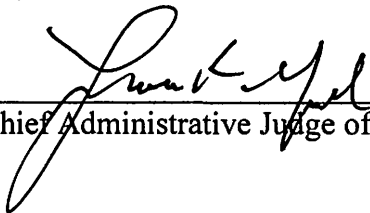


ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and upon consultation with and agreement of the Administrative Board of the Courts, I hereby adopt, effective May 4, 2020, the proposed plans for temporary centralized arraignments parts in the Erie County, Eight Judicial District (Exhibit A) and establish off- hours arraignment part as described therein. Pursuant to Judiciary Law §212(1)(w), the off- hours arraignment parts shall be held in such courts for the conduct of arraignments and other preliminary proceedings incidental thereto, and for arrest warrant returns in criminal cases, where the use of such parts will facilitate the availability of public defenders or assigned counsel for defendants in need of legal representation at such proceedings. In response to the COVID-19 health emergency, all appearances in the parts will be virtual—by means of video conferencing as detailed in each plan. Judges and justices shall be temporarily assigned to the court on a rotating basis in accordance with a schedule to be published as soon as practicable. This order will remain in effect at least and until the public health emergency necessitating it abates, whereupon this order will be rescinded by a subsequent order.



Chief Administrative Judge of the Courts

Dated: May 4, 2020

AO/101/20

EXHIBIT A

**ERIE COUNTY PLAN FOR VIRTUAL OFF-HOURS ARRAIGNMENT PARTS
PURSUANT TO JUDICIARY LAW §212(1)(w)**

I. BACKGROUND

The Eighth Judicial District is comprised of eight counties. Three of those counties preside over immediate local criminal court arraignments under an approved off-hours arraignment part plan pursuant to Judiciary Law §212(1)(w). Those three counties are Chautauqua, Niagara and Orleans. Five Counties within the Eighth Judicial District do not operate off-hours arraignment parts. Those counties are Allegany, Cattaraugus, Erie, Genesee, and Wyoming. In Genesee County, there is an Acting County Court Judge who has been designated to handle off hour arraignments virtually for Batavia City Court and the Genesee County Town and Village Justice Courts.

In response to directives of the Governor, Chief Judge and Chief Administrative Judge to reduce the density of court users relating to the unprecedented COVID-19 public health crisis, effective Monday, April 6, 2020, at 9:00 AM all of the courts of the Eighth Judicial District began “Virtual Courtroom” proceedings pursuant to a plan approved of by the Deputy Chief Administrative Judge for Courts Outside of New York City. These remote proceedings are accomplished using “Skype for Business.” These virtual appearances are attended by the judge, litigants, and attorneys, all of whom can connect to a virtual courtroom utilizing computers or smart devices from various off-site locations.

In Erie County, arraignments are handled remotely during normal business hours and between 9:00 AM and 11:00 AM on weekends and court holidays, by an assigned consolidated courthouse superior court judge. Currently, after normal business hours and on weekends, other than as described above, arraignments are handled by local criminal court judges of appropriate jurisdiction when the defendant is not held in custody overnight.

In Erie County alone there are 35 Town and Village Justice Courts and approximately 70 Town and Village Justices. In addition, there are 3 City Courts, Buffalo, Tonawanda and Lackawanna. While every effort has been made to ensure that all town and village justices within Erie County can conduct remote arraignments utilizing Skype for Business, as a practical matter,

that is not possible at this time. Many Town and Village Justices do not have the necessary equipment to conduct remote arraignments from their homes, and such equipment is now in short supply and largely unavailable, due in part to a nationwide shortage of web cameras and networking equipment due to the current health crisis. Many justices live in rural areas with poor or no internet connectivity, and therefore cannot access a Skype for Business meeting from home even if they had the necessary equipment. Many justices require extensive training to conduct remote arraignments. The type of training required would normally take months and require extensive in-person staff-hours. Finally, as the current global pandemic continues and spreads throughout the district, it is anticipated that some judges may be unable to preside over immediate arraignments due to illness. This phenomenon has been observed in districts bordering New York City.

Therefore, it is anticipated that there may be insufficient local criminal court justices of appropriate jurisdiction to conduct after-hours arraignments in Erie County that do not have approved off-hours arraignment plans pursuant to Judiciary Law §212(1)(w). While Criminal Procedure Law §100.55(6) allows any town or village justice to arraign a person charged via felony complaint for all felonies committed in the county where that justice sits, the same is not true of misdemeanor and violation level offenses. Criminal Procedure Law §140.20 allows a town or village justice to arraign upon an accusatory instrument charging a misdemeanor or violation level offense only for those towns or villages that are adjacent to the town or village justice's home jurisdiction. A significant number of misdemeanors and violations require immediate arraignments when such offenses are accompanied by a request for a temporary order of protection pursuant to Criminal Procedure Law §§ 530.12, & 530.13. However, where a county is operating an approved off-hours arraignment part pursuant to Judiciary Law §212(1)(w), any justice assigned to that off-hours arraignment part may arraign any person charged with a misdemeanor or violation anywhere within the county

This plan constitutes the proposed temporary off-hours arraignment plan for the town and village courts in the County of Erie. This plan is also a proposed temporary off-hour arraignment plan for the cities of Buffalo, Tonawanda and Lackawanna. It is anticipated that in most instances in the Towns of Amherst, Cheektowaga, Hamburg, Tonawanda, and West Seneca as well as the Cities of Buffalo, Tonawanda and Lackawanna (hereinafter "the Big 8"), there will not be a

need to conduct an off-hour arraignment since each of these jurisdictions retain custody of defendants overnight for arraignment the next day, including weekends. However, there could be rare instances where an off-hour arraignment is necessary for the Big 8 in the event law enforcement has an issue with a prisoner who is symptomatic or COVID-19 positive or other exigent circumstances exist. This plan provides that in all instances the defendants will be provided with counsel, remotely at arraignment.

II. VIRTUAL OFF-HOURS ARRAIGNMENT PLAN

1. HOURS OF ARRAIGNMENT AND PLAN COVERAGE

The Erie County Off-Hours Temporary Virtual Arraignment Part (hereinafter “ECTVAP”) will operate between the hours of 5:00 PM and 9:00 AM during the week, and at all hours on weekends and other court holidays other than 9:00 AM and 11:00 AM, on an “on-call” and “as-needed” basis. There will be five sixteen-hour shifts during the week (5:00 PM – 9:00 AM), and four 20-hour shifts during the weekend (11:00 AM – 9:00 AM, and 11:00 AM – 9:00 AM). These hours may be changed or altered at the discretion of the District Administrative Judge. The ECTVAP will be staffed by town and village justices of Erie County who possess the necessary equipment and training to conduct remote arraignments, in a rotating fashion as described below. There shall be a designated on-call judge in the county, during all shifts. The Erie County Bar Association Aid To Indigent Prisoners Society, Inc, (hereinafter “Assigned Counsel Program”) shall provide remote legal services for all persons arraigned utilizing the ECTVAP.

2. JUDICIAL STAFFING OF THE ECTVAP

Six judges in Erie County will follow a rotating schedule for staffing the ECTVAP. Each judge will possess the necessary equipment and technical proficiency to conduct remote arraignments. The District Administrative Office will create a schedule which will be approved by the Supervising Judge and followed by the six justices sitting in the ECTVAP. The District Administrative Judge or the Supervising Judge shall be authorized to substitute additional Town and Village Justices into the rotation if needed.

Upon approval by the Supervising Judge, the schedule, along with the phone numbers for each justice will be transmitted to all local law enforcement agencies, the Assigned Counsel Program Coordinator, and the Erie County District Attorney's office. Each assigned justice will also have a designated "backup" justice in the event the justice is unable to perform his or her duties due to exceptional circumstances. The list of backup justices will also be published and distributed with the phone list mentioned above.

3. JUDICIAL COMPENSATION

Town and village justices sitting in the ECTVAP shall be reimbursed by the Office of Court Administration pursuant to Part 126.3 of the Rules of the Chief Administrator.

4. VIRTUAL ARRAIGNMENT PART FACILITY AND DESCRIPTION

The facility for the ECTVAP will be determined by the on-call justice but will generally be the home of that justice. The justice will join the ECTVAP Skype meeting from home, an arresting police agency will generally join the ECTVAP Skype meeting from their police station, substation or barracks. Defense attorneys will join the ECTVAP Skype meeting from their home or place of business. The Erie County District Attorney's office will also participate remotely if needed.

5. PLAN FOR REPRESENTATION

Representation will be provided by the Assigned Counsel Program. All defendants arraigned at the ECTVAP will be presumed indigent for purposes of arraignment. Privately retained defense attorneys shall also be permitted to participate in the arraignment proceeding in accordance with this plan provided he/she has the necessary equipment to participate remotely. The administrator for the Assigned Counsel Program will develop a schedule of assignments for attorneys to cover the ECTVAP and circulate it to all law enforcement agencies in the county as well as to the Eighth Judicial District Special Counsel to the Supervising Judges for the Town and Village Courts.

6. INTERPRETING SERVICES

When necessary justices will have interpreters appear remotely through “Language Line Solutions”. If necessary, the court should contact the Language Line at: 1-866-874-3972; Client ID: 502970; Access Code: 8765032.

7. COURTROOM EQUIPMENT AND INVENTORY

The ECTVAP judge may use any personal equipment that he/she has on hand and may also use his/her recording laptop and any other courtroom equipment which he/she may removes from the courtroom. If the Office of Court Administration is able to procure more computers and hardware, this equipment may be provided to the ECTVAP judge.

8. TRANSFER OF CASES, DATA ENTRY, CASE ACTIVITY AND DISPOSITION REPORTING

Non-felony cases shall be transferred from the ECTVAP to the court with trial jurisdiction pursuant to CPL §100.55. Felony cases shall be transferred from the ECTVAP to the court that has geographic jurisdiction over the situs of the offense. On-Call Judges who accept guilty pleas or plea bargains in the CAP shall provide the defendant with a notice of any fine and surcharge to be paid to the Court of original geographic jurisdiction, with a reasonable period of time to pay, and shall notify the Court of original geographic jurisdiction of the disposition, so the Court of original geographic jurisdiction can properly record and dispose of the filing on its CDR or TSLED docket. Orders of protection will be entered in WebDVS the next business day following the arraignment by staff from the Chief Clerk’s office of the Erie County Court. All arraignment paperwork will be scanned and e-mailed by the arraigning justice to the proper jurisdictional court and copied to the Eighth Judicial District Office. Data entry and CDR uploads concerning the arraignment shall be completed by the jurisdictional court receiving the case. It is anticipated that during the COVID-19 crisis, the Erie County Central Courthouse will serve as the jurisdictional court responsible for data entry.

9. **ARRAIGNMENT RECORDING PROCEDURES**

All arraignments will be electronically recorded using Liberty recording software, or if that is unavailable, utilizing the “record skype” feature of Skype for Business. The proceeding may also be recorded using the record feature on the judge’s cell phone or other digital recording device to be later uploaded onto the Liberty recording software.

10. **COLLECTION OF BAIL AT ARRAIGNMENT**

In the event the on-call judge sets bail, the Erie County Sheriff will collect bail and transfer the bail to the court of trial jurisdiction.

11. **RELEASE ON OWN RECOGNIZANCE**

Defendants released on their own recognizance will be given a Notice of Adjournment and Securing Order with his/her next appearance date in the court of trial jurisdiction.

12. **ARRAIGNMENT PROCEDURE**

Following an arrest, the arresting agency will enter fingerprint information using the ORI number of the court that has geographical jurisdiction over the offense. The law enforcement agency should then contact the on-call ECTVAP justice and should e-mail a copy of the accusatory instruments to the ECTVAP judge. The on-call justice will utilize the list of on-call attorneys provided by the administrator of the Assigned Counsel Program to advise of the arraignment and arrange for the on-call attorney to appear remotely. The defendant will be afforded the opportunity to speak privately to the assigned attorney via telephone or video prior to the arraignment. The on-call justice shall also furnish defense counsel with the accusatory instrument(s) and the RAP sheet via e-mail. The ECTVAP justice should then conduct the arraignment via Skype for Business. At the conclusion of the arraignment, the ECTVAP justice shall e-mail a securing order and order of protection, if applicable, to the arresting agency, the Erie County District Attorney’s Office, and the defense counsel. The arresting agency shall serve the securing order and order of protection (if applicable) on the defendant promptly upon the conclusion of the arraignment.

13. EXPIRATION OF PLAN

This plan may expire, via administrative order of the Chief Administrative Judge, when the current health crisis has ended and the administrative orders requiring that essential arraignments be conducted remotely have been rescinded.

III. CONSULTATIONS

Hon. Paula L. Feroletto, Administrative Judge of the Eighth Judicial District, through her staff, has reviewed with this plan with the leadership of the necessary stakeholders in Erie County, consisting of local police agencies, the Erie County Sheriff's Office, the Erie County District Attorney, the Assigned Counsel Program, Supervising Judge, and Special Counsel of the Town and Village Courts. It is anticipated that, upon approval, the ECTVAP will be ready for commencement of operations immediately.