



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

2016 Update

November 10, 2016

Submitted by the New York State Office of Indigent Legal Services in accordance with
Section III of the *Hurrell-Harring v. The State of New York* Stipulation and Order of Settlement.

Update to 2015 Plan to Implement the Counsel at Arraignment Obligations In the *Hurrell-Harring v. New York State Settlement*

The New York State Office of Indigent Legal Services (ILS) submits this report to update its 2015 *Plan to Implement the Counsel at Arraignment Obligations in Hurrell-Harring v. New York State Settlement*. This Plan was submitted pursuant to § III of the *Hurrell-Harring Settlement*, which requires that by November 11, 2016, the five defendant counties have implemented programs to provide defense counsel at the arraignments of all defendants eligible for mandated representation. The Settlement also requires New York State to provide the five defendant counties a total of \$1 million to initiate these counsel at arraignment programs.

Pursuant to the Settlement, ILS met with stakeholders in each of the five *Hurrell-Harring* counties to develop a written plan for providing counsel at arraignment. On September 11, 2015 ILS submitted this Plan to the parties. The parties had 30 days to submit comments, and ILS had 30 days to review and consider these comments. On November 12, 2015, ILS submitted a final Counsel at Arraignment Plan, setting forth the programs that would be needed for full arraignment coverage in each of the five defendant counties and estimating the costs of these programs. Of no surprise, these costs exceeded the \$1 million allocated in the Settlement for arraignment coverage. Accordingly, the Plan set forth how much of the Settlement's \$1 million each county would receive to initiate implementation of the proposed counsel at arraignment programs, detailing which aspects of these programs would be implemented if only \$1 million in State funding were available. Each county's proportionate share of the Settlement's \$1 million for counsel at arraignment was sufficient to fully fund at least one of the necessary arraignment programs, but could only partially fund other programs. These partially funded programs were to be initiated as pilot programs.

In its 2016-2017 New York State budget request, ILS requested the funding needed to implement all of the programs in the *Hurrell-Harring* counties for full counsel at arraignment coverage. The full amount of this funding was included in the ILS Final Fiscal Year 2016-2017 Budget. As described in this report, some of the counties initiated their counsel at arraignment obligation by starting with those programs identified as pilot programs in the 2015 Counsel at Arraignment Plan, and then expanding where appropriate.

In addition to detailing the steps that have been taken to implement the 2015 Counsel at Arraignment Plan, this report also discusses the steps ILS has taken to help the providers in the five *Hurrell-Harring* counties to collect, maintain, and report on data related to the outcomes of having counsel at arraignment. Additionally, this report relays stories providers have shared with ILS that illustrate the value of having counsel at arraignment. Accordingly, this report is organized into the following sections:

- I. Implementation of the 2015 Counsel at Arraignment Plan: County Specific Information
- II. Assessment of Outcomes of Having Counsel at Arraignment
- III. Stories that Illuminate the Value of Having Counsel at Arraignment

I. Implementation of the 2015 Counsel at Arraignment Plan: County Specific Information

For each of the five *Hurrell-Harring* counties, this section provides background information about their counsel at arraignment coverage. It then details the steps each county has taken to implement the 2015 Counsel at Arraignment Plan, and provides an assessment of each county's arraignment coverage as of November 2016. Finally, it summarizes the sources of funding for each county's arraignment programs.

Onondaga County

A. The 2015 Counsel at Arraignment Plan: Background and Overview

In November 2015, when ILS issued its final Counsel at Arraignment Plan, Onondaga County already had in existence the following programs for arraignment coverage:

- *Syracuse City Court Arraignments*: Arraignment coverage for the daily criminal calendar in Syracuse City Court began in 2001 as a county-funded initiative to have defense attorneys available for detained defendants. In 2006, using federal funding, the program was expanded to include daily afternoon arraignments. In 2013, Onondaga County began using ILS distribution funding to expand the morning arraignment coverage to include non-detained defendants appearing on appearance tickets or bench warrants.
- *Syracuse City Community Court*: This court meets one day each week to address "quality of life" violations. County funding pays for one attorney to provide representation during this weekly court session.
- *Town and Village Courts*: In 2013, after receiving an ILS Counsel at First Appearance competitive grant award, Onondaga County began providing coverage of arraignments during regular court sessions in 14 of the County's 28 justice courts. This grant award provides for two attorneys (one felony-qualified attorney and one misdemeanor-qualified attorney) at regular court sessions in each of these 14 courts to conduct arraignments. In 2015, noting that there was extra funding available from the Counsel at First Appearance grant award, the County added coverage for a 15th justice court. Since this 15th court is smaller, only one attorney is needed to provide arraignment coverage.¹

Given the above pre-existing arraignment programs, ILS' 2015 Counsel at Arraignment Plan identified the following gaps in arraignment coverage:

1. *Regular court sessions of the 13 uncovered justice courts*, including: Elbridge, Fabius, Fayetteville, Jordan, Lafayette, Manlius (Village), Marcellus, Minoa, Otisco, Pompey, Skaneateles, Spafford, and Tully.

¹ The fifteen justice courts covered by this program are (in order of size): Salina, Dewitt, Camillus, Clay, Cicero, Geddes, Onondaga, Manlius, Solway, East Syracuse, Liverpool, Baldwinsville, Van Buren, North Syracuse, and Lysander.

2. *Syracuse City Traffic Court*, which conducts daily arraignments in the morning.
3. *Justice court arraignments conducted in the Criminal Courts Building*. As a courtesy to town and village court justices who have law offices in Syracuse, the Office of Court Administration (OCA) had been allowing justices to occasionally conduct off-hour arraignments in the Criminal Courts Building located in Syracuse. Such arraignments could be conducted only when the building was open and security staff available. At the time of ILS' 2015 Counsel at Arraignment Plan, it was believed that perhaps six magistrates were conducting such arraignments, though there was no data on how many of these arraignments occurred per year.
4. *Off-hour arraignments in all 28 justice courts*. Off-hour arraignments are those that happen any time of day outside of a regularly scheduled court session. Instead of issuing an appearance ticket for a regularly scheduled court session, law enforcement immediately transport the person to a magistrate to be arraigned. There are no off-hour arraignments in Syracuse City Court because individuals arrested in Syracuse are either issued an appearance ticket or detained in the County's Justice Center and arraigned the following morning.

To address the above gaps in arraignment coverage, ILS worked with Onondaga County to develop a program for each gap. The process of developing these programs and the programs themselves are fully discussed in ILS' 2015 Counsel at Arraignment Plan. Below is a brief description of these programs:

1. *Regular court sessions of the smaller 13 justice courts*: To cover these arraignments, the County decided to expand its already existing justice court arraignment program. Because these 13 smaller courts have fewer arraignments, this expansion requires only one felony-qualified attorney to attend each regularly scheduled court session. Based on the number of cases in these courts, the County estimated that this program would cost **\$76,500 per year**.
2. *Syracuse City Traffic Court*: The Syracuse Traffic Court arraignments occur at the same time and in the same building as Syracuse City Court arraignments. Thus, to cover these arraignments, the County decided to simply expand the currently existing Syracuse City Court arraignment program by adding one attorney to cover the Traffic Court part. The County estimated that this program would cost **\$60,194 per year**.
3. *Justice court arraignments conducted in the Criminal Courts building*: To cover these arraignments, the County decided to create a list of attorneys willing to be on-call. The justices who regularly conduct arraignments in the Criminal Courts Building would be given this list and would be responsible for notifying an on-call attorney of the arraignment. The County estimated that the program would cost **\$15,600 per year**.
4. *Off-Hour Arraignments in all 28 justice courts*: To cover these arraignments, the County decided to create an on-call program, which involves dividing the County into geographic

regions and creating a list of attorneys available to be on-call in each of these regions. The County anticipated needing back-up attorneys in case the on-call attorney in a particular region is not available. The Plan calls for the magistrates in each of these regions to be provided that region's schedule of on-call attorneys as well as a single cell phone number to reach the on-call attorney or, if that attorney is not available, the back-up attorney. The on-call attorneys are to be paid a stipend of \$25 per day, and \$150 per arraignment at which they appear. Additionally, the arraigning attorney would likely be assigned to represent those defendants for whom they appear at arraignment.² Onondaga County estimated that the full cost of this program would be **\$407,750**, and that a pilot version of this program (i.e., initiating it in one region) would cost **\$123,497**.

ILS' Counsel at Arraignment Plan estimated that Onondaga County would need a total of \$560,044 to pay for the programs needed for full arraignment coverage. The Plan contemplated that if the Settlement's \$1 million were the only funds available to meet the Settlement's counsel at arraignment objectives, then Onondaga County would receive \$275,791 to fully fund all but the on-call program for justice court arraignments, which would be partially funded as a pilot program.

As previously stated, the funding needed to fully fund the Plan's counsel at arraignment programs was included in the ILS Final Fiscal Year 2016-2017 Budget. In April 2016, Onondaga County received its contract for the Settlement's counsel at arraignment funding.

B. Implementation of the Counsel at Arraignment Plan

ILS met with Onondaga County stakeholders in the months following finalization of the 2015 Counsel at Arraignment Plan. The County would not start the Plan's counsel at arraignment programs until receipt of a final contract from ILS, but the County Attorney's Office agreed that it made sense to take the preliminary steps necessary to get the program structures in place so upon receipt of the contract, the programs could be immediately implemented. During a March 21, 2016 meeting about implementing the Counsel at Arraignment Plan, Renee Captor, the ACP Executive Director, estimated that implementation would take three to six months. ILS stated that this time frame was unreasonably long. Still, because it was anticipated that implementation would take at least some period of time, ILS urged Ms. Captor to take preliminary steps as soon as possible to start the process. Such steps could include, for example, recruiting attorneys to participate in the pilot on-call program. Despite this urging, Ms. Captor did not initiate these preliminary steps until late-April 2016.

Notwithstanding the foregoing, the programs in the 2015 Counsel at Arraignment Plan have been implemented, as described below:

1. *Regular court sessions of the smaller 13 justice courts:*

² The 2015 Plan anticipates exceptions to this assumption that the arraigning attorney will be assigned. For example if the defendant is already represented by another ACP attorney, this attorney will be assigned. Similarly, if the defendant is Spanish-speaking, a Spanish-speaking attorney will be assigned if available.

Implementation of this program required the ACP to identify attorneys who are qualified and able to provide counsel at arraignment coverage in each of the 13 smaller courts and then to create a schedule of attorneys for each justice court session to be disseminated to the justices in the 13 justice courts. Toward the end of April 2016, the ACP sent a memo to each of the justices in the thirteen justice courts, briefly describing the program and asking them to identify attorneys they wished to have participate in the program. The memo instructed the judges to complete an attached schedule, and then return the schedule to the ACP. The program started on June 1, 2016.

2. *Syracuse City Traffic Court:*

Since this program is an extension of the existing Syracuse City Court arraignment program, implementation simply required that the ACP include an additional attorney into its existing City Court arraignment rotation to provide representation in the City Court's Traffic part. This was done by June 1, 2016.

3. *Justice court arraignments conducted in the Criminal Courts Building:*

Prior to developing a list of attorneys willing to participate in this program, the ACP initiated discussions with the Criminal Courts Building staff to determine the hours that the building is available for justice court arraignments. These discussions illuminated the need for court security staff to be available at these arraignments, which proved to be problematic. Ultimately the ACP was told that the Criminal Courts Building is available for very limited times during the day for these arraignments. Because of this logistical barrier to using the Criminal Courts Building, the ACP believes that there are few, if any, justice courts arraignments currently conducted in the Criminal Courts Building. As a result, it was decided to defer implementation of this program until the ACP can obtain data on the extent, if at all, justice court arraignments are being conducted in the Criminal Courts Building. ILS will work with the ACP to ensure that such data is being collected, and to further assess the need for this program.

4. *Off-Hour Arraignments in all 28 justice courts:*

The 2015 Counsel at Arraignment Plan contemplated starting with a pilot program in one geographic region of Onondaga County and eventually expanding the program to the remainder of the County. Initiating the pilot program required the County to develop a phone system for attorney notification, which was completed by May 17, 2016. Additionally, the ACP needed to survey panel attorneys who live in or near the pilot program region (which covers courts in Dewitt, East Syracuse and Minoa) to assess interest in participating in the on-call program. The ACP did so in late April 2016. Twelve attorneys responded. The ACP then drafted a list of these interested attorneys and a blank schedule, and sent both documents to the justices, instructing them to complete the schedule and return it to the ACP. These schedules were completed by late June 2016.

In the meantime, in early June 2016, a county-level stakeholders meeting occurred to discuss, among other things, implementation of the pilot on-call program. There was a second, follow-up meeting on June 15, 2016, during which the group discussed drafts for a written protocol, one for

judges and one for on-call attorneys, and the attorney voucher. After the meeting, stakeholders communicated by email to finalize the protocols and voucher, which were completed by June 22, 2016. Over the next few weeks, the County Attorney's Office secured the needed cellphones, while the ACP finalized and distributed the on-call attorney schedule. Dewitt Justice Court Judge Gideon, who had attended the meetings, was tasked with notifying the relevant judges and police agencies about the pilot program.

The pilot program was implemented on July 13, 2016. As of early October 2016, approximately 41 arraignments have been covered by this program.

In late September 2016, the County initiated steps to expand the pilot on-call program to the remainder of the County. A timeline for this expansion was finalized on October 5, 2016; it is attached as Exhibit A. The timeline divides the County into seven geographic regions, or Zones, with the pilot program as Zone 1. Each Zone has two attorneys on-call at all times. The timeline requires that attorneys be recruited who live in or near each Zone to participate in the on-call program, with a goal of at least eight attorneys for each Zone. Zone 2 was implemented on October 12, 2016; Zone 3 on October 19, 2016, Zone 4 on October 26, 2016; Zone 5 on November 2, 2016; and Zones 6 and 7 on November 9, 2016. ILS monitored the expansion of the on-call program, with the County Attorney Office's support, through weekly telephone conversations with the ACP. It was evident early on that these phone conversations were necessary to ensure that implementation occurred as scheduled.³

C. Assessment of Overall Arraignment Coverage in Onondaga County

As of November 10, 2016, Onondaga County has programs in place for full arraignment coverage throughout the County. Below is an assessment of these programs.

1. *Arraignments conducted during regular court sessions (justice court sessions and Syracuse City and Traffic court sessions)*

During the months of June, July, and August 2016, ILS conducted a series of observations of regular court sessions in various courts throughout Onondaga County to, among other things, assess these arraignment programs. We observed regular court sessions in Syracuse Traffic Court and in the following town and village courts: Cicero, Dewitt, East Syracuse, Lafayette, Manlius, Marcellus, Minoa, Salina, Skaneateles, and Van Buren. We observed that attorneys were present to represent defendants at any arraignments that occurred during these court sessions, and that there were no barriers to representing defendants at arraignment. In short, we did not observe any flaws in the structure of the programs for coverage of arraignments in regular court sessions in Syracuse Traffic Court and the 28 justice courts.

³ For example, during the call to discuss implementation of Zone 2, which occurred just one week prior to the scheduled date of this Zone's implementation, ILS asked Ms. Captor when she planned on sending the notices and schedules to that Zone's justices and attorneys. She responded that she had no time frame for doing so, and suggested that it might be the following week. ILS and the County Attorney's Office reminded Ms. Captor that implementation was scheduled to occur in just one week and that it was critical the notices and schedule be sent out as soon as possible, and we set a deadline for doing so. ILS repeated this during the next two calls, until the process became routinized.

We also observed arraignments in Syracuse City Court, where we repeatedly witnessed defendants being arraigned without one of the arraigining attorneys standing up for them. As a result, some defendants were not represented at arraignment even though a defense attorney was present and available. There was no evident pattern as to when the arraigining attorneys did not stand up for a defendant at arraignment. ILS has spoken to Ms. Captor about this, and she has stated that the problem stems from jail staff failing to transport all defendants to attorney interview rooms prior to arraignment that day. The arraigining attorneys do not stand-up for the defendants who have not been interviewed.

ILS first observed this problem with arraignment coverage in 2015 and brought this issue to the ACP's attention, but the problem went unresolved. In September 2016, after observing this problem repeatedly during court observations, ILS involved the County Attorney's Office to make it a priority for the ACP to resolve this problem with arraignment coverage. Since, Ms. Captor has told us that she is taking a two-pronged approach to resolving this. First, she is communicating with the jail administration to ask that all defendants be made available for attorney interviews prior to arraignment. Second, she has told the arraigining attorneys that they must stand-up for all defendants, even those they have not been able to interview. She has also changed the attorney voucher form to require that attorneys record any instance in which they have not stood up to represent a defendant, and the reason for this. ILS has asked that Ms. Captor periodically send this information to us, and we will continue to monitor the Syracuse City Court arraignments to ensure full arraignment coverage.

2. Off-Hour Arraignments: The On-Call Program

Because the on-call program has only recently begun, and because of the logistical impossibility of observing these off-hour arraignments (which are not scheduled until minutes before the arraignment occurs), ILS has not been able to observe these arraignments.

On September 22, 2016, ILS met with County stakeholders to evaluate the pilot on-call program. During this meeting, the judges who were present expressed their opinion that the on-call program "is not working" because arraignments are "taking too long," apparently because of the need to wait for the defense attorney and an assistant district attorney to arrive. They expressed a preference for a centralized arraignment program as more efficient and sustainable than an on-call program. They shared with us a centralized arraignment plan that local judicial officials have drafted. Unfortunately, there are financial impediments to implementation of a centralized arraignment program⁴ and thus, it cannot be implemented at this time.

On October 20, 2016, the County Attorney's Office forwarded to ILS letters from William J. Fitzpatrick, Onondaga County District Attorney, and James E. Hughes, 2016 President of the Onondaga County Magistrates Association. Both letters list several hardships related to conducting off-hour arraignments in general, such as disruption of justices' and attorneys' daily work schedule (for daytime off-hour arraignments) and disruption of sleep (for overnight off-hour arraignments). With regard to the on-call arraignment program in particular, both letters indicate that having counsel at arraignment takes more time because of the need to wait for

⁴ The centralized arraignment plan currently proposed by judges in Onondaga County requires funding for the arraigining justice and possibly other officials, such as law enforcement.

counsel to arrive. These letters requested that expansion of the on-call program be delayed so that a centralized arraignment program could be implemented instead.

Despite these concerns about the on-call program, the County has gone forward with expanding it as an interim program until it is possible to replace it with a centralized arraignment program. The County has done so to meet the right to counsel obligations articulated in the 2010 Court of Appeals decision, *Hurrell-Harring v. The State of New York*, 15 N.Y.3d 8 (2010) and to comply with the *Hurrell-Harring* Settlement's obligation to provide full counsel at arraignment coverage by November 11, 2016.

D. Overview of Funding for Onondaga County's Counsel at Arraignment Programs

Onondaga County relies on the following non-county funding sources to support the programs needed to provide counsel at arraignment:

- *ILS Distribution #5 (\$90,000 annually)*: This funding pays for coverage of appearance ticket and bench warrant arraignments in Syracuse City Court. This is a continuation of the program that was initially implemented in 2013 with ILS Distribution #2, and over time, has shown to be sufficient to support this program.
- *ILS Counsel at First Appearance competitive grant (\$198,666 year 1; \$194,667 years 2-3)*: This competitive funding covers the costs of arraignment coverage for regular court sessions in the 15 largest justice courts in Onondaga County. Since its implementation in 2014, this funding has been sufficient to support this program. As part of its budget appropriation to ILS, the State allocated funds to ensure continuation of this funding.
- *Federal funding, through New York State's Division of Criminal Justice Services (approximately \$15,000 annually)*: This funding is used to cover afternoon arraignments in Syracuse City Court. According to the Onondaga County's Finance Department, this funding will continue to be available.
- *Hurrell-Harring Counsel at Arraignment funding (\$560,044 annually)*: This funding is used to cover arraignments in Syracuse City Traffic Court and in the regular court sessions of the 13 smaller justice courts; it is also used to cover all justice court off-hour arraignments.

Because the *Hurrell-Harring* counsel at arraignment programs have been in place only since June and July 2016, it is too early to assess whether or not the funding for these programs is sufficient. ILS will monitor these programs as they go forward to assess sufficiency of this funding.

Ontario County

A. The 2015 Counsel at Arraignment Plan: Background and Overview

At the time of ILS' 2015 Counsel at Arraignment Plan, Ontario County had already implemented the following programs to provide counsel at arraignment:

- *Centralized arraignment program for overnight arrests (i.e., arrests that occur after 10 p.m.):* In 2012, at the urging of Ontario County Sheriff, the County initiated a centralized arraignment program. People arrested after 10 p.m. are either issued an appearance ticket or detained until the next morning, when they are arraigned in either Canandaigua or Geneva City Court. Since shortly after the inception of this program, the Public Defender Office has ensured that staff attorneys are present at these morning court sessions to represent people being arraigned.
- *Regularly scheduled justice court DA sessions:* Ontario County's seventeen justice courts all have specific regular court sessions designated as "DA sessions" in which it is expected that attorneys from the District Attorney Office and the Public Defender Office will be present. The Public Defender Office has traditionally covered the arraignments that occur during these regularly scheduled DA court sessions.
- *Off-hour justice court arraignments:* In 2014, with funding from the ILS Counsel at First Appearance competitive grant, the Public Defender Office hired two full-time staff attorneys to enhance the Office's capacity to cover off-hour justice court arraignments that occur prior to 10 p.m. The Office does so through three on-call rotations: i) a rotation for off-hour justice court arraignments that occur during regular business hours (8:30 a.m. to 5:00 p.m.); ii) a rotation for off-hour justice court arraignments that occur in the evenings (5:00 p.m. to 10 p.m.); and iii) a rotation for off-hour arraignments that occur on the weekends and holidays (8:30 a.m. to 10 p.m.). These on-call rotations are staffed by all of the Public Defender Office's attorneys. At the time of the Plan, there were twelve staff attorneys, including the Public Defender, Leanne Lapp.

At the time of the 2015 Counsel at Arraignment Plan, the Public Defender Office's on-call rotations had been in place for approximately one year, and there was concern about their sustainability. Ms. Lapp told ILS that being on-call so frequently on evenings and weekends was contributing to attorney "burn out," and she expressed concern that this could cause some of the more experienced attorneys to seek employment elsewhere.

After review of the Ontario County Public Defender Office arraignment program, the 2015 Counsel at Arraignment Plan identified the following gaps in arraignment coverage:

1. *Non-DA justice court sessions:* While the Public Defender Office regularly covers DA court sessions, its capacity to cover the non-DA court sessions was limited. As a result, coverage was sporadic at best.

2. *Overnight arraignments in Bloomfield and Geneva Town courts:* At the time of the 2015 Plan, it was believed that that neither of these two courts were participating in the centralized arraignment program, and that people arrested in these jurisdictions after 10 p.m. were being arraigned without counsel.

In addition to these gaps, the 2015 Counsel at Arraignment Plan highlighted the burden the on-call rotations were placing on the Public Defender Office's staff attorneys.

To address the above gaps in arraignment coverage and diminish the burden of the on-call rotations, ILS worked with Ontario County to develop programs for arraignment coverage. Below is a brief description:

1. *Non-DA court sessions:* It was decided that two additional staff attorneys would be needed to provide the Public Defender Office with the capacity to cover the arraignments that occur during these court sessions. Adding these two attorneys would meet the additional goal of diminishing the burden of the Office's on-call rotations by adding two attorneys to the rotations. The County estimated that hiring both attorneys would cost **\$210,000 per year**; hiring one attorney would cost **\$105,000 per year**.
2. *Overnight arraignment coverage and eliminating the Public Defender Office's weekend on-call rotation:* The County decided that covering overnight arraignments for the courts not participating in the centralized arraignment program would require creation of an on-call program to be staffed by private attorneys. This same on-call program could be used to replace the Public Defender Office's weekend on-call rotation, thereby diminishing the burden of the Office's on-call rotations. Thus, the private attorney on-call program would cover overnight, weekend, and holiday arraignments. The County estimated that fully funding the program would cost **\$97,100 per year**. Funding just the weekend rotation of this program was estimated to cost **\$61,000 per year**.

ILS' Counsel at Arraignment Plan provided that Ontario County would need a total of \$307,100 to pay for the programs needed for full arraignment coverage. The Plan contemplated that if the Settlement's \$1 million were the only funds available to the five *Hurrell-Harring* counties to meet the counsel at arraignment requirements, then Ontario County would receive \$166,300 to hire one full-time attorney to cover non-DA court sessions and to start as a pilot program an on-call program of private attorneys to cover weekend arraignments.

As previously stated, the funding needed to fully fund the Plan's counsel at arraignment programs was included in the ILS Final Fiscal Year 2016-2017 Budget. In April 2016, Ontario County received its contract for the Settlement's counsel at arraignment funding.

B. Implementation of the Counsel at Arraignment Plan

Below is a discussion of the steps taken to implement each component of the 2015 Counsel at Arraignment Plan:

1. *Non-DA court sessions:*

In February 2016, the Ontario County Board of Supervisors approved the creation of an additional attorney position for the Public Defender Office. Ms. Lapp hired an attorney in March 2016. However, in summer 2016, another staff attorney resigned from the Public Defender Office. In August 2016, a new attorney was hired to replace the attorney who had resigned. Thus, as of August 2016, the Public Defender Office has thirteen attorneys (including Ms. Lapp), and enhanced capacity to cover non-DA court sessions. Additionally, there are now thirteen attorneys participating in the on-call rotations, which has marginally reduced the burden of being on-call evenings and weekends.

2. *Weekend and overnight arraignment coverage:*

In February 2016, Ms. Lapp advised ILS that she had taken some preliminary steps to recruit private attorneys to participate in the weekend component of the private attorney on-call program, and was concerned that there might not be enough private attorneys willing to do so. Still, she continued her recruitment efforts, reaching out to attorneys on the Assigned Counsel Program panel, the County Bar Association, and newly admitted attorneys seeking to build their law practices. Despite her efforts, Ms. Lapp was unable to recruit a pool of private attorneys willing to cover weekend and holiday arraignments. As a result, her staff continues to cover weekend off-hour arraignments.

In the meantime, in August 2016, ILS and Ms. Lapp met to assess the need for the private, on-call program for overnight arraignments. ILS carefully reviewed the Public Defender Office's missed arraignment data from January 2015 through May 2016. Of the fifty-six defendants who were not represented at arraignment during this time period, only nine were unrepresented because their arraignments occurred overnight. More importantly, in terms of the courts conducting these arraignments, there was no discernable pattern, suggesting that the two courts previously thought to not be participating in the centralized arraignment program are now participating. Based on what she knows of these cases, Ms. Lapp suspects that these overnight arraignments involve cases in which the magistrate decides the defendant must be arraigned right away instead of detained, either because the case involves very serious charges or because the defendant has an acute mental health condition requiring hospitalization.

Notably, Public Defender Office staff obtain and review jail logs each day, identifying any newly admitted defendant who was not represented at arraignment. When this occurs, a staff investigator goes to the jail that day to interview the defendant and determine if there is any reason, such as a review of release status, to immediately schedule a court appearance.

Because the overnight arraignments are occurring only sporadically, and because the Public Defender Office has a system in place to ensure immediate contact with any defendant who is arraigned without counsel and detained, there currently is no identifiable need for an on-call program of private attorneys to cover overnight arraignments. For that reason, this program will not be implemented, and the funding re-directed to address other counsel at arraignment needs, as discussed more fully below.

C. Assessment of Overall Arraignment Coverage in Ontario County

As a result of the centralized arraignment program, the Public Defender Office's on-call arraignment programs, and the addition of an attorney to enhance the Office's ability to staff regularly scheduled court sessions, the Public Defender Office has programs in place for full arraignment coverage. During the months of June, July, and August 2016, ILS conducted a series of observations of regular court sessions in various courts throughout Ontario County, in part to assess the arraignment programs. We observed regular court sessions in Geneva and Canandaigua City Courts, and Bristol, East Bloomfield, Gorham, Manchester and Victor town courts. We observed no structural problems in the arraignment coverage at day time or regular evening court sessions. Due to the logistical difficulty of observing off-hour arraignments, which are scheduled at the last minute, ILS was not able to observe any arraignments that occurred during one of the Public Defender Office's on-call programs.

The most fragile component of the Public Defender Office's arraignment program is coverage of non-DA court sessions. To bolster this component, the Public Defender Office needs to hire the second attorney contemplated in the 2015 Counsel at Arraignment Plan for coverage of non-DA court sessions. Ms. Lapp has already identified an experienced attorney to fill this slot, and is in the process of obtaining the requisite approval from the County Board of Supervisors for this position. At this point, she anticipates obtaining this approval in November 2016 so the attorney can start in late December 2016. Importantly, hiring this attorney will serve another important purpose – allowing a fourteenth attorney to rotate into the Public Defender Office's on-call programs. This need is especially acute, given that it was not possible to recruit private attorneys to participate in or replace the Office's weekend on-call program.

D. Overview of Funding of Ontario County's Counsel at Arraignment Programs

Ontario County relies on the following non-county funding sources to support the programs needed to provide counsel at arraignment:

- *ILS' Counsel at First Appearance competitive grant (\$250,000 annually)*: This competitive grant has allowed the Public Defender Office to hire two full-time attorneys to support the Office's on-call rotations to better ensure that attorneys are present at off-hour justice court arraignments. As part of its budget appropriation to ILS, the State allocated funds to ensure continuation of this funding.
- *Hurrell-Harring counsel at arraignment funding (\$307,100)*: \$210,000 of this funding is needed for the Public Defender Office to hire two additional full time attorneys to cover non-DA court sessions and to support the Office's on-call rotations. \$97,100 is to be re-directed, as discussed below.

The 2015 Counsel at Arraignment Plan provided for \$97,100 to pay private attorneys to participate in the weekend and overnight on-call programs, but as previously stated, while the weekend on call program is needed, private attorney coverage is not viable. Additionally, the overnight private attorney on-call program may not be necessary.

After consulting with Ms. Lapp about what her office needs to provide counsel at arraignment, ILS recommends that this funding be re-directed for two purposes. First, the Public Defender Office has exceeded its budget on mileage reimbursement for the on-call attorneys, and additional funding is needed for these extra costs. Second, an office specialist is needed to support the administrative aspects of the Public Defender Office's counsel at arraignment program. As the foregoing reveals, the Public Defender Office's counsel at arraignment program includes many components, all of which require coordination, data collection, and data maintenance. The office specialist will assist in the collection and tracking of counsel at arraignment data. The office specialist will also assist in coordinating the on-call arraignment programs by responding to calls from 911 notifying the office of the arraignment, notifying the on-call attorney, and finding back-up if that attorney is not available. Finally, the office specialist will coordinate the non-DA justice court arraignment program by contacting courts in advance to obtain their dockets, determining if there is a defendant who is to be arraigned, and if so, obtaining information about and contact information for that defendant so the arraigning attorney can meet with the defendant in advance. Ms. Lapp states that the cost of this position including salary, fringe benefits, and other than personnel costs (furniture, equipment, supplies, etc.) is \$69,000.

Schuyler County

A. The 2015 Counsel at Arraignment Plan: Background and Overview

In November, 2015, when ILS issued its final Counsel at Arraignment Plan, Schuyler County already had in existence the following programs for arraignment coverage:

- *Off-hour arraignments conducted during regular business hours (8:30 a.m. to 5:00 p.m.):* Wesley Roe, the Public Defender, and Matt Hughson, the only other full-time attorney in the Public Defender Office, cover all off-hour arraignments conducted during regular business hours. Their ability to do so is made possible by ILS' Counsel at First Appearance competitive grant, which provided the funding needed to transition Mr. Hughson's position from part-time to full-time so these arraignments could be covered.
- *Off-hour arraignments that occur in the evening (5:00 p.m. to 11:30 p.m.):* Using funding from ILS' Upstate Caseload Relief competitive grant, the Public Defender Office hired a part-time attorney, Fred Cerio, to provide arraignment coverage in the evening. Mr. Cerio covers all off-hour arraignments that occur between 5:00 p.m. and 11:30 p.m.
- *Regularly scheduled DA court sessions:* Schuyler County's eleven town and village courts have approximately 15 regular court sessions per month which are referred to as DA or "consolidated" court sessions. These court sessions regularly include staff from the Public Defender Office and the District Attorney Office. The times of these sessions range from morning to evening. For example, the Village of Watkins Glen's DA court session is every Thursday at 3:00 p.m.; the Town of Catharine's DA court session is every second Monday at 9:00 a.m.; and the Town of Orange's DA court

session is every second Tuesday at 7:00 p.m. With their current staffing pattern of two full-time attorneys and one part-time attorney, the Public Defender Office is able to ensure that an attorney is present to cover arraignments at each of these regularly scheduled DA court sessions.

- *Overnight arraignments (11:30 p.m. to 8:30 a.m. on weekdays and 9:00 p.m. to 9:00 a.m. on weekends):* As of the writing of ILS' 2015 Counsel at Arraignment Plan, Schuyler County had just obtained the authorization for an overnight holding facility for defendants who are arrested after 11:30 p.m. and detained. The amount of time that the jail may hold a person in custody pending arraignment diminishes with the number of people held. Specifically, the jail can house one person for twelve hours, and two or more persons for a maximum of six hours.

Mr. Roe initiated the off-hour arraignment coverage by notifying all justice court magistrates and requesting that they notify his office of arraignments. He provided the magistrates with the Public Defender Office number and an on-call cell phone number. Mr. Roe has found that the magistrates generally do notify his office of all arraignments. The magistrates are instructed to call the Public Defender Office during business hours, and a cell phone after regular business hours. Mr. Roe has also worked closely with the Sheriff's Department, which runs the County's 911 dispatch system. Sheriff William E. Yessman, Jr. has been instrumental in ensuring that dispatch notify the Public Defender Office and the District Attorney Office of all off-hour arraignments.

With regard to overnight detention of arrested people, as previously indicated there is a limit to how many people can be held in the jail pre-arraignment. If the jail reaches this limit, and another person is arrested and not issued an appearance ticket, dispatch will notify the appropriate court for an overnight arraignment. Even though his office cannot cover these arraignments, Mr. Roe has asked dispatch to make sure that he is still notified. He does so for two reasons. First, it is the method by which he tracks the occurrence of these arraignments. Second, if the person is detained after the arraignment, he makes sure that the case is scheduled for a court appearance for the following day. Toward this end, Mr. Roe has asked magistrates to "continue the arraignment" the next day of anyone who is arraigned without counsel and detained. During these "continued arraignments," an attorney from the Public Defender Office can be present to address critical issues, such as pre-trial release status and the right to appointed counsel.

Given the above pre-existing arraignment programs, ILS' 2015 Counsel at Arraignment Plan identified the following gaps in arraignment coverage:

1. *Arraignments that occur on weekends*
2. *Appearance ticket arraignments that are scheduled for non-DA court sessions*

To address the above gaps in arraignment coverage, ILS worked with Schuyler County to develop a program for each gap. The process of developing these programs and the programs themselves are fully discussed in the 2015 Counsel at Arraignment Plan. Below is a brief description of these programs:

1. *Arraignments that occur on weekends:* To cover weekend and holiday arraignments, Schuyler County established an on-call program. The on-call attorney is available from 9 a.m. to 9 p.m. to cover arraignments. Those arrested after 9 p.m. are either issued an appearance ticket or held until the following morning for arraignment. The on-call attorneys are paid \$200 per day. Notification occurs by way of the County's dispatch system notifying the on-call attorney, with courts also calling to confirm attorney notification. The on-call attorney has an office cell phone, just like the on-call attorney for weekday evenings. The County estimated the cost of this program to be **\$30,000** per year, which includes the attorney per diem, mileage reimbursement, and cell phone costs.
2. *Appearance ticket arraignments that are scheduled for a non-DA court session:* It was agreed that Mr. Roe would work with Schuyler County Sheriff Yessman to obtain agreement from local law enforcement to issue appearance tickets for DA court sessions, and that ILS would work with the Executive to obtain the same cooperation from State law enforcement officers. As long as appearance tickets are issued for these DA court sessions, then there is no need for Public Defender Office staff to cover the non-DA court sessions. Absent law enforcement cooperation, Mr. Roe estimated that he would need to hire an additional full-time attorney and a part-time attorney to cover these court sessions, at a cost of at least **\$161,000**.⁵

ILS' Counsel at Arraignment Plan provided that Schuyler County would need a total of \$191,000 to fully pay for the programs needed for full arraignment coverage, assuming that it was not possible to obtain agreement from law enforcement to issue appearance tickets for just DA court sessions.

As previously stated, the funding needed to fully fund the Plan's counsel at arraignment programs was included in the ILS Final Fiscal Year 2016-2017 Budget. In April 2016, Schuyler County received its contract for the Settlement's counsel at arraignment funding.

B. Implementation of the Counsel at Arraignment Plan

Below is a discussion of the steps taken to implement each component of the 2015 Counsel at Arraignment Plan.

1. Weekend on-call program:

Mr. Roe began implementing by attending his County's magistrates' meetings to discuss the program. He also conferred with Sheriff Yessman to ensure that dispatch would continue to notify his office of weekend arraignments. On February 24, 2016, he sent a memorandum to all town and village court magistrates and to law enforcement that set out the new arraignment program in the context of the previously existing programs. In this memo, Mr. Roe stated that having counsel at arraignment is an imperative of *Hurrell-Harring*, and that his office is

⁵ The \$161,000 estimate includes only salaries and fringe for staff; it does not include other critical costs, such as space, computer equipment, and supplies.

addressing this need by making sure that attorneys are on-call to provide representation at arraignments. He instructed magistrates to call the Public Defender Office number for arraignments that occur on weekdays between 8:30 a.m. and 5:00 p.m.; to call the office or the office's on-call cell phone for arraignments that occur between 5:00 p.m. and 11:30 p.m. on weekdays; and to call the office's on-call cell phone for arraignments that occur on weekend or holidays between 9:00 a.m. and 9:00 p.m. He further asked that if a magistrate is unable to reach an on-call attorney, the magistrate leave a message, conduct the arraignment, and schedule a court appearance with counsel the next day.

The Public Defender Office implemented the weekend on-call program March 5, 2016. Though the Plan originally contemplated the participation of private attorneys in addition to the Public Defender Office staff attorneys, to date, the three Public Defender Office attorneys continue to cover these arraignments. Since inception of the program, and as of the end of September 2016, the office has covered approximately 17 arraignments through this program. The weekend arraignment calls are sporadic, and some weekends, there are no arraignments, while other weekends there are as many as three.

The Public Defender Office's data on missed arraignments shows that in the first quarter of 2016, prior to initiation of the weekend on-call program, 11 of the missed arraignments tracked were holiday or weekend arraignments. Since initiation of the weekend on-call program, however, there have been no missed weekend or holiday arraignments. The data thus far reveals that the on-call weekend arraignment program has been a success.

2. Appearance ticket arraignments that are scheduled for non-DA court sessions.

With the assistance of Sheriff Yessman, Mr. Roe worked with local law enforcement agencies to obtain cooperation in issuing appearance tickets only for DA court sessions. This effort was supplemented by ILS working with the Executive to receive the same cooperation from State law enforcement agencies. Specifically, in October 2015, ILS conferred with the Executive about the issue of obtaining agreement from State law enforcement agencies to only issue appearance tickets for DA court sessions. It was agreed that Assistant Counsel to the Governor, Jeremy Attie, would coordinate a phone call with counsel for the State Police, Department of Environmental Conservation, and the Department of Parks and Recreation. This call occurred on October 19, 2015, during which it was agreed that the law enforcement agencies would instruct officers to issue appearance tickets only for DA court sessions in Schuyler County.⁶ On November 19, 2015, ILS followed-up this conversation with a letter to Mr. Attie confirming what was agreed to in the call, and identifying a point person in Schuyler County to ensure that law enforcement officers had access to local court schedules. Mr. Attie confirmed that he had forwarded this letter to all the participants of the call. To date, it appears that law enforcement officials regularly have been issuing appearance tickets for DA court sessions. Mr. Roe is aware of some sporadic instances of non-compliance with this request because there are times that magistrates have notified his office in advance that there is an arraignment scheduled for a non-DA court session. Because of this notice, the Public Defender Office staff have been present at these arraignments. The Public Defender Office's missed arraignment data for 2016 does not reveal any missed appearance ticket arraignments.

⁶ Washington County was also included in this call, as discussed in the section below on Washington County.

C. Assessment of Overall Arraignment Coverage in Schuyler County

The Public Defender Office's data on missed arraignments shows that, since inception of the weekend on-call program, there have been only two causes of missed arraignments. The first are off-hour arraignments that occur during regular business hours that are not covered because both Mr. Roe and Mr. Hughson are tied up with other matters. For example, on September 22, 2016, the Public Defender Office was unable to cover an off-hour afternoon arraignment because Mr. Roe was meeting with a client at Attica Correctional Facility and Mr. Hughson was appearing in a matter before County Court. Since March 1, 2016, only 2 arraignments were missed for this reason.

The second cause of missed arraignments are those that occur overnight, when the County Jail's pre-arraignment holding cell is full. Since January 2, 2016, and as of September 30, 2016, this situation has resulted in approximately 26 missed arraignments. In each case, the Public Defender Office was notified and the matter was scheduled for a court appearance the following day with staff from the Public Defender Office and District Attorney Office. This has allowed for immediate resolution of any issues that were unresolved or improperly addressed during the overnight arraignment, including issues regarding pre-trial release and financial eligibility for assignment of counsel. ILS will continue to work with the County to monitor these arraignments while simultaneously assessing what steps can be taken to diminish the number of arraignments missed in this time frame. Possible steps include, for example, enhanced use of appearance tickets for people arrested overnight and increased jail capacity to hold people prior to arraignment.

Overall, it is evident that through the efforts of the Public Defender Office and with the assistance of other County officials, including Sheriff Yessman, having counsel at arraignment has become the norm in Schuyler County. Mr. Roe has created multiple levels of notification, including magistrates, 911 dispatch, and more recently the District Attorney Office. Magistrates have utilized the programs that the Public Defender Office has created to ensure that defendants are represented at arraignments, and have even contacted the Public Defender Office in those rare instances in which an appearance ticket arraignment is scheduled for a non-DA court session.

D. Status of Funding for Schuyler County's Counsel at Arraignment Programs

In addition to funding from the County to provide representation, the Public Defender Office funds its counsel at arraignment coverage through the followings:

- *ILS Distribution #2 (\$18,276 total for 3 years)*: This funding helps to pay the costs of transitioning one of the Public Defender Office's part-time attorney positions to full-time. The County can continue this funding through on-going ILS funding, including distribution funding.

- *ILS Distribution #4 (\$4,776 total for 3 years):* This distribution funding helps to pay for mileage for appearing at arraignments. The County can continue this funding through on-going ILS funding, including distribution funding.
- *ILS's Counsel at First Appearance competitive grant (\$93,849 total for 3 years):* This competitive grant provides the bulk of the money needed to transition one of the Public Defender Office's part-time attorney positions to full-time to provide arraignment coverage of all off-hour arraignments that occur during regular business hours, and to ensure coverage of arraignments that occur during regularly scheduled DA court sessions. As part of its budget appropriation to ILS, the State allocated funds to ensure continuation of this funding.
- *ILS Upstate Caseload Reduction competitive grant (\$207,665 total for 3 years):* This competitive grant allowed the Public Defender Office to hire a part-time staff attorney to work evenings to enhance the Office's ability to cover regular DA court sessions that occur in the evening, as well as off-hour arraignments that occur prior to 11:30 p.m. This funding will need to continue when a second Upstate Caseload Reduction competitive grant is issued.
- *Hurrell-Harring counsel at arraignment funding (\$30,000 for the weekend on-call program; \$161,000 for staff to cover non-DA court sessions):* This funding has allowed the Public Defender Office to create its weekend on-call program to cover off-hour weekend arraignments; it also provides the funding needed to hire additional staff attorneys if it is not possible to have law enforcement consistently issue appearance tickets for DA court sessions.

The *Hurrell-Harring* counsel at arraignment programs are still relatively new, and therefore it is premature to assess the needs of the Public Defender Office and sufficiency of this funding. As we continue to evaluate these programs and monitor missed arraignments, it may become evident that, for example: additional staff attorneys are needed to cover non-DA court sessions; additional funding is needed to rotate private attorneys into the weekend on-call program to address "burn-out" in the Public Defender Office; or that the Public Defender Office needs more administrative support to coordinate the arraignment programs and track arraignment-related data. ILS will continue to work with the Public Defender Office to monitor its counsel at arraignment programs, identify potential problems with arraignment coverage, and resolve those problems.

Suffolk County

A. The 2015 Counsel at Arraignment Plan: Background and Overview

In November, 2015, when ILS issued its final Counsel at Arraignment Plan, Suffolk County had in existence the following programs for arraignment coverage:

- *West End District Court arraignments:* Since 1964, Suffolk County has operated a District Court for the five western towns of Suffolk County: Babylon, Brookhaven,

Huntington, Islip, and Smithtown. The vast majority of all Suffolk County arraignments occur in this District Court. There are two parts in the District Court that conduct arraignments: D-11, for defendants who are detained at arrest and arraigned the next day; and the Street Appearance Part (SAP), for defendants who are issued an appearance ticket upon their arrest and scheduled for arraignment on a specific date. D-11 operates 7 days per week so that no defendant is detained for more than 24 hours awaiting arraignment; SAP operates five days per week. The Legal Aid Society (LAS) has traditionally staffed D-11, covering arraignments for defendants when there is no conflict. In 2015, through a combination of funding from ILS' Counsel at First Appearance competitive grant and ILS Distribution #5, the Assigned Counsel Program (ACP) began staffing SAP and D-11 (to represent defendants when there is a conflict with the LAS). As a result, there is counsel available to represent all defendants who are arraigned in the District Court.

- *West End Village Courts arraignments:* The LAS has traditionally covered all arraignments that occur in the villages in the western part of Suffolk County. LAS does so using attorneys who are assigned to these village courts and regularly staff all scheduled court sessions.

- *East End: Arraignments in Riverhead, Southampton, Southold, and East Hampton Town Courts:* Riverhead and Southampton Town Courts are the highest volume courts on the eastern end of Suffolk County, accounting for about 70% of East End arraignments. The LAS has traditionally assigned attorneys to provide arraignment coverage for these courts, including arraignments that occur during the courts' regular sessions and off-hour arraignments. Both justice courts are located close to the LAS office, so once notified of an arraignment, the two attorneys are able to get to court quickly. In 2013, using funding from an ILS Counsel at First Appearance competitive grant, the LAS expanded this arraignment program to Southold and East Hampton Town Courts, hiring two full-time attorneys to cover all arraignments conducted on weekdays during regular business hours. Arraignments that occur on weekends are not covered by this program.

Given the above pre-existing arraignment programs, ILS' Counsel at Arraignment Plan identified the following gaps in arraignment coverage:

1. *Weekday coverage for five of the East End justice courts that currently do not have such arraignment coverage*

2. *Weekend and holiday coverage for all of the East End justice courts*

To address the above gaps in arraignment coverage, ILS worked with Suffolk County to develop a program for each gap. The process of developing these programs and the programs themselves are fully discussed in ILS' 2015 Counsel at Arraignment Plan. Below is a brief description of these programs:

1. *Weekday coverage for five of the East End justice courts that currently do not have such arraignment coverage.* It was decided that the LAS could expand its current coverage of weekday arraignments in four of the East End courts to the rest of the East End by hiring two additional attorneys. The costs to do so, including salaries, fringe, other than personnel costs, and mileage reimbursement was estimated to be **\$173,080**.
2. *Weekend and holiday coverage for all of the East End justice courts.* It was decided to contract with a pool of private attorneys to create an on-call program for weekend arraignments. This plan involved Suffolk County putting out a Request for Qualifications (RFQ) to the private bar to solicit bids for covering arraignments in specific East End courts. The RFQ would enumerate the scope of services attorneys would need to provide, including the days and expected hours, what is required during and after arraignments, reporting requirements, record keeping, and the necessary attorney qualifications. The County anticipated being able to establish a uniform fee schedule for these on-call attorneys. It was anticipated that eight attorneys would be selected to contract with the County. The justice court magistrates would be given names and contact information for the designated on-call attorneys. It was agreed that the ACP would handle the administrative function of this program. The County estimated that the total costs of this program would be **\$400,000**. They estimated that a pilot on-call program for the Riverhead and Southampton Town Courts would cost **\$160,000**.

ILS' Counsel at Arraignment Plan provided that Suffolk County would need a total of \$573,080 to fully pay for the programs needed for full arraignment coverage. The Plan contemplated that if the Settlement's \$1 million were the only funds available to the five *Hurrell-Harring* counties to meet the counsel at arraignment objectives, then Suffolk County would receive \$333,080, \$173,080 of which would be allocated to the LAS for two additional attorneys to cover all weekday East End arraignments and \$160,000 for the pilot on-call program to cover weekend arraignments in Riverhead and Southampton courts.

As previously stated, the funding needed to fully fund the Plan's counsel at arraignment programs was included in the ILS Final Fiscal Year 2016-2017 Budget. In April 2016, Suffolk County received its contract for the Settlement's counsel at arraignment funding.

B. Implementation of the Counsel at Arraignment Plan

Implementation of each counsel at arraignment programs is described below:

1. *Implementation of the program for weekday coverage for five of the East End justice courts that currently do not have such arraignment coverage*

The LAS could not start this program until finalization of its subservient contract with the County, which did not occur until late-September 2016. In the months prior to finalizing this contract, however, the LAS began actively recruiting attorneys for these two positions. These recruitment efforts were necessary because there is not a pool of attorneys who live on the East End who are willing to forego a potentially lucrative private practice in order to work for the LAS at a very modest salary. But the LAS was persistent, and by late-September 2016, able to

identify two qualified attorneys to fill these positions. One of these attorneys is an experienced lawyer and highly regarded on the East End. The second attorney has less experience, but is well-known to the LAS because he worked there as an investigator prior to graduating from law school. He is well-liked and committed to public criminal defense.

Both lawyers started with the LAS on October 17, 2016.

2. Weekend and holiday coverage for all of the East End justice courts.

In late-November 2015, the Suffolk County Attorney's Office issued an RFQ to elicit proposals from private attorneys qualified to participate in the pilot on-call program. Though several attorneys had expressed interest in the program, only four submitted proposals. A committee of three individuals – Dennis Brown (County Attorney), David Besso, (ACP Administrator), and William Ferris (President of the Suffolk County Bar Association) – evaluated the proposals. In general, the committee was dissatisfied with the proposals and decided to re-issue the RFQ. In late-January 2016, the County Attorney's Office re-issued the RFQ, this time receiving nine proposals in response. The same committee evaluated the proposals and selected five attorneys to participate in the program. Each attorney is paid a flat fee of \$35,000 per year to provide coverage of weekend arraignments. The committee also decided that the pilot program would include not only Riverhead and Southampton Town Courts, but also Southampton Village Court. Three of the attorneys are designated as the on-call attorneys for Southampton Town and Village Courts, while two of the attorneys are the designated on-call attorneys for Riverhead Town Court, which is the busiest East End justice court.

The County finalized contracts with the five attorneys in late-June 2016. Working with the County Attorney's Office and Sabato Caponi, LAS East End Bureau Chief, ILS developed a data collection form for the attorneys to complete at each arraignment. This form also serves as a means of collecting information about the arraignment that will be useful to the attorney who eventually represents the arraigned individual, which typically will be an attorney from the LAS. ILS also worked with the County Attorney's Office, Mr. Caponi, and Stephanie McCall of the ACP to conduct a phone meeting with the five attorneys prior to implementation of the program. This phone meeting served as a forum to discuss several issues pertaining to the program, including scheduling, completion of the data collection form, and the importance of getting the form and any other information about the arraignments conducted over the weekend to the Legal Aid Society first thing each Monday.

The program began the second weekend of July 2016. Since then, and as of the last weekend in August 2016, the five on-call attorneys have conducted approximately 104 weekend arraignments.

In late-September 2016, the County explored the viability of expanding the program to the remaining East End courts. The County's primary concern was whether there would be a sufficient number of East End private attorneys able and willing to participate in the program. The County sought to assess viability by reaching out to the Suffolk County Bar Association, which informally surveyed its members and determined there was interest in the program.

Additionally, on September 21, 2016, the County coordinated with ILS to conduct a phone meeting with the five attorneys participating in the pilot on-call program to obtain their feedback on the program. During this phone meeting, the attorneys were asked if they thought other private attorneys would be interested in participating in the program. They thought that there was sufficient interest.

Based on this, the County decided to initiate steps to expand the program to the remaining East End courts. On October 11, 2016, the County issued an RFQ seeking proposals from attorneys interested in participating in the program for the remaining East End Courts. The RFQ set a deadline of October 21, 2016 for responses, but at the request of the Suffolk County Bar Association, this deadline was extended to November 4, 2016. The County anticipates selecting attorneys by late-November 2016, and then completing individual contracts with the attorneys, with implementation occurring in December 2016.

C. Assessment of Arraignment Coverage in Suffolk County

Once expansion of the East End weekend arraignment on-call program is complete, Suffolk County will have programs in place to provide representation at all arraignments. Even before expanding the East End weekend on-call program, the County has programs in place to cover more than 99% of arraignments conducted in Suffolk County.⁷

During the months of June, July, and August 2016, ILS conducted a series of observations of regular court sessions in various courts throughout Suffolk County, in part, to assess the arraignment programs. We observed regular court sessions in District Court (both D-11 and SAP) as well as Amityville Village Court, Quogue Village Court, Riverhead Town Court, Sag Harbor Village Court, Southampton Town Court, Southampton Village Court, Southold Town Court, and Westhampton Village Court. These court observations did not reveal any systemic flaws in the counsel at arraignment programs. Moreover, ILS was generally impressed with the quality of advocacy at arraignments. The only concern we drew from the court observations regarded the right to assigned counsel. There were some instances in the East End courts in which we observed a court arraign a defendant on low-level charges without informing the defendant of the right to assigned counsel and the right to be represented by a Legal Aid Society staff attorney for arraignment. ILS will work with the Legal Aid Society to ensure that the arraigning attorneys are able to effectively address this problem.

Because the Legal Aid Society has only recently hired its two attorneys to conduct arraignments in the regular court sessions of the East End courts that had not previously been covered, it is premature to assess how well this program is working.

⁷ This is based on data ILS reviewed from the Office of Court Administration (OCA) and the Division of Criminal Justice Services (DCJS). In 2014, there were about 66,200 criminal cases reported on the West End of Suffolk County, compared to only 1,870 criminal cases reported on the East End. Thus, East End criminal cases constitute less than 3% of Suffolk County's criminal cases. The pilot on-call program provides arraignment coverage in the East Ends busiest courts. Based on their case assignments, the Legal Aid Society estimates that the cases in Riverhead and Southampton Town courts combined constitute about 70% of all East End cases. Knowing this, it is fair to estimate that with its current programs in place – and even without expanding the East End on-call program to all East End justice courts – the County has programs in place to provide arraignment coverage in more than 99% of Suffolk County's criminal cases.

With regard to the on-call program for weekend arraignments in East End courts, ILS has had an opportunity to assess the pilot program since its implementation on July 9, 2016. We have spoken with Mr. Caponi, who has told us that the LAS is regularly receiving information and documentation from the arraignment attorneys about what occurred during the previous weekend's arraignments, and that for that reason, he is quite pleased with the "handoff" from the arraignment attorneys to the LAS. Additionally, on September 21, 2016, ILS coordinated with the County Attorney's Office to conduct a conference call with the five arraignment attorneys to assess implementation of the on-call program. Three of the five attorneys participated in the call; ILS subsequently spoke by phone with the two additional attorneys. All five attorneys stated that the program is going well, and, in fact, that the program is serving an important function in protecting the rights of defendants. In terms of notice of arraignments, the Southampton attorneys appear at court at a set time each weekend morning for arraignments. The Riverhead attorneys call the police department each weekend morning to remind the police that they are on call. They ask if there is a defendant to be arraigned and if so, what time the judge is planning on taking the bench. They then arrive at court at this time. The police also notify the attorneys if there is an arraignment later in the day after the morning session. The Riverhead attorneys told us that one of the town court justices openly dislikes the program. For example, this judge often interrupts the attorneys when they try to argue on behalf of their clients, asking the defendants direct questions instead of allowing the attorneys to speak on their behalf. Despite this, the Riverhead on-call attorneys were able to convey examples of when their presence at arraignment made a difference in the case.

D. Status of Funding for Suffolk County's Counsel at Arraignment Programs

In addition to funding from the County to provide representation, the Legal Aid Society and the Assigned Counsel Program fund their counsel at arraignment programs through the following sources:

- *ILS' Counsel at First Appearance competitive grant (\$747,000 total, \$249,000 per year for the three years of the grant)*: The largest portion of this competitive grant funds the two staff attorney positions the Legal Aid Society needs to cover weekday arraignments in two East End courts (Southold and East Hampton). A smaller portion supports the Assigned Counsel Program's arraignment coverage in District Court. As part of its budget appropriation to ILS, the State allocated funds to ensure continuation of this funding.
- *ILS Distribution #5 (\$1,337,338 total for all 3 years)*: This distribution funds the Assigned Counsel Program's arraignment program in District Court (D-11 and the SAP). This funding can continue through on-going ILS funding, including distribution funding.
- *Hurrell-Harring Counsel at Arraignment funding (\$573,080 full funding)*: This funding has allowed the Legal Aid Society to hire two staff attorneys to cover weekend arraignments in the five East End courts previously not covered, and it has allowed the County to create a private attorney on-call program for East End weekend arraignments.

To date, it is too early to assess the sufficiency of the *Hurrell-Harring* funding. ILS will monitor whether \$173,080 per year is sufficient for the Legal Aid Society to maintain the two new staff positions on the East End, or whether the salaries are too low to attract and maintain qualified attorneys. Similarly, ILS will monitor whether the \$400,000 per year is enough to compensate attorneys to participate in the weekend on-call program on the East End.

Washington County

A. The 2015 Counsel at Arraignment Plan: Background and Overview

In November 2015, when ILS issued its Final Plan for implementation of the Settlement's Counsel at Arraignment requirements, Washington County had not implemented any counsel at arraignment programs. Indeed, Washington was the only *Hurrell-Harring* County that had not applied for ILS' Counsel at First Appearance competitive grant. Thus, Washington County's arraignment coverage was, at best, inconsistent. The Public Defender Office was most frequently covering arraignments that occurred during regular DA court sessions, but even this coverage was unreliable. With regard to the non-DA court sessions, arraignment coverage was episodic. And off-hour arraignments were covered rarely and only in serious cases when a magistrate contacted the Public Defender Office.

The lack of arraignment coverage was due partly to the staffing of the Public Defender's Office. As of September 2015, the Office was comprised of its full-time Public Defender, Michael Mercure, and seven part-time attorneys. In September 2015, using ILS distribution money, the Office transitioned three of its part-time attorneys to full-time, creating an office of a full-time Public Defender, three full-time staff attorneys and four part-time staff attorneys. These staffing changes were expected to allow for full arraignment coverage at regularly scheduled DA justice court sessions and partial coverage of off-hour arraignments that occur during business hours.⁸ Accordingly, the 2015 Counsel at Arraignment Plan identified these gaps in arraignment coverage:

1. *Regularly scheduled non-DA court sessions*
2. *Off-hour arraignments that occur during business hours*
3. *Off-hour arraignments that occur outside of business hours (i.e., nights, weekends, and holidays)*

To address these gaps, ILS conferred closely with the Washington County stakeholders to develop a plan to expand representation at arraignments throughout the County. The process of developing the arraignment program and the Washington County program itself is set out in the 2015 Counsel at Arraignment Plan. Below is a brief description:

⁸ Enhanced arraignment coverage was not the only goal of transitioning part-time staff attorneys to full-time. As discussed in ILS' Quality report, doing so has also allowed Mr. Mercure to take steps to professionalize the Public Defender Office, facilitating his efforts to cultivate a culture of quality.

1. *Regularly scheduled non-DA court sessions - issuing appearance tickets for DA court sessions:* It was decided that since the Public Defender Office's new staffing pattern enhanced its capacity to cover regularly scheduled DA court sessions, it would be most efficient to resolve the issue of non-DA court session coverage by working with law enforcement to ensure that appearance tickets are issued only for DA court sessions. Anthony Jordan, the Washington County District Attorney, agreed to obtain cooperation from all the local law enforcement agencies in the County to issue appearance tickets only for the regularly scheduled DA court sessions. ILS agreed to work with the Executive to obtain the agreement of State law enforcement agencies to issue appearance tickets for DA court sessions. It was anticipated that consistently issuing appearance tickets for DA court sessions would eliminate or significantly reduce the need for arraignment coverage during non-DA court sessions. This systemic change has no financial costs.
2. *Off-hour arraignments that occur during regular business hours:* Mr. Mercure stated that to cover all off-hour arraignments during business hours, his office needed to transition an additional part-time staff attorney position to full-time status. Adding another full-time attorney would also increase the Office's capacity to cover regularly scheduled DA court sessions. The estimated cost of this staffing change was **\$46,762**, inclusive of salary and fringe benefits.
3. *Off-hour arraignments that occur outside of regular business hours (nights, weekends, and holidays):* It was decided that the Public Defender Office would develop and implement an on-call program to cover these arraignments. The on-call attorney would be responsible for overnight arraignments (4:30 p.m. to 8:30 a.m. the next day), as well as arraignments on weekends and holidays. It was envisioned that this on-call program would utilize a rotation of 12 attorneys, including the eight Public Defender Office staff attorneys and four private attorneys. A single cell phone number would be used for law enforcement and magistrates to notify the on-call attorney. A stand-by attorney would also be designated in case the on-call attorney could not respond. The estimated cost of this program, including stipends for on-call and stand-by attorneys, hourly pay to the private attorneys, mileage, communication and training was estimated to be **\$217,850**. The County estimated that a pilot version of this program, with only one on-call attorney and no stand-by attorney, would cost **\$148,067**.

ILS' Counsel at Arraignment Plan provided that Washington County would need a total of \$264,612 to pay for the programs needed for full arraignment coverage. The Plan contemplated that if the Settlement's \$1 million were the only funds available to the five *Hurrell-Harring* counties to meet the counsel at arraignment objectives, then Washington County would receive \$194,825, \$46,762 of which would be allocated to transition an additional part-time Public Defender Office staff attorney to full-time, while \$148,067 would be allocated for the pilot on-call program, with no back-up attorney.

As previously stated, the funding needed to fully fund the Plan's counsel at arraignment programs was included in the ILS Final Fiscal Year 2016-2017 Budget. In April 2016, Washington County received its contract for the Settlement's counsel at arraignment funding.

B. Implementation of the Counsel at Arraignment Plan

Washington County's steps to implement the 2015 Counsel at Arraignment Plan are set forth below:

1. Regularly scheduled non-DA court sessions - issuing appearance tickets for DA court sessions:

In October 2015, ILS conferred with the Executive about the issue of obtaining agreement from State law enforcement agencies to only issue appearance tickets for DA court sessions. It was agreed that Assistant Counsel to the Governor, Jeremy Attie, would coordinate a phone call with counsel for the State Police, Department of Environmental Conservation, and the Department of Parks and Recreation. This call occurred on October 19, 2015, during which it was agreed that the law enforcement agencies would instruct officers to issue appearance tickets only for DA court sessions in Washington County.⁹ On November 19, 2015, ILS followed-up this conversation with a letter to Mr. Attie confirming what was agreed to in the call, and identifying a point person in Washington County to ensure that law enforcement officers had access to local court schedules. Mr. Attie confirmed that he had forwarded this letter to all the participants of the call. With regard to local law enforcement agencies, District Attorney Anthony Jordan had preliminary conversations with these agencies in late 2015, and followed up by memo in April 2016 advising law enforcement to commence issuing appearance tickets for DA court sessions.

2. Off-hour arraignments that occur outside of regular business hours (nights, weekends, and holidays):

Prior to receipt of the Counsel at Arraignment contract, the County took preliminary steps to initiate the off-hour arraignment programs so that once the contract was received, implementation could occur as soon as possible. This included development of the notification system for the on-call attorneys and creation of a rotational schedule for the on-call attorneys. With regard to the notification system, the County decided that the magistrates would be provided with a single number to reach the primary on-call attorney. With regard to attorney rotation schedule, Mr. Mercure decided to start the rotation with his own staff, and to rotate in private attorneys if needed. Mr. Mercure decided to include his name and number as a back-up contact so that he could monitor how the program was going and the extent to which a back-up attorney may be needed.

Prior to implementation of the program, Mr. Mercure reached out to all of the county magistrates to personally discuss the counsel at arraignment plan. He also attended the county magistrates' meeting at the end of April 2016 to discuss the plan for arraignment coverage. During these

⁹ As discussed earlier, the agreement also included Schuyler County.

discussions, he discussed both on-call programs – i.e., the program for off-hour arraignments during business hours and off-hour arraignments during nights, weekends, and holidays.

After receipt of the contract in April 2016, the County moved forward with implementation. On May 3, 2016, Mr. Mercure sent a notice to the magistrates informing them of the on-call programs for off-hour arraignments, reminding magistrates to call his office for any off-hour arraignments, providing them with contact information and the protocol, and stating that all of the arraignment programs would begin May 16, 2016.

3. Off-hour arraignments that occur during business hours:

As set forth above, magistrates were formally notified of this program on May 3, 2016, and implementation began on May 16, 2016. For about three months, the Public Defender Office struggled to operate this program with its pre-2015 Plan staffing of 4 full-time attorneys and four part-time attorneys. It was not until late-August 2016 that the Public Defender Office was finally able to transition another part-time attorney position to full-time status.¹⁰ Thus, this program has been fully operational since late-August 2016.

C. Assessment of Overall Counsel at Arraignment Coverage

Washington County has come a long way over the last year in its arraignment coverage. In 2015 when ILS submitted its Plan, Washington County had just started covering arraignments in regular scheduled DA court sessions, but otherwise did not have any programs in place for arraignment coverage. Within a year, the County has successfully implemented programs to provide coverage of all arraignments. This is in large part due to the efforts of the Public Defender, who worked closely with the County Administrator, the County Attorney, the District Attorney, and the local magistrates to obtain cooperation and buy-in from every stakeholder. As described more fully below, it appears this effort has been successful.

Over the summer of 2016, ILS conducted observations of regular DA court sessions in the following courts: towns of Fort Ann, Hartford, Hebron, Kingsbury, and White Creek, and villages of Fort Edward and Granville. Public Defender Office staff attorneys were present and conducting arraignments at all of these court sessions except for one. ILS discussed this one missed court session with Mr. Mercure, who told us that he knew of one other missed court session. His staff attorney had been at the court session, but left early thinking there were no more defendants to be arraigned. After he left, the judge realized that there were about five more defendants to be arraigned. To his credit, the judge called the on-call attorney, who was not able to come because he was covering another arraignment. Mr. Mercure has spoken with his staff attorneys about this issue. He is also developing a formal counsel at arraignment policy for his

¹⁰ A few factors contributed to the delay in this staffing change. It took some time after the receipt of the Counsel at Arraignment contract for the County to take the steps needed to formally authorize this staffing change. In the meantime, it became apparent to Mr. Mercure that one of his part-time attorneys, Thomas Cioffi, might be resigning from the Public Defender Office to take the position of Supervising Attorney for the Assigned Counsel Program. It made sense, therefore, for Mr. Mercure to accomplish this staffing change by replacing Mr. Cioffi with a full-time staff attorney. Thus, Mr. Mercure coordinated his job search and hiring with Mr. Cioffi's departure in late-August 2016.

staff attorneys to ensure that they fully understand their obligations and take steps to cover all arraignments at DA court sessions.

Review of the Counsel at Arraignment Plan's specific components shows that, with regard to issuing appearance tickets for DA court sessions, law enforcement agencies are now generally doing so. This change has resulted in DA court sessions being busier. As a result, Fort Edward's two courts have each added one additional DA court session per month. There are occasional appearance tickets scheduled for non-DA court sessions, but magistrates are notifying the Public Defender Office, which has been able to provide representation at these arraignments.

With regard to covering all off-hour arraignments that occur during regular business hours, the transition of a fourth part-time attorney to full-time means that the Public Defender Office now has five full-time attorneys, including the Public Defender himself. This additional attorney has allowed the Office to cover off-hour arraignments that occur during business hours in addition to regularly scheduled DA court sessions. Mr. Mercure reports that though he is able to do so with his current staffing pattern, doing so has been a challenge, and his staff is stretched pretty thin.

With regard to the on-call program, the Public Defender Office commenced the program on May 16, 2016 and is now covering all off-hour arraignments that occur at night and on weekends and holidays. Though the Counsel at Arraignment Plan contemplated involvement of private attorneys, currently the rotation is staffed only by the eight Public Defender Office staff attorneys. Initially, attorneys were rotating every seven days; more recently, however, the rotation has changed to 3 or 4 days a week. Notably, the Counsel at Arraignment Plan estimated an average of three arraignments per night. However, as of late-August 2016, there were 91 arraignments conducted over the 75 days since the program's implementation. This is an average of about 1.3 arraignments per night – about half of what was anticipated when the Plan was originally developed. Thus, it appears that the need for a stand-by attorney may be less than originally contemplated. ILS met with Mr. Mercure and his First Assistant, Barry Jones, in late-August 2016 to ask for their assessment of the program. They said that they currently do not see signs of burn-out or decreasing morale due to the on-call program, but they are concerned that the program will become more challenging for attorneys in the winter months, when driving becomes treacherous because of the weather. They opined that it is premature to accurately determine if the stand-by attorney is needed.

Also in August 2016, ILS attended two meetings organized by Mr. Mercure to discuss with the magistrates how the counsel at arraignment programs were going. These meetings included staff from the Public Defender Office, town and village court magistrates, and staff from the District Attorney Office. The first meeting was also attended by Judge Gary Hobbs, Supervising Judge for Washington County Town and Village Courts. Judge Hobbs could not attend the second meeting, and instead Matthew Chivers, 4th Judicial District Court Attorney, attended. During these meetings, magistrates consistently stated that they believe having counsel at arraignment is important, despite the fact that doing so means that arraignments are taking longer. A couple of judges indicated that their DA court sessions are now longer, which corroborates Mr. Mercure's assessment that a greater number of appearance tickets are being written for these regular court

sessions. There was a discussion about arraignments on warrants and consensus that defense counsel needs to be present for these arraignments.¹¹

Washington County has also initiated steps to develop a centralized arraignment system that could potentially replace the on-call arraignment program. This past legislative session, Washington County was able to successfully advocate for an amendment to Criminal Procedure Law § 500-a (2)(o), which now authorizes the County's jail to detain arrestees prior to arraignment. Various county stakeholders have been meeting to discuss creating a centralized arraignment program and the form such a program might take. The County is motivated, in part, by the Legislature's passage of Bill A10360/S7209 which, if signed by the Governor, will provide a process for decision-making about centralized arraignments and will eliminate the statutory barriers to the creation of a centralized arraignment system.

D. Status of Funding for Washington County's Counsel at Arraignment Programs

In addition to funding from the County to provide representation, Washington County funds its counsel at arraignment programs through the following sources:

- *ILS Distribution #2 (\$88,503 total for 3 years)*: This funding supports the transition of three part-time Public Defender Office staff attorneys to full-time, which allows the Office to provide for arraignment coverage at regularly scheduled DA court sessions. This funding will continue through on-going ILS funding, including distribution funding.
- *Hurrell-Harring Counsel at Arraignment funding (\$264,611)*: As previously discussed, this funding allowed for the Public Defender Office to transition an additional part-time staff attorney to full-time status to cover off-hour arraignments that occur during business hours, and it allowed for the creation of an on-call program for overnight, weekend, and holiday arraignment coverage.

Because the Public Defender Office's *Hurrell-Harring* Counsel at Arraignment programs have been in place for a relatively short amount of time, it is premature to gauge sufficiency of funding. ILS needs to monitor whether there is a need for a back-up attorney for the on-call program for overnight, weekend, and holiday arraignments. We also need to monitor the Public Defender Office's business hour coverage, to ascertain whether this coverage needs to be bolstered by having another part-time attorney transition to full-time status. ILS will continue to work with the County in assessing its Counsel at Arraignment programs and identifying any areas that need additional support.

¹¹ These meetings also provided the Washington County magistrates an opportunity to discuss when defendants are legally entitled to counsel. The magistrates expressed frustration about certain low level conduct which is criminalized, such as Aggravated Unlicensed Operation of a Motor Vehicle in the third degree. At the meetings, Judge Hobbs and Matt Chivers emphasized that individuals cannot be detained even for low level offenses or failure to pay a fine if not afforded the right to counsel at the commencement of the criminal proceeding.

II. Assessing the Outcomes of Having Counsel at Arraignment

In addition to working with the five *Hurrell-Harring* counties to implement their counsel at arraignment programs, ILS has been working with the counties to develop strategies for improved data collection. To gauge whether each program accomplishes the goal of providing counsel at arraignment, it is critical that the providers in the five counties have the capacity to track missed arraignments. There are a variety of methods by which to do so, including: i) logging missed phone calls or texts notifying the provider of an arraignment; ii) checking local jail intake logs to determine if any of the people recently detained were not represented by counsel at their arraignment; and iii) including a question on providers' intake forms, the county's assigned counsel application form, or both asking whether or not the defendant was represented at his or her first court appearance. Tracking missed arraignments necessarily requires each county to use a combination of these tracking methods, though the particular combination used differs amongst the counties and depends on the particular county's resources and constraints. ILS continues to work with the providers on improving their ability to track missed arraignments.

ILS has also worked with the five *Hurrell-Harring* counties to improve their capacity to identify, collect, maintain, and report relevant data about the outcomes of having counsel at arraignment. Between March 2016 and October 2016, the two ILS Senior Research Associates visited the providers of arraignment representation in each of the five Settlement Counties twice. The first round of site visits was conducted to gain a better understanding of how case-related information is collected and subsequently entered into the case management systems currently in use. Those meetings typically involved supervisory staff from each of the providers' office in addition to staff involved in day-to-day data entry.

Specifically, ILS researchers gathered the following information from each provider:

1. Who collects the data and how is the data collected?
2. What forms are used to collect data?
3. What data is submitted and to whom?
4. What are the challenges in the data collection process?
5. What are the next steps?

This initial groundwork was crucial in that it facilitated ILS' understanding of the data collection protocols in place¹² and paved the way for a better informed, second round of site visits. The latter was tailored to discuss specifically the Counsel at Arraignment and the Quality Improvement Plan contracts.

With respect to Counsel at Arraignment, those meetings focused particularly on identifying possible Counsel at Arraignment outcomes that can be assessed through existing case management systems, as well as additional data collection efforts.

¹² A complete description of each provider's data collection and maintenance infrastructure is provided in the ILS Quality Improvement Plan Update. Here, we focus solely on their capacity to collect and maintain data on counsel at arraignment outcomes.

A. Contractual obligation and arraignment outcomes selected

By requiring the counties to create programs to ensure that all defendants are represented by counsel at arraignment, the Settlement acknowledges the importance of early entry into a case and the potential impact decisions made at arraignment can have on the eventual outcome of that case. This section describes the efforts made by ILS and providers to assess this potential impact.

ILS distributed the Settlement's Counsel at Arraignment funding to the counties through contracts that include a work plan. For each contract, the work plan requires, among other things, that providers collect and report data assessing the outcomes of arraignment coverage. To accomplish this task, providers must consult with ILS to "develop a plan to identify outcomes of the Counsel at Arraignment Plan, including, if possible, outcomes pertaining to bail, pretrial release, pretrial detention, motions to dismiss the accusatory instrument, and case dispositions." Through conversations with individual providers and internal dialogue within the *Hurrell-Harring* Team, we identified a list of outcome data that could be used across all providers to examine over time the impact of having counsel at arraignment. The resulting list, a "Model Arraignment List," was then presented to each of the providers to determine which of the outcome variables were already being collected and to strategize how to collect the remaining items, typically through a redesign of their current intake forms.

The Model Arraignment List has several sections with questions designed to routinize the examination of each arraignment so that data can be aggregated to provide an overall initial impression of the arraignment practice in each county. The data includes a combination of demographic and outcome data that will allow for more sophisticated analyses once case disposition data is collected in the future. For an explanation of each section of the Model Arraignment List and for the list itself, see Exhibit B.

B. Steps to ensure counties' ability to collect, maintain, and report counsel at arraignment outcomes

This section summarizes the collaborative efforts in which ILS and providers in the *Hurrell-Harring* counties engaged to fulfill the contractual obligations laid out above with respect to data on arraignment outcomes.

Data collection and analysis in this area is at different stages of development in each of the five counties. We discuss their progress in terms of the following three steps: 1) instrument design and implementation; 2) development of a procedure for data maintenance; and 3) development of a reporting protocol.

Onondaga County

Arraignment coverage in this county is provided entirely by panel attorneys from the Onondaga County ACP. In Onondaga, the ACP collects data regarding arraignments by using two types of forms: 1) the Assigned Counsel Application form commonly called the "Blue Form"; and 2) the Attorney Voucher for the particular arraignment program. The "Blue Form" collects both case information (e.g., charges, arraignment date, court, judge, etc.) and client information, such as

family composition, employment, and income data to be used in the determination of eligibility for assigned counsel. There are three Attorney Vouchers used to summarize each arraignment session covered: Town and Village “Off-Hours” Arraignments Voucher¹³; the City Court Arraignment Voucher; and the Town and Village Court Arraignment Voucher. Each voucher is intended to be used for the entire arraignment session and has entries for each client represented including the top charge; number of felonies, misdemeanors, violations, and violations of probation charged; pretrial release status; disposition; and bail amount set, if applicable. There is also space to record the name of the court, the presiding judge, and a total of the time spent in court for the entire session.

To better understand how the ACP collects and reports data from each of these vouchers, ILS requested and received summary reports on each arraignment program listed above, which Ms. Captor provided via Excel spreadsheets. ILS also received hard copies of the arraignment vouchers received for the “Off-Hour” program. We spent a considerable amount of time reviewing the spreadsheets and the vouchers, and in the process, we identified a number of significant problems. For instance:

- The information in the “Off-Hour” spreadsheets do not match the hard copy of the arraignment vouchers provided to ILS - i.e., there were some vouchers that had not been included in the spreadsheet and there were also some arraignments entered in the spreadsheet for which there was no voucher.
- The spreadsheets contain overlapping dates from one monthly summary to the next, which makes it difficult to discern whether dates are missing (no arraignments actually happened) or if there was a problem recording that information (arraignments happened but were not entered into the spreadsheet).
- The spreadsheets for Off-Hour arraignments and arraignments in the regular sessions of the 13 smaller courts both included gaps for which there was no explanation. For example, the July 12, 2016 to October 11, 2016 spreadsheet on the 13 smaller court arraignments included only 16 entries. Even if these courts meet only once per month, there should be at least 39 entries.

Additionally, all of the voucher information is not included in the summary reports, making it difficult to determine the source of data entry errors when two different vouchers completed by different attorneys contain arraignments for the same date. This review highlighted deficiencies in the ACP’s data management structure and the lack of necessary procedures to ensure that quality data is being entered into their existing data systems.

The foregoing problems have complicated ILS’ efforts to build the ACP’s capacity to not only collect and report on basic information about its arraignments programs, but also information about the outcomes of arraignments. Because the ACP uses different vouchers for each arraignment program, this section discusses counsel at arraignment in Onondaga County by program based on the vouchers used for each.

¹³ For the sake of clarity, this specific voucher will be referred to as the “Pilot Program Arraignment Voucher” throughout this report.

Off-Hour On-Call Pilot Program

1. Instrument design and implementation

As previously stated, in June 2016, county stakeholders met twice to work on and develop written protocols and a Pilot Program Arraignment Voucher for the off-hour on-call pilot program. The new Pilot Program Arraignment Voucher is modeled after the existing city court and town and village voucher and includes the same charge and pre-trial release information. It also includes information on the arresting agency (e.g., Sheriffs, State Police, or town and village police agency), as well as the time of the judge's call, but it does not include all of the counsel at arraignment outcome data. During these meetings, participants also developed a time log for judges and police to maintain to record attorney arrival time and arraignment start and end time. The time log was developed because of the concern that law enforcement and judges would spend an inordinate amount of time waiting for defense counsel to arrive for these off-hour arraignments. ILS does not know if judges and police have been diligent about recording this information; we have asked Ms. Captor for copies of these logs, and she has told us that the justices have not shared them with her. During a September 21, 2016 meeting, ILS was told that in lieu of sharing these logs, Dewitt Town Court Justice Gideon would issue a report about the off-hour arraignment program. This report was attached to an October 18, 2016 letter from Judge E. Hughes, 2016 President of the Onondaga County Magistrates, to Robert Durr, Onondaga County Attorney, which is referenced in Section I above.

2. Data maintenance

The Onondaga ACP uses ACPeep as its case management and data collection system, and thus to collect case information for assignments to ACP attorneys. However, the data from the off-hours pilot program is not currently being kept in ACPeep. Instead, Ms. Captor uses Excel spreadsheets to maintain summary data on the pilot program arraignments, as she does for all of the other arraignment programs. Currently Ms. Captor is not entering all of the reported information from the Pilot Program Arraignment Voucher in the Excel spreadsheets and therefore is not currently tracking the limited outcome data that is actually being recorded, such as the previously mentioned pre-trial release information.

3. Reporting

In June 2016, the ACP agreed to track arraignment information reported on voucher and log forms and report it to ILS periodically or as requested. To date, ILS has received three summary reports of off-hour pilot program data from the three courts. These reports do not identify arraignment outcomes, but instead simply list the arraignment date, charges (i.e., violation, misdemeanor, or felony), hours billed by the arraigning attorney, the arraigning judge, and the court of arraignment. Judge Gideon's report on the Pilot Program does not provide a systematic analysis of all the information collected on the Pilot Program Arraignment Vouchers.

Moving forward, ILS will work with Ms. Captor to develop a document that will capture all of the requested counsel at arraignment outcome data for all of the arraignment programs, including

the pilot program. As a starting point, on October 6, 2016 ILS provided Ms. Captor with a “Model Arraignment Form” and requested a meeting to discuss the document.¹⁴ After receiving no response from Ms. Captor, ILS raised the issue again during a weekly phone conference about expanding the off-hour arraignment program and Ms. Captor agreed to meet on November 14, 2016. Once the ACP and ILS agree upon a form that can be used to collect arraignment outcome data, ILS will urge the ACP to use this same document for all arraignments across all programs, with the data entered either into an Excel spreadsheet or ACPEeper. This would routinize both the data collection and data entry and provide the basis for quarterly reports. In the future, ILS will request the arraignment data to be reported on a quarterly basis.

Syracuse City Court Traffic Part, and 13 Town and Village Court Regular Business Hour Arraignments

1. Instrument design and implementation

At present, the Onondaga ACP is using the previously described City Court Arraignment Voucher and Town and Village Court Arraignment Voucher, in combination with the eligibility “Blue Form” to collect data on these two programs. As mentioned above, these vouchers do not include most of the counsel at arraignment outcome data that we seek to collect. ILS seeks to have the Onondaga ACP implement a customized version of the “Model Arraignment Form” that would capture all of the required data. The November 14, 2016 meeting discussed above will be the first step toward reaching that goal.

2. Data maintenance

At present, the Onondaga ACP is using an Excel spreadsheet to record voucher information on arraignments in the smaller town and village courts and the Syracuse City Court Traffic Part. Moving forward, we anticipate that Ms. Captor will continue to enter arraignment data into spreadsheets rather than use ACPEeper, which will meet our needs as long as the additional outcome data is collected and reported.

3. Reporting

The Onondaga ACP has provided summary data for these arraignments covering town and village courts (5/17/16 through 7/5/16; 6/20/16 through 8/9/16; and 8/10/16 through 9/30/16), and Traffic Part (6/16 through 7/8/16; 7/11/16 through 8/8/16; and 8/9/16 through 9/29/16). Ms. Captor has agreed to provide this data on a monthly basis. Moving forward, once a form for tracking arraignment data is adopted and implemented, receiving quarterly reports would be sufficient to allow ILS to more closely monitor data collection and data entry at the start of this new project.

¹⁴ The “Model Arraignment Form” was originally prepared by ILS for data collection by the attorneys participating in Suffolk County’s East End Pilot Program. During conversations with providers in other counties, the form’s utility became clear beyond the original intent. Thus, the form has been adapted for use by other providers. We discuss those instances later in this document.

Ontario County

Arrest coverage in Ontario County is provided by the Public Defender Office. Accordingly, below we recount the status of our collaborative efforts with that provider with respect to collecting arrest outcome data.

1. Instrument design and implementation

Ontario County's Public Defender Office has been collecting arrest data routinely since at least 2012, and while they have collected much information that goes to arrest outcomes, there are a few outcomes in ILS' Model Arrest List that they are currently not collecting. Therefore, ILS staff have worked with the Public Defender to discuss collecting the additional fields of interest and to ensure that data collection is accomplished in a way that best fits the office's current practice.

Currently, attorneys at the Public Defender Office record arrest information on an "Attorney Notes Sheet" and then email that information to clerical staff, who then cull the data from the emails and enter it into an "Arrest Log." The log is a case-level spreadsheet in Excel. According to Leanne Lapp, this system has been in place for a while; arresting attorneys are accustomed to this process and have achieved excellent compliance in transmitting arrest information to the staff. ILS and the Ontario Public Defender's Office have agreed that the most efficient way to collect the additional information on arrest outcomes is to request the attorneys to include such data in their emails. This will ensure continuation of a process in which attorneys and clerical staff are already trained and that has proven successful.

While the Ontario Public Defender's Office and ILS have achieved consensus on the collection of most of the outcome information, Leanne Lapp is still considering the utility and feasibility of gathering information on some additional outcomes, such as "Defense's request for bail." Therefore, at present, attorneys have yet to be required to include the additional arrest information in the emails.

2. Data maintenance

The Ontario County Public Defender Office uses the New York State Defender Association (NYSDA's) Public Defense Case Management System (PDCMS) as its case management and data collection system. Currently, in addition to PDCMS, the Public Defender Office utilizes Excel to compile certain data. Specifically, staff have developed a spreadsheet, the "Arrest Log," to record arrest information. This alternative database is used because staff at the Public Defender Office find data entry into PDCMS somewhat cumbersome, as it often requires one to maneuver through a number of different screens to enter information on a single event/case. ILS has assured Ms. Lapp that these concerns were shared with NYSDA and that NYSDA is working to make the counsel at arrest data entry as easy as possible moving forward. Because the Ontario Public Defender Office staff presently have a system in place with which they are comfortable and at which they are proficient, they are considering whether it would be practical to keep the arrest data on their existing spreadsheet permanently, or at

least until they gain confidence that the same information could be kept in PDCMS just as easily and efficiently.

3. Reporting

Once data collection and data maintenance of the additional outcomes begin, it is expected that the Ontario Public Defender Office will report the recorded information on a quarterly basis to ILS. The first report will be due on February 1, 2017 and will cover November and December 2016 arraignments.

Schuyler County

Arrest coverage in Schuyler County is provided by the Public Defender Office. Accordingly, below we recount the status of our collaborative efforts with that provider with respect to collecting arraignment outcome data.

1. Instrument design and implementation

The Schuyler County Public Defender Office uses PDCMS as its case management and data collection system. In Schuyler County, the Public Defender Office attorneys typically record case information on the outside of the case file folder or on a notepad, as well as on a “Criminal Case Summary” form. The office also utilizes a “Defendant’s Criminal History Summary” form to collect client information. The information culled from these sources is entered into PDCMS by support staff and/or by the attorneys themselves.

In reviewing both forms currently in use in Schuyler, ILS and Mr. Roe concluded that the most efficient way to collect arraignment outcome data would be to create an additional form dedicated specifically to record this type of information. When these discussions with Mr. Roe began, ILS had already prepared a “Model Arraignment Form” that was being utilized in Suffolk County by the attorneys participating in the East End Pilot Program (described later in this report). ILS suggested adopting the “Model Arraignment Form” in Schuyler with very minor adjustments.

Mr. Roe and the other attorneys in his office have just recently started to use the “Model Arraignment Form” for their “notification” arraignments—i.e., all of the arraignments, except the appearance ticket arraignments at DA night court sessions. Once staff become accustomed to utilizing the form, we will explore adopting it for appearance ticket arraignments as well.

2. Data maintenance

As previously stated, the Public Defender Office uses PDCMS. At present, attorneys and staff enter case-level information into the database. It is anticipated that information from the “Model Arraignment Form” will be incorporated into the data entry procedure currently in place.

3. Reporting

NYSDA has updated PDCMS to allow for: (a) entry of arraignment outcome data into the system and (b) creation of an automated counsel at arraignment report. These updates are available as of November 1, 2016. Once their staff are adequately trained, it is expected that the Schuyler Public Defender Office will report the recorded information on a quarterly basis to ILS. The first report will be due on February 1, 2017 and will cover November and December 2016 arraignments.

Suffolk County

As previously stated, the LAS and the ACP operate counsel at arraignment programs in this county. In addition, the Suffolk County Attorney's Office has played a key role in getting the weekend on-call pilot program in the East End up and running. Accordingly, below we recount the status of our collaborative efforts with each of these providers with respect to collecting arraignment outcome data.

East End Pilot On-Call Program

1. Instrument design and implementation

In June 2016, in collaboration with the County Attorney's Office and with input from LAS' staff, ILS developed a "Model Arraignment Form" (Exhibit C). It was agreed that each attorney participating in the pilot program would complete one form per appearance. The completed forms are then photocopied, the copies are attached to the corresponding case files and are passed on to the LAS first thing on Monday mornings. The original arraignment forms are submitted to the County Attorney's Office each month along with the arrainging attorneys' vouchers. The County Attorney's Office subsequently mails the submitted arraignment forms to ILS for data processing (more on this below).

To train the attorneys on how to complete the form and on the submission protocol, ILS developed a training brochure (Exhibit D). The brochure was emailed to the participating attorneys and thoroughly reviewed during the July 7, 2016 conference call, previously discussed in this report.

2. Data maintenance

To facilitate the process of transferring the information from the submitted forms to a database, when designing the form ILS adopted a format that could be scanned using appropriate software. Currently, and on an interim basis, ILS has assumed the responsibility of scanning the forms that are mailed to ILS by the County Attorney's Office every month. This arrangement will stay in place until we have a better handle on how many arraignments are being provided through the pilot program and the attending demands regarding data maintenance. To date, ILS has received a total of 104 forms that reflect arraignments from July 9, 2016 (the start date of the program) to August 28, 2016 (the last Sunday in that month).

These forms have been scanned and data cleaning has started. ILS' researchers are currently engaged in reviewing the answers in the forms received and have followed up with the

participating attorneys to remedy certain minor data entry issues and to seek clarification about their responses in selected fields.

3. Reporting

Because ILS has temporarily assumed the responsibility of processing the data generated by the attorneys participating in the East End Pilot Program, the task of reporting is not applicable at this time. Once the pilot is expanded in the county, an alternative data maintenance protocol may be needed, and reporting should, at that point, reflect the same frequency procedure expected of all other providers of representation at arraignment.

Legal Aid Society of Suffolk County

1. Instrument design and implementation

Until recently, the LAS utilized an “Intake Sheet” and a pre-printed file jacket to gather data on arraignments (and other useful information). These two sources contained a few, but not all, of the outcome data identified above. By the time ILS and LAS engaged in conversations about the best procedures to capture the arraignment data in question, Mr. Caponi, LAS East End Bureau Chief, had become familiar with the form ILS had developed for the East End Pilot Program (described above). Mr. Caponi had participated in the July 7, 2016 meeting organized by the County Attorney’s Office, during which the form was introduced and instructions on how to complete it and hand it off were reviewed. Mr. Caponi expressed to ILS staff an interest in adopting the East End Pilot Program form with a few adjustments to suit the context of his organization.

Based on his stated interest, ILS worked closely with Mr. Caponi and other LAS staff to develop such a form. At present, LAS attorneys are routinely utilizing these forms in the East Hampton and Southold courts. Concomitantly, LAS staff are revising their pre-printed file jackets to include the data fields currently captured in the arraignment form.¹⁵ By including the counsel at arraignment fields in these jackets, LAS can eliminate the need for a form in addition to the case files that attorneys already carry to court. Once the new file jackets are finalized, data collection will be expanded to include the other courts in the East End.

2. Data maintenance

LAS uses PDCMS as its case management and data collection system. In total, LAS has 13 clerks on their staff dedicated to data entry into PDCMS. A physical file folder is created for each case. LAS attorneys take the folder with them to all court dates and, at the end of the day, they return them to the clerks who, in turn, enter the data into the case management system. Data thus is entered on a daily basis and there is a procedure in place to verify that it is done correctly. It is anticipated that data from the arraignment form/file jacket will be incorporated into the data entry routine currently in place.

3. Reporting

¹⁵ This was a fortuitous event as LAS was already in the process of modifying their pre-printed file jackets.

As previously mentioned, NYSDA has updated PDCMS to allow for: (a) entry of arraignment outcome data into the system and (b) creation of an automated counsel at arraignment report. These updates are available as of November 1, 2016. Once their staff are adequately trained, it is expected that the LAS will report the recorded information on a quarterly basis to ILS. The first report will be due on February 1, 2017 and will cover November and December 2016 arraignments.

Suffolk County Assigned Counsel Defender Plan

1. Instrument design and implementation

Until recently, in addition to attorneys' vouchers, staff in the ACP utilized several forms to gather arraignment information. Those forms, which were completed by the arraignment attorneys and by one investigator, contained a few, but not all, of the outcome data identified above. ILS worked closely with Stephanie McCall, ACP's Deputy Administrator, to revise those instruments accordingly. Ms. McCall, the attorneys, and the investigator elected to adopt two forms to record arraignment data. That choice allowed them to record all of the outcome data of interest but also to streamline the hand-off of information from the investigator to the attorneys and then to the ACP administrative staff. This system was implemented in October 2016.

2. Data maintenance

The ACP uses PDCMS as its case management and data collection system and routinely enters case-level information into PDCMS. It is anticipated that data from the two arraignment forms will be incorporated into the data entry procedure currently in place.

3. Reporting

As mentioned above, NYSDA is currently updating PDCMS to allow for: (a) entry of arraignment outcome data into the system and (b) creation of an automated counsel at arraignment report. These updates are available as of November 1, 2016. Once staff are adequately trained, it is expected that the ACP will report the recorded information on a quarterly basis to ILS. The first report will be due on February 1, 2017 and will cover November and December 2016 arraignments.

Washington County

Arraignment coverage in Washington County is provided by the Public Defender Office. Accordingly, below we recount the status of our collaborative efforts with that provider with respect to collecting arraignment outcome data.

1. Instrument design and implementation

In an effort to collect relevant arraignment data, staff in the Washington County's Public Defender Office originally developed a form that contained many, but not all, of the outcome

data identified above. At Mr. Mercure's request, ILS staff identified which fields were not in the document and revised it to include all of the fields of interest. The resulting form, referred to as "CAFA Cover Sheet" by the Public Defender Office, is currently completed by attorneys for each arraignment they represent.¹⁶

2. Data Maintenance

The Washington Public Defender Office began utilizing PDCMS in 2014, and currently three office administrative assistants enter case-level information into the database. In conversation with ILS in March 2016, Mr. Mercure recognized that they could be using more of the functionality of PDCMS and would like to work toward that. It is anticipated that the office will indeed expand its use of the case management system and that data from the "CAFA Cover Sheets" will be incorporated into the data entry procedure currently in place.

At present, in an effort to expedite the reporting and conduct in-house analysis,¹⁷ the Washington County Public Defender Office is maintaining data from the "CAFA Cover Sheet" in an Excel spreadsheet that was developed in collaboration with ILS. Office staff have demonstrated proficiency in maintaining the data in Excel, evidenced by the data they have already submitted to ILS, as discussed below.

3. Reporting

As mentioned above, NYSDA has updated PDCMS to allow for: (a) entry of arraignment outcome data into the system and (b) creation of an automated counsel at arraignment report. Updates are available as of November 1, 2016. To their credit, in the absence of a way to enter data into PDCMS at the moment, staff in the Washington County Public Defender's Office have been utilizing Excel to record data from the "CAFA Cover Sheet" electronically. They have reported those data to ILS, spanning May 16, 2016 to September 27, 2016. ILS is currently reviewing the data.

Once staff are adequately trained on the PDCMS updates, it is expected that the Washington County Public Defender Office will begin utilizing the case management system and report the recorded information on a quarterly basis to ILS. The first report will be due on February 1, 2017 and will cover November and December 2016 arraignments.

C. It is premature to have good data

In the previous section, we described the status of data collection on arraignment outcome data in terms of three steps: instrument development and implementation, data maintenance, and data reporting protocols in place for each county. At the time of this report, data collection is incipient

¹⁶ In addition to recording counsel at arraignment "outcome" data, the office uses the "CAFA Cover Sheet" for multiple purposes. Mr. Mercure and his staff have advised ILS that the form is always completed. If an attorney records only some of the information at arraignment, then office staff will complete the form during the course of the case or at the end, when the case is closed.

¹⁷ For instance, Mike Mercure was interested in calculating how long it took for attorneys to get to courts after being notified.

and therefore it would be premature to perform an analysis of the outcomes of counsel at arraignment in each of the counties for several reasons.

As discussed, each of these counties is at a different stage with respect to the steps involved in a data collection plan. For example, whereas the instrument design for the most part has been completed, the actual implementation has not yet begun in all of the counties. In addition, ILS continues to work with NYSDA to update PDCMS to allow providers to enter and report arraignment outcome data. Until that process is completed, data maintenance will not generally be complete, unless providers develop procedures to enter data outside of PDCMS—as a few of them have been able to do.

Finally, even in the counties where data forms have been created and implemented and data maintenance and reporting have begun, ILS is still evaluating whether the data reported are accurate, whether more training on completing the forms is needed, and whether the forms themselves need to be adjusted as new needs are identified or emerge. This is crucial because flawed data leads to poor inferences and equally poor decision-making; therefore, every data collection process requires time so that unforeseen problems can be resolved. Only then can sound analysis start.

Out of necessity, reports such as this tend to be parsimonious and emphasize almost exclusively the current status of what is being reported on. This often obfuscates the important steps taken to achieve such status. To get here, a great deal of collaboration and critical thinking by the providers and ILS staff took place over several months. The very fact that now each of these counties is, for the first time, uniformly collecting data on arraignment outcomes is in itself a considerable achievement.

III. Stories that Illuminate the Value of Counsel at Arraignment.

This report has detailed the manner in which the five *Hurrell-Harring* counties have implemented programs to ensure that every eligible criminal defendant is represented at arraignment. Additionally, the previous section of this report discusses the steps ILS is taking to build providers' capacity to collect, maintain, and report data regarding arraignment outcomes. But quantitative data collection is only one aspect of assessing arraignment outcomes; obtaining qualitative information from providers is yet another aspect. This section discusses the qualitative information we have gathered.

As described in this report, ensuring that defendants are represented at arraignment has been no small task for providers. Every county has had to develop multiple arraignment programs, including on-call rotations that require attorneys to sacrifice their evenings, weekends, and holidays. The administration of these programs has posed a myriad of challenges, requiring providers to develop notification systems, a variety of schedules for the different programs they operate, and financial systems to track the plethora of costs, including mileage, cell phones, hourly compensation, and stipends. Providers have also worked diligently to obtain buy-in from judges, magistrates, law enforcement, and others.

Despite the work involved, providers have told us that having counsel at arraignment is critical to fully honoring the constitutional right to counsel. We wanted to know why providers place a high value on the right to counsel at this early stage, so over the past two months, we reached out to provider attorneys in all five counties to elicit their perspectives. These attorneys shared stories with us to illustrate the importance of having counsel at arraignment.

Below are some of their stories.

Counsel at Arraignment Diminishes the Use of Pretrial Detention

Most, if not all, attorneys who spoke with us reported that the presence of counsel at arraignment has resulted in many more clients avoiding pretrial detention. At arraignment, attorneys are often able to successfully argue for release on recognizance, release under supervision, or lower bail amounts that defendants can pay. One attorney commented that having an attorney present “keeps the judge honest,” meaning that judges are less apt to use bail as a means of punishing a defendant or as a means of gaining leverage to induce a quick guilty plea.

One attorney recounted a case in which her client was charged with possession of a forged instrument. At arraignment, the assistant District Attorney recommended \$5,000 cash, or \$10,000 bond. The arraigning attorney spoke with her client for a few minutes and elicited information about the client’s young children, strong community ties, and the fact that he had never before failed to appear in court. After hearing from the prosecution and defense, the judge set bail at \$500 cash, or \$1,000 bond, an amount within the client’s reach. This attorney commented that it is unlikely that her client would have been able to assemble such a strong argument for the much more reasonable bail ultimately set by the judge. This scenario, where an attorney marshals the facts and makes the bail argument with good results, is a common outcome of counsel at arraignment.

In other situations, counsel’s ability to present legal arguments to the court at arraignment may result in release or more reasonable bail. Attorneys generally report that in some cases their ability to argue deficiencies in the accusatory instrument have resulted in immediate dismissal of at least some charges, and hence led to release or lower bails. In one case, a deputy sheriff argued for \$500 bail on an Aggravated Unlicensed Operation of a Motor Vehicle 3rd degree charge. The arraigning attorney reminded the judge that the Sheriff’s office does not have a right to be heard about bail. The Judge agreed, stated that he would not consider the Sheriff’s position, and released the defendant.

Attorneys have reminded us of the significant case implications of being released instead of detained while a case is pending. Research consistently shows that case outcomes are significantly better for defendants who are released.¹⁸ Moreover, it is a common practice for

¹⁸ A helpful summary of research on this issue can be found in the 2013 brief, “Pretrial Criminal Justice Research,” written by the Laura and John Arnold Foundation. This brief can be found at: http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FNL.pdf. As this brief highlights, research shows that people detained while their case are pending are significantly more likely to receive a jail or prison sentence, and among all defendants sentenced to jail or prison, significantly more likely to receive a longer sentence.

defendants detained on lower-level charges to be offered a quick plea in exchange for a sentence of “time served” - meaning immediate release. This is powerful leverage that can be used to induce defendants to plead guilty, even defendants who are not guilty of the crimes with which they were charged.

Attorneys have also told us of instances in which their advocacy at arraignment has meant that innocent people are not incarcerated or that clients are not detained because of mistaken information. In one case, the attorney successfully argued for release of a defendant who had been arrested on a bench warrant for not providing a DNA sample. The client, who spoke little English, told the attorney he had given a sample and explained the circumstances under which he had done so. Almost immediately, the arraignment attorney was able to request the jail log, which corroborated the defendant’s story. The charges were eventually dismissed. This attorney told us that had she not been at arraignment to successfully argue for his release, the client would have needlessly sat in jail for at least two days before the case was dismissed. In another case, this same attorney was able to prevent her client’s incarceration without bail by correcting the judge’s mistaken belief that her client had two prior felony convictions.

Counsel at Arraignment Allows for Early and More Effective Case Investigation

Attorneys told us of several instances in which being at arraignment allowed them to conduct a quick and immediate fact investigation into the case, with positive case outcomes. One attorney told us the story of his client, “Sue,” who was originally charged with two counts of Criminal Possession of Stolen Property in the fourth degree, a felony. The charges arose out of a sex for money encounter. Sue’s “customer,” the complainant, claimed that after he paid her for sex, she stole his credit cards and fled. Sue claimed that after she had refused the complainant’s request to perform deviant sex acts, he forcibly raped her. Sue’s claims of rape were summarily denied by the police due to her prior prostitution convictions and the credit card theft charges. Prior to arraignment, the attorney spoke to Sue, and was convinced she had been raped. The attorney raised this with the court. Although the court set bail and did not release Sue, the attorney was able to persuade the court to direct that medical attention be provided to her. The attorney then arranged to have Sue seen in the jail by a victim’s advocate and a nurse, both of whom concluded that her claim of rape was legitimate. Armed with this additional information, the attorney returned to court and successfully argued that the bail should be reduced to an amount Sue could post. After her release, the attorney took steps to ensure that Sue received the medical and psychological attention she needed. The attorney also continued to advocate with the court and the prosecution, convincing law enforcement to open a rape investigation. Ultimately, the prosecution declined to seek an indictment against Sue and the charges against her were reduced to misdemeanors.

Having Counsel at Arraignment Can Diminish Imposition of Punitive Conditions and Sanctions, Such as Suspension of a License or Issuance of Orders of Protection

The law authorizes judges to impose punitive conditions or sanctions at arraignment, including suspension of a license or the issuance of a temporary order of protection. Attorneys told us that in many instances, their advocacy prevented the imposition of these sanctions or conditions. For example, an on-call arraignment attorney was called by the judge on short notice and told that

the police were in a hurry to arraign the defendant. The defendant was charged with several offenses, including Driving While Intoxicated after refusing to take a Breathalyzer test. The judge released the client on his own recognizance, but suspended the defendant's license because of the alleged refusal. Shortly after the defendant left the courtroom, the arraignment attorney realized that there was nothing in the accusatory instrument and supporting papers to support the allegation that the defendant had refused the Breathalyzer test. She immediately called the client who explained he had not refused, and in fact, had been taken for blood work. The attorney called the judge and explained the situation; the judge vacated the suspension the next day before the paperwork was sent to the Department of Motor Vehicles (DMV). Had the paperwork reached DMV, it would have been very difficult to reverse the license suspension.

In another case, the defendant was charged with Burglary in the third degree arising from an allegation that in 2007 he had stolen a bottle of liquor from a bar that was closed. The defendant was not arrested or arraigned on this charge until July 2016. The arraignment attorney immediately recognized the potential statute of limitations issue. During the argument about release status, he raised not only the standard bail factors, but also the fact that the prosecution likely had a stale case. Nonetheless, the court set bail at \$10,000. The attorney immediately filed a writ of habeas corpus in superior court, and two days later the superior court justice heard the writ and reduced bail to \$250, which the client was able to post. In addition, the defendant was a lawful permanent non-citizen resident of the United States. At the beginning of the case, the arraigning attorney was able to arrange for coordination between the assigned defense counsel and an immigration attorney.

Preventing Improper Practices

Sometimes arraignment counsel are able to push back against improper law enforcement practices. For example, one attorney told us that he represented a defendant who was arraigned on a domestic violence charge. At arraignment, the judge issued an order of protection against the defendant, and, in accordance with the criminal procedure law, suspended the defendant's firearms license and required the defendant to surrender his firearms. The judge and the assistant district attorney were ready to immediately send the police to the defendant's home to seize the firearms. The arraignment attorney explained that the criminal procedure law clearly states that the defendant shall be informed of a date, time and location to surrender his firearms; the law does not authorize law enforcement to enter a person's home to forcibly seize the firearms. The arraigning attorney's advocacy prevented unwarranted law enforcement intrusion into the defendant's home.

Similarly, in another case, the defendant was accused of stealing valuable antique coins. The assistant district attorney stated that he was inclined to recommend \$80,000 bail, but would be willing to reduce his recommendation to \$40,000 if the defendant consented to an immediate search of his house. The arraigning attorney outright rejected this proposal and told the assistant district attorney that he could not search the defendant's home without a lawful warrant. In so doing, the arraigning attorney prevented a warrantless search of the defendant's home.

Better Client-Attorney Relationships

Many attorneys who spoke to ILS about the impact of counsel at arraignment emphasized the positive impact that it has on their ability to build better relationships and communicate more effectively with their clients. At arraignment, attorneys are able to explain the process and proceedings to their clients, prevent clients from making incriminating statements, and assist them in making a favorable impression. From the beginning of the case, clients sense that their attorney is helping them to navigate the court system. Even more importantly, they see the attorney representing their interests and often engaging in zealous advocacy.

Other outcomes of having counsel at arraignment are amenable to being measured through the collection of data, as described in the previous section of this report. Building better client-attorney relationships is not something that can be measured quantitatively. Yet, research has shown that, from the client's perspective, the attorney-client relationship is the most important element of client satisfaction.¹⁹ In other words, the ability to foster positive attorney-client relationships is one of the more important indicators of quality representation. For that reason, in terms of enhancing the quality of representation overall, ILS considers this outcome of counsel at arraignment to be immensely important.

CONCLUSION

Over the past year as we have worked with the counties in implementing their counsel at arraignment obligations, and with one exception,²⁰ ILS has been impressed with their efforts to ensure that defendants are represented by counsel at arraignment. We have witnessed a shift in culture from one in which this right was honored only when convenient, to a culture in which the right is viewed as fundamental, even when honoring it requires time and effort.

We recognize that the implementation work is not finished. The counsel at arraignment programs in each of the five counties are relatively new, and ILS needs to monitor the robustness of these programs. This requires ongoing assessment of missed arraignments (to identify possible gaps in arraignment coverage) and expenditures (to identify if additional resources are needed). Additionally, we need to work on assessing the quality of arraignment coverage and ensuring that the providers in the *Hurrell-Harring* counties have access to training opportunities. Our next annual report will focus on these issues.

Finally, we note that in our 2015 Counsel at Arraignment Plan, ILS discussed possible systemic changes to facilitate arraignment coverage. We discussed centralized arraignments as a cost-effective means of ensuring that all defendants are represented by defense counsel at their arraignment, and we identified several possible means of centralizing arraignments. We are

¹⁹ See, e.g., Chelsea Davis, Ayesha Delany-Brumsey, and Jim Parsons, "'A Little Communication Would Have Been Nice, Since This is My Life:' Defendant Views on the Attorney-Client Relationship," The Champion, July 2016, at 28.

²⁰ This report describes many of the problems ILS has with the Onondaga ACP both in terms of implementing the counsel at arraignment programs and in terms of obtaining reliable data on these programs.

pleased that this past legislative session, the Assembly and Senate passed Bill Number A10360/S7290A, which allows all New York counties to develop and implement county-specific centralized arraignment programs. Enactment of this bill would enable the five *Hurrell-Harring* counties to re-assess their current arraignment programs to decide if a centralized arraignment program could better meet the goal of ensuring that all defendants are represented by counsel at their arraignments. As discussed earlier in this report, two of the *Hurrell-Harring* counties – Onondaga and Washington - have initiated steps to develop centralized arraignment programs, and both counties are waiting enactment of this bill to complete the process. Accordingly, we encourage the Governor to sign this important ameliorative legislation.

EXHIBIT A

Hurrell-Harring Counsel at Arraignment
Onondaga County
Plan to Expand On-Call Program to all Onondaga County Justice Courts

Overview of On-Call Program

To cover the off-hour arraignments in all 28 of Onondaga County's justice courts, Onondaga County worked with ILS to develop a plan for the creation of an on-call program. This plan was set forth in the *Implementing the Counsel at Arraignment Obligations in the Hurrell-Harring v. The State of New York Settlement, Final Plan*, submitted to the parties on November 12, 2015. The program involves dividing the County's justice courts into seven geographic zones, and recruiting and designating attorneys within each zone to be on-call for off-hour arraignments. The Onondaga Assigned Counsel Program (ACP) is to administer the program, recruit attorneys to participate in the program, develop the on-call schedules, and notify the town and village court magistrates of the schedule and the on-call number at which they can reach the attorneys. There will be two attorneys on-call for each zone – one as the primary, and one as the back-up. The County's IT Department has created a phone system so that within each zone there is one cell phone number that judges can call to notify the designated on-call attorney of the off-hour arraignment. If the primary attorney is unavailable the call will automatically be forwarded to the back-up attorney.

Pursuant to the plan submitted in 2015, the on-call program was initially implemented as a pilot program in Zone 1 (see Implementation Schedule below). This pilot program began on July 13, 2016. As a result, the infrastructure is in place to expand the program to the remaining justice courts in the County.

General Steps to Implement

- 1) The ACP will verify residence addresses for panel attorneys
- 2) The ACP will identify attorneys in each zone (based on their residence address) interested in participating in On-Call Program
- 3) The ACP and County Attorney's Office will work with the County IT Department to verify equipment set up, which includes:
 - a. Re-check telephone tree setup for use in multiple locations (County IT)
 - b. Setup and check existing phones (ACP and County IT)
 - c. Order additional telephones (County IT)
 - d. Setup and check new phones (ACP and County IT)
- 4) The ACP will finalize the schedule for each zone (the attorneys will be on-call for one week at a time)
- 5) The ACP will notify the on-call attorneys and judges of the schedule; the ACP will also distribute telephones to the on-call attorneys
- 6) The ACP will troubleshoot as necessary
- 7) The ACP will work with ILS to track the program and collect data regarding missed arraignments and outcomes of having counsel at arraignment

The ACP, the Onondaga County Attorney's Office, and ILS have scheduled weekly meetings to monitor implementation and resolve any problems that may arise.

Implementation Schedule by Zone

	<u>Courts</u>	<u># Attorneys</u>	<u>Proposed Start Date</u>
Zone 1	DeWitt, East Syracuse Village, Minoa Village	2	Implemented (7/13/2016)
Zone 2	Salina, Liverpool Village	2	10/12/16
Zone 3	Cicero, Clay, North Syracuse	2	10/19/16
Zone 4	Camillus, Geddes, Solvay Village	2	10/26/16
Zone 5	Baldwinsville Village, Lysander, Van Buren	2	11/2/16
Zone 6	Onondaga, Elbridge, Jordan Village, Skaneateles, Marcellus, Spafford	2	11/9/16
Zone 7	Manlius Town, Manlius Village, Fayetteville Village, Otisco, Lafayette, Tully, Pompey, Fabius	2	11/9/16

EXHIBIT B

Counsel at Arraignment - Model Arraignment List

Court and Charge Information

- Arraigning court
- Arraigning judge
- Date of arraignment
- Time arraignment began
- Charges arraigned on (specify Penal Code) and charge level (specify Fel., Misd., Viol.)
- Type of arraignment: appearance ticket or in-custody or warrant
- Defendant's last name

Refused/waived representation?

Attorney Information

- Name of defense attorney
- Type of defense attorney (PD, LAS, ACP)
- Time of call/notification to defense attorney
- Time defense attorney arrived
- Was DA present?

Release and Bail

- Release status (RoR, RuS, remanded, other)
- Was bail requested? If so, please provide information on:
 - o DA's request
 - o Defense's request
- Was bail set? If so:
 - o Amount set
 - o Bail posted at arraignment? (Check if YES)
 - o Date bail posted
 - o Date defendant released

Motion to Dismiss

- Did the defense attorney move to dismiss? If so,
 - o Was the motion denied, granted, or adjourned?

Disposition

- Was the case disposed of? If so
 - o What was the disposition? (Dismissal, ACD, guilty plea to top charge, guilty plea to reduced charge, other?)

Other Outcomes

- Order of protection
- Driver's license suspended
- Other
- None

Next Court Appearance

- Date of next court appearance
- Attorney assigned? If so, who and type (PD, LAS, ACP, Private)

Counsel at Arraignment- Model Arraignment List Explanations

1. Court and Charge Information – This section is intended to capture the basic demographic information of the proceedings and includes: arrainging court and judge; date and time of arraignment; whether it was an in-custody, appearance ticket or an arraignment on a warrant; and the arraignment charges. Defendant's last name is also included, more so as a means for the provider to reconcile the arraignment information with other case file information collected, as ILS does not need to collect this data. ILS asks that the arraignment date and time be recorded to differentiate various arraignment programs within each county (i.e., on-call off-hours and weekend overnight arraignments). Arraignment type (in-custody, appearance ticket, or warrant) is one factor that can be used to compare bail decisions for in-custody defendants charged with different offenses or in different courts. It can also be used to assess whether more appearance tickets are being issued for DA justice court sessions.¹

2. Attorney Information – This section includes the following: name of defense attorney and type of defense attorney (PD, ACP, LAS for those counties where more than one program covers arraignments); time of call/notification to defense attorney, time defense attorney arrived; and whether the DA was present. In some counties, it is important to collect the time information to refute arguments that judges are required to wait an inordinate amount of time for the PD to arrive. Whether the DA was present is a critical piece of information for several reasons. The presence of the DA can have a significant impact on the defendant's pretrial release status and the amount of bail requested and set. Also, in some jurisdictions, DAs have begun to appear at off-hour arraignments when they did not do so prior to the new counsel at arraignment programs. In some instances, DAs are now requesting bail in higher amounts than they had previously when they appeared only by phone. This can be an indicator of the county's receptivity to the new counsel at arraignment programs.

¹ This is an expectation in Schuyler and Washington counties. But as counsel at arraignment becomes routinized, it may be that use of appearance tickets become a mechanism by which to facilitate having arraignment representation.

3. Release and Bail – This section includes several pertinent questions including: whether the defendant was granted ROR, RUS, or was remanded; whether bail was requested and if so, the amount requested by both defense and prosecution; whether bail was set, and if so, the amount set and whether the defendant posted bail at arraignment; and if the defendant was able to post bail at some point after arraignment. The defendant’s pretrial release status is a significant outcome variable, as a defendant’s ability to actively participate in his or her defense is greatly restricted if he or she is detained pretrial. Furthermore, the pressure to plead guilty is increased for defendants who are unable to make bail. Defendants can continue working and providing for their families during the pendency of their case if they can secure their release. All of these factors make the defendant’s pretrial release status a critical piece of information to assess the long-term outcome of the case and is one of the key pieces of information to assess the impact of counsel at arraignment.² Whether the defendant is able to post bail at some time following arraignment cannot be recorded at arraignment, however, as mentioned above, it is important to record the defendant’s eventual release to more fully assess the case’s eventual disposition.

4. Motion to Dismiss – This section is very straightforward: whether the defense attorney made a motion to dismiss and if so, was the motion denied, granted, or adjourned. These questions capture whether attorneys are challenging the facial sufficiency of the accusatory instrument at arraignment and if so, are they successful. While a straightforward question, its interpretation can be complicated; we have heard from more than one provider that these motions are not made at arraignment, often because motions to dismiss are made in writing subsequent to arraignment, or motions are otherwise made after arraignment either in writing or orally. Again, this information will provide a window into each county’s arraignment practices, but cannot be the only source of information.

5. Disposition – Another straightforward set of questions: whether the case was disposed at arraignment and if yes, was the case dismissed; an adjournment in contemplation of dismissal granted; or did the defendant plead guilty to the top charge or a lesser charge; or was there some other disposition. In some jurisdictions, it is routine practice for various “minor” offenses including but not limited to traffic infractions to be resolved by guilty plea at arraignment, even when the defendant is entitled to an attorney who could advocate for a more favorable outcome. These questions along with the other information included on the model list can help outline the scope of that practice.

6. Other Outcomes – A series of questions including: whether an order of protection was issued, whether the defendant’s driver license was suspended, and any other outcomes that could impact the eventual disposition of the case. Temporary orders of protection issued at arraignment can significantly impact the defendant. For example, if the parties work together or cohabit, the defendant’s livelihood and living arrangements could be jeopardized by a stay away provision

² See for example, Phillips, M.T. (2007, May). *Bail, Detention, & Nonfelony Case Outcomes* (CJA Research Brief No. 14); Phillips, M. T. (2008, September). *Bail, Detention, & Felony Case Outcomes* (CJA Research Brief No. 18); and Sacks, M., & Ackerman, A. R. (2012). Bail and Sentencing: Does Pretrial Detention Lead to Harsher Punishment? *Criminal Justice Policy Review*, 25(1), 59-77.

within a temporary order of protection. The same can be said for a defendant who loses his or her driving privileges following arraignment. While we recognize that there are legal factors that can mandate the license suspension and are therefore out of the defense attorney's control, it is still important to know that the defendant has lost his or her license as we assess the eventual outcome of the case. Additionally, our court observations revealed that in one jurisdiction defense attorneys were routinely requesting hardship hearings to address the license issue. By collecting the data, we can then ask the follow-up questions about the provider's practice in those circumstances and better understand their arraignment practice.

EXHIBIT C

SUFFOLK COUNTY – COUNSEL AT ARRAIGNMENT – EAST END PILOT PROGRAM

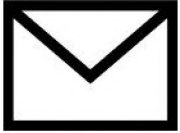
COURT: <input type="checkbox"/> Riverhead <input type="checkbox"/> Southampton Town <input type="checkbox"/> Southampton Village		
JUDGE: _____ <small>PLEASE WRITE LAST NAME ONLY</small>		
DATE OF ARRAIGNMENT: ____ / ____ / ____	TIME OF ARRAIGNMENT: ____ : ____	<input type="checkbox"/> AM <input type="checkbox"/> PM
DEFENDANT: _____ <small>PLEASE WRITE LAST NAME ONLY</small>	ARRAIGNMENT TYPE:	<input type="checkbox"/> Appearance ticket <input type="checkbox"/> In custody <input type="checkbox"/> Warrant
CHARGE(S): <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Violation _____ _____		
DEFENSE ATTORNEY: _____ <small>PLEASE WRITE LAST NAME ONLY</small>		
NOTIFICATION TIME: ____ : ____	ARRIVAL TIME: ____ : ____	DA PRESENT? <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> CHECK IF DEFENDANT REFUSED/WAIVED REPRESENTATION		
BAIL REQUESTED? <input type="checkbox"/> Yes → If yes, please provide information on: <input type="checkbox"/> No DA's request: _____ Defense's request: _____		BAIL SET? <input type="checkbox"/> Yes → If yes, please provide <input type="checkbox"/> No amt.: \$ _____ <input type="checkbox"/> Check if bail posted at arraignment
RELEASE STATUS: <input type="checkbox"/> ROR <input type="checkbox"/> RUS <input type="checkbox"/> Remanded (bail) <input type="checkbox"/> Remanded (530 or 730) <input type="checkbox"/> Other: _____		
DID DEFENSE MOVE TO DISMISS? <input type="checkbox"/> Yes → If yes, motion was: <input type="checkbox"/> No <input type="checkbox"/> Denied <input type="checkbox"/> N/A <input type="checkbox"/> Granted <input type="checkbox"/> Adjourned	DISPOSITION: <input type="checkbox"/> No disposition at arraignment <input type="checkbox"/> Dismissal <input type="checkbox"/> ACD <input type="checkbox"/> Guilty plea, top charge <input type="checkbox"/> Guilty plea, lesser charge <input type="checkbox"/> Other: _____	
OTHER OUTCOMES: <input type="checkbox"/> Order of protection <input type="checkbox"/> None <input type="checkbox"/> Driver's license suspended <input type="checkbox"/> Other: _____		NEXT COURT APPEARANCE: ____ / ____ / ____ DISPOSITION OF FILE: <input type="checkbox"/> ACP <input type="checkbox"/> LAS <input type="checkbox"/> Private attorney <input type="checkbox"/> Other: _____ _____
FOR INTERNAL USE ONLY		

EXHIBIT D

Introduction

Suffolk County is initiating this pilot program to provide counsel at arraignment as part of the *Hurrell-Harring* Settlement which the NYS Office of Indigent Legal Services is charged with implementing. The pilot program provides off-hour arraignment coverage in the town and village courts of Southampton and the town of Riverhead by establishing a rotating schedule of on-call attorneys, of which you are one. In order to assess the successes and challenges of the pilot program, ILS needs to collect information on each arraignment you conduct. We have developed this form to be as user-friendly as possible as it is important that you complete the form for every appearance.

General instructions



The forms will be MAILED to you.
Need ADDITIONAL forms? Let us know and we will send you more.



The forms you will receive are marked ORIGINAL (in red).



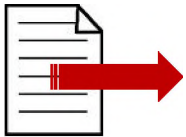
Please complete ONE form per CASE.



Please make COPIES of the completed form.



Please return the ORIGINAL forms to the County Attorney's office MONTHLY along with your VOUCHERS.



Please provide COPY to "hand-off" attorney (Legal Aid Society).



Please make sure we have your up-to-date CONTACT INFORMATION (address, phone, email).



Please use PEN when completing the form. Any COLOR is fine.
Write FIRMLY, please!



→ DO!



→ DON'T!!!!

Overview of form's fields

Select the appropriate court.

COURT: <input type="checkbox"/> Riverhead <input type="checkbox"/> Southampton Town <input type="checkbox"/> Southampton Village		
JUDGE: _____ <i>Last</i> _____ <small>PLEASE WRITE LAST NAME ONLY</small>		
DATE OF ARRAIGNMENT: ____/____/____	TIME OF ARRAIGNMENT: ____:____	<input type="checkbox"/> AM <input type="checkbox"/> PM
DEFENDANT: _____ <i>Last</i> _____ <small>PLEASE WRITE LAST NAME ONLY</small>	ARRAIGNMENT TYPE: <input type="checkbox"/> Appearance ticket <input type="checkbox"/> In custody <input type="checkbox"/> Warrant	

Be sure to check an option.

Select appropriate option.

Note: If a defendant was issued an appearance ticket but failed to make the first appearance and has "walked in", select the "Appearance ticket" option, even if a warrant had been issued.

Check all that apply.

List Penal Law Code(s).

CHARGE(S): <input checked="" type="checkbox"/> Felony <input checked="" type="checkbox"/> Misdemeanor <input type="checkbox"/> Violation
_____ <i>221.1, 265.19</i> _____ _____ _____

Record the time when you were notified of the arraignment.

DEFENSE ATTORNEY: _____ <i>Last</i> _____ <small>PLEASE WRITE LAST NAME ONLY</small>		
NOTIFICATION TIME: ____:____	ARRIVAL TIME: ____:____	DA PRESENT? <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> CHECK IF DEFENDANT REFUSED/WAIVED REPRESENTATION		

Be sure to check an option.

Check this box when appropriate. If defendant refuses or waives representation, none of the subsequent fields need to be completed. HOWEVER, the form still needs to be returned.

Record the time when you arrived to the court.

<p>BAIL REQUESTED?</p> <p><input checked="" type="checkbox"/> Yes → If yes, please provide information on:</p> <p><input type="checkbox"/> No DA's request: <u>\$5K C, \$10K B</u></p> <p> Defense's request: <u>Supervised release</u></p>	<p>BAIL SET?</p> <p><input checked="" type="checkbox"/> Yes → If yes, please provide</p> <p><input type="checkbox"/> No <u>amt.: \$ 300 C</u></p> <p><input type="checkbox"/> Check if bail posted at arraignment</p>
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Record requests for release as well as requested bail amounts. If bail amounts are requested, indicate if cash (C) or bond (B).

Select appropriate option. If you answered YES, be sure to write the amount set.

If you answered YES, be sure to write the respective requests.

Be sure to check if appropriate.

<p>RELEASE STATUS:</p> <p><input type="checkbox"/> ROR <input type="checkbox"/> RUS <input type="checkbox"/> Remanded (bail) <input type="checkbox"/> Remanded (530 or 730)</p> <p><input checked="" type="checkbox"/> Other: <u>Write clearly, please!</u></p>	<p>RUS = Released under Supervision</p>
---	---

Select appropriate option

RUS = Released under Supervision

Note: If the case is disposed at arraignment, select "Other" and write "disposed".

<p>DID DEFENSE MOVE TO DISMISS?</p> <p><input checked="" type="checkbox"/> Yes → If yes, motion was:</p> <p><input type="checkbox"/> No <input type="checkbox"/> Denied</p> <p><input type="checkbox"/> N/A <input checked="" type="checkbox"/> Granted</p> <p> <input type="checkbox"/> Adjourned</p>	<p>DISPOSITION:</p> <p><input type="checkbox"/> No disposition at arraignment</p> <p><input type="checkbox"/> Dismissal <input type="checkbox"/> ACD</p> <p><input type="checkbox"/> Guilty plea, top charge <input type="checkbox"/> Guilty plea, lesser charge</p> <p><input checked="" type="checkbox"/> Other: <u>Write clearly, please!</u></p>
---	---

Select appropriate option.

Select appropriate option.

If you answered YES, be sure to check the corresponding outcome.

Select appropriate option.

<p>OTHER OUTCOMES:</p> <p><input type="checkbox"/> Order of protection <input type="checkbox"/> None</p> <p><input type="checkbox"/> Driver's license suspended</p> <p><input checked="" type="checkbox"/> Other: <u>Write clearly, please!</u></p>	<p>NEXT COURT APPEARANCE:</p> <p>___ / ___ / ___</p>
<p>FOR INTERNAL USE ONLY</p> <p style="text-align: center;">ORIGINAL</p>	<p>DISPOSITION OF FILE:</p> <p><input type="checkbox"/> ACP <input type="checkbox"/> LAS</p> <p><input type="checkbox"/> Private attorney</p> <p><input checked="" type="checkbox"/> Other: <u>Write clearly, please!</u></p>

Select appropriate option.

Before you return the forms, please review them to ensure that:

- 1) Every field has an answer
- 2) Where applicable, when "YES" is selected, write in/check the corresponding fields (for instance, if you make a motion to dismiss, check the outcome box)
- 3) Where applicable, when "Other" is selected, write in CLEARLY and FIRMLY the corresponding answer
- 4) Answers requiring a handwritten response (e.g., "Charges") are CLEARLY and FIRMLY written

If you have any *technical questions* about the form, please contact:

Giza Lopes, PhD
 Senior Research Associate
 NYS Office of Indigent Legal Services
 Giza.Lopes@ils.ny.gov
 (518)486-2740

Melissa I. Mackey, MA
 Senior Research Associate
 NYS Office of Indigent Legal Services
 Melissa.Mackey@ils.ny.gov
 (518)486-3068

If you have *substantive questions*, please contact:

Deborah Schneer, Esq.
 Hurrell-Harring Counsel at First Appearance Implementation Attorney
 NYS Office of Indigent Legal Services
 Deborah.Schneer@ils.ny.gov
 (518)402-3668

Return ORIGINAL forms to Jessica Hogan at the Suffolk County Attorney's Office:
 100 Veterans Memorial Highway, 6th Floor. PO Box 6100. Hauppauge, NY – 11788.