

## Albany County mulls video arraignments

Technology cuts costs, but may also infringe on defendant's rights

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A person's first appearance before a judge — the arraignment — could go virtual in Albany County courts.

Those accused of crimes would communicate with a judge by video monitor while charges are reviewed and decisions such as whether to grant bail are made. Members of Albany's criminal justice community, mostly local judges, met earlier this month to form a committee to examine how such a system could be implemented.

Video arraignments trim costs for local police and courts, but some say using the technology at such a critical point in the judicial process is unfavorable to the accused. Opponents and advocates of video arraignments both say their positions ensure due process.

Judge George Ceresia, administrative judge for the Third Judicial District, said audio-visual appearances are part of a "larger answer" to the difficulty local courts have in providing defense for indigent defendants at arraignment.

Using video arraignments is an attempt to comply with what New York's highest court, the Court of Appeals, requires. In 2010, the court called arraignments a "critical stage in the proceeding," particularly because a bail decision can have impacts "both direct and collateral," including loss of employment and housing as a result of detention.

Guaranteeing representation for those too poor to hire a lawyer is difficult for cash-strapped public defense offices, and Judge Ceresia said video arraignments offer a way to guarantee an attorney, as the law requires. "We have to try and have a system whereby if someone is arrested during off hours, when they are being arraigned, they have counsel there to give them advice," said Ceresia. "Right now, that's very difficult for economic reasons."

A state agency that provides money to counties for public defenders excludes video arraignments from the strategies it supports. The Office of Indigent Legal Services (OILS) recently announced \$12 million in grants to counties for proposals to improve legal representation at a first appearance. The physical presence of the parties is required for an application to be considered. "There are all kinds of consequences that rest on that first appearance," said Joe Wierschem, counsel for OILS. "To do an effective job advocating, it's important to have the defendant and lawyer in the courtroom."

Still, the foundation is being laid in Albany for video arraignments. Albany County jail has a video system, and Albany County Sheriff Craig Apple said the correction law was amended in

August so the jail can now hold pre-arraigned detainees. "I want the availability out there so if judges say 'let's do this' we're ready to do it," said Apple. It saves money and decreases liability, he said. "Every time I have to put an inmate on the highway and transport them, we're exposing ourselves. There are a lot of variables we could avoid with video arraignment."

Calls to Albany public defender Jim Milstein and conflict defender Joseph Maney, who were at last Friday's meeting, were not returned. Mary Rozak, director of communication for Albany County, said "nobody is prepared to comment at this point," but that leaders of Albany's counsel for the poor are "taking a look at what the benefits are and any potential downsides" of video arraignments.

Jonathan Gradess, executive director of the New York State Defenders Association opposes video arraignment. He circulated a position paper to the chief defenders in the state last week, which said that in some jurisdictions, the technology has been "appropriately employed to avoid needless court appearances" but using video screens for the initial court appearance is "an improper use of the technology."

"[N]o competent criminal defense lawyer would routinely recommend to clients that they waive personal appearance in court at the arraignment," said the association's statement of opposition.

Since the law governing electronic court appearances was written in 1990, attempts to implement video arraignment have failed, in part because audio-visual court appearances require the consent of the defendant. Since not everyone agrees to be arraigned by using a video monitor, counties maintain dual systems. Over the years, efforts have been made to amend the law and remove the consent clause, including a bill that failed to pass the Legislature last session.

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