§ 170.10 Arraignment upon information, simplified traffic information, prosecutor's information or misdemeanor complaint; defendant's presence, defendant's rights, court's instructions and bail matters.

1. Following the filing with a local criminal court of an information, a simplified information, a prosecutor's information or a misdemeanor complaint, the defendant must be arraigned thereon. The defendant must appear personally at such arraignment except under the following circumstances:

(a) In any case where a simplified information is filed and a procedure is provided by law which is applicable to all offenses charged in such simplified information and, if followed, would dispense with an arraignment or personal appearance of the defendant, nothing contained in this section affects the validity of such procedure or requires such personal appearance;

(b) In any case in which the defendant's appearance is required by a summons or an appearance ticket, the court in its discretion may, for good cause shown, permit the defendant to appear by counsel instead of in person.

2. Upon any arraignment at which the defendant is personally present, the court must immediately inform him, or cause him to be informed in its presence, of the charge or charges against him and must furnish him with a copy of the accusatory instrument.

3. The defendant has the right to the aid of counsel at the arraignment and at every subsequent stage of the action. If he appears upon such arraignment without counsel, he has the following rights:

(a) To an adjournment for the purpose of obtaining counsel; and

(b) To communicate, free of charge, by letter or by telephone provided by the law enforcement facility where the defendant is held to a phone number located in the United States, or Puerto Rico, for the purposes of obtaining counsel and informing a relative or friend that he or she has been charged with an offense; and

(c) To have counsel assigned by the court if he is financially unable to obtain the same; except that this paragraph does not apply where the

accusatory instrument charges a traffic infraction or infractions only.

4. Except as provided in subdivision five, the court must inform the defendant:

(a) Of his rights as prescribed in subdivision three; and the court must not only accord him opportunity to exercise such rights but must itself take such affirmative action as is necessary to effectuate them; and

(b) Where a traffic infraction or a misdemeanor relating to traffic is charged, that a judgment of conviction for such offense would in addition to subjecting the defendant to the sentence provided therefor render his license to drive a motor vehicle and his certificate of registration subject to suspension and revocation as prescribed by law and that a plea of guilty to such offense constitutes a conviction thereof to the same extent as a verdict of guilty after trial; and

(c) Where the accusatory instrument is a simplified traffic information, that the defendant has a right to have a supporting deposition filed, as provided in section 100.25; and

(d) Where the accusatory instrument is a misdemeanor complaint, that the defendant may not be prosecuted thereon or required to enter a plea thereto unless he consents to the same, and that in the absence of such consent such misdemeanor complaint will for prosecution purposes have to be replaced and superseded by an information; and

(e) Where an information, a simplified information, a prosecutor's information, a misdemeanor complaint, a felony complaint or an indictment charges harassment in the second degree, as defined in section 240.26 of the penal law, if there is a judgment of conviction for such offense and such offense is determined to have been committed against a member of the same family or household as the defendant, as defined in subdivision one of section 530.11 of this chapter, the record of such conviction shall be accessible for law enforcement purposes and not sealed, as specified in paragraph (a) and subparagraph (vi) of paragraph (d) of subdivision one of section 160.55 of this title; and

5. In any case in which a defendant has appeared for arraignment in response to a summons or an appearance ticket, a printed statement upon such process of any court instruction required by the provisions of

subdivision four, other than those specified in paragraphs (d) and (e) thereof, constitutes compliance with such provisions with respect to the instruction so printed.

6. If a defendant charged with a traffic infraction or infractions only desires to proceed without the aid of counsel, the court must permit him to do so. In all other cases, the court must permit the defendant to proceed without the aid of counsel if it is satisfied that he made such decision with knowledge of the significance thereof, but if it is not so satisfied it may not proceed until the defendant is provided with counsel, either of his own choosing or by assignment. Regardless of the kind or nature of the charges, a defendant who proceeds at the arraignment without counsel does not waive his right to counsel, and the court must inform him that he continues to have such right as well as all the rights specified in subdivision three which are necessary to effectuate it, and that he may exercise such rights at any stage of the action.

7. Upon the arraignment, the court, unless it intends to make a final disposition of the action immediately thereafter, must, as provided in subdivision one of section 530.20, issue a securing order either releasing the defendant on his own recognizance or fixing bail for his future appearance in the action; except that where a defendant appears by counsel pursuant to paragraph (b) of subdivision one of this section, the court must release the defendant on his own recognizance.

8. Notwithstanding any other provision of law to the contrary, a local criminal court may not, at arraignment or within thirty days of arraignment on a simplified traffic information charging a violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of the vehicle and traffic law and upon which a notation has been made pursuant to subdivision twelve of section eleven hundred ninety-two of the vehicle and traffic law, accept a plea of guilty to a violation of any subdivision of section eleven hundred ninety-two of the vehicle and traffic law, nor to any other traffic infraction arising out of the same incident, nor to any other traffic infraction, violation or misdemeanor where the court is aware that such offense was charged

pursuant to an accident involving death or serious physical injury, except upon written consent of the district attorney.

8-a. (a) Where an information, a simplified information, a prosecutor's information, a misdemeanor complaint, a felony complaint or an indictment charges harassment in the second degree as defined in section 240.26 of the penal law, the people may serve upon the defendant and file with the court a notice alleging that such offense was committed against a member of the same family or household as the defendant, as defined in subdivision one of section 530.11 of this chapter. Such notice must be served within fifteen days after arraignment on an information, a simplified information, a prosecutor's information, a misdemeanor complaint, a felony complaint or an indictment for such charge and before trial. Such notice must include the name of the person alleged to be a member of the same family or household as the defendant and specify the specific family or household relationship as defined in subdivision one of section 530.11 of this chapter.

(b) If a defendant, charged with harassment in the second degree as defined in section 240.26 of the penal law stipulates, or admits in the course of a plea disposition, that the person against whom the charged offense is alleged to have been committed is a member of the same family or household as the defendant, as defined in subdivision one of section 530.11 of this chapter, such allegation shall be deemed established for purposes of paragraph (a) and subparagraph (vi) of paragraph (d) of subdivision one of section 160.55 of this title. If the defendant denies such allegation, the people may, by proof beyond a reasonable doubt, prove as part of their case that the alleged victim of such offense was a member of the same family or household as the defendant. In such circumstances, the trier of fact shall make its determination with respect to such allegation orally on the record or in writing.

9. Nothing contained in this section applies to the arraignment of corporate defendants, which is governed generally by the provisions of article six hundred.

10. Notwithstanding any contrary provision of this section, when an

off-hours arraignment part designated in accordance with paragraph (w) of subdivision one of section two hundred twelve of the judiciary law is in operation in the county in which the court is located, the court must adjourn the proceedings before it, and direct that the proceedings be continued in such off-hours part when the defendant has appeared before the court without counsel and no counsel is otherwise available at the time of such appearance to aid the defendant, unless the defendant desires to proceed without the aid of counsel and the court is satisfied, pursuant to subdivision six of this section, that the defendant made such decision with knowledge of the significance thereof.