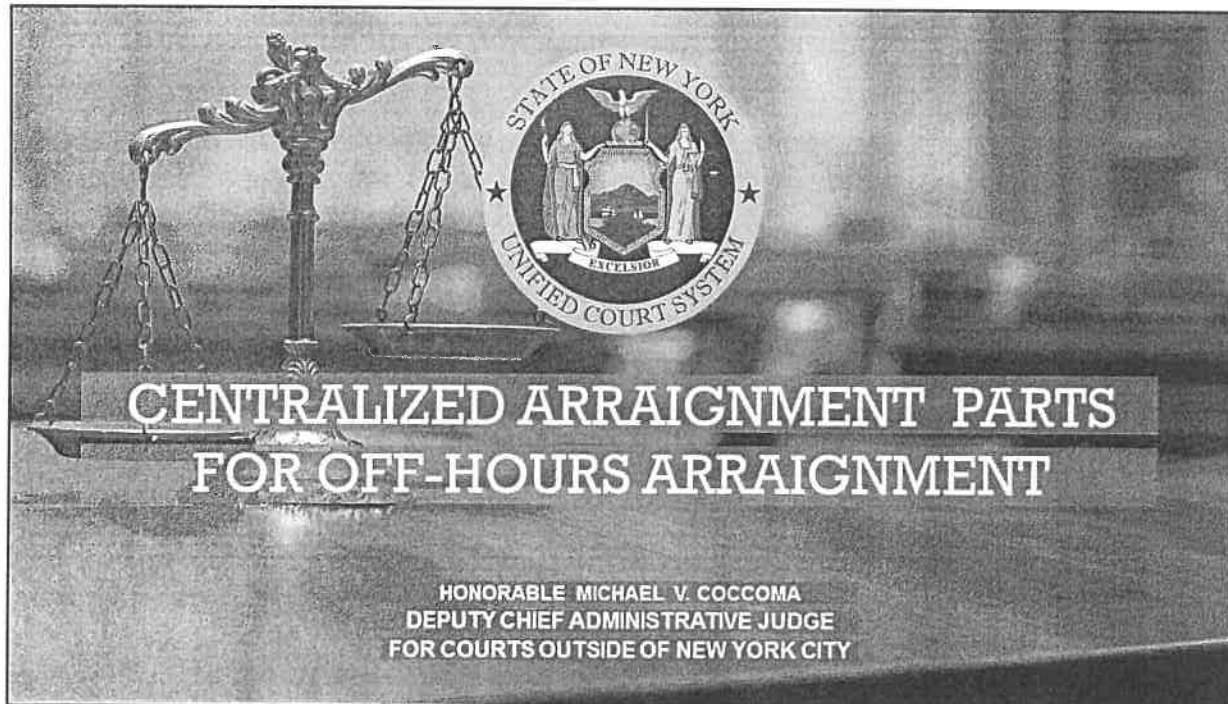


**Centralized Arraignments
and Recent Developments
in Indigent Legal
Representation – The
Perspective from the
Judiciary**

Hon. Michael V. Coccoma



OVERVIEW

- NEW CENTRALIZED ARRAIGNMENT PARTS LEGISLATION
- LEGISLATIVE HISTORY
- STATUTORY OBJECTIVES
- TIMEFRAME FOR IMPLEMENTATION
- KEY ISSUES THAT NEED FURTHER CONSIDERATION
- GOVERNOR'S 2017 – 2018 BUDGET
- WHAT IS NEXT?

NEW CENTRALIZED ARRAIGNMENT PARTS LEGISLATION

- Centralized Arraignment Parts for Off-Hours Arraignment
- Chapter 492 of the Laws of 2016
- Among other provisions, the law amends section 212(w) of the Judiciary Law to authorize the Chief Administrative Judge, after consultation with a multitude of stakeholders, to establish a plan for off-hours arraignment parts in the local criminal courts

NEW CENTRALIZED ARRAIGNMENT PARTS LEGISLATION

(CONT.)

- Statute is designed to facilitate the availability of public defenders or assigned counsel for the defendants in need of legal representation, without unduly burdening local government or placing additional stress on each of the stakeholders in the criminal justice system
- Primary Goals of the Statute are to ensure:
 - Counsel at arraignment, and
 - Swift arraignment of individuals

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LEGISLATIVE HISTORY

- Legislation 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

STATUTORY OBJECTIVES

- 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

STATUTORY OBJECTIVES

(CONT.)

- Statute focuses solely on having counsel at arraignment
- 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 conduct the arraignment and will then send the case back to the court that has trial jurisdiction

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STATUTORY OBJECTIVES

(CONT.)

- Statute modified 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

STATUTORY OBJECTIVES

(CONT.)

- Statute 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
 - Gives localities the opportunity to create own plan to submit for approval
 - No time limit by which plans must be established or submitted

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TIMEFRAME FOR IMPLEMENTATION

- On December 19, 2016, convened a meeting with statewide stakeholders to discuss the new legislation and its impact statewide:
 - The questions raised and issues identified by the stakeholders focused on
 - Operations and Staffing
 - Detention and Security
 - Jurisdiction and Criminal Procedure
- At the end of the meeting, stakeholders were invited to submit written comments or memoranda for further consideration by January 17, 2017

TIMEFRAME FOR IMPLEMENTATION

(CONT.)

- On January 25, 2017, convened a meeting with our Administrative Judges and shared our Centralized Arraignment Parts for off-hours arraignment report and meeting minutes with them
- The Administrative Judges were asked to begin the process of meeting with their local stakeholders in furtherance of developing pilot plans for Centralized Arraignment Parts within their districts and report by April 1, 2017
- On April 5, 2017, a summary of their efforts and short-term goals for implementation were provided to Chief Administrative Judge Lawrence K. Marks

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KEY ISSUES THAT NEED FURTHER CONSIDERATION

- Staffing needs and operational support, with a particular focus on security personnel to cover the Centralized Arraignment Part
- Issuance and service of Orders of Protection
- Transportation of individuals:
 - To and from a holding facility
 - To and from the Centralized Arraignment Part
 - If released, back to the original jurisdiction
- Available Interpreter Services

GOVERNOR'S 2017 – 2018 BUDGET

- Includes a 6-year plan to increase state's investment in public defense legal services according to a plan developed by the Office of Indigent Legal Services (OILS)
- The plan will ensure defendants have:
 - 1) Counsel at arraignment
 - 2) Establish new caseload standards for attorneys
 - 3) Ensure that public defense attorneys receive effective training
- When fully implemented in 2023, the increased funding to counties and New York City, through OILS, will be approximately \$250 million dollars

WHAT IS NEXT?

- Reconvene a meeting with the statewide stakeholders to provide an update and to discuss a timeframe for implementation
- Work closely with the Office of Indigent Legal Services to coordinate:
 - 1) Our statewide efforts to implement Centralized Arraignment Parts
 - 2) Their statewide efforts to provide counsel at arraignment



STATE OF NEW YORK

7209--A

IN SENATE

April 6, 2016

Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 212 of the judiciary law is
2 amended by adding a new paragraph (w) to read as follows:
3 (W) ADOPT, AFTER CONSULTATION WITH THE OFFICE OF INDIGENT LEGAL
4 SERVICES, THE APPROPRIATE LOCAL MAGISTRATES ASSOCIATION, INSTITUTIONAL
5 PROVIDERS OF CRIMINAL DEFENSE SERVICES AND OTHER MEMBERS OF THE CRIMINAL
6 DEFENSE BAR, LOCAL GOVERNMENT OFFICIALS, INCLUDING THE DISTRICT ATTOR-
7 NEY, AND WITH THE APPROVAL OF THE ADMINISTRATIVE BOARD OF THE COURTS, A
8 PLAN FOR THE ESTABLISHMENT, IN ACCORDANCE WITH PARAGRAPH (C) OF THIS
9 SUBDIVISION, OF OFF-HOURS ARRAIGNMENT PARTS IN SELECT LOCAL CRIMINAL
10 COURTS OF A COUNTY TO BE HELD IN SUCH COURTS ON A ROTATING BASIS FOR THE
11 CONDUCT OF ARRAIGNMENTS AND OTHER PRELIMINARY PROCEEDINGS INCIDENTAL
12 THERETO, AND FOR ARREST WARRANT RETURNS IN CRIMINAL CASES, WHERE THE USE
13 OF SUCH PARTS WILL FACILITATE THE AVAILABILITY OF PUBLIC DEFENDERS OR
14 ASSIGNED COUNSEL FOR DEFENDANTS IN NEED OF LEGAL REPRESENTATION AT SUCH
15 PROCEEDINGS. TO THE EXTENT PRACTICABLE, AND NOTWITHSTANDING THAT ANY
16 SUCH PLAN SHALL DESIGNATE OFF-HOURS ARRAIGNMENT PARTS IN FEWER THAN ALL
17 OF THE LOCAL CRIMINAL COURTS OF A COUNTY, EACH PLAN AUTHORIZED BY THIS
18 PARAGRAPH SHALL PROVIDE FOR THE PERIODIC ASSIGNMENT OF ALL OF THE JUDGES
19 AND JUSTICES OF ALL OF THE LOCAL CRIMINAL COURTS IN THE AFFECTED COUNTY
20 TO THE OFF-HOURS ARRAIGNMENT PARTS DESIGNATED THEREIN. THE CHIEF ADMIN-
21 ISTRATOR SHALL GIVE APPROPRIATE PUBLIC NOTICE OF EACH OFF-HOURS ARRAIGN-
22 MENT PART ESTABLISHED HEREUNDER AND EACH JUDICIAL ASSIGNMENT MADE THERE-
23 TO.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD14072-06-6

1 S 2. Section 100.55 of the criminal procedure law is amended by adding
2 a new subdivision 11 to read as follows:

3 11. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, A LOCAL
4 CRIMINAL COURT ACCUSATORY INSTRUMENT MAY BE FILED WITH A LOCAL CRIMINAL
5 COURT WHILE IT IS OPERATING AN OFF-HOURS ARRAIGNMENT PART DESIGNATED IN
6 ACCORDANCE WITH PARAGRAPH (W) OF SUBDIVISION ONE OF SECTION TWO HUNDRED
7 TWELVE OF THE JUDICIARY LAW PROVIDED THAT AN OFFENSE CHARGED THEREIN WAS
8 ALLEGEDLY COMMITTED IN THE COUNTY IN WHICH THE LOCAL CRIMINAL COURT IS
9 LOCATED.

10 S 3. Subdivision 1 of section 120.90 of the criminal procedure law, as
11 amended by chapter 424 of the laws of 1998, is amended to read as
12 follows:

13 1. Upon arresting a defendant for any offense pursuant to a warrant
14 of arrest in the county in which the warrant is returnable or in any
15 adjoining county, or upon so arresting him OR HER for a felony in any
16 other county, a police officer, if he OR SHE be one to whom the warrant
17 is addressed, must without unnecessary delay bring the defendant before
18 the local criminal court in which such warrant is returnable, PROVIDED
19 THAT, WHERE A LOCAL CRIMINAL COURT IN THE COUNTY IN WHICH THE WARRANT IS
20 RETURNABLE HEREUNDER IS OPERATING AN OFF-HOURS ARRAIGNMENT PART DESIG-
21 NATED IN ACCORDANCE WITH PARAGRAPH (W) OF SUBDIVISION ONE OF SECTION TWO
22 HUNDRED TWELVE OF THE JUDICIARY LAW AT THE TIME OF DEFENDANT'S RETURN,
23 SUCH POLICE OFFICER MAY BRING THE DEFENDANT BEFORE SUCH LOCAL CRIMINAL
24 COURT.

25 S 4. Paragraph (d) of subdivision 1 of section 140.20 of the criminal
26 procedure law, as amended by chapter 549 of the laws of 1987, is amended
27 and a new paragraph (e) is added to read as follows:

28 (d) If the arrest is for a traffic infraction or for a misdemeanor
29 relating to traffic, the police officer may, instead of bringing the
30 arrested person before the local criminal court of the political subdi-
31 vision or locality in which the offense was allegedly committed, bring
32 him OR HER before the local criminal court of the same county nearest
33 available by highway travel to the point of arrest[.]; AND

34 (E) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, WHERE A LOCAL
35 CRIMINAL COURT IN THE COUNTY IN WHICH THE DEFENDANT IS ARRESTED IS OPER-
36 ATING AN OFF-HOURS ARRAIGNMENT PART DESIGNATED IN ACCORDANCE WITH PARA-
37 GRAPH (W) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TWELVE OF THE JUDI-
38 CIARY LAW AT THE TIME OF DEFENDANT'S ARREST, THE ARRESTED PERSON MAY BE
39 BROUGHT BEFORE SUCH LOCAL CRIMINAL COURT.

40 S 5. Section 170.10 of the criminal procedure law is amended by adding
41 a new subdivision 10 to read as follows:

42 10. NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS SECTION, WHEN AN
43 OFF-HOURS ARRAIGNMENT PART DESIGNATED IN ACCORDANCE WITH PARAGRAPH (W)
44 OF SUBDIVISION ONE OF SECTION TWO HUNDRED TWELVE OF THE JUDICIARY LAW IS
45 IN OPERATION IN THE COUNTY IN WHICH THE COURT IS LOCATED, THE COURT MUST
46 ADJOURN THE PROCEEDINGS BEFORE IT, AND DIRECT THAT THE PROCEEDINGS BE
47 CONTINUED IN SUCH OFF-HOURS PART WHEN THE DEFENDANT HAS APPEARED BEFORE
48 THE COURT WITHOUT COUNSEL AND NO COUNSEL IS OTHERWISE AVAILABLE AT THE
49 TIME OF SUCH APPEARANCE TO AID THE DEFENDANT, UNLESS THE DEFENDANT
50 DESIRES TO PROCEED WITHOUT THE AID OF COUNSEL AND THE COURT IS SATIS-
51 FIED, PURSUANT TO SUBDIVISION SIX OF THIS SECTION, THAT THE DEFENDANT
52 MADE SUCH DECISION WITH KNOWLEDGE OF THE SIGNIFICANCE THEREOF.

53 S 6. Section 180.10 of the criminal procedure law is amended by adding
54 a new subdivision 7 to read as follows:

55 7. NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS SECTION, WHEN AN
56 OFF-HOURS ARRAIGNMENT PART DESIGNATED IN ACCORDANCE WITH PARAGRAPH (W)

1 OF SUBDIVISION ONE OF SECTION TWO HUNDRED TWELVE OF THE JUDICIARY LAW IS
2 IN OPERATION IN THE COUNTY IN WHICH THE COURT IS LOCATED, THE COURT MUST
3 ADJOURN THE PROCEEDINGS BEFORE IT, AND DIRECT THAT THE PROCEEDINGS BE
4 CONTINUED IN SUCH OFF-HOURS PART WHEN THE DEFENDANT HAS APPEARED BEFORE
5 THE COURT WITHOUT COUNSEL AND NO COUNSEL IS OTHERWISE AVAILABLE AT THE
6 TIME OF SUCH APPEARANCE TO AID THE DEFENDANT.

7 S 7. Subdivision 2 of section 106 of the uniform justice court act, as
8 added by chapter 321 of the laws of 2007, is amended to read as follows:

9 2. The chief administrator of the courts may temporarily assign any
10 justice of another town or village court, or a judge of a city court, to
11 a town or village court within the county of such judge's or justice's
12 residence or an adjoining county. While temporarily assigned hereunder,
13 any such judge or justice shall have the powers, duties and jurisdiction
14 of a justice of the court to which the assignment is made, INCLUDING THE
15 POWER TO PRESIDE OVER AN OFF-HOURS ARRAIGNMENT PART ESTABLISHED IN SUCH
16 COURT PURSUANT TO PARAGRAPH (W) OF SUBDIVISION ONE OF SECTION TWO
17 HUNDRED TWELVE OF THE JUDICIARY LAW. After the expiration of any tempo-
18 rary assignment hereunder, the judge or justice assigned shall have all
19 the powers, duties and jurisdiction of a judge or justice of the court
20 to which the assignment was made with respect to all matters pending
21 during the term of such temporary assignment. Such judge or justice
22 shall be entitled to such compensation and travel expenses as the chief
23 administrator shall prescribe by rule, payable out of funds appropriated
24 to the state judiciary for such purpose.

25 S 8. This act shall take effect on the ninetieth day after it shall
26 have become a law.