MODEL COLLOQUY ON ANNOUNCEMENT OF READINESS
(Revised, effective May 3,, 2020)[1]

Note: The following colloquy attempts to fulfill the requirement of CPL 30.30(5) [2] *It is a "work-in-progress" and is submitted as a suggested guide, while the courts gain experience in fulfilling the law's requirement that on a People's statement of readiness, the court make inquiry on the record as to their "actual readiness." The Committee invites the bench to share its experiences and any colloquy recommendations that flow from those experiences.*

TO THE PROSECUTOR:

(1) Have the People filed a certificate of compliance with the discovery requirements of CPL 245.20? [3]

Add if appropriate:
Has there been a need to file a supplemental certificate of compliance, and if so, have the People done so? [4]

Add if the People have not filed a certificate of compliance:
Are the People claiming that they are nonetheless ready because special circumstances in this case have prevented them from filing the certificate? [5] If so, what are those circumstances?

(2) Are you, or another prosecutor, presently available and ready to try the case? [6]

(3) Are the witnesses, including any expert witness, that you deem necessary for the People to presently go to trial, available to testify? [7]

(4) Are any exhibits that you deem necessary to introduce at trial presently available for that purpose?

(5) In sum, have you done all that is required to bring the case to a point where it may be tried? [8]

TO DEFENSE COUNSEL:

(1) Have you received the certificate of compliance?

(2) Does the defense wish to be heard as to whether the disclosure requirements of CPL 245.20 have been met? [9]

Add if questions have been raised and not readily resolvable:
Given the questions you have raise with respect to the certificate, you should, as the statute requires [CPL 245.50(5) [10]], address them in a motion.

Add as may be advisable:
Before filing the motion, however, you and the assistant should have a conference to see if the questions may be resolved.

Note: Where "a statement of unreadiness has followed a statement of readiness made by the [P]eople," and the People claim that the period of unreadiness should be excluded because it is caused by "exceptional circumstances," the claim "must be evaluated by the court after inquiry on the record as to the reasons for the people's unreadiness and shall only be approved upon a showing of sufficient supporting facts." [11]

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[1] The revision was for the purpose of incorporating amendments to CPL 245.50 [L. 2020, c. 56, Part HHH, effective May 3, 2020] that [1] amended subdivision (3) by deleting "exceptional circumstances" and substituting "special circumstances in the instant case"; and [2] added a subdivision (4) to that statute to state: "Challenges to, or questions related to a certificate of compliance shall be addressed by motion."

[2] "Whenever pursuant to this section [CPL 30.30] a prosecutor states or otherwise provides notice that the people are ready for trial, the court shall make inquiry on the record as to their actual readiness. If, after conducting its inquiry, the court determines that the people are not ready to proceed to trial, the prosecutor's statement or notice of readiness shall not be valid for purposes of this section." CPL 30.30(5).

[3] "Any statement of trial readiness must be accompanied or preceded by a certification of good faith compliance with the disclosure requirements of section 245.20 of this chapter." CPL § 30.30(5). Note, however, that "[t]his subdivision shall not apply to cases where the defense has waived disclosure requirements." *Id.* CPL 245.50(1) provides that "[w]hen the prosecution has provided the discovery required by subdivision one of section 245.20 of this article, except for any items or information that are the subject of an order pursuant to section 245.70 of this

article, it shall serve upon the defendant and file with the court a certificate of compliance. The certificate of compliance shall state that, after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery, the prosecutor has disclosed and made available all known material and information subject to discovery. It shall also identify the items provided."

[4] "If additional discovery is subsequently provided prior to trial pursuant to section 245.60 of this article, a supplemental certificate shall be served upon the defendant and filed with the court identifying the additional material and information provided. No adverse consequence to the prosecution or the prosecutor shall result from the filing of a certificate of compliance in good faith; but the court may grant a remedy or sanction for a discovery violation as provided in section 245.80 of this article." CPL 245.50(1).

[5] "Notwithstanding the provisions of any other law, absent an individualized finding of special circumstances in the instant case by the court before which the charge is pending, the prosecution shall not be deemed ready for trial for purposes of section 30.30 of this chapter until it has filed a proper certificate pursuant to subdivision one of this section. A court may deem the prosecution ready for trial pursuant to section 30.30 of this chapter where information that might be considered discoverable under this article cannot be disclosed because it has been lost, destroyed, or otherwise unavailable as provided by paragraph (b) of subdivision one of section 245.80 of this article, despite diligent and good faith efforts, reasonable under the circumstances. Provided, however, that the court may grant a remedy or sanction for a discovery violation as provided by section 245.80 of this article." CPL 245.50(3), as amended by the Laws 2020, c. 56, Part HHH (amendments highlighted).

[6] A statement of readiness must be of "present readiness, not a prediction or expectation of future readiness." *People v. Kendzia*, 64 N.Y.2d 331, 486 (1985). In particular, the law requires for a statement of readiness that an assistant district attorney be presently available to try the case, meaning that the assistant who is to try the case not be on trial in another case or directed and bound by a court to start another case to the exclusion of trying the one upon which the statement of readiness is proffered. *See People v. Jones*, 68 N.Y.2d 717, 718 (1986) (an adjournment was chargeable to the People where the prosecutor was planning on going on a European vacation, but "the record suggests that another trial assistant could have been substituted").

[7] A witness should be deemed available when, should the trial start in the foreseeable future, the witness would be available to testify. *But see People v. Wilson*, 86 N.Y.2d 753, 754–55 (1995), which suggests that the availability of a witness is meant in a more general way. There, the Court of Appeals noted that on the alleged date of readiness, "the People stated 'we have been in contact with the victim. Our intentions are to go forward.'" And the Court held that the second element of readiness, that the People were, in fact ready, "was satisfied here where the People had secured the complainant's cooperation for retrial, possessed a valid accusatory instrument, and had produced defendant."

[8] "This question is taken directly from *People v. England*, 84 N.Y.2d 1, 4 (1994), in which the Court of Appeals stated, "Trial readiness in CPL 30.30 means both a communication of readiness by the People on the record and an indication of present readiness. The inquiry is whether the People have done all that is required of them to bring the case to a point where it may be tried" (citations omitted).

[9] CPL 30.30(5) explicitly requires the court to give the defendant an opportunity to be heard about discovery compliance; it does not explicitly require the court to give the defendant an opportunity to be heard otherwise on a statement of readiness. The Court must nonetheless be prepared to address whether, aside from discovery compliance, it will entertain defense counsel on other issues of readiness. If a defendant's concerns are not readily resolvable, CPL 245.50(4) requires that "[c]hallenges to, or questions related to a certificate of compliance shall be addressed by motion." A court may find it advisable, however, to require the parties to consult with each other to see if their differences can be resolved without a motion.

[10] CPL 245.50(4) ["Challenges to, or questions related to a certificate of compliance shall be addressed by motion."]

[11] CPL 30.30(4)(g).