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Cc:
Subject: [External]LPS Comments to Future of Court Proceedings
Attachments: AOC Future of Court Proceedings_LPS Comments.pdf

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Please accept the attached submission from the Department of Law and Public Safety in response to the Supreme Court Notice to the Bar and Public, Future of Court Operations.

Apologies for the delay in response.

Thank you for the opportunity to provide comment.

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Future of Court Operations – Remote and In-Person Proceedings

Department of Law and Public Safety Comments

In response to the July 16, 2021 Notice to the Bar and Public, “Future of Court Operations – Remote and In-Person Proceedings,” the Department of Law and Public Safety respectfully submits the following responses.

Proposal: Oral arguments before the Supreme Court and the Appellate Division will be primarily conducted in person.

Comment: LPS agrees with this proposal, acknowledging that it also allows for discretion to accommodate the needs of the parties.

Proposal: Judges shall have discretion to determine whether to conduct court proceedings virtually or in person except as follows:

Criminal Jury trials shall proceed in person.

Comment: LPS agrees with this proposal.

The following matters may only proceed remotely with the consent of all parties, except that the consent of a party will not be required if the party is absent and unreachable:

Sentencing hearings in Criminal, Family Juvenile Delinquency (FJ), and Municipal matters.

Comment: LPS does not object to the proposal as written. LPS notes that it is disinclined to consent to remote sentencing hearings except in rare circumstances.

Juvenile delinquency adjudications;

Comment: LPS agrees with the proposal.

Evidentiary hearings and bench trials in Criminal matters;

Comment: LPS agrees with the proposal as written. LPS notes that it is disinclined to consent to remote evidentiary hearings and bench trials in criminal matters except in rare circumstances.

LPS further notes that as a general matter, witness testimony should always be presented in-person except in rare circumstances. The coordination of victim/witness participation and testimony, inclusive of direct- and cross-examination, and the ability to assess credibility, is best accomplished in-person.

Evidentiary hearings and trials in Municipal matters that involve a reasonable likelihood of a jail sentence or loss or suspension of license;

Comment: LPS agrees with the proposal.

Termination of parental rights trials, fact-finding and permanency hearings, and other hearings in which constitutional interests are at stake; and

Comment: LPS supports the protocol as written. The major benefits to the remote platform are (1) increased participation by defendants; (2) eliminating the commute to court; and (3) significantly less waiting time for court hearings to commence which allows all parties and attorneys to be more productive overall.

Hearings for an adjudication of incapacity and appointment of a permanent guardian.

Comment: LPS supports the proposal.

Proposal: In all matters, judges may determine to proceed in person where the participants have demonstrated an inability to proceed in a remote format, or in other exceptional circumstances.

Comment: LPS agrees that Courts must maintain some flexibility and discretion to accommodate reasonable requests.

Proposal: In matters that are conducted in person, judges may determine to permit one or more participants to participate remotely based on the individual facts and circumstances.

Comment: LPS agrees with the Court having discretion in these circumstances.

Proposal: In matters that are conducted remotely, judges may accommodate a participant who appears and requests to participate in person.

Comment: LPS agrees that the Court must maintain the discretion to allow a participant to appear in person when appropriate.

Proposal: The following matters in general will proceed remotely:

Motion arguments and case management conferences in all trial divisions of the Superior Court and the Municipal Courts:

Comment: LPS agrees as to non-testimonial motions, as these oral arguments lack the coordination of witnesses required for testimonial motions, and are therefore best suited to continue virtually for efficiency. As to case management conferences, despite the efficiency of virtual status conferences, the lack of in-person appearances reduce opportunities for counsel to work towards resolution. LPS suggests, to the extent possible having at least one in-person status conference, prior to the pre-trial conference, to enable counsel to meet and have meaningful discussions about the case and potential

resolution. This will also impart the gravity of the criminal process on the defendant. For attorney-only conferences, LPS agrees with continuing remote operations.

CRIMINAL: Central Judicial Processing/First Appearances on defendants in custody; Sexually Violent Predator (SVP) hearings; most proceedings that involve state prisoners;

Comment: As to first appearances, given the typically brief nature of first appearances, LPS maintains these events should continue remotely. Despite the remote format, defendants should continue to be provided with/encouraged to complete the "5A" forms to request counsel (where applicable) to avoid delays in assigning representation. The exception to remote first appearances should exist in cases where the defendant has not been processed (for example, the defendant has yet to be fingerprinted). In these cases, the parties should be required to appear in-person. This will reduce the need for post-appearance scheduling of the defendant for processing and will ensure that criminal justice systems are accurate and up to date. This same caveat should apply to arraignments where a defendant has yet to be processed.

LPS agrees that detention hearings should continue remote operations.

CIVIL: landlord tenant proceedings; Special Civil (DC) and Small Claims (SC) trials; civil arbitrations; mediations; and involuntary civil commitment proceedings, absent an application for an in-person hearing based on the individual circumstances of the case;

Comment: LPS agrees that Workman's Compensation court matters can continue largely in a virtual format except for actual trials, as it is difficult during a remote proceeding to determine a witness' credibility or assess a level of disability.

FAMILY: uncontested adoptions; hearings to establish or modify child support; applications for a temporary restraining order (TRO) and initial conferences (but

not hearings on a final restraining order); initial applications for protection pursuant to the Sexual Assault Protection Act (SASPA); matrimonial early settlement panels; and mediations, except for Intensive Settlement Conferences; and

Comment: LPS agrees that in SVP cases, remote proceedings provide better document access as they afford the ability to access e-mails/case management files during the proceeding which ordinarily would not happen because these proceedings when in-person require DAsG to be housed in SVP trailers with limited internet access.

MUNICIPAL: most hearings, except for DWI, other matters with especially serious penalties, and trials that involve multiple witnesses or complex evidence.

Comment: LPS agrees with the proposal.

Additional Recommendations

Comment: Pre-trial conferences. LPS suggests that pre-trial conferences should be conducted in-person to give the Court and counsel an opportunity to resolve the case and/or impart the severity of next steps, i.e. plea cut-off and trial.

Comment: Attorney Caucusing. LPS suggests that to improve remote proceedings generally, the method by which attorneys may caucus with their client(s) while preserving confidentiality, be established early and available.