



**Implementing the Counsel at Arraignment Obligations in
the *Hurrell-Harring v. The State Of New York* Settlement
2019 Update**



**Indigent
Legal Services**

I. Introduction

The New York State Office of Indigent Legal Services (ILS) submits this report as an update to its 2015 *Final Plan to Implement the Counsel at Arraignment Obligations in Hurrell-Harring v. New York State Settlement* (2015 Counsel at Arraignment Plan).¹ This report follows three prior updates to the Settlement’s counsel at arraignment obligations issued in 2016, 2017, and 2018.² In this report, we focus on the five *Hurrell-Harring* counties’ ongoing success in ensuring that counsel is present at all arraignments.

All the *Hurrell-Harring* counties continue to be in compliance with the counsel at arraignment requirements of the *Hurrell-Harring* Settlement (Settlement). The purpose of this report is to provide an update about how well the counsel at arraignment programs are working. To do so, we rely on qualitative information we received during discussions with the providers of mandated representation and county officials as well as court observations. We also incorporate quantitative arraignment data ILS received from the providers over the past year.

Additionally, this report discusses two recent changes to New York’s Criminal Procedure Law (CPL) and related statutes which affect counsel at arraignment obligations: the 2017 legislation raising the age of criminal responsibility to age 18 and this year’s bail reform legislation.

Raise the Age

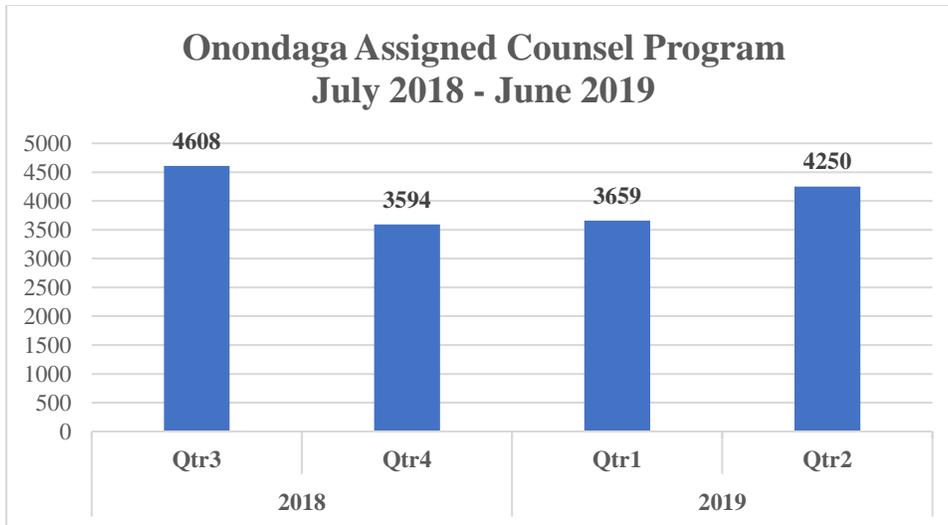
New York’s 2017 Raise the Age (RTA) legislation raised the age of presumptive criminal responsibility to age 18 and created a new category, “adolescent offender” (AO), which applies to 16 and 17-year olds charged with a felony level offense.³ CPL § 722.10 also created separate “Youth Parts” in the criminal courts where all adolescent and juvenile offenders (JO) must be arraigned during business hours. When the Youth Part is closed, arraignments are conducted by a designated “accessible magistrate.”⁴ The legislation prohibits detaining AOs and JOs with adults, although currently most counties lack facilities to detain teens separately prior to arraignment. The RTA reforms are intended to limit teens’ exposure to the criminal justice system and conducting arraignments swiftly is one requirement now in place to ensure this goal is met. Consequently, accessible magistrates must be available to conduct arraignments outside the hours of the Youth Part (i.e. on evenings, overnights, weekends and holidays) and qualified defense counsel must be available to appear at these unscheduled, after hours arraignments. This report will discuss the RTA arraignment procedures in each county section.

¹ Available at: <https://www.ils.ny.gov/content/hurrell-harring-settlement-plans-and-reports>.

² The previous update reports: *Implementing the Counsel at Arraignment Obligations in the Hurrell-Harring v. The State of New York Settlement: 2016 Update* (2016 Update report); *Implementing the Hurrell-Harring Settlement: 2017 Update* (2017 Update report); and *Implementing the Hurrell-Harring Settlement: 2018 Update* (2018 Update report) are available at <https://www.ils.ny.gov/content/hurrell-harring-settlement-plans-and-reports>.

³ See CPL § 722. The RTA provisions were effective as of October 1, 2018 for 16-year olds and as of October 1, 2019 for 17-year olds.

⁴ See CPL § 722.10(2), requiring administrative judges in each judicial department to designate judges to serve as “accessible magistrates, for the purposes of acting in place of the youth part for certain first appearance proceedings involving youths, as provided by law.” Accessible magistrates must be easily reached from all areas of the county and have the same specialized training as Youth Part judges. *Id.*



Number of Arraignments by Quarter

Syracuse City Court Arraignments

Syracuse City Court arraignments are conducted seven days a week in a designated arraignment part. Both defendants issued appearance tickets at arrest and defendants taken into law enforcement custody at arrest (custodial arraignments) are arraigned in City Court. Those defendants detained prior to arraignment are held in the Onondaga County Justice Center. Because City Court also serves as the morning session of the Onondaga Centralized Arraignment Part, as described in more detail below, defendants arrested anywhere in the County and detained overnight are arraigned the next morning in City Court.

The ACP has a panel of attorneys who provide representation at arraignments for all defendants without counsel in Syracuse City Court. The ACP periodically reviews the number of arraignments, when they occur, and whether they are custodial or appearance ticket arraignments. Staffing in the City Court arraignment part is based on this analysis and varies by day. Currently the busiest arraignment day is Wednesday, and six attorneys are present – three for custodial arraignments and three for appearance ticket arraignments. Thursday is the second busiest day, and the part is staffed with five attorneys – two for custodial arraignments and three for appearance ticket arraignments. On Mondays, Tuesdays, and Fridays, four attorneys provide representation. During the weekends there are no appearance ticket arraignments, and three attorneys are available for custodial arraignments.

Attorneys designated to provide representation for custodial arraignments meet with their clients at the jail before court begins. Arraignment attorneys do not keep the cases; once the arraignment is done, the court assigns an attorney who provides representation in the court of original jurisdiction to handle the case through its final resolution.⁷ The ACP represented 8,666 clients (54% of total) in City Court between July 1, 2018 and June 30, 2019.

In last year’s update we described the difficulty ACP arraignment attorneys were having in obtaining the arraignment paperwork before or at arraignment. The problem has persisted to

⁷ Each town and village court in Onondaga County has a “core” of panel attorneys who accept and are assigned cases in that jurisdiction.

varying degrees and the ACP continues to seek a satisfactory resolution. Those efforts are set out in the CAP section below.

Traffic Court

Syracuse City Traffic Court meets every weekday morning. An ACP attorney is present at each session to represent those defendants eligible for assigned counsel who are charged with misdemeanor offenses under the Vehicle and Traffic Law. Although infrequent, some Traffic Court defendants charged with a criminal Vehicle and Traffic Law offense are detained prior to arraignments. In those instances, the Traffic Court arraignment attorneys do not interview individuals in custody. Instead, they rely on information obtained from the interviews conducted by the City Court arraignment attorneys. The Traffic Court attorneys sometimes experience the same problems City Court arraignment attorneys do in obtaining RAP sheets. This issue is discussed in more detail in the CAP section below.

Traffic Court arraignments are not separately reported by the ACP but are included in the ACP's City Court arraignment data.

Town and Village Courts – Regular Court Sessions

In 2013, the ACP provided attorneys to represent defendants at arraignments at the regularly scheduled court sessions of the fifteen largest town and village courts in Onondaga County. Two years later, pursuant to the 2015 Counsel at Arraignment Plan, the ACP expanded its arraignment coverage to regular sessions of the thirteen remaining town and village courts. In the larger courts, two attorneys are present at regularly scheduled court sessions to represent eligible defendants at arraignment. In the smaller courts, one attorney is present at the regularly scheduled court sessions. This program continues to function well and ensure that defendants are represented by counsel at arraignment in all the county's town and village courts, as confirmed by our ongoing discussions with the ACP and our court observations. ACP attorneys represented 4,539 (28% of total) clients at arraignment in the town and village courts between July 1, 2018 and June 30, 2019.

The Centralized Arraignment Part

The Onondaga County Centralized Arraignment Part began operations on December 17, 2017. The CAP has jurisdiction over custodial arraignments arising throughout the county. There are two sessions, a morning session which is incorporated into Syracuse City Court arraignments and an evening session. Evening sessions are held seven days a week, from 5:00 p.m. to 10:00 p.m., in the Public Safety Building which is next to the Justice Center. Town and village magistrates preside in the CAP on a rotating basis. Defendants who are taken into custody at arrest are detained until arraignment at the next CAP session. Because there is a morning and an evening session, no defendant is detained for more than 12 hours prior to arraignment.

The ACP assigns two attorneys to represent defendants eligible for assigned counsel at each evening CAP session. The ACP also provides a clerk who assists the judge in assigning the attorney who will handle the case after arraignment based on the case's court of original jurisdiction. ACP attorneys are provided iPads on which they record information about the arraignment and the client. That information is transmitted to the ACP and subsequently, to the

assigned attorney. From July 1, 2018 – June 30, 2019, the ACP represented 2,906 defendants (18% of total) at the evening session of CAP.⁸

The CAP replaced the ACP’s previous off-hour, on-call arraignment program in the town and village courts. In that program, the ACP divided the county into seven geographic zones and established panels of attorneys willing to serve as off-hour, on-call arraignment attorneys for week long shifts. Although effective, the program was burdensome to administer. It was also disruptive to attorneys’ work lives due to the irregular and unpredictable hours. The CAP has eliminated these challenges.

In February 2019, the Onondaga Sheriff’s Department informed the County Executive and the ACP that there had been a significant reduction in the jail population since the prior year, and that this decrease was largely due to the reduction in the number of pre-trial detainees. The Sheriff attributed the reduction to the CAP.⁹

In the 2018 Update Report, we discussed the difficulty ACP attorneys were having obtaining their clients’ official criminal history records (commonly referred to as “RAP sheets”) and accusatory instruments before, or even at, arraignment. Over the last year, the ACP made significant efforts to rectify this situation through discussions with law enforcement officials, the District Attorney’s Office, and supervisory judicial officials. ACP attorneys report that these efforts have improved access to arraignment paperwork, but regular access to RAP sheets remains a problem. The problem is most acute in the CAP. The ACP continues to work with stakeholders, including newly appointed Fifth Judicial District Administrative Judge James Murphy, to ensure that arraigning attorneys have all the relevant paperwork, including the RAP sheet, at arraignment.

Raise the Age Arraignments

The Onondaga Youth Part is in the Onondaga County Criminal Court building. Town and village judges serve as accessible magistrates for any off-hour adolescent and juvenile offender arraignments.

The ACP created an “RTA panel” of 8-10 attorneys who are qualified to provide both serious felony and Family Court juvenile delinquency representation. As most adolescent offender cases will be removed to Family Court, utilizing attorneys who are dually qualified in this manner assures continuity of counsel when a case originates in the Youth Part and is later removed to Family Court. The RTA attorneys are available for adolescent and juvenile offender arraignments in the Youth Part and off-hours in front of an accessible magistrate. Three RTA attorneys are on-call every day for two weeks at a time. The ACP provides on-call attorneys with a phone and created a notification phone tree which insures that if the primary attorney is not

⁸ As discussed above, the morning session of CAP is incorporated into the City Court arraignment part.

⁹ One possible reason for this is the presence of arraignment attorneys. Because the arraignment attorneys at the CAP advocate on behalf of their clients for pre-trial release and/or low bail amounts, the existence of the CAP at which defense attorneys are present may well contribute to the smaller number of people detained pre-trial. *See* Worden, Morgan, Shteynberg, Davies, *What Difference Does a Lawyer Make? Impacts of Early Counsel on Misdemeanor Bail Decisions and Outcomes in Rural and Small Courts*, Criminal Justice Policy Review, 19 (2018) (detailing preliminary findings that suggest the presence of counsel at arraignment positively affects bail outcomes and noting, “CAFA may ‘work’ because it gives attorneys an opportunity to make persuasive release or bail arguments—in other words, it allows attorneys to redirect judges’ behavior”).

available, the second attorney, or if necessary, the third attorney, is contacted. The phone tree is used for daytime arraignments in the Youth Part and for off-hour adolescent and juvenile offender arraignments.

Attorneys on this new RTA panel began providing arraignment representation shortly after the October 1, 2018 implementation date. However, they encountered significant barriers to client communication. In the newly established Onondaga County Youth Part, attorneys were not able to conduct confidential meetings with their adolescent and juvenile clients prior to arraignment and at subsequent Youth Part court appearances because a deputy sheriff would remain in the room. This was an obvious impediment to providing quality legal representation at arraignment.¹⁰ The ACP tried to resolve this issue by meeting with the Sheriff, but the Sheriff's Department would not relent. Legal Services of Central New York stepped in and filed a lawsuit effectively using information from ACP panel attorneys. In *JB, et al. v. Onondaga County*,¹¹ the Northern District of New York affirmed the importance of confidential meeting space in the Youth Part as a key aspect of the constitutional right to the meaningful assistance of counsel and issued a preliminary injunction to end this practice. Attorneys are now able to conduct confidential meetings with their clients in the Youth Part prior to arraignment.

ONTARIO COUNTY



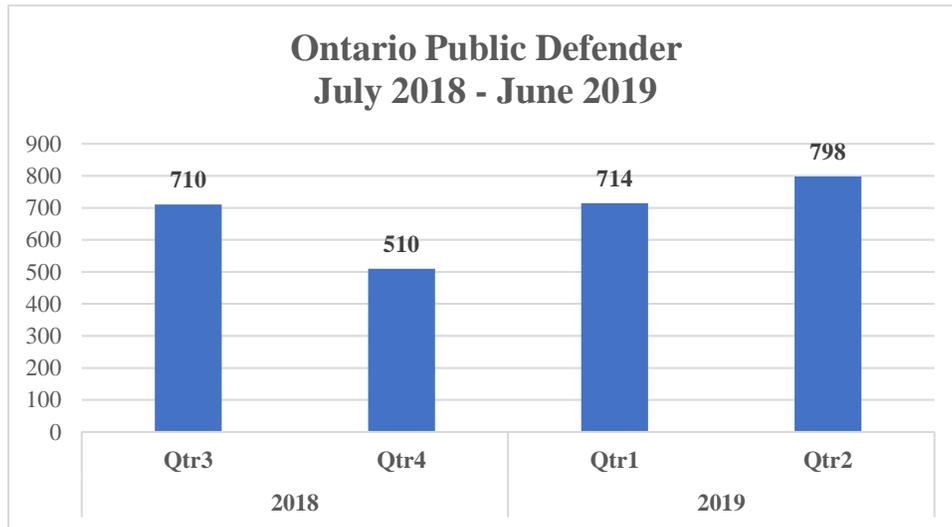
In Ontario County, the Ontario County Public Defender's Office (PD Office) provides counsel at arraignment for all defendants without legal representation. They currently operate two programs to do so. One program provides counsel at arraignment in the city, town and village courts. In the other program, the PD Office represents defendants arraigned in the Ontario County Centralized Arraignment Part. Prior to creation of the CAP, the PD Office operated an on-call program for off-hour custodial arraignments. But as noted in our 2016 and 2017 Update Reports, this on-call program was burdensome on attorneys. The CAP eliminated the need for the on-call arraignment program. At the time of ILS's 2018 Update Report, Ontario County's CAP had only been open for a few months. Now, after over a year of operation, ILS is in a better position to describe how it works and its impact on arraignment representation.

¹⁰ As the Settlement makes clear, access to confidential meeting space for attorney-client meetings is imperative for quality representation. *See* Settlement § V(A)(3).

¹¹ 2019 WL 3776377 (August 12, 2019).

The arraignment data ILS received from the Ontario Public Defender's Office shows that between July 1, 2018 and June 30, 2019:

- The Ontario PD represented defendants **at a total of 2,732 arraignments.**
- There were **no missed arraignments.**
- There were **11 cases in which the defendant waived or refused counsel.**



Number of Arraignments by Quarter

Regular Sessions of the City, Town and Village Courts

The PD Office provides counsel at arraignment in the county's two city courts and seventeen town and village courts. Staff attorneys are assigned to each court. The assigned attorney is present at the court's regularly scheduled criminal calendar session to handle arraignments and represent clients in other matters. Attorneys meet with their clients before arraignment to gather relevant information and, if time permits, to assist in completing the application for assigned counsel. Between July 1, 2018 and June 30, 2019, sixteen percent (16% of total) of all arraignments handled by the PD's Office occurred in the Geneva and Canandaigua City Courts, thirty-two percent (32% of total) of PD arraignments occurred in the town and village courts.¹²

The Centralized Arraignment Part

The Ontario County Centralized Arraignment Part commenced in May 2018. It is located in the county jail. The CAP is the designated location for all off-hour custodial arraignments in the county, no matter the jurisdiction in which the defendant was arrested. There are two CAP sessions. The morning session runs from 7:00 a.m. to 9:30 a.m. and the evening session from 5:00 p.m. to 7:30 p.m. Individuals who are arrested and taken into custody after a CAP session ends are detained at the jail until the next session. No one is detained more than 12 hours. Public Defender Leanne Lapp recently advised ILS that the sheriff also uses the CAP as a surrender

¹² A small number of arraignments (4% of total) occur in Ontario County Court.

location, i.e., individuals who are wanted on an arrest warrant can voluntarily turn themselves in at the jail and be arraigned in the CAP.

Each attorney from the PD's Office handles four to five CAP sessions per month. CAP attorneys do not keep the cases they arraign; instead each case is reassigned to the PD Office attorney who provides representation in the court of original jurisdiction.

Since its inception, the CAP has worked well, and Ms. Lapp reports no problems. There is a confidential space for attorney/client interviews. The CAP judges are patient in allowing attorneys time to meet with and interview their clients. Defense attorneys receive the arraignment paperwork in a timely manner and have no problems obtaining the documents prior to client meetings. The only occasional exception occurs with permanent access to a client's RAP sheet. If law enforcement arrests someone but does not fingerprint them, the jail will produce a repository RAP sheet which attorneys can review but cannot keep.

Moreover, as noted in the 2018 Update Report, the CAP continues to benefit clients in other ways. The CAP expedites completion of applications for assigned counsel as it is easier to interview clients prior to arraignment. PD Office support staff visit the jail and interview clients before court to obtain information needed to complete the Intake/Eligibility form. The completed form is shared with the CAP attorney. The CAP attorney will also meet with clients prior to arraignment but now has more information because of the earlier interview by support staff. Additionally, the presence of both public defenders and Assistant District Attorneys at the CAP creates the opportunity for counsel to discuss proposed dispositions and to resolve some cases. Finally, because the Probation Department is in the same municipal office complex, defendants ordered to the Electronic Monitoring Program or pre-trial supervision can be released without delay. Indeed, Public Defender Lapp has occasionally called Probation to request that an officer come to the CAP on a Friday night instead of waiting until Monday to process a client. In this way Probation's proximity to the CAP results in the client's immediate release and avoids additional incarceration.

Raise the Age Arraignments

In Ontario County, the Youth Part is located on the third floor of the County Court building. A separate holding cell and a private meeting room are available for interviewing juvenile and adolescent clients. All the town and village judges have been trained to serve as accessible magistrates for any off-hour adolescent or juvenile offender arraignments. The PD Office designated three attorneys to provide representation at these arraignments and for the duration of the criminal case.

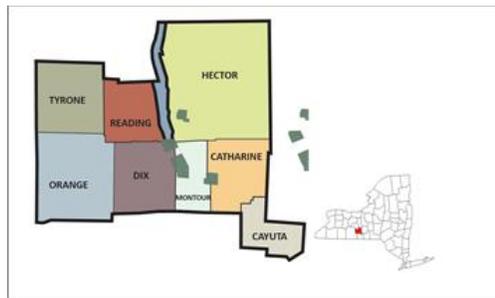
The PD Office worked with county stakeholders to develop its RTA implementation plan. The Sheriff agreed to notify the PD Office when a 16 or 17-year old is arrested to advise them of the case and potential arraignment. Additionally, the arresting officer calls either the District Attorney or the County Attorney to discuss whether to charge the individual with a felony offense who will be initially arraigned in the Youth Part or by an accessible magistrate.¹³ In this way, law enforcement exercises its discretion in accord with the principles behind the RTA

¹³ As sixteen and seventeen-year olds charged with most misdemeanor offenses are now under Family Court's jurisdiction, if the arresting officer, county attorney, and/or district attorney decide to charge a misdemeanor level offense which is not a vehicle and traffic law offense, the case will be sent to Family Court and/or Probation for intake and screening for adjustment.

legislation – that in most cases, teenagers should not be subject to the adult criminal justice system and youth cases are better suited for Family Court.

To date, the PD's Office has been notified of one adolescent offender case. Because the arresting officer notified them before arraignment, the PD's Office was able to immediately run a conflict check which revealed they had a conflict with the client that precluded their representation. The early notification allowed Public Defender Lapp to contact the Conflict Defender's Office who then represented the client at the arraignment. Public Defender Lapp told ILS recently that she expects her office will handle more cases when 17-year olds are included and she is prepared to cover the arraignments as they arise. Additionally, Ms. Lapp reports that the County plans to use the CAP for off-hour juvenile and adolescent offender arraignments, if possible, which will further facilitate off-hour youth arraignment representation.

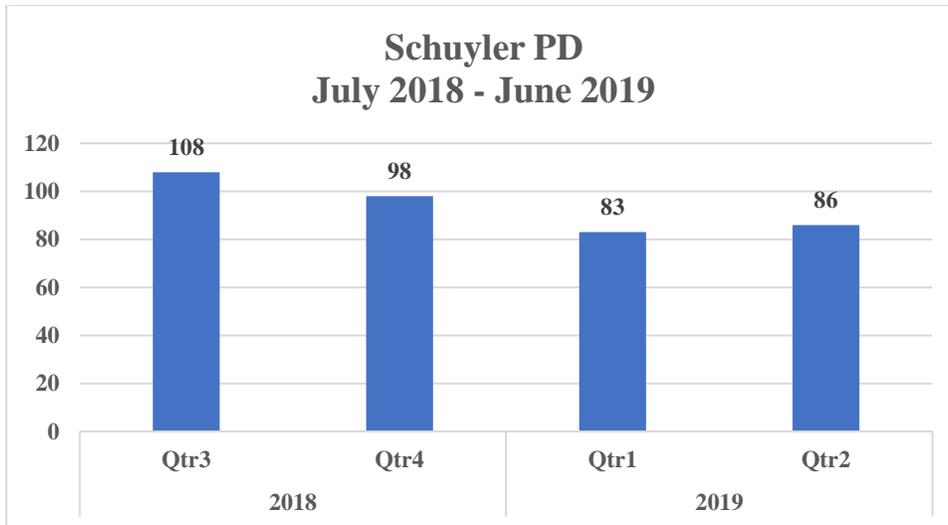
SCHUYLER COUNTY



The Schuyler County Public Defender's Office (PD Office) is responsible for providing counsel at arraignment representation for all defendants in Schuyler County. The PD Office does so by staffing the regular court sessions of the town and village courts and by maintaining on-call programs for the several types of off-hour custodial arraignments. There is no centralized location for arraignments nor any city court, so all arraignments occur in the town and village courts which are spread throughout the county. However, as described below, this may change soon as the county is in the process of developing a CAP.

The arraignment data ILS received from the Schuyler Public Defenders Office shows that between July 1, 2018 and June 30, 2019:

- The Schuyler PD represented a total of **375 defendants**.
- There were **13 missed arraignments**.
- There were **21 cases in which defendants waived or refused counsel**.



Number of Arraignments by Quarter

Regular Sessions of the Town and Village Courts

The PD Office provides counsel at arraignment in the county’s eleven town and village courts. Each of the three full-time attorneys is responsible for several local courts. The assigned attorney is present at each court’s regularly scheduled criminal calendar session to handle arraignments and represent clients in other matters. Between July 1, 2018 and June 30, 2019, forty percent (40% of total) of all arraignments handled by the PD Office occurred in Watkins Glen village court and nineteen percent (19% of total) occurred in the village and town courts of Montour Falls.

Off-hour Custodial Arraignments – Weekdays, Weekends, and Holidays

The PD Office’s coverage of off-hour arraignments has expanded incrementally since 2013. The Office began representation at off-hour, business hour arraignments in 2013 when it received an ILS grant which supported the upgrade of the part-time attorney position to a full-time position.¹⁴ Currently, responsibility for off-hour, business hour arraignments is shared by the three full-time public defenders. Because these arraignments occur irregularly, attorneys are deployed to cover them based on availability at the time the office is notified of the arraignment, notwithstanding the attorney’s regular court assignments.

In 2015, the PD Office again increased its arraignment coverage by hiring a part-time attorney to cover the custodial arraignments which occur between 5:00 p.m. and 11:30 p.m. on weekdays. As set forth in the 2016 Update, in early March 2016 the PD Office began representing defendants at custodial arraignments on weekends and holidays. Finally, the hiring of a third full-time attorney in May 2018, as described in the 2018 Update Report, further increased the Office’s capacity to cover off-hour weekend and holiday custodial arraignments. The PD Office added an overnight shift to provide arraignment coverage from 9:00 p.m. to 9:00 a.m. As a

¹⁴ As distinct from arraignments which occur at regularly scheduled court sessions, off hour business hour arraignments occur on any day of the week, at any time during the workday when the court does not have a regularly scheduled session, and may arise in any of the eleven local courts

result, the PD Office now provides round-the-clock arraignment representation on weekends and holidays, from 9:00 a.m. Saturday until 11:30 p.m. Monday.

Overall, the PD Office's arraignment programs are working as there are very few missed arraignments during the periods of counsel at arraignment coverage. The PD attorneys are now covering nearly all of the off-hour arraignments in the County. ILS's review of the arraignment data shows that from July 1, 2018 – June 30, 2019, 10 of the 13 missed arraignments occurred on weekdays after 11:30 p.m. - outside the hours of the PD Office's current off-hour arraignment programs. To address any instances of arraignments that occur outside their off-hour programs, the PD Office arranged for next day notification from the arraigining court. The PD Office then ensures the case is heard in court again that morning and an attorney is present to provide representation. Ultimately, Schuyler County's plan to soon implement a CAP, as described below, will eliminate this break in coverage as well as the need for the additional next day appearance.

Raise the Age Arraignments

The Schuyler County Youth Part is located in the County Court. Public Defender Wes Roe provides representation for all adolescent and juvenile offender arraignments. Mr. Roe worked with stakeholders in setting up the necessary structures, including mechanisms for off-hour arraignment coverage and agreement to notify the PD Office of arraignments in advance. To date, the county has had one adolescent offender arraignment in the Youth Part.

Centralized Arraignment Part

Pursuant to Judiciary Law § 212(1)(w), the Office of Court Administration (OCA) has been working with Schuyler County officials to create a CAP. OCA has convened two stakeholder meetings and the PD's Office is working with OCA and other county stakeholders, including the County Executive, the District Attorney's Office, the local judiciary and local law enforcement in developing a final plan. All stakeholders have agreed to implementation of a CAP. The plan is contingent on pending legislation that permits the detention of individuals in county jails prior to their first court appearance.¹⁵ Thus, we anticipate that the county will produce a final plan in the coming months.

SUFFOLK COUNTY



¹⁵ See NYS Senate Bill S5593 (passed Senate and Assembly, 2019-2020 Legislative Session).

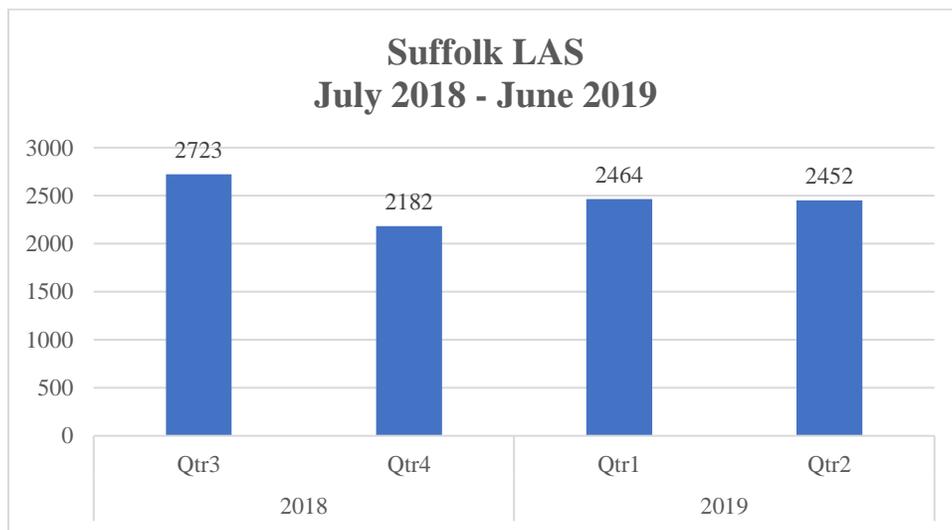
Arrest coverage in Suffolk County is complex due to both geographical challenges and differing court structures. The West End of the county is densely populated and primarily served by a large District Court in Central Islip which hears criminal cases from multiple jurisdictions. The East End is more rural, branching out into two “forks” which are separated by the Peconic Bay. In the East End, criminal cases are, at least initially, heard in their local jurisdictions in one of the ten town and village courts. Additionally, as the fourth most populous county in the state and the most populous county outside of New York City, the county has a high volume of arraignments. As a result, both public defense providers in Suffolk County are involved in providing counsel at arraignment representation.

The Suffolk County Legal Aid Society (SCLAS) represents defendants at custodial arraignments in District Court, the regularly scheduled court sessions of the larger West End municipalities and the regularly scheduled weekday court sessions of the East End town and village courts. The Assigned Counsel Program (ACP) represents defendants in District Court at noncustodial arraignments and in custodial arraignment cases when SCLAS has a conflict. The ACP also provides representation for custodial arraignments which occur in the East End courts on weekends and holidays.

The arraignment data ILS received from both organizations shows that Suffolk County’s public defense providers represented a total of 19,875 defendants at arraignment in Suffolk County from July 1, 2018 to June 30, 2019.

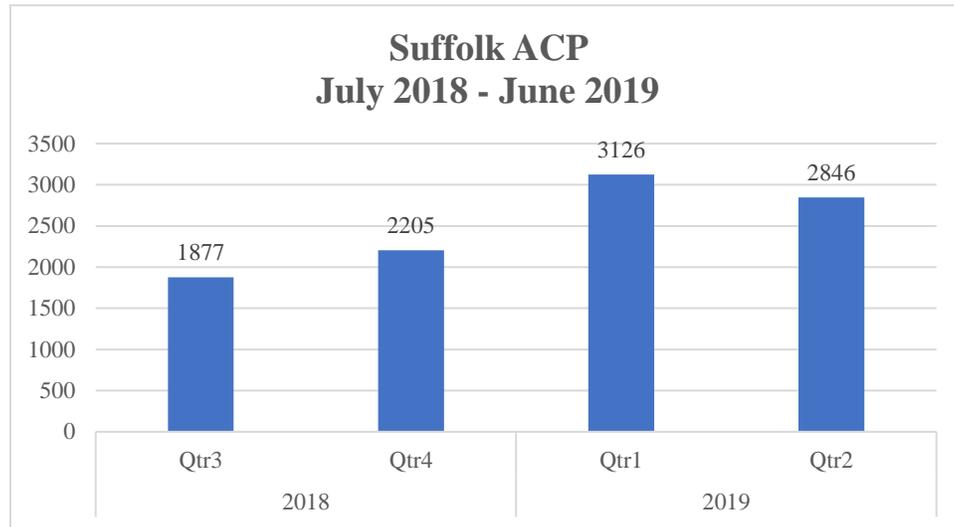
The data from each provider reveals that:

- The Suffolk LAS represented a total of **9,821 defendants at arraignment.**
- There were **33 cases in which defendants waived or refused counsel.**



Number of LAS Arraignments by Quarter

- Assigned Counsel Program attorneys represented a total of 10,054 defendants.
- There were 33 cases in which defendants waived or refused counsel.



Number of ACP Arraignments by Quarter

- There were no reported missed arraignments in District Court.¹⁶

Because both SCLAS and the ACP provide arraignment coverage throughout the county, below we separately describe the arraignment programs in the West and East Ends of Suffolk County.

The West End: District Court Arraignments

The District Court in Central Islip has jurisdiction over nearly all the criminal cases in the West End of the County. Thus, by far, most arraignments in Suffolk County are conducted in the District Court. The District Court has two arraignment parts. Defendants who are taken into custody and detained by law enforcement at arrest are arraigned in Part D-11. Because Part D-11 operates seven days a week from 9:30 a.m. – 5:00 p.m., no defendant is held in pre-arraignment detention for more than 24 hours. Defendants who are issued appearance tickets at arrest and scheduled to appear in court at a future date are arraigned in the Street Appearance Part (SAP) or on the “254 calendar” in D-11 if there is a need for them to be fingerprinted.¹⁷ Both the SAP and the 254 calendar are in session on weekdays.

SCLAS is the primary provider of arraignment representation in D-11. A supervising attorney and three staff attorneys are present to represent defendants in custody. SCLAS also has a social worker available for client assessments at arraignment. The SCLAS attorneys meet with their clients, review their paperwork, and advocate for them at the initial appearance. Additionally, two ACP attorneys are assigned to D-11 on a rotating basis to represent those defendants whom

¹⁶ There may have been some arraignments in the East End courts for which the providers were not notified, which is addressed further in the East End section of this report.

¹⁷ The “254 calendar” is an arraignment calendar for those cases in which the defendant is charged with a fingerprintable offense but was not previously fingerprinted. These are noncustodial arraignments although they are heard in D-11.

SCLAS cannot represent due to a conflict or who are otherwise ineligible for SCLAS representation, as well as those on the 254 calendar.

The ACP also staffs the SAP part with one of two attorneys who rotate weekly to provide appearance ticket arraignment representation. From July 1, 2018 to June 30, 2019, ACP attorneys represented a total of 6,706 defendants at SAP arraignments.

The combination of providers and programs described above has resulted in no defendant in Suffolk County District Court being arraigned without counsel, unless the defendant refuses counsel.

The SCLAS also provides arraignment counsel for the cases which arise in the West End village courts which do not participate in the District Court system. Individual staff attorneys are assigned to each of these courts and handle arraignments at regularly scheduled court sessions and off-hour arraignments which occur during business hours.¹⁸

The East End: Weekday Arraignments

As mentioned above, the East End is composed of ten town and village courts which hear the cases from their jurisdictions. SCLAS attorneys are present during the regular criminal sessions in the largest East End courts – the towns of Riverhead, Southampton, Southold and Easthampton – and in the smaller East End Courts – the villages of Southampton, Quogue, Westhampton Beach, Westhampton Dunes, Sag Harbor and Shelter Island. The attorneys assigned to these courts also cover any off-hour arraignments which occur during business hours.

The 2018 Update described how ILS and SCLAS discovered that some defendants arraigned on appearance tickets in the Town of Riverhead court lacked counsel and the steps taken to resolve this issue. Specifically, the two Riverhead justices agreed to notify SCLAS if a defendant appears for an arraignment when no SCLAS attorney is present.¹⁹ In addition, the Riverhead justices agreed to encourage law enforcement to issue appearance tickets which are returnable on the days SCLAS attorneys are regularly present in court. Over the last year, SCLAS attorneys have continued to appear for arraignments when called by the court. The system when employed appears to be working well although there appears to be a recent uptick in Riverhead Town Court defendants reporting they were not represented at their first court appearance. SCLAS and ILS will continue to remind Riverhead Town Court Justices to notify SCLAS when counsel is needed for an arraignment and review arraignment information to address issues as they arise.

The East End: Weekend and Holiday Arraignments

Since January 2018, the ACP has been providing attorneys to cover arraignments which occur on weekends and holidays in the East End courts.²⁰ Eleven attorneys provide counsel at arraignment

¹⁸ These include the village courts of: Amityville, Babylon, Huntington Bay, Islandia, Lake Grove, Lindenhurst, Patchogue, Port Jefferson, Northport and Ocean Beach (seasonal). There are also other smaller West End courts which SCLAS staffs as needed for arraignments and other matters.

¹⁹ SCLAS attorneys are present Monday-Wednesday for regular court sessions. SCLAS attorneys are not always present Thursday and Friday for special court sessions.

²⁰ This program began in July 2016 and was administered by the County Attorney's Office. The program initially covered only the two largest East End courts in the towns of Riverhead and Southampton. In May 2017, the program was expanded to include the East Hampton and Southold town courts.

representation on weekends and holidays on a rotational basis in all ten East End courts. Dan Russo, Administrator of the ACP has reported no problems with the attorney coverage or the timely transfer of the arraignment paperwork to SCLAS.

Raise the Age Arraignments

The Suffolk County Youth Part Court is located in the District Court. SCLAS designated two felony qualified attorneys to staff juvenile and adolescent offender arraignments. Additionally, SCLAS partnered these felony attorneys with attorneys in their Children’s Law Bureau who can provide representation when cases are removed to Family Court. The SCLAS RTA program provides for a team approach to vertical representation as all attorneys are involved from the initial stages of the case. Because Part D-11 is open seven days a week, the County has designated D-11 judges “accessible magistrates” to conduct off-hour adolescent and juvenile offender arraignments.



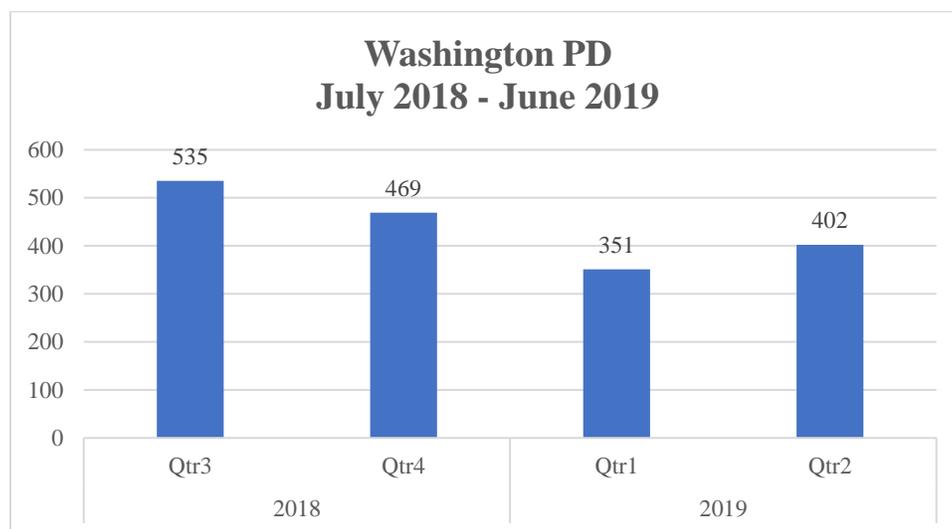
The Washington County Public Defender’s Office (PD Office) is responsible for ensuring counsel at all arraignments. It does so by staffing the regular criminal sessions of the twenty-two town and village courts and at each session of the Centralized Arraignment Part (CAP). Additionally, as described in more detail below, the Assigned Counsel Program (ACP) is now providing supplemental arraignment representation in the town and village courts.

Prior to the Settlement, there was sparse arraignment coverage in Washington County due to the PD Office having only one full-time attorney, Chief Public Defender Michael Mercure, and seven part-time attorneys. However, with Settlement and other ILS funds, the PD Office increased its staffing, and transformed its counsel at arraignment coverage.

Now, the Washington County PD Office staff is comprised of seven full-time and two part-time attorneys who provide complete arraignment coverage throughout the county. The implementation of a CAP in October 2017 further facilitated the PD Office’s ability to ensure that all defendants are represented at arraignment.

The arraignment data ILS received from the PD Office shows that between July 1, 2018 and June 30, 2019:

- The Washington County PD Office represented defendants **at a total of 1,757 arraignments.**
- There was **one missed arraignment.**
- There was **one case in which a defendant waived or refused representation.**



Number of Arraignments by Quarter

Regular Sessions of the Town and Village Courts

The PD Office provides counsel at arraignment in the county’s twenty-two town and village courts. Staff attorneys are assigned to each court. The assigned attorney is present at the court’s regularly scheduled criminal calendar sessions to handle arraignments and represent clients in other matters. Attorneys meet with their clients before arraignment to gather relevant information and, if time permits, to assist in completing the application for assigned counsel. Between June 30, 2018 and July 1, 2019, fifty-six percent (56% of total) of all PD Office arraignments occurred in the town and village courts.

Additionally, the Washington County Assigned Counsel Program (ACP) is now providing arraignment representation at some regularly scheduled court sessions pursuant to the county’s newly implemented “caseload overflow plan.” As part of Settlement implementation, ILS established caseload standards for every HH provider of mandated representation in 2016.²¹ In Washington County, implementation of the standards revealed that the county needed a caseload overflow plan to comply with the caseload standards and maintain reduced workloads for PD Office attorneys.²² As part of this plan, ACP attorneys now provide primary representation on

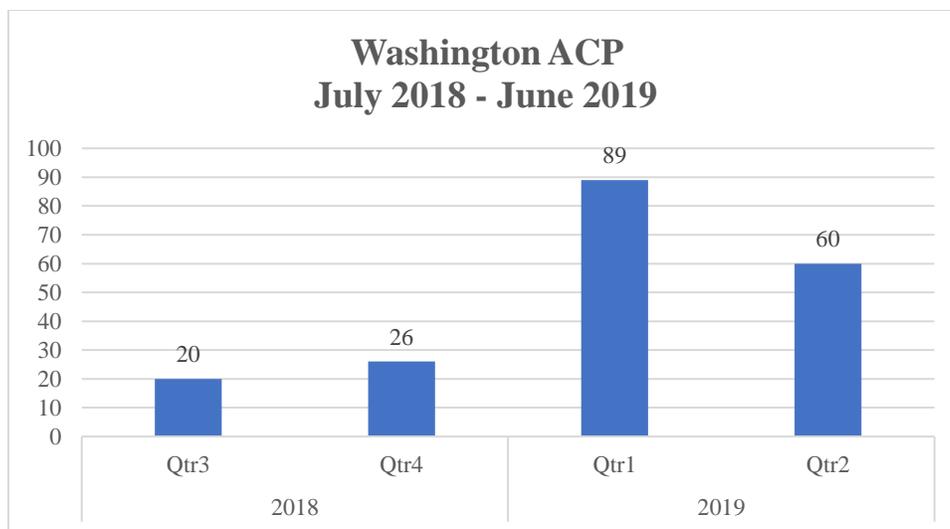
²¹ See *A Determination of Caseload Standards pursuant to Section IV of the Hurrell-Harring v. The State of New York Settlement* (December 8, 2016), available at: <https://www.ils.ny.gov/files/Hurrell-Harring/Caseload%20Reduction/Caseload%20Standards%20Report%20Final%20120816.pdf>.

²² A “caseload overflow plan” is a systematic plan developed by a county and its public defense providers for distribution and assignment of cases to ensure that the institutional provider is in compliance with caseload

certain Vehicle and Traffic Law (VTL) offenses in the county’s six busiest courts.²³ To do so most efficiently, ACP attorneys present in those courts provide arraignment representation on the designated VTL cases. Before the caseload overflow plan, the PD Office staffed all regularly scheduled criminal sessions of all town and village courts and provided arraignment representation and other case representation at those sessions. The PD Office continues to staff these court sessions for other case representation and if no ACP attorney is present, the PD Office attorney provides arraignment representation to ensure there is no gap in coverage.

The arraignment data received from the Washington County Assigned Counsel Program shows that from July 1, 2018 to June 30, 2019:

- The ACP represented **195 defendants at arraignment.**
- There was **one case in which the defendant waived or refused representation.**²⁴



Number of Arraignments by Quarter

Centralized Arraignment Part

Washington County’s Centralized Arraignment Part (CAP) began operation in October 2017. The CAP is in the lobby of the County jail, which is close to the PD Office. Defendants arrested anywhere in the County and taken into custody are transported to the County jail for arraignment. If the CAP is in session when the defendant is transported to the jail, the defendant

standards. Such a plan includes a system for consistent, periodic monitoring of new case assignments and an opportunity for assignment of new cases to a conflict provider when necessary. Washington County took a two-pronged approach by: 1) transferring primary responsibility for some Vehicle and Traffic Law cases to the ACP and, 2) monitoring PD Office caseloads and sending any additional new cases to the ACP should there be a spike in new assignments.

²³ Specifically, the plan requires the Assigned Counsel Program to assign attorneys on the following case types: VTL §§510-7; 511-1a; 511-1c; 511-2ai; 511-2aai; 511-2aiii; 511-2aiv; 511-a3; 511-a3c; 511-d; and 512. The PD Office and ACP work together to monitor this system and determine the courts which will be covered by the ACP for these cases.

²⁴ The ACP does not report missed arraignment data as the PD Office maintains this information.

is immediately arraigned. If the CAP is not in session, the defendant is detained until arraignment at the next CAP session. To ensure that no defendant is detained for more than 12 hours, there are two CAP sessions every day of the year: a morning session from 8:00 a.m. to 9:30 a.m. and an evening session from 7:00 p.m. to 9:30 p.m. The PD Office represents defendants who are arraigned in the CAP. PD Office attorneys are scheduled on a rotating basis to cover every CAP session. The local magistrates rotate as the presiding judge. Attorneys from the District Attorney's Office regularly appear at CAP arraignments.

If there is no defendant in custody to be arraigned at the time the CAP session is scheduled to begin, the session will not commence. However, the CAP judge and designated attorneys from the PD Office and the District Attorney's Office are available by phone to immediately attend the CAP for an arraignment if a defendant is arrested and transported to the jail during the two and a half hour CAP session. Additionally, the PD Office is notified by jail staff when there are defendants in custody waiting to be arraigned and/or if there are defendants in transport to the CAP for arraignment. Once notified of a CAP arraignment, PD Office attorneys go to the CAP, obtain the arraignment paperwork and interview their client prior to the arraignment. From July 1, 2018 through June 30, 2019, there were a total of 665 arraignments (38% of total) conducted in the CAP.²⁵

In April 2019, some 18 months after the CAP began, Chief Public Defender Mercure conducted an "Arraignment Refresher" program which was inspired by some sporadic issues with receiving arraignment paperwork. While those issues were resolved expeditiously, Mr. Mercure took the opportunity to solicit feedback from attorneys and remind staff of proper procedures for quality arraignment advocacy. Mr. Mercure deemed one week "CAP Week" and each day sent staff a new memo with information on CAP arraignment advocacy and procedures. The memos included new points, reminders of information previously transmitted, and a summary of feedback from attorneys. Mr. Mercure also met with his staff to brainstorm strategies to address any issues. At the end of the week, Mr. Mercure summarized everything previously sent and distributed the summary to the PD Office attorneys. Mr. Mercure reports that CAP Week was a success as it produced new ideas to incorporate into arraignment advocacy as well as new documents to provide to clients in their advisory "arraignment packet" which assist clients with further understanding case procedure and the potential consequences of their pending criminal matter.

Raise the Age

In Washington County, the PD Office represents juvenile and adolescent offenders at their arraignments. Mr. Mercure and First Assistant Public Defender Barry Jones are the designated attorneys for Youth Part arraignments. In addition to PD Office attorneys, attorneys from the

²⁵ The PD Office remains available to cover off-hour custodial arraignments during business hours. From July 1, 2018 – June 30, 2019, the PD Office covered 42 custodial arraignments during business hours which were outside of regular court sessions. Twenty-one of these, or fifty percent (50%), occurred in the town and village courts (primarily the Village of Ft. Edward). This number includes three off-hour adolescent and juvenile offender arraignments conducted prior to the shift to utilizing CAP for this purpose. The other off-hour business hour custodial arraignments occurred in County Court.

Offices of the District Attorney and County Attorney are present, as are representatives from the Probation Department and the Department of Social Services. The County set up a phone tree procedure so that every necessary agency is notified of an arraignment. Though initially the county utilized an on-call system with designated accessible magistrates in the town and village courts for off-hour adolescent and juvenile offender arraignments, those arraignments now occur in the CAP. Several of the town and village magistrates who preside over the CAP are designated “accessible magistrates” for off-hour AO and JO arraignments. If the presiding CAP judge is not an accessible magistrate, one who has been designated is called.

III. 2019 Criminal Justice Reforms

In its 2019-2020 budget, New York State passed sweeping reforms of the criminal justice system, including dramatic changes to the laws governing discovery, speedy trial, and the use of monetary bail. These changes will take effect on January 1, 2020. Two of these reforms are directly applicable to counsel at arraignment programs.

First, the legislation amended Criminal Procedure Law (CPL) § 150.20 to require issuance of appearance tickets to defendants charged with most misdemeanor and E felony offenses.²⁶ Previously, appearance tickets were issued for eligible offenses at the discretion of law enforcement. Now, under this amendment, many more defendants will be arraigned by appearance ticket and thus will remain at liberty prior to their arraignment.

There are exceptions to this new requirement. Appearance tickets are not required for E felony and misdemeanor level escape, domestic violence, and sex offenses.²⁷ Additionally, there are certain circumstances in which the police are not required to issue an appearance ticket even for eligible cases. These circumstances include situations where it may be necessary to obtain an order of protection, suspend a driver’s license, or if the arrestee requires immediate medical attention, has outstanding warrants or a recent history of failures to appear in court, or fails to verify their identity and provide contact information. Notably, even if one of the above circumstances exists, the arresting officer retains the discretion to issue an appearance ticket in a particular case.²⁸

This change to the CPL will reduce the number of custodial arraignments and, at the same time, increase the number of appearance ticket arraignments at regular court sessions. Accordingly, the number of off-hour arraignments should also significantly diminish.

Second, under the new legislation, CPL §150.40(1) was amended to require that appearance ticket arraignments occur within 20 days of arrest. Previously, there was no time limitation, so appearance ticket arraignments were scheduled according to local practice and capacity. As a

²⁶ The amendments did not change the classification of cases ineligible for appearance tickets thus, individuals charged with class A, B, C, and D felonies remain ineligible for appearance tickets. *See* CPL § 150.20(1),

²⁷ The other penal law offenses for which appearance tickets are not mandatory are: PL §§ 130.25, 130.40 (E felony sex offenses); 205.10, 205.17, 205.19 (E felony escape offenses); 215.56 (E felony bail jumping offense); and misdemeanor sex offenses under PL 130. Appearance tickets are also not required for the family offenses covered by CPL § 530.

²⁸ *See* CPL § 150.20(2)(a).

result of this new requirement, in some counties there will be an increased need for regular court sessions to conduct these arraignments and, counties with existing dedicated appearance ticket court parts may see a need to enhance capacity. For example, town and village courts which currently conduct a criminal calendar only once a month may need to schedule additional court sessions to ensure timely arraignments. Dedicated appearance ticket parts may need to extend their hours to hear more cases and/or employ other strategies to increase capacity as a result of the 20-day timeframe and the overall anticipated increase in appearance tickets.

Both reforms affect how HH providers' counsel at arraignment programs are staffed. Due either to the increased number of appearance ticket arraignments at individual court sessions and/or the need to schedule additional sessions to conduct timely arraignments, it is likely that there will be more regularly scheduled court sessions at which counsel at arraignment is necessary. For example, in Schuyler County only one of the eleven local courts has regular criminal sessions more than once a month. If all the other courts schedule additional regular sessions to insure timely arraignments, the three full-time PD Office attorneys will have to cover ten more court sessions a month. In other counties, the number of regular sessions may not change, but providers may need to staff each session with additional attorneys to handle an increased volume of appearance ticket arraignments.

The HH providers have been coordinating with stakeholders to prepare for these changes to local practice. ILS is also working with the HH providers to help assess how the changes in the law will affect their arraignment programs. One method we employed was to review and analyze the 2018 arraignment data we received from each HH provider. From this data, ILS estimated the likely increase in appearance tickets in each county and the likely increase of cases in some individual courts. We did so by calculating the number of custodial arraignments conducted in 2018 cases which should be appearance ticket arraignments in 2020 under the amended statute. We shared these estimates with the HH providers to assist them with preparing for the impact of this reform. In addition, as the changes go into effect, ILS will examine the degree to which the number of cases at regular court sessions increases, and whether the number of custodial arraignments, including off-hour and CAP arraignments, decrease. We will use this and other information gathered as part of regular data collection to assist HH providers throughout implementation of these reforms.

The reforms passed in April 2019 will not only affect the HH providers' counsel at arraignment procedures but may also alter the substance of arraignment advocacy. Arraignment attorneys should now monitor whether appearance tickets are being issued in accord with the changes to the CPL, or whether law enforcement is taking arrestees into custody in violation of the new law. Likewise, arraignment attorneys will want to take note whether arraignments are being conducted within 20 days of arrest. Attorneys may need to incorporate any violations into their arraignment arguments.

Moreover, the 2019 reform legislation also made significant changes to New York's bail and release procedures. Starting in January 2020, pre-trial release will be mandatory for arrestees charged with most misdemeanors and nonviolent felonies. Unless a person is charged with a "qualifying offense" (primarily violent felonies, sex offenses, and escape related offenses) a

court has no authority to set monetary bail and must release the person on their own recognizance.²⁹ Nonmonetary conditions may be imposed on a person otherwise eligible for mandatory release if the court finds that there is a risk of flight from prosecution.³⁰ Under this new statutory scheme, arraignment attorneys must advocate on behalf of clients to ensure that every eligible client is granted mandatory release and that either the least restrictive nonmonetary conditions or affordable bail is set for those clients charged with qualifying offenses. The coming year will be both exciting and challenging for arraignment attorneys, and ILS will work with providers to ensure continued quality representation under the new arraignment and bail procedures.

IV. Conclusion

Now in the fourth year of Settlement implementation, counsel at arraignment programs are solidly in place in all five *Hurrell-Harring* counties. Through the hard work and dedication of the HH providers and county stakeholders, counsel at arraignment is provided under the various conditions existing in the five counties – in urban, suburban, and rural courts, in courts that meet every day and those that meet only once a month, in courts which are easy to reach and those which require extensive travel. The HH counties have accomplished this by utilizing an array of programs, including regular attorney assignments, off-hour on-call programs, coordination with the judiciary and law enforcement, and CAPs. Notably, providers' previous experience formulating counsel at arraignment facilitated the development of each county's Raise the Age arraignment representation. Defendants in the HH counties can now count on having an attorney at their side during arraignment.

ILS will continue to work with the HH providers and county stakeholders as they encounter the new procedures of the 2019 bail reforms and adapt their counsel at arraignment systems to these new challenges. ILS will also use implementation of the bail reforms as another opportunity to continue our work with the HH providers to further improve their arraignment practices and ensure quality representation at arraignment.

²⁹ See CPL § 510.10(1), as amended.

³⁰ See CPL § 500.10(3-a), as amended.