



2023 Annual Conference

Syracuse, New York

Expect the Unexpected: Advanced Arraignment Issues

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Instructor:

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MCLE: 1.0 Professional Practice

This program has been approved for credit in
New York State for all attorneys
including those who are Newly Admitted
(less than 24 months) and administered by
the Onondaga County Bar Association

Presenter

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Expect The Unexpected: Advanced Arraignment Issues

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2023 Edition

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Back to Basics: What is
required for an
arraignment?

**Examination of Accusatory
Instrument for Facial
Sufficiency C.P.L. §140.45
(When arrested without a
warrant)**

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Back to Basics: What is
required for an
arraignment?

**Governed By CPL §§ 170.10
& 180.10**

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CPL §170.10

The Court must inform the defendant:

1. Of his/her right to counsel (C.P.L §170.10(3))

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The Right to Counsel at Arraignment

1. Gideon v. Wainwright, 372 U.S. 335 (1963)
2. Strickland v. Washington, 466 U.S. 668 (1984)
3. Hurrell-Harring v. State, 15 N.Y.3d 8 (2010)
 1. Arraignment as a “critical stage” of the proceeding.
4. C.P.L. §510.10(2) (2020)

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CPL §170.10

The Court must inform the defendant:

1. Of the charges (C.P.L §170.10(2))

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CPL §170.10

The Court must issue a securing order.
(CPL § 170.10(7)).

1. CPL 530.20

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BAIL

CPL. §510.10(1)

...[The court] shall impose a securing order in accordance with this title. Except as otherwise required by law, the court shall make an individualized determination as to whether the principal poses a risk of flight to avoid prosecution, consider the kind and degree of control or restriction necessary to reasonably assure the principal's return to court, and select a securing order consistent with its determination under this subdivision.

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510.10(1) Factors:

- (A): The principal's activities and history;
- (B): Charges facing the principal;
- (C): Criminal Conviction Record;
- (D): Pending or previous adjudication as a juvenile delinquent or a youthful offender
- (E): Previous record with respect to flight to avoid criminal prosecution;
- (F): Financial circumstances and ability to post bail without posing undue hardship, as well as his or her ability to obtain a secured, unsecured or partially secured bond;
- (G): Violations of any order of protection issued by any court;
- (H): History of use or possession of a firearm;
- (I): Whether the charge is alleged to have caused serious harm to an individual or group of individuals; and
- (J): The merit or lack of merit of the appeal, in such matters.

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FORMS OF BAIL

Committed to the custody of _____ and bail is fixed as follows (select at least 3 types, except for nominal bail):

- [Juvenile Offender] to be lodged in a place certified by the Office of Children and Family Services as a juvenile detention facility for the reception of children, being a Juvenile Offender at the time the crime was allegedly committed.
- [Adolescent Offender] to be lodged in a place certified by the Office of Children and Family Services and the State Commission on Corrections as a specialized secure juvenile detention facility for older youth, being an Adolescent Offender at the time the crime was allegedly committed.
- (check if applicable) Pursuant to CPL §510.10(5), although the Court would not or could not otherwise require bail or remand, the Court has set nominal bail in the form specified in CPL § 520.10(1)(a) upon the defendant's voluntary request. (NOTE: The form of bail specified in CPL § 520.10(1)(a) is cash bail only.)
 - \$ _____ Cash, or
 - \$ _____ Credit Card or similar device, or
 - \$ _____ Insurance Company Bail Bond, or
 - \$ _____ Secured Appearance Bond (Form CRC 3292), or
 - \$ _____ Partially Secured Appearance Bond with a _____% deposit (Form CRC 3293), or
 - \$ _____ Unsecured Appearance Bond (Form CRC 3294), or
 - \$ _____ Secured Surety Bond (Form CRC 3292), or
 - \$ _____ Partially Secured Surety Bond with a _____% deposit (Form CRC 3293), or
 - \$ _____ Unsecured Surety Bond (Form CRC 3294).

NOTE: Surety or appearance bonds must be submitted to the court using the applicable form as indicated above and require approval by the court before the defendant may be released from custody.

- (check if applicable) Nominal bail on this matter is set at one dollar (\$1) because defendant currently has other detainers/holds. Once all other detainers/holds, excluding other criminal cases secured by one dollar (\$1) bail, are satisfied, the securing order on this matter will convert to release on recognizance, subject to any additional conditions of release indicated below, without further action by the court.

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The 2x PFO Rule

C.P.L. §530.20(2)(a)

***[When the defendant is charged, by felony complaint]...
A city court, a town court or a village court may not order recognizance or bail when (i) the defendant is charged with a class A felony, or (ii) the defendant has two previous felony convictions.***

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The 2x PFO Rule

C.P.L. §530.20(1)(a)

In cases other than as described in paragraph (b) of this subdivision [qualifying offenses], the court shall release the principal pending trial on the principal's own recognizance or release the principal pending trial under non-monetary conditions...

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The 2x PFO Rule

People Ex Rel Bradley v. Baxter, 2023 N.Y. Slip Op. 23145 (Sup. Ct. Monroe Co. 2023).

In Bradley, in response to an Article 78 petition, the court held that the 2x pfo rule only applies to qualifying offenses.

Bradley is persuasive authority from a trial-level court.

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Conditions of Release

1. **Non-Monetary Conditions May be combined with monetary conditions. CPL § § 510.20(1) & 510.20(2)(b).**
2. **The court may require the defendant to attend treatment for mental health and chemical dependency as a condition of release, or refer them to a crisis stabilization center.**

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Conditions of Release

1. **The court may now consider whether new conditions are necessary to ensure a principal complies with court conditions and orders, when charged with certain crimes (in addition to reasonably assuring a principal's return to court). C.P.L. § 530.60(2)(d)**

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Conditions of Release

Possible Conditions:

1. Pre-trial Release;
2. Mandatory Programming (Counseling / Mental Health / Chemical Dependence / Violence Intervention Treatment);
3. Crisis Stabilization;
4. Mental Health Law 9.43 involuntary hospital admission;
5. Travel Restrictions;
6. Passport Surrender;
7. Weapons Restrictions;
8. Personal Association Restrictions

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Conditions of Release

Possible Conditions (Continued):

9. Employment/Housing/Schooling Conditions;
10. Obedience to orders of protection;
11. Obedience to orders concerning victims of family offenses;
12. Electronic Monitoring;

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Out of County Misdemeanor Warrants

C.P.L. § 530.70(1)

...A bench warrant issued by a city court, a town court or a village court may be executed in the county of issuance or any adjoining county; and it may be executed anywhere else in the state upon the written endorsement thereon of a local criminal court of the county in which the defendant is to be taken into custody. When so endorsed, the warrant is deemed the process of the endorsing court as well as that of the issuing court.

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The Guilty Plea At Arraignment

Considerations when a principal wants to enter a plea of “guilty” at arraignment:

- 1. A principal may not plead guilty to a felony complaint;

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The Guilty Plea At Arraignment

Considerations when a principal wants to enter a plea of “guilty” at arraignment:

- 1. A principal may not plead guilty to Driving While Intoxicated or Driving While Ability Impaired in violation of V.T.L. § § 1192.2, 1192.2a, 1192.3, 1192.4, or 1192.4a if the court is aware that the offense was charged in connection to an accident involving serious physical injury or death. C.P.L. §170.10(8).

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The Guilty Plea At Arraignment

Considerations when a principal wants to enter a plea of “guilty” at arraignment:

- 1. If a principal pleads guilty in a Centralized Arraignment Part, the case must be kept through final disposition by the judge who conducted the arraignment. C.P.L. §170.15(1).
1. EXCEPTION: Those CAP plans where judges are cross-designated as a judge of a different court to sit.

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Family Court Warrants

Local Criminal Court Jurisdiction

1. Family Court Warrants: Family Court Act §153;
2. Article 8 (Family Offenses) Family Court Act §827;
3. CAP & VAP Judges may arraign Family Court Warrants for Article 8 Offenses, C.P.L. 530.11(4) When Family Court is Not In Session;
4. Article 4 (Support). Family Court Act §431;
5. CAP & VAP Judges may arraign when Family Court Not In Session. Family Court Act §155;

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County Court Warrants

C.P.L. § 530.70(2)

1. Defendant must be brought before County Court Or detained at the local correctional facility of the county in which the court sits;
2. CAUTION – Problem-Solving Courts & Acting County Court Judges;

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Fugitives from Justice

C.P.L. §570.34 – Arrest of accused without a warrant within NY State

1. May be taken to any local criminal court judge (including CAP Judges);
2. Must be charged via Fugitive Complaint;
3. Judge is acting as his/her own court (generally), and Fugitive Complaint should stay with him/her until it transfers to County Court;

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Fugitives from Justice

- You cannot arraign on a Governor’s Warrant;
- You cannot accept a waiver of extradition;
- You cannot hold a hearing on the merits of the extradition application;

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Intoxicated or Impaired
Principals

So Intoxicated or Impaired that a principal is incapable of understanding the proceedings or assisting in his/her own defense.

1. Discuss with counsel;
2. Adjourn arraignment if necessary;
3. Mere intoxication is not enough, principal must be so impaired so as to be unable to understand the proceedings;

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Mentally Incapacitated
Principals

C.P.L. §730.30 – Order of Examination

1. Any time after [arraignment] the court [must] issue an order of examination when it is of the opinion that the defendant may be an incapacitated person.
2. Principals charged with non-qualifying offenses may not be remanded pending an examination. People Ex Rel Molinaro v. Warden, Rikers Island, 39 N.Y.3d 120 (2022);

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Motions to Dismiss at
Arraignment

C.P.L. § § 170.45 & 210.45. A motion to dismiss must be:

1. In writing; and
2. Upon reasonable notice to the people; Unless
3. The People waive that requirement.

People v. Jennings, 69 N.Y.2d 103 (1986);

People v. Lawrence, 64 N.Y.2d 200 (1984);

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Required Arraignment
Paperwork

You must have an accusatory instrument to arraign on a:

1. Summary Arrest (without a warrant);
2. Arrest Warrant;
3. Fugitive from Justice;
4. Violation of Probation Warrant (C.P.L. §§ 410.40 & 120.90(5))

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Required Arraignment
Paperwork

You do not need to have an accusatory instrument to arraign on a:

1. Bench Warrant;
2. Family Court Warrant;

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Contemptuous Defendants

Judiciary Law §751 & UJCA §210

1. Explore Alternatives: Removing principal from courtroom;
2. A summary criminal contempt is an extraordinary remedy to be used sparingly and only after strict adherence to procedure;

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Requirements:

1. Act must occur during court proceeding and in immediate view and presence of the judge;
2. Must be intended or amount to an actual obstruction of justice or interruption of court business;

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Procedure:

1. Court must warn the person that continuation of the behavior may result in summary contempt;
2. Court must allow the principal a reasonable opportunity to state the reasons or excuse for the behavior;

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Procedure:

3. Court must allow the principal a reasonable opportunity to apologize for and correct the behavior;
4. Court must allow the principal a reasonable opportunity to state the reasons or excuse for the behavior;

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Final Order of Contempt, the Court Must Enter a Written Order:

1. Stating the facts of the offense that constitute summary contempt;
2. Specifying the punishment imposed;
3. Stating that the contempt is criminal;
4. State how the conduct disrupted the proceeding;

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Punishment:

1. Fine not to exceed \$1,000;
2. Incarceration not to exceed 30 days;

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Purge

1. After finding of contempt the principal should be given one last opportunity to purge the contempt to have the sentence forgiven.

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Recommendations:

1. I do not recommend the use of contempt, and I especially do not ever recommend using contempt during a virtual proceeding;
2. Explore other options. For Example: removing the defendant from the courtroom and continuing without him/her, muting the defendant, turning off his/her camera, etc.

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Contact Information

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Thank You.

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