, 2020

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

RE: COVID-19 Effect on Pretrial Detainees

Dear Governor Cuomo:

We write to you on behalf of our members and their clients, many of whom are incarcerated in jails and prisons throughout New York State, including thousands of pretrial detainees who have not been found guilty of any offense. Together with similar city, county, and state organizations, we request that you take the steps outlined below to modify Executive Order 202.8, given that its unilateral suspension of multiple provisions of the Criminal Procedure Law will do grave harm to the rights and health of pretrial detainees throughout New York.

Pretrial detainees currently face the imminent threat to their health and lives posed by COVID-19. Just days ago, the New York City Board of Corrections Interim Chair confirmed that twenty-one inmates and seventeen employees on Rikers Island tested positive for COVID-19. The defenses available to other members of the community—social distancing and frequent handwashing—are impossible for those in prisons and jails. Rapid transmission through the inmate population appears likely. All over the state, local courts and detention centers are struggling to address the threats to health and life now facing those in our prisons and jails.

You could aid them by amending Executive Order No. 202.8, which provides in pertinent part: “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 procedure law . . . or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020.”

Pretrial detainees’ state and federal constitutional rights are generally protected by the time limits set forth in the Criminal Procedure Law that Executive Order No. 202.8 suspends. For example, Criminal Procedure Law § 190.80 provides for the release of a person who is incarcerated for more than forty-five days and who has not had the evidence against her evaluated by a grand jury or a court. Criminal Procedure Law § 180.80 contains a similar provision. Other provisions of the Criminal Procedure Law, like § 30.30(2), provide for the release of those members of our incarcerated communities who have had their case evaluated by a grand jury or a court, but have been incarcerated an undue period of time. These statutory rights derive from the New York and United States Constitutions.

We agree that there are instances where the prosecution’s ability to take action is limited by a state of emergency. But the Legislature has accounted for this possibility. For example,

Criminal Procedure Law § 190.80(b) permits a court to continue detention beyond the statutorily prescribed period for “good cause shown.”

There is a critical difference between a court applying an existing “good cause” provision and a court being sidelined by an executive order. A “good cause” exception allows individuals to petition the court for relief—a core constitutional right. The Executive Order denies judges and advocates the ability to do justice at a local level, when local actors are in the best position to assess the public health threat to people being held pretrial. In short, restrictions on individual rights should be analyzed on a case-by-case basis, as set forth in the very rules your Order suspends. In sum, the Order is not only unconstitutional, but is unnecessary.

We thank you for your swift action in response to the threats that COVID-19 poses to our entire community. We respectfully request that you reflect on how the language of Executive Order No. 202.8 affects pretrial detainees and ask that you amend the Order to exclude Criminal Procedure Law §§ 190.80, 180.80, 170.70, and 30.30(2). We would welcome the opportunity to assist you or your staff in any way we can, and would be happy to discuss ways to protect the incarcerated members of our community from the threats posed by COVID-19, without unduly compromising competing interests.

Thank you.

Respectfully yours,



Timothy W. Hoover
President

New York State Association of Criminal Defense Lawyers

Supported By:

- Appellate Advocates
- The Bronx Defenders
- Brooklyn Defender Services
- The Center for Appellate Litigation
- Chief Defenders Association of New York
- Franklin County Public Defender’s Office
- Innocence Project
- It Could Happen To You
- The Jeffrey Deskovic Foundation for Justice
- The Legal Aid Bureau of Buffalo, Inc.
- The Legal Aid Society
- Legal Aid Society of Nassau County
- Legal Aid Society of Suffolk County
- Legal Aid Society of Westchester County
- NAACP New York State Conference
- Nassau County Criminal Courts Bar Association
- Neighborhood Defender Service, Inc.
- New York County Defender Services

- New York Criminal Bar Association
- New York State Defenders Association
- New Yorkers United for Justice
- Onondaga County Bar Assoc. Assigned Counsel Program
- Ontario County Public Defender's Office
- The Putnam County Legal Aid Society
- Queens Defenders
- Suffolk County Criminal Bar Association