

# **Centralized Arraignment Parts for Off-Hours Arraignment Report (Stakeholder Meeting Summary)**



**December 19, 2016  
Albany, NY**

**New York State Unified Court System  
Office of Deputy Chief Administrative Judge - Outside NYC**

## **I. Introduction**

To begin the dialogue of identifying key issues and to address concerns throughout the state by local governments, magistrate judges, court clerks, law enforcement officials, prosecutors, bar associations, and indigent defense providers, Chief Administrative Judge Lawrence Marks directed that a meeting be convened of essential statewide stakeholders to discuss the new legislation. The meeting was held on December 19, 2016 at the training room for the Office of Justice Court Support, 87 Wolf Road, Albany. The meeting was facilitated by Deputy Chief Administrative Judge, Michael V. Coccoma.

The following statewide stakeholders were invited:

- NYS Office of Indigent Legal Services
- NYS Magistrates Association
- NYS Association of Magistrates Court Clerks
- Association of Towns of the State of NY
- NYS Association of Counties
- NYS Conference of Mayors and Municipal Officials
- NYS Bar Association
- NYS Defenders Association
- Chief Defenders Association of NY
- NYS Association of Criminal Defense Lawyers
- District Attorneys Association of the State of New York
- New York State Sheriffs' Association
- NYS Association of Chiefs of Police
- New York State Police
- Division of Criminal Justice Services

Judge Coccoma opened the meeting by thanking all of the statewide stakeholders for making the effort to be present on short notice. He summarized the goals and timeframe for implementation. In addition, he invited the stakeholders to submit written comments or memorandums for further consideration on or before January 17, 2017.

Following a brief legislative history provided by Deputy Counsel Paul McDonnell, a roundtable discussion took place with the stakeholders to identify substantive issues needing to be considered and taken into account before Chief Administrative Judge Marks considers approving local plans for implementation. The next section of this report sets forth the key issues identified by the statewide stakeholders during the meeting.

## Statewide Stakeholders' Meeting Summary

Most of the questions raised and issues identified by the statewide stakeholders are summarized as follows, with a particular focus on operations and staffing, detention and security, and jurisdiction and criminal procedure:

### 1) Operations and Staffing:

- Will Centralized Arraignment Parts (CAP) be staffed with court clerks, interpreters, security, or stenographers?
- Who will pay for the additional staffing?
- Who will pay for the additional facilities management costs, such as utilities and insurance?
- Whose insurance will cover all of the issues or claims that may arise while operating CAP?
- Will there be a need for inter-municipal agreements?
- How can localities absorb these additional costs while operating under a tax cap?
- Can a locality impose a surcharge to help cover the increase in costs of operating a CAP?
- Who will notify defense counsel of an arraignment? Trooper, judge, clerk, or court staff?
- Who will pay for the additional local prosecutors needed to cover the CAP?
- Is submitting a plan or creating a CAP optional or mandated for each county?
- How will localities absorb this unfunded mandate?
- Will the designated CAP be available for arraignments during the normal business day (9-5)?
- Will local magistrates receive additional compensation when assigned to a CAP?
- Is the CAP a 24-hours-a-day operation, or will the period of coverage be limited?
- Which courtroom actors are necessary to include in a plan?
- Can there be a designated repository for all CAP plans that can be shared with other localities?

## **2) Detention and Security:**

- Where will the defendants be held pre-arraignment?
- Will the designated CAP have security or court officers for the magistrates and courtroom actors?
- What if a locality does not have a detention or holding facility? Does that mean no CAP?
- How will the localities deal with additional staffing needed to hold defendants?
- Will a CAP have to negotiate a specific contract with a detention/holding facility to hold defendants' post-arraignment?
- Will all of the localities in a county split the costs among them by inter-municipal agreement?
- How will the costs be shared among the localities?

## **3) Jurisdiction and Criminal Procedure:**

- Is the CAP authorized to arraign for all offenses, including violations?
- Does the new legislation provide for a procedure for bail review post-arraignment?
- Can a juvenile be arraigned in a centralized off-hours arraignment part?
- Can the CAP utilize the AT&T language line for interpreting services, rather than an interpreter?
- What about the cost for interpreters? Can the state reimburse localities for this expense?
- Assuming the state takes over the cost of providing indigent defense services, how will that affect a CAP that is up-and-running?
- What happens if an off-hours arraignment part cannot get a defense attorney to show up? Is the CAP considered down?
- Is there a drafting error with the new legislation? CPL §170.15 does not mention village courts. How does this case get moved to village court from the CAP?

## **II. Conclusion**

The statewide stakeholders are to be commended for convening on short notice and presenting a myriad of issues and concerns for review and consideration. The meeting minutes are attached to this report as well as the comments received from the stakeholders. Future meetings will be held both at the State and county level.

The Deputy Chief Administrative Judge wishes to commend Paul McDonnell, Scott Murphy, Anthony Rossi, Patricia Hans, Nancy Sunukjian and Alex Glick-Kutscha for their efforts working on this project thus far, particularly for getting the meeting scheduled in such a short time period.

Thank you to everyone who attended and for sharing their thoughtful insight.

## **Statewide Stakeholders Attendee List**

### **Office of Court Administration (OCA)**

- Hon. Michael Coccoma
- Paul McDonnell, Esq.
- Scott Murphy
- Anthony Rossi, Esq.
- Nancy Sunukjian, Esq.
- Alexandra Glick-Kutscha, Esq.
- Tina Richburg
- Karen Kane
- Maureen Rossi
- William Perritt
- Glenn Poore

### **NYS Office of Indigent Legal Services (ILS)**

- William J. Leahy, Director
- Matt Alpern, Director for Criminal Trial Level Representation

### **NYS Magistrates Association (NYSMA)**

- Hon. Tanja Sirago, Executive Director
- Hon. David Gideon, President-Elect
- Hon. Don Buttenschon, Past President
- Hon. Edward G. Van Der Water, Past President

### **NYS Association of Magistrates Court Clerks, Inc. (NYSAMCC)**

- Gillian Koerner, President (by MP conf. call)
- Julie Gansle, Past President

### **Association of Towns of the State of New York (AOT)**

- Sarah B. Brancatella, Associate Counsel
- Gerry Geist, Executive Director

### **NYS Association of Counties (NYSAC)**

- Stephen J. Acquario, Executive Director
- Patrick Cummings, Assistant Counsel

NYS Conference of Mayors and Municipal Officials (NYSCOM)

- Wade Beltramo, General Counsel
- John Mancini, Counsel

NYS Bar Association (NYSBA)

- Sherry Levin Wallach, Chair of the NYSBA Criminal Justice Section and the 9th District Vice President of NYSBA

NYS Defenders Association, Inc. (NYSDA)

- Susan Bryant, Special Counsel

Chief Defenders Association of NY

- Lisa Schreibersdorf (by MP conf. call)
- Mark Williams, Cattaraugus County – incoming President of Chief Defenders Association (by MP conf. call)

NYS Association of Criminal Defense Lawyers

- Andrew Kossover, Esq.

District Attorneys Association of the State of New York (DAASNY)

- Thomas P. Zugibe by Itaman J. Yeger
- Robert Conflitti, Counsel to the DA, Orange County (by MP conf. call)

New York State Sheriffs' Association (NYSSA)

- Alex Wilson, Associate Counsel
- Thomas Mitchell, General Counsel
- Chris Farber, President

NYS Association of Chiefs of Police, Inc.

- Margaret Ryan, Executive Director

New York State Police

- Kevin Gagan, Counsel
- Steve Hogan, Assistant Counsel
- Captain Michael Regan

Division of Criminal Justice Services

- Jerry Mollen, Deputy Commissioner

# Appendix A:

## Meeting Minutes





## Appendix A: Meeting Minutes

### Minutes

Welcome and Opening Remarks – **Hon. Michael V. Cocco**, Deputy Chief Administrative Judge, Courts Outside New York City

Judge Cocco opened the meeting and asked all attendees to introduce themselves and identify which agency they represented. Judge Cocco encouraged stakeholders to let the Office of Court Administration (OCA) know of other agencies that should be invited to attend stakeholder meetings. Minutes from this meeting will be distributed to all in attendance, and to any other stakeholders not present. Judge Cocco concluded his opening remarks by thanking all of the statewide stakeholders for making the effort to be present on short notice, and noted that Chief Administrative Judge Marks was pleased that we were starting a dialogue to identify issues with this new legislation.

- Primary goals of Centralized Arraignment Parts:
  - Swift arraignment of individuals
  - Ensure counsel at arraignment
- Timeframe for implementation:
  - Meetings with local stakeholders will be held statewide by the local Administrative Judges in 2017
  - Plans submitted will be shared with the Administrative Board (Chief Judge Janet DiFiore, Chief Administrative Judge Lawrence Marks, the four Appellate Division Presiding Justices) for approval
  - Statute does not permit approval of plans by Chief Administrative Judge Marks prior to February 26, 2017 (90 days after legislation signed into law)
  - No deadline by which plans must be submitted
- Goal today: Begin dialogue with statewide stakeholders to identify issues to be taken into account by Chief Administrative Judge Marks before considering plans
- Issues previously identified by OCA:
  - Security at arraignment parts
  - Transport of defendants
  - Securing orders
  - Impact on local municipalities: cost, staffing, number of arraignment parts
- Stakeholders are invited to submit written comments on or before **January 17, 2017**, to **Anthony Rossi** at [arossi@nycourts.gov](mailto:arossi@nycourts.gov).

Legislative History and Update Regarding Off-Hours Arraignments – Paul McDonnell,  
Deputy Counsel, Office of Court Administration, Counsel's Office

- Statute emerged from the recognition of need for counsel at arraignment
- A written proposal was submitted by Chief Administrative Judge Marks, which originated from the Advisory Committee on Criminal Law and Procedure
  - Percolating around the state since *Gideon* in 1963, then following the *Hurrell-Harring* settlement, which compels counsel at first appearance
- Statute sets up the framework upon which plans for Centralized Arraignment Parts can be established
  - Implementation is not intended to be one-size-fits-all; needs flexibility to work statewide
  - Localities have the ultimate control to develop their own plans with oversight and approval by Chief Administrative Judge Marks
- Limited bill focused solely on having counsel at arraignments
  - Centralized Arraignment Parts can conduct arraignments, handle returns on warrants, and matters incidental thereto
  - This structure is to specifically address the ability to have counsel at arraignment; not a part to supersede local courts
  - Police officer may bring accusatory instrument to Centralized Arraignment Part when no other court is open; may bring accusatory instrument to either off-hours arraignment part or open local court, provided counsel is present at local court (if no defense counsel at local court, must bring to Centralized Arraignment Part)
  - Centralized Arraignment Part will then send the case back to the court that has trial jurisdiction
- Bill modifies the Uniform Justice Court Act to assign magistrates to the Centralized Arraignment Part
  - Intended to promote rotation of magistrates, which avoids dedicated "arraignment part" judges
  - Rotation intended to be commensurate with volume of off-hours arraignments individual judges' conduct in local courts
- Legislation written to be flexible to assist localities to solve this problem
  - Location of arraignment part is flexible, whether static or rotational among a number of courthouses, with some operational limitations as to how/where rotated
  - Flexible legislation gives localities opportunity to create own plan to submit for approval
  - Plans cannot begin to be considered until February 27, 2017
  - No time limit by which plans must be established or submitted

## Roundtable Discussions with Statewide Stakeholders

- **New York State Sheriffs' Association (Thomas Mitchell):**
  - Question: Will Centralized Arraignment Part courtrooms be available for arraignment on all crimes?
  - Response (**Paul McDonnell**): Yes; does permit arraignment on violations; expectation that this will promote more appearance tickets on low-level offenses
- **New York State Bar Association (Sherry Levin Wallach):**
  - Question: If request is for securing an order, would defendant have to be brought to arraignment part?
  - Response (**Judge Coccoma**): Yes
  - **Judge Gideon**: Exception will be domestic violence cases
- **District Attorneys Association of the State of New York (Itamar Yeger):**
  - Question: Will there be a clearinghouse for plans to share with others to assist in development?
  - Response (**Judge Coccoma**): Judge Gideon will give a brief synopsis of the Onondaga plan
  - Request to circulate examples of plans
- **New York State Sheriffs' Association (Thomas Mitchell):**
  - Question: Is this a 24-hour operation? How will this operate?
  - Response (**Paul McDonnell**): Intent of legislation is to provide counsel at first appearance whenever necessary, no matter what time
    - Implementation may vary based on locality (geography, volume factors; permission for detainment)
    - Nothing would prevent law enforcement from holding a defendant for a few hours
    - **Judge Coccoma**: Intent to is to maintain and modernize our current system
- **Association of Towns of the State of New York (Gerry Geist):**
  - Comment: Concerned about staffing (court clerks, interpreters, stenographers, etc.), insurance costs, potential implementation of surcharges for localities to help cover these costs. Submitted comments to Governor's Office
  - Response (**Judge Coccoma**): Comments submitted to Executive/Legislative Branches may not have been seen by OCA; any group which submitted comments is encouraged to submit them to OCA by January 17, 2017 – we would like the opportunity to review comments
- **District Attorneys Association of the State of New York (Itamar Yeger):**
  - Comment: Court of Appeals held that arraignment should be within 24 hours – this allows a certain amount of time to find an interpreter; for example, in areas where no interpreter is immediately available – but the

operative question becomes where the defendant is housed during that time

- New York State Association of Criminal Defense Lawyers (**Andrew Kossover**):
  - Question: Is submitting a plan/creating a centralized part optional for each county?
  - Response (**Judge Coccoma**): If a county feels it does not need to create a centralized part in order to satisfy their constitutional requirement under *Gideon* of having counsel at arraignment, they will not be required to create one
- Association of Towns of the State of New York (**Gerry Geist**):
  - Comment: Their members are operating under tax cap, and costs present a potential detrimental impact on member towns
  - New York State Conference of Mayors (**Wade Beltramo**): Not just nominal costs; any cost will be a problem for their members
  - Response (**Judge Coccoma**): County-by-county basis – need to identify costs of additional attorney and district attorneys needed (will vary by county)
    - OCA recognizes that costs will be a big issue (attorneys, magistrates, interpreters)
- New York State Association of Counties (**Stephen Acquario**):
  - Question: In what counties are off-hours arraignments with counsel taking place right now?
  - New York State Office of Indigent Legal Services (**William Leahy**): 25 counties providing some; goal is to get all 57 counties
  - Response (**Judge Coccoma**): ILS has been in consultation with OCA since 2015, since *Hurrell-Harring* settlement; Centralized Arraignment Parts will not necessarily replace what has already been working in *Hurrell-Harring* counties
- New York State Bar Association (**Sherry Levin Wallach**):
  - Comment: The State Bar's Criminal Justice Section has a Town and Village Court subcommittee; no current policy in place at the Bar; issues identified by the Bar in investigative report mirror those already raised, and additionally:
    - Presence of DA, cost/practicality
    - Holding facilities – suggestion: Centralized Arraignment Part should be where there is a holding facility
    - Insurance – whose insurance will cover issues?
    - Jurisdiction – does every magistrate have jurisdiction? This legislation covers this issue
    - Bail review – would individual go to county court, or back to the arraignment part? What is the timeframe?
    - Who notifies counsel of arraignment? Trooper, judge, clerk?
    - Question identified: How to handle courts that meet once a week or once every two weeks?

- Response (**Judge Coccoma**): OCA is happy to receive and review any work that any of the groups have already done
- Association of Towns of the State of New York (**Gerry Geist**):
  - Question: Availability of DA – some towns have local prosecutors who are not district attorneys; issue of their availability and who pays
  - Response (**Paul McDonnell**): Defense counsel must be physically present; however, no requirement for prosecution to be present
    - Legislation – intended to be a good step forward; not the magic bullet to solve all scenarios
- New York State Police (**Kevin Gagan**):
  - Comment: Safety issues – detention facilities not available in majority of places
- New York State Association of Chiefs of Police (**Margaret Ryan**):
  - Comment: Many/majority of police agencies have issues finding courts available for arraignment during the day as in the middle of the night; many times officers sit for hours
  - Response (**Judge Coccoma**): Possible to use city court during the day
- New York State Sheriffs' Association (**Thomas Mitchell**):
  - Comment: There is statute allowing for video arraignments, which was a failure and is hardly used (defendant must agree to video conferencing arraignment); however, video conferencing should be something to look at where possible
  - New York State Office of Indigent Legal Services (**William Leahy**): Representation must comport to professional standards – remote representation may not be effective; physical appearance of defense counsel with the client at arraignment is a must
  - District Attorneys Association of the State of New York (**Itamar Yeger**): Agreed that defense attorney not speaking with client directly in person is not sufficient (concern for the confidentiality of conversations over video conference); however, DA appearing remotely might be helpful in larger counties where it is difficult to appear in person
  - New York State Sheriffs' Association (**Thomas Mitchell**): Mammoth expense of counsel; may be more cost-effective for video representation as an option to consider
- **Judge David Gideon**, describing Onondaga Plan:
  - This is a county-specific plan (non *Hurrell-Harring*)
  - In Onondaga, finding arraignments are turning into a 2-3 hour process
  - Started developing idea for off-hours arraignment parts from 6-10 p.m.; courtroom directly across from county holding facility (pre-arraignment holding in place), staffed by county magistrates
  - 18-b program: two attorneys available, with additional attorney on-call
  - Set place/time for arraignment
  - Looking into staffing security

- Police agencies are meeting on setting procedures for pre-arraignment holding
- ORI number issues
- 5<sup>th</sup> JD: Four counties fall into Centralized Arraignment Part model (one county does not have county holding facility; one county looking to build an arraignment facility at jail facility); two counties may not need it
- New York State Magistrates Association – issue of compensation for magistrates
- More meetings set up to facilitate communication – stakeholders’ meeting set for January 2017
- Now vs. proposal: Current model faces burnout of magistrates and attorneys with high volume of cases
- Interpreters: Language line through AT&T, available 24/7
  - Are they court-certified?
  - Perhaps state could compensate for use?
- New York State Association of Criminal Defense Lawyers (**Andrew Kossover**):
  - Question: Pre-arraignment hold legislation? Cannot take someone to jail without securing order
  - Response (**Paul McDonnell**): Jefferson and Onondaga Counties have this; Oneida County being proposed; currently 21 counties under NY Corrections Law that permit pre-arraignment detention in county facility
  - New York State Sheriffs’ Association (**Thomas Mitchell**): Not all counties operate the same way (some municipalities may have to pay for use of facility)
  - Response (**Paul McDonnell**): Some counties without facilities may not be able to do pre-arraignment hold
  - New York State Sheriffs’ Association (**Chris Farber**): Pre-arraignment holding brings additional load on staffing – unfunded mandate
  - **Judge Edward Van Der Water**: City of Syracuse and the county have a contract regarding pre-arraignment holding (raises question of how would this work with municipalities? Split the cost among them?); cost of assigned counsel increased; eligibility guidelines changing
- New York State Conference of Mayors (**Wade Beltramo**):
  - Question: What about outside of 6-10 p.m.?
  - Response (**Judge Gideon**): Potential to use City Court during the day
    - Transportation of defendants can be an issue for municipalities
  - **Judge Gideon**: Police officers have been effective at triaging
- District Attorneys Association of the State of New York (**Itamar Yeger**):
  - Question: CPL 170.15 – where arrested and arraigned, provisions to move case to jurisdiction with trial jurisdiction; the statute does not mention village courts, which leaves open the question of how does this case now get moved to village court?
  - Response (**Paul McDonnell**): Details to be addressed later

- Question: How to work if there is a court in session that cannot find a defense attorney? Moved to off-hours arraignment part, or dealt with in the morning?
  - Response (**Paul McDonnell**): Details to be addressed later
- New York State Association of Counties (**Stephen Acquario**):
  - Question: Assuming state takes over cost of indigent defense, costs would be assumed by the state – how does this affect plans?
  - Response (**Judge Coccoma**): Moving forward under current Centralized Arraignment Part legislation
    - Any changes in the law would be factored into plans in the future
  - **Judge Edward Van Der Water**: Indigent legal defense bill presented to the Governor only addresses defense costs, not associated costs
  - New York State Office of Indigent Legal Services (**William Leahy**): It is a tremendous expense to get a defense attorney to every arraignment without a Centralized Arraignment Part
- Association of Towns of the State of New York (**Gerry Geist**):
  - Question: What happens if off-hours arraignment part cannot get a defense attorney to show up?
  - Response (**Judge David Gideon**): This issue came up in Onondaga – *Hurrell-Harring*; after a reasonable time period, could continue with arraignment
  - New York State Magistrates Association (**Judge David Gideon**): The Magistrates Association has grappled with what is reasonable
  - New York State Office of Indigent Legal Services (**William Leahy**): in practice, this has been implemented well
- New York State Bar Association (**Sherry Levin Wallach**):
  - Comment: This encompasses pieces not necessarily specific only to off-hours arraignment part
  - Response (**Judge Coccoma**): With OCA administrative structure/framework, meetings will allow information to be shared as a conduit from local stakeholders, up to Chief Administrative Judge Marks – intended to be an ongoing dialogue
- New York State Association of Counties (**Stephen Acquario**):
  - Question: Juvenile arraignments?
  - Response (**Judge Coccoma**): This is an issue that needs to be discussed

Next Steps and Closing Remarks – **Hon. Michael V. Coccoma**

This is an ongoing dialogue: today's meeting is the first in a process of consulting with statewide and local stakeholders.

- Statewide meeting of Administrative Judges in January 2017; sharing what is generated from this meeting and other comments received
- Stakeholders are welcomed to submit written comments to OCA
- If association has provided public comments to the Governor, please send that to OCA
- Ultimate goal: Counsel at arraignment, plans that work for statewide and local stakeholders and satisfy the legislation
- Date by which to submit written comments from stakeholders (can be emailed, phone call): **January 17, 2017**



# **Appendix B:**

## **Comments and Submission by Stakeholders**



**12/24/16**

**Letter from George A. Belcher, Councilman, City  
of Port Jervis addressed to Judge Coccoma**



**5 Kingston Avenue  
Port Jervis, New York 12771  
December 24, 2016**

**Honorable Michael Coccoma  
Supreme Court  
197 Main Street  
Cooperstown, New York 13326**

JAN -3 2017

**Honorable Michael Coccoma ;**

**Please see the below link and attached section of law pertaining to newly enacted law that establishes provisions for creating rotating arraignment parts among the local criminal courts within each county. The Police Chief and Judge Hendry have alerted me to this legislation as it may have a significant impact on overtime staffing call-outs to transport prisoners for arraignment to courts that may be fixed throughout the County in the event Port Jervis is not selected as a 24 hour, seven day a week arraignment court. I believe that the system may develop a regional arraignment court process where certain courts located around the county will be open for law enforcement agencies during specified times to transport arrestees for their initial appearance before a judge with counsel.**

**Typically, when our prisoners require arraignment, we hold the prisoner in city lock-up until one of our city**

**court judges are available or court is in session to conduct an arraignment. Our assigned shift staffing adequately handles this task without added costs. If the prisoner is remanded to Orange County Jail by the court, the prisoner is held in our lock-up and turned over to sheriff's deputies at the station who transport the prisoners to the county correctional facility.**

**However, if Court Administration develops regional arraignment courts with specified times and assignments, we would be forced to travel with prisoner(s) to the designated court to receive an arraignment which can result in the posting of bail and release or remand to county jail. It will not only be our responsibility to transport prisoners to the on-call court, but we will have the added responsibility of prisoner transport to the jail or transporting the released defendant back to the City of Port Jervis after arraignment.**

**For example, if the Village of Monroe Court is designated an arraignment court for the weekend arrests and we experience a busy weekend resulting in 15-18 arrests who require an arraignment, we will be forced to bring in extra staff on overtime and utilize multiple vehicles to transport the prisoners to the arraignment court. For those prisoners committed to further custody by the court, we will be forced to drive them directly to Orange County Jail and wait for**

**admission. Further, if the court determines to release prisoners on their own recognizance or they are able to post bail, we will be forced to transport them from the arraigning court back to the City.**

**Could you imagine a situation where two officers in a single patrol car transport three prisoners in one car to the Town of Montgomery for arraignment which results in the committal of one prisoner and release of two arrestees. Where do we go first? To the jail or back to Port Jervis to drop off the released persons? We would logistically be required to drive the prisoner to the jail for admission and the two released defendants back to Port Jervis for release.**

**As with most legislation during the incipient phases, the policy and procedures are incomplete, the costs and impacts on local government are unknown and will have to be examined as the operational components are conducted in compliance with the law. Unfortunately, I predict this legislation will have a heavy burden on our already depleted staff and resources having a significant impact on our overtime budget. To date, we have arrested 1,500 adult offenders and have held approximately 400 in our city lock-up facility. It is not uncommon for the Sheriff's Office to deploy several cars to pick-up and transport our committed prisoners or use a transport van due to the volume of arrests our department generates.**

**I am asking you to work toward having Port Jervis  
named as one of the arraignment courts in Orange  
County, New York.**

<https://www.nysenate.gov/newsroom/articles/lohn-i-bonacic/senator-bonacis-bill-allow-hours-arraignments-outside-nyc-signed>

  
**George A. Belcher, Councilman**

**12/24/16**

**Letter from George A. Belcher, Councilman, City  
of Port Jervis addressed to Chief Judge DiFiore**



**5 Kingston Avenue  
Port Jervis, New York 12771  
December 24, 2016**

**New York State Unified Court System  
Office of Court Administration, Rm. 852  
25 Beaver Street  
New York, NY 10004**

**Attention: Honorable Janet DiFiore  
Chief Administrative Judge**

**Honorable Janet DiFiore ;**

**Please see the below link and attached section of law pertaining to newly enacted law that establishes provisions for creating rotating arraignment parts among the local criminal courts within each county. The Police Chief and Judge Hendry have alerted me to this legislation as it may have a significant impact on overtime staffing call-outs to transport prisoners for arraignment to courts that may be fixed throughout the County in the event Port Jervis is not selected as a 24 hour, seven day a week arraignment court. I believe that the system may develop a regional arraignment court process where certain courts located around the county will be open for law enforcement agencies during specified times to transport arrestees for their initial appearance before a judge with counsel.**



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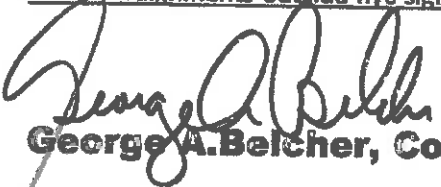
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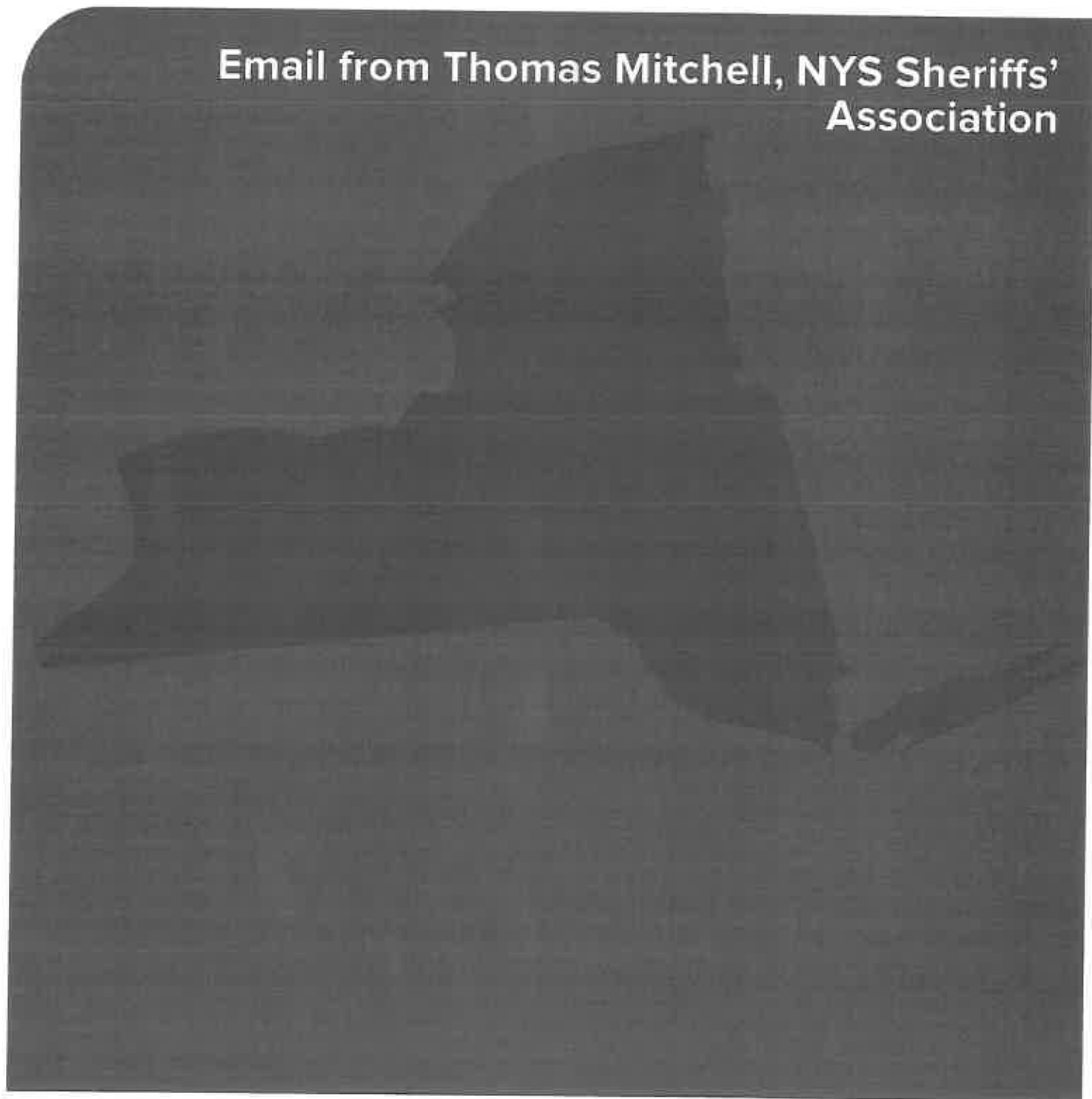
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<https://www.nysenate.gov/newsroom/articles/john-j-bonacic/senator-bonacis-bill-allow-hours-arraignments-outside-nyc-signed>

  
**George A. Belcher, Councilman**

**12/28/16**

**Email from Thomas Mitchell, NYS Sheriffs'  
Association**



**From:** thomas mitchell [<mailto:tmitchellnyssa@gmail.com>]

**Sent:** Wednesday, December 28, 2016 10:37 AM

**To:** Anthony C. Rossi <[arossi@nycourts.gov](mailto:arossi@nycourts.gov)>

**Cc:** Daniel Stewart <[danieste@cisco.com](mailto:danieste@cisco.com)>; Joe Mangano <[lmangano@cdwg.com](mailto:lmangano@cdwg.com)>; Chuck Gallo <[cgallo@nysheriffs.org](mailto:cgallo@nysheriffs.org)>; awilson@nysheriffs.org; Peter R. Kehoe <[pkehoe@nysheriffs.org](mailto:pkehoe@nysheriffs.org)>

**Subject:** Re: Centralized Arraignment Parts Meeting Minutes

**Mr. Rossi**

Thanks for the minutes and the opportunity to comment further. I mentioned at the meeting that we should at least consider video conferencing as one solution for some courts. I know that video arraignments have been permitted in New York State for some time, but the program is largely inactive since the current law requires the defendant to agree to this method. We strongly support a program that would allow the court to determine if video conferencing is appropriate in a given case.

We understand that there may be many solutions to the practical problem of providing counsel to defendants at arraignments on a 365/24/7 basis, and video conferencing might be just one part of the program that counties and judicial districts consider. Our Association has partnered with CISCO and CDW to develop a secure law enforcement portal for video conferencing, and this is now used for a variety of purposes. I would like to offer to have our partners present a demonstration of the program, either to all the members of the committee, or to any representatives from OCA that are interested.

Please let me know if you would like to have this demonstration, and any possible dates that would work for your office.

Thank you.

*please reply to my gmail account*

**Thomas A. Mitchell**

**Counsel, New York State Sheriffs' Association**

**27 Elk Street**

**Albany, NY 12207**

**(518) 434-9091 x120**

**(518) 441-7353 [cell]**

**(518) 434-9093 [fax]**

**[tmitchellnyssa@gmail.com](mailto:tmitchellnyssa@gmail.com)**

**1/5/17**

**Email from David T. Corretore, Webster Town  
Justice with attachment**



**From:** David Corretore [<mailto:corretorelaw@gmail.com>]

**Sent:** Thursday, January 5, 2017 8:53 PM

**To:** Anthony C. Rossi <[arossi@nycourts.gov](mailto:arossi@nycourts.gov)>

**Subject:** Stakeholder Written Comments on Centralized/Off-Hours Arraignments

Please see the attached letter concerning my stakeholder thoughts on this topic.

David T. Corretore

(Webster Town Justice, Monroe County)

Corretore Law Offices

Phone (585) 265-1343

Fax (585) 265-0482

**DAVID T. CORRETORE**

66 East Main Street  
Webster, NY 14580

(585) 265-1343

Fax (585) 265-0482

[corretoreslaw@gmail.com](mailto:corretoreslaw@gmail.com)

January 5, 2017

Attn: Anthony Rossi, Esq.  
NYS Unified Court System/  
Office of Court Administration

[arossi@nycourts.gov](mailto:arossi@nycourts.gov)

Re: Stakeholder Written Comments on  
Centralized Arraignment Parts for Off-Hours Arraignments  
Stakeholders' Meeting of December 19, 2016

Dear Mr. Rossi/Interested Arraignment Stakeholders:

I just began my thirtieth year as Webster Town Justice (in Monroe County), so I believe that I might know a thing or two about centralized arraignments and/or off-hours arraignments, and hopefully have some valid thoughts. I understand that you (Mr. Rossi) are the collector of written comments by stakeholders, and that you must have written comments on or before January 17. I therefore send you this letter to give you my personal, individual, non-official, view of Monroe County's current, in place, plan for having counsel at arraignment, saddened by the fact that I did not receive notice of your meeting from the NYS Magistrates' Association, but rather in a very offhand way.

I was asked to serve on a committee to work through how best Monroe County could meet the requirements of Hurrell-Harring and implement Chapter 492 of the Laws of New York, 2016. Because we have yet to even meet, and I cannot see how we can meet and make a decision and report by January 17, I send this to you as one sitting judge's thoughts, and not as a member of the Monroe County Magistrates' Association or any other group (though I am also a practicing attorney since 1983).

I believe that it was around March of 2014 that Monroe County Public Defender Timothy P. Donaher, Esq., began work to establish a program that would provide an assistant public defender at the vast majority of arraignments for those that qualify for the public defender or for those who wish to hire the public defender for representation at the arraignment. At best, I was a lukewarm supporter of his program, which he established based on his belief of what would happen in the Hurrell-Harring matter (despite Monroe County not being a named county). (At worst, I scoffed at the program.)



I am now a full supporter of his program, especially given the Court of Appeals decision. He provides a public defender for every arraignment, 24 hours/day, 7 days/week. This is for any arraignment at any court location within the entire county. Generally speaking, I can count on the public defender being in my court within 25-30 minutes of my call. I do not know how we can beat that.

I see other counties talking about a centralized arraignment court from 6 p.m. to 10 p.m. Whoopie! What does that really accomplish? What would that really accomplish? At least for Monroe County, nothing. In fact, when I read the Minutes of the 12/19/2016 Stakeholders' Meeting, I was struck by Judge Coccoma's Opening Remarks that said the primary goals of Centralized Arraignment Parts were (first listing) swift arraignment of individuals and (second listing) ensure counsel at arraignment.

If we were to go to some off-hours arraignment program that had certain (limited) hours, what would happen to those being held hours for an arraignment? Say someone is arrested after the centralized arraignment part is done - maybe 11:00 p.m. - and they must be held until 8:00 the next morning for the next schedule court. By the time they get out of court (say released on their own recognizance given that they are working etc.), they are already late for work without any good explanation. ("Sorry, boss, I got arrested last night for \_\_\_\_\_ and had to wait for the judge to come in this morning to have my court appearance.") When I am called to arraign someone, whether in the middle of the night or not, it gives me an opportunity to think about the person's employment and not ruining that for the defendant unless it cannot be avoided. Depending on the off-hours arraignment program, that may go out the window.

I appreciated all of the comments/concerns/thoughts that each participant brought to the table on December 19. I am not sure that the answers given were always consistent from person to person or even consistent in what the same person might have said at different times in the conference. Nonetheless, the issues raised, that everyone will need to deal with, were probably well outlined (even if I did not see the NYS Magistrates Association as a noted participant).

From my perspective, every "solution" seems to have a myriad of problems. I do not know how long the Monroe County Public Defender ("PD") will be financially able to continue their 24/7 program of representation. (Thanks loads, Governor Cuomo, for vetoing the unanimously passed bill to have NYS pick up the Public Defender tab.) As long as the Monroe County PD can financially do it, their current program seems to me to be the best, easiest, most inexpensive program possible. I note Judge Coccoma's comment that "(i)f a county feels it doesn't need to create a centralized part in order to satisfy their constitutional requirement under *Gideon* of having counsel at arraignment, they will not be required to create one". Great. Put me down for that exact feeling as concerns Monroe County; we arraign defendants in a timely manner all hours day and night and provide a public defender for them.

The logistics of this all, and/or figuring out the logistics of this all, is not something that can be accomplished on short notice, I suspect. That is one reason why what we have in place in Monroe County is my choice for what we (continue to) do in

Monroe County. Further, however, I suspect that after a wide ranging review of all of the possible resolutions, what we have would likely be what would be chosen, and would be the "gold standard" by which similar counties might be judged.

If you, or anyone else, have any questions about my thoughts, or would like to know something further, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Corretore', with a stylized flourish at the end.

David T. Corretore

**1/12/17**

**Email from Sarah Brancatella, Association of  
Towns with attached comments and letter of  
recommendation of disapproval**



**From:** Sarah Brancatella [<mailto:sbrancatella@nytowns.org>]  
**Sent:** Thursday, January 12, 2017 3:35 PM  
**To:** Anthony C. Rossi <[arossi@nycourts.gov](mailto:arossi@nycourts.gov)>  
**Subject:** Comments on Centralized Arraignment

Dear Mr. Rossi,

Attached are the memo the Association of Towns submitted to the Governor on the centralized arraignment legislation as well as additional comments AOT wanted to submit to OCA based on the stakeholder meeting in December.

Please let me know if you need anything else.

Best,

Sarah B. Brancatella  
Associate Counsel  
Association of Towns  
150 State St.  
Albany, NY 12207



# ASSOCIATION OF TOWNS OF THE STATE OF NEW YORK

**GERALD K. GEIST**  
**EXECUTIVE DIRECTOR**

*Serving Towns Since 1933*

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150 State Street Albany New York 12207 • Phone: (518) 465-7933 • Fax: (518) 465-0724

January 12, 2017

Hon. Michael V. Coccoma  
Deputy Chief Administrative Judge  
Courts Outside New York City  
187 Wolf Rd, Suite 103  
Albany, NY 12205

Dear Judge Coccoma,

As the Office of Court Administration begins its work crafting plans for off-hour arraignment courts, the Association of Towns has identified some areas it believes are imperative in creating a system that not only protects indigent defendants' right to legal representation at arraignment but one that functions efficiently for local governments and other interested parties.

First, keeping the cost of off-hour arraignment courts and their implementation down is crucial to local governments. Municipalities across the state are constrained by the tax cap, which is frequently misnomered as a 2 percent cap; the actual 2017 cap for local governments is a mere .68 percent. As a result, even minimal increases in expenses can have an enormous impact on budgets. Of course, off-hours arraignment courts will necessarily involve local government resources, both in terms of facilities and personnel, but plans to institute these courts must be mindful of the monetary constraints under which local governments must work and minimize the financial impact. Limiting off-hour arraignment courts to the weekend when courts do not have regularly scheduled hours is one way to curtail costs while achieving the main goals of having indigent defense counsel available and performing an arraignment within 24 hours of an arrest.

Additionally, while costs should be kept to a minimum, specifically outlining the financial responsibilities local governments are expected to incur and how costs will be allocated is critical to include in off-hour arraignment court plans. For example, if a town or village justice has to drive across the county, the plan developed by the OCA should outline what entity pays for mileage and whose insurance applies in the event of an accident. Plans should also identify what entity provides, pays for and insures court personnel such as stenographers, interpreters and court officers. Similarly, the plan should have a system of dividing costs if, instead of having a rotating system, one municipal court is designated as the sole off-hour arraignment court. In that instance, it would be unjust and overly burdensome for the host municipality to bear the entire cost of running such operation. Outlining and fairly allocating costs will prevent confusion, allow local governments to budget and prepare for expenditures, and keep the focus on providing the best services possible.

Finally, in order to have an equitable and efficient system, local government officials must have a meaningful voice in creating off-hour arraignment court plans. Although the statute requires the OCA to work with local officials, it is unclear who or what constitutes "local government officials." This leaves open a scenario where a plan uses town, village, city and county resources, but, for example, only town officials are consulted as local government officials. One need only look at the fruitful dialogue held at the OCA stakeholder meeting in December to see all the different considerations that go into creating off-hour arraignment courts and how the deliberate involvement of all affected by the plan will create the best system possible. However, mere consultation with local government officials does not guarantee that their concerns will be given due and equal consideration, and there is nothing in the legislation that would prevent a plan from being adopted that would be costly for local government and potentially unworkable for local law enforcement. Instead, requiring local governments, as well all interested parties, to approve the off-hours arraignment plan would create a level playing field so that the interests of one group do not dictate how the program will be run at the expense of others.

The Association of Towns is happy to discuss these points further to ensure the creation of a viable system that protects indigent defendants' rights and works with local governments.

Respectfully submitted,

*/s/ Gerald K. Geist*

Gerald K. Geist  
Executive Director



# ASSOCIATION OF TOWNS OF THE STATE OF NEW YORK

150 State Street Albany New York 12207-1671  
Phone: (518) 465-7933 • Fax: (518) 465-0724

*Serving Towns Since 1933*

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July 7, 2016

Honorable David Alphonso  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, New York 12224

S7209-A Introduced by Sen. Bonacic  
(at request of the Office of Court Administration)

## **Recommendation of Disapproval**

*AN ACT to amend the judiciary law, the criminal procedure law and the uniform justice court act, in relation to off-hours arraignment parts in counties outside of the city of New York*

Dear Sir:

The law demands that a person be arraigned within 24 hours of a warrantless arrest (*see People ex rel. Maxian on Behalf of Roundtree v. Brown*, 77 NY2d 422 [1991]), and individuals have a constitutional right to representation at this stage of a criminal proceeding. However, there is currently no coordinated system in place that addresses how to ensure indigent legal defense services or what to do when courts are closed. The proposed legislation attempts to address those issues by authorizing the Chief Administrative Judge to create a plan to institute an off-hours arraignment part in local criminal courts. Plans would be created on a county-by-county basis with rotating, off-hours arraignment courts operating pursuant to a schedule. For example, a justice, court staff, public defenders and others involved would be responsible for all arraignments in the county at a designated court facility one Saturday evening a month, thereby ensuring that arraignments are timely and indigent defense counsel is available. Though towns regularly collaborate with other municipalities to bring the best services to their residents, this legislation leaves open several significant issues that prevent the Association of Towns from recommending its approval.

One of our main concerns involves the level of participation towns will have in creating and executing an off-hours arraignment court plan. Although, the legislation states that plans will be adopted after consulting with local government officials, it is unclear who constitutes local government officials, and

there is no guarantee that town officials will be among those consulted. Additionally, despite the fact that these plans will very likely use town resources, both in terms of personnel and facilities, there is no assurance – even if town officials are consulted – that towns will actually have a meaningful voice or that their concerns will be given due and equal consideration. Similar to how intermunicipal agreements are executed under article 5-g of the General Municipal Law, we recommend requiring the approval of the off-hours arraignment plan from all interested parties, including towns, which would ensure that one group's interests do not dictate how the program will be run at the expense of others.

Furthermore, there are many unanswered questions regarding the cost of operating an off-hours arraignment court on a rotating basis. For example, if a justice has to travel across the county to appear in the assigned court, who is responsible for mileage reimbursement and covering insurance costs, such as workers' compensation or liability insurance in the event of a car accident? What entity will pay for and provide court personnel, security, a stenographer or interpreter if needed? Will there be a new surcharge on tickets to fund off-hours arraignments, and, if so, how will the money be divided? Unfortunately, without additional surcharges or increased state aid to fund these plans, neither of which are included in the bill, complying with this legislation will likely result in additional costs that will be borne by real property taxpayers and could impair our members' ability to stay under the tax cap.

The proposed legislation is a step in the right direction to solve the issue of indigent legal defense and operationalizing off-hour arraignments, and we support the idea of having a county-by-county program as it grants flexibility for those with firsthand knowledge of the issues specific to the area to craft a solution; however, for the reasons mentioned above, we cannot recommend the approval of this legislation. The Association of Towns looks forward to working with state leaders and the Office of Court Administration to resolve this issue.

Respectfully submitted,

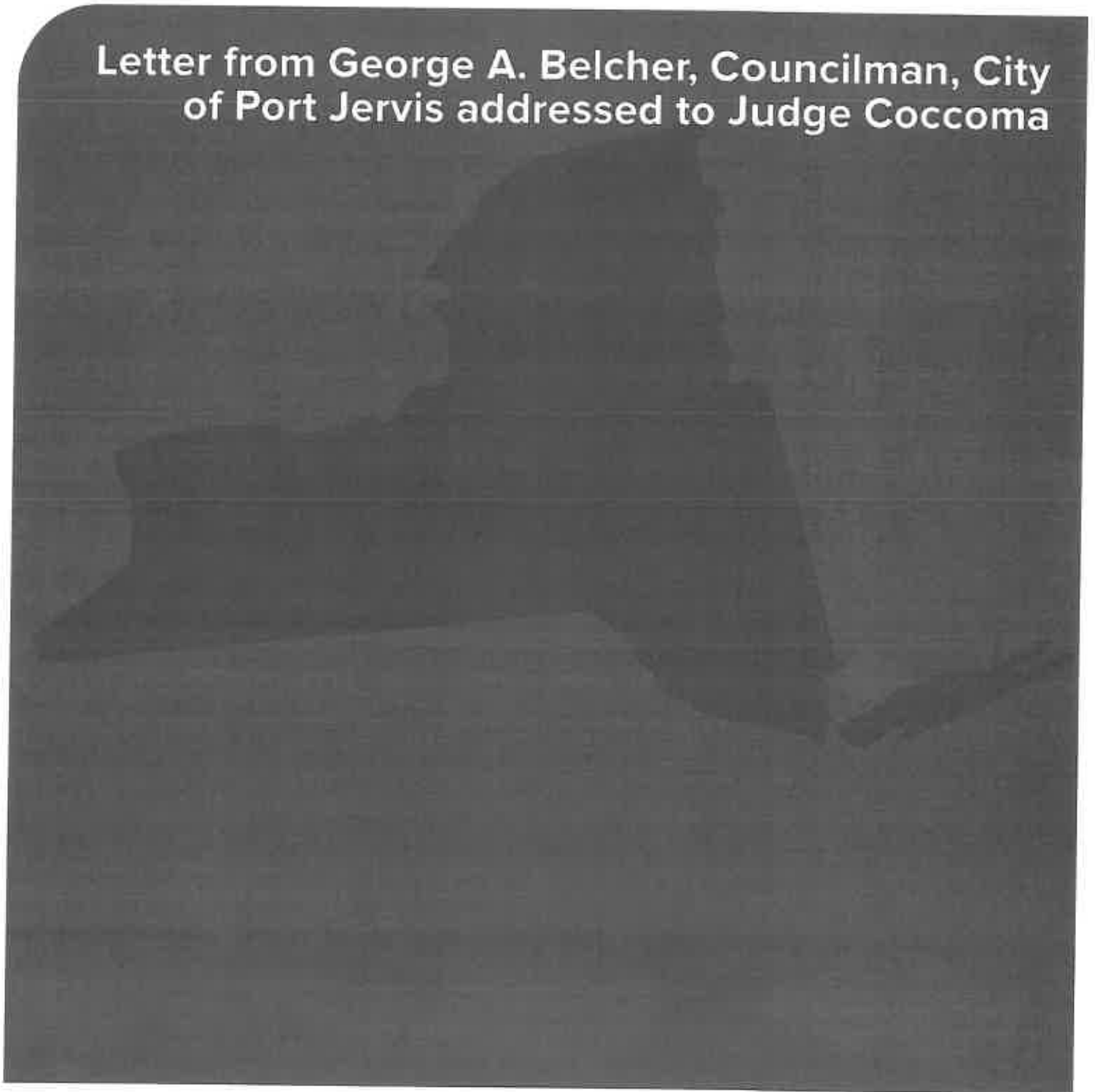
*/s/ Gerald K. Geist*

Gerald K. Geist  
Executive Director



**1/13/17**

**Letter from George A. Belcher, Councilman, City  
of Port Jervis addressed to Judge Coccoma**



5 Kingston Avenue  
Port Jervis, New York 12771  
January 13, 2017

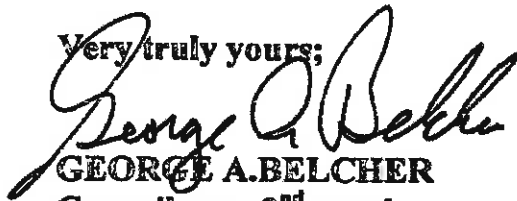
Honorable Michael V. Coccoma  
Deputy Chief Administrative Judge  
Courts Outside New York City  
Otsego County Annex Building  
32 Chestnut Street  
Cooperstown, New York 13326

Hon. Michael V. Coccoma;

The Chief's Assoc. of Orange County has met with the President and Immediate Past President of the Orange County Magistrates Association to discuss this new legislation. Basically, the Magistrate's Association is proposing to create a centralized arraignment court at the Orange County Jail for afterhours arraignments that would require all agencies to travel to Goshen with their arrestees for arraignments. This plan would essentially have a tremendous financial impact on the City's overtime and staffing resources and would certainly require the additional purchase of a prisoner transport van, increased overtime and potentially more staffing to accommodate the large volume of arrestees the City processes. Travel time and arraignment delays would have a negative impact on the public safety of our community. The centralized arraignment courts that have been established upstate have been inefficient and costly for municipalities.

The most effective solution is to create an on-call rotational list of defense attorneys that would be paid to virtually be "skyped" into the arraignment process remotely either from their office or home from each court when arraignments are conducted after hours. This would have very minimal financial impact that the Unified Court System as this technology is affordable and will satisfy the legislative requirements.

Very truly yours;

  
GEORGE A. BELCHER  
Councilman, 2<sup>nd</sup> ward

**1/17/17**

**Email from Judge Thomas DiSalvo, Webster Town  
Justice with attached letter**

A dark, low-contrast photograph of a person's profile, possibly a judge, looking down at a document. The image is very dark and grainy, with the subject's features mostly obscured by shadows. The person appears to be wearing a suit and tie. The background is also dark and indistinct.

**From:** Judge Thomas DiSalvo [<mailto:judgethisalvo@yahoo.com>]  
**Sent:** Tuesday, January 17, 2017 12:25 PM  
**To:** Anthony C. Rossi <[arossi@nycourts.gov](mailto:arossi@nycourts.gov)>  
**Subject:** Centralized Arraignment Parts for Off-Hour Arraignments

Dear Anthony:

Please see the attached letter as my comment relative to the above issue. Thank you for your attention to same.

Hon. Thomas J. DiSalvo  
Webster Town Justice



*Hon. Thomas J. DiSalvo*  
*Webster Town Justice*

672 Ridge Road  
Webster New York 14580  
(585) 787-6920  
Fax (585) 787-6922  
Cell: 330-8540  
E-Mail: [judgethisalvo@yahoo.com](mailto:judgethisalvo@yahoo.com)



January 17, 2017

Attention: Anthony Rossi, Esq.  
[arossi@nycourts.gov](mailto:arossi@nycourts.gov)

Re: Centralized Arraignment Parts For Off-Hours Arraignment

Dear Mr. Rossi:

I have been a Webster Town Justice since May of 2001. During that time I have been very active in the Monroe County Magistrates Association. I am past president and current trustee of that organization. I have been doing off-hour arraignments on the odd months of the year for going on sixteen years. Thus I consider myself qualified to speak on the subject of off hour arraignments. I have done them on a 24/7 basis during that entire time. Approximately three years ago our Monroe County Public Defender instituted a program that provided for a public defender at every arraignment. Originally, that program provided for an attorney at arraignment from 8:00 A.M. till 8:00 P.M. About a year ago that was extended to provide for an attorney at arraignment on a 24 hour basis. As a result, Monroe County is the gold standard in terms of providing an attorney at arraignment.

The current system in Monroe County provides for a defendant to be arraigned with an attorney in the town or an adjacent town in which he or she is arrested on a 24/7 basis. Changing that system amounts to a solution looking for a problem. This morning I received a phone call from the Webster Police Department at 1:30 A.M. regarding a domestic violence matter, wherein the defendant was charged with criminal contempt, 2<sup>nd</sup>, petit larceny and harassment, 2<sup>nd</sup>. I contacted the on-call public defender, who was at home in Pittsford, New York. She told me she could be in my court by 2:05 A.M. I arrived at the court at about 2:00 A.M. The public defender arrived about 10 minutes later. The defendant was brought in and was interviewed by the public defender. The arraignment was performed. A stay away order of protection was issued, which allowed the defendant to obtain his personal effects from the residence with the assistance of the police. The defendant, who was employed as a full time plumber, was released on his own recognizance and given a date and time to return to court. The arraignment was completed at 2:30 A.M.

Page 2

January 17, 2017

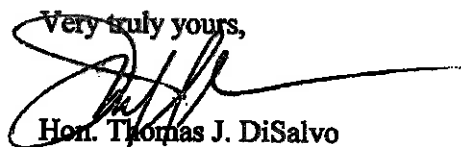
Re: Centralized Arraignment Parts For Off-Hours Arraignment

I fail to see how a centralized arraignment part, working with limited hourly coverage, outside of the jurisdiction wherein the arrest was made, could have served, the defendant, the police or the complainant any better. Instead of spending the night in jail, the defendant was free to be at work the next morning. Even if bail had been set, he could have immediately attempted to raise or put up bail at the county jail, which takes payment from credit cards for bail, rather than wait for an arraignment many hours later.

Any suggestion to change the current system in an attempt to assist defendants reminds me of the words of Ronald Reagan when he said "The most terrifying words in the English language are: I'm from the government and I'm here to help."

Should you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'TJ DiSalvo', with a long horizontal flourish extending to the right.

Hon. Thomas J. DiSalvo  
Webster Town Justice

TJD/pc

**1/17/17**

**Email from Julie Gansle, Past President  
NYSAMCC, with attachment**



**From:** Julie Gansle  
**Sent:** Tuesday, January 17, 2017 5:07 PM  
**To:** Anthony C. Rossi  
**Cc:** [GillianKoerner@villageofarcade.org](mailto:GillianKoerner@villageofarcade.org)  
**Subject:** NYSAMCC, Inc. comments

Anthony,  
Attached please find the comments submitted on behalf of the NYSAMCC, Inc..  
Thank you.

Julie





## New York State Association of Magistrates Court Clerks, Inc.

**President**

**Gillian Koerner**  
17 Church Street  
Arcade, NY 14009  
gkoerner@nycourts.gov  
585-492-4479

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**Annie Raskoskie**  
Ulster County

**2<sup>nd</sup> Vice-President**

**Jane Curtiss**  
Saratoga County

**3<sup>rd</sup> Vice-President**

**Dawn Marie Klingner**  
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Albany County

**Terri Bolt**

Ontario County

**Mary Shufelt**

Columbia County

January 17, 2017

Anthony C. Rossi, Esq.

Assistant Deputy Counsel

Office of the Deputy Chief Administrative Judge

Courts Outside New York City

NYS - Unified Court System

Empire State Plaza

4 ESP, Suite 2001


Albany, NY 12223-1450

Re: Stakeholders comments on creation of centralized arraignment parts for off-hours arraignments for courts outside New York City.

Dear Mr. Rossi,

Although the paperwork, reporting, scheduling and cost seem to be universal concerns of the stakeholders, they are a primary concern of the Court Clerks as related to the creation and implementation of Centralized Arraignment Parts. (CAP). In addition to, and on behalf of, the New York State Magistrates Court Clerks Association, I submit the following comments and concerns relating to the Centralized Arraignment Parts for Off-Hours Arraignments which relate to the role and effect of the court clerks of the town and village courts. I thank you for your time and consideration and look forward to future discussions.

Respectfully,

  
**Julie Gansle**  
Past President  
NYSAMCC, Inc.





## New York State Association of Magistrates Court Clerks, Inc.

### Centralized Arraignment Parts (CAP) – effect on court clerks

If county feels it doesn't need to create a centralized part- who specifically is making that decision for the T/V Court? (DA/PD/Court/JD?)

If the County puts a plan in place will each T/V be required to participate? Opt out? "Localities have the ultimate control to develop their own plan"

CAP are able to handle return on warrants in addition to the arraignments- who will ensure that the warrant paperwork (not simply the file 15) is submitted to the CAP?

Who will be responsible for the paperwork generated by the CAP to "send the case back to the court of trial jurisdiction? Magistrate/court clerk on duty rotation; magistrate/court clerk of the court chosen as the CAP?

Who will be responsible for coordinating the return dates for the various courts within the county when an arraignment takes place at the CAP? With many different courts within the county all meeting on differing dates and some with very limited court sessions, high risk of incorrect return date notification

Often times court clerks are PT with minimal hours and pay from the municipalities, will there be state reimbursement/pay associated with processing the paperwork from the CAP? Issue of compensation for court clerks – even if not present during the off hour arraignment, anticipate the additional paperwork associated with the arraignments

When /if defendants are arraigned at the CAP and remanded to return to the court of trial jurisdiction for the next appearance, who will facilitate the notification to transport to ensure that the defendant is brought before the court

If the rotation is intended to be commensurate with volume of off-hours arraignments individual judges conduct in local courts, if they are not currently conducted due to designated pre-arraignment holds

Who will be responsible for the coordination of staffing to include court clerks and interpreters?

Who will be responsible for the processing of orders of protection and dissemination, including Web DVS?

How will CAP effect the electronic reporting of information including differing court software programs between the various courts, TRACS, CDR, and Web DVS-?

Who notifies the DA/PD/Attorney of the arraignment- law enforcement, court (exparte communication)?

Defense counsel must be present, no requirement for prosecution to be present- how court to obtain a bail rec if no appearance by People at CAP?



**1/17/17**

**Email from Susan Bryant, Special Counsel, New York State Defenders Association, with attached comments and statement in opposition to audio-visual arraignments**



**From:** Susan Bryant [<mailto:SBryant@nysda.org>]

**Sent:** Tuesday, January 17, 2017 5:03 PM

**To:** Anthony C. Rossi

**Subject:** Centralized Arraignment Parts for Off Hours Arraignments

Dear Anthony,

Attached are NYSDA's comments regarding plans for off-hours arraignment parts. Please let me know if you have any questions.

Sincerely,

Susan

Susan C. Bryant  
Special Counsel  
New York State Defenders Association  
194 Washington Avenue, Suite 500  
Albany, New York 12210  
(518) 465-3524  
<http://www.nysda.org>



# **New York State Defenders Association, Inc.**

**Public Defense Backup Center**

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

Telephone (518) 465-3524

Fax (518) 465-3249

www.nysda.org

January 17, 2017

**VIA E-MAIL** (arossi@nycourts.gov)

The Honorable Michael V. Coccoma  
Deputy Chief Administrative Judge  
for Courts Outside New York City  
NYS Unified Court System  
Office of Court Administration  
Empire State Plaza, Suite 2001, 4 E.S.P.  
Albany, NY 12223-1450

Re: Off-Hours Arraignment Parts

Dear Judge Coccoma:

Thank you for the opportunity to submit written comments regarding off-hours arraignment parts, which have been authorized by Chapter 492 of the Laws of 2016. The New York State Defenders Association (NYSDA) provides legal support services to the over 130 public defense programs in the state's 62 counties. As part of its support services to public defense providers and state and local governmental entities, NYSDA provides consultation and technical assistance about legal and policy issues relevant to the criminal justice system, delivery of defense services, and barriers thereto.

Throughout the development and review of plans for off-hours arraignment parts, the primary goal must be to "facilitate the availability of public defenders or assigned counsel" at arraignment for defendants in need of legal representation. The legislation was intended to help ensure that defendants outside New York City are afforded the right to counsel at arraignment, a critical stage of the criminal proceeding. *See Hurrell-Harring v State of New York*, 15 NY3d 8 (2010).

While plans may have the effect of making the arraignment process more efficient and convenient for judges, law enforcement, and others, this is secondary to the goal of holding arraignments in a specific location so that defendants can appear with counsel. And efficiency and convenience must not be used to justify arraignment delays or the increased reliance on pre-arraignment detention. We urge Chief Administrative Judge Lawrence Marks to be cognizant of the legislation's primary purpose when reviewing proposed plans for off-hours arraignment parts.

Below is a list of other issues and recommendations regarding plans for off-hours arraignment parts. There are no doubt many other issues, some of which will arise during planning and implementation. We are encouraged by your interest in having a continuing dialogue about this important legislation.

### Review and Amendment of Plans

Plans should be reviewed on a periodic basis to ensure that they fulfill the goal of the legislation. During the periodic review, the Chief Administrative Judge or those responsible for implementation of approved plans should solicit comments from the defense providers identified in Judiciary Law § 212(1)(w).

Also, when a plan is approved, there should be clear instructions on making future amendments to the plan. Even the most thoughtful plans can have unexpected consequences and it is important to ensure that these problems can be remedied quickly.

### Defense Counsel Access to Client Rap Sheets at Arraignment

Despite clear statutory provisions directing that client criminal history reports (rap sheets) be given to defense counsel at arraignment (*see* Criminal Procedure Law 160.40[2] and 530.20[2][b][ii]), as well as the Office of Court Administration's ongoing efforts to educate and remind arraigning judges of this requirement, NYSDA continues to receive calls from defenders about not receiving rap sheets at arraignment. Rap sheets are essential to provide proper representation at arraignment and any plan for off-hours arraignment parts must include details regarding how rap sheet dissemination at arraignment will be accomplished.

### Facilities for Off-Hours Arraignment Parts- Need for Private Space for Attorney-Client Consultation

Off-hours arraignments should be held in court facilities that allow attorneys and clients to have private, confidential conversations. These conversations are often the first opportunity for a defendant to speak to an attorney and confidential information will be exchanged during that meeting. We recognize that law enforcement agencies may have a policy that requires constant visual monitoring of persons who have been arrested. However, such monitoring must not facilitate law enforcement overhearing or otherwise understanding privileged attorney-client communications or impede meaningful attorney-client exchanges. Off-hours arraignments should not be held in court facilities that do not have this capacity.

### Arraignment Delays and Pre-Arraignment Detention

The December 19, 2016 initial stakeholders meeting reaffirmed that swift arraignment of individuals and providing counsel at arraignment are considered the primary goals of the off-hours arraignment parts. Although scheduling arraignments at specified times of the day may be convenient, this should not cause individuals who have been arrested to wait longer than they currently do for arraignment. Plans should be required to satisfy the dual goals of swift arraignment and provision of counsel at arraignment. There are programs operating today in which on-call counsel is assigned and dispatched telephonically, allowing for full compliance with the requirements of *Hurrell-Harring*.

We have a number of concerns about the reliance on pre-arraignment detention; proposals that rely on such detention should be examined carefully and modified to avoid increased detention. Plans should be required to describe why alternatives to pre-arraignment detention, such as the use of appearance tickets, would not work in that county.

The availability of pre-arraignment detention facilities makes it easier to postpone arraignments. This can cause significant harm to an individual, such as missed work and possible loss of employment and temporary removal of a child because no one else is available to provide child care. Also, when defendants are already sitting in the county jail, some judges may be more reluctant to consider releasing a defendant, whether ROR or on bail. And it can give law enforcement and prosecution additional time to interrogate, without counsel, people who have been arrested. If individuals must be detained before arraignment, it is essential that plans do not provide an additional opportunity for unilateral law enforcement access for soliciting uncounseled statements. Plans should require that defense counsel be notified of the arrest and be given the opportunity to promptly meet with the client at the detention facility. This will give counsel time to discuss the case with the client and gather information to support a bail release argument, and will also reduce the amount of time needed for the arraignment. In the alternative, plans should affirmatively and consensually prevent law enforcement access during the pre-arraignment period exclusively caused by adjournment of what would otherwise have been a nighttime arraignment.

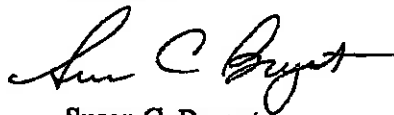
#### Video Arraignments

At the December 19, 2016 meeting, it was suggested that OCA consider the use of video arraignments and the elimination of the defendant consent requirement. NYSDA has opposed the use of video arraignments for years, as described in the attached memorandum (also available [here](#)). Video arraignment is not a substitute for the presence of counsel at arraignment. As noted by William Leahy, Director of the NYS Office of Indigent Legal Services, state funding for counsel at first appearance explicitly requires the physical presence of counsel with the client in court; this requirement ensures that representation comports with ethical standards. Any off-hours arraignment plan must not force defense attorneys to compromise their ethical and professional obligations to clients.

#### **Conclusion**

This common sense legislation presents a wonderful opportunity to build on the work that is already being done, in the five counties that are parties in the *Hurrell-Harring* litigation, in other counties where defense providers have received grant funding for counsel at first appearance, and elsewhere in the state, to provide counsel at arraignment. NYSDA will provide whatever assistance is needed to help ensure the right to counsel at arraignment is met throughout New York.

Sincerely,



Susan C. Bryant  
Special Counsel

Enclosure



# New York State Defenders Association, Inc.

## Public Defense Backup Center

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### STATEMENT IN OPPOSITION TO AUDIO-VISUAL ARRAIGNMENTS

In 1990, the Legislature authorized the experimental use of audio-visual court appearances via two-way closed-circuit television in the Bronx, Brooklyn and Manhattan. The purpose of the legislation was to "eliminate transportation costs, court detention facility resources, and the waiting time and inconvenience that precede court appearances in situations where *nothing of substance* will be determined (e.g., where both sides anticipate an adjournment.)" (Preiser, Practice Commentary McKinney's Cons. Laws of N.Y. CPL Art. 182) (emphasis added). When the experiment was not undertaken in any of the three boroughs during the original eighteen-month study period, the legislation was renewed in 1993, at which time additional counties were added to the list of authorized jurisdictions, a trend that has continued to the present day. There are currently twenty-seven jurisdictions authorized to participate in the experimental use of audio-visual court technology. In most places, the statute is being appropriately employed to avoid needless court appearances when nothing of substance will occur in court. Lawyers with established attorney-client relationships also use the technology to stay in close touch with incarcerated defendants. However, every now and again, a jurisdiction floats the idea of using audio-visual technology to dispense with the personal appearance of defendants at the initial arraignment, a critical phase of a criminal prosecution. The New York State Defenders Association continues to strongly oppose such initiatives as an improper use of the technology.

In over 22 years, no jurisdiction in New York has implemented a system of audio-visual arraignments under the statute. The reasons are twofold. First, the statute requires each defendant to give informed consent to the procedure and the choice must be voluntary. Consent may not be coerced by penalizing defendants who opt to personally appear in court by delaying the arraignment. Thus, counties must maintain an expensive dual system of audio-visual and conventional arraignments. Secondly, as explained below, no competent criminal defense lawyer would routinely recommend to clients that they waive personal appearance in court at the arraignment.

As counsel to the Office of Court Administration commented in response to the original legislation in 1990, "[N]ew technology in the judicial forum must be embraced carefully and only after thorough study of its impact upon court procedures and the administration of justice."<sup>1</sup> The use of audio-visual technology to avoid transporting pre-trial detainees to courthouses for routine case status conferences is fundamentally different from use of the technology to eliminate a defendant's personal appearance at the initial arraignment proceeding.

Important matters are reviewed and critical decisions are made at a criminal court arraignment. Central among these is the court's duty to apprise a defendant of the cause and nature of the allegations, and decide whether to release or hold the defendant in lieu of bail

<sup>1</sup> Letter from Michael Colodner to Evan Davis, Counsel to Governor Cuomo, dated July 20, 1990 at p. 2.



during the pendency of the criminal action. For the accused person, few decisions are as critical as the court's bail decision. Detention in jail for even a few days can result in the loss of employment, financial hardship, loss of custody of children, and devastation to one's family. Pre-trial detention can also adversely affect a defendant's ability to mount a successful defense to a criminal charge. Given the important liberty interests at stake at a criminal court arraignment, any plan that restricts the flow of information to the court and interferes with its ability to render a fair and impartial bail decision demands a compelling justification. Clearly, the administrative urge to save a few dollars on personnel expenses does not meet this high threshold. Indeed, a recent study in Cook County, Illinois, noted a statistically significant increase in bail amounts resulting from videoconferenced arraignment proceedings. The study concluded that "defendants were significantly disadvantaged by . . . videoconferenced bail proceedings." Shari Seidman Diamond, et. al. "Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions," 100 *Crim. L. and Criminology* 869, 898 (2010). Moreover, higher bail amounts "can impose additional financial costs on the justice system by leading to increased pre-trial incarceration of defendants who would otherwise be released." *Id.* at p. 901.

In addition to bail decisions, judges must make other important determinations during the arraignment that can have wide-ranging consequences for criminal defendants. Judges must decide at the arraignment whether to refer an apparently mentally unstable defendant for psychological testing to determine competence to stand trial,<sup>2</sup> or whether to issue a temporary order of protection to protect a crime victim,<sup>3</sup> or whether to suspend a defendant's license to possess a firearm,<sup>4</sup> or to drive a motor vehicle.<sup>5</sup> In order to make any of these discretionary judgment calls, judges must have the ability and means to "size up" the defendant, a difficult and largely intuitive process that would be seriously impaired if judges were relegated to making decisions based on whatever information they could glean from the defendant's image and voice on a video monitor. When the accused is not physically present in the courtroom, the court cannot get a full spectrum of nonverbal cues about the defendant's character and trustworthiness. The court literally cannot "look the defendant in the eye" to make a personal assessment of credibility. The defendant is likewise deprived of an opportunity to personally engage the judge when endeavoring to convey sincerity and respect for the legal process. *See Ann Bowen Poulin, Criminal Justice and Videoconferencing Technology: The Remote Defendant*, 78 *Tul. L. Rev.* 1089 (2004).

A defendant's personal appearance in court in response to a criminal charge also serves an important symbolic function in our criminal justice system. Unlike a police detention facility, a courtroom is an independent place. While police and prosecutors may be physically present in the courtroom, it is not *their* domain. The courtroom is the province of an independent judiciary, and the defendant is the central participant and focus of the arraignment proceeding. The defendant's presence is not a mere formality that can or should be routinely dispensed with. Physical presence in the courtroom has its own significance and meaning. Under our justice system, the accused must be turned over by his captors and allowed to stand, as a person presumed innocent, before a court of law. While accused persons may be in custody, they are in

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<sup>2</sup> CPL § 730.30

<sup>3</sup> *See* CPL §§ 530.12, 530.13

<sup>4</sup> *See* CPL § 530.14

<sup>5</sup> *See* VTL § 510 (3)

the hands of the court and its officers. Family and loved ones can see the accused and be reassured that he or she has not been harmed, and will be treated with respect by the court. From this small event, public respect for the law and for our system of justice flows.

The right of personal appearance is not only important to the accused; it is also important to the independence of the judiciary. Even when physically producing a defendant in court may cause inconvenience and expense, judges have an obligation to perform their duties with dignity and decorum. This obligation should not be lightly surrendered to administrative and fiscal concerns about convenience and cost-cutting. The right to personally appear in court at a critical stage of a criminal proceeding is indispensable. It should be relinquished only in the most extraordinary circumstances when no practical alternatives exist.

Arraignments conducted via two-way closed-circuit television can interfere with the development of trust between attorney and client, and can seriously interfere with a lawyer's ability to effectively advocate for a client. The closed-circuit process offers defense lawyers two equally objectionable choices: to be physically present in the police detention facility with a client, or in the courtroom with the judge and prosecutor. In the former situation, a defense lawyer's ability to advocate for a client is diminished by his or her absence from the courtroom, the locus of authority and decision-making. In the latter situation, counsel cannot stand by the client's side during the arraignment process, the critical first stage in most attorney-client relationships. The physical separation of attorney and client inevitably results in poor communication between the two parties, a situation that is only made worse when the client has special needs, such as language difficulties, mental health problems, or limited intelligence. In one study in New Jersey, 68% of the clients arraigned by closed-circuit television did not get to speak to an attorney during the bail hearing, and an overwhelming 96% did not get to speak to their attorney following the hearing.<sup>6</sup> This lack of communication can only serve to alienate attorney and client during this important early phase of their relationship.

For all of these reasons, audio-visual arraignments via two-way closed-circuit television are destructive of the rights of criminal defendants and are inconsistent with the deliberative process of the courts. The New York State Defenders Association strongly opposes it.

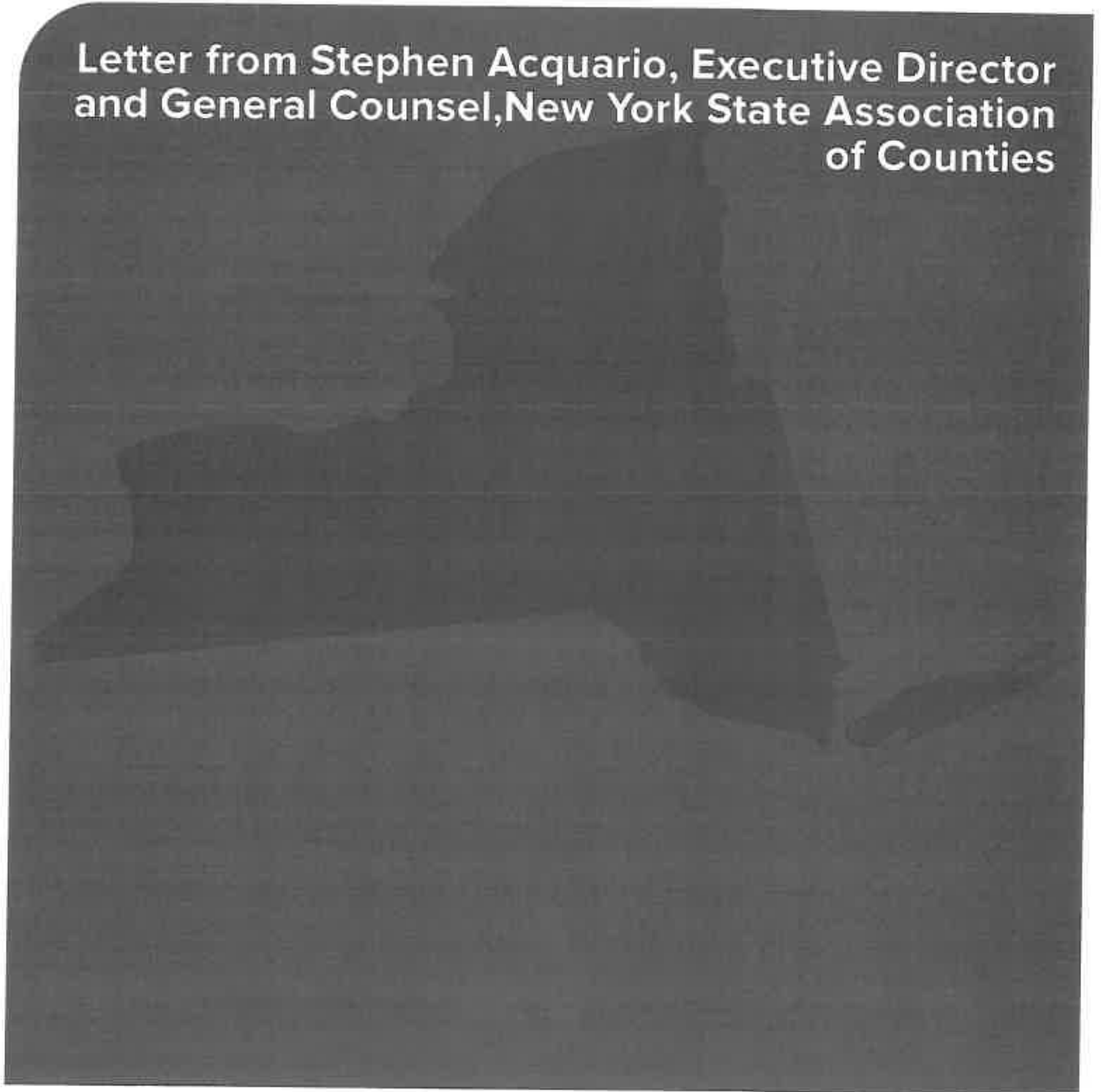
December 5, 2012

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<sup>6</sup> See Hudson County Video Link System, a report prepared for the Public Defender of New Jersey, on file with NYSDA.

**1/17/17**

**Letter from Stephen Acquario, Executive Director  
and General Counsel, New York State Association  
of Counties**





# NYSAC

NEW YORK STATE  
ASSOCIATION OF COUNTIES

540 Broadway, 5<sup>th</sup> Floor, Albany, New York 12207

Phone: (518) 465-1473

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[www.nysac.org](http://www.nysac.org)

President: Hon. William Cherry, Schoharie County

Executive Director: Stephen J. Acquario, Esq.

January 17, 2017

Dear Deputy Chief Administrative Judge Cocomma,

Thank you for the opportunity to provide feedback on the consolidation of criminal court arraignment and bail services. We appreciate that the NYS Office of Court Administration (OCA) is listening to counties as you are implementing these changes.

The New York State Association of Counties (NYSAC) is the only statewide municipal association representing the interests of county government, including elected county executives, county supervisors, legislators, representatives, commissioners, administrators and other county officials from the 57 counties of the State of New York, including the City of New York. NYSAC is the only statewide association representing the interests of both prosecution and defense.

If done correctly, the consolidation of criminal court arraignment and bail services has the potential to lower county costs by reducing the number of courts that a county must staff and would lower the transportation costs for County Sheriffs that transport defendants to and from the local courts. However, without proper state funding not all counties will see cost savings, and those that do may not benefit equally. In fact, some counties may face higher costs.

We request that OCA be mindful that counties are required to deliver and fund state mandated programs and also operate under a state-imposed property tax cap. Therefore, we do not have the capacity to fund any increases derived from the consolidation of criminal court arraignment and bail services. As the law dictates, OCA is not under any timetable requiring when consolidation in any county must occur. Therefore, we urge OCA to wait until proper funding is allocated through the State budget or other non-county streams before implementing these changes.

We understand that OCA is currently meeting with County Sheriffs, Public Defenders, and District Attorneys, each of whom plays a different role in the criminal justice system. Variables such as crime rates, transportation distances, and available staffing are key to understand before implementing these changes locally. NYSAC recommends, if you have not already, to also

include county attorneys and county administrators in your local meetings. These are seasoned county professionals that understand the workings and costs of the local service.

The following concerns have been presented to NYSAC and we are filing them with you.

- A) Currently not all counties provide counsel at first appearance services and many that do, do not provide off-hour/weekend counsel at first appearance. NYSAC highly recommends OCA does not create a system that requires counsel at first appearance until there is funding to implement this change. This funding can be provided in the State Budget. If statewide off-hour arraignment coverage is a high priority for OCA, we encourage you to support county indigent defense funding in the State 2017-2018 budget.
- B) Sheriff's costs could potentially increase if implemented incorrectly. Many towns and villages cannot meet holding cell requirements, and using county jails would increase costs for counts. Any additional or new holding cell space requirements should be funded by the state.
- C) Sheriff transportation costs should decrease as stated above. However, this is only possible if proper local coordination is executed by OCA with the Sheriffs and the county. Locating a consolidated court should consider sheriff and county transportation costs.
- D) Off-hour arraignment should be understood to mean weekend and not weeknight counsel coverage, unless a county is willing and able to perform such function. Most public defender offices operate on a normal Monday through Friday work week schedule. If a county workforce is required to be expanded to provide weekend coverage, the cost must be met by the State. Additionally, if OCA is envisioning off-hour coverage to include weekday nights this will increase costs further. Accordingly, these additional costs must be avoided by keeping Monday- Friday coverage between 9am to 5 pm or the State must pick up this additional cost.
- E) Even if additional funding for these program changes is secured, the next question is expansion of staffing. Counsel at arraignment naturally presumes experienced and competent counsel. It will not be easy to find experienced and capable lawyers who will be able to handle work in the middle of the night, weekends, and holidays that are not currently staffed by the county. Accordingly, even if funding is available, we ask that OCA allow counties a reasonable time to look for and obtain competent expanded staff.

Thank you again for inviting NYSAC to share county thoughts to help OCA with this process. Together we can build a better and stronger criminal justice system. If you have any follow-up questions or would like further NYSAC input, we are happy to help.

Sincerely,

Stephen J. Acquario,

Executive Director and General Counsel

**1/17/17**

**Email from Margaret Ryan,  
Executive Director – Chief of Police (Ret)  
New York State Association of Chiefs of Police,  
with attachments**



**From:** Margaret Ryan [<mailto:Margaret.Ryan@nychiefs.org>]  
**Sent:** Tuesday, January 17, 2017 8:32 PM  
**To:** Anthony C. Rossi <[arossi@nycourts.gov](mailto:arossi@nycourts.gov)>  
**Cc:** Margaret Ryan <[Margaret.Ryan@nychiefs.org](mailto:Margaret.Ryan@nychiefs.org)>  
**Subject:** Centralized Arraignment Parts - Comments for Submission

Attached please find the submission of comments from the New York State Association of Chiefs of Police regarding Centralized Arraignment Parts.

Please let me know if you need further comment or clarification.

I look forward to continuing to work with you on this important issue.

**Margaret E. Ryan**

Executive Director – Chief of Police (Ret)  
New York State Association of Chiefs of Police  
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# **New York State Association of Chiefs of Police, Inc.**

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Margaret E. Ryan, Executive Director Chief David J. Zack (Cheektowaga PD), President



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**January 17, 2017**

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**Anthony C. Rossi, Esq.**

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**New York State – Unified Court System**

**Empire State Plaza**

**4 ESP, Suite 2001**

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Samuel M. Palmiere

**Liaison, New York City Police**  
Vacant

**Dear Attorney Rossi,**

I write on behalf of the Board of Governors of the New York State Association of Chiefs of Police (NYSACOP) regarding Centralized Arraignments and Off-Hours Arraignments. As discussed in the December 19, 2016 Statewide Stakeholder's meeting, you advised that anyone in attendance could supplement meeting comments, propose possible solutions or submit materials to you that may be helpful to the Administrative Judges.

New York State has 596 police employers, including: 5 state agencies; 62 District Attorney Offices; 57 Sheriff Offices; 3 County Police; 2 Police Districts; 61 City; 131 Town; 259 Village; 10 Railroad; 1 Indian Nation; and 5 authorities/commissions. 330 of these police employers have 25 officers or less. Many of these agencies have collective bargaining agreements mandating minimum staffing for patrols. Many agencies have only one patrol car or one patrol officer on duty at any given time. The complexities of police personnel issues coupled with extended pre-arraignment holding times cause overtime budget concern issues for police administrators. Additionally, one officer tied up for an extended amount of pre-arraignment holding time followed by travel outside a jurisdiction for a centralized court arraignment will leave some jurisdictions with no on duty law enforcement available to response to other emergency calls for service.

NYSACOP has been discussing police lockups with the New York State Commission of Correction (SCOC) since May 2014 including the definition of "lockup" and searching female prisoners. There are some inconsistencies in how the state standards are



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Margaret E. Ryan, Executive Director Chief David J. Zack (Cheektowaga PD), President



interpreted and applied by SCOC inspectors in various parts of the state. Extended pre-arraignment custody of subjects may lead more police departments to more SCOC inspections, more police departments being considered a "lockup" and more subject to SCOC regulations. Correspondence with SCOC has been attached for your edification on the subject. Safety for everyone is a priority, pre-arrest, post-arrest and until they are no longer in police custody.

After canvassing Chiefs of Police across New York State, I have further compiled a list of questions and concerns that have been voiced. As mentioned by Deputy Chief Administrative Judge Coccoma, the primary goal of Centralized Arraignment Parts is swift arraignment of individuals and the ultimate goal of "counsel at arraignment and plans that work for local stakeholders and satisfy the legislation."

On behalf of NYSACOP, I thank you and Judge Coccoma for your commitment to this issue and for including stakeholders on all levels as plans are considered. Please contact me or the Association should you have further questions or comments. As stated in the December 19, 2016 meeting, flexibility in the legislation give localities an opportunity to create their own plan to submit for approval; a plan that meets with the diversity and uniqueness of each locality.

Sincerely,

Margaret E. Ryan  
Executive Director

**NEW YORK STATE COMMISSION OF CORRECTION**

**Albany, New York**



**ADULT LOCK-UP  
MANAGEMENT MANUAL**

**Thomas A. Beilein**  
*Chairman*

**Phyllis Harrison-Ross, M.D.**  
*Commissioner*

**Thomas Loughren**  
*Commissioner*

# **FOREWARD**

**This manual is intended to provide guidance to agencies that operate an adult lockup in New York State. This manual is not intended to be an all-inclusive document. It has been prepared to set forth the minimum a department must perform in order to ensure compliance with the Commission's Minimum Standards and other state and federal requirements.**

**Included you will find information and various forms covering the following topics:**

- 1. Minimum Standards and Appendix A**
- 2. Reportable Incidents and Appendix B**
- 3. Suicide Prevention**
- 4. Office of Juvenile Justice Delinquency Prevention Act and Appendices C and D**

**Note: This document was revised on August 2013**

**9NYCRR, PART 7500 - MINIMUM STANDARDS AND  
REGULATIONS FOR MANAGEMENT OF CITY JAILS – TOWN  
AND VILLAGE LOCKUPS**

These Minimum Standards outline the various requirements Police Lockup Facilities must observe. They also serve as the foundation for operational documents such as policies and procedures, post orders and forms. It is critical that these requirements are observed on a consistent basis.

Please find attached Part 7500 of the Minimum Standards (Appendix A)

The Minimum Standards are also available on the Commission's website (below)

<http://www.scoc.state.ny.us> (click on the "Manuals" box)

## **REPORTABLE INCIDENT FORMS**

Pursuant to Part 7508, Reportable Incidents, certain incidents that occur within a police lockup must be reported to the Commission of Correction.

1. The following reportable incidents must be reported to the Commission within 24 hours of occurrence, using the attached *Reportable Incident Form SCOC-501*.
  - a. Inmate injury requiring hospitalization
  - b. Inmate illness requiring hospitalization
  - c. Civil Emergency
  - d. Natural Emergency
  - e. Disturbance

Please find attached Reportable Incident Form SCOC-501 (Appendix B)

The *Reportable Incident Form SCOC-501* is also available on the Commission's website:

<http://www.scoc.state.ny.us> (click on the "Forms" box)

2. The death of an inmate shall be reported to the Commission within 6 hours of pronouncement of death using *Report of Inmate Death M-187* form.

Please find attached *Report of Inmate Death M-187* form (Appendix B)

The *Report of Inmate Death M-187* form is also available on the Commission's website:

<http://www.scoc.state.ny.us> (click on the "Forms" box)

## **SUICIDE PREVENTION FOR POLICE LOCKUPS**

In 1984, the Commission of Correction and the New York State Office of Mental Health initiated a design of a model to address the problem of jail/lockup suicides. They were joined by the Ulster County Mental Health Department and the DCJS Office of Public Safety. The program was designed to:

- Reduce the number of inmate suicides and attempts in jails and police lockups.
- Assure timely crisis intervention and follow-up for inmates with serious mental illness.
- Enhance the safety of high risk suicidal inmates and decrease litigation for police and corrections agencies.
- Enhance the quality of communication/coordination between local detention and correctional facilities and local mental health service providers.

The result of this collaboration was the development of the Suicide Prevention Screening Guidelines and the Suicide Prevention and Crisis Intervention Program in County Jails and Police Lockups. The Suicide Prevention Screening Guidelines (form ADM-330) is a structured questionnaire designed to identify inmates at high risk for suicide during early incarceration. Each question is based on research that documents its direct relationship to suicide risk. The form is designed to be used at booking/arrest processing and is designed to help officers make the most effective use of time and effort in identifying potentially suicidal detainees.

The Suicide Prevention and Crisis Intervention Program in County Jails and Police Lockups is an eight hour training program for the purpose of training officers on how utilize the ADM-330 form and how to complete a suicide screening. Completion of the training is required prior to utilizing the form. The course is designed to be taught by instructors certified in the curriculum. The course is generally offered throughout the state on an annual basis. Information regarding program location and registration is available through the Commission of Correction website:

<http://www.scoc.state.ny.us> (click on the "Training" box)

**NOTE:** Those police lockup staff who administer the ADM-330 form must have completed the required training course.

## OFFICE OF JUVENILE JUSTICE DELINQUENCY PREVENTION ACT

The New York State Division of Criminal Justice Services has charged the New York State Commission of Correction with the responsibility of evaluating the compliance with the Juvenile Justice and Delinquency Prevention Act (JJDP) for adult jails and lockups.

The Commission will be monitoring the deinstitutionalization of status offenders, jail removal of juveniles, and sight and sound separation of juveniles from adult offenders. A report will be issued citing violations, if any, that have been identified, as well as what corrective action is deemed appropriate to rectify any outstanding violations. It is incumbent upon the facility administrator to comply with the provisions set forth in the Act.

Commission staff will be scheduling training on the standards and how agencies must deal with the various categories of juvenile offenders. A letter will be sent to each Sheriff or Chief of Police inviting you to attend either the training session or send a representative from your agency to represent you. The Commission will also supply your agency with materials that will guide you on the fundamentals of handling juveniles in a manner that is in compliance with the Juvenile Justice and Delinquency Act.

Please find the following related documents in Appendices C and D:

1. *New York State Record of Juvenile Detention in Adult Lockups* form. This form must be completed and submitted to the Commission of Correction any time a juvenile is detained in an adult lockup. This form is located in **Appendix C** and can be downloaded from the Commission of Correction's website:

<http://www.scoc.state.ny.us> (click on the "Forms" box)

2. *QJJD Evaluation for Adult Lockups in NYS* checklist. This form is used by Commission of Correction staff during on-site assessments and is included in this manual so that you are aware of the scope of the assessment prior to the visit. **Please see Appendix D.**

**NOTE:** If you have any questions or are in need of technical assistance concerning the handling of juveniles, please contact Commission staff members Richard Kinney or Keith Zobel at (518) 485-2346.

# **APPENDIX A**

## **PART 7500**

### **Minimum Standards and Regulations for Management of City Jails – Town and Village Lockups**



**CHAPTER IV**

**Minimum Standards and Regulations for Management of City  
Jails--Town and Village Lockups**

**PART**

- 7500 Legal Authority**
- 7501 Definitions**
- 7502 Admission Procedures**
- 7503 Medical**
- 7504 Supervision of Detention Areas**
- 7505 Food**
- 7506 Sanitation and Maintenance**
- 7507 Discipline**
- 7508 Reportable Incidents**
- 7509 Records**
- 7510 Visits**
- 7511 Construction and Renovation**
- 7512 Variances**

PART 7500

LEGAL AUTHORITY

(Statutory authority: Correction Law, § 45(6))

Sec.

7500.1 Legal authority

Section 7500.1 Legal authority. (a) Article XVII, section 5, of the New York State Constitution provides that there shall be a State Commission of Correction which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime.

(b) Article 3, sections 45 and 46, New York State Correction Law defines the following as functions of the State Commission of Correction: .

- (1) Promulgate rules and regulations establishing minimum standards for the care, custody, correctional treatment, supervision, discipline and other correctional programs for all persons confined in local correctional institutions. (Note: As used in this statute, the term local correctional institution means any county penitentiary, county jail, city jail, court detention pen, hospital prison ward, or town, village or county lockup.)
- (2) Aid in securing humane and economic administration and best sanitary conditions of the institutions subject to inspection.
- (3) Investigate their management and conduct of their officials.
- (4) approve or reject plans for construction or renovation.
- (5) Collect statistical information with respect to the inmates.
- (6) Close any of the facilities subject to inspection which are unsafe, unsanitary or inadequate to provide for the separation and classification of prisoners as required by law or which has not adhered to or complied with the rules or regulations promulgated by the commission.

PART 7501

DEFINITIONS

(Statutory authority: Correction Law, § 45(6))

Sec.

7501.1 Definitions

Section 7501.1 Definitions. Unless otherwise specifically provided herein, the following words or terms used in this Chapter are defined as follows:

(a) Chief administrative officer shall mean the commissioner of police, chief of police or other officer in charge of a city jail, lockup or precinct station detention facility.

(b) Commission and Commission of Correction shall mean the New York State Commission of Correction.

(c) Lockup shall mean a place where individuals 16 years of age and over are temporarily detained while awaiting disposition of their cases in the courts, before arraignment in court, or for a brief period after arraignment or sentence while awaiting transfer to another correctional facility. An individual who has not reached his or her 16th birthday shall not be detained in any adult lockup except in accordance with section 304.1 of the Family Court Act or section 510.15 of the Criminal Procedure Law.

## PART 7502

### ADMISSION PROCEDURES

(Statutory authority: Correction Law, § 45(6))

Sec.

#### 7502.1 Admission procedures

Section 7502.1 Admission procedures. (a) Before being placed in a cell or detention room, the clothing and person of each prisoner shall be thoroughly searched.

(b) Belts, neckties, shoes and clothing items such as jackets, overcoats or other similar outer garments shall be removed and stored temporarily where they will not be accessible to prisoners. A supply of disposable type fiber or paper footwear to replace shoes may be kept available for issue as required.

(c) An accurate listing shall be made of all money, and items such as rings, watches and any other personal property taken at the time of admission, such list to be properly witnessed by the receiving officer and the prisoner. At the appropriate time, a receipt signed by the prisoner shall be obtained, acknowledging that all money and property have been returned.

(d) Searching of a female prisoner shall be accomplished by the regularly appointed police matron, or other qualified female person whose services may be available on a part-time basis.

(e) On request, within a reasonable time after arrival at the place of detention, a prisoner shall be allowed to make, without charge, one local telephone call to communicate with an attorney, a family member or relative, an employer, etc. Requests to place additional local calls and those of a long distance nature should be decided on an individual basis consistent with the prisoner's situation, funds in his possession and the possibility of reversing toll charges or otherwise having the prisoner make reimbursement for same. Telephone calls should be properly supervised and preferably made from an area where best security can be maintained.

PART 7503

MEDICAL

(Statutory authority: Correction Law, § 45(6))

Sec.

7503.1 Medical

Section 7503.1 Medical. (a) Definite arrangements shall be in effect so the services of a physician will be available, on a standby basis, to examine prisoners in cases of illness and injury. As an alternative, and to provide for situations of an emergency nature, the facilities of a conveniently located hospital, particularly emergency ward services, shall be utilized.

(b) Every prisoner to be detained who appears to be physically incapacitated due to drug or alcohol intoxication should preferably be examined by a physician. Note: Experience has firmly established that an alcoholic odor emanating from a prisoner can obscure a serious physical deficiency such as narcotic drug addiction, stroke, diabetic coma, heart attack, etc., or an abnormal mental condition.

(c) No medication shall be given to a prisoner unless authorized or prescribed by a physician.

(d) A record of medical attention provided for a prisoner shall be maintained.

PART 7504

SUPERVISION OF DETENTION AREAS

(Statutory authority: Correction Law, § 45(6))

Sec.

7504.1 Supervision of detention areas

Section 7504.1 Supervision of detention areas. (a) As a minimum, the condition of prisoners shall be checked, by actual visits to cells and detention rooms, at intervals not to exceed 30 minutes.

(b) In situations where a prisoner's physical or mental condition obviously warrants it, constant observation and supervision shall be provided.

(c) The supervisory visit procedure shall be accomplished either by personnel on full-time duty in the detention area or by those assigned to other duties in police department operations.

(d) A suitable record of supervisory visits shall be maintained in ink and in a legible manner and shall include but shall not necessarily be limited to the following information:

- (1) date;
- (2) time of each visit;
- (3) condition of prisoner(s), e.g., awake, sleeping, etc;
- (4) other notations considered relevant;
- (5) signature of officer or matron.

(e) Supervision of female prisoners shall be accomplished by a matron, and a female prisoner shall not be placed in or removed from a detention area unless the matron is present. The matron shall retain the key for the detention area for females and no male person shall be permitted to enter an area where female prisoners are detained unless accompanied by the matron.

(f) If a detention facility is located in a structure which is not of fire-resistant construction and where a fire hazard of extensive proportions exists, constant supervision is required.

(g) The use of closed circuit television to visually monitor an area in which prisoners are detained is approved only as an adjunct to actual physical supervisory visits by police

department personnel and shall not be considered as a substitute for such visits.

(h) Under no circumstances shall an officer while armed enter a detention area where prisoners are being detained.

PART 7505

FOOD

(Statutory authority: Correction Law, § 45(6))

Sec.

7505.1 Food

Section 7505.1 Food. (a) Prisoners who are detained during any of the usual three daily meal hours, i.e., morning, noon and evening, shall be provided with a suitable repast at the expense of the city, town, village or county maintaining the detention facility.

(b) Food shall be given to prisoners in the cell or detention room. Under no circumstances shall prisoners be taken outside the security area for this purpose.

(c) A record of meals provided, including a notation of the prisoner's refusal thereof, shall be maintained.

(d) Consistent with the requirements of this Part, inmates shall be entitled to observe dietary laws established by their religion. Each facility shall furnish or provide access to the type of food required by recognized religious dietary rules. Such special diets shall conform as closely as possible to the foods served other inmates.

(e) Consistent with the requirements of this Part, inmates shall be entitled to medical diets ordered by a physician. Each facility shall furnish or provide access to the type of food required by their medical diets. Such special diets shall conform as closely as possible with the foods served other inmates.



PART 7506

SANITATION AND MAINTENANCE

(Statutory authority: Correction Law, § 45(6))

Sec.

7506.1 Sanitation and maintenance

Section 7506.1 Sanitation and maintenance. (a) Definite arrangements shall be made so that janitorial and maintenance services are regularly provided to insure that satisfactory conditions will exist at all times.

(b) If bedding items such as sheets and pillow cases are used, they shall be changed each time a prisoner is released.

(c) Mattresses if used in cells or detention rooms should preferably be of a soil and water-resistant type and their condition should be checked regularly for damage, attempts to conceal contraband items, etc.

(d) When an approved type wood bunk is in use, mattresses, sheets and pillowcases are not required in routine operations.

(e) A supply of clean blankets shall be kept available for issue depending on such circumstances as the condition of the prisoner, and the temperature in the detention area. Blankets should be routinely left in the cells, and should be laundered or sterilized as necessary to ensure proper cleanliness.

(f) A supply of soap, paper towels and toilet tissue shall be maintained, and paper drinking cups made available when lavatories do not have an integral drinking fount. Supplies of this nature should be issued as needed and not routinely left in cells.

(g) Locks on cell doors and security doors, locking devices and the security aspects of detention type windows and screens shall be checked regularly to insure that they are in proper condition.

PART 7507

DISCIPLINE

(Statutory authority: Correction Law, § 45(6))

Sec.

7507.1 Discipline

Section 7507.1 Discipline. (a) Minor matters of discipline, where no danger of safety, property or life exists, shall be handled in such a manner as to attract as little attention as possible to the incident.

(b) Officers shall not strike or lay hands on a prisoner unless it be in self defense, to prevent escape or serious injury to person or property, to quell a disturbance, or to effect detention. In such cases, only the amount of physical force necessary to accomplish the desired result is authorized.

(c) Some type of restraining equipment, e.g., jacket or sheets, should be available for use in emergencies and under the direction of trained personnel and competent medical authority. In such instances, full time supervision shall be provided and further action determined by a physician.

(d) The use of chemical agents such as tear gas to control or reduce a prisoner to submission shall be used only when other restraint methods or efforts to subdue have not proven effective. Authority shall first be obtained from a supervisory or command officer and the chemical agent shall be used only by staff personnel who have been trained in its use.

PART 7508

REPORTABLE INCIDENTS

(Statutory authority: Correction Law, § 45(6))

Sec.

7508.1 Definition

7508.2 Reportable incidents

Section 7508.1 Definition. As used in this section, "reportable incident" shall mean inmate death; inmate injury or illness requiring hospitalization; civil or natural emergency; or disturbance.

7508.2 Reportable incidents. (a) Except as provided in subdivision (b) of this section, reportable incidents shall be reported to the commission by mail within 24 hours of occurrence in a form and manner prescribed by the commission.

(b) The death of an inmate shall be reported to the commission within six hours of pronouncement of death in a form and manner prescribed by the commission.

PART 7509

RECORDS

(Statutory authority: Correction Law, § 45(6))

Sec.

7509.1 Records

Section 7509.1 Records. (a) A record of the number of male and female prisoners detained on a daily basis shall be maintained and shall be kept available at all times for review by commission representatives at the time of an official inspection or as may otherwise be required. A supply of forms (Record of Detentions) which can be utilized for this purpose shall be provided to each lockup upon request to the commission office.

(b) On or before the first day of February of each year, the chief administrative officer shall submit a report to the commission of the total number of male and female prisoners detained during the preceding calendar year. The form on which such data are to be reported shall be forwarded at the appropriate time by the commission to each lockup.

PART 7510

VISITS

(Statutory authority: Correction Law, § 45(6))

Sec.

7510.1 Visits

Section 7510.1 Visits. (a) All prisoners shall be permitted to converse with their counsel or religious advisor under such reasonable regulations and restrictions as the officials in charge may establish.

(b) Visits to prisoners by a family member, relative or other person may be permitted at the discretion of, and in accordance with regulations established by, the officials in charge.

PART 7511

CONSTRUCTION AND RENOVATION

(Statutory authority: Correction Law, § 45(6))

Sec.

7511.1 Construction and renovation

Section 7511.1 Construction and renovation. (a) Correction Law, section 45, subdivision 10, requires that any plans and specifications for the construction or renovation of detention facilities must be submitted for review to the State Commission of Correction.

(b) Approval of the commission must be obtained before a construction or renovation project is advertised for bids. If it is not contemplated that a bidding procedure is to be followed, approval must be obtained before any construction or renovation is undertaken.

(c) A booklet which contains outline data and general requirements to be observed in the construction or renovation of city, town and village detention facilities is available and will be provided on request to the commission office at Albany.

## PART 7512

### VARIANCES

(Statutory authority: Correction Law, § 45(6))

Sec.

7512.1 Policy

7512.2 Conditions for applying for a variance

7512.3 Variance applications

7512.4 Review of variance applications

7512.5 Variance reapplications

Section 7512.1 Policy. The Commission of Correction recognizes the need to provide a mechanism by which a lockup may apply for a variance to the requirements of this Chapter when situations exist or arise that would prevent or alter the lockup's ability to meet a requirement as set forth in this Chapter. The commission may, in its discretion, grant such variance only under certain conditions when so doing will not jeopardize the safety, security or good order of a lockup.

7512.2 Conditions for applying for a variance. (a) The chief administrative officer may apply to the commission for a variance to requirements of this Chapter when:

- (1) compliance with a specific rule or regulation cannot be achieved by the effective date of such rule or regulation;
- (2) due to a temporary condition or situation, compliance with a specific rule or regulation cannot be achieved; or
- (3) compliance is to be achieved in a manner other than that which is specified in a rule or regulation until such time as compliance with such specific rule or regulation can be achieved.

(b) The provisions of this Part shall not apply to any requirements of this Chapter where it is specifically stated that variances to such requirements are prohibited.

7512.3 Variance applications. (a) Any application to the commission for a variance shall be made in writing by the chief administrative officer.

(b) Such application shall include:

- (1) the specific rule, regulation or provision that is the subject of the application;
- (2) the specific reasons and facts supporting the belief that compliance with the specific rule and regulation cannot be achieved;
- (3) the specific plans, provisions and timetables for achieving full compliance with the rule or regulation at issue, the time period for which the variance is requested and any other material that the chief administrative officer deems supportive of the application; and
- (4) when the application is made for reasons stated in section 7512.2(a)(3) of this Part, the specific plans which fully explain and support alternative methods of compliance when compliance is to be achieved in a manner other than that which is specified in the provisions of this Chapter, and the time period for which the variance is requested.

(c) The commission may require additional information concerning any variance application prior to rendering its decision.

7512.4 Review of variance applications. (a) The commission shall review and issue a written determination to the chief administrative officer on each variance application which complies with the requirements of this Part.

(b) When a variance is granted, the commission's determination shall specify:

- (1) the time period for which the variance is granted; and
- (2) any special requirements or conditions imposed as a condition of the variance.

(c) When a variance is granted, such variance and any special requirements or conditions imposed shall become the standard for compliance with the specific rule or regulation at issue for the lockup involved.

(d) When a variance is denied, the commission's determination shall include the specific facts and reasons underlying its decision.



(e) Within 30 days after a variance is denied by the commission pursuant to this Part, the chief administrative officer may request a hearing before the commission. Such hearing shall provide the chief administrative officer an opportunity to present his/her position and to respond to any questions the members of the commission may have on the matter.

7512.5 Variance reapplications. (a) When a variance is denied, the chief administrative officer may reapply to the commission for a variance if:

- (1) additional information is available which supports the application and addresses the specific facts and reasons for the denial; and/or
- (2) conditions or circumstances within the lockup have changed in a manner which would justify reconsideration of the application.

(b) Any such reapplication shall be made in accordance with the requirements of this Part.

## **APPENDIX B**

- 1. Reportable Incident Form SCOC-501**
- 2. Report of Inmate Death M-187 form**

NEW YORK STATE COMMISSION OF CORRECTION

REPORTABLE INCIDENT FORM

NAME AND TITLE OF REPORTING PERSON: \_\_\_\_\_

DEPARTMENT: \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_

DATE OF INCIDENT: \_\_\_\_\_ TIME: \_\_\_\_\_

DATE REPORTED: \_\_\_\_\_ TIME: \_\_\_\_\_

LOCATION OF INCIDENT: \_\_\_\_\_

PERSON(S) INVOLVED: \_\_\_\_\_

DATE OF BIRTH(S): \_\_\_\_\_

BRIEF SUMMARY OF INCIDENT

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

DO NOT WRITE BELOW THIS LINE (FOR SCOC STAFF ONLY)

DATE REPORT RECEIVED: \_\_\_\_\_

SCOC STAFF NAME: \_\_\_\_\_

REFERRALS: YES \_\_\_\_\_ NO \_\_\_\_\_ IF YES, WHERE? \_\_\_\_\_

SCOC CONTROL NUMBER: \_\_\_\_\_

Return to:

New York State  
Commission of Correction  
80 Wolf Road, Albany, NY 12205

SCOC M187  
(518) 485-2466  
(518) 485-2467

6/05  
24 Hr On Call  
Fax machine

Page 1 of 2

**Report of Inmate Death to State Commission of Correction**

Instructions: Call the on-call number to advise the Commission of the death within 6 hours of death.  
Follow this up by sending a completed Section I by facsimile within 6 hours of death.

Section II must be completed and sent within 10 days of death (with a copy of Part 1).

Enter clinical summary on page 2, enter "DNA" if not applicable. Answer all questions, explain unavailable information.

Commission Use Only

Control #

M

Rt#

**Section I- REPORTING FACILITY, INMATE INFORMATION, CIRCUMSTANCES OF DEATH**

1. Name of Reporting Facility		1a Code	17. Name of Inmate	
2. Name of Chief Administrative Officer		18. Date of Birth		19. Height
3. Name of Hospital		21. Race		22. Sex
4. Name of Reporting Official		24. Date of Death		23. Inmate #
5. Telephone		25. Assigned Housing Unit		24a. Time of Death
6. Name of Ambulance/Rescue Squad		26. Location of Terminal Incident:		25. a. Housing Unit type
7. Date and Time Admitted		27. Supervision Immediately Prior to Incident		
8. Date of Arrest	9. Arrest Charge(s)		28. History of substance abuse: (check all that apply)	
10. Date Convicted	11. Conviction Charge(s)		Drugs ( ) Alcohol ( ) None ( ) Unknown ( )	
12. Sentence	13. Date of Sentence		29. What type of treatment was inmate under? see page 2	
14. Intake screening done? Yes ( ) score _____ No ( )		30. Date of last Contact:		Medical ( ) Psychiatric ( ) None ( )
15. Date of Last Admission		31. Officer Supervising Death Location:		
16. Witnesses		32. Date of this report		
a _____				
b _____				
c _____				
33a. Reported Immediate Cause of Death:				
33 b. Due To or As a Result Of:				
34 Facility Administrator's Report of Circumstances of Death				
35. Autopsy Performed? (MANDATORY) Yes ( ) Date _____ Time _____ No ( )				
36. Autopsy: Location				
Name of Medical Examiner or Coroner:				

Return to:

New York State  
Commission of Correction  
80 Wolf Road, Albany, NY 12205

SCOC M187  
(518) 485-2466  
(518) 485-2467

8/05  
24 Hr On Call  
Fax machine

Page 2 of 2

**Section II-MEDICAL DIRECTOR'S INMATE HISTORY AND CLINICAL SUMMARY**

Instructions: include in Section IIA a description of the inmate's medical and mental health status during the 90-day period prior to the death, including problem list, medications, sick call visits, infirmary/hospital admissions, mental health evaluations, laboratory findings, and treatment rendered. Include in Section II B a description of the events preceding the death, including relevant history, when symptoms were first noted, treatment provided, inmate's response, circumstances of death and other relevant information. Include in Section II C the names and titles of all medical staff involved or present. Attach additional sheets if needed.

**Section II A: MEDICAL AND MENTAL HEALTH HISTORY**

Problem list

Dx:

Date:

Dx:

Date:

Dx:

Date:

**Section II B- EVENTS PRECEDING DEATH**

**Section II C: MEDICAL STAFF INVOLVED IN TERMINAL EVENT**

Medical Director's Signature \_\_\_\_\_ MD

Please Print Name \_\_\_\_\_

## **APPENDIX C**

### **1. New York State Record of Juvenile Detention in Adult Lockups form**

**NEW YORK STATE RECORD OF JUVENILE DETENTION IN ADULT LOCK-UPS**  
(PERSON UNDER THE AGE OF 16)

**The following information must be submitted to the  
New York State Commission of Correction  
whenever a Juvenile has been detained in an adult lockup.**

Name of Juvenile: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Did juvenile give a false DOB? Yes ☐ No ☐ If so indicate the false DOB: \_\_\_\_\_

Gender: Male ☐ Female ☐

Race and Ethnicity:

- ☐ White (non-Hispanic)
- ☐ Asian (non-Hispanic)
- ☐ American Indian or Alaska Native (non-Hispanic)
- ☐ Hispanic or Latino
- ☐ Black or African American (non-Hispanic)
- ☐ Native Hawaiian or other Pacific Islander (non-Hispanic)

Crime Charged/Reason for Detention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Was juvenile separated from adult (age 16 or over) detainees? Yes ☐ No ☐

If NOT please note where the juvenile was when they were not separated (e.g. Booking Area, Cell Block):  
\_\_\_\_\_  
\_\_\_\_\_

Date & time juvenile entered the Lock-up: \_\_\_\_\_

Date & time juvenile was removed from Lock-up: \_\_\_\_\_

Was juvenile transferred from another location or agency (e.g. Police Dept/Jail)?

Yes ☐ No ☐ If yes, which agency? \_\_\_\_\_

Was juvenile transferred to another agency (e.g. Police Dept/Jail/ Probation)?

Yes ☐ No ☐ If yes, to which agency? \_\_\_\_\_

Form submitted by: Name: \_\_\_\_\_ Title: \_\_\_\_\_

Area code and phone number: (\_\_\_\_) \_\_\_\_\_ Date: \_\_\_\_\_

Mail form to:

OR

Fax the form to:

NYS Commission of Correction  
80 Wolf Road, 4<sup>th</sup> Floor  
Albany, NY 12205

(518) 485-2467

If you have any questions, please call (518) 485-2485

5/08

## **APPENDIX D**

### **1. OJJDP Evaluation Questionnaire for Adult Lockups**





NEW YORK STATE COMMISSION OF CORRECTION

**JJDPA EVALUATION**  
**ADULT LOCK-UPS**

**Questionnaire**

**GENERAL INFORMATION**

Facility Name: \_\_\_\_\_  
Site Visit Date: \_\_\_\_\_  
Facility Staff: \_\_\_\_\_ Title: \_\_\_\_\_  
Monitor's Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Last Eval Date: \_\_\_\_\_

**I. GENERAL PROCESSING OF ALL JUVENILES**

*(Circle appropriate answers)*

New York State law generally provides that no juvenile (person under 16 years of age) may be detained in any lock-up. (An exception is provided wherein juvenile delinquents and juvenile offenders may be temporarily held in an adult lock-up with the prior approval of OCFS.) As set forth in Articles 3 and 7 of the Family Court Act, the only place in a police department a juvenile may be brought is a questioning room that is designated for juveniles. The room must be designated as such by the New York State Office of Court Administration.

- a. Does your agency have an Office of Court Administration/Family Court approved room for the questioning of juveniles? (22 NYCRR §205.20) Yes / No

If YES, where is such approved room(s) located?

(Confirm with OCA approved list)

If NO, how/where do you detain and interview juveniles?

- b. When a female juvenile is being questioned, is there a female officer/matron present?  
Yes / No

NEW YORK STATE COMMISSION OF CORRECTION

(NOTE: The Uniform Rules for the Family Court, 22 NYCRR §205.20(d)(7), requires a policewoman or other qualified female person be present when questioning a female juvenile.)

- c. Other than an OCA-approved questioning room, are juveniles brought to any other room or area of the department?  
Yes / No

If YES, what rooms or areas of the department?

If YES, for what purpose(s)? (booking, waiting for transport, etc.)

**II. DEINSTITUTIONALIZATION OF STATUS OFFENDERS (DSO)**

In accordance with Section 223 (a) (12) (A) of the JJDP Act, no status offender (ungovernable, truant or runaway, i.e. PINS) or non-offender (abused/neglected child) shall be held in secure custody while in an adult lock-ups. A juvenile is considered to be in secure custody when he/she is physically secured to a cuffing rail or other stationary object or physically detained in a locked room, set of rooms or cell.

- a. In the last 12 months, has there been a situation where an officer has handcuffed a status offender to a stationary object?

Yes / No

If yes, what were the details? (Who, what, where, when.)

- b. In the last 12 months, has an officer used a cell, locked room or set of rooms to hold and/or question a status offender?

Yes / No

If yes, what were the details? (Who, what, where, when.)

NEW YORK STATE COMMISSION OF CORRECTION

If either II a or b were answered as yes, was it reported to the Commission of Correction, using the Record of Juvenile Detention Form?

Yes / No

If not, advise that reporting is required and provide guidance and a form, if needed.

Are such situations (a or b) recorded or documented?

Yes / No

If yes, how? If not, why not?

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III. SIGHT AND SOUND SEPARATION

In accordance with Section 223 (a) (13) of the JJDP Act; no juveniles shall be held in secure custody in an adult lock-up where they have sight or sound contact with incarcerated or arrested adults.

- a. If the facility has an OCA approved juvenile questioning room, does such room provide sight and sound separation from incarcerated and arrested adults?  
Yes / No
- b. In the last 12 months, has there been an occasion where a juvenile was held in secure custody outside of an OCA approved questioning room and there were adult prisoners who could be seen or heard in the vicinity?  
Yes / No

If yes, what were the details? (Who, what, where, when.)

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NEW YORK STATE COMMISSION OF CORRECTION

If answered yes, was it reported to the Commission of Correction, using the Record of Juvenile Detention Form?

Yes / No

If not, advise that reporting is required and provide guidance and a form, if needed.

**IV. JAIL REMOVAL**

In accordance with Section 223 (a) (14) of the JJDP Act, no juvenile shall be detained or confined in any jail for adults.

- a. In the last 12 months, has any juvenile been detained in your lockup with Office of Children and Family Services (OCFS) approval?

Yes / No

If yes, what were the details? (Who, what, where, when.)

---

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- b. In the last 12 months, has any juvenile been detained in your lockup without Office of Children and Family Services (OCFS) approval?

Yes / No

If yes, what were the details?

---

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If either IV a or b were answered as yes, was it reported to the Commission of Correction, using the Record of Juvenile Detention Form?

Yes / No

If not, advise that reporting is required and provide guidance if needed.

NEW YORK STATE COMMISSION OF CORRECTION .

V. RECORDS

Are juvenile records maintained separately from adult records?  
Yes / No

Additional Comments:

Monitor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **Centralized Arraignments / Off Hours Arraignments**

In reference to Centralized Arraignments, the following are considerations to review as submitted by the New York State Association of Chiefs of Police as received from Chiefs of Police across New York State:

1. **Public Safety and Transportation Costs:** Counties such as Orange and Ulster are large geographically making it necessary for several regional Hub Arraignment Courts to be established in order to minimize the costs related to transporting prisoners to arraignment. The transportation costs alone would require many agencies to be forced to purchase a prisoner transport van and either (a) add staffing or (b) increase overtime costs for assigning officers to transport prisoners to arraignments as most agencies do not have sufficient shift resources or officers assigned to street patrol to remove them from their primary assignments and tie them up on prisoner transport and arraignments.
2. **Impact on agencies that do not have holding cells and are forced to arraign prisoners as required after arrest processing.**
3. **Potential Solution-** The state courts should provide funding to equip all village, town and city courts and public defender / 18-b assigned counsel and district attorneys with skype type capabilities for arraignments. With today's technology, a list of on-call defense attorneys and prosecutors could virtually be present in the arraignment process at all court facilities at an on-call basis thus complying with the requirements of the legislation and limiting the financial and public safety burden of assigning officers to transport prisoners to regional arraignment courts.
4. **Are these centralized arraignment courts going to be open to the public?**
5. **If open to the public, who will be responsible for the security of the facility?**
6. **Will all hours of the day be discussed for the definition of "Off-Hours" arraignments?** Finding a judge and attorneys for a 2:00pm arraignment is often as difficult, and in some areas more difficult, as a 2:00am arraignment.
7. **Will these courts have permanent hours?** Perhaps not as long, but similar to the NYC where there run from 5pm to 1 am seven nights a week?
8. **Are these courts going to have holding and feeder cells?** If so what agency will have responsibility for the cells? The Sheriff's Office? The Local PD where the Court is located? The PD seeking arraignment?
9. **If no cells, is each arresting agency going bring their prisoners thru the front door and sit them in the courtroom until it is their turn to be heard?**
10. **Who is going to docket the cases and make sure the case gets back to the proper jurisdiction?**
11. **Which Judges and what type of judges are going rotate in and out of these courts.** Town & Village Judges? City & County Court Judges. Supreme Court Judges? All Judges?
12. **Will these sitting judges be designated Acting Supreme Court Judges so that the can not only arraign felonies but also adjudicate felonies?**
13. **Will rotating judges rotate with their staff or will the designated court have to supply the staff?**
14. **How will a record of the proceedings be maintained?** By tape or court reporter? Where will these records be stored? Centralized court or jurisdictional court?

15. Who will be responsible for ensuring public defenders and ADAs are present?
16. Will bail be allowed to be posted at these courts? Will fines be able to be paid at these courts?
17. Will these courts also process people who are only being held for an arrest or bench warrant(s)?
18. Will law enforcement be applying for a search or arrest warrant through these centralized courts or jurisdictional court judges?
19. Information received from some Police Chiefs post Statewide Stakeholder's meeting includes some local judges are advising law enforcement agencies that they will no longer be doing arraignments after February 26 since centralized arraignments will be in place.
20. Constitutional violations due to the amount of time a police officer may end up holding a subject while waiting for a centralized arraignment / off-hours arraignment court to be available.



STATE OF NEW YORK • EXECUTIVE DEPARTMENT  
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Thomas A. Bellin

COMMISSIONERS  
Phyllis Harrison-Ross, M.D.  
Thomas J. Loughren

June 17, 2014

Steven Heider  
President  
NYS Association of Chiefs of Police, Inc.  
2697 Hamburg Street  
Schenectady, New York 12303-3783

Dear Mr. Heider:

The Commission of Correction has completed its review of your May 16, 2014 correspondence, which contained various proposals to amend the Commission's Minimum Standards and Regulations for lockups, as contained in 9 NYCRR Part 7500 *et seq.* Many of the issues outlined in your correspondence were discussed during a May 7, 2014 meeting between the Commission and the NYS Association of Chiefs of Police (hereinafter "the Association") in Albany.

The following is a brief description of the Association's proposals, and the Commission's response to each.

**Definition of "Lockup"**

The Association proposes amending the definition of a "lockup," as set forth in 9 NYCRR §7501.1, to incorporate a time threshold after which a confined individual would be considered detained. Please be advised that the Commission's Constitutional and statutory mandates commence immediately upon an individual's detention in a correctional facility. Accordingly, the Commission has no intention of amending the definition of a 'lockup' in this regard.

**Searching of Female Prisoners**

The Association proposes an amendment to 9 NYCRR §7502.1(d) to allow for the searching of female prisoners by male department staff. One of the bases for such proposal is that cross-gender searches occur during the initial arrest process. However, the arrest process described is in a public, uncontrolled setting that, for safety purposes, requires an immediate search of a female arrestee prior to placement in a police vehicle. As discussed during the meeting, the Commission's jurisdiction does not extend to a police agency's procedure and practice of executing public arrests. The requirements set forth in 9 NYCRR §§7502.1(d) and 7504.1(e) apply only where a female prisoner is to be placed in a lockup. Consequently, the Commission has no intention of amending this requirement as proposed.



### **Supervision of Female Prisoners**

The Association conveyed some of the challenges (lack of female staff, EEOC court mandates, etc.) police departments face in observing the requirements of 9 NYCRR §7504.1(e), and proposes the allowance of cross-gender supervision. While sympathetic to the challenges police departments face in meeting the requirements of this section, the Commission is charged with promulgating and enforcing standards that ensure local correctional facilities operate in a safe, stable, and humane manner, to include the safe detention and supervision of female prisoners. To that end, the Commission has no intention of amending §7504.1(e) as proposed.

Police departments challenged by the requirements of this section should consider alternate available options, including:

1. The utilization of county correctional facilities authorized to house unarraigned prisoners pursuant to Correction Law §500-a;
2. The utilization of lockups operated by neighboring police departments that have sufficient female staff; and
3. Securing female arrestees to a bench and bullring, located in the police department processing area, until a female matron is available to detain the female arrestee in the lockup.

The remaining Association proposals (i.e., medical, visits, constant supervision) outlined in your correspondence will be considered by the Commission during its ongoing review of the lockup regulations.

Should you have any questions regarding these issues, please do not hesitate to contact me.

Sincerely,



Thomas A. Beilein  
Chairman

**Overview of Issues and Concerns pertaining to Police Lockups. Submitted by the NYS Association of Chiefs of Police for consideration by the NYS Commission of Correction – May, 2014**

**Issue:**

Many police lockups are not in compliance with current SCOC standards. That does not mean, however, that police chiefs are not concerned about the health and safety of their arrestees. We are as committed as SCOC in providing the safest possible environment for detainees as we are for officers and civilians. In addition, there are some inconsistencies in how the standards are interpreted and applied by SCOC inspectors in various parts of the state. The regulations were initially made effective in October 1976 and appear to be designed to apply to small-scale jails in that they are designed to hold people in cells for overnight or even longer. This seems to be the source of the inconsistency in inspections, since most police department secure booking areas vary dramatically in design and function and do not meet the model that the standards were designed to regulate. Some portions of the regulations, such as the requirement that only female “matrons” may tend to female prisoners, may make sense in an actual jail, but can place an insurmountable burden upon many police departments. As will be discussed below, this regulation, and parts of others within NYCRR Title 9, Subtitle AA, Chapter IV, are no longer based upon the reality of what police lockups are typically used for.

**Reality of Police Lockups:**

Most police departments in NYS have less than 20 officers and the types of buildings that serve as police departments vary dramatically in age and design. There typically is very little that can be done physically with these facilities, and agencies must attempt to make them as safe as possible for officers and civilian personnel that work within; all while trying to meet regulations that were not designed with that facility and specific function in mind. Most departments do not hold arrestees for any longer than is necessary to process an arrest and either issue an appearance ticket or have the person arraigned. The latter typically happens as fast as it can be arranged. The majority of agencies do not have the physical accommodations necessary to hold arrestees overnight nor do they have any desire to. The cost of having to remove an officer(s) from their normal patrol activities to sit in a secure area overnight is beyond the reach of many smaller agencies.

A police department has an obligation to provide a safe and functional work environment for the officers and civilian staff that work within. Many departments accomplish this by utilizing a combination of two to three layers of protection within their facilities. The first could be as simple as handcuffing the person to a secure bolt in a wall or attached to a desk. This, however, has limitations when the handcuffs are removed and the suspect is now able to resist or flee. This places the officer and/or other employees, including civilians, at risk if no further barriers exist. The second layer may then be a secure booking area which isolates the suspect so he or she will not be able to leave the area and put other employees at risk. A final layer may be through the use of a locking cell, within the secure booking area, that the arrestee can be placed in temporarily. This allows the officer(s) doing the arrest processing to safely turn their back or who otherwise may be distracted while completing their work. It is uncommon in many agencies for the arrestee to be left unattended or out of view for more than a brief period of time. The entire booking process, including arraignment, can commonly be accomplished within 30 minutes to three hours, depending upon the complexity of the charges and response time of a judge, if an arraignment will occur. And for much of this time an officer(s) is directly engaged with the arrestee – obtaining pedigree information, Livescanning, and using the Datamaster, if applicable.

**Current Impediments to Law Enforcement Pertaining to Lockups**

In addition to the discussion of how most police lockups are used, there are several factors we feel relevant to why the regulations could be updated. First, the impact of both the recession of the last six years and the New York State tax cap that was adopted in 2011, has brought many police departments

to their lowest staffing levels in years, if not ever. In addition, the resulting fiscal cuts have impacted overtime payments as well as training. Most agencies want their personnel to process/arraign or release arrestees as quickly as possible and return to their other duties. Second, approximately 30% of the claims brought before the U.S. Equal Employment Opportunity Commission (EEOC) include a claim of discrimination based upon sex. Some police departments, when faced with EEOC complaints and/or sex discrimination lawsuits are under court mandate not to make any officer assignments based upon the sex of the officer. In addition, union contracts routinely base overtime recall on seniority, which would prohibit the selection of a female officer over a more senior male officer. The hiring of female matrons brings fiscal and operational implications. A police chief would first have to obtain approval and funding to hire them. Then comes the challenge of finding someone who could pass a background investigation and be willing to be on call 24/7 for what would amount to sporadic and little pay. And then by the time a matron, or off-duty female officer, arrived after being called in, the arresting officers may have completed or are nearing completion of the processing. Finally, the societal view of gender and the delineation of male/female roles and expectations has changed dramatically since 1976, and the line between what is appropriate as between genders has blurred considerably. Many states have adopted gay marriage laws and many police departments have openly gay and lesbian police officers. Transgender advocacy groups have emerged and championed for equal protection. In the face of all of this, we feel the regulations need to be modified to reflect more modern values while protecting the rights of arrestees and ensuring the professionalism of police officers.

#### **Conflict with 9 NYCRR Part 7500 - Part 7512 and Relief Requested**

We are not asking for you to consider modification of the regulations to make things “easier” for us. Our role as police chiefs is to adopt and enforce policies that provide systemic control and guidance throughout all functions performed by our officers in the course of our duties. It is our responsibility to focus on the bigger picture and ensure that we are respecting the rights of citizens in all areas, not just in one. If we do our jobs properly through proper pre-employment screening, proper supervision and consistent discipline, then our officers will be professional everywhere, not just in a lockup. We are all cognizant of liability, and there are numerous areas of concern for us, which we take seriously.

Corrections Law §45(6) is the enabling statute primarily relied upon by for the creation of the SCOC regulations. This section provides the SCOC with broad discretion in regulating the “care, custody, correction, treatment, supervision, discipline...for all persons confined in correctional facilities.” As we discussed in our recent meeting, we respectfully request that the commission consider modifying some of the regulations to be more reflective of how the booking and pre-arraignment process works. In the following pages we will do an analysis of the sections of the regulations that most agencies have difficulty complying with. In attempting to suggest a possible solution we will occasionally refer to the Prison Rape Elimination Act lockup standard from 28 C.F.R. Part 115.

One possible answer would be to revise and expand the definitions section found in 9 NYCRR §7501.1. An additional subsection (d) could include something to the effect of “‘Arrest processing function’ means the period of time a lockup is used for the continuous arrest processing and other ministerial-related duties while preparing the individual for release and/or arraignment which should be accomplished within three hours, after which the individual will be considered formally detained in the lockup for purposes of this Chapter.” Such definitional modification could be coupled with some variation of the following discussion.

**7502.1 Admission procedures.**

- (a) Before being placed in a cell or detention room, the clothing and person of each prisoner shall be thoroughly searched.
- (b) Belts, neckties, shoes and clothing items such as jackets, overcoats or other similar outer garments shall be removed and stored temporarily where they will not be accessible to prisoners. A supply of disposable type fiber or paper footwear to replace shoes may be kept available for issue as required.
- (c) An accurate listing shall be made of all money, and items such as rings, watches and any other personal property taken at the time of admission, such list to be properly witnessed by the receiving officer and the prisoner. At the appropriate time, a receipt signed by the prisoner shall be obtained, acknowledging that all money and property have been returned.
- (d) Searching of a female prisoner shall be accomplished by the regularly appointed police matron, or other qualified female person whose services may be available on a part-time basis.
- (e) On request, within a reasonable time after arrival at the place of detention, a prisoner shall be allowed to make, without charge, one local telephone call to communicate with an attorney, a family member or relative, an employer, etc. Requests to place additional local calls and those of a long distance nature should be decided on an individual basis consistent with the prisoner's situation, funds in his possession and the possibility of reversing toll charges or otherwise having the prisoner make reimbursement for same. Telephone calls should be properly supervised and preferably made from an area where best security can be maintained.

*(Highlighted areas are those of particular concern to NYSACOP)*

The primary issue with this particular regulation is found in paragraph (d). Basic cross gender searches occur regularly on the street, so it would seem illogical and inconsistent to prohibit the same type or level of search within a lockup. In fact, cross gender searches are part of the defensive tactics curriculum taught to officers.

This issue may possibly be remedied by referring to the current PREA standards. The following select subsections seem to be on point and reflective of actual practices. While (a) and (b) reference strip searches, the NY Court of Appeals (People v. Hall) prohibits body cavity searches (physical intrusion to remove something) without a warrant. Most strip searches are now only done at jails under their own guidelines. With that being said, even under state case law there may be exigent circumstances when an intrusive cavity search may be warranted if an arrestee's life may be in danger if they quickly placed something in their rectum in response to being in custody. Improperly packaged drugs can kill someone fairly quickly.

Applicable PREA standard (select subsections):

**§ 115.115 Limits to cross-gender viewing and searches.**

- (a) The lockup shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.
- (b) The lockup shall document all cross-gender strip searches and cross-gender visual body cavity searches
- (e) The agency shall train law enforcement staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex detainees, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs. *(This is consistent with the current defensive tactics training and practice)*

**7503.1 Medical.**

- (a) Definite arrangements shall be in effect so the services of a physician will be available, on a standby basis, to examine prisoners in cases of illness and injury. As an alternative, and to provide for situations of an emergency nature, the facilities of a conveniently located hospital, particularly emergency ward services, shall be utilized.
- (b) Every prisoner to be detained who appears to be physically incapacitated due to drug or alcohol intoxication should preferably be examined by a physician. *Note:* Experience has firmly established that an alcoholic odor emanating from a prisoner can obscure a serious physical deficiency such as narcotic drug addiction, stroke, diabetic coma, heart attack, etc., or an abnormal mental condition.
- (c) No medication shall be given to a prisoner unless authorized or prescribed by a physician.
- (d) A record of medical attention provided for a prisoner shall be maintained.

This section is not one that we have heard has been a recurring problem in regards to SCOC inspections, but if it is possible to modify the regulations, this could also use a review. The reality is that a significant percentage of persons arrested are intoxicated, and they are not examined by a physician, nor could they ever be. This could simply be a matter of including a definition of "incapacitated". I am sure most law enforcement personnel would consider that definition to be the person is unable to effectively walk and/or converse. We are sure a plaintiff's attorney would argue that a person is incapacitated at any level of intoxication when representing a person injured in a lockup. So while it is not nearly as critical as other issues, it would be good to take the vagueness out of the subsection. Many departments do have policies that require medical attention for arrestees that appear to be severely intoxicated by their behavior and/or very high blood alcohol content as determined from a Datamaster test.

**7504.1 Supervision of detention areas.**

(a) As a minimum, the condition of prisoners shall be checked, by actual visits to cells and detention rooms, at intervals not to exceed 30 minutes.

(b) In situations where a prisoner's physical or mental condition obviously warrants it, constant observation and supervision shall be provided.

(c) The supervisory visit procedure shall be accomplished either by personnel on full-time duty in the detention area or by those assigned to other duties in police department operations.

(d) A suitable record of supervisory visits shall be maintained in ink and in a legible manner and shall include but shall not necessarily be limited to the following information:

- (1) date;
- (2) time of each visit;
- (3) condition of prisoner(s), e.g., awake, sleeping, etc.;
- (4) other notations considered relevant;
- (5) signature of officer or matron.

(e) Supervision of female prisoners shall be accomplished by a matron, and a female prisoner shall not be placed in or removed from a detention area unless the matron is present. The matron shall retain the key for the detention area for females and no male person shall be permitted to enter an area where female prisoners are detained unless accompanied by the matron.

*(f), (g) and (h) are intentionally omitted.*

This is the regulation where it could prove to be beneficial to have added a definition to §7501.1 – as in the suggested “arrest processing function” and modify this section for the rules that apply when in that mode as compared to when “formally detained”. Specifically, we are requesting that subdivision (e) be rescinded or modified to allow for cross-gender supervision of arrestees for the arrest processing function. Once again the language included in PREA may be of assistance. In addition to the subsections of §115.115 already discussed pertaining to strip searches and cross-gender searches, the following subsection appears to be a reasonable accommodation to the problem we are facing with gender staffing and availability.

**§ 115.115 Limits to cross-gender viewing and searches.**

(c) The lockup shall implement policies and procedures that enable detainees to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an area where detainees are likely to be showering, performing bodily functions, or changing clothing.

Another modification that would be helpful is to modify the language to waive the need for supervisory visits, while in arrest processing function, when the arrestee is under constant observation and supervision. It is typical that this be the case during processing and there may only be brief periods of time where the person is not under observation. At least one inspector has required a log to be completed showing 30-minute supervisory visits even though the agency attests to constant observation. This seems to be form over substance.

**7510.1 Visits.**

- (a) All prisoners shall be permitted to converse with their counsel or religious advisor under such reasonable regulations and restrictions as the officials in charge may establish.
- (b) Visits to prisoners by a family member, relative or other person may be permitted at the discretion of, and in accordance with regulations established by, the officials in charge.

This final section is another that is not critical, but if a review does occur, it would seem to make sense to modify this as well. The reality is that virtually no agency is going to allow someone who is being booked to converse with their religious advisor. Yes, it rarely happens and is easy to just include this language in a policy and then in practice not do it, but why go through it if it is not necessary.

The other issue is the way subsection (a) is written as to conversing with counsel. This indicates this would be subject to "such reasonable regulations and restrictions as the officials in charge may establish." This now goes the other way of the religious advisor, in that the law may be contrary to the regulations established by an agency. For example, the NY Court of Appeals just decided on May 6, 2014 (People v. Jonai Washington) that a person in custody for DWI must be allowed to speak with his or her attorney should that attorney call before the chemical test is administered. Perhaps the best way to revise this would be to state "prisoners shall be permitted to converse with counsel in accordance with New York State law."

**Conclusion:**

At the conclusion of our meeting you had asked for something in writing, and this is what we have done in response. We are not implying that these suggestions are the answer to everything and are the only options. We are just offering these hoping to start a dialog, and we would very much appreciate the opportunity to work cooperatively with you and your staff. We would like to try to come up with a resolution that could be mutually acceptable to both disciplines. Thank you for your willingness to hear our concerns.

**1/17/17**

**Letter from Kevin T. Gagan, Counsel, New York  
State Police with Appendix A**







**State  
Police**

**ANDREW M. CUOMO**  
Governor

**GEORGE P. BEACH, II**  
Superintendent

**Office of Counsel**  
(518) 457-6137

January 17, 2017

Anthony C. Rossi  
Supervising Counsel, Office of Justice Court Support  
Office of Court Administration  
4 Empire State Plaza, Room 852  
Albany, New York 12223

**Re: Comments on Statewide Plan for Centralized and Off-Hour Arraignments**

Dear Mr. Rossi:

On behalf of the Division of State Police ("NYSP"), I respectfully submit the following comments for the Office of Court Administration's consideration regarding issues raised during the stakeholders' meeting held on December 19, 2016, concerning the planning and implementation of centralized arraignment parts and other systemic changes in how off-hours arraignments are handled statewide.

### **OVERVIEW OF THE ISSUE**

NYSP is the only full-service police department with statewide jurisdiction for the enforcement of New York's general criminal laws.<sup>1</sup> In many rural areas of New York, we are the principal provider of police services. In most other areas we share jurisdiction and work cooperatively with local police departments. The public relies on the State Police to respond rapidly to a variety of emergency situations at all hours of the day and night. Other police departments rely on us as well to work collaboratively on cases or on patrol or as backup for officer safety.

Like many police departments in the state, NYSP does not operate any jails or detention facilities. When a state trooper makes an arrest for which arraignment is necessary, the trooper must supervise and care for the arrestee until arraignment, thus removing the trooper from being of service in any other regard. Our only method of securing arrestees is through physical restraint, such as handcuffs and other devices. Accordingly, it is imperative that those whom we arrest be arraigned as quickly as possible or held in an appropriate detention facility in order for the arrestee to avoid unnecessary and/or prolonged physical restraint, and to return the arresting trooper to service as quickly as possible.

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<sup>1</sup> NYSP is organized into a Division Headquarters (located in Albany), and the eleven separate "troops" throughout the state that are listed in Appendix "A." Each troop, with the exception of L, NYC, and T, is comprised of three "zones", and each zone is comprised of a collection of patrol and satellite stations that vary in size and staffing.

## **COMMENTS AND CONCERNS**

For the well-being of those arrested and to support public safety, we ask the Office of Court Administration to consider the following comments while planning and implementing off-hour arraignment systems:

1. **Arrestees awaiting arraignment should be detained properly and for as short a period as possible.**

We understand many of the current off-hour arraignment proposals will limit arraignments to specific hours in designated courts, generally preventing any arraignments outside those hours. In other words, under most of these plans arrestees will no longer be arraigned during late-night or early-morning hours.

If this is the case, these plans need to first ensure appropriate pre-arraignment detention. Police officers holding arrestees for several hours in police stations ill-equipped for extended detention is not appropriate pre-arraignment. Any detention for more than a brief duration is inappropriate and will create more problems than it solves. Problems arise concerning prisoner health and safety, officer safety, patrol coverage and increased liability for localities as well as the state.

2. **Public safety decreases when police are unable to patrol while caring for pre-arraignment detainees.**

Terminating late-night and early-morning arraignments without first ensuring that there will be suitable pre-arraignment detention for all arrestees would be irresponsible and potentially dangerous for all. This is especially the case in rural areas where NYSP is the primary and sometimes the only overnight police presence.

As discussed above, under the current off-hours arraignment proposals that do not account for pre-arraignment detention in a facility designed for that purpose, police will have to care for and supervise their arrestees for several hours awaiting the next available arraignment time. This leaves those officers unavailable for patrol for extended periods. Less police availability means longer response times for calls for service (potentially endangering the public) and calls for backup (potentially endangering other officers).

Solving the pre-arraignment detention issue is more complicated than simply relying on existing county jails to house arrestees awaiting arraignment. First, there is a substantial legal impediment to this approach because only 21 of the 57 counties outside of New York City are statutorily authorized to detain NYSP arrestees awaiting arraignment.<sup>2</sup> Correction Law § 500-a must be amended to authorize the remaining 36 counties to use county jails for the purpose of pre-arraignment detention. Second, even if all counties were authorized to use existing jails to house pre-arraignment arrestees, there must be adequate space, staffing, and other resources at each facility in order to absorb the additional burden. We expect that more detailed examination of this issue will reveal highly individualized needs that cannot be met quickly or uniformly across the state.

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<sup>2</sup> See Correction Law § 500-a(2).

Accordingly, careful consideration of these issues must occur and solutions must be found that guarantee appropriate detention for every person arrested before a locality terminates its late-night and early-morning arraignments. Any reduction in the availability of local court judges for off-hours arraignments must be accompanied by access to appropriate pre-arraignment detention facilities for all those arrested.

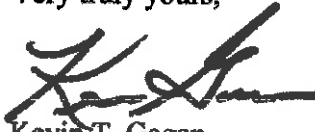
3. **Prolonged detention in police stations is not suitable.**

The point cannot be overstated that state troopers and local police are not correctional officers, and police stations are usually not suitable detention facilities. Correctional officers possess training and experience in prisoner care and supervision that police officers do not. Proper detention facilities are equipped to satisfy the safety, security, and health needs of prisoners, including pre-arraignment detainees.

Arrangements must be formalized for pre-arraignment detention of arrestees by suitable facilities prior to implementing any new off-hours arraignment system that involves detention for longer than an hour or two. Displacing the burden of extended detention onto police departments will result in suboptimal care for arrestees, decreased public safety, increased liability for the state, the counties and the municipalities, and an overall decline in service to all of us who benefit from effective, equitable and efficient policing.

Thank you for the opportunity to comment on this topic and we look forward to working cooperatively to resolve these important concerns and move forward in a way that respects the interests of all stakeholders.

Very truly yours,



Kevin T. Gagan  
Counsel

## **Appendix A**

### **Listing of NYSP Troops**

- Troop A – headquartered in Batavia and serving the Western New York counties of Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, and Wyoming.
- Troop B – headquartered in Ray Brook and serving the Northern New York counties of Clinton, Essex, Franklin, Hamilton, and St. Lawrence.
- Troop C – headquartered in Sidney and serving the Southern-Central New York counties of Broome, Chenango, Cortland, Delaware, Otsego, Tioga, and Tompkins.
- Troop D – headquartered in Oneida and serving the Northern-Central New York counties of Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, and Oswego.
- Troop E – headquartered in Canandaigua and serving the Rochester-Fingerlakes region counties of Cayuga, Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, and Yates.
- Troop F – headquartered in Middletown and serving the Western Hudson Valley counties of Greene, Orange, Rockland, Sullivan, and Ulster.
- Troop G – headquartered in Latham and serving the Capital Region and Southern Adirondack counties of Albany, Fulton, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington.
- Troop K – headquartered in Poughkeepsie and serving the Eastern Hudson Valley counties of Columbia, Dutchess, Putnam, and Westchester.
- Troop L – headquartered in Farmingdale and comprised of two zones serving Nassau and Suffolk counties.
- Troop NYC – headquartered in Manhattan and serving New York City.
- Troop T – headquartered in Albany and comprised of four zones serving the entire New York State Thruway.

**1/17/17**

**Letter from Christopher Farber, President, New  
York State Sheriffs' Association, addressed to  
Judge Coccoma**



## OFFICERS

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Barry Virta, 2nd V.P.  
Wayne County

Robert Maciol, 3rd V.P.  
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*Peter R. Kehoe, Executive Director*

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January 17, 2017

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Gregory Rudolph  
Wyoming County

Ronald Spike  
Yates County

Judge Michael Coccoma  
Deputy Chief Administrative Judge  
Office of Court Administration  
25 Beaver Street  
New York, NY 10004

Dear Judge Coccoma,

The New York State Sheriffs' Association is grateful for the opportunity to submit written comments to the Office of Court Administration about the potential implementation of a centralized arraignment court system.

For context, the Office of Sheriff is an elected law enforcement position in the majority of counties outside of New York City (the exception being Westchester County and Nassau County). The Sheriff's Office provides general law enforcement services to the public, and is also responsible for the operation of the county jail. Some Sheriffs are authorized under the New York State Correction Law to hold pre-arraigned detainees for a limited period of time. This authorization is granted on a county by county basis through the State Legislature. But even in counties where this is the practice, the Sheriff retains discretion as to who is admitted into the jail; some Sheriffs house all pre-arraigned detainees regardless of the arresting agency, while others only hold persons arrested by Sheriff's Deputies.

At the outset, Sheriffs acknowledge the desire of OCA to see counsel provided to defendants at all stages of a criminal proceeding, including arraignment. However, as Sheriffs are neutral on the legal obligation of such an endeavor, our comments are confined to those aspects of the law which could directly affect Sheriffs, both positively and negatively.

Turning to the practical aspects of this initiative, Sheriffs have been generally receptive to the idea of a centralized, off-hours arraignment court. Many have expressed their frustration at being unable to rouse judges at night to perform arraignments in a timely fashion. In counties where the jail is not authorized to house pre-arraigned detainees, this situation results in a road patrol deputy having to maintain custody of an arrestee for an extended period of time—time which should be spent patrolling for crime or responding to emergency calls. Even Sheriffs who

*Your Sheriff: The People's Choice for Public Safety*

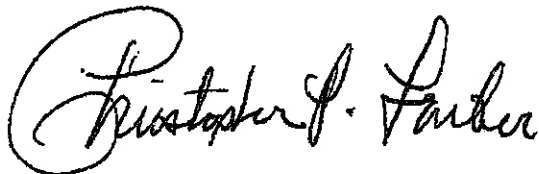
are allowed to hold pre-arraigned detainees have expressed interest in a centralized arraignment court. As it stands, a person must be arraigned in the local jurisdiction in which they are arrested, or an adjacent jurisdiction. This means that Sheriff's Corrections Officers must do transports to multiple destinations to arraign detainees arrested the night before who have been committed to pre-arraignment holding. A centralized arraignment court would save the Sheriff's Office time and manpower by requiring a single transport to a single court.

That said, Sheriffs are not without their concerns. For some of the larger counties, the idea of a centralized arraignment court seems just as onerous as the current system. For St. Lawrence County for instance, a central arraignment court would provide no logistical benefit to law enforcement, as the time it would take to drive to a central court would take as long, or longer, then finding a local judge. It should also be considered that this initiative may result in arrestees spending *more* time incarcerated than they would otherwise. In counties that utilize pre-arraignment holding, jails may become a dumping ground for arrestees if a centralized arraignment court is not in constant operation. Finally, in many counties the Sheriff is responsible for court security. If the Sheriff were called upon to staff a central arraignment court, it would be an unanticipated and burdensome cost for his or her office.

Indeed, the potential cost of this initiative is what gives Sheriffs the most concern. In order for an off-hours centralized arraignment system to be acceptable to Sheriffs, and law enforcement as a whole, its hours of operation must be lengthy enough to ensure that there is no risk that a Deputy, Trooper or police officer is forced to babysit an arrestee until such court opens. This would seem to be a very expensive proposition. And if county governments must make general cuts to its budget, including the Sheriff's budget, in order to implement a centralized arraignment system, then the idea becomes much less palatable.

Again, thank you for soliciting our input on this matter. If you have any further need of our perspective going forward, please do not hesitate to reach out.

Sincerely,

A handwritten signature in black ink, reading "Christopher P. Farber". The signature is written in a cursive, flowing style with a large initial "C".

Christopher Farber  
Herkimer County Sheriff  
President, New York State Sheriffs' Association

**1/18/17**

**Letter from Claire P. Gutekunst, President, New  
York State Bar Association addressed to Judge  
Coccoma**







# NEW YORK STATE BAR ASSOCIATION

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**CLAIRE P. GUTEKUNST**

President, New York State Bar Association

917-734-5458

[cgutekunst@gutekunstadr.com](mailto:cgutekunst@gutekunstadr.com)

January 11, 2017

Hon. Michael V. Coccoma  
Office of Court Administration  
4 ESP, Suite 2001  
Empire State Plaza  
Albany, NY 12223-1450

Re: Chapter 492 of the Laws of 2017, in relation to off-hour arraignments

Dear Judge Coccoma:

Thank you for including the New York State Bar Association in your Statewide Stakeholders Meeting regarding implementation of the above-referenced chapter law. Sherry Levin Wallach, Chair of our Criminal Justice Section, attended. As she informed you, the New York State Bar Association does not have a policy regarding the implementation of off-hour arraignment parts in New York; however, we do have policy to support access to justice and the provision of legal services to those who cannot afford them at all stages of criminal proceedings.

We applaud your efforts to find a fair way to implement Chapter 492, which would facilitate the arraignment of defendants with counsel in a timely manner throughout New York State. We understand that the law does not contemplate the creation of a uniform plan for off-hour arraignments for all counties, and that you and your staff will be meeting with the stakeholders in each county over the next few months to assist them in developing an appropriate plan for that county.

The New York State Bar Association would like to reiterate the importance of ensuring that all stakeholders are invited to the meeting in each county. This would include the District Attorney, the defense providers, and the local bar association, which is mandated by County Law 18-B to participate in the development of plans for the provision of legal services.

We appreciate the effort that you and OCA are making to ensure that Chapter 492 is implemented in a fair and effective manner statewide. We also support the continued information sharing among the statewide stakeholders and the counties, which we believe will result in positive collaboration and in accomplishing these goals as fairly and effectively as possible.

MUC # 87  
OFFICE OF COURT  
ADMINISTRATION

JAN 18 2017

ALBANY, N.Y.

As Ms. Levin Wallach indicated to you, our Criminal Justice Section is in the process of formulating a report that will make important recommendations regarding criminal proceedings in town and village courts. We expect the report to be presented to our Executive Committee and our House of Delegates during 2017. We are pleased to keep you informed of the report and its status.

We look forward to continuing to work closely with you and OCA to ensure access to justice in all courts across the state, a goal to which we are deeply committed.

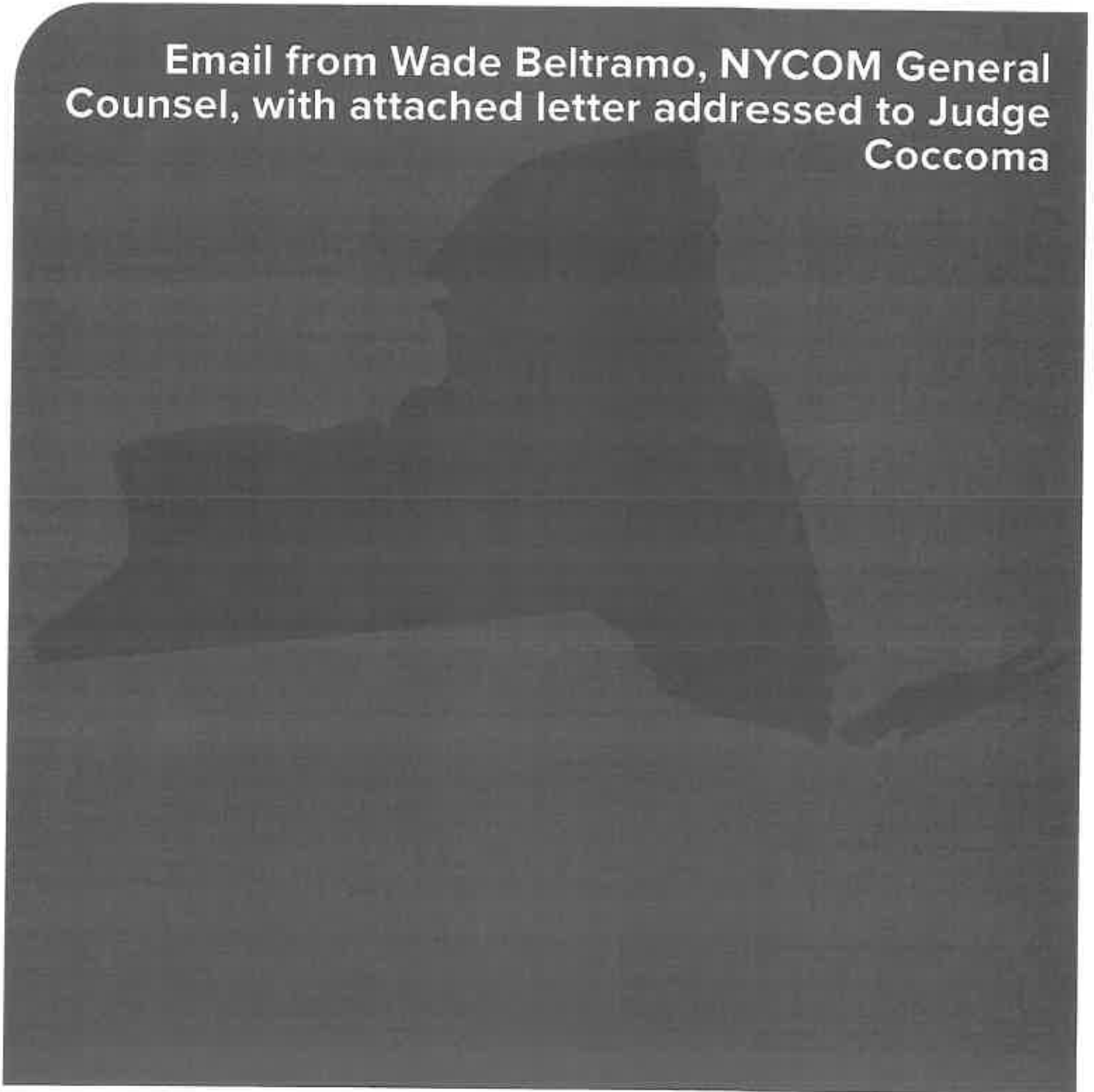
Sincerely,

*Claire P. Gutekunst*

Claire P. Gutekunst

**1/19/17**

**Email from Wade Beltramo, NYCOM General Counsel, with attached letter addressed to Judge Cocco**



**From:** "Wade Beltramo" <[wade@nycom.org](mailto:wade@nycom.org)>  
**To:** "Anthony C. Rossi" <[arossi@nycourts.gov](mailto:arossi@nycourts.gov)>  
**Cc:** "John Mancini" <[jmancini@nycom.org](mailto:jmancini@nycom.org)>, "Peter Baynes" <[peter@nycom.org](mailto:peter@nycom.org)>  
**Subject:** RE: Centralized Arraignment Parts Meeting Minutes

Anthony,

Please find attached, NYCOM's comments and suggestions regarding OCA approving centralized arraignment plans.

I hope that this is helpful. If you have any questions or would like to discuss this matter further, do not hesitate to drop me an email or give me a call.

Wade Beltramo  
General Counsel  
New York Conference of Mayors  
119 Washington Ave., 2nd Floor  
Albany, N.Y. 12210  
518-463-1185  
518-463-1190 (Fax)  
[wade@nycom.org](mailto:wade@nycom.org)



## New York State Conference of Mayors and Municipal Officials

Peter A. Baynes  
Executive Director

119 Washington Avenue, Albany, New York 12210  
(518) 463-1185 www.nycom.org

January 19, 2017

The Honorable Michael Coccoma  
Deputy Chief Administrative Judge  
Office of the Deputy Chief Administrative Judge  
NYS - Unified Court System  
Empire State Plaza  
4 ESP, Suite 2001  
Albany, NY 12223-1450

Delivery via email

Re: Central Arraignment Plans

Dear Judge Coccoma,

Per the December 19<sup>th</sup> meeting, the New York State Conference of Mayors (NYCOM) submits the following comments regarding potential centralized arraignment plans.

An important component of Ch. 492 of the Laws of 2016 is its requirement for the Office of Court Administration (OCA) to consult with local government officials and other interested parties prior to adopting any centralized arraignment plan. Compliance with this requirement is imperative for a myriad of reasons. While centralized arraignment plans may result in "significant savings to localities in meeting their statutory and constitutional obligations for assigned counsel to appear at arraignments," as argued in the Law's sponsor's memo, centralized arraignment also has the potential of substantially impacting village finances and law enforcement operations. NYCOM has several concerns related to village involvement in developing and adopting centralized arraignment plans:

- The term "consultation" is not defined in the law and does not specify which local government officials must be consulted. It is unclear whether OCA must merely afford local government officials the opportunity to weigh in on proposed centralized arraignment plans or whether OCA must acknowledge and respond to concerns raised by local officials. Moreover, it is unclear what recourse, if any, local

officials have if they are not consulted per the law or if their concerns or objections are not addressed. To address this issue, OCA should consider establishing a uniform process or set of guidelines regarding the process for consulting with local officials when formulating and adopting centralized arraignment plans.

- To effectively implement the Hurrell-Harring mandate and any centralized arraignment plan, OCA consultation must be with all village mayors that have a village police department and/or a village justice court, as such plans may significantly impact village finances and police department and justice court operations.
- OCA must also consult with all potentially impacted local municipal chiefs of police to determine the full impact any proposed centralized arraignment plans may have on local law enforcement efforts. At a time when local governments are subject to a tax cap, any new fiscal expenditure that would exacerbate already existing fiscal pressures must be taken into consideration.

Potential impacts to village police departments include:

- *Potential overtime police costs.* If local police officers are required to supervise arrested individuals at a centralized or regional holding facility for an extended period of time while waiting for an arraignment court, police departments' overtime costs could be substantially increased.
- *Collective bargaining agreement impact.* Many union contracts have minimum staffing clauses that require a specific number of officers to be on patrol at any given time. An officer supervising a detainee at a holding facility for an extended period of time may not be considered to be "on patrol" for staffing purposes. Such an interpretation of a minimum staffing clause may require villages to staff additional officers than would ordinarily be on a particular shift.
- *Safety Concerns.* Some police departments may argue that, for the protection of police officers and detainees, two officers must be present at all times while waiting with a detained person. While such a policy may be safer for the officers, it would put additional financial stress on municipal budgets and operational stress on the departments.

- *Police Department Dissolution:* An unintended consequence of centralized arraignment plans could be an increase in local village police department dissolutions. Village budgets already stretched to their breaking point may have no option but to consider dissolving their local departments and exploring the feasibility of relying on county Sheriff's Department or the New York State Police to police their communities. Thus, the impact that centralized arraignment plans will have on local law enforcement agencies must be taken into consideration when formulating such plans.

Thank you for giving NYCOM the opportunity to offer comments regarding plans to implement indigent defense programs. NYCOM greatly appreciates your efforts to engage local governments on this important topic. My staff and I look forward to working with you on this issue in the future.

If there is any way in which NYCOM or I can be of assistance to you or OCA, do not hesitate to contact me.

A handwritten signature in dark ink, appearing to read "Wade Beltramo", with a stylized flourish at the end.

Wade Beltramo  
NYCOM General Counsel