



# New York State Defenders Association, Inc.

## Public Defense Backup Center

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November 22, 2016

The Honorable Andrew M. Cuomo  
Governor of New York  
Executive Chamber  
The Capitol  
Albany, NY 12224

Re: S.7209-A/A.10360 – Relates to off-hours arraignment parts in counties  
outside the city of New York

Dear Governor Cuomo:

On behalf of the New York State Defenders Association (NYSDA) and public defense clients around the state, I urge you to sign bill S.7209-A/A.10360.

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.

This bill will authorize the creation of off-hours arraignment parts in counties outside of New York City. Specifically, it will allow the Chief Administrator of the Courts to adopt, after consultation with the Indigent Legal Services (ILS) Office, public defenders and other members of the criminal defense bar, the district attorney, the local magistrates association, and others, a plan for creating off-hours arraignment parts "where the use of such parts will facilitate the availability of public defenders or assigned counsel for defendants in need of legal representation at such proceedings."

The primary purpose of this bill is to make it more likely that criminal defendants will be represented by counsel at arraignment, a critical stage of the criminal proceeding. *Hurrell-Harring v State of New York*, 15 NY3d 8 (2010). Before 2013, it was rare for a criminal defendant outside of New York City to be represented by counsel at arraignment. The provision of counsel at arraignment is being implemented in some pockets of the state, particularly in the five *Hurrell-Harring* settlement counties, where the State has agreed that counsel must be provided at arraignment,<sup>1</sup> and in the 21

<sup>1</sup> The Stipulation and Order of Settlement in *Hurrell-Harring* requires the State to "ensure, within 20 months of the Effective Date and continuing thereafter, that each criminal defendant within the Five Counties who is eligible for publicly funded legal representation ... is represented by counsel in person at his or her Arraignment." <https://www.ils.ny.gov/files/Hurrell-Harring%20Final%20Settlement%20102114.pdf>. But, as detailed in the Office of Indigent Legal Services' report, Implementing the Counsel at Arraignment Obligations in the *Hurrell-Harring v. The State of New York* Settlement: Final Plan (11/12/2015), each of the five settlement counties has a long way to go before counsel at arraignment is a reality for all defendants who are eligible for representation. <https://www.ils.ny.gov/files/Hurrell-Harring/Counsel%20At%20Arraignment/Hurrell-Harring%20Final%20Counsel%20At%20Arraignment%20Plan%20111215.pdf>.

counties that received counsel at first appearance grants.<sup>2</sup> However, on a daily basis in many of New York's counties, defendants are still denied this fundamental right.

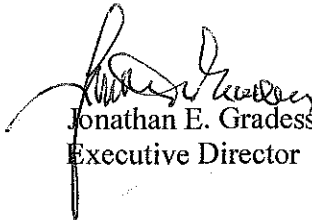
Current law acts as a barrier to ensuring counsel at arraignment. In general, arraignment jurisdiction is limited to the court in the particular city, town, or village where the charged offense allegedly occurred or, if that court is not available, a court in an adjoining locality within the same county. Criminal Procedure Law §§ 120.90, 140.20. As a result, the location of arraignments on nights and weekends is unpredictable. In counties where public defense lawyers are actually available to represent defendants at arraignment, those lawyers may be called on to appear in multiple courts on a given night, which may require significant travel between courts or more than one lawyer has to be on-call to provide representation at the arraignments.

The off-hours arraignment parts authorized by this bill will provide predictability for public defense lawyers, as well as judges and law enforcement. Everyone will know where an arraignment will be held if an individual is arrested outside of regular court hours. And, by requiring that the Chief Administrative Judge get input from those groups that participate in arraignments, the bill ensures that the off-hours arraignment plan will be tailored to meet the needs of the specific county.

Off-hours arraignment parts would also make arraignments more efficient and reduce costs for courts, public defense providers, sheriffs and local police, and others.<sup>3</sup> Jail costs will likely decrease because defense counsel is able to make bail arguments and obtain pre-trial release.<sup>4</sup> Law enforcement will not have to spend time trying to find a judge to preside over an arraignment. And, most importantly, these parts will help counties and the State ensure that the statutory and constitutional right of criminal defendants to counsel at arraignment is met.

For these reasons, our Association urges you to sign S.7209-A/A.10360.

Sincerely,



Jonathan E. Gradess  
Executive Director

JEG/dld

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<sup>2</sup> In November 2013, the ILS Office awarded grants to 25 counties to provide counsel at first appearance; four of those counties are *Hurrell-Harring* counties. For financial and logistical reasons, most of those grants were limited to the provision of counsel at arraignment in a handful of justice courts in each county.

<https://www.ils.ny.gov/content/counsel-first-appearance>.

<sup>3</sup> The Tompkins County Municipal Courts Task Force released a report earlier this year with recommendations for improvement in the current court system. Of note was the Task Force's unanimous recommendation that a centralized arraignment part be created for off-hours arraignments. The Task Force stated: "Delay in the arraignment of an individual in custody is contrary to the most fundamental tenets of our jurisprudence. A centralized program for after-hours arraignments not only will speed up that process, but also will save money."

[http://www.tompkinscountyny.gov/files/tccog/Shared\\_Services/Municipal\\_Courts\\_Task\\_Force/Final%20Report%2014%20July%202016.pdf](http://www.tompkinscountyny.gov/files/tccog/Shared_Services/Municipal_Courts_Task_Force/Final%20Report%2014%20July%202016.pdf) (pp. 49-50).

<sup>4</sup> The ILS Office has been collecting data on the impact of counsel at first appearance. While there have not been any studies published yet, there is some data and evidence of the benefits of having counsel at arraignment, including an increased number of defendants being released pre-trial, either on their own recognition or on bail that is set at an amount that defendants can afford, reduced jail costs, and other cost savings.

<https://www.ils.ny.gov/files/Hurrell-Harring/Counsel%20At%20Arraignment/Hurrell-Harring%20Final%20Counsel%20At%20Arraignment%20Plan%20111215.pdf> (p. 48).