

Memorandum Urging APPROVAL CRIMINAL JUSTICE SECTION

CJS #1 - GOV

August 1, 2016

S. 7209-A
A. 10360

By: Senator Bonacic

By: M. of A. Lentol

Senate Committee: Judiciary

Assembly Committee: Codes

Effective Date: 90th day after it shall have
become a law

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

LAW & SECTION REFERRED TO: Section 212 of the judiciary law, sections 100.55, 120.90, 140.20, 170.10, 180.10 of the criminal procedure law and section 106 of the uniform justice court act.

THE CRIMINAL JUSTICE SECTION SUPPORTS THIS LEGISLATION AND URGES ITS APPROVAL

We urge Governor Cuomo to approve this bill and by doing so:

- Current restrictions on the courts regarding initial jurisdiction would be lifted;
- A framework would be established by which the courts, law enforcement, prosecutors and defense counsel would be able to have certainty of location and time to conduct arraignments on criminal proceedings in compliance with the Sixth Amendment of the Constitution – assignment of an attorney for the representation of a poor person at every critical stage of the criminal case; and,
- Fundamental issues of access to timely off-hour arraignments would be addressed and each New York State county would be permitted to determine which courts would be used and the hours of their operation.

Background:

Fifty years ago the U.S. Supreme Court recognized a defendant's Sixth Amendment Right, in that an accused has the right to counsel for all critical stages of criminal proceeding (Gideon v. Wainright 372 U.S. 335, 1963). In 2010, the Court of Appeals reaffirmed the fundamental right, that the indigent person accused of a crime must be provided an attorney at arraignment: "[N]othing in the statute may be read to justify the conclusion that the presence of defense counsel at arraignment is ever dispensable, except at a defendant's informed option, when matters affecting the defendant's pretrial liberty or ability to subsequently defend against the charges are to be decided. Nor is there meant ... [the] suggestion that the Sixth Amendment Right to counsel is not yet fully implicated..." (Hurrell-Harring v. New York, 15 NY3d 8 at 21 (2010)¹.

In October of 2014, Hurrell-Harring was settled before trial and the stipulation set out a number of agreements among the parties. Subdivision III, pages 5 -7 of the stipulation refer to Counsel at Arraignment. It requires in the five Hurrell- Harring counties² that every poor criminal defendant will have a lawyer at the first court appearance, commonly referred to as Counsel at First Appearance (CAFA). The Office of Indigent Legal Service is charged with oversight and authority to improve the delivery of services for these counties.

This legislation would lift the limitations on jurisdiction which currently exist. Law-enforcement authorities can bring each person arrested in a county to designated "off-hour" arraignment part(s) regardless of location within that county. This kind of arrangement provides a framework by which courts, law enforcement, prosecutors and defense counsel can facilitate representation of indigent individuals, thus protecting the individual's Sixth Amendment Right to Counsel.

For the foregoing reasons, the Criminal Justice Section **SUPPORTS** this legislation and urges its **APPROVAL** by the Governor.

Section Chair: Sherry Levin Wallach, Esq.

¹ Hurrell-Harring was a class action suit brought by the New York Civil Liberties Union to challenge New York State's failures to support meaningful indigent criminal defense in the state.

² Onondaga, Ontario, Schuyler, Suffolk and Washington Counties are the five counties named in Hurrell-Harring.