

Statewide Plan for Implementing Counsel at Arraignment:

Year Five Report

September 29, 2023



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INTRODUCTION

The constitutional right to counsel for people facing criminal charges in New York State is protected under Criminal Procedure Law (CPL) § 170.10(3) and § 180.10(3) and “attaches at arraignment.”¹ In 2010, New York’s Court of Appeals affirmed this critical right in *Hurrell-Harring v. State of New York*, explaining that “nothing in the statute may be read to justify the conclusion that the presence of defense counsel at arraignment is ever dispensable, except at a defendant’s informed option, when matters affecting the defendant’s pretrial liberty or ability subsequently to defend against the charges are to be decided.”² Four years later, in 2014, the State agreed to a settlement in the *Hurrell-Harring* case which acknowledged the importance of counsel at arraignment and required the five Settlement counties (Onondaga, Ontario, Schuyler, Suffolk and Washington) to ensure the in-person presence of defense counsel to represent all eligible persons at arraignment.³ This requirement was codified and extended statewide in 2017.⁴

Executive Law § 832(4)(a) required the Office of Indigent Legal Services (ILS) to develop and implement “a written plan to ensure that each criminal defendant who is eligible for publicly funded legal representation is represented by counsel in person at his or her arraignment; provided, however, that a timely arraignment with counsel shall not be delayed pending a determination of a defendant's eligibility.” With adequate State funding, the counties were required to make good faith efforts to fully implement counsel at arraignment by April 1, 2023.

ILS issued the Statewide Plan for Implementing Counsel at Arraignment (CAFA Plan) on December 1, 2017.⁵ The CAFA Plan described the status of counsel at arraignment in 52 counties (excluding the five Settlement counties) and indicated that \$9,373,237 in annual State funding was required to meet additional counsel at arraignment needs.⁶ The CAFA Plan also detailed ILS’ commitment to work with each county to develop individualized plans for arraignment representation, monitor implementation, and submit periodic reports on the status of counsel at arraignment statewide. The State allocated one-fifth of the funding in State FY 2018-19 budget and increased funding in each subsequent fiscal year until the full amount was allocated in FY 2022-23.⁷ During this five year “phase-in,” ILS worked with counties and providers of mandated representation (or “public defense providers”) to develop and implement sustainable systems for providing arraignment representation.

¹ *Hurrell-Harring v. New York*, 15 N.Y. 3d 8, 21 (2010) (citing *Rothgery v. Gillespie County*, 554 U.S. 191 (2008)); see also *McNeil v. Wisconsin*, 501 U.S. 171, 180-181 (1991) (“The Sixth Amendment right to counsel attaches at the first formal proceeding against an accused”).

² *Id.*

³ See Stipulation and Order of Settlement, *Hurrell-Harring v. New York* (approved March 2015), available at: [Hurrell-Harring Final Settlement 102114.pdf \(ny.gov\)](#).

⁴ See Executive Law § 832(4)(a).

⁵ Office of Indigent Legal Services, Statewide Plan for Implementing Counsel at Arraignment (December 1, 2017) (CAFA Plan), available at: [Microsoft Word - FINAL - CAFA Plan.docx \(ny.gov\)](#).

⁶ Because systems for providing full counsel at arraignment already existed in New York City, the CAFA Plan, projected funding needs, and subsequent update reports focus exclusively on the 52 non-Settlement counties outside of New York City.

⁷ By state FY 2022-23, the State allocated a total of \$250 million in funds for Executive Law § 832(4) implementation of caseload relief, quality improvement, and counsel at arraignment in the 52 non-Settlement counties and New York City.

In accordance with ILS' commitment in the CAFA Plan and as required by Executive Law § 832(4)(a)(iv), beginning in 2019, ILS has published annual reports (CAFA Reports) on implementation of, and adherence to, the counties' plans. With each CAFA Report, we examine progress made in infrastructure development, including: i) how counties organize representation; ii) any gaps in representation; and iii) systems for identifying missed arraignments. CAFA Reports filed to date reflect an overall trend toward complete coverage, as fewer counties report gaps in their systems of representation with each passing year. This is significant considering the challenges posed by the COVID-19 pandemic, recent changes to New York's bail laws, continued geographic challenges, and ongoing issues with attorney recruitment and retention.

In preparing this report, ILS staff spoke with the coordinators of CAFA representation⁸ in each of the 52 non-Settlement counties outside of New York City, using a survey designed to elicit information about the structure of arraignment representation, any remaining gaps in coverage, systems in place to identify missed arraignments, and the process of the arraignment itself.⁹ We report on the status of New York's counsel at arraignment infrastructure, including any remaining gaps and challenges, in Section I of this report. Additionally, we detail our findings in Section IV, "Counsel at Arraignment By the Numbers."

In Section II of this report we present, for the first-time, data on the number of arraignments where public defense providers provided arraignment representation, whether pre-arraignment detention was reported, and reported arraignment outcomes. This information is collected as part of ILS' annual data reporting and, though still in the early stages of development, demonstrates the extent of arraignment coverage. We also include information collected on the use of custody both prior to arraignment (custodial arraignments) and after the arraignment is completed (pre-trial detention). The data is informative in light of recent changes to New York's bail laws, which were intended to reduce reliance on pre-arraignment and pre-trial detention, and provides us with a baseline against which to compare information collected for future reports.

Finally, with CAFA implementation underway and understanding that "mere formal appointment" does not satisfy the constitutional guarantee of counsel, in the 2022 CAFA Report, ILS began to explore the quality of representation provided.¹⁰ The 2022 Report focused on four metrics: i) whether confidential space was provided for attorney interviews prior to arraignment; ii) whether arraigning attorneys had a meaningful interview with clients prior to arraignment; iii) whether representation continued post-arraignment; and iv) the existence of protocols to transfer information from the arraigning attorney to the attorney ultimately assigned (if continuous representation is not provided). Significantly, the 2022 Report revealed that in 40 of the 52 counties surveyed, CAFA coordinators reported either: 1) a pre-arraignment conversation regarding the facts of a case does not take place with regularity; or 2) if it does, that the attorney

⁸ The list of interviewees and interviewers is attached as Appendix A.

⁹ The survey instrument used is attached as Appendix B.

¹⁰ See *Hurrell-Harring*, 15 N.Y. 3d 8 at 22 ("It is very basic that [i]f no actual [a]ssistance for the accused's defence is provided, then the constitutional guarantee has been violated. To hold otherwise could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment.") (internal citations and quotations omitted).

limits the conversation to bail factors and next steps in the case.¹¹ This information suggests that in most counties, counsel at arraignment is often limited representation for the purposes of the arraignment only.

As noted by the American Bar Association’s *Revised Ten Principles of a Public Defense Delivery System*, best practices call for vertical and continuous representation.¹² Thus for this report, we gathered additional information on the scope and duration of provider arraignment representation. We found that while counties have achieved arraignment representation, often it is not vertical. Instead, the arraignment attorney limits representation to the arraignment proceeding rather than remaining provisionally assigned to the case until a permanent assignment is made. As a result, after the arraignment there are gaps in representation which diminish the overall quality of client representation. Long term, ILS will work with counties to develop systems that promote vertical representation. In the meantime, it is important to address the immediate concern of gaps in representation after arraignment. In our interviews with counties, ILS learned that these gaps are typically related to determinations of eligibility for assignment of counsel and the failure to provide provisional assignment of counsel (ideally by the arraiving attorney) until counsel for the case is assigned. This relationship and its impact on quality representation is analyzed in Section III below.

I. STRUCTURAL INTEGRITY OF CAFA PROGRAMS

In the six years since the CAFA Plan was issued, the practice of arraignment representation has changed dramatically. This period witnessed legislative changes to bail, discovery, and speedy trial laws that all improve the quality of representation.¹³ In addition, during this period all mandated providers experienced increased challenges to attorney recruitment and retention, especially assigned counsel panels, culminating in the long-awaited increase in compensation rates for assigned counsel in the FY 2023-24 State budget. During this period, counties and public defense providers also had to rapidly adapt to a changing legal landscape with the sudden onset of the COVID-19 pandemic and its aftermath. Representation “went virtual” for 15 months during the height of the COVID-19 pandemic, necessitating remote defense representation that undermined the ability of attorneys to effectively represent their clients and then, in many cases, abruptly returned to in-person representation.¹⁴ Further, the challenges identified in the original CAFA Plan persist, including the size and geography of counties, availability of counsel, multiple law enforcement agencies, and the sheer number of courts to cover.¹⁵ Against this

¹¹ See Office of Indigent Legal Services, Statewide Plan for Implementing Counsel at Arraignment: Year Four Report (September 30, 2022) (2022 CAFA Report), available at: [Statewide CAFA Report 2022.pdf \(ny.gov\)](#).

¹² See American Bar Association, *Revised Ten Principles of a Public Defense Delivery System*, Principle 8 (2023) (stating, “[t]o develop and maintain a relationship of trust, the same defense lawyer should continuously represent the client from assignment through disposition and sentencing in the trial court, which is known as “vertical” representation.)

¹³ See, e.g., The Impact of Discovery Reform Implementation in New York, Report of a Defense Attorney Survey Conducted Jointly by: Chief Defenders Association of New York, New York State Defenders Association, NYS Association of Criminal Defense Lawyers, NYS Office of Indigent Legal Services (March 28, 2022), available at: [Microsoft Word - Discovery Reform Survey Report_DRAFT 03.27.22.docx \(ny.gov\)](#).

¹⁴ See Office of Indigent Legal Services, Statewide Plan for Implementing Counsel at Arraignment: Year Three Report, §I. Remote Counsel: Arraignments During COVID-19 (September 30, 2021) (2021 CAFA Report), available at: [Statewide CAFA Report 2021.pdf \(ny.gov\)](#).

¹⁵ See CAFA Plan, *supra*, at 8-9.

shifting legal and cultural backdrop, counties and providers have made considerable progress in creating and sustaining systems of representation for arraignments.

For this 2023 implementation update report, ILS gathered information about coverage and any remaining gaps, as well as providers' ability to identify and track missed arraignments. Acknowledging that each system's integrity is also a function of its ability to continue over time, ILS also gauged providers' assessments of the sustainability of their systems of representation. Our interviews revealed overall progress towards full and complete coverage with few gaps. The remaining gaps exist primarily in those town and village courts where noncustodial arraignments are sometimes scheduled outside of regular criminal sessions, though significantly, providers increasingly report confidence that law enforcement and judges will not proceed with an arraignment unless defense counsel is present.

The surveys conducted for this year's CAFA Report coincided with ILS' internal Criminal Defense Representation team integration, which is intended to provide more support to the counties by designating team attorneys as regional "point persons." In doing so, ILS attorneys can better serve county needs and implementation efforts while at the same time learn more detailed information about the counties' systems for representation and attorney practice. The new structure led to more detailed and accurate responses in this year's surveys. Thus, in some cases, information in this report is different than what was reported in previous years, an inevitability as we move toward better quality data.

Where gaps remain, ILS is committed to working with providers to craft county-specific solutions and help them reinforce the expectation amongst law enforcement and judges that individuals facing criminal charges are afforded their constitutional right to counsel.

A. Completeness of coverage and remaining gaps

Arraignments fall into two categories: custodial (i.e., law enforcement transport clients to court for arraignment immediately following their arrest) and non-custodial (i.e., law enforcement release clients following their arrest and issue an appearance ticket directing them to appear in court for arraignment at a future date). Custodial arraignments either (a) take place at designated times at an Office of Court Administration (OCA)-approved Centralized Arraignment Part (CAP) established pursuant to Judiciary Law § 212(1)(w)¹⁶ or (b) take place throughout the day and night with representation provided via an on-call system. Non-custodial arraignments generally take place during scheduled court sessions when a prosecutor may or may not be present, though in two counties (Oswego and Jefferson) they take place at the CAP.

Executive Law § 832(4)(a) excludes from the definition of arraignment those first court appearances "where no prosecutor appears, and no action occurs other than the adjournment of the criminal process and the unconditional release of the person charged." ILS acknowledges that in such circumstances, Executive Law § 832(4)(a) does not require the presence of defense

¹⁶ As of September 14, 2023, counties with CAPs are Broome, Cayuga, Chautauqua, Chenango, Cortland, Delaware, Fulton, Genesee, Jefferson, Livingston, Madison, Nassau, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Tioga, Tompkins, Warren, Washington, Wayne, and Yates (31 total, including HH counties).

counsel.¹⁷ However, since its inception, ILS has worked toward defense counsel representation at *all* first court appearances. As noted in prior reports, having a person come to court for arraignment only to have the matter adjourned to a future date, results in unnecessary court appearances and potential hardships for the individual facing charges, including missed work, family care issues, transportation issues, an increase in the amount of time that a charged individual has a criminal case pending, and possible delays in time-sensitive case investigations which can result in lost evidence. For this reason, ILS continues to use a broad definition of “gaps in arraignment” to include gaps in defense coverage of *all* first court appearances, regardless of whether the arraignment takes place, or the case is adjourned to be arraigned with counsel at a future date. Doing so is consistent with our Office’s mandate to improve the quality of indigent defense under Executive Law § 832(4)(c) and allows ILS to work towards quality, client-centered defense representation.

Our initial analysis in 2017 showed that, statewide, arraignment representation was provided at 71% of “DA” sessions (i.e., court sessions where a prosecutor was present) and at only 26.9% of “non-DA” sessions (i.e., court sessions where no prosecutor was present).¹⁸ Only about one-third of “off-hour” arraignments (i.e., those occurring outside of regularly scheduled sessions) were covered.¹⁹

Recognizing that the prosecutor is not necessarily present for arraignments, and that the primary defense provider is not always scheduled to appear during regular court sessions (which may be limited to civil cases and/or traffic tickets), starting in 2021, ILS refined the categorizations of noncustodial arraignments to “regular PD/DA or PD court sessions” (when the institutional primary provider is regularly scheduled to appear) and “other court sessions” (when the institutional primary provider is not regularly scheduled to appear). The addition of the “other court sessions” category revealed that in a significant percentage of counties, gaps in coverage existed during these other court sessions. In these situations, judges often – but not always – adjourn the matter without conducting an arraignment until the next regular court session where counsel is present to conduct the arraignment.²⁰ Nevertheless, as demonstrated in Figure 1 below, counties have made progress in closing that gap.

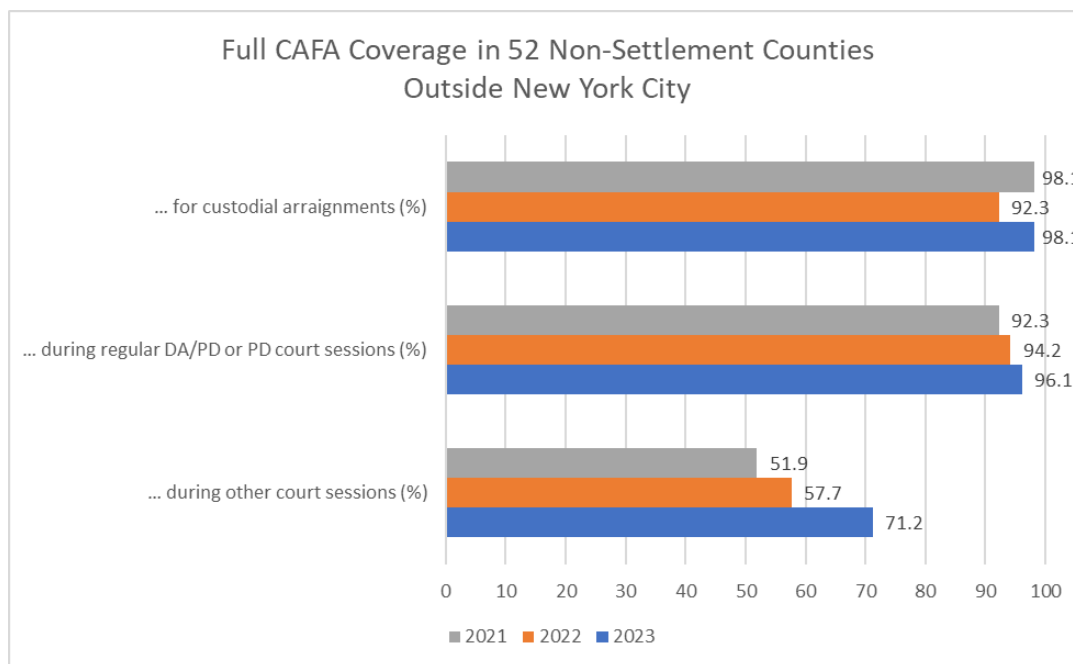
¹⁷ If the court takes any action, such as reading the charges to the individual, then defense counsel is clearly required under Executive Law § 832(4)(a).

¹⁸ See Office of Indigent Legal Services, 2019 Implementation Update of Statewide Plan for Implementing Counsel at Arraignment, 10-11 (September 30, 2019) (2019 CAFA Report), available at: [Microsoft Word - CAFA_DRAFT Plan Update Report FY 2018-2019 \(ny.gov\)](#).

¹⁹ *Id.* at 11-12 (indicating 33.7% of weekday off-hour sessions; 33.6% of overnight off-hour sessions; and 32.9% of weekend and holiday off-hour sessions were covered as of the 2017 analysis).

²⁰ See Appendix D for county-specific information for the current reporting period.

Figure 1. Full CAFA Coverage in 52 Non-Settlement Counties Outside New York City



Now, systems for defense representation are in place for nearly all custodial arraignments (98.1%) and regularly scheduled PD/DA court sessions (96.1%).

Only one county (Allegany) reported gaps in representation for custodial arraignments. In Allegany County, because of the number of courts to cover and lack of a CAP (necessitating a 24/7 on-call system), the Public Defender’s Office lacks attorney staffing capacity to appear at every custodial arraignment. Representation is provided if the client does not qualify for release under the bail laws or the judge otherwise requests counsel. The county is currently establishing a CAP, which will resolve this issue by consolidating the custodial arraignments in a centralized location. ILS will continue to work with the providers, county officials, and OCA to support CAP implementation and ensure adequate Public Defender’s Office staffing.

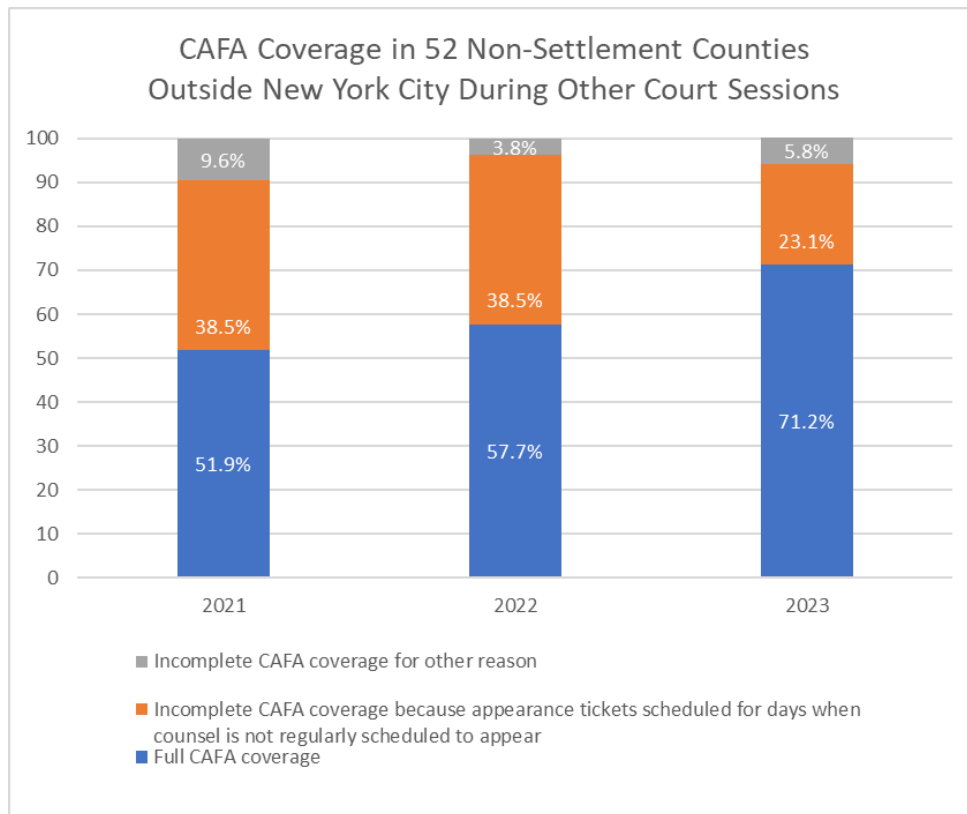
More providers reported systems for arraignment representation at “other court sessions” this year than in previous reports (see Figure 2 below). Ten counties reported closing gaps in coverage identified in the 2022 CAFA Report.²¹ Still, “other court sessions” remains an area where it is most difficult to ensure full counsel at arraignment coverage. This is largely due to the nature of the town and village court system; there are over 1,100 town and village courts in the non-*Hurrell-Harring* Settlement counties, and each court has regular sessions during which an arraignment could potentially occur. In some counties the sheer number of court sessions to cover, often with only a chance that there will be an arraignment requiring representation, makes it virtually impossible to cover all sessions without compromising other client and case

²¹ Chemung, Chenango, Dutchess, Orange, Rensselaer, Rockland, Saratoga, Tompkins, Schoharie, Seneca, and Wyoming all reported fewer gaps in coverage than reported in 2022. In this year’s interviews, regional attorneys learned that some counties who previously reported no gaps in representation in other court sessions now report gaps. Thus, the net increase of counties reporting no gaps in these sessions is lower. See Appendix D for a full list of counties and coverage.

responsibilities, even with additional staffing. Some providers, like the Orleans County Public Defender, have been successful working with courts to reduce the number of court sessions during which arraignments occur to ensure an attorney can be present. Others, like the Genesee County Public Defender, have been successful working with law enforcement to consistently schedule appearance tickets on regular PD/DA or PD court sessions.

Given the incomplete ability of providers to track missed arraignments (discussed more fully below), the quantitative impact of gaps in coverage during “other court sessions” cannot currently be measured or reported. Providers anecdotally report that arraignments rarely take place during these sessions and if they do, it is usually due to a scheduling error. Many providers are currently short-staffed in a nationally difficult job market; once fully staffed, their capacity to attend additional court sessions is expected to increase as well, which will make further inroads to resolving this issue.

Figure 2. CAFA Coverage in 52 Non-Settlement Counties Outside of New York City During Other Court Sessions



B. Tracking missed arraignments

ILS continues to work with the counties to develop systems to track missed arraignments, including checking jail lists against arraignment and assignment records, asking newly assigned clients if they were represented at arraignment, checking court files, and working with system stakeholders to develop systems for information transfer. This year, 10 additional counties

reported using a system to discern whether arraignments are missed.²² Still, in the absence of comprehensive systems to track missed arraignments in each county, it is impossible to know how many clients make their first court appearance without counsel in each county where such gaps are reported. Anecdotal reports are that this number is low; in most interviews, providers volunteered that the judges and arresting agencies in their county will not proceed with an arraignment unless counsel was present. Likely resulting from these expectations, in many counties (37 out of the 52 counties surveyed), no system exists to track missed non-custodial arraignments.

C. Sustainability and Centralized Arraignment Parts

As described in previous reports, New York's varied geography, transportation infrastructure, and population density contribute to concerns about the sustainability of CAFA representation systems.²³ In many remote counties with smaller provider offices (which may be staffed by five or fewer attorneys) where no CAP exists, the system for representation often depends on a few committed attorneys who coordinate on-call shifts. Even in larger provider offices, these shifts can be difficult to recruit for; while competitive compensation may be offered, this type of work is not necessarily appealing to attorneys who are required to appear in court the morning following a night of on-call representation.

With the recent increase in the Assigned Counsel Panel statutory payment rates, counties may be more successful in involving panel attorneys in CAFA rotations to bolster systems that rely heavily on understaffed institutional defense providers (e, g, Public Defender Offices). For example, in Franklin County, ILS worked with stakeholders to restructure the compensation system and include additional panel attorneys in the on-call coverage.

In many counties, ILS is working with providers, county officials, and OCA to establish CAPs which address sustainability concerns. Judiciary Law § 212(1)(w) authorizes the establishment of off-hours CAPs, which facilitate the availability of counsel for people facing criminal charges by providing predictability and regulating the "workflow" of custodial arraignments through a plan that is developed by county stakeholders and tailored to each county's specific needs. In counties with a CAP, arrested people from anywhere within a county may be brought to a designated court to be arraigned at set times (usually once in the morning and once in the evening). Instead of arraignments taking place at any time in the day or night and necessitating 24/7 attorney availability, providers can schedule defense attorneys in advance. In counties where CAPs have been implemented, providers have expressed relief from the pressures of on-call coverage and confidence in the ongoing sustainability of their systems of representation.

Since ILS' 2022 CAFA report, the number of counties using CAPs increased from 25 to 31 (including four of the *Hurrell-Harring* Settlement counties) through the significant efforts of OCA, provider offices, and county stakeholders. ILS works with providers to identify counties

²² Broome, Cattaraugus, Chautauqua, Erie, Genesee, Madison, Schoharie, Seneca, Ulster, and Wyoming counties. In this year's interviews, ILS learned that some counties that previously reported systems for tracking missed arraignments now reported having no system in place. Thus, the net increase of counties reporting systems for tracking is lower. See Appendix D for a list of all county responses.

²³ See 2022 CAFA Report, *supra*, at 7-9.

that may be appropriate candidates for a CAP, which must be approved by the Administrative Board of the Unified Court System. The Judiciary Law calls for consultation with ILS, the appropriate local magistrates association, institutional providers of criminal defense services and other members of the criminal defense bar, and local government officials, including the district attorney. Common obstacles that arise in the development of CAPs include locating an appropriate space for the courtroom, staffing it with adequate security, and arranging for transportation for clients after their arraignment (which may occur miles from where clients live). In addition to supporting costs associated with defense representation, ILS funding can support transportation costs for clients, though in some remote locations, providers are hard-pressed to locate taxi companies or public transportation options that operate in their area.

While CAPs provide a flexible solution to the challenge of arranging for 24/7 representation, counties must remain vigilant to ensure that constitutional hallmarks (such as confidentiality for attorneys and clients and access for family members and members of the public) are maintained. Since many CAPs are located within jails, visitors are subject to security protocols that do not exist in many justice courts. While some level of security is expected and appropriate, the procedure must not hinder the public's access to the courtroom.

II. STATEWIDE ARRAIGNMENT DATA

To further demonstrate arraignment coverage, this section includes data for calendar year 2022 on all 57 counties (including the *Hurrell-Harring* Settlement counties) and New York City.

Prior to the statewide expansion of the *Hurrell-Harring* Settlement, all providers of mandated representation in New York State were required to report annual caseload, expenditure, and staffing data utilizing OCA's UCS-195 form. In 2019, changes to County Law § 722-f transferred the responsibility for annual data collection from OCA to ILS, and ILS introduced the updated three-part ILS-195 form. The ILS-195 report includes questions intended to enable ILS to monitor provider caseloads and staffing and to track progress toward compliance with caseload standards. The report also allows ILS to monitor the number of arraignments conducted and collect information about arraignment outcomes. Starting in 2019, providers of both parent and criminal court representation were required to report expenditure and staffing data by type of representation (Part 1). In 2020, providers began reporting case assignment data (Part 2) utilizing the seven criminal caseload categories from the ILS Caseload Standards and, in 2021, case disposition data, including information on arraignments (Part 3). Because the ILS-195 report requests data not previously collected by many public defense providers, and statewide implementation of Executive Law § 832(4) necessarily required many providers to implement new systems for case management and data collection, ILS phased in implementation of each section of the form. With each new requirement, providers had to enhance their data collection capacity and many providers continue to refine their procedures for collecting and reporting this information.

It is imperative that ILS continue to work with provider offices to ensure the ongoing collection of timely and accurate data for future analysis. However, as this is the second year of ILS-195 Part 3 data reporting, which includes information on arraignments, we reviewed the information provided and present it here. Because of limitations of the data, we caution against drawing any

final conclusions based on these figures.²⁴ Nevertheless, the data is informative and illustrates the significant efforts of counties and providers in New York State to provide counsel at arraignment. From remote town and village courts to the densely populated courts of New York City, when individuals face criminal charges, they do so with the benefit of counsel.

A. Number of Arraignments and Outcomes

The ILS-195 report asks for information on the number of arraignments at which representation was provided broken out by trial level case type: violent felony, other (or non-violent) felony, and misdemeanors and violations. For 2022, 80 trial-level public defense providers outside of New York City (including the five *Hurrell-Harring* Settlement counties) reported a total of 151,367 arraignments at which representation was provided (Figure 3 below). New York City trial-level public defense providers reported 122,444 arraignments where representation was provided (Figure 4 below). In total, public defense providers reported providing representation at 273,811 arraignments statewide in 2022.

Providers also reported arraignment outcomes, i.e., whether the case was resolved with a guilty plea, adjournment in contemplation of dismissal pursuant to CPL §§ 170.55 or 170.56 (ACD), or immediate dismissal; and if a case continued past arraignment, whether bail was set or the person remanded, or if the person was released either on their own recognizance or under supervision. This data is included in Figures 3 and 4.

Though the data should be viewed in the context of its limitations, the difference in the numbers of cases resolved at arraignment outside of New York City as compared to the number of cases resolved at arraignment in New York City is noteworthy (see Table 1 below). For the purposes of this analysis, “resolved at arraignment” includes the categories “plead guilty at arraignment,” “ACD,” and “dismissed at arraignment.”

Table 1. Proportion of Cases Resolved at Arraignment from Total Arraignments Reported on the ILS-195.

	Violent felonies	Other felonies	Misdemeanors and Violations
Outside NYC (Rest of State)	0.6%	1.3%	16.9%
New York City	0.4%	2.2%	24.2%

While the data reflects that, statewide, it is not typical to resolve serious felony matters at arraignment, the disparity in the data on misdemeanor and violation case resolutions at arraignment is informative. In New York City, where full arraignment representation has been the norm since prior to Executive Law § 832(4) implementation, prosecutors regularly attend

²⁴ Limitations of the data include inconsistencies between the total number of arraignments reported on the ILS-195 and the total number of arraignments based on adding up the numbers reported at the seven arraignment outcomes. The instructions in the ILS-195 explain that for every arraignment, one outcome should be reported, however, in analyzing the data it appears that for some arraignments outcome information is missing (i.e., for the providers outside New York City) and for some other arraignments multiple outcomes were reported (i.e., for the providers in New York City).

arraignments and vertical representation is prioritized, the proportion of arraignments resolved at arraignment was higher for misdemeanors and violations than in those counties outside of New York City. It is common practice for public defense providers in New York City to conduct a thorough interview prior to the proceeding, negotiate with prosecutors, and advocate on behalf of their clients, possibly resulting in more opportunities for favorable dispositions at arraignment. These concepts are explored more in Section III below.

Figure 3. Arraignment Totals and Outcomes Outside New York City

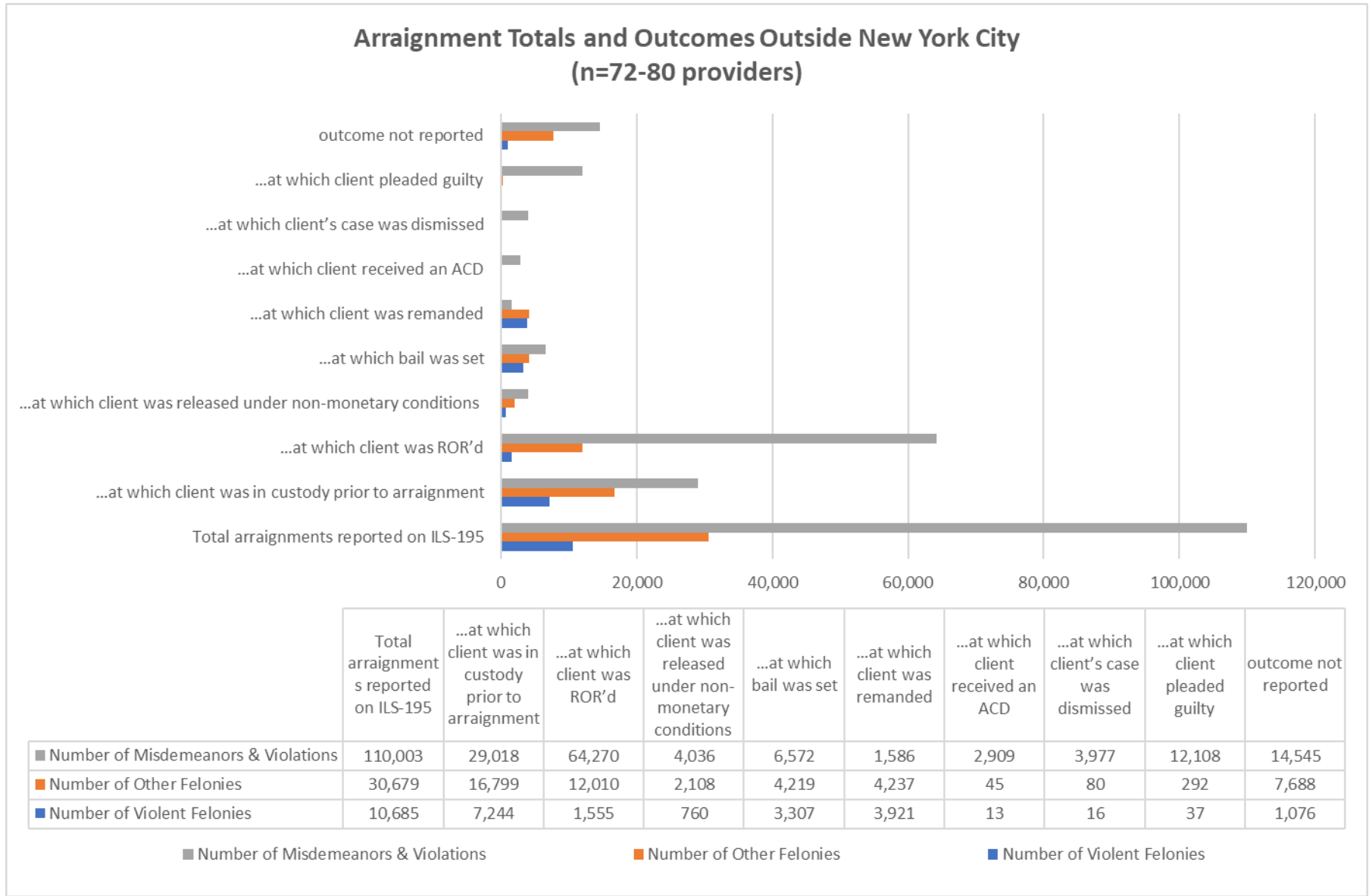
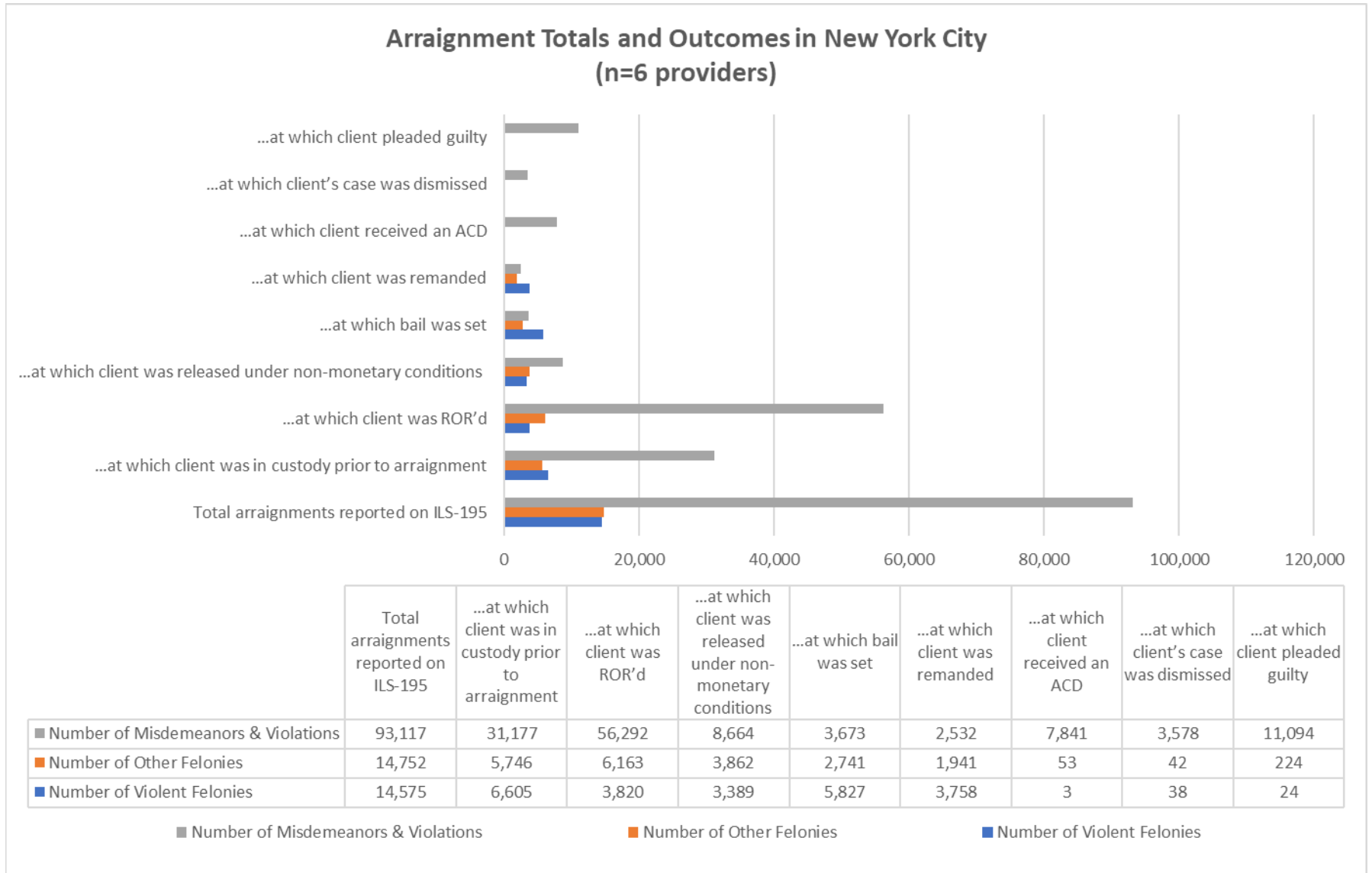


Figure 4: Arraignment Totals and Outcomes in New York City



B. Use of Custody

With recent implementation of changes to New York State’s bail laws, we also reviewed the use of custody both prior to and after arraignments. As part of the 2019 criminal justice reform legislation, CPL § 150.20 was amended to, in many instances, require police to issue appearance tickets instead of taking a person into custody prior to an arraignment.²⁵ We reviewed the reported number of custodial arraignments by case type and also compared the information reported by counties outside of New York City to the information reported by New York City providers (see Table 2 below).

Table 2. Proportion of Arraignments for Which Client Was in Custody Prior To Arraignment from Total Arraignments Reported on the ILS-195

	Violent felonies	Other felonies	Misdemeanors and Violations
Outside NYC (Rest of State)	67.8%	54.9%	26.4%
New York City	45.3%	39.0%	33.5%

The proportion of custodial arraignments was higher outside of New York City for violent felonies and other felonies; however, it was higher in New York City for misdemeanors and violations.

The reforms to New York’s bail laws were also intended to reduce reliance on monetary bail to detain people prior to trial. Changes to Articles 500, 510, 520, and 530 of the Criminal Procedure Law were enacted to ensure that most people charged with misdemeanors and non-violent felonies are not needlessly detained pre-trial after their arraignment.²⁶ In Table 3, we reviewed data provided on the use of pre-trial detention both in New York City and in counties outside of New York City.

Table 3. Proportion of Arraignments at Which Bail Was Set from Total Arraignments Reported on the ILS-195

	Violent felonies	Other felonies	Misdemeanors and Violations
Outside NYC (Rest of State)	30.6%	13.6%	5.9%
New York City	40.0%	18.6%	3.9%

²⁵ There were subsequent amendments to this section of the CPL in the FY 2022-23 state enacted budget which added several more exceptions to the requirement that police issue an appearance ticket in lieu of taking a person into custody for arraignment.

²⁶ See CPL § 510.10(1) (presumption of release in non-qualifying offenses; court must select the “least restrictive alternative” if no release on recognizance); CPL § 500.10(3-a) authorizing release under non-monetary conditions; and CPL § 520.10(2)(b) (requiring three forms of bail when set, one of which must be “either unsecured or partially secured surety bond.”). These changes were subsequently amended in state FY 2022-23 budget, including expanding the list of qualifying offenses and adding more exceptions that permit judges to set bail on otherwise non-qualifying offenses, and again in this year’s state FY 2023-24 budget, including removing the “least restrictive” language.

The data statewide indicates that bail is frequently still used in more serious cases where it is authorized. Outside of New York City, the use of bail is slightly higher in lower-level misdemeanors and violations than in New York City.

III. QUALITY ARRAIGNMENT REPRESENTATION

As demonstrated in Section I, in the six years since terms of the *Hurrell-Harring* Settlement were expanded statewide via Executive Law § 832(4), ILS has observed a steady progression toward the presence of counsel at every arraignment.²⁷ Using the funding and programmatic support made available via the *Hurrell-Harring* statewide expansion legislation, counties and public defense providers have worked to implement systems that ensure complete arraignment coverage. This marks a critical milestone as the presence of counsel at arraignment is one of the essential building blocks of quality representation. But as we noted in the 2022 CAFA Report, quality arraignment representation requires more than the mere presence of an attorney. With more firmly established systems in place for arraignment representation, we are now positioned to work with public defense providers to identify and eliminate remaining barriers to high-quality arraignment representation.

A. Virtual Arraignments

As with previous years, ILS surveyed providers statewide to determine if any arraignments continue to be conducted virtually in violation of Executive Law § 832(4)'s requirement of in-person arraignments. Virtual arraignments lead to diminished quality of representation – attorneys have reduced access to clients, and concerns with confidentiality of client communications and other communication barriers undermine attorneys' ability to establish the trust and rapport with their clients necessary for an effective attorney-client relationship. Further, a virtual setting can be dehumanizing and potentially lead to worse arraignment outcomes for clients.

As reported previously, though virtual arraignments were necessary during the COVID-19 public health emergency, by June 2021, all counties were expected to return to in-person arraignments after rescission of the Executive Orders that authorized virtual appearances.²⁸ In this year's interviews, CAFA coordinators reported that virtual arraignments continue in a limited capacity in six counties (Herkimer, Madison, Oneida, St. Lawrence, Tompkins, and Westchester). In Madison, Oneida, St. Lawrence, and Tompkins counties, the number of virtual arraignments were reported to be "a handful" per year due to emergencies such as the weather preventing safe travel or an illness precluding personal appearance. In Herkimer and Westchester counties, specific courts, judges, or both continue to hold virtual appearances during certain off-hour time periods. In those counties and any others where providers report attempts to conduct virtual appearances, ILS engages with providers, county officials, and the Office of Court Administration (OCA) to ensure in-person appearances in accordance with the *Hurrell-Harring* Settlement Agreement, Criminal Procedure Law, and Executive Law.

²⁷ See also 2019 - 2022 Updates of Statewide Plan for Implementing Counsel at Arraignment.

²⁸ See 2021 CAFA Report, *supra*.

B. Delayed Screening for Financial Eligibility for Assigned Counsel

Analysis of the information ILS collected from public defense providers this year allowed us to identify three related practices that frequently occur together and jeopardize quality representation at arraignment. These are:

- Delayed Screening for Financial Eligibility for Assigned Counsel (“Eligibility Screening”)
- Limited-Scope Arraignment Representation
- Post-Arraignment Gap in Representation

Eligibility Screening

ILS’ *Standards for Determining Financial Eligibility for Assigned Counsel* (“Eligibility Standards”) recognize that screening for financial eligibility and the related process of assignment of counsel are related to quality representation.²⁹ The Eligibility Standards set forth criteria and procedures designed to make the eligibility and assignment process as efficient, transparent, and fair as possible. Notably, Standard III states that, “[c]ounsel shall be assigned at the first court appearance or be provided immediately following the request for counsel, whichever is earlier. Eligibility determinations shall be done in a timely fashion so that representation by counsel is not delayed.”

The eligibility screening process varies from county to county. Screenings may be performed by individual attorneys, designated public defense provider staff, judges, or some combination of these. In some counties eligibility determinations are frequently made several days prior to a client’s arraignment, while in others an eligibility determination may not be completed until weeks after an arraignment occurs. Despite the diversity of approaches, we can make some generalizations about the timing and procedure of eligibility screenings.

The eligibility screening process can be accomplished either before (for noncustodial clients who are issued appearance tickets), during, or after the arraignment proceedings. This year, as part of ILS’ annual CAFA survey, we asked providers to describe the eligibility screening and assignment of counsel process.³⁰ Of the 52 counties surveyed, 13 described an eligibility process that generally occurs either before or contemporaneous with a client’s arraignment. Some of these providers receive advanced notice of appearance tickets and proactively reach out to potential clients for eligibility screening. Most of these providers simply screen for eligibility as part of the pre-arraignment interview on the day of the arraignment itself. In some jurisdictions, the judges conduct the eligibility review and assign counsel at arraignment. Regardless of the screening method, eligibility decisions in these 13 counties are nearly always made on the same day as a person’s arraignment, ensuring timely assignment of counsel.

²⁹ Office of Indigent Legal Services, *Standards for Determining Financial Eligibility for Assigned Counsel*, Blackletter with Commentary (rev. February 16, 2021), available at: <https://www.ils.ny.gov/files/Blackletter%20with%20Commentary%20021621.pdf>.

³⁰ Across all 52 counties surveyed, incarcerated clients are presumed eligible. The discussion that follows therefore applies to the screening of clients who are not in custody prior to their arraignment.

We identified nine additional counties where, although the eligibility screening can take days or weeks after an arraignment, counsel is provisionally assigned at arraignment or soon thereafter contingent on the outcome of a final screening. For these nine counties, eligibility processes are therefore also considered timely.

In the remaining 30 counties, the eligibility screening process generally takes place after arraignment with no presumption of eligibility or provisional assignment pending the eligibility determination. In these counties either the judge or arraiging attorney usually provides information at arraignment about how to apply for assigned counsel. Depending on the county, a person may then be told to gather supporting documentation, make an appointment at a provider office for a phone or in-person screening, or submit their application electronically or in person. Once the provider office receives the application, they make an eligibility determination and either communicate the decision immediately or inform the person at the next court appearance. Providers report processing applications relatively quickly after receipt. However, while some people return the application or visit the provider office for screening on the same day as their arraignment, many wait several days or weeks and some do not follow up. Waiting until after the arraignment to obtain the information needed to determine financial eligibility leads to needless delays in the assignment of counsel.

This delay in addressing the issue of whether a person is financially eligible for assigned counsel is frequently seen in conjunction with two related practices: arraignment only representation and a gap in representation between arraignment and assignment.

Limited-Scope Arraignment

A “limited-scope arraignment” occurs when the attorney providing representation limits representation to just the four corners of the arraignment and, in so doing, feels compelled to limit the scope of representation by not fully engaging in the factual, legal, and practical aspects of a person’s case. Typically, this means the attorney refrains from comprehensively interviewing the client and instead will focus exclusively on the issue of bail. There are several negative ramifications of a limited-scope arraignment representation. Clients who have pressing questions or concerns about their case may be told to wait to speak their permanently assigned attorney. Without a thorough pre-arraignment interview, bail arguments relating to specific factual or legal weaknesses in the case are missed. Moreover, when representation is limited to just the arraignment and there is a delay in assignment of counsel, investigation of the case is delayed and evidence may be lost or destroyed. Without the benefit of counsel, clients may inadvertently waive speedy trial time, as well as their right to preliminary hearings. Clients may go for several weeks without legal advice – all while the police or prosecutors continue to investigate and build their case.

Of the 30 counties that reported a delayed eligibility screening process, 25 (83.3%) reported that their attorneys regularly limit the scope of arraignment representation, usually by making a record that the appearance is for “arraignment only.” By contrast, of the 22 counties where eligibility decisions are usually made at or before arraignment (including those nine who employ provisional assignment), only three (14%) reported that arraiging attorneys limit the scope of representation. This is consistent with information providers shared with ILS regarding limited-

scope arraignments. In the CAFA interviews, providers frequently cited concerns that engaging in a comprehensive client interview and responding to a client’s questions about the case would be difficult or could implicate potential ethical issues if the client is subsequently assigned to, or retains, another attorney.

Gaps in Representation After Arraignment

A post-arraignment gap in representation is any period after arraignment when a person does not have an assigned attorney. Our interviews indicated that post-arraignment gaps correlate with delayed eligibility screenings. For many providers, post-arraignment representation is contingent on formal assignment of counsel which does not occur until after a client is deemed financially eligible. This results in gaps in representation for a significant number of people facing pending criminal charges.

In the 30 counties where eligibility screening usually occurs after arraignment, 25 (83.3%) reported gaps in post-arraignment representation. Of the 22 counties where eligibility screenings are generally completed at or before arraignment, only five reported gaps in representation.

Impact on Quality Representation

In previous reports, we have described the hallmarks of quality arraignment representation.³¹ They include:

- A critical review of the accusatory instrument and any associated documentation to identify issues related to jurisdiction or facial sufficiency
- A thorough client interview to establish important biographic information, collect case-related factual information, and address any other pressing needs the client may have (including those related to medical, mental health, or drug treatment)
- Preparation of arguments to litigate bail, potential orders of protection, and license suspensions
- Detailed notes including any time-sensitive investigation, client needs, or prosecution notices
- Addressing client questions regarding their legal circumstances and next steps

We have also previously noted that defense representation standards almost uniformly call for vertical representation – that is, representation by the same attorney from arraignment to disposition for each individual client.³² As it relates to arraignment practice, with vertical representation attorneys do not perceive any barriers to fully engaging with their clients and the facts of their cases from the outset, with no thought of appearing for arraignment only or limiting advice and advocacy to just the issue of bail. However, outside of New York City, there are often logistical barriers to the adoption of vertical representation. In this context, it is especially important that arraigning attorneys leave successor counsel well-prepared for immediate case work – with a complete case file, thorough notes, and any time-sensitive tasks already underway.

³¹ See 2022 CAFA Report, *supra*.

³² *Id.* at 10. See also, American Bar Association, Revised Ten Principles of a Public Defense Delivery System, Principle 8 (2023).

When arraignment representation is limited in scope, this is not possible. Indeed, the more limited the scope of representation, the fewer of the hallmarks of quality representation that can be achieved.

This problem is compounded when the time gap between arraignment and assignment of successor counsel is significant. Many providers reported that they regularly saw periods of several weeks where people who had been arraigned were unrepresented. One of the consequences of these delays is the potential for lost speedy trial time.³³ During the period a client is not represented, discovery is generally not exchanged. Notices may not be served, or in some cases prosecutors may serve an unrepresented person directly. Where felony charges are pending, grand jury proceedings may take place during this period. Clients with questions about orders of protection or other conditions of release have nowhere turn for explanation or advice. Broader questions regarding legal strategy, investigation, and motion practice go undecided. Investigations are not undertaken. Witnesses are not interviewed. Ultimately, delays in eligibility screening and assignment of counsel create overall delays in the case and increase the number of times a client is required to travel to and from court.

Eliminating Delays in Eligibility Determinations

In the 13 counties where eligibility determinations are usually conducted at or before arraignment, screenings are typically done either by the arraigning attorneys as part of their initial interviews or by the court. Providers in counties who take this approach informed us that a significant majority of applicants are eligible based on one of the four presumptions in the Eligibility Standards.³⁴ For the remaining applicants, a handful of follow-up questions are generally sufficient to complete the eligibility screening process. Thus, conducting the eligibility screening as part of the pre-arraignment interview does not detract from the time needed for a sufficiently comprehensive interview about the client and the case.

Resolving the question of eligibility at or before the arraignment eliminates gaps in representation as the assignment of counsel and associated defense work can be immediate. This speedy assignment of counsel also eliminates the pressure to limit the scope of arraignment representation.

³³ See, for instance, *People v. Galante*, 78 Misc 3d 31 (App Term 2023). The *Galante* court held that the delay created when defendant's case was adjourned for assignment of counsel was no fault of the court, and therefore excludable for the purposes of CPL § 30.30. See also *People v. Sydlar*, 106 AD3d 1368 (3d Dept 2013); *People v. Rickard*, 71 AD3d 1420 (4th Dept 2010).

³⁴ The Eligibility Standards set forth four criteria which create presumptions of eligibility. These presumptions, found in Standard II(A) – (D), apply to applicants who (a) have net income at or below 250% of the Federal Poverty Guidelines; (b) are incarcerated or detained; (c) receive needs-based public assistance; or (d) have been deemed eligible in any jurisdiction for assigned counsel within the previous six months. That most people qualify under one of the four presumptions is consistent with data collected from the five *Hurrell-Harring* Settlement counties. In the most recent ILS *Hurrell-Harring Eligibility Update Report*, we noted that providers in those counties reported that between 85% and 100% of eligible applicants qualified for assigned counsel based on one of the four presumptions in Standard II. For a more detailed discussion of eligibility practices in the *Hurrell-Harring* counties, the most recent report can be found here: <https://www.ils.ny.gov/files/2023%20HH%20Eligibility%20Report.pdf>.

Provisional Assignment

As stated above, nine counties reported provisional assignment of counsel. Seven of the nine counties also reported providing full-scope arraignment representation and having no gaps between arraignment and assignment of counsel. In these jurisdictions, most providers described a process by which assignments were accepted at arraignment contingent on a subsequent eligibility screening and conflict check. In other words, providers in these counties assume eligibility, carry on with representation as if the client is assigned, and only change their posture should the eligibility screening or conflict check for an individual client necessitate withdrawal from the case. As one provider put it, “we’re on until we’re off.”

This provisional assignment approach has the benefit of not requiring a change in existing eligibility screening procedures. It is ethically sound, hews closer to ILS Eligibility Standards, and eliminates to a large degree the problems created by limited-scope arraignments and long gaps between arraignment and assignment of counsel. It is therefore a viable path forward for counties where eligibility screenings are completed after arraignment.

C. Lack of Confidential Space

Last year we noted that a large portion of the providers we surveyed reported that they did not have consistent access to confidential space for client interviews before their arraignments.³⁵ Based on this year’s surveys, the problem persists. Information ILS collected from surveyed providers showed that confidential space is generally provided during custodial and non-custodial arraignments in 31 (59.6%) and 25 counties (48.1%), respectively. As we have previously noted, confidential space is critical to quality representation. Without confidentiality, clients are less willing to disclose sensitive information relevant to their defense. Building the trust and rapport required for an effective attorney-client relationship is impossible in a public setting. And perhaps most importantly, attorney-client privilege may be destroyed if conversations are happening in front of others. Providers frequently reported that they are often attempting to interview their clients within earshot of law enforcement officers, court staff, or other people awaiting arraignment. Some have even expressed concerns over the use of police body-worn cameras in areas where attorneys are speaking with clients. The lack of confidential space at arraignment continues to impede providers’ ability to provide quality representation and undermines the credibility of the criminal legal system writ large.

The lack of confidential space is frequently a product of the physical limitations of the justice courts. In many courts, there is simply no space in which attorneys can speak with clients privately. Notably, this is not true of CAP courtrooms. To receive OCA approval, a CAP court must provide confidential meeting space. But even in counties that have CAP courts, arraignments conducted outside of the CAP frequently occur in courts without confidential space. This remains a challenging problem, and ILS will continue to work with OCA, providers, and other county stakeholders to address the issue of confidential space.

³⁵ See 2022 CAFA Report, *supra*, at 11.

IV. COUNSEL AT ARRAIGNMENT REPRESENTATION BY THE NUMBERS

In preparing this report, ILS staff spoke with the coordinators of CAFA representation in each of the 52 non-Settlement counties outside of New York City.³⁶ ILS utilized a structured interview to elicit information about the county’s counsel at arraignment program types, providers, and coverage.³⁷ The data below summarizes the information these interviews yielded.

A. CAFA Program Types and Providers

Custodial arraignments

Custodial arraignments occur when a person is taken into custody prior to their arraignment instead of being issued an appearance ticket. Unless there is a mechanism for pre-arraignment detention which allows for scheduled court sessions for custodial arraignments, the arresting agency must bring such individuals before a justice to be arraigned as soon as possible.

Arraignment program type:

- **26 out of 52 counties (50.0%) conduct custodial arraignments** through a Centralized Arraignment Part (CAP).
 - In **2 out of these 26 counties**, the CAP also includes **non-custodial arraignments**.
- **1 county** (Nassau; 1.9%) has a District Court which centralizes arraignments and other court functions for certain arraignments in the county.³⁸
- **25 out of 52 counties (48.1%)** do not have a CAP and use an on-call system.

Custodial arraignment providers:

- In **31 out of 52 counties (59.6%)**, custodial arraignments are conducted by a **single provider**.
 - For **25 of these counties (48.1%)**, custodial arraignments are conducted by the **Institutional Primary Provider** (“IPP”; i.e., Public Defender or Legal Aid Society), for **6 (11.5%)** by the **Assigned Counsel Program** (ACP), and for **0 (0.0%)** by the **Institutional Conflict Provider** (“ICP”; Conflict Defender).
- In **21 out of 52 counties (36.5%)**, custodial arraignments are conducted by **two or more providers**.
 - For **9 of these counties (17.3%)**, custodial arraignments are conducted by both the IPP and the ACP, for **5 counties (9.6%)** these are conducted by the IPP and ICP, and for **4 (7.7%)** by all three providers (IPP, ICP, and ACP). Another 2 counties (3.8%) reported that custodial arraignments are conducted by the IPP and contract attorneys, and 1 county (1.9%) reported these are conducted by the IPP, ACP, and contract attorneys.

³⁶ The list of interviewees and interviewers is attached as Appendix A. The interviews were conducted in June 2023.

³⁷ See Appendix B.

³⁸ Nassau also recently established a CAP for two of their City Courts.

Non-custodial arraignments

These arraignments occur when people are not taken into custody at the point of arrest and are issued an appearance ticket instructing them to appear at a scheduled date and time for arraignment. Non-custodial arraignments are generally scheduled for criminal court sessions when the institutional provider is regularly scheduled to appear (“regular PD/DA or PD court sessions”) though they may be scheduled for non-criminal court sessions when the institutional provider is not scheduled to appear (“other court sessions”).

Non-custodial arraignment providers:

- In **39 counties (75.0%)**, non-custodial arraignments are conducted by **one single provider**.
 - For **33 of these counties (63.5%)**, non-custodial arraignments are conducted by the **IPP**, for **6 (11.5%)** by the **ACP**, and for **0 (0.0%)** by the **ICP**.
- In **13 counties (25.0%)**, non-custodial arraignments are conducted by **two or more providers** of mandated criminal representation.
 - For **5 of these counties (9.6%)**, non-custodial arraignments are conducted by both the IPP and the ACP, for **7 counties (13.5%)** these are conducted by the IPP and ICP, and for **1 county (1.9%)** by all three providers.

For more details on CAFA program types and providers for each of the 52 non-Settlement counties outside of New York City, please see Appendix C.

B. Extent of CAFA coverage

Custodial arraignment coverage:

- **Almost all counties (51 out of 52; 98.1%)** indicated that they have legal representation at **all custodial arraignments**, followed by **1 county (1.9%)** with representation at **most custodial arraignments**.
- **No counties (0%)** indicated that only **some custodial arraignments are covered** and, similarly, **no counties (0%)** indicated that **no custodial arraignments are covered**.

Gaps in coverage:

“Gaps in coverage” describe situations where no program is in place to provide defense representation at arraignment.

- **37 out of 52 counties (71.2%)** indicated that there are **no gaps** in coverage, **0 counties (0.0%)** indicated that there are **gaps in coverage for custodial arraignments only**, **0 counties (0.0%)** indicated that there are gaps in coverage **during regular PD/DA or PD court sessions only**,³⁹ and **12 counties (23.1%)** indicated that there are **gaps in coverage during other court sessions only**.⁴⁰

³⁹ These are court sessions when the IPP/ICP/ACP is regularly scheduled to appear for criminal cases.

⁴⁰ These are court sessions when the IPP/ICP/ACP is not regularly scheduled to appear for criminal cases.

- **Of the remaining 3 out of 52 counties, 2 counties (3.8%)** indicate that there are gaps in coverage during **regular PD/DA or PD court sessions and other court sessions, and 1 county (1.9%)** indicates this is the case at **custodial arraignments and other court sessions**.
- Of the **15 counties** that indicated that there are **gaps during other court sessions** (either as the sole option or one of the checked options), **12 counties** specifically mentioned that these gaps included **appearance tickets scheduled for days when counsel are not regularly scheduled to appear**. In these situations, justices often – but not always – adjourn the matter without conducting an arraignment until the next regular court session where counsel is present to conduct the arraignment.⁴¹

Systems to identify missed arraignments:

“Missed arraignments” are arraignments that take place without counsel, despite a system for representation being in place. The *Hurrell-Harring* Settlement contemplates that such arraignments may take place without violating the terms of the agreement: “[i]ncidental or sporadic failures of counsel to appear at Arraignments within a County shall not constitute a breach of the State’s obligations [to ensure that each criminal defendant who is eligible for publicly funded legal representation is represented by counsel in person at his or her arraignment].”⁴² It is, however, important to track missed arraignments because they can help providers determine how well their arraignment programs are functioning and can assist providers in identifying and resolving systematic gaps.

- **26 out of 52 counties (50.0%)** indicated that they have a system in place **to identify missed arraignments that result in a client being held in custody**; the other 26 counties (50.0%) do not have such a system.
- **Similarly, 15 out of 52 counties (28.8%)** indicated that they have a system in place **to identify missed non-custodial arraignments**; 37 counties (71.2%) do not have such a system.
- **Systems to identify missed arraignments include** the use of **jail lists** (lists of incarcerated individuals generated by custodial authorities) to identify any missed arraignments that result in a client being held in custody, **receiving notification from the court** where the missed arraignment occurred, and reviewing providers’ internal records when a new assignment comes in (i.e., checking for each assignment if there is an arraignment sheet or not).

For more details on CAFA coverage for each of the 52 non-Settlement counties outside of New York City, please see Appendix D.

⁴¹ Although the definition of an “arraignment” in the *Hurrell-Harring* Settlement technically excludes “appearances where no prosecutor appears, and no action occurs other than the adjournment of the criminal process and the unconditional release of the person charged,” in this scenario, a person charged with a crime has made their first appearance in court without the benefit of representation. This results in an unnecessary adjournment, an additional court appearance (with associated missed employment, childcare issues, and other hardships borne by the client), lengthens the amount of time that a charged individual has an open criminal case pending against them, and disadvantages time-sensitive investigations. For these reasons, ILS documents these as “gaps” in representation.

⁴² *Hurrell-Harring* Settlement Agreement, § III(A)(4).

C. Virtual and in-person arraignments⁴³

- At the time of the interview (June 2023), **most counties (i.e., 46 out of 52 counties; 88.5%)** conducted all arraignments **in-person**. **Six out of 52 counties (11.5%)** still conducted some arraignments **virtually**.

D. Eligibility screening and conflict checks

Timing of eligibility screening:

- **In 13 out of 52 counties (25.0%),** criminal court eligibility screenings take place **without delay**, occurring either prior to or on the day of the arraignment, or both, but never after the day of the arraignment.
- **In 13 out of 52 counties (25.0%),** criminal court eligibility screenings take place **exclusively after the day of the arraignment**.
- **In 20 out of 52 counties (38.5%),** criminal court eligibility screenings take place **either on or after the day of the arraignment**, and in **6 counties (11.5%)** these take place at **all three moments** (before, on, and after the day of arraignment).

Timing of conflict checks:

- **In 2 out of 52 counties (3.8%),** criminal court conflict checks take place either **prior to or on the day of the arraignment, or both**, but never after the day of the arraignment.
- **In 26 out of 52 counties (50.0%),** criminal court conflict checks take place **exclusively after the day of the arraignment**.
- **In 13 out of 52 counties (25.0%),** criminal court conflict checks take place **either on or after the day of the arraignment**, in **1 county (1.9%)** these take place **before and after the day of the arraignment**, and in **10 counties (19.2%)** these take place at **all three moments** (before, on, and after the day of arraignment).

Time gaps between arraignment and assignment of counsel:

- **18 out of 52 counties (34.6%)** reported that there are **no time gaps** between the arraignment and the assignment of counsel in criminal cases.

A. Confidential meeting space

- Prior to **non-custodial arraignments, confidential space** is generally provided for attorney interviews in **25 out of 52 counties (48.1%)**.
- Prior to **custodial arraignments, confidential space** is generally provided for attorney interviews in **31 out of 52 counties (59.6%)**.

⁴³ As per Executive Order 210, issued on June 24, 2021, Executive Orders authorizing electronic court appearances were rescinded (i.e., EO 202 through 202.11). As of then, counties were mandated to return to in-person court operations.

Appendix A

Appendix A: Interviewees and Interviewers per County

County	CAFA coordinator(s) interviewed	ILS attorney conducting the interview
Albany	Tina Sodhi, Conflict Defender	Claire Knittel
Allegany	J.R. Carter, Public Defender & Megan Dean, Investigative Case Assistant	Claire Zartarian
Broome	Jonathan Rothermel, First Assistant Public Defender	Kathryn Murray
Cattaraugus	Darryl Bloom, Public Defender	Claire Zartarian
Cayuga	Lloyd Hoskins, ACP Administrator	Kathryn Murray
Chautauqua	Ned Barone, Public Defender	Claire Zartarian
Chemung	John Brennan, Public Advocate & Jennifer LaBeau, Public Defender	Kathryn Murray
Chenango	Brett Cowen, Public Defender, Karri Beckwith, ACP Administrator & Terri Woodard, ACP Clerk	Kathryn Murray
Clinton	Jamie Martineau, Public Defender	Allison Clifford
Columbia	Shane Zoni, Public Defender	Claire Knittel
Cortland	Anita Ribeiro, Public Defender & Kevin Jones, Assistant Public Defender	Kathryn Murray
Delaware	Josephy Ermeti, Public Defender	Kathryn Murray
Dutchess	Tom Angell, Public Defender	Brendan Keller
Erie	Michelle Parker, ACP Administrator, David Schopp, Executive Director, Legal Aid Bureau of Buffalo, & Joanne Macri, Deputy Executive Director, Criminal Defense Unit, Legal Aid Bureau of Buffalo	Brendan Keller
Essex	Emily Evatt, Public Defender & Kellie King, Confidential Secretary at Public Defender's Office	Allison Clifford
Franklin	Tom Soucia, Public Defender	Allison Clifford
Fulton	Roger Paul, Public Defender	Allison Clifford
Genesee	Jerry Ader, Public Defender	Claire Zartarian
Greene	Angelo Scaturro, Public Defender	Claire Knittel
Hamilton	Sterling Goodspeed, Public Defender	Allison Clifford
Herkimer	Keith Bowers, ACP Administrator	Madeline Smith
Jefferson	Julie Hutchins, Public Defender	Madeline Smith
Lewis	Michael Young, Public Defender	Madeline Smith
Livingston	Lindsay Quintilone, Public Defender	Jennifer Chenu
Madison	David DeSantis, ACP Administrator	Madeline Smith
Monroe	Julia Cianca, Public Defender, Jean Caputo, PD Supervising Attorney and CAFA Coordinator & Mark Funk Conflict Defender and ACP Administrator	Nora Christenson
Montgomery	Bill Martuscello, Public Defender	Allison Clifford

Appendix A: Interviewees and Interviewers per County

County	CAFA coordinator(s) interviewed	ILS attorney conducting the interview
Nassau	N. Scott Banks, Chief Attorney, Nassau County Legal Aid Society, and Bob Nigro, ACP Administrator & Lindsay Boorman, Deputy Administrator	Jennifer Chenu
Niagara	Vince Sandonato, First Assistant Public Defender	Nora Christenson
Oneida	Tina Hartwell, Public Defender	Madeline Smith
Orange	Damian Brady, ACP Administrator & Michael Davis, Chief Attorney, The Legal Aid Society of Orange County	Brendan Keller
Orleans	Joanne Best, Public Defender	Nora Christenson
Oswego	Sara Davis, ACP Administrator & Rachael Dator, ACP Support Attorney	Madeline Smith
Otsego	Aaron Dean, Public Defender	Kathryn Murray
Putnam	Sandra Fusco, Chief Attorney, Putnam County Legal Aid Society	Brendan Keller
Rensselaer	John Turi, Public Defender & Sandy McCarthy, Conflict Defender	Claire Knittel
Rockland	Jim Licata, Public Defender	Brendan Keller
Saratoga	Andrew Blumenberg, Public Defender & Dawn Phillips, ACP Administrator	Claire Knittel
Schenectady	Stephen Signore, Public Defender & Tracey Chance, Conflict Defender	Claire Knittel
Schoharie	Suzanne Graulich, ACP Administrator	Claire Knittel
Seneca	Michael Mirras, Public Defender	Jennifer Chenu
St. Lawrence	James McGahan, Public Defender & Scott Goldie, ACP Administrator & Amy Dona, Conflict Defender & Sara Behuniak, Assistant Conflict Defender	Madeline Smith
Steuben	Shaun Sauro, Public Defender	Kathryn Murray
Sullivan	Lynda Levine, ACP Administrator & Tim Havas, Chief Legal Aid Panel Attorney	Brendan Keller
Tioga	George Awad, Public Defender & Thomas Cline, Second Assistant Public Defender	Kathryn Murray
Tompkins	Lance Salisbury, ACP Supervising Attorney	Jennifer Chenu
Ulster	Elizabeth Corrado, Public Defender	Brendan Keller
Warren	Erin Brothers, Data Officer at Public Defender's Office	Allison Clifford
Wayne	Andrew Correia, Public Defender	Nora Christenson
Westchester	Clare Degnan, Executive Director, Westchester Legal Aid Society Sherry Levin Wallach, Deputy Director, Westchester Legal Aid Society, and Sheralyn Pulver, ACP Administrator	Brendan Keller
Wyoming	Norman Effman, Executive Director,	Kathryn Murray

Appendix A: Interviewees and Interviewers per County

County	CAFA coordinator(s) interviewed	ILS attorney conducting the interview
	Wyoming County-Attica Legal Aid Bureau, and Leah Nowotarski, Public Defender	
Yates	Steve Hampsey, Public Defender	Jennifer Chenu
52 Upstate Counties	77 individuals interviewed	Interviews conducted by 8 ILS attorneys

Appendix B

2023 CAFA SURVEY INSTRUCTIONS

The CAFA survey consists of two components: 1) an interview; and 2) an online questionpro survey. The purpose of the interview is to confirm the CAFA representation structures in place in each county, identify issues with coverage, and assess how well systems are working to ensure quality representation at arraignments. The online questionpro survey provides a mechanism to aggregate data (to the extent possible). Together, the interview and survey will form the basis of the upcoming CAFA report.

Team attorneys will conduct interviews with CAFA coordinators in each county. For most counties, this will involve interviewing one individual. However, if more than one provider participates in arraignment representation and each provider coordinates its own attorneys (as with St. Lawrence, for example), more than one individual should be interviewed. During or after the interview, team attorneys will complete an online questionpro survey, which will be filled in with information gathered during the interview.

Preparation: Since this is the fifth year of conducting these interviews, we have a lot of information on the structures in place and we have documented areas in need of follow up. Thus, before conducting interviews, Team attorneys must gather information currently known to ILS about the general structure of arraignments from prior CAFA interviews, the most recent Statewide CAFA report (including the appendices which identified gaps in coverage, etc.), County CAP plans where applicable, the April 2023 Performance Measures Reports, County Profile Transfer Memos, and current ILS contracts. Team attorneys should have a clear picture of the systems in place, any previously identified gaps in coverage, and any other issues we previously flagged. The purpose of this is to save time, make sure providers know that we aren't "starting from scratch," that we are aware of the information that has already been provided, and to ensure we are following up on any issues we previously flagged.

Surveys should be pre-filled in with information currently known to ILS [see cited materials]. Many of these questions will be phrased as, "the information we currently have is... Can you confirm if this is still the case?" or, "has anything changed over the past year?"

2023 CAFA SURVEY

- (1) Confirmation of current structure [see 2022 CAFA surveys, located in each county's "Year 4" folder; see also CAP plans located at V:\Criminal Defense Representation\CAFA\CAP]. With the exception of Nassau County¹, with regard to custodial arraignments, counties fall into one of two categories: (a) an OCA-approved CAP established pursuant to Judiciary Law § 212(1)(w)² or (b) an on-call system.

a. For counties with an OCA-approved CAP:

- i. What are the days and times of the CAP sessions?

¹ Nassau County does not have an OCA-approved CAP, but does have a District Court that centralizes certain arraignments.

² As of April 26, 2023, counties with OCA-approved CAPs are Broome, Cayuga, Chautauqua, Chenango, Cortland, Genesee, Jefferson, Livingston, Madison, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Tioga, Tompkins, Warren, Washington, Wayne, and Yates (28 total, including HH counties).

- ii. Is there a CAP rotation? Does everyone in the office/on the panel participate? Are only certain attorneys regularly assigned to the CAP?
 - iii. Are there any courts and/or arresting agencies in the county that do not use the CAP? If so, which ones?
 - iv. Is the CAP augmented by an on-call system for custodial arraignments in certain jurisdictions within the county? If so, please describe.
- b. For counties without an OCA-approved CAP:
- i. What is/are the system(s) to provide representation at custodial arraignments? For example, attorneys might be organized into “on call teams,” or there may be one attorney who handles all custodial arraignments countywide. Arraignments may take place 24/7 throughout the County, or at certain times in certain courts that have pre-arraignment detention but on an “on-call” basis for other courts.
- c. For all counties:
- i. Is representation provided for arraignments involving warrant returns on already open cases? Are there any issues with providing representation at these arraignments?
 - ii. Non-custodial arraignments:
 - 1. What is/are the system(s) to provide representation at non-custodial (appearance ticket) arraignments?
 - 2. When do noncustodial (appearance ticket) arraignments take place? For example, non-custodial arraignments could be scheduled at a CAP, or only during regular PD court sessions, or during court sessions when the PD does not normally appear.
 - iii. Situations where there is no system in place to provide representation³. For example, if there is no system to provide representation for appearance tickets scheduled during court sessions when defense attorneys do not normally appear, it should be indicated here.
 - 1. Are there regularly scheduled court sessions at which defense attorneys are not scheduled to appear?

³ This is a **gap in coverage**, defined as situations where there is no system in place to provide representation. That term has been misinterpreted in the past, so we suggest the language used above. Gaps in coverage are distinct from **missed arraignments**, situations where no representation is provided, despite a system for representation being in place.

- a. If so, are appearance tickets ever scheduled for these sessions?⁴ How many times has this occurred in the past calendar year (if need be, give us your best estimate)?
 - b. If so, what happens if a person appears for an arraignment at these sessions?⁵
2. Are there any other situations where arraignments take place, but no representation is provided?
- iv. Is there a backup system in place if the attorney primarily responsible is unavailable due to an emergency?
 - v. Have you had any difficulty recruiting/retaining attorneys to provide representation at arraignments? Why?

(2) Missed arraignments. [see 2022 CAFA surveys]

- a. In past years, we have discussed the importance of tracking “missed arraignments” to gauge the effectiveness of arraignment programs. These are defined as arraignments that take place without counsel, despite a system for representation being in place (In other words, arraignments where representation would normally be provided, but takes place without counsel).⁶
 - i. Do you have a system to track missed arraignments? If so please describe it.
 - ii. Were you able to track how many arraignments were missed in the last calendar year? If so, what is that number. If you do not track, are you able to estimate?
 - iii. If the provider says no, or that missed arraignments would never happen, explore with them the basis for their assertion.

(3) Virtual arraignments. [see 2022 CAFA surveys]

⁴ If appearance tickets are scheduled during court sessions when the PD is not normally scheduled to appear and the cases are adjourned for a regular PD court session “for the arraignment,” with no representation being provided at the initial appearance, this should be considered a **gap in coverage** and recorded as such in QuestionPro.

⁵ If the provider indicates that the judge “begins an arraignment and then adjourns the case,” find out exactly what happens/how far into the arraignment the judge goes without an attorney present.

⁶ This could include situations where the attorney was never notified to appear due to a failure on the part of law enforcement and/or the court, or a situation where the on-call attorney missed/slept through a judge’s phone call. This is distinct from a **gap in coverage**, as described above.

Do any judges/jurisdictions in the county continue to conduct virtual arraignments? If so, please describe in as much detail as possible. What parties are physically present in the courtroom? Which parties appear remotely? Is the client physically present with the attorney?

- (4) Application process/eligibility/conflict check. [[see 2022 CAFA surveys for eligibility screening information](#)]
- a. Please describe the assigned counsel application process (including eligibility screening, conflict checks, and assignment of counsel) for criminal court clients (both custodial and non-custodial). [Does ILS have the most recent eligibility application on file?]
 - b. Are there time gaps between the arraignment and assignment of counsel? If so, typically how long is this gap? [The provider may give a range, which is fine. Also explore with the provider if the crisis in recruiting ACP attorneys has impacted the length of this gap or created one that previously did not exist].⁷
 - c. Please describe the assigned counsel application process (including eligibility screening, conflict checks, and assignment of counsel) for Family court clients. Do Judges follow Rule 205.19 (issued on 9/28/22) regarding eligibility? [offer to provide a copy] (please note that this is an area of sensitivity for many providers as there is insufficient funding to support full implementation of this rule in many places. We should be understanding of this issue)
- (5) Arraignment Processes. [[see 2022 CAFA surveys for info on confidential space](#)]
- a. Is confidential space provided for attorney interviews prior to custodial arraignments? What about non-custodial arraignments? [Note that this may vary from court to court, so this is likely not a “yes/no” response.]
 - b. Do arraignment attorneys limit the scope of representation at arraignment (e.g., by filing a limited notice of appearance)?
 - c. Does the prosecutor serve 710.30(1)(a), 710.30(1)(b) or other legal notices at arraignment?
 - d. Please describe how discovery is handled at arraignment.
 - e. Are there situations in which arraignment attorneys waive client rights related to speedy trial or discovery at arraignment? Generally, how often does this happen?
- (6) Collecting information about arraignment outcomes and case outcomes (for the 28 CAP counties only; question asked by Karlijn or other member of Research Team).

⁷ The HH Settlement team found that over the past year, there are no gaps in assignment that previously did not exist or are longer than they were because of the crisis in recruiting ACP attorneys. ILS should explore if this is happening in other counties.

- a. Was / is there anybody in the county or at the provider collecting information on what happens at arraignments and arraignment outcomes (both before and after the start date of the CAP). How about case outcomes?
 - b. If so, how is this data/information maintained? (i.e., is it entered into a CMS, maintained via Excel, or some other means?)
 - c. Is there information you / have you been collecting about arraignments beyond the information on arraignment outcomes that is required for the ILS-195? If so, what information?
- (7) Is there anything we haven't discussed related to arraignments that you think ILS should be aware of?

Recording responses:

- Questionnaires will be saved in each county's Y5 folder in the old "Statewide" folder (V:\STATEWIDE IMPLEMENTATION PLANS\COUNTY INFO\County Name\YR 5\CAFA)
- The Questionpro Survey should be filled out (based on the answers to this survey) and uploaded/saved (<https://nysils.questionpro.com/CAFAinterviews2023>).

Appendix C

Appendix C. CAFA Program Types and Providers in the 52 Non-Settlement Counties

County	Custodial Arraignments: Program Type		Custodial Arraignments: Provider(s)			Non-custodial Arraignments: Provider(s)		
	Centralized Arraignment Program (CAP)	On-call system / No CAP	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program
Albany		✓	✓	✓		✓	✓	
Allegany		✓	✓			✓		
Broome	✓		✓			✓		
Cattaraugus		✓	✓			✓		
Cayuga	✓				✓			✓
Chautauqua	✓		✓ ¹			✓		
Chemung		✓	✓	✓	✓	✓	✓	
Chenango	✓		✓		✓	✓		
Clinton		✓	✓		✓	✓		
Columbia		✓	✓ ²			✓		
Cortland	✓		✓		✓	✓		

¹ In Chautauqua, the PD and contract attorneys provide representation at custodial arraignments.

² In Columbia, the PD and contract attorneys provide representation at custodial arraignments.

County	Custodial Arraignments: Program Type		Custodial Arraignments: Provider(s)			Non-custodial Arraignments: Provider(s)		
	Centralized Arraignment Program (CAP)	On-call system / No CAP	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program
Delaware	✓		✓			✓		
Dutchess		✓	✓			✓		
Erie		✓	✓		✓	✓		✓
Essex		✓	✓			✓	✓	
Franklin		✓	✓	✓		✓		
Fulton	✓		✓		✓	✓		✓
Genesee	✓		✓			✓		
Greene		✓	✓			✓		
Hamilton		✓	✓			✓		
Herkimer		✓			✓			✓
Jefferson	✓		✓			✓		
Lewis		✓	✓			✓		

County	Custodial Arraignments: Program Type		Custodial Arraignments: Provider(s)			Non-custodial Arraignments: Provider(s)		
	Centralized Arraignment Program (CAP)	On-call system / No CAP	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program
Livingston	✓		✓			✓		
Madison	✓				✓			✓
Monroe		✓	✓	✓		✓	✓	
Montgomery		✓	✓			✓		
Nassau	✓ ³		✓		✓	✓		✓
Niagara	✓		✓			✓		
Oneida	✓		✓			✓		
Orange	✓		✓		✓	✓		✓
Orleans	✓		✓			✓		
Oswego	✓				✓			✓
Otsego	✓		✓		✓	✓		

³ Nassau has a District Court which centralizes arraignments and other court functions for town and village courts in the county. Nassau also recently established a CAP for two of their City Courts.

County	Custodial Arraignments: Program Type		Custodial Arraignments: Provider(s)			Non-custodial Arraignments: Provider(s)		
	Centralized Arraignment Program (CAP)	On-call system / No CAP	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program
Putnam		✓	✓			✓		
Rensselaer		✓	✓	✓		✓	✓	
Rockland		✓	✓			✓		
Saratoga		✓	✓	✓	✓	✓		
Schenectady	✓		✓	✓		✓	✓	
Schoharie	✓				✓			✓
Seneca	✓		✓			✓		
St. Lawrence		✓	✓	✓	✓	✓	✓	
Steuben	✓		✓			✓		
Sullivan		✓	✓	✓	✓	✓	✓	✓
Tioga	✓		✓			✓		
Tompkins	✓				✓			✓

County	Custodial Arraignments: Program Type		Custodial Arraignments: Provider(s)			Non-custodial Arraignments: Provider(s)		
	Centralized Arraignment Program (CAP)	On-call system / No CAP	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program
Ulster		✓	✓			✓		
Warren	✓		✓			✓		
Wayne	✓		✓			✓		
Westchester		✓	✓		✓	✓		✓
Wyoming		✓	✓			✓		
Yates	✓		✓ ⁴		✓	✓		
TOTAL # OF ✓ COUNTIES	27	25	46	9	20	46	8	12

⁴ In Yates, the PD contracts with two attorneys to provide representation at CAP sessions.

Appendix D

Appendix D. Counsel at Arraignment Coverage in the 52 Non-Settlement Counties Outside New York City.

County	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments ¹ ?		
	All	Most	Some	None	No	Yes, gaps for custodial arraignments	Yes, gaps during regular PD / DA or PD court sessions	Yes, gaps during other court sessions	If yes, describe	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
Albany	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office checks new assignments against their arraignment records.
Allegany		<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	Representation is provided at custodial arraignments if the client does not qualify for release under the bail statute or the judge requests counsel. The frequency with which counsel is requested depends on the judge. Sometimes appearance tickets are scheduled for court sessions when the PD Office is not scheduled to appear. In those situations, the person is arraigned without counsel.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office cross-checks jail lists with the office's arraignment records.
Broome	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office enters all cases into their case management system, which allows them to review to determine if there are cases which do not have a record of an attorney appearing at the arraignment.

¹ Note: The systems described do not necessarily capture all instances of missed arraignments (i.e., checking a jail list will identify missed arraignments that result in clients being held in on bail or remanded, but not those that result in clients that were not detained after arraignment).

County	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments ¹ ?		
	All	Most	Some	None	No	Yes, gaps for custodial arraignments	Yes, gaps during regular PD / DA or PD court sessions	Yes, gaps during other court sessions	If yes, describe	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
Cattaraugus	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office cross-checks jail lists with arraignment records. The PD Office checks new assignments against their arraignment records.
Cayuga	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Attorneys are not assigned to all regular ACP sessions but appear for arraignments if the ACP is notified in advance or if the attorney is present for another matter. Additionally, sometimes appearance tickets are scheduled for court sessions when ACP attorneys are not scheduled to appear. If a defense attorney is not present for arraignment in either circumstance, the case is adjourned to the next court session when an ACP attorney will be present for arraignment.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The ACP cross-checks jail lists against arraignment records.
Chautauqua	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	PD Office attorneys call the jail to determine if there are people being detained awaiting arraignment. They also cross-check jail lists with the office's arraignment records.
Chemung	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	If an appearance ticket is scheduled for a court session when the PD Office is not scheduled to appear, judges arraign clients without counsel.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

County	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments ¹ ?		
	All	Most	Some	None	No	Yes, gaps for custodial arraignments	Yes, gaps during regular PD / DA or PD court sessions	Yes, gaps during other court sessions	If yes, describe	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
Chenango	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office cross-checks jail lists with arraignment records.
Clinton	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	Sometimes appearance tickets are scheduled for court sessions when the PD Office is not scheduled to appear. In those situations, either an ACP attorney provides arraignment representation (if one is present) or the case is adjourned to the next PD session for arraignment.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office cross-checks jail lists with arraignment records.
Columbia	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office cross-checks jail lists with arraignment records.
Cortland	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	Sometimes appearance tickets are scheduled for court sessions when the PD Office is not scheduled to appear. In those situations, the judge arraigns the person without counsel.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Delaware	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Due to staffing limitations, the PD Office provides representation at non-custodial arraignments only when there is the possibility of bail being imposed or an offer to resolve the case.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Dutchess	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office cross-checks jail lists with arraignment records.

County	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments ¹ ?		
	All	Most	Some	None	No	Yes, gaps for custodial arraignments	Yes, gaps during regular PD / DA or PD court sessions	Yes, gaps during other court sessions	If yes, describe	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
Erie	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Both the ACP and the LAB check new assignments against their arraignment records.
Essex	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	When a court arraigns someone without counsel, they fax a form to the PD Office informing them of the missed arraignment. The PD Office then notes this in their case management system.
Franklin	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	Sometimes appearance tickets are scheduled for court sessions when the PD Office is not scheduled to appear. In those situations, representation is provided if the PD Office is notified in advance. Otherwise, the case is adjourned to the next PD session for arraignment.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office cross-checks jail lists with arraignment records. The PD Office also ask clients during intake if they were represented at their arraignment.
Fulton	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

County	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments ¹ ?		
	All	Most	Some	None	No	Yes, gaps for custodial arraignments	Yes, gaps during regular PD / DA or PD court sessions	Yes, gaps during other court sessions	If yes, describe	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
Genesee	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	This year, the PD Office worked with local magistrates and law enforcement to ensure appearance tickets are scheduled for PD sessions. However, sometimes appearance tickets are still scheduled for court sessions when the PD Office is not scheduled to appear. This is less frequent than previously reported. In those situations, the case is adjourned to the next PD session for arraignment.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The court notifies the PD Office about missed custodial arraignments. The PD Office ask clients during intake if they were represented at their arraignment.
Greene	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office checks new assignments against their arraignment records.
Hamilton	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Upon assignment, the PD Office cross-checks case information with their arraignment records.
Herkimer	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Jefferson	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Lewis	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Upon assignment, the PD Office cross-checks case information against their arraignment records.

County	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments ¹ ?		
	All	Most	Some	None	No	Yes, gaps for custodial arraignments	Yes, gaps during regular PD / DA or PD court sessions	Yes, gaps during other court sessions	If yes, describe	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
												For appearance tickets, the PD Office also receives a list of all scheduled arraignments in advance.
Livingston	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office cross-checks jail lists with their arraignment records.
Madison	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The ACP checks new assignments against their arraignment records.
Monroe	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Montgomery	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

County	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments ¹ ?		
	All	Most	Some	None	No	Yes, gaps for custodial arraignments	Yes, gaps during regular PD / DA or PD court sessions	Yes, gaps during other court sessions	If yes, describe	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
Nassau	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	Most arraignments occur in District Court or one of two City Courts, where there are no gaps in arraignment representation. Representation in the village courts is only provided if a court notifies the ACP or a panel attorney in advance of the arraignment. The ACP Administrator and the Supervising Judge for Nassau County Village Courts report that judges try to have a defense attorney present for a criminal case arraignment, and it is infrequent that an arraignment occurs without counsel.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Niagara	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Oneida	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Orange	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Orleans	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	Sometimes appearance tickets are scheduled for court sessions when the PD Office is not scheduled to appear. In those situations, the case is adjourned to the next PD session for arraignment.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

County	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments ¹ ?		
	All	Most	Some	None	No	Yes, gaps for custodial arraignments	Yes, gaps during regular PD / DA or PD court sessions	Yes, gaps during other court sessions	If yes, describe	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
Oswego	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Otsego	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Putnam	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>	Violations are typically arraigned without counsel.		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Rensselaer	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office checks new assignments against their arraignment records.
Rockland	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Saratoga	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Schenectady	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Schoharie	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	When the ACP receives a voucher for payment from an attorney, the ACP Administrator cross-checks

County	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments ¹ ?		
	All	Most	Some	None	No	Yes, gaps for custodial arraignments	Yes, gaps during regular PD / DA or PD court sessions	Yes, gaps during other court sessions	If yes, describe	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
												the voucher against the ACP's arraignment records.
Seneca	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office cross-checks jail lists with their arraignment records.
St. Lawrence	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>	Sometimes appearance tickets are scheduled for court sessions when the PD Office is not scheduled to appear. In those situations, the case is adjourned to the next PD session for arraignment.		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office cross-checks jail lists with their arraignment records. For appearance tickets, if the PD Office did not represent the person at arraignment, they ask the person if they were represented at arraignment.
Steuben	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Sullivan	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The Sullivan County Legal Aid panel cross-checks jail lists with their arraignment records. During case intake, they also ask clients if they were represented by counsel at their arraignment.
Tioga	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

County	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments ¹ ?		
	All	Most	Some	None	No	Yes, gaps for custodial arraignments	Yes, gaps during regular PD / DA or PD court sessions	Yes, gaps during other court sessions	If yes, describe	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
Tompkins	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	This year, the ACP implemented a system for appearance ticket representation for all regular sessions in City Court and the town and village courts. Appearance ticket arraignments sometimes occur in “other court sessions” when an ACP attorney is not scheduled to appear. When this happens, generally courts either: 1) notify the ACP in advance and request that counsel appear; or 2) adjourn the case for an ACP attorney to appear for arraignment. However, some judges arraign the person without counsel.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Ulster	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office cross-checks jail lists with arraignment records.
Warren	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Wayne	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>		Sometimes appearance tickets are scheduled for court sessions when the PD Office is not scheduled to appear. In those situations, the client is arraigned without counsel.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Westchester	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

County	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments ¹ ?		
	All	Most	Some	None	No	Yes, gaps for custodial arraignments	Yes, gaps during regular PD / DA or PD court sessions	Yes, gaps during other court sessions	If yes, describe	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
Wyoming	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	Sometimes appearance tickets are scheduled for court sessions when the PD Office is not scheduled to appear. In those situations, the case is adjourned to the next PD court session for arraignment.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The PD Office cross-checks jail lists with arraignment records.
Yates	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
TOTAL # OF ✓ COUNTIES	51	1	0	0	37	1	2	15		26	15	