



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

EXECUTIVE OFFICE

July 15, 2016

The Honorable Alphonso David
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

RE: S.7209-A (Bonacic)/A.10360 (Lentol)

Dear Mr. David:

The Office of the Attorney General ("OAG") writes to express its support for the above-referenced bill, which has passed both houses of the Legislature. The bill adopts one of the principal recommendations of the report the Attorney General, as Special Prosecutor appointed pursuant to Governor Cuomo's Executive Order 147, released following the investigation of the death of Raynette Turner (the "Turner Report"), who died while in the custody of the Mt. Vernon Police Department.¹ We urge the Governor to sign the bill into law.

This bill expands the availability of the arraignment court by authorizing the Chief Administrative Judge of the New York Unified Court System to adopt a plan for select local criminal courts to conduct off-hours arraignment proceedings on a rotating basis. The Chief Administrative Judge will periodically assign Judges and Justices of local criminal courts to preside at "off-hours arraignment" parts in select counties. In addition to arraignments, the off-hours arraignment part will also be authorized to consider other preliminary proceedings and arrest warrant returns in criminal cases. And, if the defendant appeared before the court for arraignment without counsel and counsel is not available, the bill requires the court to adjourn the proceeding before it and direct that the proceeding be continued in an off-hours arraignment part if one is available in the county where the court is located. The court may waive this requirement if the defendant wants to proceed without counsel and the court is satisfied that the defendant appreciates the significance of that decision.

In the Turner Report, the Attorney General recommended that the availability of arraignment courts be expanded. This bill is consistent with the Attorney General's recommendation. As noted in the Turner Report, Criminal Procedure Law § 140.20(1) requires that arrestees be brought before a

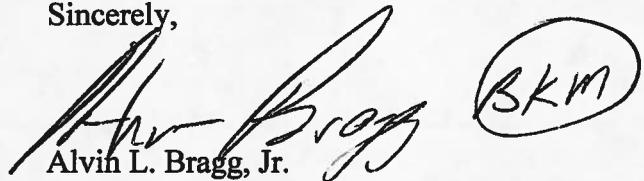
¹ Executive Order 147 provides that the Attorney General shall, where appropriate, make "recommendations for systemic reform arising from the investigation." N.Y. Exec. Order No. 147 (2015).

judge and charged with an offense in an accusatory instrument “without unnecessary delay.” The Court of Appeals has ruled that delays in excess of 24 hours are presumptively unreasonable and must be explained. *People ex rel. Maxian ex rel. Roundtree v. Brown*, 77 N.Y.2d 422, 427 (1991) (citing *People ex rel. Maxian v. Brown*, 164 A.D.2d 56 (1st Dept. 1990)). Unfortunately, the reality is that the current system, for various reasons, often fails to meet these requirements. Having an off-hours arraignment part in each county at specified times, and giving the public appropriate notice of the schedule, will help to ensure that all of the necessary parties will be present and that the arraignment will be held in a timely manner. Off-hours arraignment proceedings will also help ensure that criminal defendants can be represented by counsel at all material stages of the criminal proceeding, including arraignment. See *Hurrell-Harring v. State of New York* (15 N.Y. 3d 8 (2010)).

Although not specifically addressed in this bill, we encourage the Chief Administrative Judge to consider the targeted use of video-facilitated arraignments, in accordance with the Criminal Procedure Law, in those instances where in-person arraignment with counsel in a timely manner would not otherwise be possible. As detailed in the Turner Report, arraignment via electronic means is often a cost-effective and practical way to ensure that a defendant’s constitutional rights at arraignment are protected. However, cognizant of the limitations inherent in conducting arraignments and other criminal proceedings via video-conferencing, any such use of video-arraignments in this context must be fair and equitable and in no way diminish the rights of the accused.

For all of these reasons, the Office of the Attorney General strongly supports this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Alvin L. Bragg, Jr.", is written over a printed name. To the right of the signature is a circled monogram "BKM" in black ink.

Executive Deputy Attorney General for Social
Justice and Chief of the Special Investigations
and Prosecutions Unit