



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

November 12 , 2015.

Submitted by the New York State Office of Indigent Legal Services in accordance with
Section III(A)(2) of the *Hurrell-Harring v. The State of New York* Stipulation and Settlement.

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

The New York State Office of Indigent Legal Services (“ILS”) submits this written Plan to Implement the Counsel at Arraignment obligations set forth in Section III(A)(2) of the *Hurrell-Harring v. The State of New York* Stipulation and Settlement (“Settlement”).

Background:

The right to representation in a criminal matter is a basic right guaranteed by the Constitutions of New York and the United States and by state statutes. In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Supreme Court held that states are required under the Sixth Amendment to provide representation in criminal cases for defendants who are unable to afford their own attorneys. Supreme Court Justice Hugo Black wrote in *Gideon* that “. . .in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him,” and that in the United States, the defendant’s right to counsel is fundamental and essential to a fair trial. In 1965, New York State extended defendants’ right to counsel to include all crimes, not just major crimes, based on New York’s long-standing history of providing counsel to persons who cannot afford an attorney. *People v. Witenski*, 15 N.Y.2d 392 (1965).

In 1965, in response to the *Gideon* and *Witenski* decisions, New York enacted County Law Article 18-B and created a county-based system of delivering mandated legal services to indigent defendants to ensure that they receive meaningful and effective assistance of counsel. However, across New York State, this guaranteed right to effective legal representation has yet to be fully realized. In a 2006 report issued by the Commission on the Future of Indigent Defense Services, created by then-Chief Judge Judith Kaye, glaring deficiencies were found in the quality of indigent legal services offered by counties, including excessive caseloads, inability to hire full-time defenders, lack of adequate support services, lack of adequate training, minimal client contact and, in some courts, outright denial of the constitutional right to counsel.

More recently, in *Hurrell-Harring v. New York*, 15 N.Y.3d 8 (2010), the Court of Appeals recognized a cognizable claim for relief based on allegations made in the complaint that indigent defendants were not represented at arraignments and were kept in custody with little or no contact with their attorneys. The Court also reaffirmed that an arraignment is a “critical stage of the proceeding” which requires the presence of counsel. The Court noted that at arraignment, a defendant’s “pretrial liberty interests were on that occasion regularly adjudicated with most serious consequences, both direct and collateral, including the loss of employment and housing, and inability to support and care for particularly needy dependents.”

In October, 2014, the parties to *Hurrell-Harring v. The State of New York* entered into a Settlement, which requires the defendants to enhance the delivery of criminal defense services to indigent defendants in four key areas: Counsel at Arraignment; Caseload Relief; Initiatives to Improve the Quality of Indigent Defense; and Eligibility Standards for Representation. ILS was tasked with the responsibility of working with the parties to implement the Settlement.

Because the Court of Appeals' decision in *Hurrell-Harring* elevates the importance of representation at arraignments,¹ it is no surprise that the Settlement requires the parties to ensure that any criminal defendant charged with a crime and eligible for publicly funded representation ("Mandated Representation") has such representation at arraignment. *See* Settlement, § III.² To accomplish this, the Settlement requires that "[w]ithin 6 months of the Effective Date, the New York State Office of Indigent Legal Services ('ILS'), in consultation with the Executive, the Five Counties, and any other persons or entities it deems appropriate, shall develop a written plan to implement the Settlement's mandate that all indigent defendants in the Five Counties be represented by counsel at their arraignment."³ *See* Settlement, § III(A)(2). The Settlement further provides that the parties have 30 days after the Plan is submitted to comment, after which ILS has an additional thirty days to finalize the Plan. Additionally, the Settlement requires the State to allocate \$1 million in state fiscal year 2015/2016 for the purpose of paying any costs associated with the interim steps described in ILS's Plan.

ILS submitted a preliminary Plan to the parties in September 11, 2015; subsequently, the parties responded with written comments. After review and consideration of these comments, ILS submits this final Plan.

The Process ILS Used to Develop This Plan and Next Steps to Implement the Settlement's Counsel at Arraignment Mandates

Faced with limited time and staff to develop this Plan, ILS decided to approach the task of implementing the Settlement's Counsel at Arraignment mandates in two phases.⁴ The first phase has focused on: 1) identifying current arraignment coverage in each of the Five Counties; 2) working with the Five Counties to determine how to create the structures needed to ensure that there are defense attorneys available at all arraignments; 3) identifying the costs of creating these structures (i.e., the total costs of full arraignment coverage); and 4) determining the interim steps for the most effective use of the \$1 million provided in the Settlement. In this first phase, ILS simply did not have the time or resources to meaningfully assess the quality of representation at arraignments.

¹ In this document, the term "arraignments" is understood to mean the first appearance of a person charged with a crime before a judge or magistrate, with the exception of an appearance where no prosecutor appears and no action occurs other than the adjournment of the criminal process and the unconditional release of the person charged.

² This requirement applies to the five counties that are parties to the Settlement: Onondaga, Ontario, Schuyler, Suffolk, and Washington (the "Five Counties").

³ The Settlement's effective date is March 11, 2015.

⁴ ILS was authorized to hire staff to implement the Hurrell-Harring Settlement, but because of the realities of the hiring process, the first Hurrell-Harring staff person, Patricia Warth, Chief Implementation Attorney, did not start at ILS until August 3, 2015. Amanda Oren, the Quality Improvement Attorney, started on September 14, 2015, and Deborah Schneer, the Counsel at Arraignment Attorney, started on October 5, 2015.

To accomplish the foregoing, starting in April, 2015, ILS staff began a series of meetings with stakeholders⁵ in each of the Five Counties to specifically discuss implementation of the Settlement's requirements.⁶ A summary of the meeting dates, attendees, and general topics of discussion are set forth in the attached County specific meeting summaries. *See* Exhibit A. To facilitate these meetings, ILS staff developed a series of questions designed to facilitate the discussion and the flow of ideas and information. *See* Interview Questions, attached as Exhibit B.⁷ As a result of this process, the Five Counties and ILS staff were able to identify a range of strategies designed to ensure the presence of defense counsel at all arraignments. These strategies include, among others: having law enforcement issue appearance tickets for scheduled court sessions at which a provider of Mandated Representation is scheduled to be present; arranging for law enforcement and/or 911 dispatchers to notify a provider of Mandated Representation of an unscheduled arraignment; developing an "arraignment attorney" or "institutional provider" on-call program; and increasing staffing for a Public Defender Office and/or enhancing payment of Assigned Counsel Program panel attorneys to cover arraignments. Generally, achieving full arraignment coverage will require a combination of options in each of the Five Counties.

ILS's second phase will involve the implementation of this Plan. In this phase, ILS will consult with a variety of sources to better gauge both the consistency and the quality of representation at arraignments in each of the Five Counties. ILS will also gauge and reassess the estimated total costs of full arraignment coverage, and where necessary, update the costs set forth in this Plan.⁸

⁵ Upon the March 11, 2015 approval of the Settlement by the Albany County Supreme Court, ILS Director Bill Leahy sent a letter to each of the County Administrators and County Executives of the Five Counties inviting them to participate in the first meeting. In that letter, Mr. Leahy encouraged County Administrators and Executives to have the following people participate in the meeting: the County Attorney; the providers of Mandated Representation; and any other officials they thought should be involved. For the subsequent meetings, the Five Counties have been encouraged to invite whomever else they thought would be helpful.

⁶ In January, 2015, ILS staff formed working groups and met regularly to implement the various parts of the Settlement. A counsel at arraignment working group was formed to explore legal issues related to counsel at arraignment and to plan for upcoming meetings with the Five Counties. This working group explored legal issues related to representation at arraignments, such as joint representation at arraignment and conflict of interests; procedures after arrest by police; and attachment of the right to counsel. The working group developed a list of key components of an arraignment hearing, including adequate space (e.g., appropriate room); confidentiality (e.g., ability to consult with client in private); technology (e.g., attorney access to cellphone and/or Wi-Fi); time (e.g., adequate time to consult with client); public access (e.g., defendant's family and others); and access to a translator. The extent to which the Five Counties are fulfilling these key components of arraignment representation will be more fully addressed as the implementation of the settlement proceeds.

⁷ It should be noted that these questions were used to facilitate thoughtful discussions at the meetings with the Five Counties and were not structured interviews as was done for the Quality Improvement mandate.

⁸ For two reasons, the estimated total costs of arraignment coverage in this Plan are likely underestimates. First, while these are the best estimates of what it would cost to create the structures needed for full arraignment coverage, there are several areas we flag throughout this Plan in which we are concerned that the estimates may be too low. Second, these estimates do not take into account the quality of

ILS will periodically update this Plan to reflect the information learned about how effectively counties are meeting the objectives set forth in §III(A) of the Settlement. These updates will address both the consistency and quality of representation at arraignments and identify the additional resources the Five Counties need to address any shortcomings. The last section of this Plan outlines steps that ILS will take going forward as we implement the interim steps identified in this Plan and work with the Five Counties to achieve quality representation at all arraignments of people eligible for publicly funded representation.

This written Plan is organized by County into the following sections:

- I. County Overview
- II. Current Status of Counsel at Arraignment Coverage for the County
- III. Existing Gaps in Arraignment Coverage
- IV. Costs of Full Arraignment Coverage in Existing County System
- V. Alternatives
- VI. Interim Plan for the Allocation of the \$1 Million Provided for in the Settlement

The county-specific plans for providing representation at arraignment of all defendants eligible for publicly funded representation are set forth in the context of each County's currently existing court and law enforcement systems. There are many potential changes to existing systems that would facilitate, in a fiscally responsible manner, full arraignment coverage. This Plan includes a section that identifies and discusses these possible systemic changes.

Critical to the success of this written Plan is the continuation of programs currently funded by ILS to provide counsel at arraignment for all eligible defendants. These programs include ILS' Counsel at First Appearance (CAFA) grant, the Upstate Quality Improvement Caseload Reduction grant, and non-competitive distributions. Throughout the county-by-county analyses in this Plan, it is assumed that these current funding streams and programs will continue to be funded.

Of particular concern for continued funding is ILS' CAFA competitive grant. A second three-year CAFA grant will be issued in the next year to follow the first CAFA grant, but unless additional funding can be secured in the Fiscal Year 2016-2017 Final Budget to supplement current available funding, the second CAFA grant will be in the same amount as the first CAFA grant (\$4 million per year for each of three years). With the total number of applicants for the second CAFA grant expected to increase significantly, unless additional funding is secured, the level of funding awarded to the twenty-five counties with existing CAFA grant programs could be threatened.

representation at arraignment. Improving the quality of representation at arraignments may involve additional costs.

Onondaga County

I. COUNTY OVERVIEW

Onondaga County is situated in the central portion of New York State, west of Utica, east of Rochester, south of Watertown, and north of Ithaca. The County is approximately 35 miles long and 30 miles wide, with a total area of 806 square miles. In 2013, the County population was estimated at approximately 468,387. Also in 2013, Onondaga County's median household income was reported to be \$54,242, compared to New York's median reported income of \$58,003. The percentage of persons reported to be below the federal poverty level guidelines was 14.8% in comparison to New York's overall estimate of 15.3%. The racial composition of the County is roughly 81% White, 12% Black or African American, and 5% Hispanic or Latino.

Onondaga County is governed by an elected County Executive and seventeen elected members of the County Legislature. The County Executive appoints the County Attorney. Joanne M. Mahoney is presently the County Executive; she has recently appointed Robert Durr as the County Attorney.

Onondaga County Courts

Thirty different courts handle criminal cases in Onondaga County: Onondaga County Court; Syracuse City Court; and twenty-eight Town and Village Courts ("justice courts").

Syracuse City Court is by far the busiest court in the County and handles the vast majority of cases requiring the presence of an attorney at arraignment. Moreover, according to Onondaga County officials, fourteen of the twenty-eight justice courts account for 92% of the arraignments that occur at regularly scheduled justice court sessions within the County.

The Syracuse City Court has an overnight holding facility, the Onondaga County Justice Center, which holds both pre-trial and post-sentenced individuals. The various justice courts do not have individual overnight facilities.

Onondaga County Providers of Mandated Representation

There are two providers of mandated representation in Onondaga County. The Onondaga Bar Association Assigned Counsel Program ("ACP") provides counsel in all criminal trial cases. Renee Captor is the Administrator of the ACP. There are between 158 and 165 attorneys on the ACP panel who handle criminal cases. The Frank H. Hiscock Legal Aid Society ("Hiscock Legal Aid Society") provides representation to clients for criminal appeals and parole revocation hearings. Susan Horn serves as its President and Chief Executive Director.

Onondaga County's Law Enforcement Authorities

There are approximately 16 different law enforcement entities in Onondaga County. These include the New York State Police, the Onondaga County Sheriff's Department, the Syracuse Police Department, the Onondaga County Park Police and police departments in Baldwinsville,

Camillus, Cicero, DeWitt, Geddes, Jordan, Liverpool, Manlius, Marcellus, North Syracuse, Skaneateles, and Solvay.

II. CURRENT STATUS OF ONONDAGA COUNTY'S COUNSEL AT ARRAIGNMENT COVERAGE

A. County Court

The Onondaga County Court meets Monday through Friday. There are four Judges with Criminal Calendars. First appearance arraignments occur in County Court when a defendant has been indicted by way of a sealed indictment, which is rare. In the event of an arraignment on a sealed indictment, the County Court Judge contacts an attorney from the Assigned Counsel Program panel list for assignment of the case. These arraignments occur during regular business hours.

B. Syracuse City Court

The Syracuse City Court meets Monday through Friday and on weekends. There are four calendars (or parts) which require arraignment coverage: 1) the morning criminal calendar; 2) the afternoon criminal calendar; 3) Community Court; and 4) Traffic Court. Onondaga County currently has programs to provide arraignment coverage for the morning and afternoon criminal calendars as well as for the Community Court, but not for Traffic Court.

Morning and Afternoon Criminal Court Calendar Coverage

Arraignment coverage for the daily criminal calendar in Syracuse City Court began in 2001 with coverage of the morning calendar for defendants incarcerated the previous evening. This program is funded by Onondaga County and costs \$170,000 per year. The funding pays for two to three attorneys per day to conduct interviews at the Onondaga County Jail prior to the initial appearance and then to appear in court on behalf of defendants at the arraignment. Approximately 3500-4000 cases per year are encompassed by this coverage.

In 2006, the daily criminal court arraignment coverage program was expanded to include afternoon arraignments. The County was able to expand its arraignment program by obtaining a federal Byrne/JAG grant of approximately \$14,000 per year. Approximately 165-220 cases per year are covered by this program.⁹ The federal funding for this program began in 2007, and has continued steadily. However, on September 29, 2015, the ACP was informed that for the upcoming budget year (2016), this funding will be reduced to reflect New York State's overall 44% reduction in Byrne/JAG federal funding. It is unclear at this point how this funding reduction will impact the Syracuse City Court afternoon arraignment program. ILS will monitor this situation to gauge the impact of the federal funding reductions, and to identify gaps in coverage that could arise if additional funding is not provided.

⁹ In calendar year 2014, attorneys were available for arraignment a total of 227 afternoons to conduct a total of 168 arraignments.

In 2013, Onondaga County began using ILS' non-competitive distribution funding (Distribution #2) to expand morning arraignment coverage to include defendants appearing for arraignment after having received an appearance ticket and some defendants who appear on warrants. The ILS funding provides for two to three attorneys to cover arraignments at these court sessions. Approximately 2000-2300 cases per year are covered by this program.

According to ACP Administrator Renee Captor, ten attorneys have volunteered to participate in the arraignment program in Syracuse City Court. The attorneys interview the defendants at the jail prior to court and then conduct the arraignment. The interviews occur in private rooms at the jail. The attorneys have access to the defendants in the jail beginning at seven a.m. One of the attorneys who interviews incarcerated defendants also assumes responsibility for those appearing on appearance tickets. After the attorneys complete arraignments, they complete an "arraignment information sheet" for each arraignment. The attorney leaves this document in a "pick-up box" for the Court, which then assigns an attorney to handle the case. Ms. Captor reports that case assignment is "strictly up to the judge."

Each arraignment attorney is paid on a per diem basis as follows: 1) \$200 for the morning City Court shift; 2) \$150 for the City Court Plus/appearance ticket shift; and 3) \$110 for the afternoon City Court shift if the attorney conducts an arraignment, \$20 for attending a court session if there are no arraignments.

Community Court

This court addresses "quality of life" violations and meets one time per week. County funding pays for one attorney to provide representation one day per week approximately 50 weeks per year. This attorney is paid on a per diem basis of \$66 per shift. The volume of cases in this court is quite small, ranging from 60-100 cases per year.

C. Town and Village Courts

In 2014, after receiving an ILS Counsel at First Appearance three year grant, Onondaga County began providing coverage of arraignments in 14 of the County's 28 justice courts. This grant award provides for two attorneys (one felony-qualified attorney and one misdemeanor-qualified attorney) at each justice court to conduct client interviews and provide representation at arraignments. These 14 courts account for 92% of all justice court arraignments conducted during regular justice court sessions in Onondaga County. The County recently added coverage for a 15th court using ILS grant funding, but funding is available only until the end of this year. Since this 15th court is smaller, only one attorney is needed to provide arraignment coverage.

The justice court magistrate selects the attorneys who will serve as the arraignment attorneys from the assigned counsel panel list developed by the ACP. Different magistrates are experimenting with different selection methods. For instance, one magistrate selects two attorneys at a time for a 90 day period, while another is rotating teams of attorneys. Most justice courts have a private meeting area for the attorney and client. Unlike the arraignment program in Syracuse City Court, this program provides for vertical representation unless the client is represented by an attorney in a different matter or there is a language barrier. Attorneys receive

a per diem stipend of \$90 per session if felony-qualified, and \$70 per session if misdemeanor-qualified. The program does not reimburse for travel expenses such as time or mileage.

Significantly, this program only covers regularly scheduled justice court sessions. It does not provide coverage for off-hour arraignments.

D. Selection of Counsel in Onondaga County

Of special concern is the fact that in many instances, as described above, judges in Onondaga County select counsel to represent defendants who are eligible for Mandated Representation. It is not clear whether or not this selection occurs on a rotating basis. Doing so, however, is contrary to County Law §722(3)(a), which provides that where a county uses an assigned counsel program for Mandated Representation, the “services of private counsel are [to be] rotated and coordinated by an administrator” of the assigned counsel program, and not by judges. Section V(A) of the Settlement defines as an objective of quality representation that assigned counsel are assigned to cases in accordance with County Law §722. In accordance with our obligations to implement all objectives in the Settlement, ILS will be working with Onondaga County to develop a plan for assignment of counsel that fully comports with County Law §722 and the Settlement. In the meantime, to the extent that we describe Onondaga County’s current arraignment system as one in which judges selected the counsel, it is understood that we do not endorse this process of assigning counsel.

III. EXISTING GAPS IN ARRAIGNMENT COVERAGE

Currently, Onondaga County does not provide counsel at arraignment in the following four areas:

- a. In regular sessions of 13 of the 28 justice courts¹⁰
- b. In Syracuse City Traffic Court
- c. When justice courts conduct an arraignment in the Onondaga County Criminal Court building
- d. During off-hour arraignments in all 28 justice courts

IV. COSTS OF FULL ARRAIGNMENT COVERAGE IN EXISTING COUNTY SYSTEM

As previously stated, Onondaga County has been able to achieve its current coverage of arraignments through a combination of county funding, federal funding, ILS distributions, and an ILS Counsel at First Appearance grant. ILS distribution #2 is currently being allocated to cover

¹⁰ These justice courts are not covered: Elbridge Town Court, Fabius Town Court, Fayetteville Village Court, Jordan Village Court, Lafayette Town Court, Lysander Town Court, Manlius Village Court, Marcellus Town Court, Minoa Village Court, Otisco Town Court, Pompey Town Court, Skaneateles Town Court, Spafford Town Court, and Tully Town Court.

those arraigned in Syracuse City Court on an appearance ticket, and ILS's Counsel at First Appearance grant money is being used to provide arraignment coverage at the regular sessions of 15 or the 28 justice courts.¹¹ This funding would need to continue to ensure full coverage of arraignments in Onondaga County.

In addition to the need to continue the foregoing funding, closing the four gaps in coverage and achieving full coverage at all arraignments in the County would require the following in each of the four identified gap areas:

A. Regular sessions of the 13 justice courts currently not covered

To expand coverage of regular court sessions in the 13 justice courts currently not covered, Onondaga County would need to expand the ACP's current justice court arraignment program to provide arraignment coverage at all scheduled court sessions in each of the 13 justice courts. As with its current justice court arraignment program, the magistrates in these 13 justice courts would be given a list of qualified attorneys from the panel who have expressed an interest in providing representation in that particular court, and the magistrates would select attorneys to serve as arraignment attorneys. Because these justice courts have far fewer arraignments, only one attorney will be designated to cover arraignments at each regularly scheduled court session. Given the current regular session schedule in these 13 justice courts, Onondaga County estimates that the cost of this expanded coverage will be **\$76,500 per year**.

B. Syracuse City Traffic Court

The Syracuse Traffic Court arraignments occur at the same time and in the same building as Syracuse City Court arraignments, though in a separate courtroom. Not all people facing charges in Traffic Court have the right to Mandated Representation, though many do, including those charged with an unclassified misdemeanor traffic offense and those charged with violation level traffic offenses that can result in jail time (such as Driving While Ability Impaired). Onondaga County was not able to provide ILS an estimate of how many people arraigned in Syracuse City Traffic Court each year are arraigned on charges that implicate the right to Mandated Representation.

To cover Syracuse City Traffic Court arraignments, Onondaga County would need to expand its current Syracuse City Court arraignment program to add an additional attorney from the Assigned Counsel Panel to provide representation at these arraignments. This attorney would have the primary responsibility of covering arraignments in Syracuse Traffic Court, but if there are few or no defendants being arraigned on charges implicating the right to Mandated Representation on any particular day, this attorney could assist in covering arraignments in the other parts of Syracuse City Court. Like the other attorneys who cover Syracuse City Court, this additional attorney will be paid \$200 per session. Onondaga County estimates that it would cost **\$60,194** to expand its current morning arraignment program to include Syracuse City Traffic Court.

¹¹ As noted earlier, the 15th justice court was added to the program this year, but funding for this 15th justice court will not continue after the end of this year.

C. Justice court arraignments conducted in Syracuse City Court

Approximately six to eight of the justice court magistrates maintain law offices in downtown Syracuse. As a courtesy, the Syracuse City Court allows these magistrates to conduct arraignments in an empty courtroom in the Criminal Courts building downtown if there is a person who needs to be arraigned during regular Syracuse City Court business hours. Onondaga County estimates that these justice court arraignments occur in the Syracuse City Court approximately three times per week.

Ensuring that there is an attorney available to represent defendants at these arraignments would require expanding the Assigned Counsel Program's current justice court arraignment program to pay a panel attorney \$90 for each of these arraignments. As with the current arraignment program, the six to eight magistrates who conduct such arraignments would be provided a list of attorneys available to represent defendants at these arraignments, and the magistrates would be responsible for selecting an attorney from this list and notifying the attorney of the arraignment. Onondaga County estimates that this would cost \$15,600 per year.

D. Off-hour arraignments in all 28 justice courts

Currently, the Onondaga County Assigned Counsel Program does not provide coverage of off-hour arraignments that occur in the 28 justice courts – i.e., justice court arraignments that occur at any time other than a regularly scheduled court session.¹² To cover these off-hour arraignments in all 28 of the County's justice courts, Onondaga County would have to create an on-call program. The County has looked to the Monroe County Public Defender Office's on-call program as a model. To make an on-call program work in Onondaga County, the County would be divided into six geographic regions, and there would be a list of attorneys available to be on-call for arraignments in each of these regions. There also would be two to three attorneys identified as "floaters," who would provide back-up in case the on-call attorneys in a particular region are not available. The magistrates in each of these six regions would be provided that region's list of on-call attorneys as well as a single cell phone number that the magistrates would call to reach the on-call attorneys or, if necessary, one of the "floaters." If a magistrate needs to conduct an off-hour arraignment, the magistrate would then call this number to contact an on-call attorney. The on-call attorneys would be paid a stipend of \$25 per day, and \$150 per arraignment at which they appear. Additionally, the arraigning attorney would likely be assigned by the court to represent those defendants for whom they appear at arraignment. Onondaga County estimates that a total of fourteen attorneys would need to be on-call at any single time to cover the justice courts in all six regions.

Onondaga County has worked closely with its IT Department to ascertain if it is possible to design a system of attorney notification that is simple and "user-friendly" for the magistrates, thereby enhancing the likelihood that magistrates will regularly notify the on-call attorney of an arraignment. Onondaga County believes that its IT department can create one number for all of the magistrates to call, and this number would go to "hunt group" that would locate the on-call

¹² Off-hour arraignment coverage is not necessary in Syracuse City Court because individuals arrested outside of regularly scheduled City Court sessions are either issued an appearance ticket or held overnight at the Onondaga County Justice Center until their arraignment the next morning.

attorneys for that particular region. In the initial part of the call, the magistrate would simply have to identify the region of his or her particular justice court. Onondaga County estimates that its IT department would need \$20,000 to create and operate the system and to pay for the cell phones that the on-call attorneys would have; the ACP would be responsible for ensuring that on-call attorneys have the proper cell phone when they are on-call. The ACP would designate a staff person to be available to administer the program and trouble-shoot if a problem arises.

It is not clear if all of the local magistrates are receptive to this program, which could be problematic since they will be responsible for attorney notification. The County Attorney's Office has asked the Office of Court Administration to notify magistrates of this program, and the County Attorney's Office reports that, to their knowledge, no magistrate has complained about it.

To monitor the program's success and the volume of off-hour arraignments, the Onondaga County Attorney's Office will work with an intern from the Syracuse University Maxwell School to obtain data from the ACP and 28 justice courts about the number of off-hour arraignments conducted, the presence of defense attorneys at these arraignments, and the issues that emerge during the program's implementation.

Onondaga County estimates that the total annual cost of this on-call program would be **\$407,750**, with the following budget:

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| - On-call stipend of \$25 per day for 14 attorneys | \$127,750 |
| - Pay of \$150 per arraignment done (estimated 1,100 per year) | \$165,000 |
| - ACP Staff Person to Monitor (Dispatch Liaison) | \$ 50,000 |
| - ACP Admin. & Computer, supplies, etc. (\$40,000 & \$5,000) | \$ 45,000 ¹³ |
| - IT Department and cell phone costs | \$ 20,000 |

ILS is concerned that this cost might, in fact, be an underestimate of true costs for running the program. It is our understanding that the estimates are based on the number of County Law Article 8-B assignments in Onondaga County justice courts in 2014 (1,100 assignments). The on-call program, however, would provide coverage for every off-hour arraignment, whether or not the defendant is found eligible for an assigned attorney. Thus, the actual number of off-hour arraignments may be higher than the 1,100 estimated. We are also concerned that Onondaga's proposed on-call stipend of \$25 per day is too small to attract and maintain a qualified panel of on-call attorneys. In contrast to Onondaga's \$25 per day stipend, Washington County proposes stipends of \$100 per weekday and \$200 per weekend day for off-hour coverage and Ontario County proposes \$300 per day on holidays, \$150 per day on weekends and \$75 per day on weeknights. There is, however, one added incentive for attorneys in Onondaga County that would not apply as often in the other counties – in Onondaga County the arraignment attorney will very likely be assigned the case.

¹³ ILS questions the need for adding two positions to the Assigned Counsel Program. While the trouble-shooter is an innovative, creative position to work through glitches in the day-to-day operation of the on-call program, the administrative position, which primarily will be involved with tracking data, does not appear to be needed, particularly given that the proposed plan calls for a student from the Maxwell School to collect data.

Total cost of full arraignment coverage

Given the above, the total costs of full coverage of all arraignments in Onondaga County are estimated as follows:

Regular Sessions of the 13 Justice Courts Currently Not Covered	\$ 76,500
Syracuse City Traffic Court	\$ 60,194
Justice Court Arraignments Conducted in Syracuse City Court	\$ 15,600
Off-Hour Arraignments in All 28 Justice Courts	\$407,750
Total:	\$560,044

These costs are reflected in a Chart that identifies the full costs of arraignment coverage for all Five Counties. This Chart is attached as Exhibit C.

V. ALTERNATIVES

The total costs above would be necessary to provide for full arraignment coverage given Onondaga County's current law enforcement and justice court system. There are some systemic changes, however, that could allow for less costly alternatives. Preliminarily, these include the following possibilities:

- 1) Centralizing arraignments so that fewer courts are conducting arraignments. This would be particularly relevant for the 13 justice courts that conduct a small number of arraignments per year, and would alleviate the need to have attorneys present for each of these court sessions, even though an arraignment might not occur.¹⁴ Currently, justice court magistrates are occasionally having arraignments conducted in other justice courts, but this is not done in a systemic manner. There has been some discussion of centralizing some of the justice court arraignments, but Onondaga County is concerned about indirect costs of transporting defendants.
- 2) Adding or using existing holding facilities in Onondaga County to temporarily hold people arrested overnight for arraignment the following morning. This would negate the need and costs of an overnight on-call program for arraignment coverage. As with the above alternative, there are indirect costs associated with this alternative that merit further exploration.

The legal, fiscal, and practical implications of these alternatives are discussed further in this Plan.

¹⁴ Having attorneys present for court sessions where arraignments do not occur could be partially alleviated if courts were able to provide a calendar of the docket in advance of the session.

VI. INTERIM PLAN FOR ALLOCATION OF THE SETTLEMENT'S \$1 MILLION.

The Settlement's \$1 million allocated for Counsel at Arraignment is not sufficient to pay the total cost of arraignment coverage in any of the Five Counties. After consultation with the *Hurrell-Harring* parties, ILS has decided that Onondaga County should be allocated **\$275,791** of the \$1 million, to be spent as follows:

A. Regular sessions of the 13 justice courts currently not covered

This program will be fully funded. Doing so will expand upon and complete the arraignment coverage that began in Onondaga County justice courts with the ILS Counsel at First Appearance grant and will ensure that all arraignments that occur during regularly scheduled justice court sessions are fully covered.

Cost: \$76,500

B. Syracuse City Traffic Court

This program will be fully funded, as doing so will expand upon and supplement the already existing Syracuse City Court arraignment program.

Cost: \$60,194

C. Justice court arraignments conducted in Syracuse City Court

This program will be fully funded, since it is a cost-effective means of using the existing Syracuse City Court arraignment program to cover the justice courts arraignments that occur in the building that houses Syracuse City Court.

Cost: \$15,600

D. Off-hour arraignments in all 28 justice courts

This program will be partially funded at **\$123,497** as a pilot program in one of the largest and busiest of the 6 justice court regions in the County – the region that includes Dewitt, East Syracuse and Minoa Town Courts. The County selected this region not only because of its size and the number of cases, but also because the magistrates in this region are amenable to ensuring that counsel is available at arraignments. Onondaga County recently met with the key stakeholders from this region to discuss this pilot program. In addition, the County has worked with its IT Department to ensure that a “user-friendly” attorney notification system can be developed that requires the magistrates in this region to call only one telephone number to notify the on-call attorney, or if that attorney is not available, the “floater” attorney.

Cost: \$123,497

E. Total proposed funding to Onondaga County from the Settlement's \$1 Million

ILS recommends the following total allocation of the Settlement's \$1 million to Onondaga County:

Regular Sessions of the 13 Justice Courts Currently Not Covered	\$ 76,500
Syracuse City Traffic Court	\$ 60,194
Justice Court Arraignments Conducted in Syracuse City Court	\$ 15,600
Off-Hour Arraignments in All 28 Justice Courts	\$123,497
Total:	<u>\$275,791</u>

Ontario County

I. ONTARIO COUNTY OVERVIEW

Located in New York's Finger Lakes Region, Ontario County is surrounded by Monroe and Wayne Counties to the north, Seneca and Yates Counties to the west, Steuben County to the south, and Livingston County to the west. Ontario County is 644 square miles in size, with a population of approximately 109,707. It is comprised of two cities, Geneva and Canandaigua, and 24 towns and villages. Canandaigua and Geneva are surrounded by large swaths of rural farm land and lakefront properties. Although Canandaigua is the County seat, the city of Geneva has a slightly larger population and a higher reported crime rate.

In 2013, Ontario County's median household income was reported to be approximately \$56,479, compared to \$58,003 of New York State's median income, and the percentage of persons whose income is reported to fall below the federal poverty level guidelines was 9.5% in comparison to the state's overall estimate of 15.3%. The county is approximately 94% Caucasian, 2% Black or African American, and 2% Hispanic or Latino.

Ontario County is governed by a twenty-one member Board of Supervisors, which uses the Board-Administrator system and hires a professional County Administrator. John Garvey is currently the County Administrator, though he is scheduled to retire in October, 2015. His replacement has not yet been announced. The County Attorney is Gary Curtiss.

Ontario County Courts

Twenty different courts handle criminal cases in Ontario County: Ontario County Court; Geneva and Canandaigua City Courts; and seventeen Town and Village courts ("justice courts").

Ontario County Providers of Mandated Representation

Ontario County has three institutional providers: a Public Defender Office, a Conflict Defender, and an Assigned Counsel Program. The Ontario County Public Defender's office is responsible for handling felonies, misdemeanors, and violations of parole and probation. Leanne Lapp is the Ontario County Public Defender who provides representation alongside eleven staff attorneys. The Ontario County Conflict Defender handles cases that the Public Defender's Office cannot handle because of a conflict, either taking the case directly, or assigning it to an attorney on the Assigned Counsel Panel. Andrea Schoeneman currently is Ontario County's Conflict Defender and Administrator of the Assigned Counsel Program.

Ontario County Law Enforcement

There are approximately seven law enforcement agencies in Ontario County: two city police departments; three village police departments; the Ontario County Sheriff's Department; and the New York State Police.

The Sheriff's Department is responsible for overseeing operations within the Ontario County Jail which currently has the capacity to house approximately 282 individuals.

II. CURRENT STATUS OF COUNSEL AT ARRAIGNMENT COVERAGE

All courts in Ontario County have regularly scheduled court sessions during which some defendants are arraigned.¹⁵ For the justice courts, some of these sessions are scheduled as "DA sessions," meaning that an attorney from the District Attorney's Office is scheduled to be present, while other sessions are scheduled as "non-DA sessions," meaning that there is no attorney from the District Attorney's Office present for the court session. Additionally, arraignments are often conducted outside of these regularly scheduled court sessions, during the day in all justice courts and overnight in two of the justice courts.

In 2012, the Ontario County Sheriff, in conjunction with other county agencies and the local court justices, created a centralized arraignment procedure for defendants arrested overnight (after 10 p.m.), and detained. Through this centralized arraignment procedure, the local court magistrates are given the option to have such defendants held in the Ontario County Jail until they can be arraigned the following morning. Arraignments for the Town and City of Geneva are done in Geneva City Court, while all other arraignments are done in Canandaigua City Court by the Canandaigua City Court judge who sits as the County Court judge for all defendants who were arrested outside of the City of Canandaigua. On weekdays, these arraignments occur in Geneva City Court and Canandaigua City Court. On weekends these arraignments are held in Geneva City Court and at the Ontario County Jail. Currently, all but two justice courts participate in the centralized arraignment process.¹⁶ This centralized arraignment process does not cover unscheduled daytime arraignments – i.e., defendants who are arrested and arraigned outside of a regularly scheduled court session ("off hours"), but prior to 10 p.m. each day.

The Public Defender's Office has staff attorneys available for arraignments that occur on weekdays in Canandaigua and Geneva City court, including defendants who are arraigned as part of the centralized weekday arraignment process. In addition, through ILS Counsel at First Appearance grant funding, the Public Defender Office has hired two staff attorneys, which has enabled the Office to provide arraignment coverage in the following areas: 1) arraignment coverage for regularly-scheduled "DA sessions" in the justice courts; 2) arraignment coverage for the centralized arraignments that occur on the weekends; and 3) arraignment coverage for all justice court "off-hour" arraignments – i.e., defendants who are arrested on any weekday or weekend *prior* to 10 p.m. In sum, Ontario County currently has arraignment coverage in the following courts:

¹⁵ Ontario County Court does not have a system for first appearance arraignment coverage, since first appearances are rare, occurring when there is a sealed Indictment. In such instances, the County Court is notified of the Indictment in advance, and is able to ensure that counsel is present.

¹⁶ These two justice courts are Geneva Town Court and Bloomfield Town Court. In addition, there is some concern that Geneva City Court occasionally conducts overnight arraignments, and that this court may be moving towards doing so more frequently.

Weekdays:

Canandaigua and Geneva City Courts

- All arraignments from overnight incarcerated defendants (the centralized arraignment system)
- All appearance ticket arraignments

Justice Courts

- All arraignments conducted during regularly scheduled “DA-sessions”
- Arraignments conducted from 8:30 a.m. – 10 p.m. for defendants who are not issued appearance tickets

Weekends:

- Arraignments conducted at the Ontario County Jail and in Geneva City Court for overnight incarcerated defendants (the centralized arraignment process)
- Arraignments conducted in justice courts prior to 10 p.m. for defendants who are not issued appearance tickets

The Public Defender Office’s On-Call System

To provide arraignment coverage, the Ontario County Public Defender Office has developed an on-call system. This system has three components: 1) an attorney who is on-call from 8:30 a.m. to 5 p.m. each weekday to handle “off-hour” arraignments in justice courts; 2) an attorney who is on-call from 5 p.m. to 10 p.m. each weekday to handle “off-hour” evening arraignments in justice courts; and 3) an attorney who is on-call weekends and holidays from 8:30 a.m. to 10 p.m. to handle “off-hour” weekend arraignments in justice courts. This on-call system is staffed by all twelve Public Defender Office attorneys, including Ms. Lapp. To support this on-call system, Ontario County has worked with its 911 Center to ensure that the on-call staff attorneys are notified of arraignments. The 911 Center usually provides the on-call attorney with the name of the defendant and the charges, if known. Typically, it takes the on-call attorney no more than 30-45 minutes to travel to the arraignment.

The Public Defender Office staff attorneys are not paid extra to be on-call; rather, it is considered part of their regular job duties. This on-call system has been in place for a little over a year, and during this time, there is a growing concern about this system’s sustainability. Ms. Lapp notes that being on-call so frequently on weekday evenings and on weekends is contributing to staff attorney “burn-out,” and she is worried that some of the more experienced Public Defender Office staff attorneys will start to look for jobs that do not require them to so frequently sacrifice their weeknights and weekends.

III. EXISTING GAPS IN ARRAIGNMENT COVERAGE

In addition to the problem of attorney “burn out” the Ontario County Public Defender has identified, Ontario County currently has two gaps in arraignment coverage:

- a) Justice court regularly scheduled non-DA sessions
- b) Overnight arraignments – i.e., arraignments that occur after 10 p.m. in the two justice courts that do not participate in the centralized arraignment system.

IV. COSTS OF FULL ARRAIGNMENT COVERAGE IN ONTARIO COUNTY'S EXISTING COUNTY SYSTEM

As previously stated, Ontario County has been able to achieve its current coverage of arraignments through an ILS Counsel at First Appearance grant. This funding would need to continue to ensure full coverage of arraignments.

Additionally, much of the arraignment coverage that Ontario County currently provides occurs through the Public Defender Office's on-call system. But this system is creating significant stress for the Public Defender Office, and its sustainability is questionable. Though we do not identify this specifically as a "gap" in coverage, it is an issue that should be addressed and resolved. For that reason, the two identified means of filling gaps in coverage are intended to also support the Public Defender Office's on-call system so that this system is more sustainable.

A. Coverage for non-DA regularly scheduled court sessions and supporting the Public Defender Office's on-call system

Currently, there are about ten justice court "non-DA" sessions per week at which defendants are arraigned, usually as a result of the issuance of an appearance ticket. Coverage for arraignments at these regularly scheduled justice court "non-DA" sessions could be accomplished by adding two full time attorneys to the Public Defender Office. Adding two full-time attorneys would have the added benefit of diminishing Public Defender Office staff attorney "burn-out" by increasing the number of attorneys available for the Public Defender Office's current on-call rotation, thereby reducing the how often each attorney is required to be on-call.

The annual costs for adding two full-time attorneys is as follows:

- 64,000 base salary plus fringe = \$105,000 yearly cost per attorney x 2 = \$210,000
- Office space and equipment (uncalculated)

Cost = approximately \$210, 000 (plus costs for office space and equipment)

B. Coverage for the arraignments that occur after 10 p.m. in the courts that do not participate in the centralized arraignment process and eliminating the weekend component of the Public Defender Office's on-call system

A small Public Defender's Office like Ontario County's cannot sustain the type of 24 hour per day, 365 day per year on-call program that would be needed to cover the arraignments that occur after 10 p.m. in the courts that do not participate in Ontario County's centralized arraignment

process. Indeed, as stated above, the Public Defender Office is struggling to sustain its on-call system for arraignments done prior to 10 p.m. on the weekdays and weekends.

Therefore, to provide full coverage of off-hour arraignments and support current arraignment staff, Ontario County would have to create an on-call program in which it would contract with private attorneys to be on-call weeknights (10 p.m. at night to 8 a.m. the following morning) and weekend days and nights. Contract attorneys would be paid a stipend of \$75 per weeknight, \$150 per day and night on weekends, and \$300 for holidays to be on-call. The on-call attorneys would also be paid \$75 per hour when called upon to conduct an arraignment. As with the Public Defender Office's current on-call system, notification would occur via the Ontario County's 911 system.

The estimated costs for this contract "on-call" program are as follows:

<u>Weeknights:</u>	
254 weekdays/year x \$75/night stipend =	\$19,200
Estimated avg. of 4 overnight arraignments per week x \$75/hour =	\$15,600
 <u>Weekends and (4) Holidays:</u>	
4 holidays x \$300 stipend per day =	\$1,200
Estimated 5 calls per holiday x \$75 per hour =	\$1,500
104 weekend days x \$150 per diem =	\$15,600
104 weekend days x 5 arraignments (avg)/day x \$75/per arraignment =	\$39,000
 <u>Estimated mileage reimbursement for weeknight and weekends:</u>	 \$5,000
 Total:	 \$ 97,100

ILS staff is concerned that this proposal contemplates an average of only one-hour to provide coverage at an off-hour arraignment. The Public Defender Office currently provides off-hour arraignment coverage on weekend days, and one hour per arraignment appears sufficient. But this proposal introduces coverage at overnight arraignments in the two justice courts that do not participate in Ontario County's centralized arraignment program, and it is unknown if one hour is sufficient time for every staff attorney to travel to and from the arraignment, interview the defendant, and conduct the arraignments.

C. Total costs for full arraignment coverage in Ontario County

Given the above, the estimated total costs of full coverage of all arraignments in Ontario County are as follows:

Non-DA night court sessions	\$210,000 (plus)
Arraignments occurring after 10 p.m.	\$ 97,100
<u>Total:</u>	<u>\$307,100 (plus)</u>

These costs are reflected in a Chart that identifies the full costs of arraignment coverage for all Five Counties. This chart is attached as Exhibit C.

V. ALTERNATIVES

The foregoing costs would be necessary to provide for full arraignment coverage given Ontario County's current law enforcement and justice court system. It is to Ontario County's credit that significant systemic changes have been implemented to promote representation at arraignments. For example, the County should be credited for developing a centralized arraignment process for defendants who are arrested after 10 p.m. and detained. Additionally, the Ontario County Public Defender Office's current on-call system would not work but for the willingness of the County and its Sheriff to use its 911 Center to notify the Public Defender's Office of off-hour arraignments.

Still, there are additional systemic changes specific to Ontario County that could allow for less costly alternatives. Preliminarily, these include the following possibilities:

- 1) Have all courts use the centralized arraignment system so that there is no need to create an on-call program to staff arraignments after 10 p.m. for the small number of courts that do not participate in this program.
- 2) Obtain agreement from the law enforcement agencies within Ontario County to write appearance tickets for the scheduled "DA-sessions" of scheduled court sessions rather than the "non-DA sessions." Alternatively, and at the very least, arrange for justice courts to provide a list of arraignments on non-DA night court sessions, so that if there are no arraignments scheduled for that court session, an attorney does not need to appear.

Below, this Plan more fully explores the legal, fiscal and practical implications of identified alternatives.

VI. INTERIM PLAN FOR ALLOCATION OF THE SETTLEMENT'S \$1 MILLION.

The Settlement's \$1 million allocated for Counsel at Arraignment is not sufficient to pay the total cost of arraignment coverage in any of the Five Counties. After consultation with the *Hurrell-Harring* parties, ILS has decided that Ontario County should be allocated **\$166,300** of the \$1 million, to be spent as follows:

A. Coverage for non-DA regularly scheduled court sessions and support for the Public Defender Office's on-call system

This program will be partially funded to support the hiring of one (instead of two) additional attorney for the Ontario County Public Defender Office. Adding one additional attorney will help to provide some coverage for the non-DA court sessions while simultaneously adding one additional person to rotate into the Public Defender Office's on-call system, which will help to support this system. We will continue to

work with Ontario County to develop and implement more cost-effective alternatives to providing full coverage for non-DA night court sessions.

Cost of partially funding this program: \$105,000

B. Partially funding creation of a private attorney on-call program that would provide on-call arraignment coverage on weekends, thereby eliminating the weekend component of the Public Defender Office's on-call System

To cover off-hour and overnight arraignments that occur because of the two justice courts that do not participate in Ontario County's centralized arraignment system, Ontario County would need to develop an on-call program to be staffed by private, contract attorneys. As an added benefit, this on-call program would also eliminate the need for the Public Defender Office to require its staff attorneys to provide on-call weekend arraignment coverage.

ILS has concluded that this proposed on-call program should be partially funded as a pilot program to provide on-call arraignment coverage on weekends only, and not weekdays. Doing so is cost-effective because it will provide coverage for all off-hour weekend arraignments, including those that occur in the two courts that do not participate in the centralized arraignment system. Additionally, funding an on-call weekend program to be staffed by private attorneys instead of the Public Defender Office attorneys will go far in helping to sustain the Public Defender Office's current on-call program.

The costs of partially funding this on-call program in this manner would be as follows (using the weekend component of Ontario County's full proposal):

<u>Weekends and (4) Holidays:</u>	
4 holidays x \$300 stipend per day =	\$1,200
Estimated 5 calls per holiday x \$75 per hour =	\$1,500
104 weekend days x \$150 per diem =	\$15,600
104 weekend days x 5 arraignments (avg)/day x \$75/per arraignment =	\$39,000

Estimated mileage reimbursement for weekends and holidays: \$4,000

Cost of partially funding this program: **\$61,300**

C. Total proposed funding to Ontario County from the Settlement's \$1 million

The total allocation to Ontario County from the Settlement's \$1 million is as follows:

Coverage for non-DA nights =	\$105,000
Coverage for overnight arraignments =	\$ 61,300
<u>Total:</u>	<u>\$166,300</u> ¹⁷

¹⁷ Providing funding in this manner will not obviate the need for the Ontario Public Defender Office's on-call system. The Public Defender Office will still need the weekday components of its on-call system. Adding one additional full-time lawyer to the Public Defender Office's staff will allow one additional

Schuyler County

I. COUNTY OVERVIEW

Schuyler County is a rural community that serves as the gateway to the 14 county Finger Lakes Region of Upstate New York. Its eastern boundary is Tompkins County; Yates and Seneca Counties form its northern boundaries; the southern border is Chemung County; and Steuben County forms its western border.

With a land area of 329 square miles, Schuyler County is among the geographically smallest counties in New York State. Schuyler County has about 37,396 acres of State and Federal Park lands, lowering the available amount of taxable land, and has part of the Appalachian Trail passing through it. In 2010 the population per square mile (land) was 55.75.

Although Schuyler County is poor and rural, it attracts tens of thousands of tourists weekly who visit the County's parks and forest lands, Watkins Glen Gorge, local wineries, the many festivals held throughout the year, and the County's largest attraction: Watkins Glen International Raceway, which is a world-renowned racing venue.

Schuyler County's population in the 2010 census was 18,343 residents. The population of Schuyler is predominantly white at 97.1%. The annual median household income in Schuyler County is \$47,804 which is 16.1% below the New York State median household income of \$56,951.

The eight member Schuyler County Legislature is the policy-making and appropriations body of the County government. The County Legislature appoints the County Administrator and the County Attorney. The County Administrator is Timothy O'Hearn; Steven Gettman is the Schuyler County Attorney. He recently replaced Geoff Rossi.

Schuyler County Courts

The County Court and eleven Town and Village Courts ("justice courts") comprise the entirety of courts in Schuyler County with jurisdiction over criminal matters. The courts located in Watkins Glen, Hector, and Montour Falls are the busiest courts. Additionally, due to the influx of tourism, the volume of cases rises significantly during the summer months.

Schuyler County Providers of Mandated Representation

There are two providers of mandated representation in Schuyler County: a Public Defender Office and a Conflict Defender. The Public Defender Office consists of the Public Defender, Wesley Roe, and two staff attorneys, one who is full-time and one who is part-time. The Conflict Defender Office consists of a single part-time attorney, Jessica Saks. Schuyler County

attorney to rotate into this on-call system, thereby slightly easing the burden of this system on all staff attorneys.

does not have formal Assigned Counsel Program. Instead, the Public Defender Office coordinates the provision of assigned counsel.

Schuyler County Law Enforcement

There are at least four different law enforcement entities in Schuyler. These include the New York State Police, the New York State Park Police, the Schuyler County Sheriff's Department, and the Village of Watkins Glen Police Department. The Schuyler County Jail can house thirty people in five cell blocks, one detention cell, and one dormitory cell. The facility is staffed with seventeen full-time and ten part-time officers. The jail provides an overnight holding facility for off-hour arrests. The amount of time that the jail may hold a person in custody pending arraignment diminishes with the number of people arrested. Specifically, the jail can house one person for twelve hours, and two or more persons for a maximum of four hours.

II. CURRENT STATUS OF SCHUYLER COUNTY'S COUNSEL AT ARRAIGNMENT COVERAGE

County Court

The Schuyler County Court meets Monday through Friday during regular business hours. First appearance arraignments occur if there is a sealed indictment, which is rare. In the event of an arraignment on a sealed indictment, the County Court Judge would contact the Public Defender for assignment during regular business hours.

Town and Village Courts

The Public Defender Office currently provides first appearance coverage for all courts in Schuyler County between the hours of 8:30 am and 11:30 p.m., with the exception of justice court arraignments of defendants issued appearance for regularly scheduled "non-DA night" court sessions. Public Defender Wesley Roe and full-time Assistant Public Defender Matthew Hughson share responsibility for conducting arraignments during regular business hours (up until 5:30 p.m.). Mr. Hughson's position was expanded from part-time to full-time through an ILS Counsel at First Appearance grant.¹⁸ A third part-time attorney funded by an ILS Upstate Caseload Relief grant provides coverage of arraignments conducted during regularly scheduled "DA night" court sessions and unscheduled "off-hour" arraignments that occur between 5:30 pm and 11:30 pm.

According to Public Defender Wesley Roe, he initiated his arraignment program by notifying all justice court magistrates and requesting that they notify his office of arraignments. He provided the magistrates with a cell phone number. Since the program's inception, Mr. Roe has found that most of the magistrates do notify his office of an arraignment. The magistrates are instructed to call the Public Defender Office during business hours, and a cell phone after regular business hours. After the arraignment, the case remains with the attorney who covers that particular court, thereby allowing for vertical representation.

¹⁸ This grant has also been used to upgrade a legal secretary position in the Public Defender Office to assist with data collection.

The Public Defender's Office is not able to provide coverage of arraignments during weekends or during overnight hours on weekdays. However, Schuyler County has recently obtained the necessary authorization for an overnight holding facility for defendants who are arrested after 11 p.m. and detained. This facility has eliminated the need for coverage of most overnight arraignments. Additionally, although Schuyler County's program does not currently cover arraignments for appearance tickets on "non-DA nights" in the justice courts, Public Defender Wesley Roe has worked with and recently received assurances from the Schuyler County Sheriff and the Village of Watkins Glen Police Department that they will issue appearance tickets only for the justice court "DA nights," and not the "non-DA nights." Additionally, during an October 19, 2015 conference call, counsel for the New York State Police, the Department of Environmental Conservation, and the New York State Park Police, expressed their willingness to work with ILS and Schuyler County (as well as other counties) to issue appearance tickets for "DA nights."¹⁹ ILS is in the process of working with these law enforcement agencies to implement a process of issuing appearance tickets for these specific justice court sessions. Until this is finalized, however, there will be occasional arraignments that occur during regularly scheduled "non-DA night" court sessions without the presence of a defense attorney. Once this is finalized, ILS will monitor the extent to which this system works and the extent to which, if at all, there are sporadic arraignments that occur during "non-DA night" court sessions.

III. EXISTING GAPS IN ARRAIGNMENT COVERAGE

Despite Schuyler County's efforts to ensure representation at all arraignments, the following gaps in coverage persist:

- a) Arraignments that occur on weekends
- b) Until all State law enforcement agencies develop a system for issuing appearance tickets for DA nights only, arraignments that occur on regularly scheduled "non-DA" nights for appearance tickets issued by these State law enforcement agencies.

Schuyler County's current coverage depends upon the ability of the Schuyler County Sheriff's Department to hold those individuals who are arrested and detained overnight (after 11 p.m. and prior to 8:30 a.m.) for morning arraignments. As previously stated, there is a limit to how many defendants the Sheriff's Department can hold overnight. As a result, overnight arraignments do occur, although very infrequently. Schuyler County will continue to work with the Sheriff's Department to increase the number of people who can be held overnight when necessary pending arraignment the following morning so that no overnight arraignments occur.

IV. COSTS OF FULL ARRAIGNMENT COVERAGE IN EXISTING COUNTY SYSTEM

¹⁹ This call was initiated by the Office of Counsel for Governor Cuomo as a means of implementing a systemic change that could allow for the presence of defense counsel at arraignments in an efficient and cost-effective manner.

As previously stated, Schuyler County has been able to achieve its current coverage of arraignments through ILS Counsel at First Appearance and Upstate Caseload grants. This funding will need to continue to ensure full coverage of arraignments. In addition, the following is needed to ensure full arraignment coverage in Schuyler County:

A. Arraignments that occur on weekends and holidays

To cover weekend and holiday arraignments, Schuyler County would need to establish an on-call program. The on-call attorney would be available from 9 a.m. to 9 p.m. to cover arraignments. (Those arrested after 9 p.m. are being held until morning for arraignment which eliminates the need for attorney coverage between 9:00 p.m. and the morning.) The on-call attorneys would be paid \$200 per day. Notification would occur by way of the County's dispatch system notifying the on-call attorney, with courts also calling to confirm attorney notification. The on-call attorney would have an office cell phone, just like the current Public Defender Office attorney who provides on-call coverage on weekday nights.

Mr. Roe has explored this option with his staff, who are interested in participating in this on-call program. To sustain the program and prevent "burn-out" he would also recruit attorneys from Schuyler County's assigned counsel panel to participate in the program as needed.

The cost of this on-call program is as follows:

- \$400 a weekend (\$200/ day) and holidays for the on-call attorney = \$25,600
- Cell phones and mileage reimbursement = approximately \$4,400

Total: approximately \$30,000

B. Arraignments that occur on regularly scheduled "non-DA nights" for appearance tickets issued by the New York State Police or the New York State Park Police

If New York State law enforcement agencies had not expressed a willingness to issue appearance tickets for DA nights only, Schuyler County would have had to fund additional staff for the Schuyler County Public Defender office to cover "non-DA night" justice court sessions in addition to the DA night sessions, which would have nearly doubled the court appearances at which the Public Defender's Office must appear. Schuyler County had estimated that doing so would have required the Public Defender's Office to be staffed by an additional full-time attorney and a part-time attorney at an estimated cost of \$161, 000 for the first year, with a 4% raise for subsequent years. This does not include the costs for space, computer equipment, and other supplies, which are not yet calculated.

C. Total cost of full arraignment coverage

Given the above, the total costs of full coverage of all arraignments in Schuyler County are estimated to be as follows:

Weekend and holiday arraignments: \$ 30,000

This cost, as well as the cost Schuyler County would have incurred had State law enforcement agencies not expressed a willingness to issue appearance tickets for "DA-nights," are reflected in a Chart that identifies the full costs of arraignment coverage for all Five Counties. This chart is attached as Exhibit C.

V. ALTERNATIVES

The \$161,000 set forth to provide coverage for non-DA night sessions will likely be unnecessary as a result of the agreement of all law enforcement agencies that operate in Schuyler County, including the State law enforcement agencies, to work with Schuyler County and ILS on developing a system for issuing appearance tickets for DA-nights only. Going forward, ILS will monitor how well this system is working, whether or not there are still appearance tickets being issued for non-DA night court sessions, and the extent to which the program impacts court scheduling of DA-nights.

VI. INTERIM PLAN FOR ALLOCATION OF THE SETTLEMENT'S \$1 MILLION.

ILS has decided that money set forth in the Settlement for Counsel at Arraignments should be used to fully fund the development of an on-call program for covering arraignments on weekends and holidays, at the estimated cost of **\$30,000**.

Suffolk County

I. SUFFOLK COUNTY OVERVIEW

Suffolk County is located on Long Island and is the easternmost county in New York State. Its county seat is Riverhead, New York. The eastern end of the County contains large bays and splits into two peninsulas, known as the North Fork and the South Fork. Geographically, it is the second largest county in New York State, measuring approximately 86 miles in length and 46 miles in width. The western part of the County (the “West End”), is somewhat more urban than the eastern portion of the county (the “East End”). However, the East End draws more tourists and seasonal workers, and therefore experiences a significant increase in population during the “in-season,” which runs from about mid-May to mid-September.

The county’s current population is estimated at approximately 1,502,968, making Suffolk County the fourth most populated county in New York State and the most populated county outside of New York City. Median household income in 2013 was reported to be \$87,763 compared to New York State’s median income of \$58,003. Persons below the federal poverty level guidelines was reported at approximately 6.4% in comparison to New York State’s overall estimate of 15.3%.

Suffolk County is comprised of 10 towns and 33 villages.

Suffolk County Courts

The Suffolk County Supreme Courts are located in two locations: Riverhead and Central Islip. The Suffolk County District Court is located in Central Islip and retains jurisdiction over criminal matters in Suffolk County’s five West End towns.²⁰ The Suffolk County Court located in Riverhead adjudicates criminal prosecutions of both felonies and lesser offenses committed within the County, although in practice most minor offenses are handled by the town and village courts (justice courts). There are over 30 justice courts located throughout Suffolk County.

Suffolk County Law Enforcement

Suffolk County has several law enforcement agencies. Law enforcement services in the five West End towns are provided primarily by the Suffolk County Police Department. The five East End towns as well as a number of villages maintain their own police departments. All state parkways in Suffolk County fall under the jurisdiction of Troop L of the New York State Troopers and all rail lines are policed by the Metropolitan Transportation Authority Police. In addition, all Suffolk County at Stony Brook University campuses are supervised by the New York State University Police.

²⁰ The Suffolk County District Court was created in 1964 by way of the New York State Uniform District Court Act, which transferred authority from the five West End towns to the District Court and provided for the creation of facilities for the District Court.

The Suffolk County Sheriff's Office oversees the Suffolk County Correctional System, which is one of the largest jail systems in New York State. The Sheriff's Office is responsible for overseeing the security and operations of the Suffolk County correctional facilities which include the Central Islip Facility (a maximum/medium security facility), the Riverhead Facility (which holds 769 cells and individuals with mental observation and segregation), the Yaphank DWI Alternative Facility (with 54 beds in modular trailers used to house recidivist DWI/Substance abuse offenders) and Yaphank Facility (a smaller facility with 504 beds for men in a dormitory style housing unit). The four facilities can hold up to a maximum population of 1732 incarcerated individuals. The Sheriff's Office is also responsible for providing county courthouse security, as well as having other law enforcement duties including securing all county-owned buildings and policing the Suffolk County Community College.

Suffolk County Police Marine Bureau and the U.S. Coast Guard patrols most of the navigable waterways in conjunction with several local marine patrol and peace officers who are responsible for securing the beaches and surrounding waterways.

Suffolk County established a Criminal Justice Coordinating Council (CJCC) in 1974 to direct and manage the acquisition and allocation of criminal justice related resources to better address the needs of local criminal justice agencies and local governments within the County. The CJCC also serves as the local "Alternative to Incarceration" (ATI) Advisory Board and as the administrative body for the Suffolk County Reentry Task Force, both of which are funded by the Division of Criminal Justice Services. Members of the CJCC include: Sheriff Vincent DeMarco; County Executive Steven Bellone; Administrative Judge Randall Hinrichs; Supervising Judge of District Court, Judge Glenn Murphy; Legal Aid Attorney-in-Charge, Robert Mitchell; County Attorney, Dennis Brown; and a Suffolk County Bar Association Representative. Notably, most of these individuals have been involved in the meetings with ILS to address arraignment coverage and quality enhancement issues.

Suffolk County Providers of Mandated Representation

Suffolk County has two providers of Mandated Representation: The Legal Aid Society of Suffolk County (LAS) and an Assigned Counsel Program. LAS includes a staff of almost seventy-five (75) attorneys in the Criminal Division alone. Robert Mitchell is the Attorney-in-Charge of LAS, and Laurette Mulry is the Assistant Attorney-in-Charge. The LAS also staffs a unit of appellate attorneys, social workers, several bilingual attorneys, and an immigration attorney. Attorneys are situated in the LAS Central Islip and Riverhead offices. Suffolk County's Assigned Counsel Program is supervised by David Besso. Mr. Besso is a private attorney who serves as the Assigned Counsel Program Administrator on a part time basis. He currently oversees a panel of approximately 175 attorneys.

II. CURRENT STATUS OF SUFFOLK COUNTY'S COUNSEL AT ARRAIGNMENT COVERAGE

Because there are distinct differences between arraignment coverage on the West and East Ends of Suffolk County, this report discusses these two sections of the County separately.

The Status of Counsel at Arraignment in the West End

The vast majority of West End arraignments are conducted in the District Court located in Central Islip, NY. The District Court has two types of arraignments. The first is arraignments of people who are arrested and detained. These arraignments occur in Part D-11.²¹ The second is the arraignments of people who are arrested and issued appearance tickets. These arraignments occur in the Street Appearance Part of District Court. In addition to these District Court arraignments, some village courts also conduct arraignments during regularly scheduled court day and evening sessions.

District Court: Part D-11

The Assigned Counsel Panel and the LAS cover all of these regularly scheduled arraignments. Arraignments are held during regular business hours in D-11 each day of the week, including Saturdays and Sundays. Individuals arrested after regular business hours are detained and arraigned the next morning in Part D-11. The Assigned Counsel Program (ACP) has contracted with three panel attorneys to provide representation at arraignments each day of the week in Part D-11. ILS Distribution #5 funds one of these ACP attorneys and ILS Counsel at First Appearance grant covers a second attorney to staff D-11 arraignments.

District Court: SAP

Arraignments of non-detained individuals occur in the District Court's "Street Appearance Part" (SAP). SAP arraignments occur only during regular hours on weekdays. The Assigned Counsel Program has two panel attorneys on contract to provide representation at SAP arraignments. ILS Distribution #5 will be used to continue the funding of this program.

West End Village Court Arraignments

The LAS has traditionally covered all West End village court arraignments, including day and evening courts. LAS does so using the attorneys who are assigned to these village courts and regularly staff all scheduled court sessions.

Assuming that funding will continue to be provided to support the arraignment attorneys assigned to cover Part D-11 and the SAP in District Court, no additional funding is required to address arraignments in the West End of Suffolk County.

The Status of Counsel at Arraignment in the East End

While Suffolk County has accomplished full arraignment coverage in the West End, it has not been able to do so in the East End. Currently, the East End arraignment coverage is as follows:

²¹ "Part D-11" refers to the District Court room number – D-11 – where these arraignments occur.

Riverhead and Southampton Town Courts

Riverhead and Southampton Town Courts are the highest volume courts, handling a significant majority (approximately 70%) of all of the East End arraignments. The Legal Aid Society has traditionally assigned attorneys to provide arraignment coverage in these two justice courts. The LAS attorney calls the court on weekday mornings to see if there are any scheduled arraignments. In addition, the LAS attorneys are on-call during regular business hours for any arraignments that occur outside of a regular court session. Attorneys are notified of such arraignments by the court, via a text message or phone call. Both justice courts are located close to the LAS office, so once notified of an arraignment, the two attorneys are able to get to court quickly. Arraignments that occur after business hours or on weekends are not covered by this program.

Southold and East Hampton Town Courts

Using funding from an ILS Counsel at First Appearance grant, LAS has expanded the above arraignment program to Southold and East Hampton Town Courts, hiring two full time attorneys to cover all arraignments conducted on weekdays during regular business hours. Arraignments that occur after business hours or on weekends are not covered by this program.

III. EXISTING GAPS IN ARRAIGNMENT COVERAGE

Though Suffolk County has been able to achieve full coverage throughout the courts in the West End and during the weekdays for four of the nine East End justice courts that need coverage, Suffolk currently has the following gaps in East End coverage:

- a) Weekday coverage for five of the East End justice courts that currently do not have such arraignment coverage (Shelter Island Town, Southampton Town, Quogue Village, Sag Harbor Village, and Westhampton Beach Village).
- b) Weekend and holiday coverage for all nine of the East End justice courts (Town of Riverhead, Town of Southampton, Town of Southold, Town of East Hampton, Town of Shelter Island, Village of Quogue, Village of Sag Harbor, and Village of Westhampton Beach).

IV. COSTS OF FULL ARRAIGNMENT COVERAGE IN EXISTING COUNTY SYSTEM

As previously stated, both the Legal Aid Society and the Assigned Counsel Program in Suffolk County have been able to provide the current level of arraignment coverage with the assistance of funding from ILS, including an ILS Counsel at First Arraignment grant and funding from non-competitive Distribution #5. This funding must continue to support current arraignment coverage. In addition, closing the two gaps in East End arraignment coverage would require the following:

A. Weekday coverage for the five East End justice courts that currently do not have arraignment coverage.

The Legal Aid Society has carefully reviewed its current staffing pattern as well as staff and justice court schedules and has determined that it cannot provide weekday arraignment coverage with its current staff. However, the Legal Aid Society believes that it can extend its current weekday coverage program for five of the nine East End justice courts by adding two additional full time staff attorneys to its staff.

Legal Aid Society sets the cost of two additional staff attorneys as follows:

- 2 staff attorneys at a base salary of \$55,000 each	\$110,000
- Fringe for two staff attorneys (at \$18,050 each)	\$ 36,100
- Cost of "other than personal services" for 2 staff attorneys	\$ 18,900
- Mileage reimbursement of up to 14,430 miles at \$0.56 per mile	\$ 8,080

Total: **\$173,080**

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

Providing representation at weekend and holiday arraignments for all nine East End justice courts will be far more complicated and costly. Coverage is complicated by these factors:

Geography

It is often difficult to travel to the East End because Suffolk County is 86 miles long, and the East End is essentially divided into two peninsulas. Travel is complicated by the seasonal population flux, discussed below.

Population flux during the seasons

The East End's population swells during the "in season," months. A survey of the East End justices reveals that there are significantly more arrests and arraignments during the "in season." To complicate matters, there is much more traffic congestion during the in-season, making it even more difficult to travel.

Attorney availability

There is not a significant number of attorneys who practice on the East End because of its fluctuating population and high living expense.

These obstacles notwithstanding, Suffolk County has identified two alternative means of providing representation at arraignments that occur on weekends and holidays in all of the East End justice courts.

- 1) Contract with a pool of private attorneys to provide arraignment coverage in East End justice courts on weekends and holidays.

Suffolk County could use attorneys from the private bar to develop an on-call program of eight attorneys to contract with the County to provide cover arraignments in all nine East End justice courts on weekends and holidays. This coverage option would involve the County putting out a Request for Qualifications (RFQ) to the private bar to solicit bids for covering arraignments in specific East End courts (the attorney would identify which courts they can cover). The RFQ would enumerate the scope of services attorneys would need to provide, including the days and expected hours, what is required during and after arraignments, reporting requirements, record keeping, and the necessary attorney qualifications. The Suffolk County Bar Association would mail information about the RFQ directly to its members, and the County would advertise it in five popular East End newspapers.

Though it is anticipated that there will be some differences in what attorneys who respond to the RFQ will propose in terms of costs, the County anticipates being able to establish a uniform fee schedule, which will then be incorporated into the final contract. From this RFQ process, eight attorneys will be selected to contract with the County.²² Four East End towns will have two attorneys each designated to provide arraignment coverage in the village and town justice courts in that Town.²³ Justice court magistrates will be given names and contact information for the two designated attorneys. If need be, and to provide back-up in case the two designated attorneys are not available, magistrates will be given names and contact information for all eight attorneys.

To provide oversight, supervision, and administrative support, the Assigned Counsel Program will handle the administrative function of this program. The County, which commonly uses the RFQ process to solicit bids for services to be provided to its law department, estimates that the RFQ process would take about two months.

Suffolk County has not calculated the specific costs of this program, and in fact, cannot do so until completion of the RFQ process. Nonetheless, the County estimates that the program would not cost more than \$400,000 per year, including attorney contract costs and administrative costs. Suffolk County held a meeting on September 15th in Riverhead with private bar attorneys to discuss this program, and from this meeting concluded that there is sufficient interest amongst private attorneys to proceed with in this program.

Estimated Cost:

\$400,000

- 2) Provide the Legal Aid Society funding to compensate its existing staff to cover East End justice court weekend and holiday arraignments.

The Legal Aid Society could rely on its existing staff attorneys to provide weekend and holiday arraignment coverage in the nine East End justice courts. LAS' four criminal bureaus alone include 73 staff attorneys, while the remaining bureaus (Family Court and Children's Law) brings this number of attorneys up to about 100. These numbers should

²² Each response to the RFQ will be evaluated on its merits (likely by an evaluation panel).

²³ This proposal does not include the Town of Shelter Island.

be sufficient to staff the type of on-call program that would be needed to cover East End justice court weekend and holiday arraignments. To the extent possible, preference would be given to using those staff attorneys from the LAS' East End Bureau, since these attorneys would be the ones handling the cases after the arraignment.

This approach would require compensation for the staff attorneys who participate in this program, just as the LAS staff attorneys who cover West End District Court arraignments are compensated for working weekends and holidays. The West End staff attorneys who work weekend and holidays are compensated though "comp time." Unfortunately, the Legal Aid Society would not be able to use "comp time" to compensate attorneys who cover East End arraignments on weekend and holidays. Doing so would generate the accumulation of too much "comp time," which would adversely impact the LAS' ability to provide representation during the regular work week. Accordingly, LAS attorneys who participate in the East End weekend and holiday arraignment program would have to be financially compensated.

The costs of such a program would have to account for: 1) nine attorneys providing 351 days of coverage from the third week of May through the second week of September (in-season); 2) six attorneys providing 462 days of coverage from the third week of September through the second week of May ("off-season"); and 3) two on call attorneys providing 232 days of coverage for off-hour arraignments (or those that occur outside of a court's scheduled weekend or holiday session).

- 9 attorneys providing 351 ²⁴ days of in-season coverage:	\$140,400
- 6 attorneys providing 462 ²⁵ days of off-season coverage:	\$184,000
- Mileage (estimated 34,698 miles)	\$ 19,430
- 2 attorneys on-call 232 ²⁶ days	\$ 92,800
- Mileage for on-call attorneys (11,684 miles)	\$ 6,543
Total Costs:	\$443,974

C. Total costs of full arraignment coverage in Suffolk County

Based on the foregoing, the total costs of full arraignment coverage in Suffolk County is estimated to be:

Weekday coverage for the five East End justice courts =	\$173,080
Weekend and Holiday coverage for 9 East End justice courts =	\$400,000 – \$443,974
Total:	\$573,080 - \$617,054

²⁴ There are 18 weekends, and thus 36 weekend days, and 3 holidays during the in-season. This is a total of 39 days that need coverage. 39 days times nine attorneys is 351 days.

²⁵ There are 34 weekends, and this 68 weekend days, and 9 holidays during the off-season. This is a total of 77 days that need coverage. 77 days times the six attorneys is 462 days.

²⁶ These attorneys would be on-call 116 days each year (all 104 weekend days plus the 12 holidays). 116 days times the two attorneys needed to be on-call is 232 days.

V. ALTERNATIVES

The total costs above would be necessary to provide for full arraignment coverage given Suffolk County's current law enforcement and justice court system. There are concerns about the feasibility and sustainability of each of the possible attorney on-call programs to cover East End weekend and holiday arraignments.²⁷

There are some systemic changes that could dramatically diminish the cost of full arraignment coverage and promote a more sustainable system for arraignments. These include the following:

Centralize East End Justice Court Arraignments

The most effective and efficient means to ensure representation at all arraignment is for the East End to centralize arraignments by establishing a single location for arraignments, much like what has been accomplished in the West End of Suffolk County. Doing so would allow the Legal Aid Society and/or the Assigned Counsel Program to cover East End arraignments simply by ensuring that there is always an attorney available at the single location, thereby diminishing the number of people and hours needed to cover arraignments.

Adopt a "cut off" system

The concept of "cut off" means that a person arrested for an offense and taken into custody after a specified time of day (i.e., after the court has finished its regularly scheduled court session) would be held until the following day for arraignment. This would result in all arraignments occurring during regular court hours, thereby ensuring that there are no "off hour" arraignments that occur without a defense attorney being present.

The legal, fiscal, and practical implications of these alternatives are discussed further in this Plan.

VI. INTERIM PLAN FOR ALLOCATION OF THE SETTLEMENT'S \$1 MILLION.

After consultation with the parties, including Suffolk County, ILS has decided that the Settlement's \$1 million will be allocated to Suffolk County as follows:

A. Weekday coverage for the five East End justice courts that currently do not have arraignment coverage

This program will be fully funded. Doing so will expand the arraignment program that the LAS developed through ILS Counsel at First Appearance grant funding in the four busiest East End justice courts.

²⁷ For example, the Legal Aid Society has referred to such an on-call program as a "fragile systems" and encouraged adoption of more efficient, less-costly, and less-fragile systemic changes.

Cost: **\$173,080**

B. Weekend and holiday arraignments in the nine East End justice courts

Because there is not enough money to fully fund either on-call proposed program, the contract-attorney program will be partially funded to establish an on-call pilot program that will provide coverage for the two busiest East End courts: Riverhead and Southampton Town Courts. Based on their data, the LAS estimates that covering these two courts will address about 70% of all the arraignments conducted in all nine of the East End Justice Courts. Developing a pilot program will have the added benefit of addressing some of the issues that emerged during our discussions with Suffolk County on this issue, including the following: Are there enough private attorneys in the East End who are qualified and interested in doing this work on weekends and holidays? How many attorneys would be needed to provide arraignment coverage to the East End courts? What is a reasonable compensation that would maintain a pool of attorneys without “burn-out”? What days need the most coverage? Are there days when coverage is not needed?

In our discussions, Suffolk County estimated that the cost of providing coverage for the two busiest East End courts, Riverhead and Southampton Town Courts, will be \$160,000. This includes the costs of contracting with four attorneys (two for each court), as well as administrative costs. As with the above proposal, the County will initiate this program by issuing an RFQ to solicit bids from attorneys who are interested in covering weekend and holiday arraignments, developing a process to review the bids submitted, establishing a uniform fee schedule, and then selecting and contracting with four attorneys to participate in this program.²⁸

Costs of partially funding this program: **\$160,000**

C. Total proposed funding to Suffolk County from the Settlement’s \$1 million

In total, Suffolk County will receive the following of the Settlement’s \$1 million:

Regular sessions of 5 East End courts not currently covered =	\$173,080
Weekend and holiday arraignments =	\$160,000
<u>Total:</u>	<u>\$333,080</u>

²⁸ As of the writing of this Plan, Suffolk County has released the RFQ through the Suffolk County Bar Association, with questions by applicants due by October 30, 2015 and responses to the RFQ due on November 13, 2015. At that point a Bar Association committee will review the applications, which will include interviewing applicants. Suffolk County predicts that the program can start around February 1, 2016.

Washington County

I. WASHINGTON COUNTY OVERVIEW

Washington County is a geographically long, narrow county located in the northeastern section of New York State. The County is approximately 60 miles long and 20 miles wide with a total area of 846 square miles, of which 831 square miles is land and 15 square miles is water. It is known for its rich valley farm land and is part of the Great Appalachian Valley which is a long narrow valley strip between mountain ranges. Washington County transitions from the Taconic Mountains to the Adirondack Mountains, and from the Lake Champlain Valley to the Hudson River Valley. The eastern boundary of Washington County is the New York-Vermont border, part of which is Lake Champlain. The northern end of the county is part of the Adirondack Park. Western boundaries include primarily the Hudson River and Lake George. Nearly half of its borders are long bodies of water.

In 2013, Washington County's population was estimated to be approximately 63,000. Approximately 95% of Washington County's population is White, while the remaining 5% is evenly split between African Americans and Latinos. In 2013, Washington County's median household income was reported to be \$52,361, which is lower than state-wide median income of \$58,003. Persons reported to be below the federal poverty level guidelines was 13.2% in comparison to New York's overall estimate of 15.3%.

Washington County is governed by an eighteen member Board of Supervisors, which appoints a County Administrator and County Attorney. The County Administrator is Kevin Hayes, and the County Attorney is Roger Wickes. Mr. Hayes has announced he will retire at the end of 2015.

Washington County Courts

The Washington County court system consists of its County Court and 24 Town and Village Courts ("justice courts"). The justice courts of Fort Edward, Hudson Falls, and Kingsbury have the greatest volume of cases.

Washington County Providers of Mandated Representation

There is one institutional provider of mandated representation in Washington County: the Washington County Public Defender Office, which is staffed by its full time Public Defender, Michael Mercure, and 7 part-time attorneys. In September, 2015 the Public Defender Office transitioned three of its part-time staff attorneys to full-time status, so there is a full-time Public Defender, three full-time staff attorneys, and four part-time staff attorneys. Washington County does not presently have a formal Assigned Counsel Program. Instead, the Public Defender Office coordinates the provision of assigned counsel to approximately fifteen private attorneys in the County who are willing to accept criminal defense assignments. Washington County is in the process of establishing a separate Assigned Counsel Program to be headed by Maria DeCarlo, who is currently the Executive Assistant in the Public Defender's Office.

Washington County's Law Enforcement Authorities

There are approximately 7 different law enforcement entities in Washington County. These include the New York State Police, the Washington County Sheriff's Department, and local police departments in Hudson Falls, Fort Edward, Cambridge/Greenwich, Whitehall, and Granville. The Washington County Sheriff's Department runs the Washington County Jail, which is located Fort Edward and is part of the Court Complex. The facility has the capacity of 179 beds and holds both males and females.

II. CURRENT STATUS OF WASHINGTON COUNTY'S COUNSEL AT ARRAIGNMENT COVERAGE

County Court

The Washington County Court meets Monday through Friday during regular business hours. First appearance arraignments occur if there is a sealed indictment, which is rare. In the event of an arraignment on a sealed indictment or return on a warrant, the County Court Judge would contact the Public Defender for assignment during regular business hours.

Town and Village Courts

The Public Defender Office currently has limited capacity to cover arraignments, and as a result, coverage is inconsistent. Mr. Mercure reports that with his current staffing pattern (which was, until recently, entirely part-time), the Public Defender Office is able to often provide representation at regularly scheduled "DA-night" court sessions, but only able to sporadically provide representation at the scheduled "non-DA night" sessions. With regard to off-hour arraignments (any arraignment that occurs outside of a regularly scheduled court session), the Public Defender's Office provides representation only when contacted by the justice court magistrate, which tends to happen only when the defendant faces serious charges.

Mr. Mercure has identified a number of issues with providing full arraignment coverage, including the following:

Facilities

Only one local court, Hudson Falls, has a holding facility.

Geography

Washington County's large size and isolated, rural geography present key logistical obstacles. First, there are justice courts in Washington County that do not have attorneys who reside in close proximity and thus, wait times for attorneys to appear might be lengthy. Second, some of the justice courts are so isolated that they do not even have cellphone coverage, though all of justice courts have land-lines.

Attorney availability

Washington County does not have a large pool of attorneys. As noted above, the Public Defender Office employs only eight attorneys and there are only about 15 attorneys willing and able to take Assigned Counsel criminal cases.

III. EXISTING GAPS IN ARRAIGNMENT COVERAGE

As stated above, Washington County currently provides only sporadic representation at arraignments in regular sessions of the County's 24 justice courts. This coverage is most consistent during regular court sessions that are designated as "DA-night" sessions, while scheduled "non-DA nights" are covered far less frequently. There is even less frequent representation at arraignments that occur outside of a court's regular session ("off-hour" arraignments).

Washington County is the only one of the Five Counties that did not apply for ILS funding to implement a Counsel at First Appearance program.

IV. COSTS OF FULL ARRAIGNMENT COVERAGE IN EXISTING COUNTY

Below is a plan for full coverage of Washington County arraignments:

A. Full coverage of regularly scheduled justice court sessions and full coverage of "off-hour" arraignments that occur during regular business hours

Washington County's change to its staffing pattern (transitioning three part-time staff attorneys to full-time status) will help promote better coverage at regularly scheduled "DA-night" court sessions. Doing so will also enable the Public Defender Office to cover some of the off-hour arraignments that occur during regular business hours, though having only 4 full-time attorneys will not be enough to ensure full coverage of these arraignments. To address these gaps, Washington County proposes the following:

1. Regularly scheduled court sessions: non-DA nights

Washington County has worked closely with its District Attorney, J. Anthony Jordan, who has agreed to instruct all of the local law enforcement agencies operating in Washington County to issue appearance tickets only for regularly scheduled "DA-night" court sessions. In addition, and as stated previously, State law enforcement agencies have agreed to work with ILS and the counties to issue appearance tickets for DA night court sessions only.

Assuming that all law enforcement agencies involved consistently issue appearance tickets only for DA nights, it will not be necessary to have defense attorneys present at non-DA night court sessions. Going forward, ILS will monitor the extent to which law enforcement are complying with the requests to issue appearance tickets for DA night court sessions and the impact of having more arraignments during the DA-night court sessions. If ILS discovers that this system is not working as planned, we will identify the costs needed to have defense counsel present at non-DA night court sessions.

2. Off-hour arraignments that occur during regular business hours

Ensuring the availability of Public Defender staff to cover all off-hour arraignments that occur during regularly business hours could be accomplished by transitioning an additional Public Defender staff attorney from part-time to full-time. These costs would be as follows:

- Cost of salary increase from part to full time:	\$14,697
- Cost of fringe benefits:	\$32,065
Total:	\$46,762

B. Coverage of evening, overnight, weekend and holiday arraignments

Washington County would need to develop and implement an on-call program to cover overnight, weekend, and holiday arraignments. As envisioned by Washington County, this program would utilize a single pager/cell phone number that law enforcement and magistrates would use to notify the on-call attorney of the arraignment. The attorneys participating in the on-call program would be responsible for arraignments that occur during holidays, weekends, and weekday nights (4:30 p.m. to 8:30 a.m. the following days). In addition to the on-call attorney, there would be a stand-by attorney who would be available if the on-call attorney has already been called to conduct an arraignment in another part of the County. Each attorney participating in this on-call program would be on-call approximately once every twelve weeks, and on stand-by status once every twelve weeks as well. Washington County anticipates that for this system to work, there will need to be twelve attorneys involved. All eight of the Public Defender Office attorneys would be required to participate. The County would need to recruit four additional attorneys from the private bar.

Both the Public Defender and the private bar attorneys will be paid a weekday stipend of \$100 per day to be the on-call attorney, and \$50 to be the stand-by attorney. On weekends and holidays, the stipend would be \$200 per day for on-call status and \$100 per day for stand-by status. Attorneys would also receive mileage reimbursement, and the Public Defender staff attorneys would receive 25% fringe. In addition to this stipend, the private bar attorneys would be paid \$75 per hour when called upon to conduct an arraignment.

Mr. Mercure estimates that there will be an average of three calls per night. The following cost estimates are based on this average:

Stipend Costs (assuming December 31, 2015 to January 1, 2017)

The weekday daily per diem costs are \$150 (\$100 for the on-call attorney and \$50 for the stand-by attorney) and weekend and holiday daily per diem costs are \$300 (\$200 for the on-call attorney and \$100 for the stand-by attorney). Dec.21, 2015 to January 1, 2017 includes 368 calendar days (250 business days, 53 Saturdays, 53 Sundays, and 12 holidays). The per diem costs therefore are as follows:

250 x \$150 =	\$37,500
53 x \$300 =	\$15,900

53 x \$300 = \$15,900
 12 x 300 = \$ 3,600
 Sub Total = \$72, 9000

\$72,000 x .25 = \$18,225²⁹
\$72,900 + 18,225 = \$ 91,125

Mileage

The Washington County mileage reimbursement rate is \$.45 per mile. It is estimated that there will be a minimum of 200 miles driven per day (on-call and stand-by mileage combined), which is \$90 per day.

\$90 x 365 = \$32,850

Hourly Pay for the Private Attorneys

As previously stated, the participating private attorneys will be paid \$75 per hour for each arraignment they conduct. It is estimated that there will be 18 weeks of the year that the on-call attorney will be a private attorney, and that these attorneys will be paid an average of \$375 per night for a total of \$2,625 per week. This estimate assumes an average of 2 arraignments per night, with 2.5 hours (including travel time) spent on each arraignment.

18 x \$2,625 = \$47, 250

There will also be an estimated 18 weeks per year that the stand-by attorney will be a private attorney. Assuming that this attorney conducts one arraignment per night, at 2.5 hours per arraignment, this will cost on average \$187.50 per night, or \$1,312.50 per week.

18 x 1,312.50 = 23,625

Other Costs

Communication equipment (pages/phone/computers):	\$12,000
Carrying costs (pagers and phones) and software:	\$ 5,000
Training	\$ 6,000
Total Cost of on-call program:	\$217,850

²⁹ ILS confirmed that the inclusion of this 25% fringe for the private attorneys is an inadvertent error; this fringe is intended only for arraignment stipends for the Public Defender Office staff attorneys.

C. Total cost of full arraignment coverage

Given the above, the total costs of full coverage of all arraignments in Washington County are as follows:

Off Hour Arraignments (business hours)	\$ 46,762
Evening, Overnight, Weekend, and Holiday Arraignments	\$217,850
<u>Total:</u>	<u>\$264,611</u>

These costs are reflected in a Chart that identifies the full costs of arraignment coverage for all Five Counties. This Chart is attached as Exhibit C.

ILS is concerned about the possibility of attorney “burn-out” that can result from this on-call program, particularly for the Public Defender Office staff attorneys. Because there are so few experienced criminal defense attorneys who live and practice in Washington County, the Public Defender Office staff attorneys will have to sacrifice their nights, weekends, and holidays two weeks per month to be on-call or on stand-by status. The stipends are not enough to compensate for that significant sacrifice. Better compensation for Public Defender Office staff attorneys is one step toward addressing that concern.

V. ALTERNATIVES

The total costs above would be necessary to provide for full arraignment coverage given Washington County’s current law enforcement and justice court system. Washington County should be credited for developing and implementing a less costly systemic change to promote full arraignment coverage – that is, having law enforcement issue appearance tickets for “DA sessions” of the justice court calendar. There are some additional systemic changes, however, that could allow for less costly alternatives. Preliminarily, these include the following possibilities:

- 1) Centralizing arraignments so that fewer courts are conducting them.
- 2) Establishing or using existing holding facilities for justice courts so that when it is inappropriate or not legally possible to issue an appearance ticket, the defendant can be held and arraigned at a morning arraignment session the following day.

The legal, fiscal, and practical implications of these alternatives are discussed further in this Plan.

VI. INTERIM PLAN FOR ALLOCATION OF THE SETTLEMENT’S \$1 MILLION.

The Settlement’s \$1 million allocated for Counsel at Arraignment is not sufficient to pay the total cost of arraignment coverage in any of the Five Counties. After consultation with the *Hurrell-Harring* parties, ILS has decided that Washington County should be allocated **\$194,829** of the \$1 million, to be spent as follows:

A. Full coverage of regularly scheduled justice court sessions and off-hour arraignments that occur during regular business hours

This program is to be fully funded. Doing so will not only provide coverage for unscheduled arraignments that occur during business hours, but it will also further professionalize the Washington County Public Defender Office by adding a fourth full-time staff attorney.

Cost of fully funding this program: \$46,762

B. Coverage for evening, overnight, weekend and holiday arraignments

ILS's preference is that this program be fully funded. However, because the Settlement's \$1 million for interim Counsel at Arraignment coverage is insufficient to do so, we have decided that this program be partially funded as a pilot program to allow for an on-call attorney, but not a stand-by attorney. We recognize that partially funding this program means that not all arraignments will be fully covered. Still, doing so will allow Washington County to at least develop a pilot on-call program that covers a significant percentage of arraignments and creates a structure for possible full coverage once additional funding is obtained. Additionally, by developing this pilot on-call program, Washington County will have an opportunity to see if any issues arise. For example, we are concerned that the stipends are too low to attract qualified attorneys who are willing to give up several weeknights and weekends each year. A pilot program will allow Washington County to determine if the stipends are sufficient, and if not, to determine a compensation rate that would draw qualified attorneys.

Partial funding for this program without the stand-by attorney position will cost as follows, assuming that the on-call attorneys respond to, on average, two arraignments per night:

Stipend Costs (one calendar year)

The weekday daily per diem cost is \$100, while the weekend and holiday daily per diem cost is \$200. A typical calendar year includes 365 calendar days (249 business days, 104 weekend days, and 12 holidays). The per diem costs therefore are as follows:

249 x \$100 = \$24,900
116 x \$200 = \$23,200
Sub Total = \$48,100
Stipend fringe for Public Defender staff = \$8,036³⁰

³⁰ As previously stated, including stipend fringe for the private attorneys was a mistake; only the on-call Public Defender Office staff receive fringe for stipends. Using the figures provided by Washington County for weekday and weekend fringe, and calculating 2/3 of this total fringe (because Public Defender Office staff will be on-call 2/3 of the time), we calculated a fringe for Public Defender staff to be on-call as \$8,036.

$$\$48,100 + \$8,036 = \$56,136$$

Mileage

The Washington County mileage reimbursement rate is \$.45 per mile. It is estimated that there will be a minimum of 132 miles driven per day (on-call) which is \$59.40 per day.

$$\$59.40 \times 365 = \$21,681$$

Hourly Pay for the Private Attorneys

As previously stated, the participating private attorneys will be paid \$75 per hour for each arraignment they conduct. It is estimated that there will be 18 weeks of the year that the on-call attorney will be a private attorney, and that these attorneys will be paid an average of \$375 per night for a total of \$2,625 per week. This estimate assumes an average of 2 arraignments per night, with 2.5 hours (including travel time) spent on each arraignment.

$$18 \times \$2,625 = \$47,250$$

Other Costs

Communication equipment (pages/phone/computers)	\$12,000
Carrying costs (pagers and phones) and software	\$ 5,000
Training	\$ 6,000

Cost of partially funding this on-call program: \$148,067

C. Total proposed funding to Washington County from the Settlement's \$1 million

The total for funding the above is from the Settlement's \$1 million is:

Regularly scheduled and unscheduled, business hour arraignments =	\$ 46,762
Coverage for overnight, weekend, and holiday arraignments =	\$148,067
Total:	\$194,829

Possible Systemic Changes to Facilitate Arraignment Coverage

There are a number of systemic changes which could, and in some instances already have, maximize representation at arraignment. Some are relatively simple while some are more complex and would likely require inter-municipality cooperation or statutory change. Going forward, the parties should consider these possible systemic changes as part of each of the Five Counties' multi-faceted plans for full arraignment coverage.

When integrated into a counsel at arraignment plan, these alternatives will both advance representation at arraignments and significantly reduce costs. The quality of representation will be enhanced as attorneys conduct more arraignments during standard working hours on a regular schedule, rather than at erratic appearances at late night hours. Moreover, several of these systemic changes involve centralizing arraignments, which would obviate the need for on-call systems. This would eliminate the enormous drain on attorney morale and productivity caused by the demands of being on-call to conduct off-hour arraignments. Tangible costs of on-call systems (including paying attorneys stipends and travel costs) will also decrease.

A. Use of Appearance Tickets

One of the most challenging issues in full arraignment coverage is providing defense counsel at off-hour arraignments. Off-hour arraignments are those which occur when a court is not in session, i.e., late at night, or for smaller courts, on days when the court does not have a scheduled session. Due to off-hour arraignments, comprehensive coverage all too frequently requires attorneys to appear late at night or early in the morning in geographically distant courts.

Expanded use of appearance tickets will ease these burdens. Appearance tickets are an authorized method of compelling an arrested individual's appearance (for misdemeanors and E felonies) which eliminates the need for law enforcement to immediately produce the individual to court for arraignment. *See* Criminal Procedure Law (CPL) §120.90(5) and CPL §140.20. **Use of appearance tickets should be the norm and not the exception.**

Nearly all local courts have a regularly scheduled "DA night," the criminal calendar court session at which a prosecutor is already scheduled to be present. Scheduling defense counsel to be present at just these scheduled sessions, rather than all scheduled court sessions, would halve the number of scheduled court sessions at which defense counsel must appear. Accordingly, ensuring that appearance tickets set arraignments for "DA night" will greatly facilitate counsel at arraignment. Uniform scheduling of arraignments for "DA night" is perhaps the easiest system change. It will promote a significant expansion of counsel at arraignment coverage in a fiscally responsible manner. As stated previously in this Plan, two counties – Schuyler and Washington – have already initiated use of "DA night" only appearance tickets to reduce the number of court sessions at which defense counsel must be present. In Schuyler County alone, it is estimated that this will save at least \$161,000.

Obtaining the participation of all law enforcement agencies is key to implementing this change. At the initiative of the Governor's Counsel's Office, ILS has discussed this issue with counsel for the New York State Police, the DEC, and the New York State Parks Department. Counsel for

these agencies have expressed their willingness to have their officers schedule arraignments set by appearance ticket for “DA night” when asked to do so. To insure that law enforcement is aware of the date and time of “DA night” for every court, a point person in each county will be designated as the contact for court schedules. Notably, 22 NYCRR 214.2(b) requires that justice court schedules be filed with the municipal clerk and with law enforcement agencies who regularly appear in that court.

In the counties which initiate the program of issuing appearance tickets for “DA nights,” ILS will monitor the impact of doing so on the local court calendars to determine whether the program overburdens court calendars for “DA night” court sessions.

B. Centralized Arraignments

Centralizing arraignments presents many logistical advantages for provision of counsel at arraignment and can be achieved in several different ways.

1. Arraignment in Adjoining Jurisdictions

The law permits defendants arrested without a warrant and accused of one or more misdemeanors and most E felonies to be arraigned in an “adjoining” municipality if a justice from the original municipality is “not available.” See CPL § 140.20(1) a-d.³¹ Defendants arrested pursuant to a warrant for any offense can similarly be arraigned in an “adjoining” municipality if a justice from the original municipality is “not available.” CPL § 120.90 (5). Bringing a defendant to an adjoining jurisdiction for arraignment is most often used by law enforcement for off-hour arraignments when a judge from the locale where the offense occurred is not available. In that situation, the arresting officer will contact judges from adjoining municipalities to conduct the arraignment.

Under CPL §120.90(5) and CPL §140.20, multiple adjoining jurisdictions can centralize off-hour arraignments by having participating municipalities agree to schedule all off-hour arraignments for their jurisdictions in specified locations on a rotating schedule. Justices from the non-arraigning jurisdictions would be deemed “unavailable” during their “off” periods.³² Implementation of this arrangement is straightforward and requires no statutory change. It can be accomplished informally, or the arrangement can be formalized by having municipalities enter into an inter-municipal agreement (IMA) pursuant to Article 5-G of the General Municipal Law. Formalized arrangements will better ensure the sustainability of such a centralized arraignment program.

³¹ Defendants who are arrested without a warrant for class A, B, C, or D felony offenses can be arraigned in any “town court or village court of a particular county” in which the offense occurred, as can defendants who are arrested for a violation of the following E felony offenses: Penal Law §§ 130.25, 130.40, 205.10, 205.17, 205.19, , 215.56. See CPL §§ 140.20(1); 100.55(6).

³² This is currently done informally in practice in several counties. A Westlaw search disclosed no case law that prohibits this practice; nor are there cases endorsing it.

Two relatively minor statutory changes would also broadly facilitate centralized arraignments. Uniform Justice Court Act (UJCA) §106, which prescribes the jurisdiction of justice courts, could be amended to allow all local court justices in each of the Five Counties to preside as a justice of his/her court anywhere in the county for the limited purpose of arraignments. This is currently the case in Onondaga, Rockland and Jefferson counties. UJCA §106 (6),(8) & (9). This more expansive form of centralized arraignment creates greater regularity and predictability of arraignments, thereby easing off-hour scheduling of defense counsel. By these reforms the presence of defense counsel at arraignments will be readily increased.

Further, CPL §120.90(5) and CPL §140.20 (1) could be amended to eliminate the requirement that when a justice is unavailable, law enforcement is limited to finding an “adjoining” jurisdiction in which to arraign defendants charged with certain offenses for warrantless arrests, (CPL § 120.40(1)) and all offenses for warrant arrests, (CPL § 120.90(5)). Doing so would allow for the centralization of more courts, not just those that adjoin each other. Eliminating the requirement that the arraignment occur in an adjoining municipality will considerably expand the number of available venues for arraignments. This will allow for even greater municipal cooperation and regularity of off-hour arraignments. As an example, eliminating the limitation as to where arraignments can be conducted would allow counties to designate certain courts as “on-call” arraignment courts, available to conduct all off-hour arraignments in the county. Depending on the county’s particular geography and off-hour arraignment needs, these “on-call” arraignment courts could rotate among all of the town and village courts in the county, or could be designated to specific courts to meet the off-hour arraignment needs of a particular geographic region of the county.³³

2. Arraignment by County Court Judge

Pursuant to CPL §10.20(3) a County Court judge may sit as a local criminal court justice and arraign defendants arrested in all municipalities in a county. *See also* CPL §100.55 (information and misdemeanor complaint may be filed with superior court); CPL §170.15(2) (superior court may arraign and remit to local court); CPL §180.20(2) (superior court may conduct felony arraignment instead of local court). When a County Court judge sits as a local criminal court judge, s/he does so only for limited purposes and does not retain general jurisdiction over those cases. *See* CPL §10.30 (superior court judge sitting as local criminal court has only preliminary jurisdiction over offense).

Having a County Court judge sit as a local criminal court judge for purposes of arraignment can significantly reduce logistical issues and costs in providing counsel at arraignment. These arraignment calendars are more easily staffed as they occur during regular court sessions in the county seat. As previously stated in this Plan, Ontario County utilizes this system, and an acting County Court judge conducts arraignments each morning for nearly all of the town and village courts in the county, enabling a staff attorney from the Ontario County Public Defender’s Office

³³ The Advisory Committee on Criminal Law and Procedure, a standing Committee of New York’s Chief Administrative Judge, is currently drafting legislation that would expand the preliminary jurisdiction of local criminal courts to allow designated courts to conduct county-wide arraignments. Under this proposal, courts would be designated on a rotating basis to meet the off-hour arraignment needs of the county and courts. ILS will monitor the development of this proposed legislation.

to be present. The ability to arraign defendants promptly on a consistent schedule in a single location avoids “unreasonable delay” in arraignment, and facilitates quality representation of the defendant as matters of travel, distance and off hour coverage are diminished.

3. Off Hour Cut-offs and Holding Cells

Two of the main challenges to ensuring defense counsel at every arraignment are off-hour arraignments and the availability of holding cells. In municipalities with holding cells and frequent or daily court sessions, an off-hour arraignment can be deferred and the arrested person detained until court convenes the next morning.³⁴ Holding cells are generally not available for most town and village courts, necessitating “off-hour” arraignments late at night or early in the morning. These off-hour arraignments are highly demanding of defense attorneys, as they require the implementation of attorney “on-call” programs so that attorneys are available on weekends, holidays, and overnights to be present at arraignments. These on-call programs not only require attorneys to be available during non-working hours, but they often involve significant travel around the county, which can be hazardous in the winter months. It is questionable how long providers of mandated representation can sustain such coverage without depleting staff morale and productivity. As this plan discusses, Ontario County Public Defender Leanne Lappe has stated that her office’s on-call program has adversely affected the morale of her staff attorneys, and she is worried that her more senior attorneys will leave the office for jobs that do not require them to regularly sacrifice their weeknights, weekends, and holidays.

Combining the availability of holding cells with a fixed cut-off time for off-hour arraignments will help streamline comprehensive counsel at arraignment coverage. This allows for some off-hour arraignments, without depleting staff stamina. For example, Ontario and Schuyler counties have a time certain after which off-hour arraignments are not be conducted. Individuals arrested after the cut off time are either issued appearance tickets or detained. Detained individuals are arraigned promptly with counsel the following morning.

Use of off-hour cut off times for arraignments may mean greater transportation expense for law enforcement. However, any such costs will likely be less than the funds required by public defenders and assigned counsel plans to fully staff and represent individuals at all off-hour arraignments.³⁵

One cost-efficient way to increase holding cells is made available by Correction Law §500-a, which prescribes the uses of county jails. Sixteen counties, including Onondaga and Ontario counties, have statutory authority to use their county jails for the detention of persons under

³⁴ As discussed above, increased use of desk appearance tickets which set arraignments for local court “DA Nights” will both reduce the number of off-hour arraignments and the need to detain arrested persons.

³⁵ In addition, counties will have significantly less liability exposure if individuals are placed in holding cells instead of the back of the squad car of a law enforcement officer who must drive the defendant around the county while looking for an available arraigning court. This is particularly true with defendants who are angry, drunk or who suffer from serious mental health disorder.

arrest being held for arraignment. *See* Corr. Law § 500-a (2), (2-a –m). Counties must obtain accreditation by the New York State Commission on Correction before legislative authority to detain persons awaiting arraignment will be granted.

ILS is acutely aware that increased detention, whether by an increase in holding cells, use of the county jail or in combination with an off-hour cut off, directly implicates the fundamental liberty interests of arrested individuals.³⁶ For this reason, ILS reiterates that detention instead of appearance tickets should be utilized only as a last resort. However, to the extent that detention substantially enhances the ability of mandated providers to represent defendants at arraignment, the marked rise in successful outcomes warrants serious consideration of this option. ILS' preliminary research suggests that the presence of counsel has, on average, resulted in tangible benefits for defendants, including lower bail amounts and fewer individuals incarcerated pending final resolution of their cases.³⁷

4. Court Consolidation

The Uniform Justice Court Act permits consolidation of justice courts in a number of forms. Two or more adjoining towns may share court facilities, even though one or more of the courts is physically situated outside its geographical boundaries. *See* UJCA §106(1). Multiple adjoining towns may elect a single justice to preside over courts of each town. *See* UJCA §§106(1), 106-b. In both types of consolidation, each court maintains its own identity, hears its own cases and collects its own revenue, even if sharing space or a town justice with another court.

In general, for consolidation of this type, each town must pass a resolution supporting the consolidation, hold a public hearing, pass another resolution approving the consolidation and present the issue to the voters in a referendum. *See* UCJA §§ 106-a(1), 106-b. Pursuant to General Municipal Law § 199-o, cooperating municipalities must also enter into an inter-municipal agreement (IMA) to share services or personnel. To elect a single justice for multiple courts, the state legislature must enact implementing legislation.

The statute also permits a comprehensive merger of two or more adjoining town courts into a single consolidated justice court. *See* UJCA § 106-a (1). The merger process is similar to that described above, but has certain other requirements, although no state action is required. *See*

³⁶ One disadvantage of holding defendants overnight for arraignment is that there will be instances in which some of the defendants held would have been released during the night had a late-night arraignment been conducted, albeit, without counsel present.

³⁷ ILS's preliminary research examined Ontario County's centralized arraignment program, reviewing data regarding arraignment outcomes before centralization, when defense attorneys were not regularly present at arraignment, and after, when Ontario County Public Defender staff attorneys were regularly present. The results of this preliminary research are in file with ILS. This research finding is consistent with research findings in other jurisdictions. Two experimental studies that sampled four urban jurisdictions found that early intervention by counsel indeed increased the use of pretrial release, improved the conditions set for bail, shortened the time defendants spent in jail prior to bail, and significantly reduced the sentences ultimately imposed (Colbert et al., 2002; Fazio, Jr. et al., 1985).

UJCA §106-a. Separate records, dockets and bank accounts must be maintained for each town included in the consolidated courts. UCJA §106-a(13).

Consolidation will eliminate many of the current obstacles to representation at all arraignments, as defense counsel will be required in fewer courts, each of which will convene on a more regular basis. Consolidation may also result in more attorneys choosing to participate in Assigned Counsel Plans in the consolidated courts due to heavier caseloads. Municipalities may reduce expenses by sharing overhead costs and personnel.

In addition, in four instances the state legislature has authorized local courts to hold arraignment proceedings in another municipality or anywhere in the County. *See* UCJA §106 (6) (Onondaga County), §106(8) (Jefferson County), §106(9) (Rockland County), §106(10) (Genesee County). Accordingly, the state legislature could authorize arraignment proceedings for individual jurisdictions to be conducted anywhere within their county. This would allow wide latitude in the locale of off-hours arraignments and should ease the logistics of providing defense counsel to defendants, reducing the burdens of on call systems in terms of travel, delay, and unpredictability.

5. Creation of District Courts

By statute, the New York State legislature may create district courts to cover an entire county or a portion of a county consisting of one or more cities, one or more adjoining towns, or a combination of such cities and towns, as long as at least one such city is contiguous to one such town. New York Const. Article VI §16 a; UDCA § 2001 et seq. By definition district courts may cover a larger geographic area which in turn should lead to more frequent regular court sessions. In turn, mandated providers would be better able to provide consistent representation at arraignment on a more regular and defined schedule. District courts have been in place in the West End of Suffolk County and in Nassau County since the 1960s. Creation of a district court requires a request by the governing body of the county, a vote by the affected general electorate and legislative action by the NYS legislature.

ILS details the various options above to promote further discussion about the many mechanisms by which to change current systems and diminish barriers to providing defense counsel at arraignment in an efficient and cost-effective manner. We recognize that each county has its unique geography, history, and municipal culture, and that there is no “one-size-fits-all” approach. Providing a range of options is a means by which to promote ongoing discussion about reducing the burden and fiscal costs of providing counsel at arraignment, while ensuring that all defendants entitled to publicly funded representation are provided quality representation at their arraignment.

ILS's Plan to Update this Counsel at Arraignment Plan

This Plan focuses primarily on the resources needed to ensure that each of the Five Counties has an attorney available at all arraignments of defendants who are eligible for publicly funded representation. As set forth in Exhibit C, we estimate the annual costs of full coverage to be nearly \$2 million, with an estimated cost of \$560,044 per year in Onondaga County, \$307,100 per year in Ontario County, \$191,000 per year on Schuyler County, \$573,000 per year in Suffolk County, and \$264,612 per year in Washington County. Clearly, the \$1 million allocated in the Settlement is not enough to cover these total costs. Therefore, this Plan also includes interim steps that will be implemented using the \$1 million allocated in the Settlement.³⁸

It is important to note that in at least two regards, the total costs of full arraignment coverage in this Plan likely significantly understate the real costs of meeting the Settlement's objectives. First, the costs set forth in this Plan are *estimates* of what is needed in each of the Five Counties to create new structures to ensure that attorneys are present at arraignments. Throughout this Plan, we have flagged areas where we are concerned that the estimates costs are too low.³⁹

Second, and perhaps even more importantly, this Plan does not take into account the quality of these arraignments and whether or not defense counsel have the time, the space, the training, and the supervision needed to provide quality representation at arraignments. Yet, there is no question that merely having an attorney available at arraignments is not enough to fulfill the mandates set forth in the Settlement. As the Court of Appeals stated in *Hurrell-Harring v. New York*, 15 N.Y.3d 8 (2010), arraignments are a critical stage of a case which implicates the defendants' due process rights to be informed of the charges against them and, because bail or release is determined, their pretrial liberty interests. *Id.* at 20. Often, a case is disposed of at an arraignment via a guilty plea or an adjournment in contemplation of a dismissal. *Id.* at 20, n. 2. Additionally, an arraignment is the stage at which a well-trained and well-prepared attorney often can argue that the case should be dismissed because the accusations against the defendant are not legally sufficient or do not establish reason to believe that the defendant committed a crime. See CPL Article 100; *Fitzpatrick v. Rosenthal*, 29 A.D.3d 24 (4th Dept. 2004). Attorneys who lack the time and space needed for a confidential meeting with their client before the arraignment or who lack the legal training and expertise needed for bail and/or legal sufficiency arguments cannot provide quality representation at arraignments.

Therefore, as we implement this Counsel at Arraignment Plan, it is critical that ILS evaluate not only the extent to which counsel are present at arraignments, but that we also assess the sustainability of the structures that will be developed by the Settlement's \$1 million and the quality of representation at arraignments. ILS will then use this information to identify the resources needed to fill the gaps in arraignment coverage and ensure quality representation at arraignments.

³⁸ ILS has included the total costs of full arraignment coverage – i.e., the nearly \$1 million that is not provided for the Settlement – in our budget request for state fiscal year 2016/2017.

³⁹ For example, in several instances we express concerns that the stipend allocated for a county's attorney "on-call" system is not enough to attract attorneys, that travel costs may not be enough, or that the estimated amount of time to conduct an arraignment is too low.

To assess the extent to which arraignments are being covered, the sustainability of coverage structures, and the quality of representation at arraignments, ILS will gather information from a wider variety of sources, including the following:

- *Obtaining data from the Five Counties to quantify arraignment coverage and gaps in coverage.* Our efforts will be facilitated by the improvements in case tracking that are being done in accordance with § IV of the Settlement. When necessary and appropriate, we will also seek out data from the providers themselves and other sources, such as OCA data.
- *Observing arraignment proceedings in a systemic manner.* ILS will regularly conduct court observations of arraignments at all levels of courts throughout the Five Counties including justice courts, district courts, and city courts.⁴⁰ We will monitor not only the extent to which each defendant is represented by counsel, but also the quality of this representation. To that end, we have attached a basic outline of quality indicators for arraignments that we will use to guide and inform our observations. (See Exhibit D).
- *Obtaining qualitative information from a variety of sources.* ILS will continue to meet regularly with county officials and providers of mandated representation in the Five Counties. In addition, we will seek to meet with other stakeholders, including, but not limited to, defense attorneys, government and not-for-profit agencies that work with defendants, former defendants and possibly defendants' families.
- *Obtaining more information from providers.* ILS will seek to obtain more information from providers by speaking with staff attorneys and other provider staff members involved in the arraignment process.

Another issue that directly implicates quality of arraignments is that of vertical representation – that is, ensuring that defendants are continuously represented by the same attorney until completion of their case.⁴¹ Although vertical representation is the ideal and should be implemented where feasible, given our current justice court system, it is not always possible to ensure that the arraigning attorney will be the same as the attorney assigned to represent the defendant. Where the arraigning attorney is not the attorney assigned to the case, it is critical that mandated providers develop systems and protocols to ensure the transfer of the case is done quickly and seamlessly without detriment to the client's rights.⁴² ILS will work with the Five

⁴⁰ Very few first appearances occur in County and Supreme Courts, and even when they do, courts have advance notice and therefore contact criminal defense attorneys. Therefore, we will not prioritize observing arraignments in these courts. Still, even taking into consideration just the lower level courts, court observations will be an immense undertaking given the number of courts throughout the Five Counties. Onondaga County has 29 courts that handle criminal cases, Ontario County has 19 courts, Schuyler County has 10 courts, Suffolk County has 23 courts, and Washington County has 24 courts.

⁴¹ See, e.g., American Bar Association, "Ten Principles of a Public Defense Delivery System," (2002), Principle 7.

⁴² As part of ILS's Counsel at First Appearance grant program, when vertical representation could not be provided, counties were required to describe the process they would follow to ensure that information

Counties to establish systems and protocols to be used for the transfer from arraignment attorney to the assigned attorney. ILS, in conjunction with the mandated providers, will also monitor these systems to ensure that they are working as designed.

As ILS acquires more information and works with the Five Counties on implementation of the Settlement, we will be updating and revising this Plan to: i) better reflect each of the Five Counties' progress towards meeting the objectives outlined in § III(A) of the Settlement; ii) set forth what additional financial resources are needed to meet these objectives; and iii) where appropriate, identify systemic changes that would facilitate achieving the objectives in § III(A) of the Settlement. ILS will submit updated Plans annually over the course of the Settlement's seven year monitoring period. The first updated Plan will be submitted by October 13, 2016.

Conclusion

This Plan sets forth a proposal for the expenditure of the \$1 million set forth in the Settlement to fund interim steps toward achieving the Settlement's goal of Counsel at Arraignment. The Plan also identifies the total costs of full arraignment coverage so that, in the upcoming State budget process, money can be allocated to the Five Counties for these costs. Doing so is critical to achieving the Settlement's requirement 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." Doing so is also critical to honoring a person's constitutional right to counsel as set forth in *Gideon v. Wainwright*, 372 U.S. 335 (1963), and *Hurrell-Harring v. New York*, 15 N.Y.3d 8 (2010).

obtained at arraignment would be made available to the attorney representing the defendant for the remainder of the case, and that no gaps in representation would occur.

EXHIBIT A

Summaries of ILS Meetings
with the Five Counties

Onondaga County discussions

Date	Topic	ILS attendees	Onondaga County attendees
4.3.15	1 st meeting	Bill, Joe	Lori Tarolli (Acting County Attorney), Carol Rhinehart (County Attorney's office), and Marthe Ngwashi (County Attorney's office)
5.4.15	Tracking/ACP	Andy, Peter, Joe	Lori Tarolli (Acting County Attorney), Carol Rhinehart (County Attorney's office), and Marthe Ngwashi (County Attorney's office); Renee Captor (Assigned Counsel Administrator); Frank Walters, Board member for ACP
5.4.15	Quality #1 ACP	Risa, Matt, Joe	Lori Tarolli (Acting County Attorney), Renee Captor (Assigned Counsel Administrator), Sheldon Gould (Board member of the Onondaga County Bar Association Assigned Counsel Program) Kathy Dougherty (County Attorney's office), Carol Rhinehart (County Attorney's office), Marthe Ngwashi (County Attorney's office); and Dan Hammer, Onondaga County Budget office (part of meeting).
5.8.15	Tracking/Hiscock LAS	Andy, Peter, Risa, Joe	Susan Horn, Darren, Faye and Michelle of Hiscock LAS; Marthe Ngwashi (County Attorney's office)
5.8.15	Quality #1 Hiscock Society	Risa, Matt, Joe	Lori Tarolli (Acting County Attorney), Carol Rhinehart (County Attorney's office), and Marthe Ngwashi (County Attorney's office); Susan Horn (Hiscock LAS)
5.27.15	CAFA #1	Joanne, Matt, Joe	Lori Tarolli, Acting County Attorney, Carol Rhinehart, Marthe Ngwashi and Kathy Dougherty (County Attorney's office) and Renee Captor (ACA).
7.22.15	CAFA #2/Quality #2 (ACP/Hiscock)	Joanne, Matt, Risa, Joe	Bob Durr, Onondaga County Attorney; Lori Tarolli, Carol Rhinehart, Marthe Ngwashi and Kathy Dougherty (County Attorney's office); and Renee Captor (ACA).
8.27.15	CAFA #3/Quality #3 (ACP/Hiscock)	Joanne, Matt, Patricia, Joe	Bob Durr, Onondaga County Attorney; Lori Tarolli, Carol Rhinehart and Marthe Ngwashi (County Attorney's office); Renee Captor (ACA); and Dan Hammer, Onondaga County Budget office (part of meeting).
10.2.15	Quality #4/review CAFA	Matt, Amanda, Patricia, Joe	Bob Durr, Onondaga County Attorney (part of meeting); Lori Tarolli, Carol Rhinehart, Marthe Ngwashi, Carol Rhinehart and Kathy Dougherty (County Attorney's office); Renee Captor (ACA); Susan Horn, Hiscock Society (part of meeting); and Dan Hammer, Onondaga County Budget office.

Onondaga County: Comprised of County Court, Syracuse City Court and 28 Town & Village Courts. The Assigned Counsel Program (ACP) coordinates representation in the 28 Town and Village courts, before 44 judges; the Hiscock Legal Aid Society handles criminal appeals and parole violations. The Town & Village Courts account for approximately 1/3rd of assignments received by ACP each year).

CAFA

Current Coverage

- **Syracuse City Court:**
 - **AM arraignments:** (since 2001) (County funded) (365 days/yr.) (2-3 attorneys/day) (conduct interviews in jail) (3,500 – 4,000 cases/yr.)
 - **Community Court arraignments:** ("problem solving court") (since 2001) ("quality of life") (arraignments once/week) (60-100 cases/yr.) (meets at 9:30 one/day wk.)

- **PM Arraignments:** (since 2007) (Federal funding/JAG grant/CNY Services) (165-220 cases/yr. - number of cases dropping yearly) (3 year grants; most recent grant period started Oct. 1, 2014)
- **AM+ arraignments:** (since 2013) (ILS Distribution #2 funding) appearance tickets and warrants/provides for 2 attorneys (2,000-2,300 cases/yr.)
- **Town & Village Courts:**
 - **Regular Sessions:** (since 2014) (ILS Counsel at First Appearance grant award) arraignments at 14 of the 28 largest justice courts covered (in larger courts, 2 attorneys – one felony-qualified and one misdemeanor-qualified; in smaller courts; 1 attorney - felony qualified). Provides coverage at over 90% of arraignments at regular justice court sessions (estimated 4,500 – 5,000 cases/yr. covered when fully implemented) (the remaining 14 courts accounted for 329 assignments in 2014). Recently, ACP has added a 15th justice court using ILS Counsel at First Appearance grant funding, but this funding will only be available until the end of 2015).

Coverage Assumptions for CAFA (continued ILS funding):

- **Town & Village Courts (ILS Counsel at First Appearance grant program)** – assumes continued ILS funding of 18-B attorneys for coverage at regular sessions in 14 of the largest justice courts (2 attorneys – one felony qualified and one misdemeanor qualified) in larger of these courts; 1 attorney in the smaller courts - usually felony qualified).
- **Syracuse City Court**
 - **non-custodial defendants (ILS Distribution #2)** – assumes continued funding for representation at arraignment of non-custodial defendants who appear in Syracuse City Court on appearance tickets (and some warrants) (Onondaga has yet to submit a Distribution #5 proposal, although Onondaga has verbally indicated that it will propose using Distribution #5 funding to continue this program).

Coverage Gaps:

- **City Traffic Court:** no coverage at Traffic Court arraignments (e.g., DWI; DAS). Daily sessions at 9:30 am.
- **Town & Village Courts**
 - **Regular Sessions.** 13 of the 28 smaller justice courts (15 are currently covered by ILS Counsel at First Appearance grant program).
 - **Off-hour arraignments:** all 28 Town & Village courts (includes unscheduled arraignments on weekends and weeknights)
 - Notification system needed for on-call arraignment attorneys
 - **Town and Village Court arraignments held in courtrooms in Syracuse City Court.**

Coverage Options

- **City Traffic Court:** Expand arraignment coverage provided in Syracuse City Court to include Traffic Court (Traffic Court meets weekdays 9:30 am). Participating attorneys would receive \$200/day. Onondaga estimates that it would cost \$60,194 to cover Traffic Court arraignments.
- **Regular sessions at 13 Town & Village Courts.** Expand arraignment coverage at regular court sessions in fifteen (15) Town & Village courts (ILS Counsel at First Appearance grant program) to cover regular court sessions at all twenty-eight (28) Town & Village courts (\$90/session for felony-eligible attorneys; \$75/session for misdemeanor-eligible attorneys).
- **Town and Village Court arraignments held in courtrooms in City Court.** Provide “on-call” arraignment coverage for Town and Village court arraignments held in courtrooms in Syracuse City Court (\$90/arraignment).

- **Off-hour arraignments in 28 Town & Village Courts.** Establish 24/7 on-call system providing counsel at arraignment at off-hours in all 28 Town and Village courts, with fourteen (14) 18-b panel attorneys divided into six geographic regions (weekends, weeknights and unscheduled, individualized weekday arraignments other than arraignments held in courtrooms in Syracuse City Court – see above). On-call attorneys would receive a \$25/day stipend and \$150 per arraignment.

Estimated CAFA Costs

Coverage	Cost Description	Costs
Regular sessions at thirteen (13) Town & Village courts	Expand arraignment coverage at regular court sessions of fifteen (15) Town & Village courts (ILS Counsel at First Appearance grant program) to include regular sessions at all twenty-eight (28) Town & Village courts (\$90/session for felony-eligible attorneys; \$75/session for misdemeanor-eligible attorneys).	Total cost estimate: \$76,500
Syracuse City Traffic Court (meets daily)	Expand arraignment coverage provided in Syracuse City Court to include Traffic Court (\$200/day)	Total cost estimate: \$60,194
Local Court arraignment held in City Court	Expand arraignment coverage provided in Town and Village courts to include local court arraignments held in Syracuse City Court (\$90/arraignment).	Total cost estimate: \$15,600
Off-hour arraignments (all 28 Town & Village Courts)	Provide 24/7 on-call system of providing counsel at off-hour arraignments in the twenty-eight (28) Town and Village Courts, with attorneys participating in program divided into six regions. On-call attorneys (14) would receive a basic stipend of \$25/day (total cost: \$127,750/yr.), with an additional stipend of \$150 for each arraignment covered (\$165,000). Two ACP staff positions would be added to (1) monitor day-to-day operations (troubleshoot) (\$50,000/yr.) and (2) perform administrative tasks, such as tracking data (\$40,000/yr.) Other program costs: computer & supplies (\$5,000/yr.); dispatch fees (telephone) (\$20,000 yr.)	Total cost estimate: \$407,750
Total Cost to close gaps in coverage .		Total cost estimate: \$560,044

Alternatives

- **Consolidation of arraignment/Town and Village courts.** For contiguous Town & Village Court jurisdictions, some consolidation of “off-hour” arraignments is occurring (“it’s happening”), but it is not being done systematically and the extent to which it is occurring is not known.
 - **Indirect costs.** To initiate consolidation of Town & Village Court arraignments, County requests funding for law enforcement costs of transporting defendants to centralized arraignments and costs of holding defendants overnight in holding facility.

Longer term issue:

- **Appointment of 18-B attorneys:** Onondaga County is a judge-assign county.

Quality Improvement

Funding breakout

- **Onondaga County:** \$588,677 for each of two years

Quality Assumptions (continued ILS funding):

- ACP

- **ACP contractor** (track time spent in jail; bail posted) (CAFA) – assumes continued funding of ACP contractor position to collect data.
- **Volunteer Initiative Program** (CNY Services) (Distribution #2) – assumes continued funding for Program to coordinate volunteer services (court diversion) in Town, Village and City Courts.
- **Case management services position** (Adolescent Diversion) (Distribution #4) – assumes continued funding of case management services position to assess offender’s needs for referral and follow-up
- **Extend 18-B representation** (e.g., VTL 1157; traffic infraction) (Distribution #4) – assumes continued funding of extended 18-B representation.
- **Extend 18-B representation** (problem solving courts) (Distribution #3) – assumes continued funding to provide representation at problem solving courts
- **Veteran’s Advocate** (Distribution #4) – assumes continued funding of Veteran’s Advocate to assist veterans arrested for offenses committed as result of disabilities, including coordinating services.
- **Mitigation experts** (sentencing advocacy) (Distribution #4) – assumes continued funding of mitigation experts in sentencing advocacy, particularly for youthful offenders.
- **CLE training (assigned counsel panel)** (Distribution #3) – assumes continued funding for CLE training for 18-b panel attorneys
- **Investigative, interpreter, expert services** (Distribution #3) – assumes continued funding for investigative, interpreter, expert services

- Hiscock Legal Aid Society

- **Staff attorney position** (Appeals Program) (Upstate Caseload) - assumes continued funding of staff attorney position in Appeals Program
- **Senior attorney upgrade** (Appeals Program) (Upstate Caseload) – assumes continued funding to upgrade senior attorney to midlevel supervisory position in Appeals Program
- **Salary adjustments** (Distribution #2) – assumes continued funding for cost-of-living salary adjustments and benefits/fringe in mandated representation programs.

Topics Discussed:

ACP

- **Formal supervisory/mentoring structure.**

- **RFP/Creation of Mentoring program.** Develop RFP or create mentoring program to establish panel of experienced attorneys to provide oversight/support of panel of assigned counsel panels
 - **Components of RFP/Mentoring program.**
 - Components discussed include developing structured mentoring program for younger attorneys (currently 2nd chair program infrequently utilized; 3-4 times/yr.; mentoring currently done informally); availability of panel as resource to attorneys (provide advice; assist in complex cases; schedule meetings with panel attorneys); attorney performance evaluations (supervision; observe attorneys in court; re-certification of panel attorneys - currently re-application process consists of updating basic information); developing and/or mandating training programs (currently 50% of CLE credits must be obtained in 18-B practice areas).
 - **Role of ILS in process.**

- **Onondaga/ACP Meetings.**
 - **Erie County.** Onondaga County met with Erie County ACP (Bob Convisar) to discuss Erie County ACP (supervision, mentoring, resource, training).
 - **Tompkins County.** Onondaga County conference calls with Julia Hughes; planning to meet to discuss Tompkins program re: supervision, mentoring, resource, training.
- **Training.**
 - **Enhance specialized training resources**
 - Currently, ACP offers training through NYSACDL twice a year to panel attorneys at no charge.
 - Panel attorneys required to obtain 50% of state-mandated CLE credits in 18-B practice areas.
- **Investigative/Expert services**
 - **Increase access to investigative/expert services**
 - Currently, attorneys must apply to court for investigative, expert services

Hiscock LAS

- **Appeals Backlog**
 - At close of 2014, 239 cases pending
- **Violations of Parole**
 - Significant increase in caseloads experienced in past few years.
- **Training/CLE**

Estimate Quality Improvement Costs

Item	Description	Costs
ACP priorities.	<p>Training Fund. Enhance training resources by increasing funding for CLE programs, noon-time programs ("lunch and learn"), and add scholarships for National Criminal Defense College (2) and Trial Skills Program in Batavia.</p> <p>Mentoring. Create mentoring program for new attorneys and for attorneys trying "first felony." Would require five hours of mentoring for attorneys to join and remain on assigned counsel panel. Attorneys trying first felony would "second chaired" by mentor. County proposed establishing panel of 20-25 mentors who would paid \$250/hr.</p>	<p>Training Fund (\$34,000). Per discussions with County, would increase availability of funding for training (to \$34,000) and expand availability of training programs to include regional and national programs. County had originally proposed \$26,250 for training.</p> <p>Mentoring (\$110,000). Per discussion with County, would increase the amount of required mentoring time for new attorneys (doubled); and enhance availability of "second chairing." This can be accomplished by reducing the hourly rate of mentors from \$250/hr. to \$150/hr. – a rate deemed more than adequate to attract a quality, committed group of about 10 mentors.</p>

	<p>Supervision. Create supervisory program that includes court monitoring of cases handled by ACP attorneys in City Court, Family Court and Town and Village courts. To handle client complaints, would upgrade AC Peeper system to collect complaint information.</p> <p>Quality Standards Coordinator. Add full-time non-lawyer position in ACP office to recruit and coordinate scheduling for mentors. Would include rent for additional space for new position, along with furniture and computer costs.</p>	<p>Supervision (\$222,100). Per discussion with County, would redirect the court monitoring funding for Family Court to criminal cases and add County and Supreme Court. By reducing the hourly rate paid to the mentors from \$250/hr. to \$150/hr., would increase the number of available hours to spent monitoring court cases by about 40%. It also allows for the addition of mentoring/consultation time for more experienced attorneys</p> <p>Quality Standards Coordinator (\$64,380). Per discussion with County, duties of Coordinator are limited, so would recommend funding a part-time position (with benefits), along with the cost for rent for additional space, furniture and computer set-up.</p> <p>Total: ACP \$430,480</p>
Hiscock Legal Aid Society priorities	<p>Reduce Appellate Backlog. To reduce the appeals backlog, either hire or contract with appellate lawyers; currently Hiscock LAS has a two year backlog of 233 appellate cases, of which 214 are criminal appeals.</p>	<p>Reduce Appellate Backlog (\$157,493). Per discussion with County, would hire two appellate lawyers with some experience at \$50,000/yr. (plus benefits), along with costs for purchasing furniture and computers.</p> <p>Total: Hiscock LAS \$158,197</p> <p>Overall plan total: \$588,677</p>

Longer Term Issues:

- **Quality of representation.** Onondaga County is a judge-assign county and “quality is monitored by the judges.”
- **Voucher cutting.** More information needed on practices of ACP on cutting payment vouchers submitted by panel attorneys.

Tracking

Attorney Caseload/Workload

- ACP has added attorney workload fields (18-B/non-18-B) to AC Peeper program.
- Hiscock LAS to provide spreadsheet (electronic) of attorney workloads (18-B/non-18-B)

Ontario County discussions

Date	Topic(s)	ILS attendees	Ontario County attendees
4.7.15	1 st meeting	Bill, Joe	Michael Reinhardt (Assistant County Attorney); Nancy (paralegal; County Attorney's office); Leanne Lapp (Public Defender); Andrea Schoeneman (Conflict Defender, ACA)
5.7.15	CAFA #1	Joanne, Matt, Joe	Michael Reinhardt (Assistant County Attorney); Nancy (paralegal; County Attorney's office); Leanne Lapp (Public Defender); Andrea Schoeneman (Conflict Defender, ACA)
5.7.15	Quality #1 (PD, Conflict, ACP)	Risa, Joanne, Matt, Joe	Michael Reinhardt (Assistant County Attorney); Nancy (paralegal; County Attorney's office); Leanne Lapp (Public Defender); Andrea Schoeneman (Conflict Defender, ACA)
6.27.15	CAFA #2; Quality #2 (PD, Conflict, ACP)	Joanne, Matt, Risa, Joe	John Garvey (County Administrator); Michael Reinhardt (Assistant County Attorney); Lea Nacca (Assistant County Attorney); Nancy (paralegal; County Attorney's office); Leanne Lapp (Public Defender); Andrea Schoeneman (Conflict Defender, ACA)
8.3.15	CAFA #3; Quality #3 (PD, Conflict, ACP)	Joanne, Matt, Patricia, Joe	Michael Reinhardt (Assistant County Attorney); Lea Nacca (Assistant County Attorney); Nancy (paralegal; County Attorney's office); Leanne Lapp (Public Defender); Andrea Schoeneman (Conflict Defender, ACA); John Garvey (County Administrator) (briefly);
8.28.15	CAFA #4; Quality #4	Joanne, Matt, Patricia, Joe	Michael Reinhardt (Assistant County Attorney); Lea Nacca (Assistant County Attorney); Nancy (paralegal; County Attorney's office); Leanne Lapp (Public Defender); Andrea Schoeneman (Conflict Defender, ACA); John Garvey (County Administrator) (briefly)
10.6.15	Quality #5; (CAFA review)	Amanda, Patricia, Joe, Deborah	Michael Reinhardt (Assistant County Attorney); Lea Nacca (Assistant County Attorney); Leanne Lapp (Public Defender); Andrea Schoeneman (Conflict Defender, ACA)

Ontario County: Public Defender (12 attorneys, including Public Defender); ACP panel (approximately 12 attorneys/criminal).

CAFA

Current Coverage (centralized arraignments)

- **Town & Village Courts**
 - **Centralized arraignments are conducted in Canandaigua City Court and Geneva City Court**
 - **Exceptions**
 - **Two Town Courts.** Two Town courts do not participate in the centralized arraignment program and conduct late night, off-hour arraignments (after 10 pm) on weeknights and weekends (estimate two weeknight/arraignments per week)

Coverage Assumptions for CAFA coverage (continued ILS funding)

- **Town & Village Courts (ILS CAFA RFP):** assume continued funding of two (2) Assistant Public Defender positions to primarily handle arraignments.

Coverage Gaps:

- **Weeknights**

- **Non-DA nights:** coverage of arraignments on non-DA nights is not available (approximately 10 non-DA nights/week).
- **Off-hour arraignments (after 10 pm) on weeknights:** estimated four weeknight arraignments/wk. in the two Town Courts that do not participate in the centralized arraignment programs.
- **Weekends**
 - **Off-hour arraignments (after 10 pm) on weekends:** late night arraignments in the two Town Courts that do not participate in the centralized arraignment program.

Coverage Options:

- **Off-hour weeknight and weekend night arraignments (after 10 pm).**
 - **Two Town Courts.** Develop on-call, off-hour rotational system of 18-b assigned counsel or other private attorneys (contractual) to provide counsel at arraignment in the two Town Courts not participating in the centralized arraignment program.
- **Non-DA nights**
 - **Add Public Defender staff.**
 - Add two (2) additional full-time attorney positions in the Public Defender office to cover non-DA nights countywide. Adding staff to the Public Defender's office to cover non-DA nights would have following benefits:
 - **Coverage of regular sessions.** With added staff, arraignments at all court sessions in Ontario County (including non-DA nights) would be covered.
 - **Sustainability of CAFA coverage.** With additional positions in Public Defender office, current staff coverage of arraignments could be restructured to ensure sustainability of current evening off-hour and weekend coverage.
 - **Enhanced Supervision.** Adding additional attorney positions would allow Public Defender to reduce caseload and provide more effective supervision within the office.

Alternatives

- Law enforcement (Sheriff, State Police, City police) issue desk appearance tickets for "DA night."
- Early notification to Public Defender office of arraignment calendar on non-DA nights would alleviate need for attorneys to attend non-DA night court sessions when arraignments not scheduled.
- Late night, on-call coverage of arraignment would not be needed if the two Town Courts currently conducting such arraignments participated in the centralized arraignment program.

Estimated CAFA Costs

Coverage	Cost Description	Costs
Non-DA nights (regular sessions)	Non-DA nights. Add two additional Assistant Public Defender positions to cover local courts. Number of arraignments on non-DA nights not known. Cost: \$210,000/yr. (Includes fringe). Note: does not include incidental costs such as office space, computers, training, etc.	Total cost for non-DA night coverage: \$210,000/year

<p>Off-hour weeknight and weekend/holiday arraignments</p>	<p>Weekend/Holiday. Contract with 18-B attorney(s) or other attorneys to cover off-hour arraignments; "on-call" flat rate stipend of \$150/weekend day and \$300/holidays plus actual costs of providing representation at arraignment at statutory rate of \$75/hr. (includes travel time and mileage reimbursement). Average of five (5) arraignments per weekend day expected.</p> <p>Weeknights. Contract with 18-B attorney(s) or other attorneys for "on-call" flat rate stipend of \$75/night (10 pm until 8:30 am) plus actual costs of providing representation at arraignment at statutory rate of \$75/hr. (includes travel time and mileage reimbursement). Average of four calls/week anticipated.</p>	<p>Weekend total cost: \$55,125</p> <p>\$150/weekend day stipend = \$15,600/yr. Five (5) arraignments/day at \$75/hr. = \$39,000 \$300/holiday stipend = \$1,200 Five (5) arraignments/holiday at \$75/hr.= \$1,500</p> <p>Weeknights total cost: \$34,800</p> <p>\$75/weeknight stipend (254 weeknights/yr.) (\$19,200) and average of four (4) arraignments/wk. at \$75/hr. (\$15,600) plus mileage reimbursement = \$34,800</p> <p>Estimated mileage reimbursement for weeknight and weekends: \$5,000</p> <p>Total cost for off-hour arraignments: \$97,100</p>
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Quality Improvement

Funding breakout

- **Ontario County:** \$146,123 for each of two years

Discussions:

Conflict/ACP

- **Build up Conflict Defender office.** Conflict office currently consists of one attorney, the Conflict Defender.
 - **Experienced criminal defense attorney position.** The County is committed to building up the Conflict Defender office; including adding an experienced criminal defense attorney position to handle serious felonies and providing other support resources, e.g., additional staff. At present, the addition of the criminal defense attorney position is in the process of being approved by the County legislature.
 - **Funding of experienced defense attorney position.**
 - **Distributions #4-#5.** The County has indicated that it plans on using ILS distribution funding for this position
- **ACP/Formal supervision/mentoring structure.**
 - Supervising/mentoring/resource attorney position desired (Tompkins County ACP model)
 - Concern raised of finding a suitable candidate.

- At 10.6.15 meeting, an experienced, highly regarded attorney who currently mentors 18-b attorneys in Ontario County on an informal basis was reported as being interested in performing this role.

- **Experts/Investigator Resources/Training**

- Funding to enhance use of expert/investigative services

Public Defender's office

- **Enhance Supervision.**

- Additional supervisory capacity is sought; adding additional legal staff would allow more time for PD and 1st Assistant Public Defender to perform supervisory function
 - Currently, the Public Defender and 1st Assistant Public Defender divide supervisory responsibilities, but both carry heavy caseloads.
 - Regular meetings are currently conducted with felony attorneys to discuss cases.

- **Access to Investigators, Experts and Support Services.** Enhance the availability of support services, such as investigative services, experts, and legal research.

- **Social worker/mitigation.**

Estimated Quality Improvement Costs

Item	Description	Costs
<p>Conflict Defender and ACP priorities</p>	<p>Investigator, interpreter, expert fund. Funds would be available to encourage more frequent use of investigators, interpreters and experts.</p> <p>Retainer for panel attorney mentor/supervisor. ACP would contract with an experienced criminal defense attorney who would be available to panel attorneys as a resource and mentor.</p> <p>Social workers and sentencing advocates fund. Funds would be available to encourage use of social workers and sentencing advocates.</p>	<p>Investigator, interpreter, expert fund (\$40,000). Per discussions with the County, the total amount of \$40,000 would be split between the Conflict Defender Office and ACP. Initially, the County had proposed using a total of \$50,000 for this purpose, but additional funding was needed for the supervising/mentoring attorney contract.</p> <p>Retainer for panel attorney mentor/supervisor (\$30,000). Per discussion with the County, a contract with the mentor would call for an hourly rate of \$100 and a minimum of 300 hours/yr., for a total cost of \$30,000. Initially, the County had proposed a contract for up to 200 hours/yr. (total cost: \$20,000), but it was thought additional hours would be needed to fulfill this task.</p> <p>Social workers and sentencing advocates fund (\$30,000). The total amount of \$30,000 would be split</p>

<p style="text-align: center;">Public Defender Office priorities</p>	<p>Lexis access for panel attorneys.</p> <p>NYSDA PDCMS licensing fees. Not part of County written proposal; discussed at meetings.</p> <p>Filing of 440 motions. Not part of written proposal; discussed at meetings.</p> <p>Part-time Assistant Public Defender position. Adding a part-time APD position would allow for the Public Defender to reduce caseload and devote additional time to supervision within the PD office.</p>	<p>between the Conflict Defender Office and ACP, as initially proposed.</p> <p>Lexis access for panel attorneys (\$1,123). A total amount of \$1,123 would be available to dedicate a computer terminal in the Assigned Counsel Program office to ensure Lexis access for all assigned counsel panel attorneys. Initially, the County had proposed dedicating \$1,000/month (estimated) for 15 attorneys on the criminal panel to have access to Lexis at a total cost of \$15,000, but cost is high and providing Lexis access to each attorney not a priority – panel attorney access to a terminal in the Conflict Defender office will accomplish desired objective.</p> <p>NYSDA PDCMS licensing fees. No cost estimate provided; thought that the single source contract with NYSDA may cover these costs.</p> <p>Filing of 440 motions (\$10,000). A total of \$10,000 would be used to fund the preparation and filing of 440 motions, which is currently not a reimbursable cost under Article 18-b. Simple and complex cases expected.</p> <p><u>Total: Conflict and ACP \$111,123</u></p> <p>Part-time Assistant Public Defender position (\$35,000). A total of \$35,000 would be available to hire an Assistant Public Defender, in part to reduce the overall caseload of the office and allow the Public Defender additional time to provide supervision within the office. As an alternative, an existing part-time paralegal position within the PD office would be upgraded to a full-time paralegal position, which would serve the purpose of reducing caseload pressures of the Public Defender and 1st Assistant Public Defender.</p> <p><u>Total: Public Defender \$35,000</u></p> <p><u>Overall plan total: \$146,123</u></p>
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Tracking

Attorney Caseload/Workload

- NYSDA has added attorney caseload fields to PDCMS in PD office and ACP.
- NYSDA installed PDCMS in Ontario Conflict Defender office and ACP on September 9-10.

Schuyler County discussions

Date	Topic(s)	ILS attendees	Schuyler County attendees
4.15.15	1 st Meeting	Bill, Joe	Tim O'Hearn, County Administrator; Geoff Rossi, County Attorney; Wes Roe, Public Defender
5.21.15	CAFA #1	Matt, Joanne, Joe	Tim O'Hearn, County Administrator; Geoff Rossi, County Attorney; Wes Roe, Public Defender; Sheriff
5.21.15	Quality #1	Matt, Risa, Joanne, Joe	Wes Roe, Public Defender; Jessica Saks, Conflict defender & ACA
7.10.15	Quality #2/CAFA #2	Matt, Joanne, Joe	Tim O'Hearn, County Administrator; Geoff Rossi, County Attorney; Wes Roe, Public Defender; and Julia Hughes, ACP of Tompkins County.
8.5.15	Quality #3/CAFA #3	Joanne, Matt, Patricia, Joe	Tim O'Hearn, County Administrator; Geoff Rossi, County Attorney; Wes Roe, Public Defender; and Julia Hughes, ACP of Tompkins County
8.28.15	Quality #4/CAFA #4	Joanne, Matt, Patricia, Joe	Steve Getman, County Attorney; Wes Roe, Public Defender
10.6.15	Quality #5/review CAFA	Matt, Amanda, Deborah, Patricia, Joe	Steve Getman, County Attorney; Wes Roe, Public Defender
11.4.15	Quality #6/review CAFA	Amanda, Deborah, Patricia	Tim O'Hearn, County Administrator; Steve Getman, County Attorney; Wes Roe, Public Defender

Schuyler County: Schuyler County has a County Court and 11 Town & Village Courts.

CAFA

Current Coverage:

- **Weekdays:**
 - All courts covered from 8:30 am – 11:30 pm
 - Non-DA night exception. Sheriff has agreed to issue desk appearance tickets for DA nights (see below), so coverage not needed on non-DA nights; however, a small number of arraignments for desk appearance tickets issued by State Police (and Park Police) may still be scheduled on non-DA nights.
 - With addition of holding facility (see below), off-hour arrests covered

Coverage Assumptions for CAFA coverage (continued ILS funding):

- **Town & Village Courts (Upstate Caseload RFP):** continued funding of part-time Assistant Public Defender position to cover regular local court sessions, individualized arraignments (4:30 pm to 9:00 pm), and handle some appeals.
- **County Court (CAFA RFP):** continued funding of upgrade of part-time Assistant Public Defender to full-time to cover County Court arraignments and “float” to cover justice court arraignments.
- **Upgrade Legal Secretary position (CAFA RFP):** continued funding of upgrade of legal secretary position to assist with data collection

Coverage Gaps:

- **Town & Village Courts:**
 - Weekend arraignments
 - Non-DA night sessions for desk appearance tickets issued by State Police and Village Police.

Coverage Options:

- **Weekend arraignments:**
 - **Public Defender Office:** establish three attorney rotation in Public Defender office and provide stipend for each such attorney to cover every third weekend (9am – 9pm), but, to ensure sustainability of rotation system (avoid burn-out), build in flexibility to contract with other attorneys to substitute in the rotation.
- **Non-DA nights:**
 - **State Police.** With Sheriff’s office agreeing to write desk appearance tickets with return dates on DA nights, non-DA nights may still have arraignments for desk appearance tickets issued by the State Police (and Park Police).

Notification:

- **Weekend arraignments.** A dispatch system is used in Schuyler County to notify attorneys, so notification of attorneys is not a concern in Schuyler County.

Noteworthy:

- **Holding facility.** Schuyler County has recently obtained the necessary authorization for a holding facility, which would allow for the holding of defendants overnight, thereby alleviating the need to provide coverage for late night, off-hour arraignments.
- **Desk appearance tickets/DA nights.** The Sheriff has agreed to have his deputies issue desk appearance tickets for DA nights only, thereby alleviating need for counsel to be present for arraignments on non-DA nights. The Sheriff’s office issues about 90% of the desk appearance tickets. State law enforcement has agreed to work with ILS/Schuyler County to develop program to issue appearance tickets for DA nights. ILS needs to finalize/formalize.

Estimated CAFA costs

Coverage	Cost Description	Costs
Weekend/holiday arraignments	On-call rotational system of three attorneys in Public Defender office to provide coverage every third weekend from 9 am to 9 pm, with flexibility to add 18-B or private counsel into rotation. Would receive stipend (\$200/day); total cost estimate of \$30,000 would include cost of cell phones and mileage reimbursement (\$4,400).	Total cost to cover weekends/holidays from 9 am to 9 pm: \$30,000.
Non-DA nights (State Police/Park Police desk appearance tickets)	Add two Assistant Public Defender positions – one full-time position (salary: \$55,000/yr. plus \$37,000 fringe) and one part time position (\$40,000/yr. plus \$29,000 fringe) (both positions subject to 4% annual	Total cost for a full-time and part-time Assistant Public Defender positions: \$161,000 w/4% annual increases.

	increase)) to provide coverage on non-DA nights. Cost of office space, computers, equipment not included.	Costs not necessary if all law enforcement agree to issue appearance tax for DA-nights.
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Quality Improvement

Funding breakout

- **Schuyler County:** \$55,956 for each of two years

Quality Assumptions (continued ILS funding):

- **Investigative services** (Distribution #3) – continued funding for investigative services in PD office
- **Arc of Schuyler** (Distribution #3) – continued funding with Arc of Schuyler to transport clients without access to public transportation to and from court and office conference.

Topics Discussed

ACP

- **Regional Assigned Counsel Program.**
 - **Tompkins County/Schuyler County regional assigned counsel program.** Schuyler County and Tompkins County have held and continue to hold meetings to discuss establishment of a regional assigned counsel program. Schuyler County has drafted an inter-municipality agreement (IMA) which, Tompkins has reviewed and sent back to Schuyler; this agreement sets forth the scope of the duties and responsibilities of the two counties. Both counties agree on all key, substantive issues, though Schuyler needs to amend the IMA to reflect its recent decision to terminate its contract with its Conflict Defender, and have the regional ACP handle all cases that the Public Defender Office cannot take. Tompkins County would administer the regional assigned counsel program for the attorneys in both counties; current Tompkins County ACP program requirements and features would apply to participating Schuyler attorneys, with the exception that Schuyler County attorneys would not be expected to be on-call one day/month to handle off-hour arraignments (all Tompkins County panel attorneys are required to be on-call one day/mo.). Likewise, Schuyler County would be expected to establish its own Counsel at First Appearance program, which would be administered by Schuyler County. Some current requirements and features of the Tompkins ACP that would be included in a regional ACP with Schuyler County include:
 - **Mentoring program.** All attorneys must have a mentor; panel attorneys who have been on a panel for five or more years must be mentors for younger or inexperienced attorneys;
 - **2nd Chair.** For younger attorneys, experienced attorneys are compensated to 2nd chair trials.
 - **Training Curricula/Free trainings.** Tompkins County ACP offers free trainings to its panel members (ILS funded); some recent and upcoming trainings include Peter Gertzenstein (DWIs), conditional sealing orders and prosecutorial misconduct. Topics for trainings are solicited from panel attorneys. Tompkins County has invited Schuyler County 18-b attorneys to participate in current CLE programs, even before there is agreement to establish a regional assigned counsel program.

- **Attorney Qualifications.** In order to become a member of an assigned counsel panel, there is an Initial review of attorney qualifications, followed by an interview with the supervising attorney. Tompkins County is currently utilizing the services of an interim supervising attorney while it actively seeks a full-time replacement for its recently deceased supervising attorney (Wes McDermott).
- **Caseload Limits.** Panel attorneys are subject to a 50 caseload limit.
- **Supervising Attorney.** A policing function is performed by the supervising attorney (along with Julia Hughes, the Administrator of the ACP)

In addition to establishing a program that would improve the quality of assigned counsel representation in Schuyler County, the program would greatly expand the available pool of attorneys who could provide assigned counsel representation in Schuyler County - addressing a longstanding concern of a shortage of available attorneys in Schuyler County.

Main issue for Schuyler – keep Conflict Defender contract, or terminate contract and merge cases with regional ACP? Tompkins gave 2 estimates of cost: 1) \$33,446 without Conflict Defender cases; 2) \$58,446 with Conflict Defender cases. Schuyler estimates that terminating Conflict Defender contract will cost an estimated additional \$70,000 for county in panel attorney fees. Despite these costs, Schuyler has determined that terminating Conflict Defender contract is best means of meeting Settlement’s quality objectives, but is going forward on good faith that ILS/State will provide funding to cover additional costs.

Public Defender:

- **Specialized trainings.**
 - Some ILS funding is available for trainings; need for more specialized trainings; out-of-state trainings
- **Social workers**
 - Currently social workers are not utilized

Estimated Quality Improvement Costs

Item	Description	Costs
ACP priorities	Regional Assigned Counsel Program. Development of regional assigned counsel program with Tompkins County	<p>Regional Assigned Counsel Program (\$58,446 plus increased attorney fees estimated at \$70,000). Participating in a Regional Assigned Counsel Program with Tompkins County will use the full allotment of Quality funding available to Schuyler County, with additional costs.</p> <p style="text-align: right;">Total: estimated \$128,446/yr (Quality funding is \$55,956/yr)</p>

Tracking

Attorney Caseload/Workload

- NYSDA adding attorney workload fields to PDCMS in PD office.
- Until regional assigned counsel program finalized, whether NYSDA will install PDCMS in Conflict Defender office and ACP is on hold. Currently looks like there will be no need for PDCMS in Conflict Defender; Tompkins County's case tracking will need to be updated. (November 13th deadline will have to be extended).

Suffolk County discussions

Date	Topic(s)	ILS attendees	Suffolk County attendees
4.24.15	1 st meeting	Bill, Joe	Hon. Randall C. Hinrichs, District Administrative Judge; Hon. Glenn A. Murphy, Supervising Judge of the District Court; Robert Quinlan, Principal Law Clerk to Judge Hinrichs; David Besso, 18-B Administrator; Dennis Brown, County Attorney; Dennis Cohen, Chief Assistant County Executive; William Ferris, President of the Suffolk County Bar Association; Harry Tsilis, representative from the Suffolk County Bar Association; Angela Blekht, President of the Suffolk County Criminal Bar Association. Legal Aid attendees: Laurette Mulry, Deputy Attorney in Charge; Philip J. O'Reilly, Administration; Edward Vitale, Bureau Chief, County Court; Sabato Caponi, Bureau Chief, East End; Michael Ahern, Quality Control Supervisor
5.13.15	Quality #1 (ACP)	Matt, Risa	Dave Besso, 18-B Administrator
5.14.15	CAFA #1	Joanne, Matt, Joe	Hon. Randall C. Hinrichs, District Administrative Judge; Hon. Glenn A. Murphy, Supervising Judge of the District Court; Robert Quinlan, Principal Law Clerk to Judge Hinrichs; David Besso, 18-B Administrator (1st half of meeting); Dennis Brown, County Attorney; Angela Blekht, President of the Suffolk County Criminal Bar Association; Laurette Mulry, Deputy Attorney in Charge; Edward Vitale, Bureau Chief, County Court; Sabato Caponi, Bureau Chief, East End; Joe King, Acting Bureau Chief, District Court Bureau .
5.15.15	Quality #1 (LAS)	Matt, Risa	Laurette Mulroy (Asst. Attorney-in-Chief); Ed Vitale (Felony Section Chief; Sab Capone (East End Bureau Chief); and Joe King (District Court Bureau Chief)
7.14.15	Quality #2/CAFA #2 (ACP & LAS)	Joanne, Matt, Risa, Joe	Hon. Randall C. Hinrichs, District Administrative Judge; Hon. Glenn A. Murphy, Supervising Judge of the District Court; David Besso, 18-B Administrator; Dennis Brown, County Attorney; William Ferris, President of the Suffolk County Bar Association. Legal Aid attendees: Laurette Mulry, Deputy Attorney in Charge; Edward Vitale, Bureau Chief, County Court; and Sabato Caponi, Bureau Chief, East End.
8.11.15	Quality #3/CAFA #3 (ACP & LAS)	Joanne, Risa, Patricia, Joe	Hon. Randall C. Hinrichs, District Administrative Judge; Hon. Glenn A. Murphy, Supervising Judge of the District Court; David Besso, 18-B Administrator; Dennis Brown, County Attorney; Robert Quinlan, Principal Law Clerk to Judge Hinrichs. Legal Aid attendees: Laurette Mulry, Deputy Attorney in Charge; Edward Vitale, Bureau Chief, County Court; Sabato Caponi, Bureau Chief, East End; Joe King, Acting Bureau Chief, District Court Bureau .
9.8.15	CAFA #4	Joanne, Risa, Patricia, Joe	Hon. Randall C. Hinrichs, District Administrative Judge; Hon. Glenn A. Murphy, Supervising Judge of the District Court; David Besso, 18-B Administrator; Dennis Brown, County Attorney; Robert Quinlan, Principal Law Clerk to Judge Hinrichs. Legal Aid attendees: Laurette Mulry, Deputy Attorney in Charge; Edward Vitale, Bureau Chief, County Court; Sabato Caponi, Bureau Chief, East End; William Ferris, past President of the Suffolk County Bar Association; and Donna England, President of the Suffolk County Bar Association.
9.30.15	Quality #4/review CAFA	Matt, Amanda, Risa, Patricia, Joe	Hon. Randall C. Hinrichs, District Administrative Judge; Hon. Glenn A. Murphy, Supervising Judge of the District Court; David Besso, 18-B Administrator; Dennis Brown, County Attorney; Robert Quinlan, Principal Law Clerk to Judge Hinrichs; William Ferris, past President of the Suffolk County Bar Association; and Donna England, President of the Suffolk County Bar Association. Legal Aid attendees: Laurette Mulry, Deputy Attorney in Charge; Edward Vitale, Bureau Chief, County Court; Sabato Caponi, Bureau Chief, East End; Joe King, Acting Bureau Chief.

Suffolk County: 2nd largest county by geographic area in New York State (86 miles long and 26 miles wide at its widest point); comprised of 10 Towns, with 5 Towns in the Western portion (suburban and urban) (“West End”) and 5 Towns in the Eastern portion (largely rural; geographically remote) (“East End”). There are a total of fourteen (14) justice courts on the East End of Suffolk County. Of these fourteen (14) justice courts, nine (9) are relevant for purposes of providing counsel at first appearance (the Towns of Riverhead; Southampton; Southhold; East Hampton; and Shelter Island; and the Villages of Southampton; Quogue; Sag Harbor; and Westhampton Beach)

CAFA

Current Coverage

- **West End:** arraignments are covered throughout the West End. District Court (District Court arraignment parts – LAS & 18-B coverage) (Street Appearance Part – desk appearance tickets; 18-B coverage); West End Village Court arraignments - covered by LAS.
- **East End: Weekdays:** coverage weekdays at four (4) East End justice courts (Towns of Riverhead; Southampton; Southhold; East Hampton).

Coverage Assumptions for CAFA coverage (continued ILS funding):

- **East End:** “Arraignment Team” (CAFA RFP) – continued ILS funding of two LAS attorney positions whose “sole responsibility” is to be physically present for arraignments at two high volume town courts (Southold & East Hampton).
- **West End:** “Arraignment Attorney” (CAFA RFP) – continued ILS funding of 18-B attorney for expanded coverage in District Court arraignment parts (“ensure that counsel will be physically present in the District Court arraignment part whenever Court is in session”).
- **West End:** Street Appearance Part (Distribution #5 funding) - continued ILS funding for two (2) full-time 18-B attorneys to staff Street Appearance Part (desk appearance tickets)
- **West End:** D-11 Arraignment Part (Distribution #5 funding) – continued ILS funding for one (1) full-time 18-B attorney to staff D-11 Arraignment Part

Coverage Gaps:

- **East End:**
 - **Weekdays:** coverage is currently unavailable at five (5) East End justice courts with arraignments (Town of Shelter Island; Villages of Southampton; Quogue; Westhampton beach and Sag Harbor)
 - **Weekends; holidays:** coverage is currently unavailable at the nine (9) East End courts with CAFA needs.

Coverage Options

- **East End:**
 - **Weekdays:** add two (2) LAS attorneys to provide complete coverage for the nine (9) East End courts (estimated cost: \$173,080) (would establish two coverage zones.
 - **Weekends:** three options discussed to cover weekend (and holiday) arraignments in the nine (9) East End courts
 - **LAS hire contingent of nine (9) staff attorneys on part-time basis:** 9 attorneys “in season;” reduce to 6 attorneys “off-season.” (est. cost/per LAS: \$270,860; includes mileage)
 - **concerns:** recruitment of part-time attorneys; overstaffing “in-season” (reduce staff “off-season); retention of staff; no “spare bodies” (back-up); part-time hires runs counter to LAS preference for exclusive employment
 - **viability:** this proposal generated little discussion or interest and is not considered viable.

- **LAS use of existing staff:** In theory a potential pool of up to 100 LAS attorneys; would allow for vertical representation) (estimated range of costs/per LAS: a maximum cost: \$344,631; maximum cost with two on-call attorneys: \$443,974; minimum cost: \$224,460; minimum cost with two on-call attorneys: \$270,860. Includes mileage reimbursement.
 - **Phased-in approach.** LAS also proposes implementing this proposal in three phases, or all at one time.
- **Contract with attorneys outside LAS:** LAS, private or 18-B recruited (paid hourly, per diem or flat rate);
 - **Request for Qualifications.** County to develop Request for Qualifications (RFQ) to attract eight (8) 18-b or private counsel to cover weekend and holiday arraignments in eight East End Justice courts, with two attorneys assigned per court. Program would be administered by the Suffolk County Assigned Counsel Program. County to gauge interest in program by holding two meetings in September on East End.
 - **concerns:** limited number of lawyers on East End; transition of cases to LAS or private attorney post-arraignment.

Estimated CAFA Costs

Coverage	Cost Description	Costs
Weekday coverage at five (5) additional East End justice courts.	Add two (2) LAS attorneys to provide complete coverage for the nine (9) East End courts (would establish two coverage zones).	estimated cost: \$173,080
Weekend coverage at nine (9) East End justice courts.	<ul style="list-style-type: none"> • Option #1: LAS hire contingent of nine (9) staff attorneys on part-time basis: 9 attorneys "in season;" reduce to 6 attorneys "off-season" • Option #2: LAS use of existing staff: potential pool of up to 100 LAS attorneys. This proposal could be implemented in three phases, or all at one time. • Option #3: Contract with private or 18-B attorneys per RFQ process. 	<ul style="list-style-type: none"> • Option #1: estimated cost: \$270,860 • Option #2: estimated costs: Maximum cost: \$344,631 to \$443,974; Minimum cost: \$224,460 to \$270,860 • Option #3: estimated cost: up to \$400,000

- **Alternatives**
 - **Consolidation of arraignments into single (or fewer) locations**
 - **Concerns:** East End justices approached and express little interest in consolidation.
 - **Staggering arraignments or setting "cut off" time for arraignments.**
 - **Concerns:** East End justices approached and express little interest in staggering arraignments or setting a "cut off" time.

Noteworthy:

- **Client communications.** Suffolk LAS recently successful in an Article 78 regarding confidential meeting spaces for custodial defendants; private meeting spaces being added to East End Justice Courts

Quality Improvement

Funding breakout

- **Suffolk County:** \$1.1 million for each of two years

Quality Assumptions (continued ILS funding):

- **LAS**
 - “Social Worker” Bureau (Distribution #3) - continued funding of four social worker positions and investigator;
 - Quality Control Supervisor (Upstate Caseload RFP) - continued funding of Quality Control Supervisor (Michael Ahern) for trial preparation in District Court (no caseload);
 - “Padilla Compliance Team” (Distribution #3) - continued funding of senior staff attorney position dedicated to immigration (2 days/wk. in Riverhead; 3 days/wk. in Central Islip)
 - Spanish speaking positions (Distribution #2; continued in Distribution #5) - attorneys (4); PT secretary (1); client advocate (1)
 - Salary parity adjustment (includes healthcare insurance benefits) (Distribution #4) – continued funding of salary parity adjustment and healthcare insurance benefits
 - Enhanced training/CLE (Distribution #5) – continued funding for enhanced training/CLE, e.g., intensive trial preparation training courses, sex offender and DWIs.

- **ACP**
 - Qualitative/Quantitative Assistant (Upstate Caseload RFP) – continued funding of ACP Qualitative/Quantitative Assistant.
 - Electronic Voucher System (Distribution #4) – continued funding for web-based electronic voucher processing system and Technician Assistant position to enter voucher data into Electronic Voucher System.
 - Salary parity adjustment (Distribution #4) – continued funding for parity adjustment for Assigned Counsel Plan staff
 - Investigator position (Distribution #5) – continued funding for investigator position in D-11 arraignment part
 - Administrative allocation (Distribution #5) – continued funding for administrative allocation to administer Street Appearance Program.

Discussions:

ACP

- **Formalized 18(b) office.** Upgrade of ACA position to full-time (currently ACA position “pro bono”); obtain ACP office space (ACP currently housed in ACA’s law office)
 - **ACA full-time position:**
 - **Salary parity:** per NLADA Standards for Administration of Assigned Counsel Systems, ACA position would have salary parity with other county officials
 - **Funding source:** County appears interested in using HH Quality Improvement funding to upgrade ACA position.
 - **ACP office space:**

- **Formal supervision/mentoring/resource structure.**
 - **Supervision/mentoring/training:**

- Discussions whether supervision/mentoring/resource function should be position separate from new full-time ACA position or whether new full-time ACA in Suffolk could provide supervision, mentoring, resource function, given that there are support staff to perform day-to-day functions of office.
 - Currently, voucher review process and some informal supervision (ACA spends 5-10 hrs./wk. providing supervision for 175 attorneys). With NYSDA CMS, will be able to monitor whether motions filed, hearings conducted, whether investigator used.
 - Mentoring for younger attorneys currently done informally, with attorney initially expected to locate mentor.
 - **Enhanced Training/Training Director.**
 - Currently, free mandated CLEs for panel members, but need for more specialized trainings
 - **Experts/Investigator Resources**
 - Funding to enhance use of expert/investigative services

LAS

- **Retention Fund (Compensation/Parity).** LAS seeks a one-time stipend for staff attorneys (merit based) in order to retain staff; increasingly, LAS attorneys are leaving for better salaries and benefits, leaving LAS with a staff of either very young attorneys – or the very experienced.
- **Enhance Supervision.** Add three experienced attorneys in supervisory roles, as per the Quality Control Supervisor position added with Upstate Caseload funding, to assist with compliance with professional standards and reporting.
- **Formal, systematic training program.** Would create a formal, systematic training program that would include intensive trial training, individualized and specific training to meet needs of attorneys, and funding to rent meeting space and hire speakers.
- **Access to Investigators, Experts and Support Services.** Enhance the availability of support services, such as investigative services, experts, and legal research.
- **On-line Legal Research.** At present, only a portion of LAS attorneys have passwords to Lexis or Westlaw – would increase the number of licenses by 110.
- **Social worker/language interpretation services.** Would expand the current ILS funded Social Worker Bureau and interpretative services
- **Technology/Client communication/technology.** Provide funding for technology to enhance client communicate (i.e., via iPads).
- **Office Space.** LAS is in need of additional office space to address a growing staff.
- **Special Litigations Bureau.** Suffolk LAS was recently successful in an Article 78 regarding confidential meeting spaces; this Bureau would be dedicated to protecting due process rights of LAS clients and righting systematic problems.

Estimated Quality Improvement Costs

Item	Description	Costs
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<p>ACP priorities</p>	<p>To professionalize Assigned Counsel Program:</p> <p>Create full-time ACA position. Strong consensus that to professionalize the ACP, need a full-time ACA.</p> <p>Upgrade Deputy Administrator position. To retain services of Deputy Administrator when ACP office is upgraded.</p> <p>Part-time Grants Manager position. With an ever increasing number of ILS distributions and grants, this position would reduce the administrative burden on the ACA.</p> <p>Equipment and Start Up Costs for ACP. To outfit the new ACP office with equipment, computer technology, phones, etc.</p> <p>ACP Office Renovation. To renovate the County office space currently being identified for housing the ACP. At present, the County is considering three different locations for the office.</p> <p>ACP Consulting Attorney. To assist the new full-time ACP to acclimate to running the ACP, including mentoring of ACP panel attorneys. Per discussions with County, need for an attorney to mentor ACP panel attorneys discussed.</p>	<p>Create full-time ACA position (\$187,475). Per discussion, initial County proposal to offer a salary of \$125,000/yr. (plus benefits), but increased to \$150,000/yr. (plus benefits) in order to attract experienced, high-quality, well-regarded candidates.</p> <p>Upgrade Deputy Administrator position (\$17,347). Per discussion with County, would increase salary of Deputy Administrator position from \$75,000/yr. to \$90,000/yr. (plus benefits).</p> <p>Part-time Grants Manager position (\$40,000). Per discussions with County, County would contract for these services to obtain a quality Grants Manager.</p> <p>Equipment and Start Up Costs for ACP (\$39,225, \$30,900 which is start-up and \$8,325 ongoing internet, copier, & other monthly fees).</p> <p>ACP Office Renovations (\$80,000). Until the County is able to decide on a location for the ACP and can price out the costs of renovation, this figure of \$80,000 is a placeholder.</p> <p>ACP Consulting Attorney (\$60,000). Although not discussed during meetings with County, the current ACA has expressed interest in providing this contractual service.</p> <p>Total costs: ACP \$424,047</p>
<p>LAS Priorities</p>	<p>Retention Fund (Compensation/Parity). LAS seeks one-time stipends (for each of the two years of Quality funding) for staff attorneys (merit based) in order to retain staff; increasingly, LAS mid-career attorneys are leaving for better salaries and benefits, leaving LAS with a staff of either very young attorneys – or the very experienced.</p> <p>Enhance Supervision. Add additional experienced attorneys in supervisory roles, similar to the Quality Control Supervisor position added with Upstate Caseload funding, to assist with compliance with professional standards and reporting.</p>	<p>Retention Fund (Compensation/Parity) (\$240,000). Per discussion with County, the amount originally requested for the retention fund - \$200,000 – was increased to \$240,000.</p> <p>Enhance Supervision (\$150,000). Would make available a total of \$150,000 to contract for these positions.</p>

	<p>Specialized Courts Training program. Would create a training program to enhance quality of representation in the many specialized courts, e.g., DWI courts, Mental Health Courts, Veterans Courts, Human Trafficking Courts and Domestic Violence Courts.</p> <p>Access to Investigators. To enhance the availability of support services, such as investigative services.</p> <p>Access to Experts. To enhance availability of expert services.</p> <p>On-line Legal Research. At present, only a portion of LAS attorneys have passwords to Lexis or Westlaw – would increase the number of licenses by 110.</p> <p>Social worker Services. Would expand the services provided by the current ILS funded Social Worker Bureau.</p> <p>Interpreter Services. Would enhance funding for interpretative services to address increasing number of non-English speaking clients.</p>	<p>Specialized Courts Training program (\$52,571). Would providing funding for trainings re: specialized courts, including rental costs for space to accommodate large group trainings.</p> <p>Access to Investigators (\$80,000). Would provide funding to contract for investigative services</p> <p>Access to Experts (\$50,000). Would provide funding to contract for expert services.</p> <p>On-line Legal Research (\$50,000). Would make online legal research available to all LAS attorneys.</p> <p>Social worker/language interpretation services (\$50,000). Would provide funding to contract for these services.</p> <p>Interpreter Services (\$20,000). Would provide funding to contract for interpreter services.</p> <p>Total costs: LAS \$692,571</p> <p>Total plan costs: \$1,116,618*</p>
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Some of the items contained in this chart represent one-time costs – use of the second year of Quality funding will need to be redirected

Tracking

Attorney Caseload/Workload

- NYSDA PDCMS has been installed in Suffolk ACP.
- NYSDA has added attorney caseload fields to PDCMS in LAS and ACP.

Washington County discussions

Date	Topic	ILS attendees	Washington County attendees
4.1.15	1 st meeting	Bill, Joe	Kevin Hayes, County Administrator; Roger Wickes, County Attorney; Mike Mercure, Public Defender
4.10.15	Quality #1	Matt, Risa	Mike Mercure; Maria DeCarlo-Drost
5.20.15	CAFA #1	Joanne, Matt, Joe	Kevin Hayes, County Administrator; Roger Wickes, County Attorney; Mike Mercure, Public Defender (part of meeting); Al Nocette, County Treasurer (part of meeting); Cillian Flavin (guest), NYS Division of Budget; Nicolle Richardson (guest), NYS Division of Budget; Judge Roger Forando, Village Court Judge (Granville, NY)
7.7.15	Distributions #3-#5 CAFA #2/Quality #2	Joe	Kevin Hayes, County Administrator; Roger Wickes, County Attorney; Mike Mercure, Public Defender (part of meeting); Al Nocette, County Treasurer
7.29.15	Distributions #3-#5 CAFA #3/Quality #3)	Joe	Roger Wickes, County Attorney; Mike Mercure, Public Defender; Kevin Hayes, County Administrator (part of meeting)
8.31.15	CAFA #4	Joanne, Matt, Patricia, Joe	Roger Wickes, County Attorney; Mike Mercure, Public Defender; Kevin Hayes, County Administrator
9.2.15	CAFA #5	Patricia, Joe	Mike Mercure, Public Defender; Kevin Hayes, County Administrator; Tony Jordan, District Attorney; Judge Roger Forando, Village Court Judge (Granville, NY)
10.1.15	Quality #4/review CAFA	Matt, Patricia, Joe	Kevin Hayes, County Administrator; Roger Wickes, County Attorney (part of meeting); Mike Mercure, Public Defender,

Washington County: Washington County has 24 Town and Village Courts, County Court and Supreme Court. Currently, the Public Defender office consists of eight (8) attorneys, including Mike Mercure, the Public Defender. Mike is currently the only full-time attorney in the Public Defender office (the seven Assistant Public Defenders are part-time; 30 hrs./wk. w/o benefits), however, Washington County will be upgrading three of the part-time Assistant Public Defenders positions to full-time (w/benefits) in September. The assigned counsel program is currently run out of the Public Defender's office, but Washington County is in process of establishing a separate assigned counsel office with Maria DeCarlo, the current Executive Assistant in the Public Defender's office, running the day-to-day operation of the program. Washington County is the only HH settlement county that did not participate in ILS's counsel at first appearance grant.

CAFA**Current Coverage:**

- **County Court:** arraignment covered (Judges insist on DA and PD presence)
- **Town and Village Courts:**
 - **Regular scheduled court sessions:**
 - "DA nights:" "usually" covered by the PD office, but "not necessarily."
 - "PD nights:" DA nights that are covered by the Public Defender office.
 - "Non-DA nights:" "not covered regularly."
 - **Off-hour arraignments:**
 - covered only "situationally" (PD office may get call for very serious offenses)

- **Off-hour arraignment coverage concerns:**
 - **Lawyer availability.** difficult for lawyers in southern part of county to cover off-hour arraignments in northern part of county (few lawyers live in northern part of county; some panel attorneys do live in neighboring counties)
 - **Holding Facility.** no holding facility in Washington County
 - **Cell phone service.** lack of cell phone service in some Town and Village courts (Judges do have land lines)
- **Key to off-hour arraignment success**
 - **Early notification of attorneys for off-hour arraignments** (following arrest, law enforcement currently contacts the court and DAs office; Sheriff's office willing to notify on-call attorneys using beeper system. Thought that State Police and Village police would be willing to do the same.

Coverage Gaps:

- **Unscheduled arraignments during business hours.** Public Defender's office currently unable to have an attorney available to appear at unscheduled arraignments during business hours.

Current Coverage Options (county wide coverage):

- **Unscheduled arraignments during business hours.**
 - **Upgrade of APD position to full-time.** With upgrade of one part-time Assistant Public Defender position to full-time, Public Defender would have on-call attorney available during business hours to provide representation at unscheduled arraignments (\$36,498/yr. with benefits included).
- **"Off-business hour arraignments."**
 - **Off-business hour rotation.**
 - **On-call rotation.** Proposal to have twelve (12) attorneys (4 private attorneys & eight (8) Public Defenders) rotate on an on-call weekly basis, providing on-call coverage from 4:30 pm to 8:30 am each business day and weekends and holidays. Each of the twelve (12) attorneys would be on-call for one week of each quarter year (so roughly four weeks/year). Participation by members of the Public Defender office would be mandatory.
 - **Stand-by rotation.** Twelve (12) attorneys would also rotate to provide on-call weekly back-up coverage (4 private attorneys and eight (8) Public Defenders). Participation by members of the Public Defender office would be mandatory
 - **Costs.** On-call attorneys would receive a weekday stipend of \$100/day and \$200/day for weekends. Back-up attorneys would receive a weekday stipend of \$50 and \$100/day for weekends. The private bar attorneys would also be paid \$75/hr. for covering an arraignment, with the expectation that there would be an average of three arraignments to cover each night.

Estimated CAFA Costs

Coverage	Cost Description	Costs
Unscheduled arraignments during business hours	With upgrade of one part-time Assistant Public Defender position to full-time, the Public Defender's office would have available an on-call Assistant Public Defender to provide coverage at unscheduled arraignments during business hours.	\$46,762/yr. for salary and fringe.

<p>"Off-business hour arraignments"</p>	<p>Twelve (12) attorneys rotate on an on-call basis, providing on-call coverage from 4:30 pm to 8:30 am each business day and for the entirety (24 hour) of weekend days and holidays. A second twelve (12) attorney rotation would provide stand-by coverage in the event the on-call attorney is unable to cover an arraignment. Estimate of 3 arraignments for each day.</p>	<p>On-call stipends: \$100/weekday and \$200/day for weekends and holidays; Stand-by stipends: \$50/weekday and \$100/day for weekends and holidays.</p> <p>Total costs for stipends: \$91,125/yr. (includes 25% fringe).</p> <p>Arraignment costs (\$75/hr.) (for private attorneys only) (estimated 3 appearances/day; 2.5 hrs./arraignment): \$70,875/yr.</p> <p>Communication equipment (pagers/phones) = \$10,000/yr. Carrying costs (pagers and phones): \$5,000/yr. Training (CLE) = \$2,500/yr.</p> <p>Total cost: \$217,850</p>
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- **Alternative**
 - **centralization of arraignments**
 - Some informal centralization of arraignments is beginning to occur, but only by a few Magistrates, so cannot currently be factored into providing coverage or cost estimate.
 - **Washington County position:** set up notification system to get attorneys to arraignments; best to let Magistrates figure out if there is a way to consolidate arraignments. If Magistrates told to do so, then Magistrates will become more resistant.

Noteworthy:

- **Desk appearance tickets/PD nights.** The District Attorney has asked law enforcement agencies issue desk appearance tickets for PD nights only, thereby alleviating need for counsel to be present for arraignments on non-PD nights.

Quality Improvement

Funding breakout

- **Washington County:** \$92,624 for each of two years

Quality Assumptions (continued ILS funding):

- **PD:**
 - **Public Defender office attorney upgrades** (Distribution #2): continued funding of upgrades of part-time Assistant Public Defender positions from 15 hrs./wk. to 30 hrs./wk.); increased salary for Public Defender.
 - **Assistant Public Defender position** (Upstate Caseload): continue funding of Assistant Public Defender position dedicated to Family Court and parole matters.

- **Administrative Secretary position** (Upstate Caseload): continued funding of Administrative Secretary position.

Discussions:

PD:

- **Upgrade part-time Assistant Public Defender positions to full-time.**
 - **Professionalize Public Defender office.**
 - **ILS Distributions #3, #4 & #5:** Washington County has indicated that it intends to propose using ILS distributions to upgrade three part-time Assistant Public Defender positions to full-time (previously had talked about possibility of using HH Quality funding to upgrade these positions).
 - **Office Space.** To accommodate new full-time Assistant Public Defenders, Washington County is renovating County office space for larger PD office. Washington County has indicated that it will seek to use ILS distribution funding to partially cover costs of renovation.
- **Attorney Retention.**
 - **Increase salaries of Public Defender and Assistant Public Defenders to retain staff.**
 - Salary structure of Public Defender and Assistant Public Defenders comparable to salary structure of other County Departments, with exception of District Attorney, whose salary is supported by State funding (in addition to County funding).
- **Training.**
 - **Specialized trainings.** Specialized trainings such as DWI; sex offender; domestic violence; use of investigators; drug offenses); out-of-state trainings
 - **In-house trainings.** Currently no in-house trainings.
- **Access and use of Investigative/Expert services**
 - **Support services.** Very little spend on investigative services; virtually none spent on expert services.
- **Access to social worker/mitigation expert services**
 - Social workers/mitigation experts not currently used.

ACP

- **Establish Assigned Counsel Office**
 - **Director position.** Upgrade salary of executive secretary to run day-to-day operations of assigned counsel office
 - Currently, the Public Defender makes assigned counsel assignments.
 - **Funding source:** Washington has indicated that it will seek to use ILS distributions to cover costs of upgrading the salary of the ACA.
 - **Administrative Assistant position.** Add a part-time Administrative Assistant position to assist in running the day-to-day operations of the ACP.
- **Develop supervisory/mentoring/resource structure for ACP panel attorneys.**
 - Contract with experienced attorney to provide supervision; mentoring; attorney evaluation
 - Locate appropriate candidate that can work with panel attorneys
 - Currently, there is very little supervision, if any, of panel attorneys.

- **Access to Resources**
 - Trainings; investigative services; experts; etc.

Estimated Quality Improvement Costs

Item	Description	Costs
ACP Priorities	<p>Full-time ACP Administrator position. To professionalize the assigned counsel program will upgrade salary of executive secretary (currently in Public Defender's office) and create full-time ACA position to assume day-to-day operations of assigned counsel office</p> <p>Consulting Attorney. Contract with experienced attorney to provide supervision; mentoring; act as resource for assigned counsel panel attorneys.</p> <p>Part-time Administrative Assistant position. To provide clerical support services for newly established Assigned Counsel Program.</p>	<p>Full-time ACP Administrator. County intends to use source of funding other than Quality funding to upgrade Executive Secretary position to full-time and create ACP Administrator position.</p> <p>Consulting Attorney (\$17,000). Per discussion with County, will seek an experienced, well-regarded attorney to serve as consulting attorney. County initially proposed \$15,000 annual contract; amount increased to \$17,000 to address greater need for such a position.</p> <p>Part-time Administrative Assistant position (\$27,500). Per discussion with County, would use approximately \$27,500 for this 20 hr./wk. part-time position (w/benefits).</p> <p>Total: ACP \$44,500</p>
Public Defender Office Priorities	<p>Attorney Retention: Salary Increases. To address low salaries of Public Defender and Assistant Public Defenders, discussed various proposals for increasing these salaries.</p> <p>Part-time Administrative Assistant position. To provide additional administrative support for the newly expanded Public Defender office.</p> <p>Training Resources. To provide additional training resources, including specialized trainings for staff attorneys.</p>	<p>Attorney Retention: Salary Increases (\$14,560). Per discussion with County, to address low county-wide structural salary rates, County will propose calculating attorney salary rates based on years of experience, rather than years of service with County. This would result in small salary increases for attorney staff.</p> <p>Part-time Administrative Assistant position (\$27,500). Per discussions with County, \$27,500 would be used to add this part-time position.</p> <p>Training Resources (\$6,064). Per discussions with County, consensus on need for additional training resources. County also proposed using this funding</p>

	<p>*Alternative Use of Public Defender Funding. In the event the retention salary increases are not approved by the County Legislature, redirect funds to hiring a full-time Administrative Assistant for the Public Defender Office.</p>	<p>towards the part-time Administrative Assistant position, but need for training resources significant.</p> <p>*Alternative Use of PD funding. \$48,124 would be available for a full-time Administrative Assistant position, which would not fully cover the cost of this full-time position; plus there would not be funds available for training resources, which is a high priority for ILS.</p> <p><u>Total: Public Defender Office \$48,124</u></p> <p><u>Overall plan total: \$92,624</u></p>
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Tracking

Attorney Caseload/Workload

- NYSDA has added attorney workload fields to PDCMS in PD office and ACP.

EXHIBIT B

Interview Questions

TOPICS & QUESTIONS FOR CAFA MEETINGS

I. How does the current CAFA system operate?

A. Which Courts?

1. In which courts is CAFA being implemented?
2. Degree of implementation

Full implementation

Partial

After hours?

Weekends?

Gaps in coverage

3. Which courts have not yet implemented CAFA?
4. Total number of judges and magistrates involved in arraignments with counsel

B. What times?

1. What are the court schedules for arraignments?

C. Court Involvement in the Process

1. What assignment information do the courts receive and from whom?
2. How often is arraignment information disseminated?
3. Is CAFA implementation altered by judges/magistrates or courts?
4. Where the courts involved in the overall CAFA implementation process?
5. How?
6. Have the courts attended follow up CAFA implementation meetings? If so, when was the last meeting scheduled?
7. Who is the court instructed to contact with any concerns or complaints?
8. Any discussions on centralization of arraignment?

D. Staffing

1. Selection of Attorneys for Roster

1. Who schedules attorney assignments?
2. How are attorneys chosen to appear at arraignment?
3. How many attorneys appear at arraignment?
4. How are assigned attorneys notified of assignments?
5. Is there a system to address an attorney's failure to appear?
6. Are attorney assignments rotated?
7. Are assigned attorneys compensated for appearance at arraignment, (other than paid salary)? How often and what rate/amount?

2. Training

1. Who decides whether the attorneys are appropriate to provide representation at CAFA?
2. Do the attorneys have certain specialized experience or are the attorneys on a particular panel in order to participate in CAFA?
3. Are the attorneys trained on CAFA implementation?
4. If trained on CAFA, who oversees the training? How often is training conducted?

3. Supervision

1. Are arraignment attorneys supervised?
2. If so, by whom and how are they supervised?
3. How often are they supervised?
4. Is there a mentoring program available?
5. Is there a procedure to place an attorney on temporary leave from assignment?

6. Is there a procedure to suspend an attorney from assignment?
7. Are the attorneys required to provide a report on CAFA appearances?
8. If so, to whom?

4. Selection of Attorneys for Individual Cases

1. Who selects individual attorneys for CAFA? (i.e., assigned counsel, assigned counsel, bar association, legislator, magistrate, etc.)
2. Who arranges the staffing and scheduling of assigned counsel at arraignments?
3. Who distributes the schedule of assigned attorneys for CAFA implementation? How often?
4. Who receives the schedule of assigned CAFA attorneys? How is the schedule distributed?
5. How are attorneys assigned for CAFA appearances?
6. Who coordinates the attorneys?
7. How are attorneys chosen for CAFA implementation?
8. What criteria is applied to choose counsel for arraignments? (ex. geographical location)
9. How many attorneys are available for arraignment?
10. Are attorneys reimbursed for off-hour arraignments (i.e., outside of regularly paid salary)? If so, how are they compensated?
11. What must be submitted by an attorney to receive compensation for appearance at arraignment?

5. Vertical or Horizontal Representation

1. Does the arraignment attorney keep the case?
2. Describe circumstances that might result in a change of counsel.
3. Who is authorized to re-assign counsel and how is it done?

E. Arraignment Standards (SCRIPTT)

1. Space

1. Do arraignments always occur in a court facility?
2. If not, where do the arraignments occur?
3. Are there court facilities that have capacity for temporary secured detention?

2. Confidentiality/Conflicts of interest

1. Do court facilities where arraignments occur accommodate confidential attorney-client communication?
2. Where is law enforcement/court security officers during attorney consultation with their client?
3. Any complaints as to lack of confidentiality?
4. Are there any circumstances or courtrooms that will inherently not support confidential communications? If so, what would they be?

Conflict of Interest

5. How do the courts deal with potential conflicts of interest?
6. More than one attorney available at arraignment?
7. Vertical representation after arraignment?
8. Notification of counsel available at arraignment if conflict apparent at time of arrest?
9. How is a conflict addressed if conflict becomes apparent at arraignment?
10. What process/procedure/protocol in place to ID the conflict?
11. Who would the arraignment attorney report to if a conflict is identified during the arraignment?
12. Who, if anyone, helps to determine if a conflict exists at arraignment or post-arraignment proceedings?

13. If not addressed at arraignment, how addressed post-arraignment?

3. Recording of Arraignments

1. Are all proceedings recorded?
2. If not, why not?

4. Interpreters (Language Access)

1. Are interpreters available at arraignment?
2. What happens if there is no interpreter available?
3. When and how is the Court advised of the need for an interpreter?
4. Does law enforcement ever advise the court when an interpreter is required?

5. Public Access

1. Is there public access to all CAFA arraignments?
 - Are the courts open to the public during regular hours?
 - What about outside of regular business hours?
2. If not, why not?
3. Have there been any efforts to ensure public access to after hours or weekend arraignments?
4. Has need for public access changed since CAFA implementation?

6. Time (Notification)

1. Who developed the notification procedures?
2. Has there any collaboration to develop notification procedures?
Between whom?
3. Who is responsible for providing attorney notification?
4. How is notification provided?
5. To whom is notification provided?

6. When is notification offered?
 7. How are courts notified of whom to contact for arraignment?
 8. How are attorneys contacted to appear by the court?
 9. Does notification differ between courts?
 10. Between judges or magistrates?
 11. Between assigned attorneys?
 12. How are notification procedures updated/revised?
 13. What obstacles, if any, were identified in the notification process?
 14. Were they resolved? If so, how?
 15. Any currently existing obstacles for CAFA notification?
 16. Have efforts been made to redirect notification to a third party?
 17. Have there been many reports of failure to appear by attorneys after notification by the court?
 18. If there is a failure to appear by counsel, how does the court proceed?
 19. Does law enforcement participate in attorney notification? If so, how?
7. **Technology**
1. Are assigned attorneys required to report their cases/case outcomes/ etc.? How often?
 2. Are attorneys provided with any reporting technology?
 3. Do attorneys have access to telephones/computers to verify information provided by clients at the time of arraignment?

F. Eligibility

1. Who determines eligibility at arraignment?
2. When is eligibility determined? By whom?

3. How is eligibility being determined?
4. Other than the defendant, who, if anyone, is notified of the eligibility determination?
5. Is there any requirement to conduct eligibility determination post-arraignment? If so, who is responsible for conducting an eligibility determination post arraignment?

G. Law Enforcement Response to Current System

1. District Attorneys

1. How was the DA notified of CAFA implementation? By whom?
2. What input, if any, has the DA provided in the CAFA implementation process?
3. What has changed for the DA's involvement at arraignment?
4. What resources are required by the DA for CAFA implementation?
5. Have those resources been addressed? By whom?
6. What role does the DA's office play at individual arraignment?
7. Has that role changed since CAFA implementation?
8. If so, how has that role changed since CAFA implementation?

2. Police Agencies

1. Was law enforcement involved in CAFA implementation?
2. How was law enforcement involved in CAFA implementation?
3. Has CAFA implementation impacted how defendants are transferred or detained prior to arraignment?
4. How has CAFA changed the process of transfer or detention of individual defendants for arraignment purposes?
5. Additional staffing requirement since CAFA implementation?
6. What has changed for law enforcement post-CAFA implementation?

7. What additional resources are required for CAFA implementation?
8. Have those resources been addressed? By whom?

H. Other Agencies/Stakeholders

1. What role did they play in CAFA implementation?
2. What role have they played since CAFA implementation, if any?
3. What additional resources are required for CAFA implementation? Have those resources been addressed? By whom?

I. Resources needed for CAFA implementation

1. Detention Space

1. Detention beds utilized for arraignment? How many?
2. Has CAFA implementation changed the # of beds used?
3. Where are the beds located?
4. Has transportation process of defendants changed since CAFA? If so, how?

J. Data Collection

1. Is data being collected? If so, what data is being collected?
2. Who is reviewing the data?
3. What resources are necessary to collect data on arraignments?
4. Have efforts been made to secure resources for data collection?
5. How do you track outcomes?

K. Strengths of the Current System

1. Has CAFA implementation altered bail determinations? How?
2. Has CAFA implementation altered bail postings? How?

3. Have jail costs changed

L. Problems

1. Are there any problems with the current system?
2. Any proposed modifications or necessary changes?

II. How should system expand to include all courts?

1. Will CAFA implementation be expanded to other parts of the county, courts, etc.? If so, when and where?
2. What changes will be required for further CAFA expansion?
3. Which Courts should be next?
4. What resources do you think will be necessary?
5. Who must be involved in the process?
6. What obstacles do you foresee?
7. What solutions do you see to those problems?
8. What lessons if any, have been learned from the initial CAFA implementation?
9. Will these lessons learned result in a different implementation approach to CAFA within the county, if applicable?
10. What additional resources may be required for partial/full CAFA implementation?
 - For magistrates, judges and their courts?
 - For the office of the District Attorney?
 - For law enforcement and/or any holding facilities?
11. Have any efforts been initiated to seek additional funds/resources?
 - Successful in efforts?
12. What can ILS do to provide support to efforts being made?
13. When can ILS schedule a follow up?

EXHIBIT C

Chart of Cost of Arraignment
Coverage in the Five Counties

Total costs of providing counsel at arraignment in the five settlement counties

County	Coverage	Total Cost	Comments
Onondaga County #1 of #4	Regular sessions at 13 Town & Village Courts. Onondaga proposes expanding the model currently used to provide arraignment coverage at fifteen (15) Town & Village courts (ILS Counsel at First Appearance grant program) to include all twenty-eight (28) Town & Village courts (\$90/session for felony-eligible attorneys; \$75/session for misdemeanor-eligible attorneys).	\$76,500/yr.	This proposal expands the coverage currently provided by the ILS Counsel at First Appearance grant; with the addition of these 13 Town and Village Courts, Onondaga would provide representation at arraignments of all regular sessions in the Town and Village Courts.
Onondaga County #2 of #4	City Traffic Court. Onondaga proposes expanding arraignment coverage currently provided in City Court to include Traffic Court (\$200/day stipend). Traffic Court meets daily.	\$60,194/yr.	This proposal would essentially be an expansion of the current Syracuse City Court program. Attorneys would be added to the current rotation for staffing Syracuse City Court arraignments, and, when there are few or no arraignments scheduled in Traffic Court, these attorneys would provide additional support in the other City Court parts.
Onondaga County #3 of #4	Town and Village Court arraignments held in City Court. Onondaga proposes expanding providing counsel at arraignment in the Town and Village courts to include arraignments conducted in the City Court building, using the same stipend (\$90/arraignment) as in the ILS Counsel at First Appearance grant program. Syracuse City Court allows these magistrates to conduct arraignments in an empty courtroom if there is an arraignment conducted during regular Syracuse City Court business hours.	\$15,600/yr.	This proposal would cover Town and Village court arraignments held in Syracuse City Court. At present, the total number of arraignments is unknown, so adjustments would need to be made as the program is implemented and more information is obtained.
Onondaga County #4 of #4	Off-hour arraignment in 28 Town & Village Courts. Onondaga proposes setting up an on-call system of fourteen 18-b panel attorneys, with participating attorneys divided into six geographic quadrants to cover every off-hour arraignment in the 28 Town and Village Courts (weekends, weeknights and unscheduled weekday arraignments other than arraignments conducted	*\$407,750/yr.	This proposal would cover all off-hour arraignments held in the Town and Village Courts, with the exception of Town and Village court arraignments held in the Syracuse City Court (see #3 above). * Estimated total cost. The estimated total cost of 407,750 for this on-call program likely underestimates the actual costs for the program, because it estimates cost based on the number of 18-B assignments in 2014 (1,100 assignments). The on-call program

	<p>in the Syracuse City Court building). Attorneys would receive a \$25/day stipend (total cost: \$127,750/yr.) and \$150/arraignment (total cost: \$165,000/yr.). In addition, two ACP staff positions would be funded to (1) monitor day-to-day operations of the program (troubleshooter) (\$50,000/yr.) and (2) perform administrative tasks, including tracking data (20/hrs./wk.) (\$40,000/yr.). Other program costs include computer & supplies (\$5,000/yr.) and dispatch fees (e.g., phones) (\$20,000/yr.).</p>		<p>would provide coverage for every off-hour arraignment – whether or not the defendant is found eligible for 18-B representation - so the actual number of arraignments will be higher.</p> <p>Assigned Counsel Plan positions. ILS staff questions the need for adding two staff positions (troubleshooter and administrative) to the Assigned Counsel Program. While the troubleshooter is an innovative, creative position to work through glitches in the day-to-day operation of the on-call program, the administrative position, which primarily will be involved in tracking program data, does not appear as needed – particularly given that this plan calls for the Maxwell School to provide an intern to collect Town and Village court caseload data.</p> <p>Attorney stipend/incentive to participate. ILS staff is concerned that Onondaga’s proposed on-call stipend of \$25/day is too little to attract and maintain a qualified panel of on-call attorneys. In contrast to Onondaga’s \$25/day stipend, Washington County proposes stipends of \$100/weekday and \$200/weekend day for off-hour coverage and Ontario County proposes \$300/day on holidays, \$150/day on weekends and \$75/day on weeknights. However, there is one added incentive for attorneys in Onondaga County that wouldn’t often apply in other counties – in Onondaga County the arraignment attorney will very likely be assigned the case.</p>
<p>Onondaga County: total proposed costs</p>		<p>\$560,044/yr.</p>	
<p>Ontario County #1 of #2</p>	<p>Non-DA nights. Ontario County estimates that it would take two additional Assistant Public Defender (APD) positions to provide coverage in the Town and Village courts on non-DA nights. The number of arraignments that would be covered is not currently known.</p>	<p>\$210,000/yr.</p> <p>(This figure does not include incidental costs such as office space needed for new hires, computers, training, etc.)</p>	<p>This proposal would provide arraignment coverage on non-DA nights (regular sessions) in the Town and Village Courts in Ontario County.</p> <p>Benefits. Adding staff to the Public Defender’s office to cover non-DA nights would have following benefits:</p> <ul style="list-style-type: none"> • Coverage of regular sessions. With the two added positions, arraignments at all regular court sessions in Ontario County (including non-DA nights) would be covered. • Sustainability of current CAFA coverage. With added Assistant Public Defender positions, current coverage of off-

			<p>hour and weekend arraignments by the Public Defender's office could be restructured to better ensure sustainability of coverage (burn-out).</p> <p>Alternatives.</p> <ul style="list-style-type: none"> • The need to provide representation on non-DA nights could be easily remedied if law enforcement wrote desk appearances for DA nights only. • Costs could also be reduced if arraignment calendars on non-DA nights were available to the Public Defender prior to court sessions, which would obviate need to attend non-DA night sessions without arraignments on the calendar.
<p>Ontario County #2 of #2</p>	<p>Weeknight, weekend and holiday off-hour arraignments. Ontario County proposes establishing an on-call, off-hour rotational system (contractual) of 18-b assigned counsel or other private attorneys to provide counsel for arraignments conducted (1) after 10 pm on weeknights or on weekends and holidays in the two Town Courts that do not participate in Ontario's centralized arraignment program and (2) weekends and holidays during the day time (until 10 pm) in all of the Town and Village Courts. On-call attorneys would receive a stipend of \$75/weeknight (total cost: \$19,200), \$150/weekends (total cost: \$15,600) and \$300/holidays (total cost: \$1,200), plus \$75/hr. for providing coverage at arraignments, with mileage reimbursement (total cost: \$5,000). Four on-call weeknight arraignments/wk. (total cost: \$15,600), five on-call arraignments each weekend day (total cost: \$39,000) and five on-call arraignments on holidays (total cost: \$1,200) are expected, with each arraignment lasting approximately one hour.</p>	<p>\$97,100/yr.</p>	<p>This proposal would provide counsel at arraignment during off-hours (1) in the two Town Courts that do not participate in Ontario County's centralized arraignment program and (2) on weekend days and holidays (until 10 pm) in the remainder of the Town and Village Courts.</p> <p>Benefits. Providing this off-hour coverage would have the following benefits:</p> <ul style="list-style-type: none"> • Coverage of off-hour arraignments. With this proposal, all off-hour weeknight arraignments and weekend and holiday arraignments in Ontario County would be covered. • Sustainability of current coverage. Weekend and holiday coverage provided by contract attorneys would cover off-hour arraignments on weekends and holidays (currently covered by the Public Defender's office). <p>Arraignment coverage time. ILS staff is concerned that this proposal contemplates an average of only one-hour to provide coverage at an off-hour arraignment. The Public Defender's office currently provides off-hour arraignment coverage on weekend days – and one hour/arraignment appears sufficient - but this proposal introduces coverage at overnight arraignments in the two Town Courts that do not participate in Ontario County's centralized arraignment program.</p>

			<p>This feature of the program should be monitored to determine if one hour per arraignment is feasible.</p> <p>Alternative.</p> <ul style="list-style-type: none"> The need for late night, on-call attorneys would be eliminated if the two Town Courts would participate in Ontario County's centralized arraignment program.
Ontario County: Total costs		\$307,100/yr.	
Schuyler County #1 of #2	<p>Weekend/holiday coverage. Schuyler proposes establishing an on-call rotational system of three attorneys in Public Defender office to provide coverage from 9 am to 9 pm on weekends/holidays, with flexibility to add 18-B or private counsel to the rotation, if needed, to sustain program and avoid burn-out of attorneys. For each weekend day rotation, a stipend of \$200/weekend day or holiday would be paid (total cost: \$25,600); the cost of cell phones and mileage reimbursement would be covered (\$4,400).</p>	\$30,000/yr.	<p>With the addition of this weekend/holiday on-call plan, Schuyler will be able to provide representation at off-hour arraignments countywide.</p>
Schuyler County #2 of #2	<p>Non-DA nights. Schuyler County estimates that it would take two additional Assistant Public Defender (APD) positions – one full-time position and one part-time - to provide coverage on non-DA nights. For the full-time APD position, the salary would be \$55,000 plus \$37,000 fringe; for the part-time APD position, the salary would be \$40,000 plus \$29,000 fringe. A 4% annual increase would apply to both positions.</p>	<p>\$161,000/yr. with 4% annual increase</p> <p>(This figure does not include incidental costs such as office space needed for new hires, computers, training, etc.)</p>	<p>This proposal would provide coverage on non-DA nights, which would not be necessary if State law enforcement agencies followed the lead of the Sheriff's department and issued desk appearance tickets for DA nights.</p>
Schuyler County: Total costs		\$191,000/yr.	
Suffolk County #1 of #2	<p>Weekday coverage at five (5) East End justice courts. Suffolk County proposes adding two (2) LAS attorneys (total annual salary and fringe for two attorneys: \$110,000 salary plus \$36,100 fringe) to provide complete coverage for the nine</p>	\$173,080/yr.	<p>This proposal would expand the coverage provided with ILS Counsel at First Appearance grant funding to include regular sessions of all nine (9) East End Town and Village courts that conduct arraignments.</p>

	(9) East End courts (would establish two coverage zones). Other non-personal costs are estimated at \$18,900 and mileage reimbursement at \$8,080.		
Suffolk County #2 of #2	<p>Weekend coverage at nine (9) East End justice courts with arraignments. Two plans have been proposed in Suffolk County for providing counsel at arraignments at the nine (9) East End justice courts on weekends and holidays.</p> <p>Plan A. Suffolk County Legal Aid Society (LAS) plan. LAS proposes using existing LAS staff to provide coverage in the East End justice courts on weekends and holidays. Preference would be given to East End Bureau attorneys (vertical representation; geographically located), but to cover all nine East End justice courts, LAS would use up to 100 LAS lawyers, with many located on the West End (mandatory participation, if necessary). Nine (9) attorneys would provide coverage at the courts "in season" (May – September) (351 total days of attorney coverage; total cost: \$140,400) and six (6) attorneys "off season" (September – May) (462 total days of attorney coverage) (total cost: \$184,800) when the number of arraignments in smaller courts is much lower. Two (2) additional on-call attorneys could be needed to provide coverage (232 total days of attorney coverage; total cost: \$92,800), depending on whether the courts have a "cut off" time for holding an arraignment. This plan could be implemented in three phases (LAS preference), beginning with the courts with the highest volume of cases and year-long need, or all at one time.</p> <p>Plan B. Contracting with 18B or other private attorneys. Suffolk County proposes a program administered through the Assigned Counsel Program (ACP) to contract with a pool of eight</p>	<p>*\$400,000/yr.</p> <p>Estimated maximum cost: \$344,631/yr.</p> <p>-Estimated maximum cost with two on-call attorneys: \$443,974/yr.</p> <p>-----</p> <p>Estimated minimum cost: \$224,460/yr.</p> <p>-Estimated minimum cost with two on-call attorneys: \$270,860/yr.</p> <p>Up to \$400,000</p>	<p>*Cost of program. \$400,000 represents the total amount that would be needed to implement either of the plans being proposed.</p> <p>This proposal would provide on weekends and holidays of the nine (9) East End Town and Village courts that conduct arraignments.</p> <p>This proposal would provide coverage on weekends and holidays of eight (8) East End Town and Village courts that conduct arraignments.</p>

	private or 18-b attorneys, with two such attorneys each assigned to four (4) Town Courts on the East End to cover all weekend and holiday arraignments (Town of Shelter Island not covered), including any weekend and holiday arraignments in the Village Courts located within each such Town. A Request for Qualifications (RFQ) with a detailed scope of services would be issued, with total available funding of up to \$400,000 to fund coverage at arraignments and for administration costs. The RFQ process would take approximately two months to complete.		
Suffolk County Total costs		\$573,080/yr.	
Washington County #1 of #2	Unscheduled arraignments during regular business hours. Washington County proposes upgrading one part-time Assistant Public Defender position to full-time to ensure that an on-call attorney would be available during regular business hours to provide representation at unscheduled arraignments (total costs: \$46,762/yr. with fringe benefits included).	\$46,762/yr.	This proposal would ensure that all unscheduled arraignments conducted during regular business hours would be covered.
Washington County #2 of #2	Off-hour arraignments on weekends, holidays and weekdays (non-regular business hours). Washington County proposes establishing two on-call weekly rotational systems of twelve attorneys to provide on-call representation and back-up representation (if needed) on weekends, holidays, and from 4:30 pm to 8:30 am on weekdays (i.e., non-regular business hours). The twelve attorney rotations would consist of eight attorneys from Public Defender's office (mandatory participation) and four 18-b panel attorneys or other private attorneys. Participating attorneys would be on-call for one week every three months for each of the two rotations (on-call & back-up). Attorneys providing on-call representation would receive a stipend of	\$217,850/yr.	This proposal would cover all off-hour arraignments on weekends, holidays and weekdays (non-regular business hours). ILF staff concerns: <ul style="list-style-type: none"> • Public Defender office participation/sustainability. ILS staff is concerned that because (1) participation of members of the Public Defender's office in the program is mandatory and (2) members of the Public Defender's office are not entitled to any compensation for covering arraignments other than the daily stipend, that this proposal may not be sustainable.

	<p>\$100/weekday and \$200/weekend day or holiday. Back-up attorneys would receive a stipend of \$50/weekday and \$100/weekend day or holiday (total cost of stipends, including fringe benefits: \$91,125). Mileage reimbursement costs are estimated to be \$32,850. 18-B or private attorneys would receive \$375.00/rotation to provide on-call arraignment coverage (estimated two arraignments/rotation) (total cost of on-call representation: \$47,250) and \$187.50/rotation for back-up coverage (estimated one arraignment/rotation) (total cost of back-up representation: \$23,625). Public Defenders would not be entitled to receive compensation other than the \$100/weekday or \$200/weekend day stipend for primary rotation or \$50/weekday or \$100/weekend day for back-up. Other program costs would include equipment/phones/computers (\$12,000); software (\$5,000/yr.); and training and legal education (\$6,000)</p>		
Washington County Total costs		\$264,611/yr.	
Total for all five counties		\$1,895,835/yr.	This amount represents the total funding needed for the five counties to provide counsel at arraignment countywide.

EXHIBIT D

Arraignment Checklist

REPRESENTATION OF DEFENDANTS AT ARRAIGNMENT
(Quality Indicators)

DEFENSE COUNSEL PREPARATION

**Yes No Could Not
 Determine**

- | | | | |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Did defense counsel know the elements of the offense? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Was defense counsel provided the relevant documents? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Was defense counsel aware of pre-trial release conditions? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Was defense counsel aware of the standard for bail review? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Did defense counsel conduct an initial interview of the client? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | If interview conducted, was it outside the court's presence? |

Comments _____

ARRAIGNMENT

**Yes No Could Not
 Determine**

- | | | | |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Did defense counsel enter a not guilty plea? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Did defense counsel move to dismiss the accusatory (if appropriate)? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Did defense counsel request pre-trial release? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Did defense counsel request bail? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Did defense counsel provide information to the court regarding defendant's background that was relevant for pre-trial release/bail? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Did defense counsel request a preliminary hearing (if appropriate)? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Did defense counsel Assert 190.50 rights to testify at Grand Jury or be notified of Grand Jury presentment? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Did defense counsel raise other legal issues (e.g. probable cause, suppression, competency, Orders of Protection)? |

Comments _____

OTHER FACTORS

**Yes No Could Not
Determine**

Was the arraignment held in a courtroom/publicly accessible space?

Was defense counsel provided confidential meeting space to meet with client?

Was defense counsel provided time to meet with client prior to arraignment?

Was the proceeding recorded in some way?

Was the defendant provided an interpreter if needed?

If interpreter was needed, did defense counsel have time to interview the client with the interpreter before the arraignment?

Comments _____
