

The 6th Amendment recognizes that there is a right to an attorney at all critical stages of a case. Arraignment is one of these critical stages.

There are two concerns. First, there is the need to have an attorney present. This may be something addressed by an on-call attorney making a one-time appearance. If this is accomplished, there is a Second concern. Sufficient information is needed to conduct the arraignment and make arguments concerning bond. There is a need for information about the person's past criminal history, record of appearance or non-appearance, the crime(s) being charged, and family ties. Some of this information is available from the client. Other information is needed, and could be provided by Community Corrections, if an interview was performed. The attorney on-call will need access to the police reports and the LIEN information. Otherwise, reliance will be solely on information from the client, which is often incomplete and inaccurate.

Suggestion is made for the following in order for effective representation to take place: First - there could be an on-call attorney available at arraignment for limited appearance

Second - community corrections shall do a screening with the defendant and provide information to the on-call attorney (in capital cases, community corrections could still do a screening - however they would not make bond recommendations). Any indication of a need for a forensic interview should be highlighted, and the arraignment attorney could, in appropriate cases, make a suggestion for referral for forensic examination. Community corrections could make recommendation for testing for substance abuse as part of any bond considerations. In addition, immigration issues could be identified, an order for any needed immigration counsel could be in place, and any language interpreter needs could be assessed and arranged for the next court date.

Third - the incident report / Information must be available and shared with the attorney at arraignment, as well as the LIEN information concerning prior history of the client

This process should also be followed for juvenile DL cases. The on-call attorney should be available to determine factors for pre-trial release or detention in the Youth Home.

A unique situation arises for juveniles who are arraigned on listed offenses after a Petition is filed with the Juvenile Court. In this situation, the attorney appointed at the Prelim (and the parent), need to be notified of any arraignment of the Juvenile based on automatic waiver claims. A bond hearing could be scheduled at the arraignment and only interim bond could be set. Community corrections and/or the Youth Home should have an assessment done by the time of the bond hearing. (This is not applicable in automatic waiver cases where no Juvenile Petition was filed - in which case the procedure is the same as adult cases).

When it comes to waiver of counsel, the concern is greater for persons who are under the influence. Another concern is for juveniles who are arraigned, because their understanding of the process may be affected by their age.

Criminal disposition at arraignment should be discouraged. It is not reasonable to expect that the consequence of a plea can be adequately explained and evaluated during the limited time given for arraignments. This will lead to many motions to set aside pleas and possible Ginther hearings when the result is different from what was thought by the client.

Arraignment is not the same as the initial interview. The explanation of the court process is limited and the standard should not be one that has duties to explain the intricacies of the court process.

Should you require more discussion in this regard, please advise.

Sincerely
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