

Statewide Plan for Implementing Counsel at Arraignment: Year Three Report

September 30, 2021



Table of Contents

| | |
|---|-----------|
| Introduction | 1 |
| I. Remote Counsel: Arraignments During COVID-19..... | 4 |
| The Immediate Impact of Executive Order 202.1 | 4 |
| Beyond the Screen: The Constitutional Implications of Virtual Arraignments | 4 |
| II. The Return to In-Person Arraignments | 7 |
| The Rise of Centralized Arraignment Parts | 7 |
| III. Ongoing Challenges | 8 |
| Gauging Efficacy of Arraignment Programs: Identifying Missed Arraignments | 9 |
| Quality Arraignment Representation | 9 |
| Mandated Criminal Representation at Counsel at First Appearance in New York State: The Numbers | 11 |
| CAFA Program Types and Providers | 11 |
| CAFA Coverage | 12 |
| Virtual and In-Person Arraignments | 13 |
| Appendices | 14 |

IMPLEMENTATION UPDATE OF STATEWIDE PLAN FOR COUNSEL AT ARRAIGNMENT

INTRODUCTION

“(The assistance of counsel) is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not ‘still be done.’”¹ In New York, this critical right is protected in Criminal Procedure Law (CPL) § 170.10(3) and § 180.10(3) and “attaches at arraignment.”² In *Hurrell-Harring*, New York’s Court of Appeals unequivocally affirmed the vital importance of the presence of counsel at arraignment explaining that “nothing in the statute may be read to justify the conclusion that the presence of defense counsel at arraignment is ever dispensable, except at a defendant’s informed option, when matters affecting the defendant’s pretrial liberty or ability subsequently to defend against the charges are to be decided.”³ The fundamental right to defense counsel at arraignment thus serves two independent, indispensable purposes: for attorneys to advocate for their client’s release and to begin the defense of their client’s case.

To fulfill this critical legal requirement, New York Executive Law § 832(4)(a) requires the New York State Office of Indigent Legal Services to “develop and implement a written plan to ensure that each criminal defendant who is eligible for publicly funded legal representation is represented by counsel in person at his or her arraignment...” On December 1, 2017, ILS submitted its Counsel at Arraignment Plan (“Plan” or “Counsel at Arraignment Plan”) to the Executive, detailing the status of counsel at arraignment (“counsel at first appearance” or “CAFA”) coverage in each county and identifying where defense counsel arraignment coverage was consistently provided and where it was sporadic or non-existent. The Plan estimated the funding needed to achieve full arraignment coverage (\$9.4 million), and the proposed steps to provide statewide arraignment representation by April 2023. On September 30, 2019, ILS provided an update regarding the first year of implementation of the Statewide Plan for Counsel at Arraignment, which set forth a detailed history of progress toward the goal of full coverage of arraignments. The report identified existing gaps in coverage and explained that ILS “is working with counties in a collaborative manner, gathering information, hearing and addressing their concerns, and seeking to reach consensus on how best to implement counsel at arraignment in each county.”

In 2019, counties reported the following:

¹ *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963) (citing *Johnson v. Zerbst*, 304 U.S. 458, 462 (1938)).

² *Hurrell-Harring v. State of New York*, 15 N.Y. 3d 8, 21 (2010) (citing *Rothgery v. Gillespie County*, 554 U.S. 191 (2008); See also *McNeil v. Wisconsin*, 501 U.S. 171, 180-181 (1991) (“The Sixth Amendment right to counsel attaches at the first formal proceeding against an accused”).

³ *Hurrell-Harring v. New York*, 15 NY3d 8, 21 (2010)

- Arraignment representation was provided at **90.8%** of scheduled sessions when a prosecutor was present (“DA sessions”).⁴
- Arraignment representation was provided at **42.7%** of scheduled sessions when a prosecutor was not present (“non-DA sessions”).
- Programs were in place to provide representation at **53.9%** of weekday off-hour arraignments (defined as unscheduled arraignments that occur during business hours, typically 9:00 a.m. to 5:00 p.m., with slight variation from county to county).
- Programs were in place to provide representation at **48.5%** of overnight off-hour arraignments (defined as unscheduled arraignments that occur outside of business hours, typically 5:00 p.m. until 9:00 a.m. the next morning, with slight variation from county to county), and **48.6%** of weekend and holiday off-hour arraignments.

On January 1, 2020, bail reforms went into effect that mandated a presumption of release for all eligible cases, with conditions when deemed necessary.⁵ When bail and pretrial detention remain legally permissible, the reforms limit their use to cases when a judge determines them to be the least restrictive conditions necessary to ensure court attendance. Effective July 1, 2020, amendments to the bail reform laws expanded the list of charges and situations in which a judge may set monetary bail or remand people to pretrial detention, and provided more options for ordering non-monetary release conditions (including mandated treatment, maintaining employment or educational involvement, and conditions related to the protection of domestic violence victims).⁶

The bail reforms resulted in a reduced number of people being held in custody pre-trial.⁷ Anecdotally, based on conversations with defense providers, the reforms have also led to an increased number of appearance tickets being issued in cases where release is mandated. These reforms impacted the CAFA representation demands on counties where additional appearance ticket return dates were added to court calendars to accommodate the increased volume of non-custodial arraignments. Even in cases where clients are entitled to release pursuant to CPL §510.10, the necessity of defense counsel representation at arraignment remains unchanged; their role in beginning a client’s defense (including, but not limited to, interviewing witnesses, conducting an investigation, issuing evidentiary subpoenas, researching legal issues, and filing time-sensitive notices and motions) as required by *Hurrell-Harring* is neither affected nor diminished by a charged individual’s custody status at, or subsequent to, the arraignment.

On September 30, 2020, ILS submitted its annual report regarding the second year of implementation of its Statewide Plan for Counsel at Arraignment. The 2020 report described the

⁴ In the 2019 report, noncustodial arraignments were categorized as occurring during “DA sessions” or “non-DA sessions.” In the 2020 report, recognizing that the DA’s office is not necessarily present for arraignments during regular court sessions, categorizations of noncustodial arraignments were updated to “regular court sessions” in Town and Village and City/District Courts. To capture the additional nuance between regular court sessions when the mandated public defense provider (PD) is present and those court sessions when the PD is not scheduled to appear, the current report uses the categories of “regular PD/DA or PD court sessions” and “other court sessions.”

⁵ CPL § 510.10(1)

⁶ Id.

⁷ See <https://www.vera.org/downloads/publications/the-impact-of-new-york-bail-reform-on-statewide-jail-populations.pdf>

tremendous progress that had occurred since ILS submitted its CAFA Plan in December 2017 and demonstrated that nearly all the counties in New York State had systems in place to provide representation at all arraignments, both custodial (where the client is in the custody of law enforcement immediately prior to the arraignment) and non-custodial (where the client has been issued an appearance ticket at the time of their arrest, remains at liberty, and returns to court for the arraignment at a later date).

In 2020, counties reported the following:

- 46 out of the 52 counties (**88.5%**) reported full CAFA coverage during regular court sessions in their Town and Village Courts.
- 31 out of the 33 counties (**93.9%**) with City or District Courts reported full CAFA coverage during regular court sessions in these courts.
- 50 out of the 52 counties (**96.2%**) reported full CAFA coverage during off-hour arraignments.

Just as New York State was working toward successful implementation of the Counsel at Arraignment Plan in compliance with the *Hurrell-Harring* Settlement Agreement and Executive Law § 832(4), the global public health crisis of COVID-19 forced courts to close to in-person proceedings. The in-person representation requirement of the *Hurrell-Harring* Settlement Agreement and Executive Law was temporarily suspended as Executive Orders authorized electronic (“virtual”) arraignments (upon defendants’ consent after consultation with defense counsel). This emergency measure involved defense counsel, clients, judges, and prosecutors attending arraignments remotely via a videoconferencing platform to remove the risk of virus transmission. Counties and providers quickly adapted their in-person systems of representation to provide defense counsel at virtual arraignments until the emergency orders were lifted and normal operations could resume. As this report is drafted, counties and providers have largely transitioned back to in-person arraignment representation.

This report will describe the deleterious impact of COVID-19 on Counsel at First Appearance, the risks and pitfalls faced by providers as they transition back to in-person representation, and the ongoing challenge of ensuring structures are in place to provide complete, high-quality representation in accordance with the *Hurrell-Harring* Settlement Agreement and Executive Law. In preparing this report, ILS attorneys spoke with the coordinators of CAFA representation in each of the 52 non-Settlement counties outside of New York City, using a survey developed to understand the intricacies of each CAFA program: the structure of how counsel at arraignment is coordinated, the ability of that structure to return to in-person representation, the systems (if any) used to identify and collect data on missed arraignments, and obstacles to providing high-quality representation at arraignment.⁸

⁸ The survey instrument used is attached as Appendix A.

I. REMOTE COUNSEL: ARRAIGNMENTS DURING COVID-19

The Immediate Impact of Executive Order 202.1

On March 12, 2020, arraignment representation underwent a seismic shift when the COVID-19 pandemic necessitated the issuance of Executive Order 202.1, which included an emergency authorization of electronic court appearances, including arraignments.⁹ Four days after the issuance of Executive Order 202.1, the Chief Administrative Judge issued Administrative Order 68-20, which ordered arraignments to be conducted by video in New York City and “to the fullest extent possible” elsewhere in the State.¹⁰ On March 19, 2020, ILS published a statement acknowledging the requirement of “unusual, time-limited, emergency measures to protect public health” and authorizing ILS funding to be used “for video arraignments where they are authorized by the chief administrator of the courts and where the defendant, after consultation with counsel, consents on the record.”¹¹

Clients who were in law enforcement custody prior to their arraignment began to be arraigned via video, while many courts suspended non-custodial appearance ticket arraignments entirely, adjourning cases indefinitely. ILS worked with providers to ensure that their offices had the remote equipment and technology needed for these appearances, including laptops, tablets, monitors, webcams, and cell phones. In total, 31 out of the 52 non-Settlement counties used ILS funding for technology and necessary equipment to adapt to virtual arraignments.

Despite the significant limitations of virtual arraignments (detailed below), to the extent possible, providers continued to protect their clients’ rights at this critical initial appearance. As the public health crisis progressed, depending on the rate of COVID-19 infections and in accord with directives from the Chief Administrative Judge and each Judicial District’s Administrative Judge, some counties resumed in-person arraignments, while others remained virtual. The original March 12, 2020 Executive Order 202.1 was extended (with some modifications) by subsequent Orders through June 2021.

Beyond the Screen: The Constitutional Implications of Virtual Arraignments

The *Hurrell-Harring* Settlement Agreement is unambiguous about the necessity of in person arraignments. Paragraph III(A)(1), requires New York State to “ensure...that each criminal defendant within the Five Counties who is eligible...is represented by counsel in person at his or her Arraignment.” Executive Law § 832(4)(a), extending the *Hurrell-Harring* Settlement reforms to the entire state, likewise requires that each person who is eligible “is represented by counsel in person at his or her arraignment[.]” (emphases added).

To achieve the explicit in-person requirement of the Settlement Agreement negotiated by *Hurrell-Harring* Settlement parties and applied statewide through the Executive Law § 832(4), each county

⁹ Executive Order 202.1, authorizing electronic appearances for arraignments, is attached as Appendix B.

¹⁰ Administrative Order 68-20, authorizing video arraignments, is attached as Appendix C.

¹¹ ILS’ March 19, 2020 statement regarding video arraignments is attached as Appendix D.

faces unique challenges.¹² Indeed, in implementing programs for arraignment representation prior to the pandemic, counties and providers overcame significant hurdles, including: jurisdictional barriers to courts conducting arraignments of arrests that occurred in other towns and villages; the availability of qualified counsel for on-call arraignments that can take place at any time; geography; varying population density which requires coverage for both urban and rural areas; the complicated logistics involved with coordinating coverage among different groups of attorneys for the several different programs needed in each county; coordinating with the various courts and law enforcement agencies; and providing arraignment coverage for the numerous justice courts. In collaboration with ILS and other stakeholders, counties crafted creative and individualized solutions to address these challenges: some implemented Centralized Arraignment Parts pursuant to Judiciary Law § 212(1)(w), and others developed on-call systems that were available 24 hours a day, 7 days a week. Through these substantial efforts, counties and providers ensured that by the end of 2019, there were programs in place throughout the state designed to have defense attorneys available to provide representation at their arraignment.

During the pandemic, as video arraignments occurred more frequently, many providers reported that their attorneys appreciated the convenience of appearing for an arraignment from the comfort of their homes and offices. Similarly, many judges touted the economy of virtual arraignments, with some going so far as to advocate for their permanence – even in jurisdictions such as New York City, where in-person representation at arraignments has been provided since long before the *Hurrell-Harring* Settlement. In the words of one judge: “[v]irtual appearances promote efficiency and save money, by eliminating the need for lawyers and defendants to travel to courthouses and for incarcerated defendants to be transported from jails.”¹³ These interests of economy, however, risk incurable damage to the fundamental right to counsel – a right recognized by the Court of Appeals in *Hurrell-Harring*, acknowledged by the State of New York in the subsequent Settlement agreement, and codified in Executive Law § 832(4).

The Chief Defenders Association of New York (“CDANY”) provided a compelling response to the voices advocating for permanent virtual arraignments, “calling on the legislature to protect the integrity of the judicial system by requiring that live arraignments return when courts are reopened.”¹⁴ The New York State Defenders Association (“NYSDA”) released a statement, “Virtual/Remote Court Appearances at a Critical Stage of Criminal Proceedings Is Not the Correct Answer to Any Long-Term Question,” in which they assert that “[a] litigant’s right to appear in person, along with counsel, the decision-maker, and witnesses, should not be abridged.”¹⁵ On March 19, 2020 and December 2, 2020, ILS issued notifications reminding providers, courts, and the criminal justice community that:

conducting arraignments virtually is a temporary, emergency exception to the legal requirements of personal appearance by the defendant, and in person representation

¹² See 2019 Implementation Update of Statewide Plan for Implementing Counsel at Arraignment, § IV. Challenges to Ensuring the Presence of Defense Counsel at Arraignment.

¹³ See <https://www.law.com/newyorklawjournal/2021/07/08/new-york-needs-a-new-statute-authorizing-virtual-criminal-proceedings/>

¹⁴ CDANY’s Memorandum in Opposition to Permanent Virtual Arraignments is attached as Appendix E.

¹⁵ NYSDA’s Statement is attached as Appendix F.

by counsel. When virtual arraignments are no longer a public health necessity, justified by a valid Executive Order, in-person arraignments must resume in accordance with CPL §§ 170.10, 180.10, and 182.20, and in-person representation must be provided in compliance with the *Hurrell-Harring* Settlement and Executive Law § 832(4).¹⁶

This in-person requirement enumerated in the Settlement and Executive Law has never been a mere technical requirement, nor should it be considered inconsequential or taken for granted – and in fact, the importance of this requirement is further bolstered by various studies that have been conducted since this technology became available. Indeed, research shows that electronic court appearances for substantive proceedings such as arraignments 1) negatively impact case outcomes, 2) negatively impact perceptions of defendants, 3) have a deleterious impact on the proceedings in general, and 4) impair the attorney-client relationship.¹⁷

Defense attorneys have anecdotally reported to ILS that virtual court proceedings are, in general, more awkward, less productive, and often result in a confusing and unclear transcript of the proceeding, thereby impairing defendants' appellate rights. Furthermore, during ILS interviews, CAFA coordinators in 35% of the 52 counties surveyed reported material issues with the confidentiality of pre-arraignment interviews at virtual arraignments. These included: inconsistent confidentiality (dependent upon the arresting agency); a lack of confidence that the conversation was private; law enforcement's physical presence within earshot of the client during their interview; and attorney-client conversations being recorded by custodial authorities. One CAFA coordinator observed that defense attorneys are forced to limit their conversation to "yes or no" questions, an observation that was echoed during ILS interviews with several attorneys in the Settlement counties. Such interference – indeed, anything short of an unquestionably confidential pre-arraignment consultation between an attorney and their client – eviscerates a charged individual's right to counsel articulated in the Sixth Amendment to the U.S. Constitution. The absence of confidentiality is inconsistent with an attorney's obligations under the NYS Rules of Professional Conduct, Rule 1.6, and is fatal to relationship-building at this critical initial proceeding, when an attorney must be able to gather sensitive information about the client and the facts of the case.

Even in the counties where attorneys stated that their conversations with clients prior to a virtual arraignment were confidential, the lack of in-person communication threatened the right to counsel. As stated by one provider, "attorneys have assured me that they are satisfied that the pre-arraignment phone calls are confidential, but I think it's different for the defendant...it's difficult to earn your client's respect when you're talking to them on the phone and representing them virtually."

¹⁶ See Appendix D and copy of the December 2, 2020 notifications attached as Appendix G.

¹⁷ See Appendix H for an annotated description of relevant research studies.

II. THE RETURN TO IN-PERSON ARRAIGNMENTS

On June 24, 2021, citing the statewide vaccination rate and the significant reduction in the COVID-19 positivity rate, Executive Order 210 was issued. This Order rescinded Executive Orders 202 through 202.11, including those orders authorizing electronic court appearances.¹⁸ Four days after Executive Order 210 went into effect, ILS issued a notification to providers that representation of criminal defendants at virtual arraignments would no longer be supported.¹⁹

In 2020, defense providers shifted at short notice from in-person to virtual representation at arraignment; fifteen months later, they were called upon to pivot once again and reinstate the systems of in-person representation in place prior to the pandemic. For many counties, this transition involved significant logistical hurdles. Arraignments require not only the presence of the charged individual and their counsel, but also of the judge, clerks, and court personnel: each individual necessary to the functioning of the initial appearance. The return to in-person arraignments thus involves the cooperation, involvement, and support of the judiciary, as well as coordination with the local authorities responsible for transporting charged individuals who are in law enforcement custody. Acknowledging the potential complexities involved in responding to Executive Order 210, ILS offered to assist providers in negotiating an interim period to transition from virtual to in-person representation, if needed. In response to this notification, many providers contacted ILS to negotiate such transition periods.

The Rise of Centralized Arraignment Parts

For many counties, Centralized Arraignment Parts (“CAPs”) are an ideal solution to the logistical challenge of arranging for in-person arraignments. Counties frequently, if not universally, implemented Virtual Centralized Arraignment Parts (“VCAPs”) to coordinate arraignments during the pandemic; some have pursued the creation of permanent in-person CAPs since the issuance of Executive Order 210. Judiciary Law § 212(1)(w) establishes the framework for counties to work with the Office of Court Administration (“OCA”) to create and implement CAPs, and it is designed to give counties the flexibility needed to develop centralized programs that are attentive to county-specific needs and issues.²⁰ Providers report that having a CAP allows attorneys to better coordinate their schedules; CAPs also help reduce the attorney burnout often associated with arraignment on-call programs, especially in counties where there are fewer attorneys to provide CAFA coverage and systems of representation necessarily spread these limited resources to an unsustainable degree. CAPs also result in efficiencies and better coordination for law enforcement and judges.

There are challenges in establishing a CAP which involves the coordination of a number of criminal justice stakeholders: defense providers, the local magistrates, law enforcement, and county government officials. Depending on the specific CAP plan, it may also be necessary to identify space for a courtroom with a place for defense counsel to conduct a confidential pre-

¹⁸ Executive Order 210 is attached as Appendix I.

¹⁹ The June 29, 2021 notification is attached as Appendix J.

²⁰ See 2019 Implementation Update of Statewide Plan for Implementing Counsel at Arraignment, § III(C). Centralized Arraignment Programs.

arraignment interview. Additionally, while OCA is committed to approving CAP programs only if they limit pre-arraignment detention to 12 hours, there is still a concern about implementing arraignment programs that rely to varying degrees on pre-arraignment detention. Despite these challenges, many counties report that CAPs can provide a successful model for structuring arraignments.

As of mid-July 2021, 22 counties statewide (including four of the *Hurrell-Harring* Settlement counties: Washington, Schuyler, Onondaga, and Ontario) provide representation at arraignment through an OCA-approved CAP, with more in various stages of development. In counties where no CAP is in place, representation continues to be provided via an on-call system. *Hurrell-Harring* Statewide and Settlement funding and other ILS funding have been used to ensure the presence of defense counsel and necessary equipment and administrative support at the CAPs.

III. ONGOING CHALLENGES

As normal court operations resume, ILS is working with providers to identify and address possible structural weak points in their systems of coverage. While the overwhelming majority (98.1%) of counties report systems of representation at all custodial arraignments, 40.4% of counties do not have systems in place to provide representation for appearance tickets that are scheduled for non-DA/PD or PD court sessions (court sessions when the defense provider is not already scheduled to appear). When a charged individual appears in court during one of these sessions, the court may adjourn the case without taking any action, begin the arraignment without counsel (by, for example, reading the charges, providing the individual with a copy of the accusatory instrument, and informing the individual of their rights) and adjourn the case to a regular DA/PD or PD court session, or simply arraign the individual without counsel and provide them with an eligibility application. In each of these scenarios, a person charged with a crime has made their first appearance in court without the benefit of representation. At worst, this results in a violation of the right to counsel; at best it causes an unnecessary adjournment, an additional court appearance (with associated missed employment, childcare issues, and other hardships borne by the client), an increase in the amount of time that a charged individual has an open criminal case pending against them, and an inability to initiate time-sensitive investigations.

There are several possible protocols that can be implemented to ensure that defense attorneys are present at non-custodial (appearance ticket) arraignments. For example, defense providers can coordinate with law enforcement to ensure that appearance tickets are only returnable to regular DA/PD or PD court sessions. Indeed, some defense providers have reported success in such coordination. Providers can also expand their CAFA programs to schedule defense attorneys to be present at all court sessions or expand their on-call programs to allow judges presiding over regular court sessions to contact an on-call attorney for an appearance ticket arraignment. Another option is to obtain and review court calendars prior to each session to see if a person is scheduled to be arraigned on an appearance ticket, and if so, schedule a defense attorney to be present for that session. Finally, some counties are considering using CAP sessions for appearance ticket arraignments. ILS is committed to working with defense providers and county officials to identify and then implement a protocol that works best in that county to fill in any gaps in appearance ticket arraignment programs. ILS can also ensure that funding is available if the identified protocol

requires hiring additional attorneys to assist in CAFA representation, involving a second (or third) defense provider in the system of representation, or funding appropriate stipends to compensate attorneys for additional work responsibilities.

Gauging Efficacy of Arraignment Programs: Identifying Missed Arraignments

To gauge the effectiveness of their arraignment programs, counties should develop systems to identify and collect data on arraignments where defense counsel is not provided, despite a system of representation being in place (“missed arraignments”). The *Hurrell-Harring* Settlement counties have been tracking missed arraignments for over four years and have developed several successful strategies to identify missed arraignments, including, for example: reviewing jail lists (lists of incarcerated individuals generated by custodial authorities) and comparing them to provider arraignment data, cross-checking assigned cases data against arraignment data, and simply asking people who apply for assigned counsel if they were represented at their first court appearance. Such a system should capture missed arraignments of both custodial and non-custodial clients. For example, if the provider merely regularly checks the jail list for incarcerated people who they don’t have a record of representing at arraignment, the system captures missed custodial arraignments that result in bail being set, but fails to identify arraignments in which bail was not set. Tracking this information enables providers to address ongoing or systemic issues that lead to missed arraignments, and ultimately is required to gauge the success of the Statewide Plan for Counsel at Arraignment. In the absence of a system to identify missed arraignments, providers must necessarily rely on external agencies (such as the courts or law enforcement) to ensure that counsel is present, a responsibility that is more appropriately borne by the provider.

Currently, only 8 out of 52 counties use a system to identify missed arraignments. While CAFA coordinators in 18 counties reported confidence that the judges in their counties do not proceed with arraignments without defense counsel present, data is needed to ensure the accuracy of such claims; each county should have the capacity to independently account for missed arraignments. To the extent that systems for identifying missed arraignments are incomplete and for the remaining counties where no such systems exist, ILS is collaborating with providers to develop protocols for tracking these events, such as incorporating a question about representation at arraignment into the client’s eligibility application and cross-referencing new assignments against arraignment data.

Quality Arraignment Representation

Providing high-quality representation at arraignments is a necessary component of counsel at first appearance. As noted in the 2019 Annual Report, quality representation requires, among other things: access to and utilization of non-attorney professional services at or immediately following arraignment; pre-arraignment defense attorney access to official criminal history records (often called “RAP sheets”); access to and utilization of interpretation services; the availability of confidential space and adequate time to consult with clients prior to and after arraignment; training opportunities; and the capacity to collect and report relevant data. When CAFA coordinators were asked to identify obstacles to achieving quality representation at arraignment, 10 out of 52 cited either the lack of continuous representation (“vertical representation”) from arraignment (i.e., the

case is transferred to a different attorney post-arraignment), or the lack of pre-arraignment determination of eligibility for assigned counsel. These related factors tend to undermine the CAFA attorney's investment in conducting a comprehensive pre-arraignment interview, since the attorney does not know whether the case will be assigned to their office, or who will ultimately represent the client. Though pre-arraignment eligibility determinations and vertical representation tend to facilitate comprehensive, high-quality representation at arraignment, the duties of defense counsel in representing their clients at arraignment must not be contingent on eligibility determinations or a continuing attorney-client relationship. Where vertical representation is not possible, clear protocols must be established for the transfer of information from the arraigning attorney to the attorney ultimately assigned.

ILS continues to strategize with providers and counties on methods to ensure quality representation at arraignment. ILS developed a CAFA intake form template to assist providers in conducting a thorough pre-arraignment interview and identifying time-sensitive case-related issues.²¹ Where vertical representation is not provided, this form also serves as a mechanism to gather and convey necessary information to the attorney ultimately assigned to the case. ILS is also developing a CAFA toolkit containing blank forms, sample notices and substantive "one-pagers" on common issues pertaining to arraignments, as a resource for both new and experienced attorneys who provide representation at arraignment.

²¹ CAFA intake form template is attached as Appendix K.

Mandated Criminal Representation at Counsel at First Appearance in New York State: The Numbers

This analysis includes all 52 Upstate counties in New York State.²² For each county, between April and June 2021, ILS interviewed the CAFA coordinator or coordinators responsible for arranging CAFA representation.²³ As part of the interview, ILS utilized a pre-determined set of questions to elicit information about the county's counsel at arraignment program types, providers, and coverage. The data below is a summary of the information these interviews yielded.

1. CAFA Program Types and Providers

Custodial arraignments

Custodial arraignments occur when a person is taken into custody at arraignment instead of being issued an appearance ticket. Unless there is a mechanism for pre-arraignment detention which allows for designated (scheduled) sessions for custodial arraignments, such individuals must be brought before a justice to be arraigned as soon as possible.

Program type:

- **18 out of the 52 non-Settlement counties (34.6%)** handle **custodial arraignments** through a Centralized Arraignment Program (CAP).²⁴
- **34 counties (65.4%)** exclusively use an on-call system.

Custodial arraignment providers:

- In **38 counties (73.1%)**, custodial arraignments were handled by **one single provider**.
 - For **30 of these counties (57.7%)**, custodial arraignments were handled by the **Institutional Primary Provider** ("IPP"; i.e., Public Defender or Legal Aid Society), for **7 (13.5%)** by the **Assigned Counsel Program** (ACP) and for **1 (1.9%)** by the **Institutional Conflict Provider** ("ICP"; i.e., Conflict Defender or Legal Aid Society).
- In **14 counties (26.9%)**, custodial arraignments were handled by **two or more providers** of mandated criminal representation.
 - For **10 of these counties (19.2%)**, custodial arraignments were handled by both the IPP and the ACP, for **3 counties (5.8%)** these were handled by the IPP and ICP, and for **1 (1.9%)** by the IPP, ICP, and ACP.

²² New York City and the five *Hurrell-Harring* Settlement counties are excluded from this analysis.

²³ A list of CAFA coordinators interviewed is attached as Exhibit L.

²⁴ While many counties used a temporary virtual centralized arraignment system during the pandemic, the CAPs identified in these data points are limited to OCA-approved CAPs established pursuant to Judiciary Law § 212(1)(w). For five of these eighteen counties, the CAP is complemented with an on-call system to handle some portion of custodial arraignments. A comprehensive list of all counties, systems of representation and participating providers is attached as Exhibit M.

Non-custodial arraignments

When arrestees are not taken into custody at the point of arrest, they are issued an appearance ticket instructing them to appear at a scheduled date and time for arraignment. Arraignments may be scheduled for court sessions when the institutional provider is regularly scheduled to appear (“regular DA/PD or PD court sessions”), or may be scheduled for court sessions when the institutional provider is not scheduled to appear (“other court sessions”).

Non-custodial arraignment providers:

- In **43 counties (82.7%)**, non-custodial arraignments were handled by **one single provider**.
 - For **37 of these counties (71.2%)**, non-custodial arraignments were handled by the **IPP**, and for **6 (11.5%)** by the **ACP**.
- In **9 counties (17.3%)**, non-custodial arraignments were handled by **two or more providers** of mandated criminal representation.
 - For **4 of these counties (7.7%)**, non-custodial arraignments were handled by both the **IPP** and the **ACP**, and for **5 other counties (9.6%)** these were handled by the **IPP** and **ICP**.

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

2. CAFA Coverage

Custodial arraignment coverage:

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

Gaps in coverage:

Please note that “gaps in coverage” describe situations where no program is in place to provide mandated legal representation at arraignment.

- **26 out of the 52 counties (50.0%)** indicated that there were **no gaps** in coverage, **1 county (1.9%)** indicated that there were **gaps in coverage for custodial arraignments only**, **0 counties (0%)** indicated that there were gaps in coverage **during regular DA/PD or PD court sessions only (when the PD is regularly scheduled to appear)**, and **21 counties (40.4%)** indicated that there were **gaps in coverage during other court sessions (when the PD is not regularly scheduled to appear)**.

- **The remaining 4 out of 52 counties (7.7%)** indicate that there are gaps in coverage during **regular PD/DA or PD court sessions and other court sessions.**
- Of the **25 counties** that indicated that there were **gaps during other court sessions in which the PD is not scheduled to appear** (either as the sole option or one of the checked options), **20 counties (80.0%)** specifically mentioned that these gaps included **appearance tickets scheduled for days when counsel are not regularly scheduled to appear.** In these situations, justices often – but not always – adjourn the matter without conducting an arraignment until the next regular court session where counsel is present to conduct the arraignment.

Systems to identify missed arraignments:

Please note that “missed arraignments” are arraignments that take place without counsel, despite a system for representation being in place.

- **Only 8 out of the 52 counties (15.4%)** indicate that they have a system in place **to identify missed custodial and / or non-custodial arraignments;** most of the counties (**i.e., 44 counties; 84.6%**) do not have such a system.
- **Systems to identify missed arraignments include** the use of **jail lists** (lists of incarcerated individuals generated by custodial authorities) to identify any missed custodial arraignments and **receiving notification from the court** where the missed arraignment occurred.

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

3. *Virtual and In-Person Arraignments*²⁵

- At the time of the interview (April – June 2021), **11 out of the 52 counties (21.2%)** conducted arraignments completely **in-person** and **3 out of the 52 counties (5.8%)** conducted arraignments in a **completely virtual mode.** However, **most counties (38 counties, 73.1%) used a combination of virtual, in-person, and/or hybrid modes** to conduct their arraignments.
- At the time of the interview (April – June 2021), of the counties that were conducting arraignments in an entirely or partially virtual mode (41 counties), almost **two-thirds (n=24, 58.5%) indicated that there was a plan to return to in-person arraignments.**

²⁵ As per Executive Order 210, issued on June 24, 2021, Executive Orders authorizing electronic court appearances were rescinded (i.e., EO 202 through 202.11). As of then, counties were mandated to return to in-person court operations.

A Note About the ILS Definition of “Gap in Arraignment Coverage”

Executive Law § 832(4)(a) excludes from the definition of arraignment those first court appearances “where no prosecutor appears, and no action occurs other than the adjournment of the criminal process and the unconditional release of the person charged.” ILS acknowledges that in such circumstances, Executive Law § 832(4)(a) does not require the presence of defense counsel.²⁶ However, since 2012 when ILS issued our first request-for-proposals to fund defense representation as arraignments, ILS has worked toward defense counsel representation at *all* first court appearances. We have done so because, as stated previously in this report, having a person come to court for arraignment only to have the matter adjourned results not only in unnecessary court appearances, but also potentially significant hardships for the person, including missed work, family care issues, transportation issues, an increase the amount of time that a charged individual has a criminal case pending, and possible delays in time-sensitive case investigations which can result in lost evidence.

For that reason, ILS uses a broad definition of “gaps in arraignment” to include gaps in defense coverage of *all* first court appearances. Doing so ensures that we fully understand the arraignment programs in every county. It also allows us to work towards quality, client-centered defense representation that achieves more than what is strictly required by the law.

²⁶ If the court takes any action, such as reading the charges to the individual, then defense counsel is clearly required under Executive Law 832(4)(a).

Appendix A

2021 CAFA REPORT PROTOCOL

Goal: To determine (and accurately report) the CAFA programs that exist in each county, identify gaps in program coverage ,and assess how well programs are working to ensure representation at arraignments, focusing on **structural issues**.

For purposes of this year’s CAFA Report, the definition of “**Structural Issue**” will be **an external obstacle that prevents or hinders an attorney from attending an arraignment**.

Methodology: Team attorneys will conduct interviews with CAFA coordinators in each County. For most counties, this will involve interviewing one individual. However, if more than one provider participates in arraignment representation and each provider coordinates its own attorneys, more than one individual will be interviewed. To cover the above issues comprehensively, information on external impediments to the attorneys’ representation (confidentiality of client interview, pre-arraignment RAP sheet access) are not required to be collected. However, Team attorneys should feel free to discuss these topics, time permitting.

During or after the interview, Team attorneys will complete a QuestionPro survey based on the interview(s). This survey was developed by the Research Team as a tool to aggregate information for the CAFA report.

Preparation: Before conducting interviews, Team attorneys will gather information currently known to ILS about the structure of arraignments from prior interviews and County profiles. Team attorneys should also review the QuestionPro survey to ensure all information is gathered during the interview.

Information that Team Attorneys will collect:

- (1) Confirmation of current structure. The County profiles in the 2020 report do not necessarily cover the same data points, so the following is the universal list of CAFA structure characteristics that should be confirmed or obtained if we do not already have it. Team attorneys should prepare their interviews by recording the information we have and what is missing for each interviewee from the following list (a-g):
 - a. When do custodial arraignments take place? For example, arraignments may take place 24/7 throughout the County, at certain times in certain courts that have pre-arraignment detention but on an “on-call” basis for other courts, or pursuant to a CAP.
 - i. If a CAP is in place, what are the times of the CAP sessions (and are there any courts and/or arresting agencies that do not use the CAP)?
 - b. When do noncustodial arraignments take place? For example, noncustodial arraignments could be scheduled at a CAP, or only during regular PD court sessions, or during court sessions when the PD does not normally appear.
 - c. What is/are the system(s) to provide representation at custodial and noncustodial arraignments? For example, are attorneys organized into “on call” teams? Is there one attorney who handles all custodial arraignments Countywide? How often and for how long do they provide representation?
 - d. Are there any gaps in coverage?¹

¹ Note to Team Attorneys: “gaps in coverage” describe situations where no program is in place to provide representation. “Missed arraignments” (covered later in the interview) describe situations where there is a

- e. Are there regularly scheduled court sessions at which defense attorneys are not scheduled to appear? What happens if a person appears for an arraignment at one of these sessions? **Note: if appearance tickets are scheduled during court sessions when the PD is not normally scheduled to appear and the cases are adjourned for a regular PD court session “for the arraignment” (with no representation being provided at the initial appearance), this should be considered a gap in coverage (and recorded as such in the QuestionPro survey).**
 - f. Is there a backup system in place if the attorney primarily responsible is unavailable due to an emergency?
 - g. Are there any concerns about the burden the arraignment program has on attorneys? (such as attorney burn-out from being on -call?)
- (2) How has the system adapted to virtual arraignments during COVID?
- a. Has ILS funding helped them to be flexible, either by supporting the purchase of remote equipment/technology or otherwise?
 - b. Are any court stakeholders advocating for the permanence of virtual arraignments? What is the interviewee’s position/attitude on this issue?
 - c. Has there been a return to in-person arraignments, and if not, is the system prepared to do so?
- (3) What is the notification system? More than one notification system may be in place within a County - the notification system may vary depending on the arresting agency or arraiving Court.
- a. Does any defense provider receive pre-arraignment notification of client information for appearance tickets?
- (4) Is there a failsafe system for “missed arraignments” (both custodial and noncustodial)? Missed arraignments are arraignments that take place without counsel, despite a system for representation being in place. ***If there is a system in place, find out if it tracks arraignments missed because there is no program, arraignments missed even where there is a program, or both.*** We are interested in **whether the CAFA coordinator or any defense provider is notified of missed arraignments.** If they are not, how can ILS support the creation of a failsafe notification system?
- (5) If provider learns of missed arraignments, what are the types of circumstances in which arraignments have taken place without at arraignment (both custodial and noncustodial)? For example, do certain judges and/or arresting agencies refuse to notify attorneys of an arraignment?
- (6) What steps have been taken to collect and maintain records regarding “missed arraignments”? Beyond the arraignment data required by the ILS-195 in Part 3 (concerning the outcome of arraignments and whether representation was for “arraignment only”), we are interested in information on **arraignments that take place without counsel present.** Is this data collected? How? If not, how can ILS support collecting and tracking this data?
- (7) Obstacles to representation? This is an opportunity for the Team attorney to remind CAFA coordinators of the broader purpose of arraignment representation, and a chance for the CAFA coordinators to discuss any pressing issues that are interfering with representation at

program in place to provide representation, but some issue/defect with the program that has led to clients being unrepresented at arraignment.

arraignment. Each CAFA coordinator will be asked the following: *“Attorneys have reported that providing representation at arraignment facilitates early and more effective case investigation; early identification of a client’s immediate and long term non-legal needs, such as child care, housing, or substance abuse treatment; an opportunity to litigate punitive sanctions, such as loss of a license or an order of protection; and that it can foster enhanced trust and rapport building with clients. In your view, what obstacles (if any) exist to achieving these goals at arraignment?”*

Recording responses:

As with previous years, questionnaires will be saved in CAFA folders that Team Attorneys should create in each of the YR 3 subfolders for their counties (for example, Chautauqua’s CAFA questionnaire would be found here: V:\STATEWIDE IMPLEMENTATION PLANS\COUNTY INFO\Chautauqua\YR 3\CAFA). To be consistent with previous years, we will use the following format for file names: “CHAUTAUQUA_CAFA Questionnaire_01 01 21” – the date will be the date of the interview. If more than one interview takes place for the County, all interviews will be saved in one document, and the date should be the last interview conducted.

Appendix B



State of New York

Executive Chamber

No. 202.1

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York;

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to be continue; and

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the laws of the State of New York, do hereby continue Executive Order 202, dated March 7, 2020, and I hereby continue any suspension or modification of law made by Executive Order 202 for thirty days until April 11, 2020, except that such Executive Order is amended to read as follows:

FURTHER, pursuant to the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through April 11, 2020 the following:

Suspension of laws and regulations to allow for expansion of services and temporary facilities for health and human service providers:

- Subdivisions (a) and (e) of section 401.3 and section 710.1 of Title 10 of the NYCRR, to the extent necessary to allow hospitals to make temporary changes to physical plant, bed capacities, and services provided, upon approval of the Commissioner of Health, in response to a surge in patient census;
- Parts 709 and 710 of Title 10 of the NYCRR, to the extent necessary to allow construction applications for temporary hospital locations and extensions to be approved by the Commissioner of Health without considering the recommendation of the health systems agency or the Public Health and Health Planning Council, and to take such further measures as may be necessary to expedite departmental reviews for such approval;
- Sections 34-2.6 and 58-1.7 of Title 10 of the NYCRR, to the extent necessary to permit clinical laboratories to operate temporary collecting stations to collect specimen from individuals suspected of suffering from a COVID-19 infection;
- Section 41.34 of the Mental Hygiene law and Part 620 and section 686.3 of Title 14 of the NYCRR, to the extent necessary to allow facilities certified pursuant to Article 16 of the Mental Hygiene law to increase and/or exceed certified capacity limits without following site selection procedures and/or without providing notification to the appropriate local governmental unit upon approval of the commissioner of OPWDD;

- Section 33.17 of the Mental Hygiene Law and associated regulations to the extent necessary to permit providers to utilize staff members in the most effective means possible to transport individuals receiving services from the Office of Mental Health or a program or provider under the jurisdiction of the Office of Mental Health during the emergency, provided such facilities take all reasonable measures to protect the health and safety of such individuals;
- Sections 29.11 and 29.15 Mental Hygiene Law and section 517 of Title 14 of the NYCRR to the extent necessary to permit mental health facilities licensed pursuant to Article 31 of the Mental Hygiene Law that are treating patients during the emergency to rapidly discharge, including conditionally discharge, transfer, or receive such patients, as authorized by the Commissioner of the Office of Mental Health, provided such facilities take all reasonable measures to protect the health and safety of such patients and residents, including safe transfer and discharge practices;
- Section 29.13 of the Mental Hygiene Law and associated regulations to the extent individuals in areas affected by the emergency are temporarily receiving services from different providers, whose immediate priority is to stabilize the individual, address acute symptoms, and provide supports including medication and stress relief, such that it is impossible to comply with development, assessment, scope and frequency, and documentation requirements for treatment plans;
- Sections 131, 132 and 349-a of the Social Services Law to the extent necessary to allow screenings to be conducted by telephone;
- Sections 2510 and 2511 of the Public Health Law, to the extent necessary to waive or revise eligibility criteria, documentation requirements, or premium contributions; modify covered health care services or the scope and level of such services set forth in contracts; increase subsidy payments to approved organizations, including the maximum dollar amount set forth in contracts; or provide extensions for required reports due by approved organizations in accordance with contracts;
- Subdivision 4 of section 6909 of the Education Law, subdivision 6 of section 6527 of the Education Law, and section 64.7 of Title 8 of the NYCRR, to the extent necessary to permit physicians and certified nurse practitioners to issue a non-patient specific regimen to nurses or any such other persons authorized by law or by this executive order to collect throat or nasopharyngeal swab specimens from individuals suspected of suffering from a COVID-19 infection, for purposes of testing, or to perform such other tasks as may be necessary to provide care for individuals diagnosed or suspected of suffering from a COVID-19 infection;
- Section 400.9 and paragraph 7 of subdivision h of section 405.9 of Title 10 of the NYCRR, to the extent necessary to permit general hospitals and nursing homes licensed pursuant to Article 28 of the Public Health Law ("Article 28 facilities") that are treating patients during the disaster emergency to rapidly discharge, transfer, or receive such patients, as authorized by the Commissioner of Health, provided such facilities take all reasonable measures to protect the health and safety of such patients and residents, including safe transfer and discharge practices, and to comply with the Emergency Medical Treatment and Active Labor Act (42 U.S.C. section 1395dd) and any associated regulations;
- Subdivision 3 of section 2801-a of the Public Health Law and section 600.1 of Title 10 of the NYCRR, to the extent necessary to permit the Commissioner of Health to approve the establishment of temporary hospital locations and extensions without following the standard approval processes and to take such further measures as may be necessary to expedite departmental reviews for such approval;
- Section 2999-cc of the Public Health Law and any regulatory provisions promulgated thereunder by the Department of Health, the Office of Mental Health, the Office of Addiction Services and Supports, and the Office for People with Developmental Disabilities, to the extent necessary to allow additional telehealth provider categories and modalities, to permit other types of practitioners to deliver services within their scopes of practice and to authorize the use of certain technologies for the delivery of health care services to established patients, pursuant to such limitations as the commissioners of such agencies may determine appropriate;

Suspension of laws and regulations relating to child care to allow flexibility for providers while continuing to protect the health and safety of children:

- Sections 414.7, 416.7, 417.7, 418-1.7, 418-2.7, 414.8, 416.8, 417.8, 418-1.8, and 418-2.8 of Title 18 of the NYCRR insofar as that regulation sets the ages of children who can be served and the standards for care; Sections 414.13, 416.13, 417.13, 418-1.13, 418-2.13 of Title 18 of the NYCRR suspending requirements for staff qualifications; Section 390 of the Social Services law suspending provisions setting capacity limits for family and group family day care programs and standards for staff/child ratios in all child care modalities; Sections 390(3) and 390-a of the Social Services Law and regulations at 18 NYCRR Sections 413(g), 414.14, 415.13, 416.14, 417.14, 418-1.14, 418-2.14, allowing for the waiver of certain provisions establishing training and inspection requirements for

child day care; and Section 424-a of the Social Services Law insofar as allowing for the waiver of fees paid for statewide central register of child abuse and maltreatment database check;

- Section 410-w of the Social Services Law and sections 404.1, 404.7, 415.2, 415.3, 415.6 of Title 18 of the NYCRR insofar as that statute and those regulations establish financial eligibility standards, the reimbursement requirements, and set timeliness requirements for the provision of services including payment for absences due to COVID-19 abatement processes;

Suspension of regulations to prevent delays in providing home delivered meals and in providing services under the Expanded In-Home Services for the Elderly Program (EISEP) to older adults:

- Clause (d) of subparagraph (ii) of paragraph (3) of subdivision (a) of section 6654.10 of Title 9 of the NYCRR, insofar as it requires an assessment be conducted prior to or within 10 days of the initiation of home delivered meals;
- Subdivision (h) of section 6654.16 of Title 9 of the NYCRR, insofar as it requires an assessment be conducted within 10 working days after the completion of the screening intake and prior to the initiation of services under the Expanded In-Home Services for the Elderly Program (EISEP);
- Subdivision (n) of section 6654.16 of Title 9 of the NYCRR, to allow for a care plan to remain in effect for a period exceeding 12 months under the Expanded In-Home Services for the Elderly Program (EISEP) when such care plan would otherwise expire during the period in which a disaster emergency is declared;
- Subdivision (x) of section 6654.16 of Title 9 of the NYCRR, modifying requirements for reassessments to be conducted every 12 months or within 5 days of becoming aware of a change in circumstance under the Expanded In-Home Services for the Elderly Program (EISEP);

Suspension of law to allow waiver of requirements necessary for apportionment of school aid:

- Section 3604(7) of the Education Law, to the extent consistent and necessary to allow the commissioner to disregard such reduction in the apportionment of public money due to a failure by a school to meet the instructional requirements proscribed within this section due to the properly executed declaration of a local state of emergency as defined within sub-section (i), a school is directed to close by a state or local health official or following a properly executed declaration of a state of emergency as defined within sub-section (i), limited to the extent that those specified schools are unable to make up missed instructional days;

Suspension of laws and regulations relating to emergency procurement:

- Sections 553(22), 559, 1209, and 1265-a of the Public Authorities Law, and 21 NYCRR Part 1002, to the extent necessary to purchase necessary equipment, materials, supplies, or services, without following the standard procurement processes, including the standard prompt payment policy;

Suspensions of law relating to appearances by defendants:

- Notwithstanding any other provision of law and except as provided in section 182.30 of Article 182 of the Criminal Procedure Law, the court, in its discretion, may dispense with the personal appearance of the defendant, except an appearance at a hearing or trial, and conduct an electronic appearance in connection with a criminal action pending in any county in New York State, provided that the chief administrator of the courts has authorized the use of electronic appearance due to the outbreak of COVID-19, and the defendant, after consultation with counsel, consents on the record. Such consent shall be required at the commencement of each electronic appearance to such electronic appearance.

Suspension of law relating to waiting periods for unemployment insurance claimants whose claims arise directly out of COVID-19 outbreak:

- Subdivision 7 of Section 590 of the Labor Law, so far as it relates to the waiting period for unemployment insurance claimants whose claims for unemployment insurance arise directly out of closings of schools or other workplaces in which claimants were employed, or out of claimants' isolation or quarantine in connection with COVID-19; and

Suspension of law allowing the attendance of meetings telephonically or other similar service:

- Article 7 of the Public Officers Law, to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed;

Suspension of law allowing residents of nursing homes to vote with modified visitor policies in place:

- Subdivision 8 of section 8-407 of the Election Law to allow individuals not employed by the Board of Elections to assist residents of nursing homes or adult care facilities in the completion of absentee ballot applications and voting;

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives for the period from the date of Executive Order through April 11, 2020:

- Any guidance issued by the New York State Department of Health related to prevention and infection control of COVID-19 at nursing homes and adult care facilities, including but not limited to guidance on visitation, shall be effective immediately and shall supersede any prior conflicting guidance issued by the New York State Department of Health and any guidance issued by any local board of health, any local department of health, or any other political subdivision of the State related to the same subject.
- Any large gathering or event for which attendance is anticipated to be in excess of five hundred people shall be cancelled or postponed for a minimum of thirty days.
- Any place of business or public accommodation, and any gathering or event for which attendance is anticipated to be fewer than five hundred people, shall operate at no greater than fifty percent occupancy, and no greater than fifty percent of seating capacity, for thirty days effective on Friday, March 13, 2020, except that any theater seating five hundred or more attendees for a live performance located in a city of one million or more shall not hold any further performances after 5pm on March 12, 2020.
- The two preceding directives shall not apply to a school, hospital, nursing home, other medical office or facility as determined by the Commissioner of Health, mass transit or mass transit facility, governmental facility, law enforcement facility, or retail establishments including grocery stores. The Commissioner of Health may allow for businesses that are not public gathering spaces to exceed five hundred persons if the occupancy is less than fifty percent capacity subject to public health review.



GIVEN under my hand and the Privy Seal of the
State in the City of Albany the twelfth
day of March in the year two
thousand twenty.

BY THE GOVERNOR

A handwritten signature in black ink, appearing to be "M. C.", written over a horizontal line.

Secretary to the Governor

A handwritten signature in black ink, appearing to be "Andrew Cuomo", written over a horizontal line.

Appendix C

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and at the direction of the Chief Judge, I hereby promulgate the following procedures and protocols, effective as set forth below, to mitigate the effects of the COVID-19 outbreak upon the users, visitors, staff, and judicial officers of the Unified Court System:

- Effective 5 p.m. on Monday, March 16, all non-essential functions of the courts will be postponed until further notice. All essential court functions will continue, as described below.
- Jury Proceedings and Jury Trials: Effective March 16, civil jury trials in which opening statements have not commenced shall be postponed until further notice. Civil jury trials already commenced shall continue to conclusion. Criminal jury trials shall continue where jeopardy has attached; no new criminal jury trials shall be commenced. The jury selection process in civil and criminal trial matters shall be suspended until further notice. Existing grand juries will continue, upon consultation of the appropriate district attorney and empaneling judge. No new grand juries shall be empaneled absent exceptional circumstances.
- Motion practice: Effective March 16, unless otherwise directed by the court in exceptional circumstances, all motions in civil matters shall be taken on submission. When permitted, argument should be conducted by Skype or other remote means whenever possible.
- Special Parts: Effective March 17, outside of New York City, special court parts will be established in individual jurisdictions (at the courthouses listed in Attachment A) where essential matters will be consolidated; inside New York City, courthouses will remain open to handle essential matters as follows:

| | |
|----------------|---|
| Supreme Court: | Essential applications as the court may allow, e.g., Mental Hygiene Law applications, civil commitments, and guardianships. |
|----------------|---|

Civil matters in courts
other than Supreme
Court:

Essential applications as the court may allow.

Housing matters: Essential applications as the court may allow, e.g., landlord lockouts, serious housing code violations, and repair orders.

All eviction proceedings and pending eviction orders shall be suspended statewide, and court-ordered auctions of property shall be postponed, until further notice.

All residential foreclosure proceedings shall be suspended statewide until further notice.

I confirm that, effective March 13, 2020, residential evictions in New York City have been stayed, and the New York City Housing Court has been directed not to issue new eviction warrants when a party has not appeared in court.

Criminal (superior court) matters:

Essential applications as the court may allow.

Felony matters wherein the defendant is not in custody shall be administratively adjourned until further notice. Felony matters in which defendants are in custody will either be administratively adjourned or be conducted remotely by video in New York City and in jurisdictions outside of New York City that have technology available to do so.

Criminal (lower court):

Arraignments, and essential applications as the court may allow, e.g., applications for orders of protection.

Arraignments shall be conducted through video remote appearances in New York City and to the fullest extent possible elsewhere in the State.

In New York City, the Red Hook Community Court and the Midtown Community Court are designated as arraignment sites where persons believed to be at medical risk related to the coronavirus will appear remotely by video.

Effective Monday, March 16, misdemeanors and lesser offenses wherein the defendant is not in custody shall be administratively adjourned until further notice. Misdemeanors and lesser offenses in which defendants are

in custody will either be administratively adjourned or be conducted remotely by video in New York City and in jurisdictions outside of New York City that have technology available to do so.

Family Court: Essential matters as the court may allow, e.g., issues related to child protection proceedings, juvenile delinquency proceedings, family offenses, and support orders.

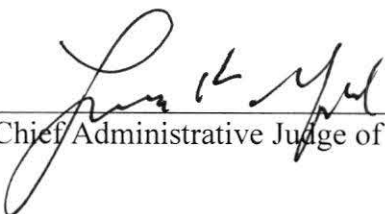
Surrogate's Court: Essential applications as the court may allow.

Court of Claims: Essential applications as the court may allow.

Activities in all other court parts shall be deferred to a later date to the fullest extent possible until further notice, unless expressly permitted by the appropriate administrative judge.

In addressing essential applications, judges will exercise judicial discretion in a manner designed to minimize court appearance and traffic in the courts.

- Court Access, Cleaning, and Reporting Protocols: The court access, cleaning, and reporting protocols set forth in the memo of the Chief Administrative Judge dated March 13, 2020 shall continue until further order.



Chief Administrative Judge of the Courts

Dated: March 16, 2020

AO/68/20

ATTACHMENT A

Courts Outside NYC
(As of 3/16/20; 11:00 a.m.)

County/City

3rd District

Albany County Courthouse & Judicial Center
Albany County Family Court
Albany City Court
Cohoes City Court
Watervliet City Court

Columbia County
Hudson City Court

Greene County

Rensselaer County Courthouse
Rensselaer County Family Court
Rensselaer City
Troy City

Schoharie County

Sullivan County Courthouse
Sullivan County Family Court

Ulster County Courthouse
Ulster County Family
Kingston City Court

4th District

Clinton Co. Supreme/County/Family/Surrogate
Plattsburgh City Court

Essex Co. Supreme/County/Family/Surrogate

Franklin Co. Supreme/County/Family/Surrogate

Fulton Co. Family Court
Fulton Co. Supreme/County/Surrogate
Gloversville City Court
Johnstown City Court

Hamilton County Courthouse
Indian Lake Court Offices

Designated Court/Location for Emergency Proceedings

Albany County Judicial Center, 6 Lodge Street, Albany, NY 12207
Albany County Judicial Center, 6 Lodge Street, Albany, NY 12207
Albany County Judicial Center, 6 Lodge Street, Albany, NY 12207
Albany County Judicial Center, 6 Lodge Street, Albany, NY 12207
Albany County Judicial Center, 6 Lodge Street, Albany, NY 12207

Columbia County Courthouse, 401 Union Street, Hudson
Columbia County Courthouse, 401 Union Street, Hudson

Greene County Courthouse, 320 Main Street, Catskill

Rensselaer County Courthouse, 80 Second Street, Troy
Rensselaer County Courthouse, 80 Second Street, Troy
Rensselaer County Courthouse, 80 Second Street, Troy
Rensselaer County Courthouse, 80 Second Street, Troy

Schoharie County Courthouse, 290 Main Street, Schoharie

Sullivan County Courthouse, 414 Broadway, Monticello
Sullivan County Courthouse, 414 Broadway, Monticello

Ulster County Courthouse, 285 Wall Street, Kingston
Ulster County Courthouse, 285 Wall Street, Kingston
Ulster County Courthouse, 285 Wall Street, Kingston

Clinton County Courthouse, Clinton County Office Building, 137 Margaret Street, Plattsburgh
Clinton County Courthouse, Clinton County Office Building, 137 Margaret Street, Plattsburgh

Essex County Courthouse, 7559 Court Street, Elizabethtown

Franklin County Courthouse, 355 West Main Street, Malone

Fulton County Courthouse - Family Court Building, 223 West Main Street, Johnstown
Fulton County Courthouse - Family Court Building, 223 West Main Street, Johnstown
Fulton County Courthouse - Family Court Building, 223 West Main Street, Johnstown
Fulton County Courthouse - Family Court Building, 223 West Main Street, Johnstown

Hamilton County Courthouse, 102 County View Drive, Lake Pleasant
Hamilton County Courthouse, 102 County View Drive, Lake Pleasant

| | |
|---|--|
| Montgomery Co. Supreme/County/Family/Surrogate Amsterdam City Court | Montgomery County Courthouse, 58 Broadway, Fonda Montgomery County Courthouse, 58 Broadway, Fonda |
| Saratoga Co. Family Court - Building #2 Saratoga Co. Supreme/County/Surrogate - Bldg. #3 Mechanicville City Court Saratoga Springs City Court | Saratoga County Courthouse, Building #2, 30 McMaster Street, Ballston Spa Saratoga County Courthouse, Building #2, 30 McMaster Street, Ballston Spa Saratoga County Courthouse, Building #2, 30 McMaster Street, Ballston Spa Saratoga County Courthouse, Building #2, 30 McMaster Street, Ballston Spa |
| St. Lawrence Co. Supreme/County/Family/Surrogate Ogdensburg City Court | St. Lawrence County Courthouse, 48 Court Street, Canton St. Lawrence County Courthouse, 48 Court Street, Canton |
| Schenectady Supreme/County/Surrogate - 612 State Schenectady Co. Family Court - 620 State Shaffer Heights Supreme Court Annex - Nott Terrace Schenectady City Court - Civil and Traffic (Jay St.) Schenectady City Criminal (Liberty St - police station) | Schenectady County Family Court - 620 State St., Schenectady Schenectady County Family Court - 620 State St., Schenectady Schenectady County Family Court - 620 State St., Schenectady Schenectady County Family Court - 620 State St., Schenectady Schenectady County Family Court - 620 State St., Schenectady |
| Warren Co. Supreme/County/Family/Surrogate Glens Falls City Court Warren Co. Centralized Arraignment Part (CAP) | Warren County Courthouse - Family Court wing, 1340 State Route 9, Lake George Warren County Courthouse - Family Court wing, 1340 State Route 9, Lake George CAP will remain open |
| Washington Co. Supreme/County/Family/Surrogate Washington Co. Centralized Arraignment Part (CAP) | Washington County Courthouse, 383 Broadway, Fort Edward CAP will remain open |

5th District

| | |
|---|--|
| Herkimer County Little Falls City Court | Herkimer County Court - 301 N. Washington St. Herkimer, NY 13350 Herkimer County Court - 301 N. Washington St. Herkimer, NY 13350 |
| Jefferson County Watertown City Court | Jefferson County Court - 163 Arsenal St. Watertown, NY 13601 Jefferson County Court - 163 Arsenal St. Watertown, NY 13601 |
| Lewis County | Lewis Multi-Bench - 7660 N. State St. Lowville, NY 13367 |
| Oneida County Utica City Court Rome City Court Sherrill City Court | Oneida Family Court - 200 Elizabeth St. Utica, NY 13501 Oneida Family Court - 200 Elizabeth St. Utica, NY 13501 Oneida Family Court - 200 Elizabeth St. Utica, NY 13501 Oneida Family Court - 200 Elizabeth St. Utica, NY 13501 |
| Onondaga County Syracuse City Court | Onondaga Family Court - 401 Montgomery St. Syracuse, NY 13202 Onondaga Family Court - 401 Montgomery St. Syracuse, NY 13202 |
| Oswego County Fulton City Court Oswego City Court | Public Safety Center, 39 Churchill Road, Oswego, NY 13126 Public Safety Center, 39 Churchill Road, Oswego, NY 13126 Public Safety Center, 39 Churchill Road, Oswego, NY 13126 |

6th District

| | |
|---|--|
| Broome County Binghamton City Court (City Hall) | Broome County Annex County and Family Court Building, Binghamton Broome County Annex County and Family Court Building, Binghamton |
| Chemung County Elmira City Court (City Hall) | Justice Building, Elmira Justice Building, Elmira |
| Chenango County Norwich City Court (City Court Building) | Eaton Center, Norwich Eaton Center, Norwich |
| Cortland County Supreme Court (Cortland County Courthouse) Cortland City Court (City Hall) | Cortland County Courthouse, 46 Greenbush Street, Cortland Cortland County Courthouse, 46 Greenbush Street, Cortland |
| Delaware County | Delaware County Courthouse, 3 Court Street, Delhi |
| Madison County Oneida City Court (Justice Center) | Madison County Courthouse, 138 North Court Street, Wampsville Madison County Courthouse, 138 North Court Street, Wampsville |
| Otsego County Oneonta City Court (Public Safety building) | Otsego County Office Building, 197 Main Street, Cooperstown Otsego County Office Building, 197 Main Street, Cooperstown |
| Schuyler County | Schuyler County Courthouse, Watkins Glen |
| Tioga County | Tioga County Annex Building, Owego |
| Tompkins County Ithaca City Court (City Court Building) | Tompkins County Courthouse, 320 North Main Street, Ithaca Tompkins County Courthouse, 320 North Main Street, Ithaca |

7th District

| | |
|---|---|
| Cayuga County Auburn City Court | Cayuga Historic Old Post Office, Auburn See Courthouse Above Cayuga CAP Jail Visitation (Town and Village) |
| Livingston County | Livingston County Courthouse, Geneseo Livingston CAP (Town and Village) |
| Monroe County Rochester City Court | Monroe County Courthouse, Hall of Justice, Rochester Monroe County Courthouse, Hall of Justice, Rochester |
| Ontario County Canandaigua City Court Geneva City Court | Ontario County Courthouse, Canandaigua Ontario CAP Jail Lobby (Town and Village) Ontario County Courthouse, Canandaigua Ontario CAP Jail (Town and Village) Ontario County Courthouse, Canandaigua Ontario CAP Jail (Town and Village) |

| | |
|----------------------------|--|
| Seneca County | Seneca County Courthouse, Waterloo Seneca CAP Jail Lobby (Town and Village) |
| Steuben County | Steuben County Courthouse, Bath Steuben CAP Jail Visitation Area (Town and Village) |
| Corning City Court | Steuben County Courthouse, Bath Steuben CAP Jail Visitation Area (Town and Village) |
| Hornell City Court | Steuben County Courthouse, Bath Steuben CAP Jail Visitation Area (Town and Village) |
| Wayne County | Wayne County Courthouse, Lyons Wayne CAP Jail Visitation (Town and Village) |
| Yates County | Yates County Courthouse, Penn Yan Yates CAP Jail Lobby (Town and Village) |
| 8th District | |
| Allegany County | Allegany County Courthouse, Belmont |
| Cattaraugus County | Cattaraugus County Courthouse, Little Valley |
| Olean City Court | Cattaraugus County Courthouse, Little Valley |
| Salamanca City Court | Cattaraugus County Courthouse, Little Valley |
| Chautauqua County | Chautauqua County Courthouse, Mayville |
| Dunkirk City Court | Chautauqua County Courthouse, Mayville |
| Jamestown City Court | Chautauqua County Courthouse, Mayville |
| Erie County | Erie County Courthouse, Buffalo |
| Buffalo City Court | Erie County Courthouse, Buffalo |
| Lackawana City Court | Erie County Courthouse, Buffalo |
| Tonawanda City Court | Erie County Courthouse, Buffalo |
| Genesee County | Genesee County Court Facility, Batavia |
| Batavia City Court | Genesee County Court Facility, Batavia |
| Niagara County | Niagara County Courthouse, Lockport |
| Lockport City Court | Niagara County Courthouse, Lockport |
| Niagara Falls City Court | Niagara County Courthouse, Lockport |
| North Tonawanda City Court | Niagara County Courthouse, Lockport |
| Orleans County | Orleans County Courthouse, Albion |
| Wyoming County | Wyoming County Courthouse, Warsaw |

9th District

Dutchess County
Beacon City Court
Poughkeepsie City Court

Dutchess Family Court, 50 Market Street, Poughkeepsie, NY
Dutchess Family Court, 50 Market Street, Poughkeepsie, NY
Dutchess Family Court, 50 Market Street, Poughkeepsie, NY

Orange County
Middletown City Court
Newburgh City Court
Port Jervis City Court

Orange County Courthouse, 285 Main Street, Goshen, NY
Orange County Courthouse, 285 Main Street, Goshen, NY
Orange County Courthouse, 285 Main Street, Goshen, NY
Orange County Courthouse, 285 Main Street, Goshen, NY

Putnam County

County Courthouse, 20 County Center, Carmel NY

Rockland County

Rockland County Courthouse, New City

Westchester County
Mount Vernon City Court
New Rochelle City Court
Peekskill City Court
Rye City Court
White Plains City Court
Yonkers City Court

Supreme Court - 111 Dr. Martin Luther King Jr. Blvd., White Plains
Supreme Court - 111 Dr. Martin Luther King, Jr. Blvd, White Plains
Supreme Court - 111 Dr. Martin Luther King, Jr. Blvd, White Plains
Supreme Court - 111 Dr. Martin Luther King, Jr. Blvd, White Plains
Supreme Court - 111 Dr. Martin Luther King, Jr. Blvd, White Plains
Supreme Court - 111 Dr. Martin Luther King, Jr. Blvd, White Plains
Supreme Court - 111 Dr. Martin Luther King, Jr. Blvd, White Plains

Nassau County

Nassau County - All Courts

Nassau County Court, 262 Old Country Road, Mineola

Suffolk County

Suffolk County - All Courts

Cohalen Court Complex, 400 Carleton Avenue, Centrall Islip, NY 11722

Court of Claims

Albany

Robert Abrams Building for Law and Justice, Capitol Station, Albany

Appendix D



Andrew M. Cuomo
Governor

STATE OF NEW YORK
OFFICE OF INDIGENT LEGAL SERVICES

80 S SWAN STREET, SUITE 1147
ALBANY, NEW YORK 12210
Tel: (518) 486-2028 Fax: (518) 474-5050
E-Mail: info@ils.ny.gov
<http://www.ils.ny.gov>

William J. Leahy
Director

Patricia J. Warth
Counsel

Improving the Quality of Mandated Representation Throughout the State of New York

On March 7, 2020, Governor Cuomo issued Executive Order 202, Declaring a Disaster Emergency in the State of New York, acknowledging that the ongoing transmission of COVID-19 is a disaster that requires a coordinated New York State response. In the following days, he issued a series of continuing Executive Orders with additional provisions. All these Executive Orders are time-limited emergency measures.

Executive Order 202.1, issued March 12, 2020, includes the following emergency provision regarding arraignments:

Suspensions of law relating to appearances by defendants:

Notwithstanding any other provision of law and except as provided in section 182.30 of Article 182 of the Criminal Procedure Law, the court, in its discretion, may dispense with the personal appearance of the defendant, except an appearance at a hearing or trial, and conduct an electronic appearance in connection with a criminal action pending in any county in New York State, provided that the chief administrator of the courts has authorized the use of electronic appearance due to the outbreak of COVID-19, and the defendant, after consultation with counsel, consents on the record. Such consent shall be required at the commencement of each electronic appearance to such electronic appearance.

The Office of Indigent Legal Services (ILS) has always maintained that representation at arraignment must be in person. The *Hurrell-Harring* Settlement Agreement, paragraph III (A) (1), required the state to “ensure...that each criminal defendant within the Five Counties who is eligible...is represented by counsel in person at his or her Arraignment.” Executive Law § 832(4) (a), enacted in 2017 to extend the *Hurrell-Harring* settlement reforms to the entire state, likewise requires that each person who is eligible “is represented by counsel in person at his or her arraignment[.]” (emphases added)

Nonetheless, ILS also recognizes that the current COVID-19 crisis has required our government to institute unusual, time-limited, emergency measures to protect public health. For that reason, while Executive Law 202.1 is in effect, and consistent with its provisions, ILS funding can be used for video arraignments where they are authorized by the chief administrator of the courts *and* where the defendant, after consultation with counsel, consents on the record. This leads to an additional reminder: whether appearance be in person or, temporarily, by video, effective representation at arraignment always requires private consultation with the defendant in advance of his or her appearance before the court.

Appendix E



CHIEF DEFENDERS ASSOCIATION OF NEW YORK

MEMORANDUM IN OPPOSITION TO PERMANENT VIRTUAL ARRAIGNMENTS

PRESIDENT

Laurette D. Mulry, Suffolk

PRESIDENT-ELECT

Leanne Lapp, Ontario

SECRETARY

Sandra J. McCarthy, Rensselaer

TREASURER

Stan German, New York

MEMBERS OF THE BOARD

Thomas Angell, Dutchess

Scott Banks, Nassau

Andrew Correia, Wayne

Robert Dean, New York

Clare Degnan, Westchester

Kathleen Dougherty, Onondaga

Norman Effman, Wyoming

Mark Funk, Monroe

Rick Jones, New York

Tina Luongo, New York

Past-President

James McGahan, St. Lawrence

Justine Olderman, Bronx

David C. Schopp, Erie, Past-President

Lisa Schreibersdorf, Kings

Past-President

David Squirrel, Putnam

John Turi, Rensselaer

Kate Woods, Ontario

Arraignments commence a criminal proceeding, making them one of the most important court appearances in a criminal case. Persons accused are notified of the substance of charges, enter a not guilty plea, are notified of orders of protection or loss of licensing privileges, and can face potential pre-conviction incarceration. In New York, arraignments have always been live appearances, in Court, with arraigning judges being required to assign counsel. The Hurrell-Harring settlement and statewide expansion provide funding for required in-person counsel at arraignment.

The Governor's Executive Budget correctly points out that, under his leadership, New York Courts were able to quickly and successfully pivot to conducting arraignments in a virtual setting during the court system shutdown necessitated by the COVID crisis. This was a necessary step during a time of an unprecedented health crisis. Unfortunately, the Governor has also stated his intention to render essential in-person arraignments obsolete.

CDANY is calling on the legislature to protect the integrity of the judicial system by requiring that live arraignments return when courts are reopened.

Virtual arraignments deprive the accused of effective assistance of counsel. The personal appearance of counsel is necessary to develop an attorney-client relationship, to foster trust, and to privately obtain information necessary to enable zealous advocacy. Much critical communication is lost when using screens.

Empirical evidence demonstrates that virtual arraignments lead to worse outcomes for the accused. The virtual system proposed by Governor Cuomo was already tried in Cook County, Illinois, where an ill-fated televised arraignment protocol was implemented in 1999. A lawsuit ensued, alleging that the system was unconstitutional and denied arrestees both due process and effective counsel. Bail outcomes of virtual arraignments were

studied as part of the lawsuit, revealing that bail was a staggering 51% higher than it had been before the televised system was implemented. Plaintiff's counsel largely attributed the disparity to the inherent dehumanization of those appearing as defendants in a virtual setting.¹

Virtual arraignments devalue the Constitution and the integrity of the Court process. Chief Judge DiFiore affirmed that virtual arraignments were a temporary, emergency measure, as the law requires arraignments be conducted in person.² Clients are constitutionally entitled to private, privileged conversations with counsel before and during court proceedings, which is not feasible in a virtual setting. A judge's ability to gauge a defendant's mental status and understanding of legal proceedings is also impeded. Also, virtual appearances lack necessary formality and decorum by their very nature.

Virtual arraignments exacerbate the divide between the rich and the poor, creating a Tale of Two Justice Systems: Poor people are far less likely to have access to the resources necessary to make virtual appearances adequate. Poor rural New Yorkers often do not have access to internet at all, and clients living in areas where internet is available may not be able to afford it. Many indigent clients do not have computers or smartphones. With a virtual system in place, a poverty divide is evident in the provision of legal representation--poor clients are more likely to have counsel assigned, and may be unable to meet their attorney until arraignment, whereas people with resources to retain can meet with attorneys beforehand. Therefore, rich clients are afforded attorney-client privilege and better informed advocacy, while poor individuals have impersonal representation, hampered by lack of time and proximity.

Virtual arraignments are less efficient. Pre-COVID, many individuals could be arraigned consecutively, in a single docket. Clients were interviewed privately prior to appearance, counsel assigned, cases heard by judges, and paperwork served and processed. In the virtual system, attorneys must wait for phone lines or virtual rooms to open before speaking to clients. Often, links do not work, or are sent incorrectly or to the wrong person. Internet connections fail, and programs crash. When multiple people speak simultaneously, speakers cannot be heard, making the record inaudible for court reporters and interpreters. Paperwork must be emailed, causing delay and issues with data storage. Clients cannot sign or be served orders of protection. This has culminated in arraignment calendars taking far longer per case than under old

¹ Shari Seidman Diamond, Locke E. Bowman, Manyee Wong, Matthew M. Patton, *Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions*, 100 J. Crim. L. & Criminology 869 (2010).
<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7365&context=jclc>

² See State of New York Office of Indigent Legal Services, "Notification Regarding Representation at an Arraignment," Dec. 2, 2021 (public document, on file with the Chief Defenders Association of New York).

systems. The issue is even more pronounced in counties with Centralized Arraignment Parts in their jails, where deputy sheriffs are forced to act as IT professionals, court clerks, and courtroom security. During the COVID shutdown, there have been far fewer cases requiring arraignment; once courts are fully open, a virtual arraignment system would lead to increasingly bottlenecked calendars.

Virtual arraignments deprive the public of access to the Courts. The Public cannot walk in to a virtual courtroom, and links have to be carefully shared to avoid internet trolls. This results in family and friends being unable to attend arraignments to vouch that their loved one has a place to live, or will be supervised if released.

It is impossible to prevent recording of virtual proceedings. It is currently illegal to record court proceedings without a court order. This is simply impossible to police in the digital sphere, and could lead to permanent recordings on social media and elsewhere on the internet.

Questions? Please contact CDANY Lobbyist Robert Perry at robt.perry@gmail.com or 646-296-5220.

Appendix F



New York State Defenders Association, Inc.

Public Defense Backup Center

194 Washington Ave. • Suite 500 • Albany, NY 12210-2314

Telephone (518) 465-3524

Fax (518) 465-3249

www.nysda.org

Virtual/Remote Court Appearance at a Critical Stage of Criminal Proceedings Is Not the Correct Answer to Any Long-Term Question

New York Courts—like much of society—closed nearly all in-person public activities in March 2020 for an undetermined amount of time. A worldwide outbreak of a previously unknown disease caused by a novel coronavirus capable of killing untold numbers of people required this move. As the spread of COVID-19 slowed in New York, and knowledge about the virus’s characteristics grew, courts began slowly re-opening.

In the interim, much was learned about the mechanics of conducting court proceedings remotely. And some officials and even lawyers began suggesting that criminal courts can and should continue holding certain critical-stage proceedings, such as arraignments, via electronic communications. **The New York State Defenders Association (NYSDA) opposes the use of virtual/remote communication for holding non-emergency court proceedings deemed critical stages, and for any proceedings, absent the consent of the person whose case is being heard.**

This is not a new position. NYSDA issued a [Statement in Opposition to Audio-Visual Arraignments](#) in 2012. Recognizing that employing technology for remote appearances may be appropriate “when nothing of substance will occur in court,” the statement emphasized that remote appearances should be limited to those occasions and should continue to require informed, uncoerced consent by the litigant. The statement pointed out the limitations of electronic “appearances” in which decisions about someone are made without full personal engagement. Nonverbal cues and eye contact are lost. More broadly, having litigants physically appear in court demonstrates that they are the focus of the proceeding and that decisions will be made by an independent judiciary, not prosecutors or law enforcement. And, the statement noted, remote appearances infringe on the right to counsel, requiring difficult choices about client-attorney communications and attorney presence. The statement was noted in the [January-May 2020](#) issue (p. 5) of the *Public Defense Backup Center REPORT (REPORT)*.

Even prior to its 2012 statement, NYSDA noted the hazards of virtual court proceedings. An item in the [September-October 2002](#) issue of the *REPORT* noted that “substituting virtual presence for real attendance threatens due process.” It went on, “[c]redibility, demeanor, and the ineffable value of having a judge, lawyers, witnesses and the jury in the same room cannot be fully realized on a television screen.”

NYSDA’s position is not unique. As noted in a 2013 NYSDA blog [post](#), the New York State Office of Indigent Legal Services (ILS) specifically said in its initial [Request for Proposals](#) (RFP) for initiatives intended to ensure representation at first court appearances, “Proposals should provide for the physical presence of counsel with the client in court.” That requirement remained in the most recent [\(2017\) RFP](#). The initiatives being funded stemmed from a decades-long delay in ensuring the right to counsel at first appearance, set out by ILS on its [webpage](#); that history contributes to on-going fears that the right will be eroded by efforts to save time or money, including by a switch to virtual appearances.

That NYSDA's 2012 statement addressed only arraignments/first appearances stemmed from threatened developments at the time, not from any limitation of the underlying rationale to one type of critical court appearance. And while much has changed in the last eight years, the concerns underlying the 2012 statement have not. In-person, physical presence of the person who is the subject of court proceedings remains vital to ensuring constitutional and human rights. A recent 10-page [Statement](#) from the National Association for Public Defense sets out dangers of holding proceedings remotely and steps to take to avoid them—all in the context of honoring an underlying limit on virtual proceedings to situations in which holding them enhances, or avoids a shutdown of, access to justice. Except in times of emergency, when physical presence is literally impossible or when vital interests clash (the need for physical health and safety vs. the need to ensure due process), virtual appearances should not occur at *any* criminal court proceeding leading to decisions other than those of a ministerial or calendaring nature absent uncoerced and knowing consent. **A litigant's right to appear in person, along with counsel, the decision-maker, and witnesses, should not be abridged.**

November 23, 2020 For more information, contact Executive Director Susan C. Bryant, at 518-465-3524.

Appendix G



Andrew M. Cuomo
Governor

STATE OF NEW YORK
OFFICE OF INDIGENT LEGAL SERVICES

80 S SWAN STREET, SUITE 1147
ALBANY, NEW YORK 12210
Tel: (518) 486-2028 Fax: (518) 474-5050
E-Mail: info@ils.ny.gov
<http://www.ils.ny.gov>

William J. Leahy
Director

Patricia J. Warth
Counsel

Improving the Quality of Mandated Representation Throughout the State of New York

Notification Regarding Representation at Arraignment

December 2, 2020

On March 7, 2020, Governor Cuomo issued Executive Order 202, Declaring a Disaster Emergency in the State of New York, which acknowledged that the ongoing transmission of COVID-19 is a disaster that requires a coordinated New York State response. Since, he has issued a series of continuing Executive Orders with additional provisions. All these Executive Orders are time-limited emergency measures.

Executive Order 202.1, issued March 12, 2020, includes the following emergency provision regarding arraignments:

Suspensions of law relating to appearances by defendants:

Notwithstanding any other provision of law and except as provided in section 182.30 of Article 182 of the Criminal Procedure Law, the court, in its discretion, may dispense with the personal appearance of the defendant, except an appearance at a hearing or trial, and conduct an electronic appearance in connection with a criminal action pending in any county in New York State, provided that the chief administrator of the courts has authorized the use of electronic appearance due to the outbreak of COVID-19, and the defendant, after consultation with counsel, consents on the record. Such consent shall be required at the commencement of each electronic appearance to such electronic appearance.

This provision was extended with modifications by subsequent Executive Orders. See EO 202.14 (continuing to May 7, 2020); EO 202.28 (continuing to June 6, 2020); EO 202.38 (continuing to July 6, 2020); EO 202.48 (continuing to August 5, 2020 with modifications that allow for limited resumption of in-person arraignments); EO 202.55 (continuing to September 4, 2020); EO 202.60 (continuing to October 4, 2020); EO 202.67 (continuing to Nov. 3, 2020); EO 202.72 (continuing to Dec. 3, 2020).

Currently, depending on the rate of COVID-19 infections and in accord with directives from the Chief Administrative Judge and each Judicial District's Administrative Judge, some arraignments are being conducted in-person, while others are virtual.

The Office of Indigent Legal Services (ILS) has always maintained that representation at arraignment must be in person. The *Hurrell-Harring* Settlement Agreement, paragraph III (A) (1), required New York State to "ensure...that each criminal defendant within the Five Counties who is eligible...is represented by counsel in person at his or her Arraignment." Executive Law

§ 832(4)(a), enacted in 2017 to extend the *Hurrell-Harring* settlement reforms to the entire state, likewise requires that each person who is eligible “is represented by counsel in person at his or her arraignment[.]” (emphases added)

Nonetheless, as we noted in a statement issued on March 19, 2020, the current pandemic has required our government to institute unusual, time-limited, emergency measures to protect public health. **It bears emphasizing, however, that conducting arraignments virtually is a temporary, emergency exception to the legal requirements of personal appearance by the defendant, and in person representation by counsel. When virtual arraignments are no longer a public health necessity, justified by a valid Executive Order, in-person arraignments must resume in accordance with CPL §§ 170.10, 180.10, and 182.20, and in-person representation must be provided in compliance with the *Hurrell-Harring* Settlement and Executive Law § 832(4).**

Finally, we remind everyone of two foundational requirements for effective representation at any arraignment, whether virtual or in-person. First, prior to the arraignment, defense counsel must be given all arraignment documentation, including the defendant’s RAP sheet. Second, defense counsel must be given an opportunity to engage in confidential consultation with the defendant in advance of his or her appearance before the court.

Appendix H

**Memorandum:
Research on Mediated Communication and
Virtual Court Appearances**

During the COVID-19 crisis, New York courts have utilized videoconferencing technology and virtual court appearances to allow for essential matters to be safely heard. While virtual court appearances have facilitated access to courts during the pandemic, the practice of conducting court matters virtually raises concerns for defenders in criminal cases. This memo provides a brief overview of the research on virtual court appearances and mediated communication. Overall, and as discussed further below, research shows that virtual court appearances for substantive proceedings such as arraignments: 1) negatively impact case outcomes; 2) negatively impact perceptions of defendants; 3) have a deleterious impact on the proceedings in general; and 4) impair the attorney-client relationship.

VIRTUAL COURT APPEARANCES NEGATIVELY AFFECT OUTCOMES FOR DEFENDANTS

As the following studies show, virtual court appearances have a deleterious impact on outcomes for defendants:

- Shari Seidman Diamond, et al., *Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions*, 100 J. CRIM. L. AND CRIMINOLOGY 869, 899 (2010).
In 1999, Cook County, Illinois implemented a “closed-circuit television procedure” (CCTP) for nearly all felony bail hearings in Chicago. The CCTP required bail hearings to be conducted remotely, with the defendant teleconferenced into the proceedings from a remote holding facility. The most serious offenses – homicides and certain sex crimes – continued to be heard in person. Cook County voluntarily ended the program upon receiving a preliminary analysis, prepared by researchers from Northwestern University and the University of Chicago and led by Professor Shari Seidman Diamond of the impact the CCTP had on defendants. The results of that analysis, which were published in their final form in 2010, portray a clear and alarming picture of the effect the CCTP had on outcomes: “We find a sharp increase in the average amount of bail set in cases subject to the CCTP, but no change in cases that continued to have live hearings.”¹

Diamond and her colleagues gathered information from the Cook County Clerk’s Office “on the initial bail hearings for all felony cases in Cook County covering the period from approximately eight and one-half years before the video system went into effect through the eight and one-half years after it was implemented.”² They then compared the average amount of bail set in cases before the CCTP was implemented with the average bail set in

¹ Diamond, *Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions*, at 870.

² Id. at 886.

similar cases after the CCTP was implemented.³ Finally, they compared the average bail set before and after CCTP implementation for those offenses which continued to require in-person initial hearings.⁴ The results show that as soon as the CCTP went into effect, average bail set for in-person hearings rose a statistically-insignificant 13%, while average bail set for videoconferenced hearings rose a staggering 51%.⁵ The results also show that the move to teleconferenced bail hearings “not only led to a large and abrupt increase in the average bond amount for felony cases handled by televised bail hearings...but also produced a steady rise in bond levels over time.”⁶

- Frank M. Walsh and Edward M. Walsh, *Effective Processing or Assembly-Line Justice? The Use of Teleconferencing in Asylum Removal Hearings*, 22 Geo. Immig. L. J. 259 (2008). In this 2008 study, the researchers used statistics from the United States Department of Justice to assess the impact of videoconferencing on asylum-seekers’ applications in over 500,000 cases before United States immigration courts. They conclude that “the grant rate for asylum applicants whose cases were heard in-person is roughly double the grant rate for the applicants whose cases were heard via [videoconferencing technology].”⁷ Even when controlling for whether an applicant was represented by counsel, in-person applicants were over 1.5 times more likely to be granted asylum than video-conferenced applicants.⁸
- Matthew Terry, et al., *Virtual Court Pilot Outcome Evaluation*, UNITED KINGDOM MINISTRY OF JUSTICE RESEARCH SERIES 21/10 (2010).⁹
This evaluation, produced by the United Kingdom Ministry of Justice, of a “Virtual Court” pilot program also shows worse outcomes for defendants. The program participants included two lower courts (one in London and one in North Kent) and fifteen police stations. Instead of appearing in person for their initial appearance, defendants charged with a crime in one of the participating courts appeared from a participating police station via videoconferencing technology.¹⁰ In the Ministry of Justice’s report, various aspects of the pilot program are compared against the comparator area, “namely the whole of London excluding” the pilot participants.¹¹ Compared to their in-person counterparts, defendants appearing in one of the Virtual Courts were “more likely to receive a custodial sentence and less likely to receive a community sentence,”¹² and were more likely to plead guilty at their initial appearance.¹³

³ Id., generally, at 887-891.

⁴ Id.

⁵ Id. at 896.

⁶ Id. at 897-98.

⁷ Walsh and Walsh, *Effective Processing or Assembly-Line Justice? The Use of Teleconferencing in Asylum Removal Hearings*, at 259.

⁸ Id. at 271-72.

⁹ Retrieved from the UK Ministry of Justice website on June 17, 2020:

<https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/virtual-courts.pdf>.

¹⁰ Id. at 1.

¹¹ Id. at 3.

¹² Id. at 25.

The above research shows that virtual court appearances negatively impact case outcomes and diminish due process. This is likely because, as explained below, this mediated form of communication impacts perceptions of defendants.

VIDEOCONFERENCING NEGATIVELY AFFECTS PERCEPTIONS OF DEFENDANTS' DEemeanOR AND CREDIBILITY

Research reveals that videoconferencing serves to “exaggerate or flatten [a] defendant’s affect, which in turn could influence the judge’s reactions to him or her.”¹⁴ Research has also shown, in general, decision-makers judge witnesses to be less credible when their testimony is viewed via video versus when it is viewed live.¹⁵ This “presentment mode effect” on credibility assessments is difficult to correct, as it “largely rests on automatic mental processes,” and instructions to disregard it might actually intensify the effect.¹⁶ When considered together, these biases can have a profoundly negative effect on the way a defendant is perceived by judges, prosecutors, and others in the courtroom.

These negative biases are often exacerbated by changes in the way defendants interact with the court when appearing via videoconferencing technology. For example, “if the defendant is nervous because of the presence of the camera focused on him, his behavior may reflect that nervousness, and such behavior could negatively affect the judge’s perceptions of his credibility.”¹⁷

The use of videoconferencing technology both “alienates and dehumanizes defendants,”¹⁸ encouraging “a harsher response than would occur if the judge were faced with a live individual.”¹⁹ It is unsurprising then that outcomes for defendants appearing via videoconferencing technology tend to be worse than for those appearing in person.

VIRTUAL COURT APPEARANCES – IMPACT ON THE PROCEEDINGS IN GENERAL

¹³ Id. at 24.

¹⁴ Molly Treadwell Johnson and Elizabeth C. Wiggins, *Videoconferencing in Criminal Proceedings: Legal and Empirical Issues and Directions for Research*, 28 L. & POL’Y 211, 216 (2006).

¹⁵ Sara Landström, et al., *Credibility judgments in context: effects of emotional expression, presentation mode, and statement consistency*, 25 PSYCHOL., CRIME & L. 279, 290 (2019).

¹⁶ Id. at 291. See also Kari Edwards and Tamara S. Bryan, *Judgment Biases Produced by Instructions to Disregard: The (Paradoxical) Case of Emotional Information*, 23 PERSONALITY & SOC. PSYCHOL. BULL. 849 (1997).

¹⁷ Johnson and Wiggins, *supra*, at 216.

¹⁸ Eric T. Bellone, *Private Attorney-Client Communications and the Effect of Videoconferencing in the Courtroom*, 8 J. INT’L COMM. L. & TECH. 24, 48 (2013).

¹⁹ Diamond, *supra*, at 900.

Defense attorneys have reported to ILS that virtual court proceedings are, in general, more awkward, less productive, and often result in a confusing and unclear transcript of the proceeding, thereby impairing defendants' appellate rights. The research explains why this occurs, revealing that videoconferencing does not allow for the non-verbal communication that is essential to human interaction:

One insurmountable limitation of videoconferencing is its inability fully to capture nonverbal cues. Nonverbal cues play an important role in the courtroom. These cues include such signals as facial expression, gaze, posture, and gestures. Nonverbal cues add valuable content to human interactions. They serve multiple functions. They convey mutual attention and responsiveness and communicate interpersonal attitudes. They signal who should speak and for how long. They provide feedback conveying reactions. They illustrate verbal expression, as, for example with hand gestures, and sometimes substitute for verbal expression, as when someone uses a head shake to express a negative.²⁰

Even when video quality is good, "it is still likely that non-verbal signals ha[ve] less of an impact" than they do during face-to-face interactions.²¹ Thus, during virtual court appearances, litigants and the judges speak over each other more frequently, fail to fully explain themselves, or inadvertently appear to be less involved or uninterested in the proceedings.

VIRTUAL COURT APPEARANCES NEGATIVELY IMPACTS THE ATTORNEY-CLIENT RELATIONSHIP

- Taylor Benninger, Courtney Colwell, Debbie Mukamal, & Leah Plachinski, *Virtual Justice? A National Study Analyzing the Transition to Remote Criminal Court*, Stanford Criminal Justice Center, August 2021. This study was based on qualitative interviews with close to 60 judges, prosecutors, defense attorneys, and court administrators in three jurisdictions (Miami-Dade County, Milwaukee County, and the Northeast Judicial District of North Dakota) and a quantitative analysis of a national survey completed by 240 defense attorneys who practice in the state court system.²² Researchers found that among defense attorneys who participated in the national survey, more than 66 percent agreed that the shift to virtual proceedings was detrimental to communications with their clients, making it difficult to engage in confidential conversations, build relationships, share discovery, and maintain contact.²³ Interviewees of all types from the three jurisdictions reinforced all of these concerns, including identifying instantaneous in-court communications as part of the loss in communication. "Being able to discuss what is happening in real time with your client while a proceeding is taking place is central to the

²⁰ Anne Bowen Poulin, *Criminal Justice and Videoconferencing Technology: The Remote Defendant*, 78 TUL. L. REV. 1089, 1100-11 (2004).

²¹ Chris Fullwood, *The effect of mediation on impression formation: A comparison of face-to-face and video-mediated conditions*, 38 APPLIED ERGONOMICS 267, 271 (2007).

²² Benninger et. al., *Virtual Justice? A National Study Analyzing the Transition to Remote Criminal Court*, at 7.

²³ Id. at 9.

role of a criminal defense attorney. Doing court by Zoom undermines this function.” said Weisberg.²⁴ A majority of interviewees also expressed concerns about access to phones, internet connections, computers, private spaces, camera and smartphone applications.²⁵

- Eric T. Bellone, *Private Attorney-Client Communications and the Effect of Videoconferencing in the Courtroom*, 8 J. INT’L COMM. L. & TECH. 24, 45 (2013). In this study, Bellone assessed data from the 2010 National Center for State Courts (“NCSC”) survey on the use of videoconferencing technology in state courts across the United States.²⁶ Focusing on client communication, Bellone found that many of the courts surveyed made no provision for confidential client/attorney communication during the court appearance.²⁷ Even in courts where there was a means to communicate confidentially, problems with equipment were common, impairing or making this confidential communication impossible.²⁸ Bellone also noted that allowing attorneys to be physically present with their clients, but to appear before the court virtually was not an acceptable solution since this diminished the defense team’s “access to the judge, clerk, and file.” He concluded that virtual court appearances “will continue to create problems of marginal or inadequate representation.”²⁹
- Amanda J. Grant, et al., *Videoconferencing in Removal Proceedings: A Case Study of the Chicago Immigration Court*, THE LEGAL ASSISTANCE FOUND. METROPOLITAN CHI. & CHI. APPLESEED FUND FOR JUST., at 39-40 (2005). This 2005 case study examining the effect of videoconferencing in removal proceedings for detained immigrants in the Chicago Immigration Court found similar problems relating to access to counsel. The authors report that surveyed attorneys commonly complained “videoconferencing makes any private consultation during the hearing impossible. ...The vast majority of lawyers believed that private conference was impossible. Observers regularly witnessed attorneys and clients becoming frustrated because they had no privacy.”³⁰ The authors note at least one occasion where an attorney’s request to speak with his client in private prompted the prosecuting attorney to leave the room, but not other court officials or guards at the remote detention center where the client was being held.³¹ The authors also observe that the most frequent

²⁴ See <https://law.stanford.edu/press/stanford-criminal-justice-center-publishes-report-examining-consequences-of-virtual-criminal-courts/>

²⁵ Benninger et. al., *Virtual Justice? A National Study Analyzing the Transition to Remote Criminal Court*, at 76-79.

²⁶ A summary of the NCSC survey, along with the data collected and other related resources may be accessed at <https://www.ncsc.org/services-and-experts/areas-of-expertise/technology/ncsc-video-conferencing-survey>.

²⁷ Id. at 44.

²⁸ Id.

²⁹ Id. at 47.

³⁰ Grant, et al., *Videoconferencing in Removal Proceedings: A Case Study of the Chicago Immigration Court*, at 39-40.

³¹ Id. at 40

solution to this problem was for the attorney to request an adjournment of the hearing, “thus slowing the overall pace of that immigrant’s case.”³²

- Penelope Gibbs, *Defendants on video – conveyor belt justice or a revolution in access?*, TRANSFORM JUSTICE, at 12 (2017).

This research echoes many of the same concerns regarding integrity of the attorney-client relationship when proceedings are conducted remotely. Where videoconferenced appearances were used, researchers found that video consultations were frequently overheard. This was due to poor privacy and soundproofing in consultation spaces, and exacerbated by the need to shout over background noise and poor audio connections.³³ During videoconferenced hearings, Transform Justice reports that it was “extremely difficult” for defendants to communicate with their lawyers, and typically required proceedings to come to a halt for the court to be cleared or a private consultation link arranged.³⁴ Predictably, this has a chilling effect on communications during hearings, as it requires a defendant to, as one surveyed attorney put it, “have the cojones to interrupt the court in full flow.”³⁵

Additional research on the impact virtual court appearances have on attorney-client communication can be found in juvenile delinquency proceedings in suburban Pennsylvania,³⁶ bail hearings in the city of Chicago,³⁷ and criminal courts in Massachusetts.³⁸ It is clear from these accounts that where video-conferencing technology has been used in court, it has made communication between attorneys and their clients more difficult and less private.

³² Id.

³³ Penelope Gibbs, *Defendants on video – conveyor belt justice or a revolution in access?*, TRANSFORM JUSTICE, at 12 (2017).

³⁴ Id. at 12-13.

³⁵ Id. at 12.

³⁶ Anne Bowen Poulin, *Criminal Justice and Videoconferencing Technology: The Remote Defendant*, 78 TUL. L. REV. 1089, 1091 (2004) (“The defendant and counsel had no means to talk privately during the hearing...”).

³⁷ Shari Seidman Diamond, et al., *Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions*, 100 J. CRIM. L. AND CRIMINOLOGY 869, 899 (2010) (“The location of the defense attorney in the courtroom and not next to her client may prevent crucial consultation.”).

³⁸ Eric T. Bellone, *Videoconferencing in the Courts: An Exploratory Study of Videoconferencing Impact on the Attorney-Client Relationship in Massachusetts*, dissertation, NORTHEASTERN UNIVERSITY at 136 (2015) (“Many of the defense attorneys interviewed indicated that the limitations videoconferencing introduces is significant enough to impair representation.”).

Appendix I



State of New York

Executive Chamber

No. 210

EXECUTIVE ORDER

Expiration of Executive Orders 202 and 205

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a disaster emergency in the State of New York in response to the COVID-19 pandemic;

WHEREAS, on June 25, 2020, I issued Executive Order Number 205, requiring the Commissioner of Health to issue a travel advisory implementing quarantine restrictions on travelers arriving in the State of New York;

WHEREAS, the State of New York successfully flattened the curve of COVID-19 cases in New York; and has undertaken a cautious, incremental, and evidence-based approach to reopening the State of New York;

WHEREAS, the State of New York successfully slowed the transmission of COVID-19 from almost 11,000 new cases a day, at the peak of the pandemic, to less than 300 new cases a day;

WHEREAS, the State of New York administered more than 20,650,000 doses of COVID-19 vaccine, and more than 71% of adults in the State have received at least one dose of the vaccine;

WHEREAS, the State of New York went from having the highest infection rate in the Country to one of the lowest, with a current seven-day rolling average positivity rate below 0.4%;

WHEREAS, the Declarations of the Secretary of the United States Department Health and Human Services issued pursuant to the federal Public Readiness and Emergency Preparedness (PREP) Act remain in effect and continue to provide authorizations and exemptions for many professions and activities related to the ongoing COVID-19 emergency response including, allowing an expanded list of professionals to administer vaccine or to administer COVID-19 testing;

WHEREAS, the Centers for Disease Control continue their guidance for unvaccinated individuals to wear masks, and for all rider on public transit and in other sensitive settings; and

WHEREAS, it has been determined that Executive Orders 202 through 202.111 and Executive Orders 205 through 205.3 are no longer necessary.

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order that upon due consideration, deliberation and review, Executive Orders 202 through 202.111 and Executive Orders 205 through 205.3 are hereby rescinded effective June 25, 2021.



GIVEN under my hand and the Privy Seal of the State in
the City of Albany this twenty-fourth day of
June the year two thousand twenty-one.

BY THE GOVERNOR

Secretary to the Governor

Appendix J



Andrew M. Cuomo
Governor

STATE OF NEW YORK
OFFICE OF INDIGENT LEGAL SERVICES

80 S SWAN STREET, SUITE 1147
ALBANY, NEW YORK 12210
Tel: (518) 486-2028 Fax: (518) 474-0505
E-Mail: info@ils.ny.gov
<http://www.ils.ny.gov>

Patricia J. Warth
Director

Improving the Quality of Mandated Representation Throughout the State of New York

**NOTIFICATION REGARDING REPRESENTATION
AT ARRAIGNMENTS**

June 29, 2021

In notifications issued March 19, 2020 and December 2, 2020, the Office of Indigent Legal Services acknowledged the necessity for virtual arraignments because of the public health crisis, the statewide state of emergency, and Executive Orders issued by Governor Cuomo allowing for electronic court appearances. In these notifications, we emphasized that ILS has always maintained that representation at arraignment must be in person. We further observed that “conducting arraignments virtually is a temporary, emergency exception to the legal requirements of personal appearance by the defendant, and in person representation by counsel. When virtual arraignments are no longer a public health necessity, justified by a valid Executive Order, in-person arraignments must resume...in-person representation must be provided in compliance with the *Hurrell-Harring* Settlement and Executive Law § 832 (4).”¹

On June 24, 2021, Governor Cuomo issued Executive Order 210, rescinding Executive Orders 202 through 202.11, effective June 25, 2021, including those orders allowing for electronic court appearances. The Governor noted that the emergency measures set forth in Executive Orders are no longer necessary because of the statewide vaccination rate and the significant reduction in the Covid-19 positivity rate.

Given the Governor’s June 24 announcement, the end of the public health emergency that allowed for virtual arraignments, and the *Hurrell-Harring* Settlement Agreement and statutory requirements for in-person arraignments, **ILS will no longer support representation of criminal defendants at virtual arraignments.** We understand that, in some counties, providers may need a reasonable period to transition from virtual to in-person representation at arraignments. Providers requesting such an interim period should contact ILS immediately. We applaud the efforts providers have made to adapt to the exigencies of the Covid-19 crisis and continue to ensure quality representation, and we will work with each provider to facilitate the prompt return to in-person representation at arraignment.

¹In-person arraignments are mandated by the *Hurrell-Harring* Settlement Agreement, ¶ III (A) (1), which requires New York State to “ensure...that each criminal defendant within the Five Counties who is eligible...is represented by counsel in person at his or her Arraignment [emphasis added].” Similarly, Executive Law § 832 (4) (a), enacted in 2017 to extend the *Hurrell-Harring* settlement reforms to the entire state, requires that each person who is eligible “is represented by counsel in person at his or her arraignment [emphasis added].”

Appendix K

CAFA INTAKE FORM

Date _____ Docket No _____ Defense Attorney _____

Court of Arraignment _____ Court of Jurisdiction _____

Time of call/notification _____ Time Defense Attorney arrived _____ Session _____

Time of Arraignment _____ Client's Name: _____

Type of Arraignment

- ☐ New Charge
☐ Custodial
☐ Appearance Ticket

☐ Warrant

☐ Remote

Reason: _____

☐ Objected

☐ Notes: _____

Appearances

Judge

Name: _____

☐ Virtual ☐ In person

Prosecutor

Name: _____

☐ Virtual ☐ In person

☐ Not present

Client's Status

☐ YO Eligible

☐ Discretionary Persistent

☐ Mandatory Persistent

☐ Adolescent Offender

☐ Juvenile Offender

☐ Detainer

Type: _____

Documents provided

☐ Accusatory Instrument(s)

☐ Supporting Deposition(s)

☐ Fingerprint-based RAP Sheet

☐ Name-based Criminal History Report

☐ Certificate of Compliance

☐ Other: _____

☐ Other: _____

Top Charges

☐ Violent felony

☐ Other felony

☐ Misdemeanor/Violation

Co-Defendant(s) / Attorney(s)

Notices

☐ 710.30(1)(a)

☐ 710.30(1)(b)

☐ 190.50 (Prosecutor)

☐ Cross 190.50 (Defense)

☐ Other: _____

☐ Other: _____

NOTES FROM CLIENT INTERVIEW name(s) and contact information of complaining witnesses, eyewitnesses, alibi, facts of the case, circumstances of arrest, circumstances of ID and statement(s), location of video surveillance, family/community contacts, any other relevant information.

☐ Interview not confidential – reason(s): _____

Client's DOB _____

Gender _____

Phone _____

Email _____

Other Contacts _____

Address _____

Length of time at current address _____

Employer _____

Length of time employed _____

Medical/Mental Health concerns,

treating physicians/hospitals _____

☐ HIPAA signed?

☐ General records release signed?

☐ Currently on Probation?

☐ Currently on Parole?

Immigration Status

☐ US Citizen

☐ Naturalized

☐ Natural Born

☐ Green Card

A# _____

Length of Time in US _____

Primary Language (if Ø English) _____

☐ Interpreter present/used

LEGAL ARGUMENTS FOR ARRAIGNMENT sufficiency issues, bail factors, is complaint converted to information?

Prosecution's Bail Request/Representations at Arraignment

Outcome of Arraignment

☐ ROR

☐ Released under supervision

☐ Released with other conditions:

☐ Bail set – 3 forms required

Cash: _____

Secured Bond: _____

Un/Partially Secured: _____

Other: _____

☐ Remand

☐ Bail application req'd ASAP

☐ ACD (at arraignment)

☐ Dismissal (at arraignment)

☐ Plea (at arraignment)

☐ Other: _____

Eligibility for Assignment of Counsel

☐ Application complete/eligible

☐ Application complete/not eligible

☐ Application not complete/provided

to client

☐ Other _____

Additional Conditions

☐ OOP

Protected Party _____

Special Conditions _____

☐ Driver's License Suspended

☐ Hardship Hearing

Date: _____

☐ DMV Refusal Hearing

Date: _____

☐ Pringle Hearing

Date: _____

☐ School Suspension Hearing

☐ Mental Health Evaluation

☐ Drug/Alcohol Evaluation

☐ 730 Exam Ordered

☐ Other _____

Adjournment

Date _____

Court _____

Purpose _____

Speedy Trial

☐ Time charged to Prosecution

☐ Time not charged

Reason _____

Appendix L

Appendix L: Interviewees and Interviewers per County

| County | CAFA coordinator(s) interviewed | ILS attorney conducting the interview |
|--------------------|--|--|
| Albany | Tina Sodhi, Alternate Public Defender | Claire Zartarian |
| Allegany | Barbara Kelley, Public Defender | Claire Zartarian |
| Broome | Mike Baker, Public Defender | Claire Zartarian |
| Cattaraugus | Darryl Bloom, Public Defender | Kathryn Murray |
| Cayuga | Lloyd Hoskins, ACP Administrator | Kathryn Murray |
| Chautauqua | Ned Barone, Public Defender | Claire Zartarian |
| Chemung | John Brennan, Public Advocate | Claire Knittel |
| Chenango | Zachary Wentworth, Public Defender & Karri Beckwith, ACP Administrator | Kathryn Murray |
| Clinton | Justin Meyer, ACP Administrator & Jamie Martineau, Public Defender | Claire Zartarian |
| Columbia | Shane Zoni, Public Defender | Claire Zartarian |
| Cortland | Michael Cardinale, ACP Administrator & Keith Dayton, Public Defender | Claire Knittel |
| Delaware | Joe Ermeti, Public Defender | Kathryn Murray |
| Dutchess | Tom Angell, Public Defender | Claire Zartarian |
| Erie | Michelle Parker, Bar Association Director, Dan Grasso, ACP Administrator, David Schopp, Chief Executive Officer Legal Aid Bureau & Kevin Stadelmaier, Chief Attorney of Criminal Defense | Claire Knittel |
| Essex | Brandon Boutelle, Public Defender | Claire Knittel |
| Franklin | Tom Soucia, Public Defender | Claire Zartarian |
| Fulton | Roger Paul, Public Defender | Claire Knittel |
| Genesee | Jerry Ader, Public Defender | Claire Zartarian |
| Greene | Angelo Scaturro, Public Defender | Kathryn Murray |
| Hamilton | Sterling Goodspeed, Public Defender | Claire Knittel |
| Herkimer | Keith Bowers, ACP Administrator | Claire Zartarian |
| Jefferson | Julie Hutchins, Public Defender | Claire Zartarian |
| Lewis | Michael Young, Lewis Defenders, PLLC | Claire Knittel |
| Livingston | Lindsay Quintilone, Public Defender | Kathryn Murray |
| Madison | David DeSantis, ACP Administrator | Brendan Keller |
| Monroe | Tim Donaher, Public Defender | Claire Knittel |
| Montgomery | Bill Martuscello, Public Defender | Claire Knittel |
| Nassau | Scott Banks, Legal Aid-Chief Attorney & Bob Nigro, ACP Administrator | Jennifer Chenu |
| Niagara | Vince Sandonato, 1 st Assistant Public Defender | Claire Knittel |
| Oneida | Leland McCormack, Public Defender | Claire Knittel |

Appendix L: Interviewees and Interviewers per County

| County | CAFA coordinator(s) interviewed | ILS attorney conducting the interview |
|----------------------------|---|--|
| Orange | Jim Monroe, ACP Administrator, Gary Abramson Chief Attorney Legal Aid & Damian Brady, Chief Assistant County Attorney | Claire Zartarian |
| Orleans | Joanne Best, Public Defender | Claire Knittel |
| Oswego | Sara Davis, ACP Administrator | Brendan Keller |
| Otsego | Mike Trosset, Public Defender | Kathryn Murray |
| Putnam | David Squirrell, Chief Attorney- Legal Aid Society | Kathryn Murray |
| Rensselaer | John Turi, Public Defender | Claire Zartarian |
| Rockland | Jim Licata, Public Defender | Kathryn Murray |
| Saratoga | Andrew Blumenberg, Public Defender & Dawn Phillips, ACP Administrator | Claire Zartarian |
| Schenectady | Stephen Signore, Public Defender | Claire Zartarian |
| Schoharie | Suzanne Graulich, ACP Administrator | Claire Knittel |
| Seneca | Michael Mirras, Public Defender | Claire Knittel |
| St. Lawrence | James McGahan, Public Defender | Claire Zartarian |
| Steuben | Shaun Sauro, Public Defender | Kathryn Murray |
| Sullivan | Lynda Levine, ACP Administrator (also emailed Tim Havas) | Claire Zartarian |
| Tioga | George Awad, Public Defender & Peter DeWind, County Attorney | Kathryn Murray |
| Tompkins | Lance Salisbury, Supervising Attorney | Lisa Joy Robertson |
| Ulster | Ruth Boyer, Public Defender | Kathryn Murray |
| Warren | Marcy Flores, Public Defender | Brendan Keller |
| Wayne | Andrew Correia, Public Defender | Lisa Joy Robertson |
| Westchester | Clare Degnan, Legal Aid Executive Director | Claire Zartarian |
| Wyoming | Norm Effman, Legal Aid Executive Director | Claire Knittel |
| Yates | Steve Hampsey, Public Defender | Claire Knittel |
| 52 Upstate Counties | 63 individuals interviewed | Interviews conducted by 6 ILS attorneys |

Appendix M

Appendix M. *CAFA program types and providers in the 52 non-settlement counties outside New York City.*

| County | Custodial Arraignments: Program Type | | Custodial Arraignments: Provider(s) | | | Non-custodial Arraignments: Provider(s) | | |
|-------------|--|----------------|---|--|--------------------------|--|--|--------------------------|
| | Centralized Arraignment Program (CAP) ¹ | On-call system | Institutional Primary Provider (PD / LAS) | Institutional Conflict Provider (CD / LAS) | Assigned Counsel Program | Institutional Primary Provider (PD / LAS) | Institutional Conflict Provider (CD / LAS) | Assigned Counsel Program |
| Albany | | ✓ | ✓ | ✓ | | ✓ | ✓ | |
| Allegany | | ✓ | ✓ | | | ✓ | | |
| Broome | ✓ | ✓ | ✓ | | | ✓ | | |
| Cattaraugus | | ✓ | ✓ | | | ✓ | | |
| Cayuga | ✓ | | | | ✓ | | | ✓ |
| Chautauqua | ✓ | | ✓ | | | ✓ | | |
| Chemung | | ✓ | | ✓ | | ✓ | ✓ | |
| Chenango | | ✓ | ✓ | | | ✓ | | |
| Clinton | | ✓ | ✓ | | ✓ | ✓ | | |
| Columbia | | ✓ | ✓ | | | ✓ | | |

¹ Nassau County does not have a CAP pursuant to the Judiciary Law, but has a District Court which centralizes certain arraignments. Nassau's District Court system has been included in the CAP category because it is a means of centralizing arraignments.

| | Custodial Arraignments: Program Type | | Custodial Arraignments: Provider(s) | | | Non-custodial Arraignments: Provider(s) | | |
|-----------|--|----------------|--|---|-----------------------------|--|---|-----------------------------|
| County | Centralized Arraignment Program (CAP) ¹ | On-call system | Institutional Primary Provider (PD / LAS) | Institutional Conflict Provider (CD / LAS) | Assigned Counsel Program | Institutional Primary Provider (PD / LAS) | Institutional Conflict Provider (CD / LAS) | Assigned Counsel Program |
| Cortland | ✓ | | ✓ | | ✓ | ✓ | | |
| Delaware | | ✓ | ✓ | | | ✓ | | |
| Dutchess | | ✓ | ✓ | | | ✓ | | |
| Erie | | ✓ | ✓ | | ✓ | ✓ | | ✓ |
| Essex | | ✓ | ✓ | | ✓ | ✓ | | |
| Franklin | | ✓ | ✓ | | | ✓ | | |
| Fulton | | ✓ | ✓ | | | ✓ | | |
| Genesee | | ✓ | ✓ | | | ✓ | | |
| Greene | | ✓ | ✓ | | | ✓ | | |
| Hamilton | | ✓ | ✓ | | | ✓ | | |
| Herkimer | | ✓ | | | ✓ | | | ✓ |
| Jefferson | | ✓ | ✓ | | | ✓ | | |

| | Custodial Arraignments: Program Type | | Custodial Arraignments: Provider(s) | | | Non-custodial Arraignments: Provider(s) | | |
|------------|--|----------------|--|---|-----------------------------|--|---|-----------------------------|
| County | Centralized Arraignment Program (CAP) ¹ | On-call system | Institutional Primary Provider (PD / LAS) | Institutional Conflict Provider (CD / LAS) | Assigned Counsel Program | Institutional Primary Provider (PD / LAS) | Institutional Conflict Provider (CD / LAS) | Assigned Counsel Program |
| Lewis | | ✓ | ✓ | | | ✓ | | |
| Livingston | ✓ | | ✓ | | | ✓ | ✓ | |
| Madison | ✓ | | | | ✓ | | | ✓ |
| Monroe | | ✓ | ✓ | | | ✓ | | |
| Montgomery | | ✓ | ✓ | | | ✓ | | |
| Nassau | ✓ | ✓ | ✓ | | ✓ | ✓ | | ✓ |
| Niagara | ✓ | | ✓ | | | ✓ | | |
| Oneida | ✓ | | ✓ | | | ✓ | | |
| Orange | | ✓ | ✓ | | ✓ | ✓ | | ✓ |
| Orleans | ✓ | ✓ | ✓ | | | ✓ | | |
| Oswego | ✓ | | | | ✓ | | | ✓ |
| Otsego | ✓ | ✓ | ✓ | | ✓ | ✓ | | |

| | Custodial Arraignments: Program Type | | Custodial Arraignments: Provider(s) | | | Non-custodial Arraignments: Provider(s) | | |
|--------------|--|----------------|---|--|--------------------------|--|--|--------------------------|
| County | Centralized Arraignment Program (CAP) ¹ | On-call system | Institutional Primary Provider (PD / LAS) | Institutional Conflict Provider (CD / LAS) | Assigned Counsel Program | Institutional Primary Provider (PD / LAS) | Institutional Conflict Provider (CD / LAS) | Assigned Counsel Program |
| Putnam | | ✓ | ✓ | | | ✓ | | |
| Rensselaer | | ✓ | ✓ | ✓ | | ✓ | | |
| Rockland | | ✓ | ✓ | | | ✓ | | |
| Saratoga | | ✓ | ✓ | | ✓ | ✓ | | |
| Schenectady | | ✓ | ✓ | ✓ | | ✓ | ✓ | |
| Schoharie | | ✓ | | | ✓ | | | ✓ |
| Seneca | ✓ | | | | ✓ | ✓ | | |
| St. Lawrence | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | |
| Steuben | ✓ | | ✓ | | | ✓ | | |
| Sullivan | | ✓ | ✓ | | ✓ | ✓ | | ✓ |
| Tioga | ✓ | | ✓ | | | ✓ | | |
| Tompkins | | ✓ | | | ✓ | | | ✓ |

| | Custodial Arraignments: Program Type | | Custodial Arraignments: Provider(s) | | | Non-custodial Arraignments: Provider(s) | | |
|--------------------------------------|--|----------------|--|---|-----------------------------|--|---|-----------------------------|
| County | Centralized Arraignment Program (CAP) ¹ | On-call system | Institutional Primary Provider (PD / LAS) | Institutional Conflict Provider (CD / LAS) | Assigned Counsel Program | Institutional Primary Provider (PD / LAS) | Institutional Conflict Provider (CD / LAS) | Assigned Counsel Program |
| Ulster | | ✓ | ✓ | | | ✓ | | |
| Warren | ✓ | | ✓ | | | ✓ | | |
| Wayne | ✓ | | ✓ | | | ✓ | | |
| Westchester | | ✓ | ✓ | | ✓ | ✓ | | |
| Wyoming | | ✓ | ✓ | | | ✓ | | |
| Yates | ✓ | ✓ | ✓ | | | ✓ | | |
| TOTAL # OF ✓ COUNTIES | 18 | 39 | 44 | 5 | 18 | 46 | 5 | 10 |

Appendix N

Appendix N. Counsel at arraignment coverage in the 52 non-settlement counties outside New York City.

| County | Custodial Arraignments: Degree of Coverage by Counsel | | | | Counsel at Arraignment Coverage: Any Gaps? | | | | If yes, describe | Custodial and Non-Custodial Arraignments: Any System to Identify Missed Arraignments? | |
|-------------|---|------|------|------|--|---|---|--|--|---|--|
| | All | Most | Some | None | No | Yes, gaps for custodial arraignments | Yes, gaps during regular DA / PD or PD | Yes, gaps during other court sessions | | Yes ✓ or no ✗ | If yes, describe |
| Albany | ✓ | | | | ✓ | | | | | ✗ | |
| Allegany | ✓ | | | | | | ✓ | ✓ | The CAFA coordinator reported that they do not yet have the capacity to provide representation at appearance ticket arraignments. These individuals are arraigned without counsel and provided with an eligibility application by court staff. | ✗ | |
| Broome | ✓ | | | | ✓ | | | | | ✗ | |
| Cattaraugus | ✓ | | | | ✓ | | | | | ✓ | The CAFA coordinator receives a jail list every day and checks it for any missed arraignments. |
| Cayuga | ✓ | | | | ✓ | | | | | ✓ | The CAFA coordinator receives a jail list every day and checks it for any missed arraignments. |
| Chautauqua | ✓ | | | | ✓ | | | | | ✗ | |

| | Custodial Arraignments: Degree of Coverage by Counsel | | | | Counsel at Arraignment Coverage: Any Gaps? | | | | | Custodial and Non-Custodial Arraignments: Any System to Identify Missed Arraignments? | |
|----------|---|------|------|------|--|---|---|--|---|---|------------------|
| County | All | Most | Some | None | No | Yes, gaps for custodial arraignments | Yes, gaps during regular DA / PD or PD | Yes, gaps during other court sessions | If yes, describe | Yes ✓ or no ✗ | If yes, describe |
| Chemung | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the judge obtains updated contact information, reads the charges to the individual, gives the individual a copy of the accusatory instrument, advises the individual of their rights, and adjourns the proceeding to the next PD session. If the judge knows that they are going to change release status or issue an order of protection, then the judge will ensure that counsel is present. | ✗ | |
| Chenango | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear and unable to send an attorney to appear. In those situations, the case is adjourned to the next PD session for arraignment. | ✗ | |
| Clinton | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the case is adjourned to the next PD session for arraignment. | ✗ | |
| Columbia | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the case is adjourned to the next PD session for arraignment. | ✗ | |
| Cortland | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the case is adjourned to the next PD session for arraignment. | ✗ | |

| | Custodial Arraignments: Degree of Coverage by Counsel | | | | Counsel at Arraignment Coverage: Any Gaps? | | | | | Custodial and Non-Custodial Arraignments: Any System to Identify Missed Arraignments? | |
|----------|---|------|------|------|--|---|---|--|--|---|------------------|
| County | All | Most | Some | None | No | Yes, gaps for custodial arraignments | Yes, gaps during regular DA / PD or PD | Yes, gaps during other court sessions | If yes, describe | Yes ✓ or no ✗ | If yes, describe |
| Delaware | ✓ | | | | ✓ | | | | | ✗ | |
| Dutchess | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the case is adjourned to the next PD session for arraignment. | ✗ | |
| Erie | ✓ | | | | ✓ | | | | | ✗ | |
| Essex | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear and unable to send an attorney to appear. In those situations, the case is adjourned to the next PD session for arraignment. | ✗ | |
| Franklin | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. Representation at these arraignments is only provided if the PD is notified ahead of time (either by the court or because the client applied for eligibility prior to the scheduled arraignment). Otherwise, the case is adjourned to the next PD session for arraignment. | ✗ | |
| Fulton | ✓ | | | | ✓ | | | | | ✗ | |

| | Custodial Arraignments: Degree of Coverage by Counsel | | | | Counsel at Arraignment Coverage: Any Gaps? | | | | | Custodial and Non-Custodial Arraignments: Any System to Identify Missed Arraignments? | |
|-----------|---|------|------|------|--|---|---|--|--|---|---|
| County | All | Most | Some | None | No | Yes, gaps for custodial arraignments | Yes, gaps during regular DA / PD or PD | Yes, gaps during other court sessions | If yes, describe | Yes ✓ or no ✗ | If yes, describe |
| Genesee | ✓ | | | | | | ✓ | ✓ | The PD provides representation only for those noncustodial arraignments where the court is being asked to issue an Order of Protection or suspend the individual’s driver’s license. When charged individuals appear on an appearance ticket (regardless of whether it is during a regular PD session or not) and the court is not being asked to issue an OOP or suspending a license, no representation is provided. | ✗ | |
| Greene | ✓ | | | | ✓ | | | | | ✗ | |
| Hamilton | ✓ | | | | ✓ | | | | | ✓ | The PD cross-checks incoming assignments with the office’s records of arraignments. |
| Herkimer | ✓ | | | | ✓ | | | | | ✗ | |
| Jefferson | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the judges generally reach out to the clients in advance and reschedule them to a different date, or the case is adjourned to the next PD session for arraignment. | ✗ | |

| | Custodial Arraignments: Degree of Coverage by Counsel | | | | Counsel at Arraignment Coverage: Any Gaps? | | | | | Custodial and Non-Custodial Arraignments: Any System to Identify Missed Arraignments? | |
|------------|---|------|------|------|--|---|---|--|--|---|---|
| County | All | Most | Some | None | No | Yes, gaps for custodial arraignments | Yes, gaps during regular DA / PD or PD | Yes, gaps during other court sessions | If yes, describe | Yes ✓ or no ✗ | If yes, describe |
| Lewis | ✓ | | | | | | | ✓ | Appearance tickets are generally scheduled for court sessions where the PD is available (either scheduled to appear or able to appear upon notification by the court). Occasionally a person will unexpectedly appear for arraignment and the court will conduct the arraignment without counsel (i.e., the person was not on the calendar but knew they missed a court date previously), and there have been a few occasions when the PD's Office is not scheduled to appear, and the court has arraigned the person without counsel. | ✗ | |
| Livingston | ✓ | | | | ✓ | | | | | ✗ | |
| Madison | ✓ | | | | ✓ | | | | | ✓ | The CAFA coordinator cross-checks incoming assignments with the office's records of arraignments. |
| Monroe | ✓ | | | | ✓ | | | | | ✗ | |
| Montgomery | ✓ | | | | | | | ✓ | Sometimes, arraignments are scheduled during local court sessions where an attorney is not scheduled to appear. The judge will either contact the PD's on-call attorney to have an attorney appear for the judge will reschedule the arraignment to a day where defense counsel is present. | ✗ | |

| | Custodial Arraignments: Degree of Coverage by Counsel | | | | Counsel at Arraignment Coverage: Any Gaps? | | | | | Custodial and Non-Custodial Arraignments: Any System to Identify Missed Arraignments? | |
|---------|---|------|------|------|--|---|---|--|---|---|------------------|
| County | All | Most | Some | None | No | Yes, gaps for custodial arraignments | Yes, gaps during regular DA / PD or PD | Yes, gaps during other court sessions | If yes, describe | Yes ✓ or no ✗ | If yes, describe |
| Nassau | ✓ | | | | ✓ | | | | | ✗ | |
| Niagara | ✓ | | | | ✓ | | | | | ✗ | |
| Oneida | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the judge conducts the arraignment without counsel and adjourns the case to the next PD session for assignment of counsel. | ✗ | |
| Orange | ✓ | | | | ✓ | | | | | ✗ | |
| Orleans | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the judge will get updated contact information on the record, ask the individual if they want an attorney, provide an assigned counsel eligibility application, and adjourn the case to the next PD session for assignment of counsel. | ✗ | |
| Oswego | ✓ | | | | ✓ | | | | | ✗ | |

| | Custodial Arraignments: Degree of Coverage by Counsel | | | | Counsel at Arraignment Coverage: Any Gaps? | | | | | Custodial and Non-Custodial Arraignments: Any System to Identify Missed Arraignments? | |
|-------------|---|------|------|------|--|---|---|--|---|---|--|
| County | All | Most | Some | None | No | Yes, gaps for custodial arraignments | Yes, gaps during regular DA / PD or PD | Yes, gaps during other court sessions | If yes, describe | Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/> | If yes, describe |
| Otsego | <input checked="" type="checkbox"/> | | | | | | | <input checked="" type="checkbox"/> | The CAFA coordinator reported to ILS that he believes it's possible that if people appear for arraignment on an appearance ticket at a session at which a defense attorney is not present, the judge conducts the arraignment without a defense attorney. | <input checked="" type="checkbox"/> | |
| Putnam | <input checked="" type="checkbox"/> | | | | <input checked="" type="checkbox"/> | | | | | <input checked="" type="checkbox"/> | |
| Rensselaer | <input checked="" type="checkbox"/> | | | | | | | <input checked="" type="checkbox"/> | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the case is adjourned to the next PD session for arraignment. | <input checked="" type="checkbox"/> | |
| Rockland | <input checked="" type="checkbox"/> | | | | <input checked="" type="checkbox"/> | | | | | <input checked="" type="checkbox"/> | The CAFA coordinator receives a jail list every day and checks it for any missed arraignments. |
| Saratoga | <input checked="" type="checkbox"/> | | | | | | | <input checked="" type="checkbox"/> | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the case is adjourned to the next PD session for arraignment. | <input checked="" type="checkbox"/> | |
| Schenectady | <input checked="" type="checkbox"/> | | | | <input checked="" type="checkbox"/> | | | | | <input checked="" type="checkbox"/> | |
| Schoharie | <input checked="" type="checkbox"/> | | | | <input checked="" type="checkbox"/> | | | | | <input checked="" type="checkbox"/> | |

| | Custodial Arraignments: Degree of Coverage by Counsel | | | | Counsel at Arraignment Coverage: Any Gaps? | | | | | Custodial and Non-Custodial Arraignments: Any System to Identify Missed Arraignments? | |
|--------------|---|------|------|------|--|---|---|--|--|---|---|
| County | All | Most | Some | None | No | Yes, gaps for custodial arraignments | Yes, gaps during regular DA / PD or PD | Yes, gaps during other court sessions | If yes, describe | Yes ✓ or no ✗ | If yes, describe |
| Seneca | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the case is adjourned to the next PD session for arraignment. | ✗ | |
| St. Lawrence | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the case is adjourned to the next PD session for arraignment. | ✗ | |
| Steuben | ✓ | | | | ✓ | | | | | ✗ | |
| Sullivan | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the defense provider is not scheduled to appear. In those situations, the case is adjourned to the next PD session for arraignment. Rarely, the court may contact the on-call CAFA attorney to attend the arraignment. | ✗ | |
| Tioga | ✓ | | | | | | ✓ | ✓ | Sometimes the PD will leave a court session before it is completed. Occasionally, a person will appear for arraignment on a desk appearance ticket after the PD has left. In that case, the court will direct the defendant to return on the date of the next session the PD is scheduled to be present. | ✗ | |
| Tompkins | ✓ | | | | | | ✓ | ✓ | For non-custodial arraignments on appearance tickets, the ACP provides arraignment coverage only when they are notified of the initial | ✓ | The CAFA coordinator cross-checks incoming assignments with the office’s records of arraignments. |

| | Custodial Arraignments: Degree of Coverage by Counsel | | | | Counsel at Arraignment Coverage: Any Gaps? | | | | | Custodial and Non-Custodial Arraignments: Any System to Identify Missed Arraignments? | |
|-------------|---|------|------|------|--|---|---|--|---|---|--|
| County | All | Most | Some | None | No | Yes, gaps for custodial arraignments | Yes, gaps during regular DA / PD or PD | Yes, gaps during other court sessions | If yes, describe | Yes ✓ or no ✗ | If yes, describe |
| | | | | | | | | | appearance in advance, i.e., when a defendant contacts the ACP office pre-arraignment and requests counsel. The CAFA coordinator is looking at the possibility of obtaining the court calendar in advance so he can be notified of the scheduled non-custodial arraignments. | | |
| Ulster | ✓ | | | | ✓ | | | | | ✗ | |
| Warren | ✓ | | | | ✓ | | | | | ✓ | Should a missed arraignment occur, the PD Office would receive notification from the court, and it would be recorded in the PD Office's PDCMS system as a missed arraignment. |
| Wayne | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the case is adjourned to the next PD session for arraignment. | ✗ | |
| Westchester | | ✓ | | | | ✓ | | | When there are co-defendants being arraigned and the police have failed to notify the court that they need to get an attorney for the conflict case (an 18B attorney), no representation is provided for the co-defendant. | ✗ | |
| Wyoming | ✓ | | | | | | | ✓ | Sometimes appearance tickets are scheduled for court sessions when the institutional provider is not scheduled to appear. In those situations, the | ✓ | The CAFA coordinator receives a jail list every day and checks it for any missed arraignments. |

| | Custodial Arraignments: Degree of Coverage by Counsel | | | | Counsel at Arraignment Coverage: Any Gaps? | | | | | Custodial and Non-Custodial Arraignments: Any System to Identify Missed Arraignments? | |
|-----------------------------|---|------|------|------|--|---|---|--|--|---|------------------|
| County | All | Most | Some | None | No | Yes, gaps for custodial arraignments | Yes, gaps during regular DA / PD or PD | Yes, gaps during other court sessions | If yes, describe | Yes ✓ or no ✗ | If yes, describe |
| | | | | | | | | | judge conducts the arraignment without counsel. | | |
| Yates | ✓ | | | | ✓ | | | | | ✗ | |
| TOTAL # OF ✓ COUNTIES | 51 | 1 | 0 | 0 | 26 | 1 | 4 | 25 | | 8 | |