

# Statewide Plan for Implementing Counsel at Arraignment: Year Four Report

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# IMPLEMENTATION UPDATE OF STATEWIDE PLAN FOR COUNSEL AT ARRAIGNMENT

## INTRODUCTION

In New York State, the constitutional right to counsel for people facing charges in criminal court is protected under Criminal Procedure Law (CPL) § 170.10(3) and § 180.10(3) and “attaches at arraignment.”<sup>1</sup> In *Hurrell-Harring*, the Court of Appeals unequivocally affirmed the vital importance of representation by 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.”<sup>2</sup> The fundamental right to defense counsel at arraignment thus serves two indispensable purposes: for attorneys to 1) advocate for their client’s release and 2) begin defending their client’s case.

To fulfill this critical legal requirement, Executive Law § 832(4)(a) requires the New York State Office of Indigent Legal Services (“ILS”) to “develop and implement a written plan to ensure that each criminal defendant who is eligible for publicly funded legal representation is represented by counsel in person at his or her arraignment...” On December 1, 2017, ILS submitted its Statewide Plan for Counsel at Arraignment (“Counsel at Arraignment Plan”) to the Executive, detailing the status of counsel at arraignment (interchangeably referred to as “counsel at first appearance” or “CAFA”) representation in each county and identifying where representation was consistently provided at arraignment and where it was sporadic or non-existent. The Counsel at Arraignment Plan estimated the State funding needed to achieve full arraignment coverage to be \$9.4 million, and proposed steps to provide statewide arraignment representation by April 2023.

On September 30, 2019, ILS provided an update report regarding the first year of implementation of the Statewide Plan for Counsel at Arraignment. The 2019 report set forth a detailed history of progress toward the goal of full coverage of arraignments, 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.”<sup>3</sup>

Following the 2019 report, on January 1, 2020, reforms to New York State’s bail laws went into effect, with amendments effective July 1, 2020 and May 9, 2022, that, among other things, required the issuance of appearance tickets upon arrest in certain cases.<sup>4</sup> Based on conversations with defense providers, these reforms have had the intended effect of decreasing reliance on custodial arrests (where law enforcement takes the person into custody upon arrest and until the arraignment) and increasing the number of appearance tickets being issued. This has shifted

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<sup>1</sup> *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”).

<sup>2</sup> *Hurrell-Harring v. New York*, 15 NY3d 8, 21 (2010).

<sup>3</sup> See 2019 Implementation Update of Statewide Plan for Implementing Counsel at Arraignment.

<sup>4</sup> CPL § 150.20.

certain CAFA representation demands from custodial appearances to non-custodial appearance ticket return dates in which the client remains at liberty and returns to court at a later date for 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 progress that had occurred since ILS submitted its Counsel at Arraignment Plan in December 2017 and demonstrated that nearly all the counties in New York State had systems in place to provide representation at both custodial and non-custodial arraignments, though these systems had not yet achieved full arraignment coverage.<sup>5</sup>

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 shift from in-person to virtual proceeding—a shift legally authorized by emergency Executive Orders issued by the Governor. Counties and providers quickly adapted their in-person systems of arraignment representation to provide defense counsel at these temporarily authorized electronic virtual arraignments until the emergency orders were lifted and in-person operations could resume. Executive Order 210 rescinded the authorization of virtual court appearances as of June 24, 2021, and counties subsequently transitioned back to in-person arraignment representation and continued working towards more sustainable and complete systems of providing arraignment representation.

On September 30, 2021, ILS submitted its annual report regarding the third year of implementation of its Statewide Plan for Counsel at Arraignment. The 2021 report described the barriers to quality representation posed by virtual arraignments and the resilience of counties' CAFA representation systems as they resumed in-person court operations. The 2021 report also began to examine the ability of counties to track missed arraignments (defined as arraignments that take place without counsel, despite a system for representation being in place), which provides a necessary mechanism to gauge the integrity of systems of coverage. This report revealed that many counties lacked an independent ability to identify missed arraignments and relied on external agencies (courts or law enforcement) to notify them of an arraignment taking place without counsel.<sup>6</sup>

The three CAFA reports submitted to date have necessarily focused on the structures in place to provide representation: their completeness, any gaps, and systems to identify missed arraignments. However, the provision of counsel at arraignment necessarily entails more than the nominal presence of an attorney. As noted in the *Hurrell-Harring* decision:

It is very basic that '[i]f no actual "Assistance" "for" the accused's "defence" is provided, then the constitutional guarantee has been violated. To hold otherwise "could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given

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<sup>5</sup> See 2020 Implementation Update of Statewide Plan for Implementing Counsel at Arraignment.

<sup>6</sup> See 2021 Implementation Update of Statewide Plan for Implementing Counsel at Arraignment.

the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment.<sup>7</sup>

In this report, the necessary next step in gauging compliance with the Counsel at Arraignment Plan is determining whether the existing programs are able to provide quality representation in accordance with the *Hurrell-Harring* Settlement Agreement and Executive Law.

In preparing this report, ILS staff spoke with the coordinators of CAFA representation in each of the 52 non-Settlement counties outside of New York City, using a survey designed to understand the structure of arraignment representation, any remaining gaps in coverage, systems to identify missed arraignments, and the quality of representation at arraignment.<sup>8</sup> Recognizing the challenge of measuring the quality of representation being provided, ILS attorneys focused on four concrete and identifiable metrics: i) whether confidential space was provided for attorney interviews prior to arraignment, ii) whether arraigning attorneys had a meaningful interview with clients prior to arraignment, iii) whether representation continued post-arraignment, and iv) the existence of protocols to transfer information from the arraigning attorney to the attorney ultimately assigned (if continuous representation is not provided). Additionally, ILS attorneys sought to elicit information about existing barriers to providing quality representation.

## **I. STRUCTURAL INTEGRITY OF CAFA PROGRAMS**

As counties work towards full compliance with the Counsel at Arraignment Plan developed by ILS pursuant to Executive Law § 832(4)(a), ILS continues to monitor and report on the structures in place to provide in-person representation at arraignment. Given that Executive Order 210, issued June 24, 2021, rescinded previous Orders authorizing virtual arraignments during the height of the COVID-19 pandemic and in-person court operations have resumed, ILS surveyed providers to determine if any arraignments continue to be conducted virtually in violation of the requirements of the Executive Law. ILS also gathered information about remaining gaps in coverage and identified areas of inquiry for future reports to gauge the impact of such gaps, and surveyed providers on their ability to track missed arraignments. Finally, ILS staff have sought to identify and overcome obstacles to the long-term sustainability of CAFA systems, which often involve multiple intersecting issues and are highly county specific. For example: a system that succeeds in one semi-urban county with multiple defense providers may not be effective in another county with a similar profile; systems in some counties may remain tenuous unless they establish a Centralized Arraignment Part (“CAP”); and problems with staff attrition and recruitment may suddenly throw a previously functioning program into crisis. Designing, redesigning, resourcing, and implementing sustainable CAFA systems statewide thus remains an ongoing challenge.

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<sup>7</sup> *Hurrell-Harring v. New York*, 15 NY3d 8, 22-23 (2010) (citing *Avery v. Alabama*, 308 U. S. 444, 446 (1940) (footnote omitted)); see also *United States v Cronin*, 466 US 648, 654-655 (1984).

<sup>8</sup> The survey instrument used is attached as Appendix A.

## The return to in-person arraignments

After fifteen months of virtual arraignments authorized by Executive Order due to the COVID-19 public health crisis, all counties have returned to in-person arraignments.<sup>9</sup> At the time of the ILS survey, virtual arraignments were still occurring in Albany, Cattaraugus, Greene, Herkimer, Orange, Putnam, Rensselaer, St. Lawrence and Westchester Counties in some limited capacity (e.g., off-hour “Raise the Age” arraignments conducted pursuant to CPL § 722, off-hour arraignments conducted in certain courts, upon the request of the client, and when severe snowstorms made travel dangerous) but those counties have now returned to systems for in-person arraignments. Indeed, the continued use of virtual arraignments on a regular and systematic basis does not comply with the in-person requirement of the *Hurrell-Harring* Settlement Agreement or Executive Law § 832(4)(a). In situations where there are attempts to conduct virtual arraignments on a regular basis, ILS engages with providers, county officials, and with the Office of Court Administration (“OCA”) where appropriate to ensure in-person arraignments.

## Completeness of coverage and remaining gaps

In the 2017 Counsel at Arraignment Plan, ILS identified the challenges to achieving statewide counsel at arraignment: jurisdictional barriers, the availability of defense counsel, geography, population density, number of courts and law enforcement agencies, and funding sources. During subsequent implementation surveys and updates, we have assessed and reported on the existing structures for representation and any gaps where clients are systematically unrepresented at arraignment. This process involved refining the language used to categorize arraignments as we seek to provide accurate metrics, detailed more fully below, and revealed possible gaps requiring further study. While the demands on defense providers have fluctuated in unexpected ways since 2017 due to reforms to New York State’s bail laws and the COVID-19 pandemic, ILS continues to work with providers to shift resources and personnel, where appropriate, to respond to these demands.

In 2019, counties reported the following:

- Arraignment representation was provided at **90.8%** of scheduled sessions when a prosecutor was present (“DA sessions”).
- 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.

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<sup>9</sup> For a comprehensive analysis of the deleterious impact of virtual arraignments, see 2021 Implementation Update of Statewide Plan for Implementing Counsel at Arraignment, § I, Remote Counsel: Arraignments During COVID-19.

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.

Recognizing that the prosecutor is not necessarily present for arraignments, and that the primary defense provider is not always scheduled to appear during regular court sessions (which may include sessions devoted entirely to non-criminal matters), our 2021 report refined the categorizations of noncustodial arraignments to “regular PD/DA or PD court sessions” (when the institutional primary provider is regularly scheduled to appear) and “other court sessions” (when the institutional primary provider is not regularly scheduled to appear). The addition of the “other court sessions” category of cases revealed that in a significant percentage (**40.4%**) of counties, gaps in coverage existed during these other court sessions. These “other court sessions” typically involve non-criminal matters, though at times a person may appear on an appearance ticket for arraignments. 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.<sup>10</sup>

In 2021, counties reported the following:

- 48 out of the 52 counties (**92.3%**) reported full CAFA coverage during regular DA/PD or PD court sessions.
- 51 out of the 52 counties (**98.1%**) reported full CAFA coverage for custodial arraignments.
- 31 out of the 52 counties (**59.6%**) reported full CAFA coverage during other court sessions.

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 explicitly require representation by defense counsel.<sup>11</sup> However, since 2012 when ILS issued its first request-for-proposals to fund defense representation as arraignments, ILS has worked toward defense counsel representation at *all* first court appearances. 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 this reason, ILS uses a broad definition of “gaps in arraignment” to include gaps in defense coverage

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<sup>10</sup> See Appendix E for county-specific information for the current reporting period.

<sup>11</sup> 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).

of *all* first court appearances (regardless of whether the arraignment takes place, or the case is adjourned to be arraigned with counsel at a future date). Doing so is consistent with ILS's mandate to improve the quality of indigent defense under Executive Law § 832(4)(c) and allows ILS to work towards quality, client-centered defense representation.

In 2022, counties reported the following:

- 49 out of the 52 counties (**94.2%**) reported full CAFA coverage during regular DA/PD or PD court sessions (when the institutional primary provider is regularly scheduled to appear).
- 48 out of the 52 counties (**92.3%**) reported full CAFA coverage for custodial arraignments.
- 30 out of the 52 counties (**57.7%**) reported full CAFA coverage during other court sessions (when the institutional primary provider is not regularly scheduled to appear).

The percentage of full CAFA coverage during DA/PD or PD court sessions increased slightly in 2021, with one additional county providing full coverage for these sessions. However, the percentage of full CAFA coverage during “other court sessions” decreased slightly from 2021 to 2022, with one less county reporting full coverage during these sessions. ILS does not currently collect data on the number of arraignments that take place in each of the above categories, so the quantitative impact of gaps in coverage during “other court sessions” cannot currently be measured. Providers anecdotally report that arraignments rarely take place during these sessions and if they do, it is usually due to a scheduling error. The number of arraignments that occur during these sessions may be so low as to be considered sporadic and incidental, thus not warranting the resource allocation necessary to develop an independent system of coverage. Additional data, such as how often people appear for arraignment during these “other” court sessions, will be needed in the future to comprehensively evaluate these apparent gaps in coverage. In the meantime, ILS will work with the providers and courts to address this issue either by creating systems of coverage or working with law enforcement to ensure that they do not schedule appearance ticket arraignments for the court sessions at which a defense provider is not scheduled to appear.

Additionally, the percentage of counties reporting full CAFA coverage for custodial arraignments regressed slightly from 2021 to 2022, with three additional counties reporting coverage of “most” instead of “all” custodial arraignments. As noted above, since ILS does not yet collect data on the number of arraignments that occur within each category, the precise extent of the problem in these counties is difficult to pinpoint. In Appendix E, provider descriptions of the situation suggest that the issue with coverage of custodial arraignments is limited in scope. For instance, providers in two of the four counties report that missed custodial arraignments are an “unlikely event” or “sporadic.” In another county, the provider estimates that only approximately 20 custodial arraignments occur without defense counsel representation. And in the fourth county, problems with coverage of custodial arraignments remains confined to a small subset of courts in the county.

Even though the problem with obtaining complete coverage of custodial arraignments does not apply to the vast majority of arraignments throughout New York, ILS views this problem quite seriously. ILS maintains an uncompromising objective to ensure full arraignment coverage in



compliance with Executive Law § 832(4)(a). Moving forward, ILS will utilize the information revealed in this report to work closely with all stakeholders within these counties to identify the causes of these missed arraignments and develop solutions to the problem. This will entail utilizing statewide funds to apply further resources to providers, working with the Office of Court Administration to implement a Centralized Arraignment Part in the counties that do not have one, working with law enforcement in scheduling arraignments for specific court sessions, and improving the dialogue between local courts and the providers so that local courts notify the providers of all arraignments so that none fall through the cracks.

### **Tracking missed arraignments**

The *Hurrell-Harring* settlement contemplates instances of missed arraignments, stating as follows: “Incidental or sporadic failures of counsel to appear at Arraignments within a County shall not constitute a breach” of the settlement.<sup>12</sup> ILS applies this common-sense standard in fulfilling its obligation under Executive Law §832(4)(a)(iv) to monitor and report on the statewide implementation of the counsel at arraignment requirement. Toward this end, defense providers should develop systems to identify and collect data on missed arraignments to recognize whether their occurrence has become a systematic pattern.

For purposes of the survey instrument, ILS attorneys defined “missed arraignments” as arraignments that take place without counsel, despite a system for representation being in place. In 21 out of 52 counties, providers report using a system to track missed arraignments in some capacity (either custodial, non-custodial, or both). This represents a significant increase of 13 counties from the 2021 report, though ILS will continue to work with counties to make additional progress toward developing statewide systems of tracking missed arraignments. Examples of systems currently in use include cross-checking daily lists of incarcerated individuals with arraignment records, cross-checking case information with arraignment records upon intake, and asking people who apply for assigned counsel if they were represented at their first court appearance. In those counties with incomplete systems or lacking any systems at all, many providers volunteered their opinion that no arraignments would take place without counsel due to court culture and the expectations of the court staff and magistrates. Where missed arraignments have been identified, providers report successful interventions to address these outlying situations. Appropriate training of magistrates and court staff can reinforce adherence to the requirement of counsel at first appearance; independent systems to identify missed arraignments provide an important mechanism to monitor and reinforce this requirement.

### **Improving sustainability**

From the 2017 Counsel at Arraignment Plan until now, the greatest challenge in providing counsel at every arraignment remains the sustainability of arraignment representation programs. This issue is especially pronounced in counties where only a limited number of attorneys provide arraignment representation and arraignments take place at unpredictable times. For example, in one rural county a single attorney from the public defender office is responsible for providing on-call representation at almost all off-hour arraignments. If this attorney falls ill, takes a vacation, or is otherwise unavailable, the county’s CAFA system is potentially thrown into crisis.

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<sup>12</sup> *Hurrell-Harring* Settlement, § II(A)(4).

In situations such as this, ILS works with the county and providers to identify barriers to sustainability and design a solution to bolster the system of representation. In the case of this particular county, ILS is working with the county to restructure the compensation system to attract more attorneys to participate in arraignment representation while the county and providers simultaneously pursue the creation of a Centralized Arraignment Part.

As described in previous reports, Centralized Arraignment Parts (“CAPs”) provide sustainable systems to centralize arraignments at designated times and locations. Judiciary Law § 212(1)(w), which establishes the framework for counties to work with the Office of Court Administration (“OCA”) to create and implement CAPs, is designed to give counties the flexibility needed to develop centralized programs that are attentive to county-specific needs and issues.<sup>13</sup> For example, some CAPs centralize all custodial arraignments at one location, while others may shift CAP responsibilities from one court to another according to a predetermined schedule (often described as the “hub court” model). Providers report a preference for the predictability CAPs offer in the demand for counsel and for the increased opportunities for pre-arraignment, confidential client interviews. CAPs can 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 and magistrates. The number of counties using CAPs has increased from 22 to 25 (including four of the original five *Hurrell-Harring* settlement counties) since the 2021 report was filed, and additional counties are currently pursuing centralized structures.

Where participation in CAFA coverage is expected of all staff attorneys in a defense provider office, a certain degree of sustainability is generally achieved because with enough attorneys participating, the distribution of responsibilities prevents a small number of attorneys from becoming overburdened with CAFA duties in addition to their regular caseload. Conversely, too few participating attorneys results in a brittle system of overworked individuals who are prone to burning out. However, even in counties where the providers have created a rotation system, they must remain vigilant that attorneys do not become overburdened, which can be a particular problem if the office experiences attrition. Unfortunately, since the pandemic, on a national scale the public sector has been experiencing problems of attrition and a diminished ability to recruit and hire new employees.<sup>14</sup> New York’s mandated public defense providers are not immune from this problem, which has created additional challenges to having enough attorneys for sustainable arraignment programs. For programs that utilize assigned counsel programs, the problem is particularly acute, as the statutory rates for these “18-B” attorneys has remained stagnant since 2004. Many attorneys are leaving assigned counsel work and fewer attorneys are joining assigned counsel panels, resulting in a significantly reduced number of assigned counsel attorneys available to participate in arraignment programs.

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<sup>13</sup> See 2019 Implementation Update of Statewide Plan for Implementing Counsel at Arraignment, § III(C), Centralized Arraignment Programs for additional information.

<sup>14</sup> See for example, Bobby Ghosh, “Government Jobs Are Plentiful, But Nobody Wants Them,” Bloomberg News, September 16, 2022, available at: [Public Sector Jobs Are Proving Hard to Fill - Bloomberg](#). As this article notes, while the private sector employment is recovering from the pandemic, state and local governments are well short of pre-pandemic levels.

This past reporting period, the impact attrition has had on arraignment coverage was most evident in two counties. In one county using an office-wide coverage system, a recent increase in the number of attorneys resigning led to the remaining attorneys becoming overburdened as their number of on-call shifts skyrocketed. The defense provider anticipated upcoming retirements that would exacerbate the problem even further. ILS worked with the county to alleviate this looming crisis by providing funding for contract attorneys to participate in the shift rotation until the office can fill its vacancies. In another county, a sudden, dramatic attrition of staff rendered the public defender office incapable of providing CAFA coverage at off-hour arraignments. The collapse of the off-hour component of CAFA coverage has forced law enforcement in that county, which does not yet have a CAP, to adapt by detaining people taken into custody at arrest until the following morning when they can be arraigned with counsel present.

These situations demonstrate both the value of CAPs and the importance of being able to recruit and retain attorneys to provide CAFA coverage. Without these twin pillars, systems remain vulnerable to unacceptable levels of disintegration. Of course, adequate compensation is critical to recruiting and retaining attorneys. Thus, ILS continues to emphasize that the statutory rate for assigned counsel attorneys must be increased, with the counties and New York City maintaining their current contribution and the State funding the increase. For institutional providers, salaries must be competitive, and attorneys must be compensated for arraignment representation outside of regular business hours. ILS has worked with the counties and mandated providers to achieve this objective. Depending on the needs of a county, compensation for arraignment representation is often structured as a flat weekly or daily fee received for being on call and handling any and all arraignments during the shift, an on-call fee augmented by a “per arraignment” fee, or a fee per CAP arraignment shift in those counties with a centralized structure. Counties may also decide to increase the salaries of institutional defenders with the expectation that attorneys will participate in a CAFA rotation. The most common structure of attorney participation involves daily or weekly off-hour on-call shifts shared by a cadre of attorneys, which may be comprised of institutional provider employees as well as assigned counsel panel members, or a permutation in which salaried or contracted positions handle all arraignments in certain courts or at designated times, and the remainder are covered by a rotation of attorneys.

ILS is also working with counties and mandated defense providers to meet the more global pandemic-related hiring challenge by not only using Statewide funds for increased compensation, but also encouraging defense providers to use the Statewide funding for other innovative approaches to recruiting, such as participating in job fairs and the development of law student internship programs, which can effectively create a pipeline of new, dedicated attorneys.

The creation and maintenance of successful structures for CAFA representation thus entail a coordinated effort on behalf of ILS, provider offices and county governments to recruit and retain attorneys, expand provider participation, and design robust systems of representation that provide competitive compensation. ILS will continue to coordinate with counties to monitor and adjust these systems when necessary to ensure their continued viability.

## **II. TOWARD QUALITY ARRAIGNMENT REPRESENTATION: ARRAIGNMENT BEST PRACTICES, OBSTACLES, AND SOLUTIONS**

The presence of counsel at arraignment does not meet the requirements of Executive Law § 832(4)(a) if it is treated as a *pro forma* appearance lacking the hallmarks of quality representation. During surveys with CAFA coordinators, a pattern of similar comments emerged during discussions about the scope of attorneys' pre-arraignment conversation with their clients. These comments revealed the following three primary concerns that defense attorneys have about fully engaging with a client at arraignment: first, lack of confidential pre-arraignment meeting space; second, concerns that there may be a conflict of interest with the client; and third, questions about whether the client is financially eligible for assignment of counsel or will otherwise be seeking to retain counsel. Failure to fully engage with a client at arraignment diminishes the quality of representation. Therefore, in this section of the report, we examine each of these obstacles and provide models of procedures some counties have adopted to overcome them.

### **What constitutes quality representation at arraignment?**

To appropriately assess the quality of provider representation at arraignment, it is helpful to begin by reviewing best practices in representation at arraignment. The moment of a client's first appearance before the court in a criminal case presents a unique opportunity for defense counsel to establish a positive relationship with their client, gather information needed to zealously and immediately begin defending the case, protect their client's legal rights, and make strategic decisions and legal arguments. Quality arraignment representation requires attorneys to:

- Review the charging documents to identify any jurisdictional or legal sufficiency issues.
- Determine and advise the client on their potential exposure to bail being set and possible pre-trial detention taking age, criminal history, any detainers, and the charges into consideration.
- Conduct a meaningful interview that: responds to a client's questions and concerns; provides information and advice about next steps; obtains the case-related factual information needed to, at the very least, identify the need for time-sensitive investigations, possible witnesses and subpoenas; identifies the client's potential need for medical, mental health, or substance abuse treatment; and lays the foundation of trust needed for an effective attorney-client relationship, even if the arraigning attorney is not ultimately assigned to represent the client.
- Prepare arguments and provide advice regarding Orders of Protection, license suspensions and any rights that may be impacted at the arraignment.
- Record prosecution notices and judicial decisions which may impact the path of litigation.

While having the arraigning attorney assigned to represent the client through disposition of the case ("vertical representation") is favored by numerous defense representation standards, logistical barriers to this practice means that in most of New York State outside of New York City, cases are transferred to another attorney after the arraignment, who then represents the client through disposition. To avoid any prejudice to the client that could result from this

handoff, clear protocols must be established for the transfer of information from the arraigning attorney to the attorney ultimately assigned.

### **Confidential space for a discussion of facts**

Access to confidential meeting space for attorney-client meetings is imperative for quality representation, as recognized in the *Hurrell-Harring* Settlement Agreement, § V(A)(3). Attorney-client communications are not confidential or privileged if made in the presence of third parties such as law enforcement, court personnel or other detainees.<sup>15</sup>

Without a private, pre-arraignment conversation, attorneys cannot properly advocate on behalf of their clients during arraignment, make appropriate hearing requests, identify time-sensitive investigative priorities, or properly counsel a client on the impact of having a pending criminal case and the next procedural steps in that case. For example, a green card holder may have an upcoming trip outside the country planned and should be advised that the existence of a pending case may impact their re-entry to the United States.<sup>16</sup> An individual charged with driving under the influence may be eligible for a hardship privilege to escort a family member to necessary medical appointments; the hearing to determine their eligibility must take place within three business days of arraignment but will only be scheduled if requested by defense counsel at the arraignment.<sup>17</sup> An individual charged with robbery may know of video surveillance that provides an alibi but will be deleted automatically after 72 hours, as is the practice in many commercial establishments. None of these time-sensitive, urgent issues would be appropriately identified without a thorough pre-arraignment conversation with the client that goes beyond the bail factors of CPL § 510.30(2)(a) and delves into the client's personal circumstances and the specifics of the case.

Our conversations with the CAFA coordinators in the 52 non-*Hurrell-Harring* settlement counties outside of New York City revealed that only 33 counties consistently provided confidential space for attorneys to speak with clients prior to non-custodial arraignments, and 35 out of 52 counties consistently provided confidential space prior to custodial arraignments. The lack of confidential space did not appear to follow any consistent pattern from county to county. In some counties, the town and village courts have space, but the city courts do not; in others, the opposite is true. Availability of space may depend on whether the arraignment is custodial or non-custodial, or it may simply vary from court-to-court. Because OCA will not approve implementation of a CAP unless it includes confidential meeting space, the counties with CAPs have a head start on ensuring the availability of such space for custodial arraignments, though even in these counties there often is a lack of confidential meeting space for at least some non-custodial, appearance ticket arraignments. In 40 of the 52 counties surveyed, CAFA coordinators reported that either: 1) a pre-arraignment conversation regarding the facts of a case does not take place with regularity, or 2) if it does, that the attorney limits the conversation to bail factors and instructing the client on the next steps in the case. When asked why attorneys do not discuss the facts of a case with their clients, the CAFA coordinators commonly cited the lack of confidential

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<sup>15</sup> See *People v. Harris*, 57 NY2d 335, 343 (1989) (“Generally, communications made in the presence of third parties, whose presence is known to the defendant, are not privileged from disclosure”).

<sup>16</sup> See *Padilla v. Kentucky*, 559 U.S. 356 (2010).

<sup>17</sup> See VTL § 1193(2)(e)(7)(e).

space, inadequate time, and noted that the case would be reassigned to a new attorney after the arraignment, with a thorough interview taking place once the assigned attorney is involved.

ILS will continue to work with providers, OCA, and county officials on addressing the problems of confidential meeting space. As discussed further below, our conversations with the CAFA coordinators reveal that other perceived obstacles—lack of eligibility and conflict determinations—can be an impediment to quality representation at arraignment.

### **Eligibility and conflict determinations**

The absence of a determination as to the financial eligibility for assigned counsel and conflict check does not preclude an attorney from fully engaging the client at arraignment; indeed, current standards call for representation at arraignment and continuously thereafter. While attorney concerns about eligibility and conflicts are understandable, these concerns must give way to the imperative for compliance with established and well-recognized standards that are designed to ensure the provision of quality representation at arraignment.<sup>18</sup> Notably, these standards neither authorize nor contemplate limits to the scope of defense counsel’s representation while their client’s eligibility is determined. To do so would necessarily result in prejudice to accused people who are essentially left unrepresented pending the determination of their eligibility for counsel.<sup>19</sup>

Taken as a whole, the relevant standards and caselaw indicate that clients should be fully and continuously represented from their arraignment through the disposition of their case, regardless of the timing of the eligibility determination. Additionally, eligibility determinations should be made “in a timely fashion,” and the eligibility determination process “shall not be unduly burdensome or onerous.”<sup>20</sup> While CAFA coordinators reported to ILS that eligibility determinations for clients in custody post-arraignment are generally made within a day, those individuals who are released at their arraignment or were never in custody (as with clients who are issued appearance tickets) often experience delays in their eligibility determination. During the CAFA surveys ILS conducted, CAFA coordinators in 30 counties reported that some or all individuals who are not in custody post-arraignment are responsible for contacting the defense provider office to apply for assigned counsel and provide information to determine their financial eligibility. Generally, at arraignment these clients receive instructions on the application process, and once they submit an application, the provider determines eligibility and if eligible, assigns an attorney. Until and unless these clients apply for counsel, their cases are not investigated,

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<sup>18</sup> See ILS, *Standards and Criteria for the Provision of Mandated Representation Cases Involving a Conflict of Interest*, § 5; ILS *Standards for Determining Financial Eligibility for Assignment of Counsel* § III (published in 2016 and most recently updated in 2021); New York State Bar Association, Standards B, Early Entry of Representation

<sup>19</sup> As recognized by the Court of Appeals in *Hurrell-Harring*, “[a]lso ‘critical’ for Sixth Amendment purposes is the period between arraignment and trial when a case must be factually developed and researched, decisions respecting grand jury testimony made, plea negotiations conducted, and pretrial motions filed. Indeed, it is clear that ‘to deprive a person of counsel during the period prior to trial may be more damaging than denial of counsel during the trial itself’ (*Maine v Moulton*, 474 US 159, 170 [1985]).” *Hurrell-Harring v. New York*, 15 NY3d 8, 21-22 (2010).

<sup>20</sup> See Standards for Determining Financial Eligibility for Assigned Counsel, § XIII.

motions are not filed, and no action occurs. This protocol burdens a client with recognizing the urgency of their need for legal counsel and the time-sensitive activities potentially necessary to prepare their defense.

Ten (10) of the 52 counties provide a model for resolving this issue and ensuring there is no delay in the assignment of counsel; in these counties, financial eligibility for assigned counsel is determined at arraignment (regardless of the custodial status of the client).<sup>21</sup> These 10 counties have incorporated eligibility determinations into the arraignment by completing the application at or before the arraignment, possibly with the assistance of intake staff, streamlining the application itself so it can more quickly and easily be completed at arraignment, and staffing arraignment shifts with additional attorneys to allow adequate time to determine eligibility.

In counties where potential clients are expected to reach out to offices to apply for counsel after their arraignment, ILS is committed to working with providers to develop new practices and protocols to remove this unnecessary and deleterious delay in representation.

Similarly, some counties check for conflicts of interest prior to the arraignment. This is generally accomplished through 24/7 remote access to the provider's case management system, the availability of support staff who check for conflicts as soon as the case information is communicated to the provider, or both. ILS will work with provider offices to ensure that conflict checks take place at the earliest possible time in a case to remove any actual or perceived barriers to quality representation. This may include funding intake staff who are available to conduct conflict checks remotely, providing attorneys with the technology needed to access case management systems for conflict checks prior to arraignment, or both. Where conflicts are identified, ILS can assist provider offices in developing protocols for an immediate and informed transfer to new counsel.

However, even in counties where the conflict determination occurs post-arraignment, counsel should not hesitate to fully represent a client at arraignment in the absence of actual knowledge of a disqualifying conflict of interest. According to relevant caselaw, an actual conflict of interest arises when an attorney "ha[s] divided and incompatible loyalties within the same matter necessarily preclusive of single-minded advocacy."<sup>22</sup> In contrast, a potential conflict which is not waived by the client requires reversal only if it "operated on" or "affected" or bore "a substantial relation to" the conduct of the defense.<sup>23</sup> Given the events which occur at arraignment and in the time prior to a conflict check, most cases are likely to present only potential conflicts of interest which fail to violate the right to effective assistance. Indeed, a far greater harm exists if attorneys limit the scope of representation at and immediately following the arraignment.

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<sup>21</sup> Notably, this number includes only those counties that regularly determine eligibility at or before arraignment in all cases. As noted in Section III of this report, 24 additional counties determine eligibility at arraignment in some cases.

<sup>22</sup> *People v. Cortez*, 22 N.Y.3d 1061, 1068 (2014).

<sup>23</sup> *People v. Sanchez*, 21 NY 3d 216, 222-223 (2013); *People v. Payton*, 22 NY 3d 1011, 1014 (2013); *See People v. Solomon*, 20 NY3d 91, 97 (2012); *People v. Abar*, 99 NY2d 406, 409 (2003); *People v. Ennis*, 11 NY 3d 403, 410-411 (2008); *People v. Ortiz*, 75 NY2d 652, 65 (1990) (terms 'operated on', 'affected' and 'substantial relation' all formulations of the same principle).

## **Transfer protocols**

Developing complete and efficient protocols to transfer information and documentation from the arraigning attorney to the attorney assigned through disposition can help insulate clients from any prejudice resulting from the lack of vertical representation. This remains an implementation priority, given that many if not most cases are transferred to a different attorney after the arraignment in most of New York State outside of New York City. Attorneys receiving arraignment files should not be “starting from scratch;” they should have all the information needed to continue the zealous defense of the client that begins at arraignment. Even in counties that provide vertical representation by the same attorney from arraignment through disposition,<sup>24</sup> protocols are needed to transfer cases that must be handed off to a new attorney post-arraignment due to conflicts of interest, retention of private counsel, and other reasons. Forty-eight (48) out of 52 counties report having an existing protocol to transfer information from the arraigning attorney to the attorney assigned through disposition. This is generally accomplished with an intake sheet that accompanies the court paperwork to the new attorney once the client’s eligibility has been determined. ILS has collected and reviewed the intake sheets currently in use, which range widely in their comprehensiveness; recognizing the need for a thorough transfer form that encourages quality representation at arraignment, ILS developed an intake template that is available to providers and counties.<sup>25</sup>

The existence of protocols in 92% of the 52 counties surveyed provides solid foundation for an expansion of the scope of representation at arraignment and the retention of valuable information gleaned during the arraignment. Where appropriate, these existing mechanisms can be augmented to incorporate time-sensitive legal issues, investigation requests, clients’ immigration status, the purpose of the adjournment, and other crucial pieces of information gathered during a thorough pre-arraignment interview. ILS intends to work with providers on a county-by-county basis to foster local cultures that encourage the quality representation outlined above, as well as assisting counties as transfer protocols evolve accordingly.

### **III. COUNSEL AT ARRAIGNMENT REPRESENTATION IN NEW YORK STATE: THE NUMBERS**

This analysis includes 52 counties in New York State.<sup>26</sup> For each county, between April and June 2022, ILS interviewed the coordinator or coordinators responsible for arranging CAFA representation.<sup>27</sup> 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.<sup>28</sup> The data below is a summary of the information these interviews yielded.

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<sup>24</sup> Two counties surveyed (Delaware and Hamilton) report continuity in representation from arraignment for most cases.

<sup>25</sup> The CAFA intake sheet developed by ILS is attached as Appendix B.

<sup>26</sup> New York City and the five Hurrell-Harring Settlement counties are excluded from this analysis.

<sup>27</sup> A list of CAFA coordinator(s) interviewed is attached as Appendix C.

<sup>28</sup> See Appendix A.



## ***1. CAFA program types and providers***

### ***Custodial arraignments***

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

#### ***Program type:***

- **20 out of the 52 non-Settlement counties (38.5%)** handle **custodial arraignments** through a Centralized Arraignment Part (CAP) approved by OCA.
- **1 county** (Nassau; 1.9%) has a District Court which centralizes arraignments and other court functions for certain arraignments in the county.
- **31 out of 52 counties (59.6%)** do not have a CAP and use an on-call system.

#### ***Custodial arraignment providers:***

- In **36 counties (69.2%)**, custodial arraignments were handled by **one single provider**.
  - For **29 of these counties (55.8%)**, custodial arraignments were handled by the **Institutional Primary Provider** (“IPP”; i.e., Public Defender or Legal Aid Society), for **6 (11.5%)** by the **Assigned Counsel Program** (ACP), and for **1 (1.9%)** by the **Institutional Conflict Provider** (“ICP”; Conflict Defender).
- In **16 counties (30.8%)**, custodial arraignments were handled by **two or more providers** of mandated criminal representation.
  - For **11 of these counties (21.2%)**, 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 **2 (3.8%)** by all three providers (IPP, ICP, and ACP).

### ***Non-custodial arraignments***

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

#### ***Non-custodial arraignment providers:***

- In **44 counties (84.6%)**, non-custodial arraignments were handled by **one single provider**.
  - For **38 of these counties (73.1%)**, non-custodial arraignments were handled by the **IPP**, and for **6 (11.5%)** by the **ACP**.

- In **8 counties (15.4%)**, non-custodial arraignments were handled by **two or more providers** of mandated criminal representation.
  - For **3 of these counties (5.8%)**, 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 D.

## 2. *Extent of CAFA coverage*

### Custodial arraignment coverage:

- **Almost all counties (48 out of 52; 92.3%)** indicate that they have legal representation at **all custodial arraignments**, followed by **4 counties (7.7%)** with representation at **most custodial arraignments**.
- **No counties (0%)** indicate that only **some custodial arraignments are covered** and, similarly, **no counties (0%)** indicate that **no custodial arraignments are covered**.

### Gaps in coverage:

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

- **30 out of the 52 counties (57.7%)** indicated that there were **no gaps** in coverage, **0 counties (0%)** 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**,<sup>29</sup> and **16 counties (30.8%)** indicated that there were **gaps in coverage during other court sessions only**.<sup>30</sup>
- **Of the remaining 6 out of 52 counties, 2 counties (3.8%)** indicate that there were gaps in coverage during **regular PD/DA or PD court sessions and other court sessions**, **3 counties (5.8%)** indicate this is the case at **custodial arraignments and other court sessions**, and **1 county (1.9%)** indicates this is the case at **custodial arraignments, regular PD/DA or PD court sessions, and other court sessions**.
- Of the **22 counties** that indicated that there were **gaps during other court sessions** (either as the sole option or one of the checked options), **20 counties** specifically mentioned that these gaps included **appearance tickets scheduled for days when counsel are not regularly scheduled to appear**. In these situations, justices often – but

<sup>29</sup> These are court sessions when the IPP/ICP/ACP is regularly scheduled to appear for criminal cases.

<sup>30</sup> These are court sessions when the IPP/ICP/ACP is not regularly scheduled to appear for criminal cases.

not always – adjourn the matter without conducting an arraignment until the next regular court session where counsel is present to conduct the arraignment.<sup>31</sup>

Systems to identify missed arraignments:

“Missed arraignments” are arraignments that take place without counsel, despite a system for representation being in place. The *Hurrell-Harring* Settlement contemplates that such arraignments may take place without violating the terms of the agreement: “[i]ncidental or sporadic failures of counsel to appear at Arraignments within a County shall not constitute a breach of the State’s obligations [to ensure that each criminal defendant who is eligible for publicly funded legal representation is represented by counsel in person at his or her arraignment].”<sup>32</sup> It is, however, important to track missed arraignments because they can help providers determine how well their arraignment programs are functioning and can assist providers in identifying and resolving systematic gaps.

- **18 out of the 52 counties (34.6%)** indicate that they have a system in place **to identify missed arraignments that result in a client being held in custody**; 34 counties (65.4%) do not have such a system.
- **Similarly, 13 out of the 52 counties (25.0%)** indicate that they have a system in place **to identify missed non-custodial arraignments**; 39 counties (75.0%) do not have such a system.
- **Systems to identify missed arraignments include** the use of **jail lists** (lists of incarcerated individuals generated by custodial authorities) to identify any missed arraignments that result in a client being held in custody, **receiving notification from the court** where the missed arraignment occurred, and reviewing providers’ internal records when a new assignment comes in (i.e., checking for each assignment if there is an arraignment sheet or not).

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

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<sup>31</sup> Although the definition of an “arraignment” in the *Hurrell-Harring* Settlement technically excludes “appearances where no prosecutor appears, and no action occurs other than the adjournment of the criminal process and the unconditional release of the person charged,” in this scenario, a person charged with a crime has made their first appearance in court without the benefit of representation. This results in an unnecessary adjournment, an additional court appearance (with associated missed employment, childcare issues, and other hardships borne by the client), lengthens the amount of time that a charged individual has an open criminal case pending against them, and disadvantages time-sensitive investigations. For these reasons, ILS documents these as “gaps” in representation.

<sup>32</sup> *Hurrell-Harring* Final Settlement Agreement, § III(A)(4).

### 3. *Virtual and in-person arraignments*<sup>33</sup>

- At the time of the interview (April – June 2022), **most counties (i.e., 43 out of 52 counties; 82.7%)** conducted all arraignments **in-person**. **Nine out of the 52 counties (17.3%)** were still conducted some arraignments **virtually**.<sup>34</sup>

### 4. *Eligibility screening*

#### *Timing of eligibility screening:*

- **In 13 out of the 52 counties (25.0%),** criminal court eligibility screenings may take place **prior to the day of the arraignment**. Eight of these counties determine eligibility prior, on, *and* after the day of the arraignment, 4 prior and after, and 1 prior and on the day of the arraignment.
- **In 33 out of the 52 counties (63.5%),** criminal court eligibility screenings may take place **on the day of the arraignment**. Nine of these counties determine eligibility **for all cases** on the day of the arraignment; the remaining 24 counties determine eligibility **for some of their cases** on the day of the arraignment, and for some of their cases at a different moment.<sup>35</sup>
- **In 42 out of the 52 counties (80.8%),** criminal court eligibility screenings may take place **after the day of the arraignment**. Fifteen of these counties determine eligibility **for all cases** after the day of the arraignment; the remaining 27 counties determine eligibility **for some of their cases** after the day of the arraignment, and for some of their cases at a different moment.<sup>36</sup>

#### *Providers conducting eligibility screening:*

- **In most counties (28 out of 52; 53.8%)** the **Public Defender's Office or Legal Aid Society** conducts the eligibility screening, followed by the **Assigned Counsel Program (10 counties; 19.2%),** the **Public Defender's Office and the Court (8 counties; 15.4%),** and the **Court only (4 counties; 7.7%).**<sup>37</sup>

#### *Income guideline for eligibility screening:*

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<sup>33</sup> 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.

<sup>34</sup> As noted above, these nine counties have now returned to systems for in-person arraignments.

<sup>35</sup> Specifically, 15 counties determine eligibility on and after the day of the arraignment, 1 county on and prior to the day of the arraignment, and 8 counties on, prior to, and after the day of the arraignment.

<sup>36</sup> Specifically, 15 counties determine eligibility after and on the day of the arraignment, 4 counties after and prior to the day of the arraignment, and 8 counties after, on, and prior to the day of the arraignment.

<sup>37</sup> Additionally, in 1 county, eligibility screening was done by the Office of Indigent Defense and in 1 other county eligibility screening was technically done by the Court but in practice by no one.

- **48 counties out of 52 counties (92.3%)** report that **250 percent of the Federal Poverty Guidelines (FPG)** is used as an income guideline while **assessing presumptive eligibility for assigned counsel in criminal court**, and **1 county (1.9%)** reports **150%.**<sup>38</sup>

**5. *Confidential meeting space***

- Prior to **non-custodial arraignments, confidential space** is provided for attorney interviews in **33 out of 52 counties (63.5%)**.
- Prior to **custodial arraignments, confidential space** is provided for attorney interviews in **35 out of 52 counties (67.3%)**.

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<sup>38</sup> For the remaining three counties (5.8%), the presumptive income guideline was unknown by the CAFA coordinator at the time of the interview.

## Appendix A

## 2022 CAFA REPORT PROTOCOL

**Goal:** To determine (and accurately report) the CAFA systems that exist in each county, identify issues with system coverage, and assess how well systems are working to ensure quality representation at arraignments.

**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 should be interviewed.

During or after the interview, Team attorneys will complete a QuestionPro survey (located at <https://cafainterviews2022.questionpro.com>) 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 general structure of arraignments from prior CAFA interviews and current ILS contracts. The purpose of this is to make sure providers know that we aren't "starting from scratch," and that we are aware of the information that has already been provided to or is otherwise in the possession of our office. 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. With the exception of Nassau County<sup>1</sup>, counties fall into one of two categories: (a) an OCA-approved CAP established pursuant to Judiciary Law § 212(1)(w)<sup>2</sup> or (b) an on-call system.
  - a. For counties with an OCA-approved CAP:
    - i. What are the days and times of the CAP sessions?
    - ii. Is there a CAP rotation? Does everyone in the office/on the panel participate? Are only certain attorneys regularly assigned to the CAP?
    - iii. Are there any courts and/or arresting agencies in the county that do not use the CAP? If so, which ones?
    - iv. Is the CAP augmented by an on-call system for custodial arraignments in certain jurisdictions within the county? If so, please describe.

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

<sup>2</sup> As of March 7, 2022, counties with OCA-approved CAPs are Broome, Cayuga, Chautauqua, Cortland, Livingston, Madison, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Schuyler, Seneca, Steuben, Tioga, Tompkins, Warren, Washington, Wayne, and Yates.

b. For counties without an OCA-approved CAP:

- i. What is/are the system(s) to provide representation at custodial arraignments? For example, attorneys might be organized into “on call teams,” or there may be one attorney who handles all custodial arraignments countywide. Arraignments may take place 24/7 throughout the County, or at certain times in certain courts that have pre-arraignment detention but on an “on-call” basis for other courts.

c. For all counties:

- i. Is representation provided for arraignments involving warrant returns on already open cases? Are there any issues with providing representation at these arraignments?

ii. Non-custodial arraignments:

1. What is/are the system(s) to provide representation at non-custodial arraignments?
2. When do noncustodial (appearance ticket) arraignments take place? For example, non-custodial arraignments could be scheduled at a CAP, or only during regular PD court sessions, or during court sessions when the PD does not normally appear.
3. Have courts added additional regular, non-custodial arraignment court sessions during the past year to accommodate an increase in appearance tickets?

- iii. Situations where there is no system in place to provide representation<sup>3</sup>. For example, if there is no system to provide representation for appearance tickets scheduled during court sessions when defense attorneys do not normally appear, it should be indicated here.

1. Are there regularly scheduled court sessions at which defense attorneys are not scheduled to appear?
  - a. If so, are appearance tickets ever scheduled for these sessions? With what frequency?<sup>4</sup>

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

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



- b. If so, what happens if a person appears for an arraignment at these sessions?<sup>5</sup>
- 2. Are there any other situations where arraignments take place, but no representation is provided?
- iv. Is there a backup system in place if the attorney primarily responsible is unavailable due to an emergency?
- v. What is the compensation system for CAFA attorneys? Please make note of amounts and highlight if different from that set forth in ILS contracts.

(2) Missed arraignments.

- a. Do arraignments ever take place without counsel, despite a system for representation being in place? (In other words, for arraignments where representation would normally be provided, do they ever take place without counsel?)<sup>6</sup>
  - i. If so, what are the types of circumstances in which arraignments have taken place without an attorney?
  - ii. If the provider says no, or that missed arraignments would never happen, follow up to ask why they assert that's the case.
- b. Is there a system to identify when missed arraignments take place? If so, please describe in detail.
- c. What steps have been taken to collect and maintain records regarding missed arraignments?

(3) Virtual arraignments.

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

(4) Raise The Age arraignments.

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

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

a. How are Raise The Age arraignments during regular business hours handled?

i. Who provides representation?

b. How are off-hour Raise The Age arraignments handled?

i. Who provides representation?

(5) Less Is More recognizance hearings (Executive Law 259-i(3))

a. How are Less Is More recognizance hearings during regular business hours handled?

i. Who provides representation for recognizance hearings for an alleged parole violation stemming from an arrest for a new criminal charge?

ii. Who provides representation for recognizance hearings that do not involve a new criminal charge?

b. How are off-hour Less Is More recognizance hearings being handled?

i. Who provides representation for recognizance hearings for an alleged parole violation stemming from an arrest for a new criminal charge?

ii. Who provides representation for recognizance hearings that do not involve a new criminal charge?

c. How would you assess the implementation of the new right to recognizance hearings set forth in the Less Is More legislation?

(6) Eligibility

a. Who currently screens for financial eligibility for assigned counsel:

i. For Criminal Court cases?

ii. For Family Court cases?

b. In assessing presumptive eligibility for assigned counsel, what percentage of the Federal Poverty Guidelines (FPG) is used as an income guideline?

i. For Criminal Court cases?

ii. For Family Court cases?

- c. Criminal cases only: are eligibility screenings conducted prior to the date of arraignment, on the day of arraignment, or after the arraignment is completed?
  - i. If screenings are done post-arraignment, what are the obstacles, if any, to assessing eligibility in advance of the arraignment?
- d. Criminal cases only: how can ILS support the conducting of eligibility screenings pre-arraignment?

(7) Obstacles to quality representation.

- a. Is confidential space provided for attorney interviews prior to custodial arraignments? What about non-custodial arraignments?
- b. Do arraigning attorneys discuss the facts of the case with clients prior to the arraignment? If not, why not?
- c. Do arraigning attorneys remain assigned to the case through disposition?
- d. Do arraigning attorneys remain assigned to the case until the next attorney is assigned?
- e. Is there a protocol for the transfer of information from the arraigning attorney to the attorney ultimately assigned to the case? Please describe. (If a transfer form is used, please request a copy.)

(8) Changes.

- a. What improvements (if any) have you seen in arraignment representation in the last year?
- b. Has arraignment representation become more challenging? How?

**Recording responses (3 steps):**

- ☐ As with previous years, questionnaires (and any transfer forms that have been provided) will be saved in CAFA folders that Team Attorneys should create in each of the YR 4 (or YR 3/YR 4) 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 22" – 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.
- ☐ The Questionpro Survey should be filled out (based on the answers to this survey) and uploaded/saved.

- County-specific information about CAFA stipends should be entered into the CAFA stipend chart (“Updated CAFA Stipend Chart 2018-2022”) located here: V:\STATEWIDE IMPLEMENTATION PLANS\CAFA

## Appendix B

# 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 C



### Appendix C: Interviewees and Interviewers per County

County	CAFA coordinator(s) interviewed	ILS attorney conducting the interview
<b>Albany</b>	Tina Sodhi, Alternate Public Defender & Steve Herrick, Public Defender	Claire Zartarian
<b>Allegany</b>	J.R. Carter, Public Defender	Claire Zartarian
<b>Broome</b>	Mike Baker, Public Defender	Claire Zartarian
<b>Cattaraugus</b>	Darryl Bloom, Public Defender	Kathryn Murray
<b>Cayuga</b>	Lloyd Hoskins, ACP Administrator	Kathryn Murray
<b>Chautauqua</b>	Ned Barone, Public Defender	Claire Zartarian
<b>Chemung</b>	John Brennan, Public Advocate	Claire Knittel
<b>Chenango</b>	Karri Beckwith, ACP Administrator & John Cameron, Public Defender	Kathryn Murray
<b>Clinton</b>	Justin Meyer, ACP Administrator & Jamie Martineau, Public Defender	Claire Zartarian
<b>Columbia</b>	Shane Zoni, Public Defender	Claire Zartarian
<b>Cortland</b>	Michael Cardinale, ACP Coordinator & Keith Dayton, Public Defender	Claire Knittel
<b>Delaware</b>	Joe Ermeti, Public Defender	Kathryn Murray
<b>Dutchess</b>	Tom Angell, Public Defender	Claire Zartarian
<b>Erie</b>	Michelle Parker, ACP Administrator, David Schopp, Chief Executive Officer Legal Aid Bureau, & Mike Deal, Managing Attorney Legal Aid Bureau	Claire Knittel
<b>Essex</b>	Brandon Boutelle, Public Defender	Claire Knittel
<b>Franklin</b>	Tom Soucia, Public Defender	Claire Zartarian
<b>Fulton</b>	Roger Paul, Public Defender	Claire Knittel
<b>Genesee</b>	Jerry Ader, Public Defender	Claire Zartarian
<b>Greene</b>	Angelo Scaturro, Public Defender	Kathryn Murray
<b>Hamilton</b>	Sterling Goodspeed, Public Defender	Claire Knittel
<b>Herkimer</b>	Keith Bowers, ACP Administrator	Claire Knittel
<b>Jefferson</b>	Julie Hutchins, Public Defender	Claire Zartarian
<b>Lewis</b>	Michael Young, Public Defender	Claire Knittel
<b>Livingston</b>	Lindsay Quintilone, Public Defender	Jennifer Chenu
<b>Madison</b>	David DeSantis, ACP Administrator	Brendan Keller
<b>Monroe</b>	Jill Paperno, Acting Public Defender	Claire Knittel
<b>Montgomery</b>	Bill Martuscello, Public Defender	Claire Knittel
<b>Nassau</b>	Scott Banks, Legal Aid-Chief Attorney & Bob Nigro, ACP Administrator	Jennifer Chenu
<b>Niagara</b>	Vince Sandomato, First Assistant Public Defender	Claire Knittel
<b>Oneida</b>	Leland McCormack, Public Defender	Claire Knittel
<b>Orange</b>	Damian Brady, ACP Administrator & Gary Abramson, Chief LAS Attorney	Claire Zartarian
<b>Orleans</b>	Joanne Best, Public Defender	Claire Knittel
<b>Oswego</b>	Sara Davis, ACP Administrator	Brendan Keller

### Appendix C: Interviewees and Interviewers per County

County	CAFA coordinator(s) interviewed	ILS attorney conducting the interview
<b>Otsego</b>	Aaron Dean, Public Defender	Kathryn Murray
<b>Putnam</b>	David Squirrell, Chief Attorney- Legal Aid Society	Kathryn Murray
<b>Rensselaer</b>	John Turi, Public Defender	Claire Zartarian
<b>Rockland</b>	Jim Licata, Public Defender & Ellen Woods, Senior Assistant Public Defender	Kathryn Murray
<b>Saratoga</b>	Andrew Blumenberg, Public Defender & Dawn Phillips, ACP Administrator	Claire Zartarian
<b>Schenectady</b>	Stephen Signore, Public Defender	Claire Zartarian
<b>Schoharie</b>	Suzanne Graulich, ACP Administrator	Claire Knittel
<b>Seneca</b>	Michael Mirras, Public Defender	Claire Knittel
<b>St. Lawrence</b>	James McGahan, Public Defender & Scott Goldie, ACP Administrator	Claire Zartarian
<b>Steuben</b>	Shaun Sauro, Public Defender	Kathryn Murray
<b>Sullivan</b>	Lynda Levine, ACP Administrator & Tim Havas, Chief Legal Aid Panel Attorney	Claire Zartarian
<b>Tioga</b>	George Awad, Public Defender & Thomas Cline, Second Assistant Public Defender	Kathryn Murray
<b>Tompkins</b>	Lance Salisbury, Supervising Attorney	Lisa Joy Robertson
<b>Ulster</b>	Ruth Boyer, Public Defender	Kathryn Murray
<b>Warren</b>	Marcy Flores, Public Defender & Robert Gregor, Supervising Attorney	Brendan Keller
<b>Wayne</b>	Andrew Correia, Public Defender	Lisa Joy Robertson
<b>Westchester</b>	Clare Degnan, Legal Aid Society Executive Director & Sherry Wallach, Deputy Director	Claire Zartarian
<b>Wyoming</b>	Norm Effman, Public Defender	Claire Knittel
<b>Yates</b>	Dianne Lovejoy, ACP Administrator & Steve Hampsey, Public Defender	Claire Knittel
<b>52 Upstate Counties</b>	<b>68 individuals interviewed</b>	<b>Interviews conducted by 6 ILS attorneys</b>

## Appendix D

**Appendix D.** *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) <sup>1</sup>	On-call system / No CAP	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program
Albany		✓	✓	✓		✓	✓	
Allegany		✓	✓			✓		
Broome	✓		✓			✓		
Cattaraugus		✓	✓			✓		
Cayuga	✓				✓			✓
Chautauqua	✓		✓			✓		
Chemung		✓		✓		✓	✓	
Chenango		✓	✓			✓		
Clinton		✓	✓		✓	✓		
Columbia		✓	✓			✓		

<sup>1</sup> 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 Arrangement Program (CAP) <sup>1</sup>	On-call system / No CAP	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program
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) <sup>1</sup>	On-call system / No CAP	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program
Lewis		✓	✓			✓		
Livingston	✓		✓			✓		
Madison	✓				✓			✓
Monroe		✓	✓			✓		
Montgomery		✓	✓			✓		
Nassau	✓ <sup>2</sup>		✓		✓	✓		✓
Niagara	✓		✓			✓		
Oneida	✓		✓			✓		
Orange	✓		✓			✓		
Orleans	✓		✓		✓	✓		
Oswego	✓				✓			✓

<sup>2</sup> Nassau has a District Court which centralizes arraignments and other court functions for town and village courts in the county.

	Custodial Arraignments: Program Type		Custodial Arraignments: Provider(s)			Non-custodial Arraignments: Provider(s)		
County	Centralized Arraignment Program (CAP) <sup>1</sup>	On-call system / No CAP	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program
Otsego	✓		✓		✓	✓		
Putnam		✓	✓			✓		
Rensselaer		✓	✓	✓		✓	✓	
Rockland		✓	✓			✓		
Saratoga		✓	✓		✓	✓		
Schenectady		✓	✓	✓		✓	✓	
Schoharie		✓			✓			✓
Seneca	✓		✓		✓	✓		
St. Lawrence		✓	✓	✓	✓	✓	✓	
Steuben	✓		✓			✓		
Sullivan		✓	✓	✓	✓	✓		
Tioga	✓		✓			✓		

	Custodial Arraignments: Program Type		Custodial Arraignments: Provider(s)			Non-custodial Arraignments: Provider(s)		
County	Centralized Arraignment Program (CAP) <sup>1</sup>	On-call system / No CAP	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program	Institutional Primary Provider (PD / LAS)	Institutional Conflict Provider (CD / LAS)	Assigned Counsel Program
Tompkins	✓				✓			✓
Ulster		✓	✓			✓		
Warren	✓		✓			✓		
Wayne	✓		✓			✓		
Westchester		✓	✓		✓	✓		✓
Wyoming		✓	✓			✓		
Yates	✓		✓		✓	✓		
<b>TOTAL # OF ✓ COUNTIES</b>	<b>21</b>	<b>31</b>	<b>45</b>	<b>6</b>	<b>19</b>	<b>46</b>	<b>5</b>	<b>9</b>



## Appendix E

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

County	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments <sup>1</sup> ?		
	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	C: Yes ✓ or no ✗	NC: Yes ✓ or no ✗	If yes, describe
Albany	✓				✓					✓	✗	Upon assignment, case information is cross-checked with arraignment records.
Allegany		✓				✓		✓	Representation is provided at custodial arraignments if the case is bail eligible or the judge has requested counsel. The PD estimates that this results in about 20 custodial arraignments per year occurring without counsel.  Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the client is arraigned without counsel.	✓	✓	Jail lists are cross-checked with arraignment records. Upon assignment, case information is cross-checked with arraignment records.
Broome	✓				✓					✓	✗	Jail lists are cross-checked with arraignment records.
Cattaraugus	✓				✓					✗	✗	

<sup>1</sup> Note: system may not be complete in capturing all instances of missed arraignments (i.e., checking a jail list will identify missed arraignments that result in clients being held in on bail or remanded, but not those that result in a clients' release).

	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments <sup>1</sup> ?		
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	C: Yes ✓ or no ✗	NC: Yes ✓ or no ✗	If yes, describe
Cayuga	✓						✓	✓	Sometimes appearance tickets are scheduled for court sessions when the ACP is not scheduled to appear. In those situations, the case is adjourned to the next court session when the ACP will be present for arraignment. When the CAFA coordinator is notified in advance about an arraignment during a regular ACP session, an attorney will be present. However, attorneys are not formally assigned to all regular ACP sessions. Instead, attorneys pick up arraignments during these sessions if they happen to be there for a different matter. If no attorney is available, the case is adjourned to the next court session for arraignment, and the court notifies the CAFA coordinator to ensure an attorney is present on the next court date.	✓	✓	Jail lists are cross-checked with arraignment records. Court calendars are cross-checked with arraignment records.
Chautauqua	✓				✓					✗	✗	
Chemung		✓				✓		✓	For custodial arraignments, in the unlikely event the courts can't reach the on-call attorney, they will try to arrange for another attorney. However, if this doesn't work out, the custodial arraignment will happen without counsel.  For appearance ticket arraignments, sometimes they are scheduled for court sessions when the PD is not scheduled to appear. In those	✓	✓	Upon assignment, case information is cross-checked with arraignment records.

	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments <sup>1</sup> ?		
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	C: Yes ✓ or no ✗	NC: Yes ✓ or no ✗	If yes, describe
									situations, the client is arraigned without counsel.			
Chenango	✓							✓	Sometimes appearance ticket arraignments 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.	✓	✗	Jail lists are cross-checked with arraignment records
Clinton	✓							✓	Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the arraignment will either be handled by an 18b attorney (if one is present) or the case is adjourned to the next PD session for arraignment.	✓	✗	Jail lists are cross-checked with arraignment records.
Columbia	✓				✓					✓	✗	Jail lists are cross-checked with arraignment records.
Cortland	✓							✓	Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the client is arraigned without counsel.	✗	✗	
Delaware	✓							✓	Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the client is arraigned without counsel.	✗	✓	Upon assignment, case information is cross-checked with arraignment records.

	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments <sup>1</sup> ?		
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	C: Yes ✓ or no ✗	NC: Yes ✓ or no ✗	If yes, describe
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.	✓	✗	Jail lists are cross-checked with arraignment records.
Erie	✓				✓					✗	✗	
Essex	✓				✓					✓	✓	For each arraignment, a form is filled out indicating if counsel was present or not. The office receives these forms from the court.
Franklin	✓							✓	Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, representation is provided if the PD is notified ahead of time. Otherwise, the case is adjourned to the next PD session for arraignment.	✓	✓	Jail lists are cross-checked with arraignment records. Clients are asked during intake if they were represented at their arraignment.
Fulton	✓				✓					✗	✗	
Genesee	✓							✓	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.	✗	✓	Clients are asked during intake if they were represented at their arraignment.

	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments <sup>1</sup> ?		
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	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
Greene	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Hamilton	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Upon assignment, case information is cross-checked with arraignment records.
Herkimer	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Jefferson	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Lewis	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Upon assignment, case information is cross-checked with arraignment records.
Livingston	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Jail lists are cross-checked with arraignment records.
Madison	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Upon assignment, case information is cross-checked with arraignment records.

	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments <sup>1</sup> ?		
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	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
Monroe	✓				✓					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Montgomery	✓				✓					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Nassau		✓				✓	✓	✓	Outside of the District Court, representation is not provided unless the court notifies the ACP or a panel attorney directly. The ACP Administrator reports that judges typically make efforts to have a defense attorney present.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Niagara	✓				✓					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Oneida	✓				✓					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Orange	✓							✓	Sometimes appearance tickets are scheduled for court sessions when the Legal Aid Society is not scheduled to appear. In those situations, the case is arraigned without counsel and the case adjourned to the next court session when the Legal Aid Society will be present.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Orleans	✓							✓	Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

County	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?				If yes, describe	Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments <sup>1</sup> ?		
	All	Most	Some	None	No	Yes, gaps for custodial arraignments	Yes, gaps during regular DA / PD or PD	Yes, gaps during other court sessions		C: Yes ✓ or no ✗	NC: Yes ✓ or no ✗	If yes, describe
									appear. In those situations, the case is adjourned to the next PD session for arraignment.			
Oswego	✓				✓					✗	✗	
Otsego	✓				✓					✗	✗	
Putnam	✓				✓					✓	✓	Upon assignment, case information is cross-checked with arraignment records.
Rensselaer	✓							✓	Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the case is either adjourned to the next PD session for arraignment or the arraignment is handled by the on-call attorney.	✓	✓	Upon assignment, case information is cross-checked with arraignment records.
Rockland	✓							✓	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.	✗	✗	
Saratoga	✓							✓	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.	✗	✗	



County	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments <sup>1</sup> ?		
	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	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
Schenectady	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Schoharie	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	Sometimes appearance tickets are scheduled for court sessions when the ACP is not scheduled to appear. In those situations, the case is adjourned to the next ACP session for arraignment.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Seneca	<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"/>	<input checked="" type="checkbox"/>	
St. Lawrence	<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"/>	<input checked="" type="checkbox"/>	Jail lists are cross-checked with arraignment records.
Steuben	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Sullivan	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Jail lists are cross-checked with arraignment records. Clients are asked during intake if they were represented at their arraignment.
Tioga	<input checked="" type="checkbox"/>				<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 (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments <sup>1</sup> ?		
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	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
Tompkins	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The ACP provides representation at “criminal” City Court sessions at which defense counsel is scheduled to appear. Currently, in the Town and Village Courts, the ACP does not provide representation at appearance ticket arraignments unless notified in advance of a scheduled arraignment. The ACP is working to extend its City Court arraignment program (i.e., attorneys at regular criminal sessions) to the Town and Village courts.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Ulster	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Warren	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Wayne	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	Sometimes appearance tickets are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the client is arraigned without counsel and the case adjourned to the next PD court session.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Westchester	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

	Custodial Arraignments: Degree of Coverage by Counsel				Counsel at Arraignment Coverage: Any Gaps?					Custodial (C) and Non-Custodial (NC) Arraignments: Any System to Identify Missed Arraignments <sup>1</sup> ?		
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	C: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	NC: Yes <input checked="" type="checkbox"/> or no <input checked="" type="checkbox"/>	If yes, describe
Wyoming		✓				✓		✓	Nearly all custodial arraignments occur with the defendant represented by counsel, though there are sporadic occasions when the on-call attorney misses the call. The PD is working toward developing a tracking system to determine how often this occurs.  For appearance tickets arraignments, sometimes they are scheduled for court sessions when the PD is not scheduled to appear. In those situations, the client is arraigned without counsel and the case adjourned to the next PD court session.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Yates	✓				✓					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
TOTAL # OF ✓ COUNTIES	48	4	0	0	30	4	3	22		18	13	