



**Implementing the Counsel at Arraignment Obligations in  
the *Hurrell-Harring v. The State Of New York* Settlement  
2020 Update**



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## I. Introduction

Ensuring that competent counsel is present at every defendant's arraignment is a pillar of the *Hurrell-Harring* Settlement ("Settlement"). Since implementation began in 2015, ILS has worked with county stakeholders and public defense providers in Onondaga, Ontario, Schuyler, Suffolk, and Washington counties ("the five counties"), to identify and bridge any gaps in arraignment representation and implement strategies to address any challenges that arise. While each of the five counties had its own set of challenges, when we developed plans it was universally clear that significant structural changes would be the keystone for any meaningful solution. These structural changes took several forms. They ranged in scope from changes in staffing patterns at individual provider offices to implementing changes in state law.<sup>1</sup> In each case, through state funding and programmatic support the five counties have augmented their existing organizational structures to address the previously identified gaps in coverage.

The cumulative effect of these many structural changes is compelling. By the end of the period described in the 2019 ILS Counsel at Arraignment Update Report,<sup>2</sup> the five counties had been ensuring coverage of nearly all arraignments for over two years. This success, which has continued through the present reporting period, has created the conditions necessary to shift the focus from simply ensuring an attorney is present at every arraignment to assessing and, where necessary, improving the quality of arraignment representation in the five counties. As the fifth update to 2015 Final Plan: *Implementing the Counsel at Arraignment Obligations in the Hurrell-Harring v. The State of New York Settlement*,<sup>3</sup> this report will describe the sustained progress the five *Hurrell-Harring* counties have made toward that goal. Though we do not repeat in detail the steps taken to achieve counsel at arraignment in the five counties, where relevant and to fully appreciate the shape and scope of that progress, we provide a brief overview of the arraignment coverage structures in each county.

### ***Challenges for this Report***

With the anticipated shift in focus from coverage to quality, and with criminal justice reform legislation passed in April of 2019 taking effect on January 1, 2020, ILS has long anticipated that 2020 would be a year of change when assessing the effectiveness of the counsel at arraignment systems in place. Much of the focus in the months leading up to 2020 was on ensuring providers and their attorneys had the training, resources, and support required to navigate the changes to the Criminal Procedure Law. This is particularly relevant for counsel at arraignment because of the sweeping changes to the rules governing bail and pre-trial release, issues commonly litigated at arraignment.<sup>4</sup> Thus, ILS worked with public defense providers in the five counties to review

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<sup>1</sup> See L. 2016, Ch. 492 (effective February 2017), establishing Judiciary Law § 212(1)(w), which allows for the creation of Centralized Arraignment Programs.

<sup>2</sup> Available at: <https://www.ils.ny.gov/files/Hurrell-Harring/Counsel%20at%20Arraignment/Hurrell-Harring%20Final%20Counsel%20at%20Arraignment%20Report%202019.pdf>.

<sup>3</sup> The 2015 Plan and subsequent update reports from 2016, 2017, 2018, and 2019 are available at: <https://www.ils.ny.gov/content/hurrell-harring-settlement-plans-and-reports>. This report is submitted pursuant to Section III(D) of the Settlement.

<sup>4</sup> See part JJJ of A-2009c/s-1509-c amending and adding sections to the relevant parts of the Criminal Procedure Law (CPL) concerning bail and appearance tickets. See, e.g., CPL § 150.20 (mandating appearance tickets in certain cases); CPL § 510.10(1) (presumption of release in non-qualifying offenses or else the "least restrictive alternative")

existing counsel at arraignment data submitted as part of Settlement implementation and other available information to prepare for potential changes to arraignment staffing and structures.

Considered on its own, the 2019 criminal justice reform legislation presented an enormous logistical and programmatic challenge for public defense providers, the five counties, and other stakeholders in New York’s criminal justice system. But as with any other piece of legislation, its terms were defined and its onset was announced, allowing organizations to plan for implementation. The same cannot be said for the still-unfolding global pandemic.

In addition to presenting data on arraignment coverage as we have in previous update reports, our intent for this report was to also review at least preliminarily the effect the new legislation has had on counsel at arraignment in the five counties. But the disruptive effect that COVID-19 has had on New York’s criminal justice system is profound. On March 16, 2020, Chief Administrative Judge Hon. Lawrence K. Marks issued Administrative Order 68/20 as part of the Unified Court System’s effort “to mitigate the effects of the COVID-19 outbreak upon the users, visitors, staff, and judicial officers of the Unified Court System.”<sup>5</sup> The Administrative Order directed, among other things, that most non-custodial arraignments were to be administratively adjourned until further notice, and that new custodial arraignments be conducted “remotely by video.”<sup>6</sup> On March 22, 2020, Governor Cuomo issued Executive Order 202.8, suspending “any specific time limit for the commencement, filing, or service of any legal action, as prescribed by the procedural laws of the state, including...the criminal procedure law.”<sup>7</sup>

These (and subsequent related) executive and judicial orders created significant changes for criminal practice in New York. The effects, including extremely limited court calendars, lengthy administrative adjournments, virtual arraignments, suspension of portions of the Criminal Procedure Law, and periods of compulsory social and commercial isolation<sup>8</sup> have all contributed to a departure from normal arraignment representation conditions. For the purposes of this report, it has meant that we are unable to proceed with a precise look at the effects of bail reform on counsel at arraignment coverage and quality as initially planned.

ILS recognizes the importance of understanding how bail reform has influenced public defense. We look forward to developing our understanding of the implications of the recent changes to the Criminal Procedure Law and we will report on our findings as soon as we can confidently draw any conclusions. But while this public health crisis has temporarily closed the door on our bail reform analysis, it has also created an unexpected opportunity to observe how prior implementation efforts have fared during this unprecedented stress test. Thus, in section I of this report, we demonstrate ongoing counsel at arraignment coverage in the five counties and discuss the providers’ responses to the ever-shifting systems during COVID-19. It is clear that the structures in place for arraignment representation and strong, dedicated leadership enabled each

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must be used); CPL § 510.10(4) (detailing “qualifying offenses” for which bail may be set”); 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.”).

<sup>5</sup> Administrative Order of the Chief Admin. Judge of Cts AO/68/20.

<sup>6</sup> Id. at 2.

<sup>7</sup> Executive Order (A. Cuomo), No. 202.8

<sup>8</sup> Id. (Requiring all non-essential businesses to reduce their workforce by 100% and utilize work-from-home procedures where possible.).

of the *Hurrell-Harring* providers to adapt quickly and ensure arraignment representation during this time. Still, there remain obstacles to providing quality arraignment representation in a virtual setting. Thus, in section II, we discuss the challenges attorneys face providing arraignment representation in virtual courts.

## **II. County Updates**

### **A. Onondaga County**

The Onondaga County Bar Association Assigned Counsel Program (ACP) is the sole provider of public defense arraignment representation in Onondaga County's courts. In order to provide comprehensive arraignment coverage, the ACP implemented programs for Syracuse City Court, Syracuse Traffic Court, regular town and village criminal calendar sessions, and the Centralized Arraignment Part (CAP), which was implemented in December 2017. This combination of coverage continues to be successful in ensuring defendants are represented at their arraignments. Below we describe the mechanisms in place for arraignment coverage pre-pandemic and their subsequent shift as the pandemic has unfolded.

#### ***Syracuse City Court***

Syracuse City Court's arraignment part hears custodial and appearance ticket arraignments from within the city as well as the county's morning CAP session, which hears arraignments from every jurisdiction in the county. In order to ensure adequate coverage for the relatively high volume of arraignments heard in City Court, the ACP monitors and reviews the number and type (i.e. custodial or non-custodial) of arraignments and assigns attorneys appropriately.

As in the past, panel attorneys who are assigned to represent defendants in custodial arraignments meet with their clients at the Justice Center (the county's jail) before their cases are heard. The distance between the jail and City Court is a short walk, and the ACP reports no problems with access or confidentiality for these pre-arraignment attorney-client meetings.

#### ***Syracuse Traffic Court***

The ACP also staffs every session of Syracuse City Court's Traffic Part with one panel attorney. That attorney provides arraignment coverage for eligible Vehicle and Traffic Law offenses. For any custodial arraignment, the traffic ACP attorneys communicate with the panel attorneys who are assigned to custodial arraignments for information collected from the defendant at the jail.

#### ***Town and Village Courts***

In 2014, just fifteen of Onondaga County's twenty-eight town and village courts were regularly staffed for arraignment coverage. Since then, with the help of ILS grant and Settlement funding, coverage has expanded to every regular session of every local court in the county. Depending on the court's volume, the ACP assigns one to two attorneys responsible for providing arraignment representation. This system of coverage continues to run smoothly.

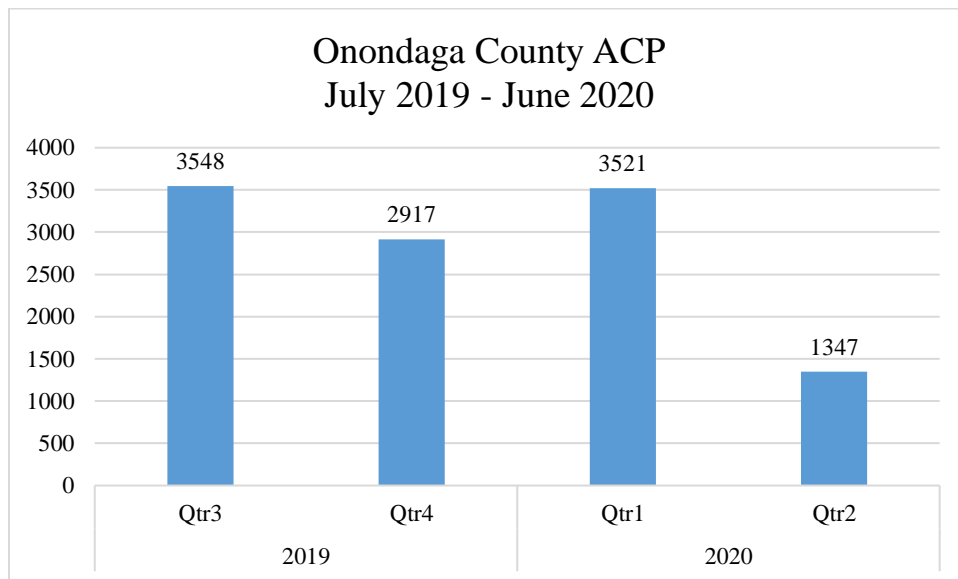
### *Centralized Arraignment Part*

The CAP hears all off-hour arraignments with two sessions every day; ensuring no defendant waits for longer than twelve hours to be arraigned. As noted above, morning sessions are consolidated with the Syracuse City Court morning arraignment calendar. Evening sessions, held in the Public Safety Building (adjacent to City Court), occur from 5:00 p.m. to 10:00 p.m. To facilitate the post-arraignment attorney assignment process, the ACP also employs an ACP clerk who assists the judge in choosing an appropriate panel attorney to continue case representation based upon the nature of the allegations, the court of original jurisdiction, and attorney caseloads. Attorneys have access to iPads during these sessions to input client information into the ACP's new electronic case management system, IntelLinx. This system efficiently provides necessary client and case information to the ACP and the subsequently assigned attorney.

Arraignment data ILS has received from the Onondaga County Bar Association ACP shows these systems continue to be highly effective in ensuring every defendant is represented at their arraignment in Onondaga County courts. Between July 1, 2019 and June 30, 2020:

- Onondaga ACP attorneys represented defendants **at a total of 11,333 arraignments.**
- There were **9 cases in which defendants waived or refused representation at arraignment.**
- There were **3 missed arraignments.**

*Number of Arraignments by Quarter*



### *COVID-19 Response*

Working in concert with stakeholders and panel attorneys, the ACP was able to organize a comprehensive system for virtual arraignment coverage almost immediately after in-person

arraignments shutdown, in early April 2020. The ACP remained client-centered during this transition, instructing panel attorneys to wait for arraignment paperwork before interviewing clients, ensuring private phone calls for pre-arraignment interviews, and arranging for a dedicated phone line in the Skype room to allow defense counsel to conference with clients during the proceeding. This remarkably fast transition to virtual arraignments was possible because of the ACP's established experience with staffing calendars and providing quality coverage of arraignments in the county's physical courtrooms. The ACP also worked with arraignment attorneys to ensure they had technological capability to connect to virtual proceedings and interview their incarcerated clients. The pivot to remote work was also aided by their recent change in case management and e-vouchering software.

At the end of 2019, the ACP executed a long-planned upgrade to a next-generation cloud-based e-vouchering and case management system, IntelLinx. The new case management system has proven to be especially useful during the pandemic. Panel attorneys can access their cases from their personal devices and arraignment attorneys can record each defendant's information. The information is sent to the ACP as soon as it is entered into the system and then ACP staff reviews it remotely for eligibility determinations and assignment purposes. IntelLinx also ensures that all necessary information is collected by panel attorneys, as it requires certain fields to be completed before moving on to other tasks. Panel attorneys upload arraignment documents to IntelLinx, which allows the assigned attorney immediate access to arraignment information, making the transition from arraignment attorney to assigned attorney faster and easier. And because all of this can be done remotely, it has reduced the need for panel attorneys to physically interact with ACP staff and each other during the public health crisis.

In previous reports, we noted that ACP attorneys were being denied consistent access to their clients' criminal history records ("RAP sheets") at arraignment, especially in the CAP and Syracuse City Court. As we reported in the 2019 Update Report, the ACP's efforts to address this issue helped reduce instances where this problem occurred. As COVID-19 compelled the temporary migration to virtual arraignments, this issue once again arose – this time with questions about electronically transmitting RAP sheets with the arraignment paperwork. This issue came to a head during the pivot to virtual arraignments, where access to relevant paperwork was of critical importance in the absence of in-person consultation. On March 28, 2020, Fifth Judicial District Administrative Judge Hon. James P. Murphy issued an Administrative Order requiring law enforcement to "digitally provide a copy of all papers to the Chief Clerk, or his/her designee for distribution to the Designated Judge, Public Defender, Assigned or retained Attorney."<sup>9</sup> Despite this order, panel attorneys reported to ACP Executive Director Kathleen Dougherty that they were not receiving their clients' RAP sheets with arraignment paperwork. The ACP administration immediately alerted Judge Murphy, who issued an order on March 29, 2020, clarifying that clerks are authorized to scan and transmit RAP sheets electronically.<sup>10</sup> Panel attorneys now report that in most cases access to RAP sheets is no longer an issue, and they are better prepared at virtual arraignments.

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<sup>9</sup> Administrative Order Fifth Judicial District No. 5AO2020-50 at paragraph II(1)(a)(i), March 28, 2020.

<sup>10</sup> Administrative Order Fifth Judicial District No. 5AO2020-51, March 29, 2020 ("ORDERED, that the local Court Clerk and/or his/her designee located within the Central Court location in each County is hereby authorized to scan RAP Sheets (Record of Arrests and Prosecution) from the Integrated Justice Portal (EJustice) for use in the 'virtual courtrooms.'").

Currently, Onondaga is operating with a hybrid system for arraignments, with in-custody clients appearing virtually, even if their attorneys are present in the courtroom which is the case for the morning sessions of Syracuse City Court.<sup>11</sup> Attorneys continue to conference with custodial clients virtually by telephone prior to their appearance at arraignment. In contrast, and like in many other counties, the gradual resumption of in-person arraignments has meant that appearance ticket arraignments (non-custodial arraignments) are now heard in person whether in Syracuse City Court or the local town and village courts. The ACP's solid infrastructure and leadership has allowed them to continue to adapt to arraignment representation needs as courts slowly increase the number of in-person court matters.

## **B. Ontario County**

The Ontario County Public Defender's Office (PD Office) has primary responsibility for mandated arraignment representation in the county. To accomplish this, the PD Office regularly staffs every scheduled criminal calendar session for each of the county's local criminal courts. This includes Geneva and Canandaigua City Courts, as well as seventeen town and village courts. The PD Office also staffs the county's Centralized Arraignment Part, which handles every off-hour arraignment in the county. In cases where a conflict of interest for the PD Office is identified pre-arraignment, the Conflict Defender Office (CD Office) is notified and provides arraignment representation. The CD Office also now provides arraignment representation for CD Office cases in Geneva City Court, Victor and Farmington Town Courts, and they staff the CAP two nights a month.

Chief Defender Leanne Lapp worked with Ontario County's local criminal courts and law enforcement to provide the PD Office with copies of appearance tickets on the day they are filed. Generally, this occurs well in advance of each defendant's scheduled arraignment. This practice has proven to be a valuable tool, and the PD Office has used it to enhance the quality of the arraignment representation they provide. With this information, they can proactively reach out to defendants to facilitate assignment of counsel, interview them for information relating to bail arguments and potential defenses, and put defendants in touch with appropriate treatment or other services. It also provides an opportunity for PD Office attorneys to reach out to the District Attorney's office to request early discovery and potentially resolve cases before arraignment. Ms. Lapp and Conflict Defender Carrie Bleakley also worked together to ensure any conflict cases identified at this stage are sent immediately so that the CD Office or Assigned Counsel Program (ACP) can begin work pre-arraignment and provide subsequent arraignment representation.

In aggregate, the local criminal courts account for 48% of all PD Office arraignments, with the two city courts together constituting 17%, and the town and village courts collectively constituting 31%. The large majority of the balance of the county's arraignments occur in its Centralized Arraignment Part, which hears 49% of PD Office arraignments.

The CAP has been operational since May 2018, when it replaced the on-call system then in place. The transition from on-call coverage to the CAP has been successful, as the CAP provides

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<sup>11</sup> In the CAP evening sessions, both attorneys and their clients still appear virtually.

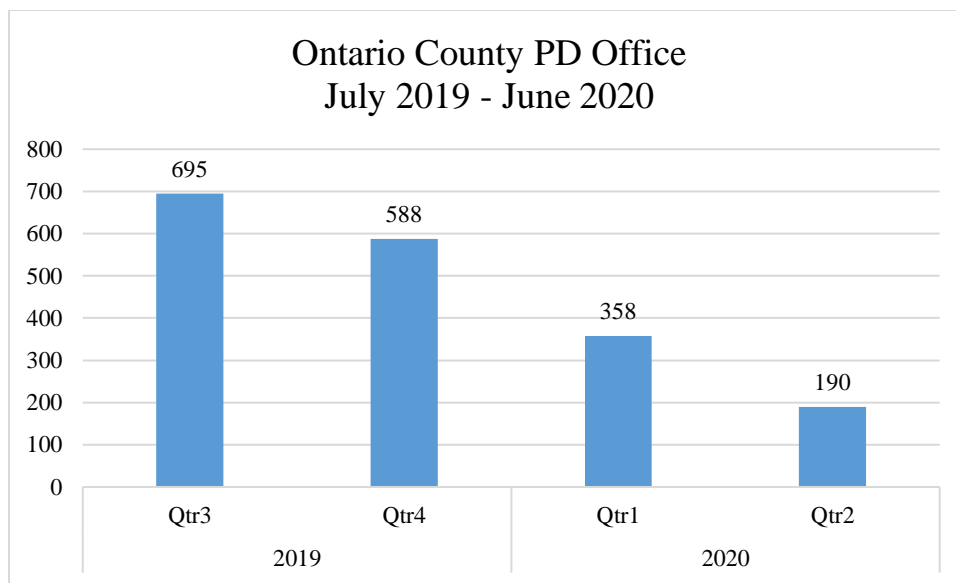


comprehensive off-hour arraignment coverage and eliminates the burdensome travel requirements of the former system. It has a morning session from 7:00 a.m. to 9:00 a.m., and an evening session from 5:00 p.m. to 7:30 p.m., ensuring that defendants do not wait for longer than twelve hours before their arraignment. Ms. Lapp assigns attorneys each two-session CAP shift on a rotating basis. Investigators from the PD Office are also present in the CAP before every morning shift to assist in the pre-arraignment interview process and expedite the assignment of counsel going forward.

The arraignment data ILS received from the Ontario County Public Defender’s Office shows that from July 1, 2019 to June 30, 2020:

- Ontario PD attorneys represented defendants **at a total of 1,831 arraignments.**
- The Ontario PD Office reported **2 cases in which defendants waived or refused representation at arraignment.**
- **There were no missed arraignments.**

*Number of Arraignments by Quarter*



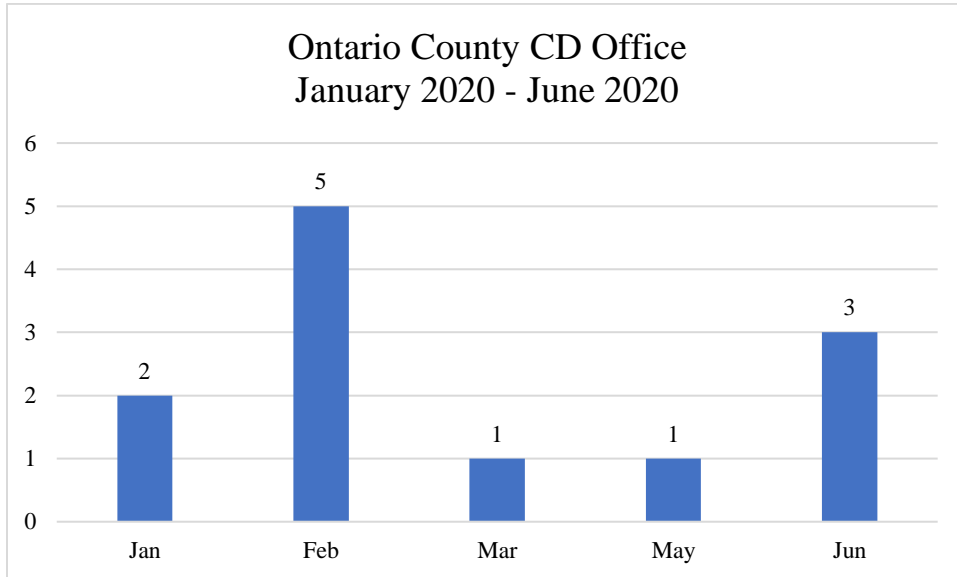
As described above, the timely receipt of appearance ticket information allows the PD Office to screen for conflicts before a defendant’s arraignment. Because conflicts are identified earlier, the CD Office can now provide representation from arraignment for these appearance ticket cases. Ms. Lapp and Ms. Bleakley agreed that the CD Office will appear on their cases in the county’s three busiest courts - Geneva City Court, Victor and Farmington Town Courts. Ms. Bleakley receives a schedule of the appearance tickets in those courts, identifies those for CD Office representation, and CD Office attorneys appear at their client’s arraignment. This has not only resulted in a more efficient system but also, enhanced quality with early client connections and vertical representation when possible. The CD Office also covers two evenings a month in the

CAP. Thus, early this year ILS met with the CD Office to develop a system for capturing and reporting counsel at arraignment data. We present this information for the first time here.

The arraignment data ILS received from the Ontario County Conflict Defender’s Office shows that between January 1, 2020 and June 30, 2020:

- Ontario CD Office attorneys represented defendants **at a total of 12 arraignments**

*Number of Arraignments Per Month*



### ***COVID-19 Response***

The Ontario PD and CD Offices were able to quickly respond to the sudden changes to arraignment practice as a result of the pandemic. With county support, attorneys were able to move to a remote working environment, including access to technology for virtual arraignments. Initially, arraignments were held virtually in the CAP via Skype. Ms. Lapp reports PD Office attorneys were very focused on getting clients released from arraignments to avoid potential COVID-19 exposure and CAP judges were sensitive to this issue. Ms. Lapp also worked with the Sheriff to dedicate a phone line at the jail for confidential client communications. Since May, CAP has resumed in-person operations and all custodial arraignments are heard in CAP. Appearance ticket arraignments are heard in-person at the court of original jurisdiction. With courts gradually resuming in-person appearances and working toward a return to normal, Ms. Lapp has been able to adapt their existing practices and coverage because of the strong foundation already in place.

## C. Schuyler County

Arraignment coverage in Schuyler County is provided by the Schuyler County Public Defender's Office (PD Office). The PD Office continues to staff every regular session of each of the county's eleven town and village courts. The Watkins Glen and Montour Falls Village Courts continue to be the county's busiest, seeing 36% and 16% of all the county's arraignments respectively.

The PD Office also provides on-call coverage in each of the town and village courts for arraignments occurring outside of regular business hours. As detailed in the 2019 Update Report, providing coverage for these off-hour arraignments in Schuyler County has been challenging with no centralized court and cases heard in the town and village courts of original jurisdiction. The PD Office took several steps to cover as many off-hour arraignments as possible – providing on-call coverage for all off-hour arraignments on weekdays and holidays from 5:00 p.m. to 11:30 p.m., and weekends from 9:00 a.m. Saturday to 11:30 p.m. Sunday. In practice, this system was very effective, with nearly every defendant arraigned in Schuyler County represented at arraignment. However, this system left a narrow gap in coverage for arraignments heard in the town and village courts between 11:30 p.m. and the start of the next business day or Saturday on-call shift. Additionally, it placed a heavy burden on the PD Office attorneys who were traveling across the county to appear for arraignments at irregular hours.

Schuyler County was set to inaugurate its newly authorized Centralized Arraignment Part (CAP) on March 30, 2020. The CAP is located at the jail and, once implemented, will conduct two sessions per day, seven days per week to hear all off-hour arraignments in the county. To ensure that no defendant is detained for more than 12 hours pre-arraignment, the first session will be conducted in the morning, 8:00 a.m. to 10:30 a.m., and the second session in the evening, 8:00 p.m. to 10:30 p.m.<sup>12</sup> The CAP is expected to address both the remaining arraignment coverage gap and the outsized burden on PD Office attorneys by consolidating off-hours arraignment practice in a single location with a predictable schedule. But efforts to bring the CAP live were stymied by the COVID-19 emergency.

Pandemic-related reduction in court operations delayed opening the CAP. Instead, on April 3, 2020, all arraignments moved to a virtual platform with the respective town and village judges presiding over the proceedings via Skype. Then, on April 20, 2020 a temporary Virtual Centralized Arraignment Part (VAP) was implemented. Since then, the VAP has been hearing custodial arraignments from 4:30 p.m. to 8:30 a.m. during the work week, and 24 hours a day during the weekends. The PD Office provides daily coverage as needed on an on-call basis.

An additional challenge to maintaining full arraignment coverage was introduced with the enactment of the criminal justice reforms that came into effect on January 1, 2020. As part of that legislation, CPL § 150.40(1) was amended to require appearance tickets to be heard as soon as possible, but no later than twenty days from the date of issuance. In many of Schuyler County's courts, regular sessions were scheduled less frequently than every twenty days. In response to this change in law, Chief Defender Wesley Roe worked with the town and village

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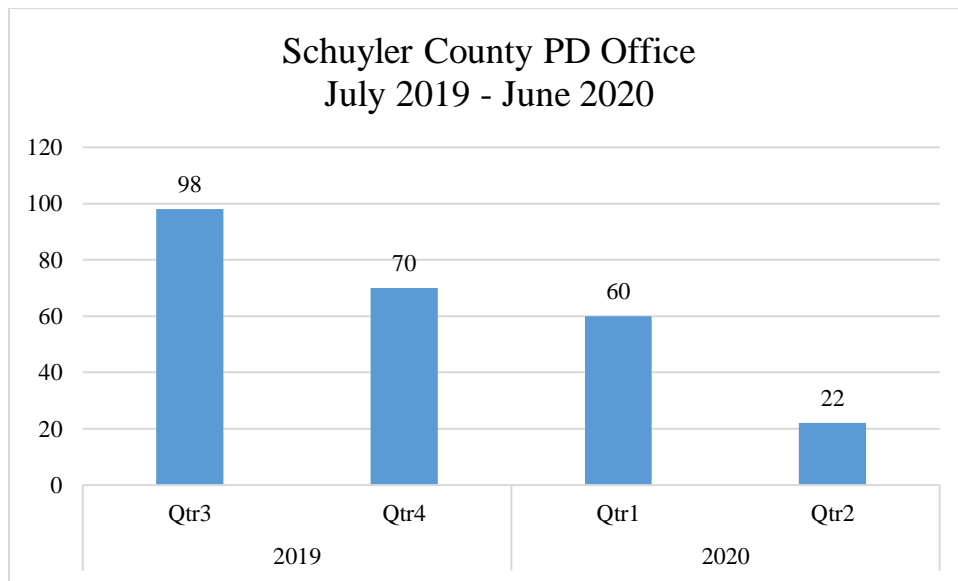
<sup>12</sup> The recent passage of Corrections Law § 500-a(2-t) enabled Schuyler County to create pre-arraignment holding facilities at the jail and build the CAP there. The jail is centrally located and adjacent to the PD Office.

courts to increase his coverage as the courts expanded their operations to comply with the new law. This significantly increased the workload for PD Office attorneys, as it required multiple appearances per month in most town and village courts where only one or two were required pre-2020. In July 2020, CPL § 150.40(1) was further amended to allow appearance tickets to be heard at the next scheduled session of the appropriate local criminal court if such session is scheduled to occur more than twenty days from the date of issuance. While this eliminated that obstacle to full arraignment coverage, it should be noted that Mr. Roe and the PD Office were able to quickly and effectively adapt to major changes in legislation in a way that allowed them to continue to provide representation to every defendant arraigned in Schuyler County’s town and village courts.

The arraignment data ILS received from the Schuyler County Public Defender’s Office shows that between July 1, 2019 and June 30, 2020:

- PD Office attorneys represented defendants **at a total of 250 arraignments**
- The PD Office reported **11 cases in which defendants waived or refused representation at arraignment.**
- The PD office reported that there were **5 missed arraignments from July to Dec 2019. There were no missed arraignments from January to June 2020.**

*Number of Arraignments by Quarter*



The five missed arraignments between July and December of 2019 all occurred between midnight and 5:30 a.m. when the Schuyler PD could not provide coverage. Additionally, they were all arrests made by law enforcement entities that did not have access to holding facilities.<sup>13</sup>

<sup>13</sup> Prior to the CAP, only the Sherriff had access to holding facilities at the jail. For the five missed arraignments, three of the cases were from the Town of Hector, one was from the Village of Montour, and the fifth was from the Village of Watkins Glen.

With the CAP's implementation, this issue should be resolved as under recently-enacted Correction Law § 500-a(2-t), the Sheriff is now authorized to hold defendants pre-arraignment at the jail. Since the implementation of the temporary VAP, the PD Office has not missed any arraignments and, we expect when the CAP eventually opens for in-person operations, this trend will continue.

### ***COVID-19 Response***

Mr. Roe swiftly responded to virtual appearances ensuring attorneys were equipped to appear in the new VAP for arraignments. Currently, all defendants who are arrested after 4:30 pm and on weekends are arraigned virtually in the VAP. For those defendants who are arrested during work hours, they are arraigned in-person in the local courts. Appearance tickets are also heard in-person on specified court sessions in the town and village courts. Mr. Roe reports that thanks to Settlement implementation they have adequate staffing and can cover arraignments on these cases without an issue whether in-person or virtually.

### **D. Suffolk County**

Suffolk County is the most populous and densely populated of the five counties. Its two public defense organizations – The Suffolk County Legal Aid Society (SCLAS) and the Suffolk County Assigned Counsel Defender Program (SCACP) – continue to share responsibility for arraignment coverage. Because of the county's geographic diversity and uneven population distribution, achieving full counsel at arraignment coverage requires a multipronged approach involving both the county's public defense providers.

#### ***The West End: District Court Arraignments***

Suffolk County's more populous West End is served by a District Court. SCLAS provides primary representation for custodial arraignments in District Court's Part D-11 every day of the week from 9:30 a.m. to 5:00 p.m. SCLAS staffs D-11 with four attorneys daily, one of whom is a supervisor. An SCLAS social worker is also available to assess clients at arraignments. Attorneys from the SCACP are also present every day in D-11. They are assigned on a rotating basis and provide representation for arraignments when SCLAS has a conflict or is otherwise disqualified.<sup>14</sup>

District Court's non-custodial arraignments are heard in the Street Appearance Part (SAP). The SAP operates on weekdays from 9:30 a.m. to 5:00 p.m. Primary arraignment coverage in the SAP is provided by the SCACP, with teams of two panel attorneys rotating on a weekly basis.

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<sup>14</sup> On weekdays, D-11 also hears non-custodial arraignments where an individual is charged with a fingerprintable offense but has not been previously fingerprinted. These cases are placed on Part D-11's "254 calendar" and are also covered by SCACP panel attorneys.

### ***The West End: Village Court Arraignments***

For the West End village courts that do not participate in the District Court system, coverage is provided by the SCLAS.<sup>15</sup> 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.

### ***The East End: Weekday Arraignments***

Just seven years ago, the only courts with regular arraignment coverage in the East End were Riverhead and Southampton Town Courts. With Settlement implementation, coverage expanded to include every regular session of all ten town and village court in the East End. SCLAS attorneys are present for each court's regularly scheduled sessions. SCLAS attorneys are also available on an on-call basis for arraignments that occur outside of regular court sessions but during business hours.

Both the 2018 and 2019 Update Reports discussed an issue in the Town of Riverhead court where some defendants reported that they were not represented by counsel at their appearance ticket arraignments. SCLAS appears at every arraignment for which they are notified and seeks to track missed arraignments on the East End by asking people who apply for assigned counsel if they were represented by an attorney at an arraignment. Because this system relies on self-reporting by individuals who are not always familiar with the court process, it is not 100% reliable. Still, as noted in previous update reports, it has helped identify trends. ILS has continued to monitor these trends and in December 2019, ILS discussed the uptick in people reporting that they were not represented at arraignment with then-Administrative Judge Hinrichs, who was also monitoring the situation. Given the imminent implementation of bail reform, which included, among other changes, new language requiring counsel at arraignment when a securing order is issued, we agreed to continue monitoring the situation to see if bail reform's new mandate would resolve any missed arraignments on the East End.<sup>16</sup> Though with the onset of the pandemic it is too early to truly assess whether this is the case, a preliminary review of more recent information is promising as fewer people reported appearing at an arraignment without an attorney in the early months of 2020.

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<sup>15</sup> These include the village courts of Amityville, Babylon, Huntington Bay, Islandia, Lake Grove, Lindenhurts, Patchogue, Port Jefferson, Northport and Ocean Beach (seasonal). There are also other West End courts which SCLAS staffs as needed for arraignments and other matters.

<sup>16</sup> Specifically, CPL § 510.10 was amended, adding subdivision (2): "A principal [defendant] is entitled to representation by counsel under this chapter in preparing an application for release, when a securing order is being considered and when a securing order is being reviewed for modification, revocation or termination. If the principal is financially unable to obtain counsel, counsel shall be assigned to the principal," Similarly, an amendment to CPL § 520.20(2) added a right to counsel for subsequent bail applications. This has been interpreted to mean courts must ensure counsel is present at every arraignment. Together with the Court of Appeals decision in *Hurrell-Harring v. State of New York*, 15 N.Y.3d 8 (2010), Section III of the Settlement's mandate, and Executive Law § 832(4)(a), this new law fortifies the requirement that defense counsel must be present at all arraignments.

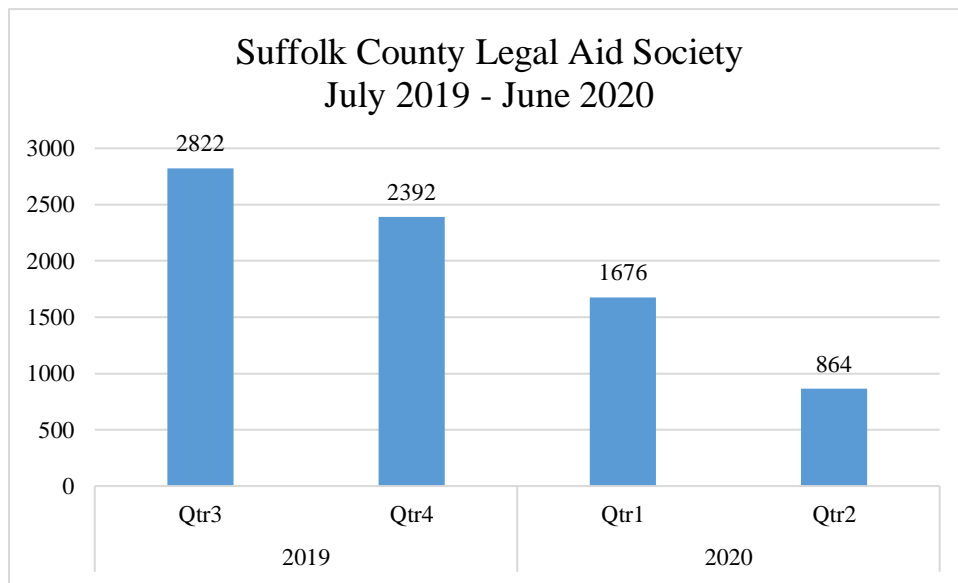
***The East End: Weekend and Holiday Arraignments***

SCACP continues to provide full weekend and holiday arraignment coverage of all ten East End courts. Administrator Dan Russo assigns on-call panel attorneys on a rotating basis. In most cases, defendants in these cases will ultimately be represented by SCLAS. SCACP and SCLAS continue to work together to provide for the smooth and timely transfer of paperwork in those cases.

This comprehensive approach has been effective and is born out in the data ILS received from the Suffolk County’s two providers of mandated defense, which shows that from July 1, 2019 to June 30, 2020:

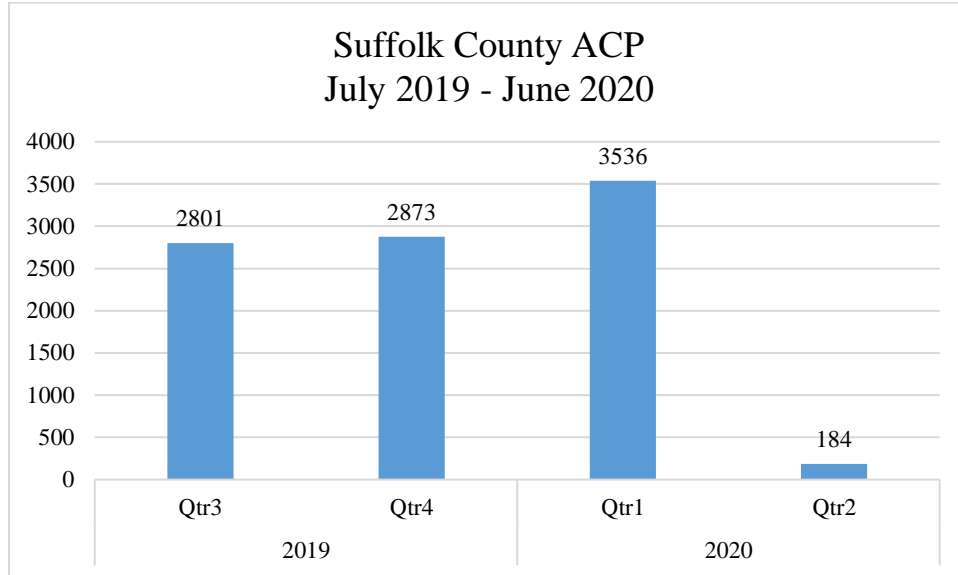
- SCLAS attorneys represented defendants **at a total of 7,754 arraignments.**
- SCLAS reported **17 cases in which defendants waived or refused representation at arraignment.**

*Number of Arraignment by Quarter*



- SCACP attorneys represented defendants **at a total of 9,394 arraignments.**
- From July 2019 to June 2020, SCACP reported **14 cases in which defendants waived or refused representation at arraignment.**

### *Number of Arraignments by Quarter*



- There were no reported missed arraignments in District Court.<sup>17</sup>

Moreover, the providers' sound arraignment infrastructure allowed them to effectively respond when the pandemic suddenly forced changes in court arraignment procedures.

### ***COVID-19 Response***

Both SCLAS and SCACP had to rapidly adapt to the new system for arraignments in Suffolk County. Like all counties in the state, social distancing guidelines and other COVID-19-related protocols forced courts and providers in Suffolk County to temporarily shift to virtual arraignments. With many attorneys also working from home, the availability of suitable technology has become essential to maintaining full arraignment coverage. It is unsurprising then, that attorneys from Suffolk County's providers have reported that technology upgrades made possible by Settlement funding have left them in a position to transition smoothly to virtual arraignments and working remotely.

In a recent interview, a supervisor from SCLAS told ILS that prior to Settlement implementation, he and his colleagues did not have access to reliable, up-to-date computers. But since implementation began, they have received modern laptops with webcams. So, instead of having to work their arraignment coverage schedule around relatively scarce technology resources, each attorney is able to appear virtually as needed. This supervisor also reported to ILS that the addition of IT Director Julio Mejia has been a critical resource during the pandemic, as he is available to address any technology issues that might arise during virtual arraignments. Mr.

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<sup>17</sup> As noted above, there may have been some arraignments in the East End courts for which providers were not notified but the general trend from January to June 2020 is fewer people reporting that they appeared at an arraignment without an attorney.



Mejia's position was created with the Settlement's caseload relief funding. These observations echo a sentiment expressed by SCLAS Attorney in Charge Laurette Mulry that SCLAS was in the best possible position to manage the COVID-19 crisis – including a seamless transition to virtual arraignments – thanks in part to technology upgrades made possible with Settlement funding.

Since the initial shift, courts in Suffolk County have begun to increase the number of in-person appearances. As of the writing of this report, the majority of custodial arraignments in the county are still occurring virtually, but SAP has resumed in-person appearance ticket arraignments. SCACP reports they were able to seamlessly transition back to in-person SAP arraignment representation because of their existing systems developed with Settlement implementation. And, while they anticipated an influx of appearance ticket arraignments because of the backlog created during the period of administrative adjournment and worried this might create an overwhelming need for attorney coverage, thus far they have not seen that come to fruition. Instead, SCACP reports attorneys are finding they are able to provide quality arraignment representation on the cases that are scheduled.

## **E. Washington County**

Washington County has two providers of mandated criminal defense: the Washington County Public Defender's Office (PD Office) and the Washington County Assigned Counsel Program (ACP). The PD Office continues to provide primary arraignment coverage in the county's twenty-two town and village courts, as well as the county's Centralized Arraignment Part (CAP). The one exception results from the county's caseload overflow plan, adopted in July 2018. To reduce PD Office caseloads, the ACP now provides representation for a subset of Vehicle and Traffic Law offenses in the county's six busiest town and village courts and handles many of those arraignments.<sup>18</sup>

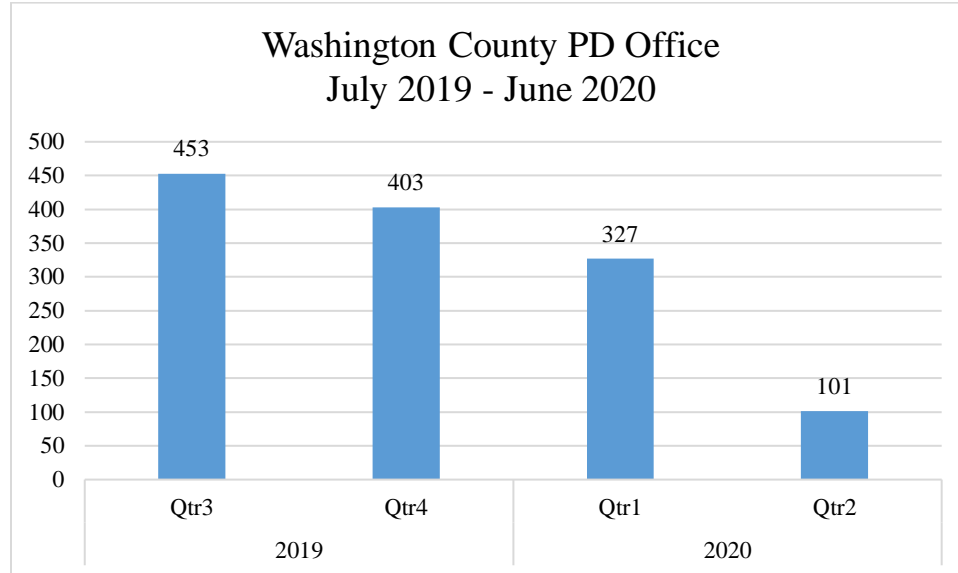
The arraignment data ILS received from the PD Office shows that between July 1, 2019 and June 30, 2020:

- Washington PD Office attorneys represented defendants **at a total of 1,284 arraignments.**
- The PD Office reported **zero cases in which defendants waived or refused representation at arraignment.**
- There were **no missed arraignments.**

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<sup>18</sup> 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; 511-2aii; 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.

*Number of Arraignments by Quarter*



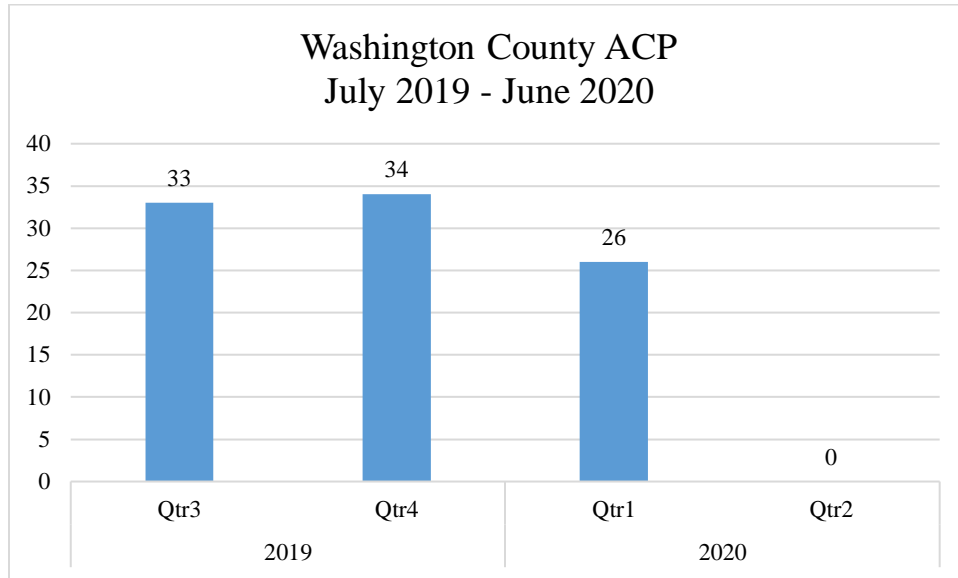
The PD Office continues to maintain full counsel at arraignment coverage, reporting no missed arraignments. As described more fully in previous update reports, this was achieved by implementing several changes. First, in 2015, the PD Office worked with ILS and county stakeholders to develop a multipronged approach for full arraignment coverage. The plan included increased staffing to ensure coverage at all regular court sessions and an on-call system for “off-hour” arraignment representation in any of the county’s twenty-two town and village courts. Chief Defender Michael Mercure created a rotating schedule for on-call attorneys, worked with relevant stakeholders to create a notification system, and used the Settlement’s counsel at arraignment funds to purchase an on-call cellphone and provide a stipend for on-call attorneys. This system, which was effective but burdensome on attorneys, was improved with additional PD Office staff and the creation of a Centralized Arraignment Part in 2017. Both changes significantly reduced the time and travel demands on individual PD Office attorneys. Now, almost all off-hour arraignments are held in the CAP which represented 37% of the total arraignments during this reporting period. The PD Office reports that with its predictable hours and central location, the CAP arraignment system continues to work well.

The PD Office has also increased formal training and supervision, which has contributed to a change in office culture that prioritizes a client-centered approach to arraignment advocacy. Mr. Mercure is consistently monitoring arraignment representation and working with attorneys to ensure clients are fully informed and receiving quality arraignment representation. Because the PD Office now has a solid system in place for covering arraignments and enhanced infrastructure resulting from other Settlement initiatives, they were able to effectively pivot when the pandemic forced courts to turn to virtual arraignments as described more below.

The Washington ACP also continued to cover designated arraignments during this reporting period. The arraignment data ILS received from the Washington ACP shows that between July 1, 2019 and June 30, 2020:

- The Washington ACP represented defendants **at a total of 93 arraignments**
- The Washington ACP reported **zero cases in which defendants waived or refused representation at arraignment.**

*Number of Arraignment by Quarter*



### ***COVID-19 Response***

Settlement implementation allowed Mr. Mercure to substantially reduce his caseload so he could devote much needed time to office management. Prior to Settlement implementation, the PD Office had eight attorneys, seven of whom were part-time. Today, thanks to effective use of Settlement and ILS distribution funding, they have nine attorney positions, seven of which are full-time. The office also added an intermediate layer of supervision, further freeing Mr. Mercure to handle the organizational and administrative aspects of running the office. This additional structure has proven crucial in how the office has managed arraignment advocacy during the pandemic.

In addition to coordinating coverage during the chaotic early days of the pandemic, Mr. Mercure focused on working with law enforcement to ensure that his attorneys would have proper access to all accusatory instruments, RAP sheets, and other documents necessary to provide quality representation during virtual arraignments. Prior to implementation of the virtual CAP, Mr. Mercure and two assistant public defenders covered in-person arraignments in CAP. Mr. Mercure also appeared at multiple arraignments in the town and village courts when clients were not sent to CAP. Mr. Mercure worked with the county’s IT Department to ensure attorneys and the PD Office had the necessary technology to perform Skype arraignments. PD Office attorneys also participated in a virtual test run. Mr. Mercure worked with county jail staff to implement procedures for confidential attorney-client conversations prior to virtual arraignments. He also worked with PD Office attorneys to emphasize the need to inform clients of the virtual process and assist as issues arose.

Mr. Mercure notes that even with all this preparation, client communication and representation at virtual arraignments presented challenges. Most critically, virtual arraignments did not allow for confidential client communications during the proceedings and, at times, conversations pre and post arraignments were inhibited due to the presence of law enforcement. In an effort to guard against the diminished confidentiality available to defense attorneys and their clients during virtual arraignments, Mr. Mercure modified the arraignment packet given to all PD Office clients. The arraignment packet, which we describe in the 2019 Update Report, now includes a form that warns defendants to wait until they are alone with their attorney before disclosing any details relating to their charges.

With support from his supervising attorneys, Mr. Mercure has been able to direct his attention at the most urgent challenges brought about by the pandemic. Because of the increased structure and staffing brought about through Settlement implementation, the Washington PD Office was able to maintain full arraignment coverage and respond effectively to the many challenges created by the pandemic.

As courts in Washington County have started to resume in-person operations, Mr. Mercure has been taking time to observe proceedings in the CAP and town and village courts to ensure arraignments are running smoothly and both attorneys and judges are adhering to the changes under bail reform.

### **III. Challenges with Virtual Arraignments**

The data presented in Section I of this report provides persuasive evidence that because of systems erected pursuant to Settlement implementation, the five counties were well-equipped to maintain counsel at arraignment compliance throughout the COVID-19 pandemic. To do so, the *Hurrell-Harring* providers have had to react to fast-moving changes to arraignment practices. These changes have not been uniform among regions, counties, or even individual courts within the same county. It is therefore impractical to discuss every departure from normal practices within the five counties. But to the extent that every jurisdiction has had to temporarily adopt some form of virtual arraignment practice, some broad generalizations regarding the challenges this has presented can be made.

Since Administrative Order 68/20 was issued, *Hurrell-Harring* providers have represented numerous clients at virtual arraignments. The shift to virtual arraignments has brought with it a host of problems for public defense attorneys and their clients. Some problems relate to practical aspects of the technology. In a recent interview with ILS, one supervising attorney noted that virtual representation has been “a mess” – microphones cut out, wireless internet can be unreliable, defendants are frequently out of frame while on the record, etc. These observations were echoed in many responses to ILS’s 2020 *Hurrell-Harring* Line Attorney Survey which was conducted during July and August of this year.<sup>19</sup> One responding attorney noted that “working from home with [his] own resources (phone, computer)” and “limited access to office” had impacted his practice. Still others have reported that they have less time to meet with clients in

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<sup>19</sup> For more information on the attorney survey and methodology, see *Evaluating the Effectiveness of Caseload Standards in the Hurrell-Harring Settlement Counties*, submitted October 30, 2020.

virtual proceedings, and many have observed more generally that access to their clients has been “drastically reduced.”

Another, even more pernicious problem arises as a result of the unavoidable degrading effect technological mediation has on human communication. The information loss caused by conducting arraignments over videoconferencing technology can have a negative effect on the quality of arraignment representation. As one supervising attorney put it: “communication is more than just words.”

The prevailing sentiment among attorneys in the *Hurrell-Harring* provider offices is that virtual proceedings make delivery of quality representation more difficult. Multiple attorneys have reported that the absence of face-to-face contact with clients (both during virtual court proceedings and during out-of-court consultations) have strained attorney-client communication and rapport and made providing quality arraignment advocacy more challenging. Again, the words of a surveyed line attorney summarize this problem succinctly: “[l]ess face-to-face with my clients is not the best for case development or client support.” Some attorneys providing virtual arraignment representation have reported worse outcomes for their clients. For instance, one supervising attorney observed that virtual court is “awful for [her] clients” because bail is set higher and relief is not being granted like it was before the pandemic. She noted that virtual proceedings tend to dehumanize her clients.

As of the date of this report, courts in the *Hurrell-Harring* counties are increasing the number of in-person appearances though the number and types of in-person proceedings varies. This is a positive development. While the providers have acted with heroic dedication and flexibility during this crisis, there are certain disadvantages that are inherent in virtual arraignments. So, notwithstanding the exemplary conduct of the *Hurrell-Harring* provider offices, their attorneys, and their leadership during this pandemic, virtual proceedings will continue to present a barrier to high quality representation as long as the pandemic persists and virtual arraignments continue in the five counties. Fortunately, as courts are able to increase the number of in-person matters, attorneys and their clients can resume in-person communications and arraignment advocacy.

## **IV. Conclusion**

This report reflects that full arraignment coverage has continued in the five *Hurrell-Harring* counties, despite the challenges caused by the pandemic. Moreover, given the unprecedented circumstances of the present reporting period, this report is also a strong endorsement of the strategy for and execution of Settlement implementation so far. Mission-driven leadership in the *Hurrell-Harring* providers, adequate funding, and thoughtful structural improvements allowed providers in the five counties to respond to this public health crisis that requires people to avoid in-person contact with others. The work of Settlement implementation is not complete, and we continue to work with providers and other stakeholders to identify and ameliorate areas in need of improvement. But in this time of global anxiety and uncertainty, we are pleased to report that counsel at arraignment coverage and efforts for quality advocacy persist in the *Hurrell-Harring* counties.