No. S070654

IN THE SUPREME COURT OF THE STATE OF OREGON

JA'MARIOUS HANNAH, JACKSON DOVE,
GREGORY GRONER, and PETER WHITTLE,

Plaintiffs-Appellants,

v.

STATE OF OREGON, JESSICA KAMPFE,
PER RAMFJORD, PAUL SOLOMON,
PETER BUCKLEY, ALTON HARVEY JR.,
LISA LUDWIG, JENNIFER PARISH TAYLOR,
MAX WILLIAMS, and KRISTEN WINEMILLER,

Defendants-Appellees.

Multnomah County Circuit Court No. 22CV36357
Court of Appeals No. A181795

BRIEF OF AMICUS CURIAE
CRIMINAL LAW & JUSTICE CENTER
IN SUPPORT OF PLAINTIFFS-APPELLANTS

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Shamena Anwar, et al.,
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INTEREST OF THE AMICUS CURIAE[1]

The Criminal Law & Justice Center researches policy outcomes and advocates for a more equitable criminal justice system. In coordination with other research groups at the University of California, Berkeley, the Center conducts data-driven analyses on crime and incarceration and publishes in scholarly journals like JAMA and Berkeley Journal of Criminal Law. The conferences that the Center hosts have received national media attention, including from the Wall Street Journal. The Center engages frequently in interdisciplinary research collaborations, including with the California Policy Lab, which has published studies attempting to measure the value to the accused of having counsel appointed during the initial stages of criminal cases.

Chesa Boudin founded and leads the Center. Mr. Boudin served as a career public defender in San Francisco and was later elected as the county's District Attorney. Mr. Boudin has first-hand experience with seeking to reduce harms like those the plaintiffs alleged they have

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[1] Counsel for the parties have not authored this brief in whole or in part. No one other than the Center and the Center's counsel has contributed money that was intended to fund preparing or submitting this brief.

suffered. The Center files this brief in support of Appellants (collectively referred to as "Hannah").

SUMMARY OF THE ARGUMENT

This case concerns the more than two thousand indigent criminal defendants in Oregon who have waited, sometimes for months, for the Government to appoint them lawyers. Oregon guarantees these defendants counsel at "critical stages" in their cases, *State v. ex rel. Russell v. Jones*, 293 Or 312, 315 (1982), but the state actors charged with responsibility for making that guarantee a reality have refused to do so in any reasonable time after defendants invoke their rights. When Hannah and others filed suit seeking redress for themselves and a class of similarly situated individuals, the Government responded by resolving the named plaintiffs' cases either through appointing counsel or dismissing the charges. The Government argues that the resolution of the named plaintiffs' personal claims rendered this case nonjusticiable through a combination of lack of standing and mootness, and that the remaining thousands of unnamed class members can fend for themselves by seeking relief in their individual cases. This is untenable.

The Government's denial of counsel causes serious, irreparable harm to the unnamed members of the class. As the Center presents through the stories of two Oregonians, indigent defendants languish without counsel while facing life-altering criminal charges. Their legal defenses and personal lives suffer when the Government refuses to act. These costs are neither abstract nor limited to these two men. Social science research shows a wide gulf between the outcomes of defendants who received timely appointment of counsel and those who did not. Courts too have underscored that criminal defendants need representation early in prosecutions because that is when—through fact investigation, negotiating pleas, and motion practice—cases are crystallized in ways that determine their outcome. Laypeople have no hope to complete these tasks effectively on their own, particularly from a jail cell. The Government denies counsel when defendants need it most.

The only solution to the Government's systemic denial of counsel in violation of Oregon's constitutional guarantee is prospective, class-wide relief. Other states have allowed classes to pursue similar claims for denial of the right to counsel. These states reject the reasoning relied on by the Court of Appeals here: that the hypothetical availability of relief

to unrepresented defendants in their individual criminal cases eliminates the need for class-wide relief. This Court should follow the many other states that require their respective Governments to defend on the merits policies that deny the right to counsel to thousands of defendants. It should not allow the Government to dodge responsibility by appointing lawyers to just a few named plaintiffs to moot their claims, leaving the rest of the unrepresented defendants to suffer under the same policy.

ARGUMENT

I. Criminal defendants suffer when the Government fails to provide counsel.

Unrepresented defendants in Oregon suffer irreparable harms every day under the current system of non-appointment of counsel. Even if their charges lack merit, unrepresented defendants often suffer the same consequences as if they had been convicted: prolonged detention, loss of employment, and travel restrictions. These consequences cannot be undone with writs of mandamus or postconviction relief, as the Government proposes for the unnamed class members. J.B and D.Z. are two indigent defendants in Oregon who bore significant costs in their

cases and personal lives because the Government failed to appoint counsel.

A. J.B. remained in custody for an extra month because the Government failed to appoint counsel.

J.B. is a disabled, indigent Oregonian who was inexperienced with the criminal justice system. He suffers from grand mal seizures, which cause loss of consciousness and violent muscle contractions. He survives on a disability income of $890 per month, which he uses to provide for his partner and four children. The Government failed to assign him a lawyer after an arrest, causing him to spend weeks in custody unnecessarily and upending the lives of his family members.

J.B. was arrested and needed a lawyer to defend him. The state charged him with misdemeanors but justified holding him in custody for 45 days because of a years-old warrant from Nevada. But that was a releasable warrant which did not require keeping J.B. in jail. J.B. believes that a lawyer would have resolved the warrant and the new misdemeanor charges in less than 15 days. Instead, J.B. spent 30 additional days in jail awaiting representation. He appeared in court several times for appointment of counsel, only for the judge to tell him that no lawyer was available.

J.B. and his family struggled during his incarceration. Initially, J.B.'s family could not visit him because the court misunderstood his charges for disturbing the peace as domestic violence charges and imposed an erroneous order preventing him from contacting his family. Without an attorney to resolve the issue, J.B. was forced to wait in custody for the court to recognize and correct its own error. Once the court removed the no-contact order, J.B.'s partner and children tried to visit him in jail almost every day. The jail frequently turned them away, claiming to be too short-staffed to accommodate visits. When the family did visit, the situation traumatized J.B.'s children. They sobbed because they had to speak to their father, wearing shackles and an orange jumpsuit, though a pane of glass. J.B. and his family also suffered outside of jail. J.B. lost his monthly disability benefit because he was incarcerated. His family had to move out of their low-income housing and became homeless while J.B. was in custody.

J.B. had to face the justice system alone and behind bars because the Government did not appoint him counsel. Most of J.B.'s time in custody was avoidable. His misdemeanor charges were minor, and all that kept him in jail was an old, releasable warrant. That kind of

procedural nuance is easy for a lawyer to resolve yet difficult for a defendant to fix himself. Even though the Government eventually appointed him counsel, the delay cost J.B. weeks in jail, cost his family their housing, and cost him his income. As J.B.'s story shows, the harms that begin when the state holds a defendant without counsel persist even after counsel is appointed and after the case is resolved.

B. The Government forced D.Z. out of his home and support network because he had no counsel to represent him.

The story of another Oregonian, D.Z., shows the consequence of a defendant attempting to represent himself. D.Z. is a disabled, indigent Oregonian who lacks legal training. D.Z. suffered from substance use dependencies for which he was diligently pursuing recovery and reliant on the social network of his recovery community. Unrepresented, D.Z. received harmful release conditions at his bail hearing.

After D.Z. was arrested and charged, the Government failed to appoint him counsel for seven months after he invoked that right, during which he had nine court appearances without an attorney. He had to miss work to show up for hearings and eventually lost his job due to the reputational damage from looming criminal charges. At one of the initial

hearings, which determined D.Z.'s bail, D.Z. had to argue on his own behalf, with disastrous results. The court denied D.Z. release on his own recognizance and imposed a $5,000 bail. Without an attorney to advocate for D.Z. and bring forth his relevant circumstances, the court also imposed a no-contact order with three punitive release conditions: D.Z. could not contact two individuals involved in the incident that led to his arrest, leave Oregon, or return to the site where the incident occurred. Because that site was located next to his home, D.Z. had to move out within 72 hours of posting bail. And because the two individuals in the no-contact order were members of his recovery community, D.Z. had to abandon his social network. Without this community, he struggled to maintain his sobriety. The court's conditions took away D.Z.'s safety net.

For months while D.Z. waited for the court to appoint an attorney, his defense stagnated. Even when the court finally appointed counsel after seven months, D.Z. had to wait another month to meet with his attorney. All the while, he had no lawyer to investigate the facts of his case and interview witnesses while their accounts were still fresh. The same was not true for the state, who had lawyers assigned to his case and sole possession of the relevant evidence. The state withheld that

evidence and only produced it through D.Z.'s lawyer after appointment. By that time, defense investigations were severely limited. The state built a case strategy while D.Z. could not.

The delay also burdened the justice system beyond D.Z. The court's administration of the case suffered, as the court rescheduled hearings over and over, waiting for the appointment of counsel. The court's risk of error and reversal also increased while dealing with a pro se defendant. And the victim involved with D.Z.'s case also sat in limbo, waiting to be called into hearings and getting no closure with the case unresolved.

D.Z.'s journey contrasts with a third Oregonian, B.F., who had a lawyer and avoided the worst conditions at his own bail hearing. B.F. is an indigent, disabled Oregonian who, like D.Z., relies on others for support. B.F. is a blind Army veteran who suffers from PTSD and needs a live-in caretaker. B.F. had temporary counsel at his bail hearing and secured favorable terms of release. With his attorney's advocacy, the court removed B.F.'s $2,000 bail and released him on his own recognizance. At the bail hearing, the court proposed a no-contact order that would have prevented B.F. from interacting with his caretaker, due to her involvement in the incident leading to his arrest. But B.F.'s

attorney persuaded the court to reduce this no-contact order to a no-offensive-contact order, allowing the caretaker to continue to support B.F as long as B.F. did not harass her. This made a night and day difference for B.F.'s care. Unlike D.Z., B.F. received manageable conditions of release because a lawyer advocated for B.F.'s particular situation.

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Arrests and detention harm criminal defendants, regardless of the merits of their charges. D.Z. lost his job, his home, and his recovery network all before any conviction or any counsel appointed to effectuate constitutional rights. J.B. lost his home and his income. The Government can reduce these harms by providing counsel to guide defendants as they enter the justice system. Sometimes, the Government provides temporary counsel, and even this limited assistance reaps life-altering rewards. B.F.'s temporary attorney made the difference between maintaining care at home and setting an indigent, blind man off on his own. D.Z. was not so lucky. No judicial remedy can give back the homes that defendants lose while in custody, waiting for the Government to provide counsel. No writ can recover the evidence and employment that defendants lose. The only remedy for these harms is prophylactic.

II. Representation makes a stark difference at key moments in criminal defendants' cases.

Appointed counsel would have mitigated the harms that D.Z. and J.B. suffered during their prosecutions. Stories like D.Z.'s and J.B.'s are all too common because a complex, adversarial legal system relies on lawyers. Studies show that having a lawyer makes a significant difference at key pretrial steps in criminal prosecutions. In research from three jurisdictions, effective public defense from the onset of prosecutions reduced pretrial detention, improved the quality of advocacy, and improved the ultimate outcomes of defendants' cases. Reflecting prosecutors' shift in focus to pretrial procedure, courts too have recognized that more and more initial steps in a defendant's case require counsel. With prompt appointment of counsel systemwide, Oregon will protect the unnamed class members' ability to defend themselves and reduce unnecessary disruption in their lives.

A. In practice, studies confirm that criminal defendants need attorneys at the initial stages of their cases.

Research confirms that unrepresented defendants suffer the costs of not having a lawyer throughout their cases. The days after arrest are critical for preparing defenses and reducing the disruption of custody.

Data from three jurisdictions that provided counsel before arraignment show that public defense from the onset of a prosecution improves defendants' cases and lives.

Prompt representation in California. Two counties in California provided attorneys within 48 hours of arrests to support defendants' cases. In San Francisco, the Public Defender Office designed a "Pre-Trial Release Unit" (led by Mr. Boudin) with two attorneys and one investigator to contact indigent defendants almost immediately after arrest. *See* Alena Yarmosky, *The Impact of Early Representation, An Analysis of San Francisco Public Defendant Pre-Trial Release Unit*, at 2, California Policy Lab (2018) (attached at APP-1). The Pre-Trial Release Unit coordinated defendants' initial responses to arrests with one-on-one interviews, early fact investigation, notification of other attorneys that defendants may have, contacts to family and friends, recruitment for others to support defendants at arraignment, and bail advocacy. *See id.* Santa Clara County built a similar program, called Pre-Arraignment Representation and Review. *See* Johanna Lacoe, et al., *The Effect of Pre-Arraignment Legal Representation on Criminal Case Outcomes*, at 5, National Bureau of Economic Research, Working Paper 31289 (May

2023) (available at https://www.nber.org/papers/w31289) (also attached at APP-43). There, public defenders met with indigent defendants between booking and arraignment to learn about employment, community ties, and housing, as well as collect time-sensitive evidence and communicate with the District Attorney's office. *Id.* at 6-7. The program attorneys then advocated for the defendants at arraignment. *See id.* at 7. Both counties designed these early contacts to bolster defense and blunt the harm of detention.

These interventions improved the quality of evidence and advocacy in defendants' cases. Research teams measuring those improvements made three significant findings. First, the teams found that representation soon after arrest dramatically increased the likelihood that a defendant would be released at arraignment. In San Francisco County, 28 percent of defendants with timely representation were released at arraignment—a rate twice as high as similar defendants who did not have timely representation. Yarmosky, *supra*, at 25. Similarly, defendants with timely representation in Santa Clara County were 75 percent more likely to be released at arraignment versus those that did not have timely representation. Lacoe, et al., *supra*, at 3.

Second, in Santa Clara, representation also reduced pretrial detention. Defendants who received counsel at those initial stages spent 79 percent less time in pretrial detention, a difference of 23 days in jail on average. *Id.* And third, the research from Santa Clara found also that representation improves defendants' ultimate case outcomes. Defendants with timely representation were 75 percent less likely to be convicted and 27 percent more likely to have their case dismissed. *Id.* at 3.[2]

Representation at bond hearings in Pittsburgh. Like these California counties, the City of Pittsburgh also provided counsel at a key pretrial stage. Its municipal court appointed attorneys to represent some defendants at preliminary bail hearings. A research team measured how much these appointments improved defendants' outcomes at the hearings. That team found that a defendant with an appointed lawyer was 21 percent more likely to be released on own recognizance or with nonmonetary bail. Shamena Anwar, et al., *The Impact of Defense Counsel at Bail Hearings*, at 5, Science Advances (May 5, 2023) (attached

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[2] Unlike the study in Santa Clara, the San Francisco research did not gauge effects on pretrial detention or case outcomes.

at APP-77). Across all possible results of the hearings, judges were 12 percent more likely to agree with the result recommended by the county's risk assessment tool or offer a more lenient result. *Id.* at 6.

Utility of timely representation. Coupling anecdotal evidence with the statistical results, these studies suggested several reasons why timely representation at those initial stages was so crucial to defendants' outcomes.

Lawyers offered technical skill. Defendants reported that, without representation, they were overwhelmed by criminal procedure, having "no idea how the system worked." Yarmosky, *supra*, at 30. Laypeople flounder without a trained professional, but assistance of counsel early on allows defendants to navigate criminal procedure.

Lawyers improved the fact gathering while defendants were in custody. Five of six attorneys in San Francisco's program reported that their advocacy at arraignment would have been less successful without evidence collected by early intervention. Yarmosky, *supra,* at 26. In the days after a defendant is arrested, witnesses' memories fade. Digital files can be deleted. Even for evidence that does not disappear, lawyers know what facts about employment, housing, and community ties assist a

judge's determination of a defendant's pretrial conditions. Appointment of counsel soon after arrest allows a defendant to collect and present that evidence.

Defense lawyers improved advocacy. Not only do lawyers argue for clients in hearings, but they also "open the door" to negotiate release with prosecutors and judges. Lacoe, *supra*, at 1. Simply having an advocate frame the defendant's positions and communicate with opposing counsel can lead to early plea agreements and other relief. Those chances for early resolution can be abused against unrepresented defendants who do not know typical plea standards. *See United States v. Gonzalez-Lopez*, 548 US 140, 150 (2006). Agreed resolutions between represented parties reduce the stress on overburdened criminal justice systems. Representation also builds defendants' faith in the legal process. After feeling like no one in the judicial system was listening to the defense, one defendant reported, "I believed [my attorney] believed me." Yarmosky, *supra*, at 30.

These studies reflect a criminal justice system built for professionals, not laypersons. Representation at the beginning of a case improves a defendant's journey through the justice system. These

studies confirm with evidence the benefits of counsel that seem obvious; an attorney helps prepare evidence and advocate for a defendant at bail hearings and arraignment. But this is not a trivial task. Attorneys must do the legwork to prepare at the very beginning of a defendant's case, coordinating with the defendants' friends and family, preserving evidence, and negotiating with the District Attorney's office, to ensure an effective defense and a fair process for the accused.

By denying counsel and forcing defendants to wait months before they get an attorney, the Government takes away all those potential benefits and undermines core constitutional rights. The beginning of a prosecution is a crucial period which shapes the rest of defendants' cases, and the Government cannot simply appoint counsel when the time is convenient.

B. Courts recognize that the initial stages of a case are critical points that require counsel, as prosecutors shifted focus to pretrial procedure.

Like these studies, the courts have recognized that more and more steps at the beginning of prosecution require defense counsel to ensure a fair process consistent with constitutional guarantees.

Federal courts. Federal courts recognize that pretrial steps are "critical stages" where a defendant needs the advice of counsel. *See Hamilton v. Alabama*, 368 US 52, 54 (1961). The U.S. Supreme Court has recognized for nearly 100 years that laypeople struggle with gathering evidence and leveraging criminal procedure in "the science of law." *Powell v. Alabama*, 287 US 45, 68-69 (1932). One particular passage that the Court has repeated in its entirety over and over again describes the serious challenges that individuals face trying to defend themselves:

> Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one.

Id. at 69; *see United Sates v. Ash*, 413 US 300, 307 (1973) (quoting the entire paragraph and acknowledging it as "well-known observations"); *see, e.g., Williams v. Kaiser*, 323 US 471, 473 (1948) (quoting the entire paragraph); *Chandler v. Fretag*, 348 US 3, 9-10 (1954) (same); *Gideon v. Wainwright*, 372 US 355, 344-45 (1962) (same); *Fuller v. Oregon*, 417 US

40, 52 (1974) (same); *United States v. Cronic*, 466 US 648, 653 n 8 (1984) (same); *Maine v. Moulton*, 474 US 159, 169 (1985) (same); *Luis v. United States*, 578 US 5, 10-11 (2016) (same).

Powell was the "watershed" moment in defendants' right to counsel. *State v. Davis*, 350 Or 440, 470 (2011) (characterizing *Powell*). Surveying the history of America's criminal justice system from colonial law, the Court in *Powell* concluded that the Sixth and Fourteenth Amendments of the U.S. Constitution provide defendants with the right to counsel at *and before* trial. *See* 287 US at 71. The Court endorsed "the guiding hand of counsel at every step in the proceedings," because without it, a defendant "faces the danger of conviction because he does not know how to establish his innocence." *Id.* at 69. In *Powell*, the federal judiciary turned its attention to specific pretrial processes to ensure that defendants could protect their defense.

Counsel at the initial stages of a case has become more valuable over time. In contrast to early English common law, pretrial representation has become even more important as "changing patterns of criminal procedure and investigation [] tended to generate pretrial events that might be appropriately considered to be parts of the trial

itself." *Ash*, 413 US at 310. In many instances, pretrial representation is more important than trial itself because at trial, positions are already solidified by investigations and motion practice. *Moulton*, 474 US at 170. And as fewer cases actually proceed to trial, defendants must make key choices about the outcome of their cases, like plea bargains or cooperation with the state, that don't concern conduct at trial at all. *See Gonzalez-Lopez*, 548 US at 150. The right to trial counsel means nothing if the defendant has already forfeited his or her rights long before, or is unable to take steps to marshal witnesses and evidence needed for the defense.

The Court has reaffirmed the importance of representation repeatedly since *Powell*, holding that a criminal defendant must have counsel for any "critical" stage of the pretrial process, including post-indictment interrogations, *Massiah v. United States*, 377 US 201, 205-07 (1964), preliminary hearings before convening a grand jury, *Coleman v. Alabama*, 399 US 1, 9-10 (1970), post-indictment line-ups, *United States v. Wade*, 388 US 218, 236-38 (1967), arraignments, *Hamilton v. Alabama*, 368 US 52, 53 (1961), and plea negotiations – *Lafler v. Cooper*, 556 US 156, 162 (2011). Denial of representation at these steps is so grave that

courts must overturn any subsequent conviction without considering if the error caused any harm. *See Gonzalez-Lopez*, 548 US at 148.

Oregon courts. The Government's non-appointment policy also contravenes the Oregon Supreme Court's emphasis that defendants need lawyers at the initial stages of their cases. This Court held that the right to counsel granted in Article 1, Section 11 of Oregon's Constitution is *at least* as protective of defendants as the right to counsel in the U.S. Constitution. *State v. Prieto-Rubio*, 359 Or 16, 28 (2016); *see Davis*, 350 Or at 475. Criminal defendants need counsel throughout pretrial steps to "counteract the handicaps of a suspect enmeshed in the machinery of the criminal process." *State v. Sparklin*, 296 Or 85, 93 (1983) (quoting Note, Interrogation and the Sixth Amendment: The Case for Restriction of Capacity to Waive the Right to Counsel, 53 Ind L J 313, 315 (1977–1978)).

Oregon courts thus naturally also recognize what has long been clear to all: that prosecutions now rely more on pretrial procedure, and that in turn requires earlier appointment of counsel to protect the rights of the accused. Like the federal right, Oregon's right to counsel tracks "changes in nature of criminal prosecutions and law enforcement." *State*

v. Gray, 370 Or 116, 129 (2022). Now, "the point at which the individual first confronts the amassed power of the state has moved back in the process from trial to the police stage." *Sparklin*, 296 Or at 92 n 9. The prosecution and the defense interact frequently before trial through motion practice and discovery, and unrepresented defendants face professional prosecution without resources of their own. Long before trial, the "state builds its case against the accused" with procedural and investigative tools, like line-ups, polygraphic sessions, and psychiatric examinations. *Id.* at 94. Defendants must have counsel to ensure that prosecutors use these tools legally and to protect potentially exculpatory evidence.

Early in their cases, indigent defendants in Oregon ask for the aid of counsel. They are arrested, arraigned, and cast into the labyrinth of the criminal justice system. Courts recognize that laypeople will struggle to navigate this process alone, especially in the first steps of a case. In response, these courts have guaranteed counsel to assist defendants. Indigent defendants of Oregon have exercised that right, and the Government has refused it. The Government fails to provide attorneys

in a timely manner, ignoring the nature of modern prosecution and the judiciary's progress to adapt the right to counsel in response.

III. Other states' courts do not use justiciability doctrines to block class actions challenging denial of the right to counsel.

In the case at hand, the Government argues that the case was nonjusticiable once Oregon appointed counsel to the named plaintiffs, and that the exception allowing courts to review issues evading review in the future did not apply. Courts could review the remaining thousands of class members' claims, the Government believes, through postconviction relief in their individual criminal cases or writs of mandamus. This is just the newest chapter in the same playbook that other states' governments use in other right-to-counsel class actions like Hannah's. Governments often try to defeat these claims by raising different justiciability doctrines or other defenses that avoid the merits. A common thread in these arguments is that right-to-counsel class actions should not proceed because criminal defendants can pursue relief in their individual criminal cases. This tactic has not succeeded. At least six other courts have rejected versions of this argument.

Several states' courts have rejected the argument that class actions are nonjusticiable because each criminal defendant can seek individual relief. In *Kuren v. Luzerne County*, 637 Pa 33, 146 A3d 715, 718 (2016), the Pennsylvania Supreme Court allowed a class action for ongoing and prospective Sixth Amendment violations. The lower court dismissed the case, under the government's theory that individual criminal defendants both lacked standing and could not state a claim for prospective, class-wide relief because violations of the right to counsel can only be remedied through individual postconviction motions. *Id.* at 727-29. The Supreme Court did not agree. It held that a class of defendants could pursue a claim for "relief for a widespread, systematic and constructive denial of counsel" because forcing defendants to seek individual relief "would be untenable"—"[i]t would render irrelevant" all violations of the right to counsel "so long as they do not clearly affect the substantive outcome of a trial." *Id.* at 743, 747. The court held that broad injunctive relief was appropriate because the class challenged "the system itself." *Id.* at 736. The highest courts of New York, Idaho, and Massachusetts rejected similar contentions that criminal defendants' collective actions for denial of counsel were not justiciable because postconviction appeals provided

adequate relief. *See Tucker v. State*, 162 Idaho 11, 394 P3d 54, 73 (2017); *Hurrell-Harring v. State*, 15 NY3d 8, 930 NE2d 217, 222 (2010); *Lavallee v. Justs. in Hampden Superior Ct.*, 442 Mass 228, 812 NE2d 895, 907 (2004).

The governments of Michigan and Georgia made similar arguments, asserting that class claims against denial of counsel were premature. In Michigan, the government framed the issue as one of ripeness, and in the Eleventh Circuit, the government argued that plaintiffs had failed to state a claim upon which relief could be granted. *See Luckey v. Harris*, 860 F2d 1012, 1016 (11th Cir 1988); *Duncan v. State*, 284 Mich App 246, 774 NW2d 89, 117 (2009). The core of both arguments was that courts could not grant relief without each individual defendant showing some prejudice due to lacking an attorney. *See Luckey*, 860 F2d at 1016; *Duncan*, 774 NW2d at 117. Neither court agreed with the government. Both courts held that criminal defendants may seek prospective, class-wide injunctions to remedy "pervasive and persistent" denial of counsel without sending each defendant to move for postconviction relief after the fact. *See Luckey*, 860 F2d at 1017; *Duncan*, 774 NW2d at 124-25. Forcing defendants to show prejudice through

individual postconviction motions was inappropriate because defendants have rights to counsel even in situations that do not affect the outcome of trials. *Luckey*, 860 F2d at 1017; *Duncan*, 774 NW2d at 127-28.

While each government may dress up the issue differently, calling it one of standing, ripeness, mootness, of failure to state a cognizable claim for relief, or of justiciability generally, these arguments boil down to the notion that the potential for an unrepresented defendant to seek relief in his or her individual criminal case supplants the need for class claims.[3] These arguments fail. *See Hurrell-Harring*, 930 NE2d at 226 (criticizing an approach "premised solely upon the availability of relief from a judgment of conviction"); *Tucker*, 394 P3d at 62-63 (reversing the district court's requirement of "case-by-case inquiries into [the] individual criminal cases"); *Kuren*, 146 A3d at 745 (rejecting postconviction relief as the "exclusive" and "sufficient" remedy for denial of counsel); *Duncan*, 774 NW2d at 126 (refusing to adopt a "case-by-case examination of individual criminal appeals"); *Lavallee*, 812 NE2d at 907

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[3] Notably, the United States does not share this view. In an amicus brief in support of a class of indigent defendants alleging systemic denial of counsel, the United States Department of Justice argued that in the face of a "system-wide problem of nonrepresentation . . . prospective relief must be available." *Kuren*, 146 A3d at 730-31.

(refusing to replace systemic relief with individual relief in lower courts). "Neither law, nor logic, nor sound public policy dictates that one form of relief should be preclusive of the other." *Hurrell-Harring*, 930 NE2d at 226.

These states' courts offered three common reasons why individual relief in criminal cases cannot displace a class action: that postconviction relief does not remedy the harm caused by denial of counsel, that pursuing those types of relief is beyond the skill of pro se defendants, and that a single action more efficiently deals with systemic failures in criminal justice.

A. Relief in an individual criminal case is not a substitute for a prospective class-wide injunction.

Most often, states allow a class action because denial of counsel cannot always be remedied with postconviction relief. Postconviction relief is useless to three types of defendants who are denied counsel: defendants who are not ultimately convicted, convicted defendants whose denial of counsel did not cause a conviction, and defendants whose denial of counsel harmed them in ways unrelated to the outcome of a trial.

Initially, postconviction relief does not apply to a portion of defendants who are denied counsel—those who were not convicted. The

right to appointed counsel does not rely on guilt or innocence and "neither can the availability of a remedy for its denial." *Hurrell-Harring*, 930 NE2d at 227.

Even for defendants who are convicted, postconviction relief imposes a wrong standard of review that eliminates claims where denial of counsel did not cause the conviction. Postconviction relief is more typically sought by a defendant with ineffective counsel rather than one denied counsel entirely. As announced in *Strickland v. Washington*, defendants who received ineffective counsel can overturn a conviction only by showing that the adversarial process was undermined and the verdict cannot be trusted. 466 US 668, 686 (1984). This test tips the scales in favor of the prosecution because it reflects "concerns for finality [and] concern that extensive post-trial burdens would discourage counsel from accepting cases." *Duncan*, 774 NW2d at 128. In other words, there must be reasonable probability that defendant would not have been convicted, but for the constitutional violation. *Strickland*, 466 US at 694.

But the right to *appointment of* counsel is distinct from the right to *effective* counsel. The Sixth Amendment "protects rights that do not affect the outcome of trial," like the right to appointment of counsel.

Luckey, 860 F2d at 1017. Denial of counsel that prejudices a defendant, but not so much that it meets the *Strickland* standard and supports a motion for a new trial, "may nonetheless violate a defendant's rights" under the Sixth Amendment. *See id.*; *Lavallee*, 812 NE2d at 905. By holding that postconviction relief will remedy the class's denial of counsel claims, the Court of Appeals doomed all defendants whose denial of counsel was harmful, but not outcome-determinative. The Sixth Amendment and state analogs must provide those defendants a remedy. The right to counsel "must mean more than just the right to an outcome." *Duncan*, 774 NW2d at 126.

For all defendants, postconviction relief cannot cure harms that unrepresented defendants suffer outside of trial. In the early stages of a case, the defense needs to interview witnesses and preserve physical evidence. *Lavallee*, 812 NE2d at 904. Without a lawyer to investigate, this evidence fades. "The effects of the passage of time on memory or the preservation of physical evidence are so familiar that the importance of prompt pretrial preparation cannot be overstated." *Id.* Without counsel, a defendant may also suffer prolonged pretrial detention or forgo potentially meritorious motions. *See Kuren*, 146 A3d at 743-44. Denial

of counsel upends defendants' cases and lives, "even without neatly wrapping the justiciable harm around a verdict and trial." *Duncan*, 774 NW2d at 127. And because those harms are not tethered to conviction, they "cannot be adequately addressed on appeal." *Lavallee*, 812 NE2d at 907; *see also Hurrell-Harring*, 930 NE2d at 227 (describing "grave and irreparable injury" caused by denial of counsel, regardless of conviction). The Government's proposed solution will only address a fraction of the problems that their inaction causes.

B. Criminal defendants lack the skill to pursue relief *pro se* for denial of counsel.

Other states point out a logistical flaw in the Government's argument: defendants who have no lawyer cannot solve the problem with motion practice. Unrepresented defendants generally lack the knowledge to identify when they are owed an attorney and the harm caused by not having one. *See Lavallee*, 812 NE2d at 905. They also typically lack the skill to draft the writs that would force a court to appoint them counsel or posttrial motions. *See id.* (citing *Powell*, 287 US at 69). In an adversarial legal system, denial of counsel weakens a defendant's "ability to assert any other rights he has." *Hurrell-Harring*, 930 NE2d at 226.

Countless defendants would drown in criminal procedure if forced to file a motion to get an attorney. Bluntly, "[t]he harm involved here, the absence of counsel, cannot be remedied in the normal course of trial and appeal because an essential component of the 'normal course,' the assistance of counsel, is precisely what is missing here. The course of the proceedings in these cases is per se not normal." *Lavallee*, 812 NE2d at 907. Litigating denial of counsel claims individually works for the prosecution, who has its own lawyers to address these motions, but not for unrepresented defendants.

C. Judicial economy favors resolving a claim of systemic denial of counsel in a single action.

The Government urges this Court to rely on remedies available in each individual defendant's case to reject this class action. Some courts take similar approaches for claims of ineffective assistance of counsel, but not when counsel has been denied outright. For systemic denial of counsel claims like Hannah's, states hold that a civil class action provides appropriate remedies.

For ineffective assistance of counsel claims, some courts have rejected class actions in favor of individual motions for postconviction relief. An ineffective assistance of counsel claim turns on the facts of the

individual case, like whether the counsel was actually deficient, and whether the errors were so serious as to deprive the defendant of a fair trial. *Strickland*, 466 US at 687. Facing those fact-specific inquiries, some states have rejected class actions over ineffective assistance of counsel and, like the Court of Appeals here, reserved those issues for each individual criminal trial. *See*, *e.g.*, *Platt v. State*, 664 NE2d 357, 363 (Ind 1996); *Kennedy v. Carlson*, 544 NW2d 1, 8 (Minn 1996).

But Hannah does not claim ineffective assistance of counsel. He claims he had no counsel at all. Denial of counsel claims do not need these individual inquiries because courts presume harm when a defendant lacks a lawyer. When the state denies a defendant a lawyer, prejudice "is so likely that case-by-case inquiry into prejudice is not worth the cost." *Strickland*, 466 US at 692. Denial of counsel is "easy to identify" and "easy for the government to prevent." *Id.*

Systemic denial of counsel can be adjudicated effectively class wide. Other states found that class actions for denial of counsel have none of the procedural problems that ineffective assistance of counsel claims do. A court can easily review a class-wide claim of a state's "widespread and endemic inability" to provide counsel because it "is a structural claim, not

an individual one." *Kuren*, 146 A3d at 746. There are no questions about the reliability of individual trials. *See id.* There are no particular instances of attorney advice to review. *See id.* The only way to cure systemic defects is to "effect systemic reform" through a civil class action. *Tucker*, 394 P3d at 62-63.

CONCLUSION

The Court should reverse the dismissal of Hannah's claims as nonjusticiable and allow Hannah to pursue prospective injunctive relief for systemic denial of counsel for thousands of Oregonians.

Respectfully submitted,

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Appendix

Alena Yarmosky, *The Impact of Early Representation, An Analysis of San Francisco Public Defendant Pre-Trial Release Unit*, at 2, California Policy Lab (2018) ....APP 1-42

Johanna Lacoe, et al., *The Effect of Pre-Arraignment Legal Representation on Criminal Case Outcomes*, at 5, National Bureau of Economic Research, Working Paper 31289 (May 2023)...........APP 43-76

Shamena Anwar, et al., *The Impact of Defense Counsel at Bail Hearings*, at 5, Science Advances (May 5, 2023) ....APP 77-87

THE IMPACT OF
EARLY REPRESENTATION:

AN ANALYSIS OF THE SAN FRANCISCO PUBLIC DEFENDER'S PRE-TRIAL RELEASE UNIT

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Executive Summary

Overview of Pre-Trial Release Unit

The San Francisco Public Defender's Office launched its "Pre-Trial Release Unit" (PRU) on October 2, 2017. The PRU, which is staffed by two full-time attorneys and one full-time investigator, provides legal advice and advocacy to indigent arrestees during the critical period between booking and arraignment. PRU interventions include direct representation (through one-on-one interviews), early case investigation, attorney notification, parole advocacy, contacts to family and friends, in-person arraignment recruitment, in-jail referrals, and bail advocacy. In its first five months of operation, the PRU provided pre-arraignment representation in 1,024 unique cases.

Goals of the PRU

After years of providing counsel to indigent arrestees in San Francisco, the Public Defender's Office is acutely aware of wealth disparities in access to pre-arraignment representation. The pre-arraignment period is critical for a number of reasons: bail is set, formal charges are filed, case investigation begins, and the first round of police interviews occur. Individuals wealthy enough to afford a private attorney immediately after booking have access to a number of services (including bail advocacy, early defense investigation, rebooking advocacy, and in-person invocation of rights) that indigent arrestees – who are not provided a public defender until arraignment – do not receive. These services can significantly impact later criminal case proceedings, increase the likelihood of pre-trial release, and help to ensure clients' stability during and post incarceration.

In addition to reducing wealth disparities in pre-arraignment representation**,** the Public Defender's Office also aims to reduce the county jail population – a key priority shared by the Mayor, District Attorney, and Sherriff's Department. In order to ensure the permanent closure of County Jails #3 and #4, the City and County of San Francisco (the City) must reduce its jail population by 83,000 jail bed days per year. The PRU hopes to contribute to this reduction goal by increasing arrestees' likelihood of pre-trial release.

Study Evaluation Methods

To quantitatively assess the impact of the PRU on length of pre-trial incarceration, we generated a dataset of booking, demographic, and charge information for all arrestees booked into county jail during our study period (October 2, 2017 - February 28, 2018). This dataset was generated primarily from the Public Defender's GIDEON case management system, which draws from data maintained by the San Francisco County Superior Court's larger case management database, and included PRU treatment coded by intervention type.

Because selection into arrest-responsive PRU treatment is non-random, we used a propensity score method to control for differences among treated and non-treated individuals. The propensity score indicates the likelihood that a client receives arrest-responsive PRU treatment given: age, race, gender, out-of-county warrants, parole or probation holds and criminal history. We then used a "nearest neighbor" matching technique to match clients treated by the PRU with similarly-scored defendants who did not receive treatment. Because there was little

selection bias associated with parole advocacy, we used a regression model to measure impact of parole advocacy on eligible parolees' length of incarceration.

To further evaluate the impact of the PRU on pre-trial detention, clients' stability, and likelihood of repeat involvement with the criminal justice system, we conducted interviews with a total of 14 stakeholders. Interviewees included PRU program staff (4), Deputy Public Defenders (6), and former PRU clients (4).

Summary of Findings

Based on the findings from our quantitative analysis and qualitative interviews, we conclude that the Public Defender's Pre-Trial Release Unit has demonstrated promising initial success in meeting its goals of 1) reducing wealth disparities in access to pre-arraignment representation, and 2) reducing the jail population through increased access to pre-trial release.

Specifically, our analysis reveals that PRU intervention reduces the length of pre-trial incarceration**:**

- **Individuals who receive arrest-responsive intervention are twice as likely to be released at arraignment when compared with similarly situated, non-treated arrestees**. Similar, not-treated arrestees are released at arraignment 14 percent of the time, compared to a 28 percent rate for treated arrestees. This appears to be due primarily to attorneys' increased ability to argue for release at arraignment, including increased access to client information, early investigation, and in-person presence at arraignment.
- Among all eligible parolees, **parole advocacy provided by the PRU reduced the length of incarceration by 230 hours (approx. 9.5 days).** This is consistent with qualitative evidence that suggests parole advocacy increases the speed at which parole holds are lifted and reduces the number of parole petitions filed.

We also conducted interviews with PRU program staff, public defender attorneys, and former PRU clients to attempt to evaluate the qualitative, more intangible impact of the PRU. Although difficult to measure, it appears that PRU intervention is reducing wealth disparities in access to critical pre-arraignment benefits. Our analysis suggests:

- **PRU intervention may uncover evidence that may positively impact later case outcomes**. This evidence, including surveillance footage and/or witness testimony, may be impossible to access post-arraignment.
- By simultaneously advocating for arrestees and helping them navigate the legal process, **PRU intervention likely increases procedural justice**.
- By contacting the employers, family members, and friends of arrestees, the **PRU may help clients' keep their jobs, maintain stable housing, and protect their families while incarcerated**. This increased stability during incarceration may lead to increased stability in the longer-term.

Using the above analyses, we calculated that **PRU's arrest-responsive treatment has saved approximately 4,689 jail bed days** during its initial 5 months of operation. This is an average savings of 940 jail bed days a month, or approximately 11,253 jail bed days saved per year.

Introduction

The San Francisco Public Defender's Office is committed to ensuring equal access to justice for all, regardless of race, gender, national origin or class. As part of this mission, the Public Defender's Office provides attorney representation, including direct defense, re-entry services, and legal support, to approximately 23,000 indigent individuals charged with crimes each year.[1] While racial disparities in the criminal justice system are undeniable both nationally and in San Francisco, the Public Defender's Office has helped to significantly reduce disparities on the basis of wealth. In addition to high quality representation, the PD's Office is currently leading the nation in efforts to reduce the burden of money bail and criminal justice debt on low-income city residents.[2]

Despite significant progress however, there remains a critical area in which wealthy arrestees in San Francisco have a significant advantage over the indigent: pre-arraignment representation. Arrestees who are wealthy enough to hire private counsel have access to legal representation and advocacy immediately upon being booked into jail. In contrast, indigent arrestees are traditionally not assigned a public defender until arraignment (the first hearing before a judge). Depending on the time and day of arrest, arraignment may occur three to four days after an individual is booked into jail.[3]

The pre-arraignment period is critical for a number of reasons: The District Attorney's Office decides whether and what charges to file, bail is set, and preliminary investigations may begin to uncover evidence. Wealth also plays a significant role in the likelihood of release pre-arraignment; wealthy arrestees who can afford to post bail and/or receive rebooking advocacy may remain in their homes and communities while awaiting the DA's charging decision. In contrast, the majority of San Francisco's indigent arrestees cannot afford to post bail.[4] These individuals must remain incarcerated at least until their case is either arraigned or dismissed, with potentially significant costs to employment, child custody, and financial stability. Pre-arraignment representation may also increase the likelihood of release *at* arraignment by providing attorneys the time needed to compile a robust case for release.[5]

The impact of pre-trial release cannot be overestimated. Defendants who are incarcerated pre-trial plead guilty at higher rates, are more likely to be convicted, and face longer sentences than similarly-situated releasees.[6] Pre-trial incarceration is also correlated with increased recidivism, as longer jail time can cause a defendant to lose his/her job, housing, eligibility for certain treatment programs, or community supports.[7]

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[1] San Francisco Public Defender. Retrieved from http://sfpublicdefender.org/about/

[2] Fuller, T., & Stevens, M. (2018, February 28). New York Times, California Today: Should Bail Be Set Above What Defendants Can Pay? Retrieved from https://www.nytimes.com/2018/02/28/us/california-today-bail-hearings-san-francisco.html

[3] Program Staff, Pre-Trial Release Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March - April)

[4] Do the Math: Money Bail Doesn't Add Up for San Francisco. (2017). San Francisco Financial Justice Project, Office of the Treasurer & Tax Collector.

[5] Deputy Public Defenders, Felony Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April)

[6] Dobbie, W., Goldin, J., & Yang, C. S. (2018). The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges. American Economic Review, 108(2), 201-240. doi:10.1257/aer.20161503

[7] Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). The Hidden Costs of Pretrial Detention. Laura and John Arnold Foundation. Retrieved from http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf

In keeping with its mission to ensure access to justice for all, the San Francisco Public Defender's Office launched its pilot "Pre-Trial Release Unit" (PRU) in October of 2017. The PRU aims to reduce wealth disparities in access to pre-arraignment representation by providing legal advice and advocacy to indigent defendants in the critical period between booking and arraignment. The PRU also seeks to reduce the county jail population – a key priority shared by the Mayor, District Attorney, and Sherriff's Department – by increasing the likelihood of release pre- and at arraignment.

This report will examine whether pre-arraignment representation, as provided by the PRU, has a significant impact on pre-trial incarceration of indigent defendants. Specifically, this report will assess the PRU's progress in its goals of 1) rectifying wealth disparities in pre-arraignment representation and 2) reducing the jail population. We hope that this analysis aides the Public Defender's Office, as well as the City and County of San Francisco, in its decision whether to continue this pilot program past the nine-month trial period.

Policy Background

Early Representation a Long-Held Priority for the Public Defender's Office

The San Francisco Public Defender's Office provides high-quality legal representation to indigent defendants within the City and County of San Francisco (the City). Due in large part to this robust counsel, the City has made progress in ensuring equitable access to justice regardless of wealth. However, wealthy arrestees continue to hold a significant advantage over the indigent in one critical area: access to pre-arraignment representation.

Arrestees who are able to hire private counsel have access to legal representation and advocacy immediately upon being arrested and booked into jail. In contrast, indigent arrestees are historically not assigned a public defender until arraignment, which can occur three to four days after arrest. The San Francisco Public Defender's Office has been acutely aware of these wealth disparities – and the resulting differences in pre-arraignment legal advice and advocacy – for several years. However, prior to the funding of the Pre-Trial Release Unit in Fall 2017, the office had been unable to expand their indigent representation to the pre-arraignment period. [8]

San Francisco Faces a Mandatory Reduction in Jail Population

The City and County of San Francisco spends approximately $119.5 million each year on programs targeting the City's justice-involved population.[9] A significant portion of this funding is used to house individuals within the City's jail system: County Jail #2 (located at 425 7th St.), County Jails #3 and #4 (located at 850 Bryant St.), and County Jail #5 (located at #1 Moreland Dr. San Bruno).[10] The San Francisco Sheriff's Department also maintains a locked ward at San Francisco General Hospital, which houses incarcerated individuals in need of intensive medical treatment. [11]

Out of the four primary jails responsible for housing prisoners, two (County Jails #3 and #4) have been deemed unsafe for permanent habitation. County Jails #3 and #4, both located in the Hall of Justice, have been classified as "seismically unfit" by inspectors and pose a serious threat to incarcerated individuals in the event of a major earthquake or similar emergency. [12] In 2015, the City proposed construction of a new facility to replace County Jails #3 and #4. However, after months of advocacy from local activists and criminal justice stakeholders, the Board of Supervisors voted unanimously in January 2016 to reject the City's proposal. Instead, the Board called for the formation of a working group to propose alternative measures, with the ultimate goal of reducing the jail population enough to allow for the permanent closure of Jails #3 and #4.[13]

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[8] Program Staff, Pre-Trial Release Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March - April)

[9] Final Report, Work Group to Re-envision the Jail Replacement Project. (2017).

[10] County Jail #1, located at 425 7th Street, is used for processing of booking and release only. No individuals are housed here.

[11] San Francisco County Jail System Facility Descriptions. Retrieved from http://www.sfsheriff.com/jail_info.html

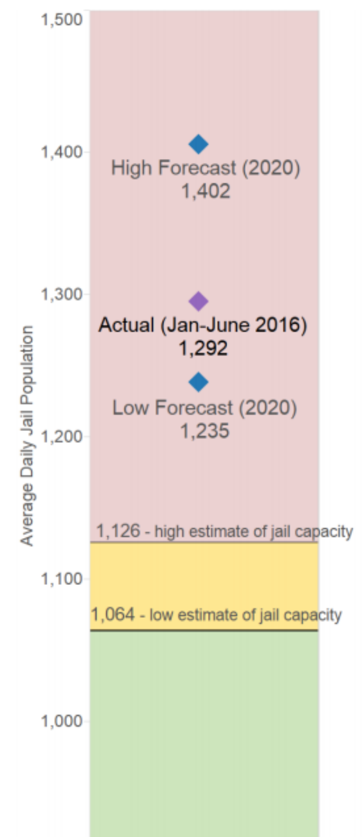
[12] Final Report, Work Group to Re-envision the Jail Replacement Project. (2017).

[13] Ibid.

The "Work Group to Re-envision the Jail Replacement Project" (Work Group) was formed in March 2016. Chaired by San Francisco Sherriff Vicki Hennessy, Barbara Garcia (Director of Department of Public Health), and Roma Guy (community member and representative of Taxpayers for Public Safety), its membership consisted of 39 local criminal justice and mental health experts, including the San Francisco Public Defender's Office. Given its mandate to facilitate the permanent closure of unsafe county jails, the Work Group prioritized methods for a significant, sustainable reduction in the city's jail population.[14]

To assess the reduction required, the Work Group compared the total number of usable beds in San Francisco's jail system to the average daily jail population in the first six months of 2016. They concluded that in order to allow for the permeant closure of County Jails #3 and #4, the jail population must be reduced by an average of 166-228 individuals per day (see Figure 1). This is a necessary jail bed reduction of 83,220 bed days per year.[15] [16]

Figure 1: Jail Population vs. Capacity



Source: Work Group to Re-envision the Jail Replacement Project, Board of Supervisors Presentation (June 13, 2017)

Pre-Trial Intervention a Promising Approach

San Francisco's jail population largely consists of individuals who have not been convicted of a crime. 85 percent of individuals in San Francisco county jail are in the pre-trial phase, meaning they have not been sentenced and are still awaiting resolution of their case.[17] Although a portion of these individuals may be ineligible for release due to out-of-county warrants, federal holds, or parole/probation violations, a significant portion of the total jail population (45 percent) is eligible for release pre-trial.[18] This indicates that pre-trial intervention is a promising means of reducing the jail population overall.

Of course, jail population is not equivalent to jail bed day use. The majority of San Francisco's jail population (65 percent) is made up of individuals who stay in jail for 15 days or less. Despite their numbers, these individuals account for only 3 percent of total jail bed days used. In contrast, a small minority of individuals (12 percent)

[14] San Francisco Department of Public Health. Work Group to Re-envision the Jail Replacement Project. Retrieved from https://www.sfdph.org/dph/comupg/knowlcol/jrp/default.asp

[15] It is important to note that jail population reduction is measured in terms of jail bed days, not the total number of people in jail. This is due to the fact that individuals are incarcerated for different lengths of time; reducing the short-term stays of several people in jail would have the same impact on average daily jail population as reducing the long-term stay of one individual. Further, a jail bed calculation allows us to consider the resources saved by reducing an individual's length of detention, even if he/she is not entirely released from jail.

[16] Final Report, Work Group to Re-envision the Jail Replacement Project. (2017).

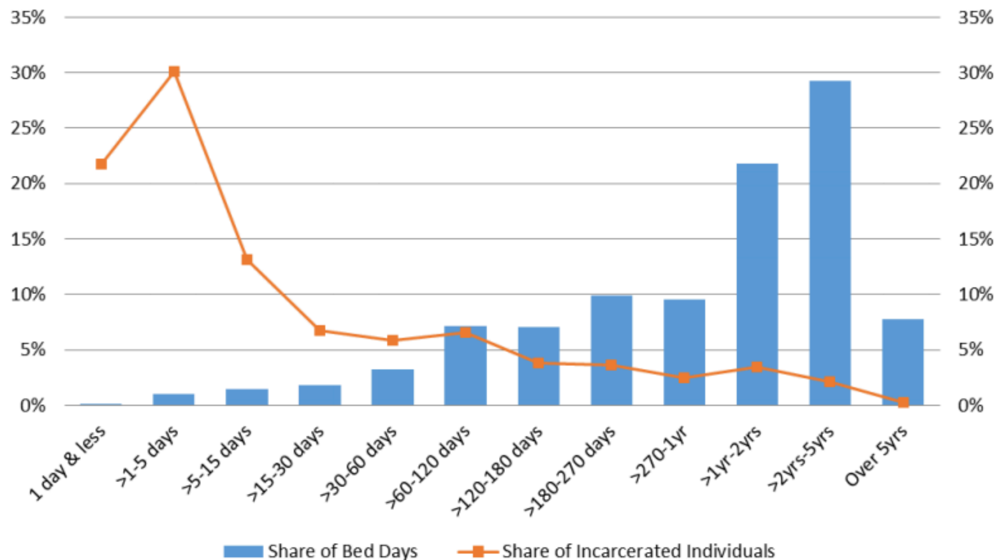
[17] Update to the Jail Population Forecast (Rep.). (2015). City Services Auditor, Office of the Controller, City and County of San Francisco.

[18] Percentage derived from daily jail population snapshot on August 23, 2016. Work Group to Re-envision the Jail Replacement Project Report Release & Next Steps. Presentation to Board of Supervisors, June 13, 2017, San Francisco. Retrieved from https://www.sfdph.org/dph/files/jrp/BOS-Presentation-6-13-2017.pdf

have long-term jail stays of over 180 days. Although a much smaller portion of the population, these individuals account for 78 percent of 2015 jail bed days used (see Figure 2).[19]

Practically, this indicates that a similar reduction in jail bed days could be achieved by either 1) targeting many individuals with short-term stays, or 2) targeting fewer individuals with significantly longer stays.

Figure 2: 2015 Incarcerated Individuals, Share of Bed Days vs. Share of Population



Source: Work Group to Re-envision the Jail Replacement Project, Board of Supervisors Presentation (June 13, 2017)

This analysis can be helpful in measuring the impact of various interventions on jail bed day reduction. However, this approach is limited in predicting the impact of *pre-trial* intervention. That's because pre-trial intervention may itself impact the length of time that an individual is in jail. Consider an individual who receives pre-trial intervention and who stays in jail less than 15 days. If this pre-trial intervention was effective in securing her release, it is likely that she would have been incarcerated for much longer – accounting for a significantly larger share of jail bed days – had she not received treatment. The causal effects of pre-trial intervention make it difficult to determine a critical threshold for impact using program size alone.

Launch of the Pre-Trial Release Unit

In their final report, the Work Group recommended pre-trial intervention as a promising approach to reducing San Francisco's jail population. Their recommendation aligned ideally with the Public Defenders' long-held priority of reducing wealth disparities in access to pre-arraignment representation.

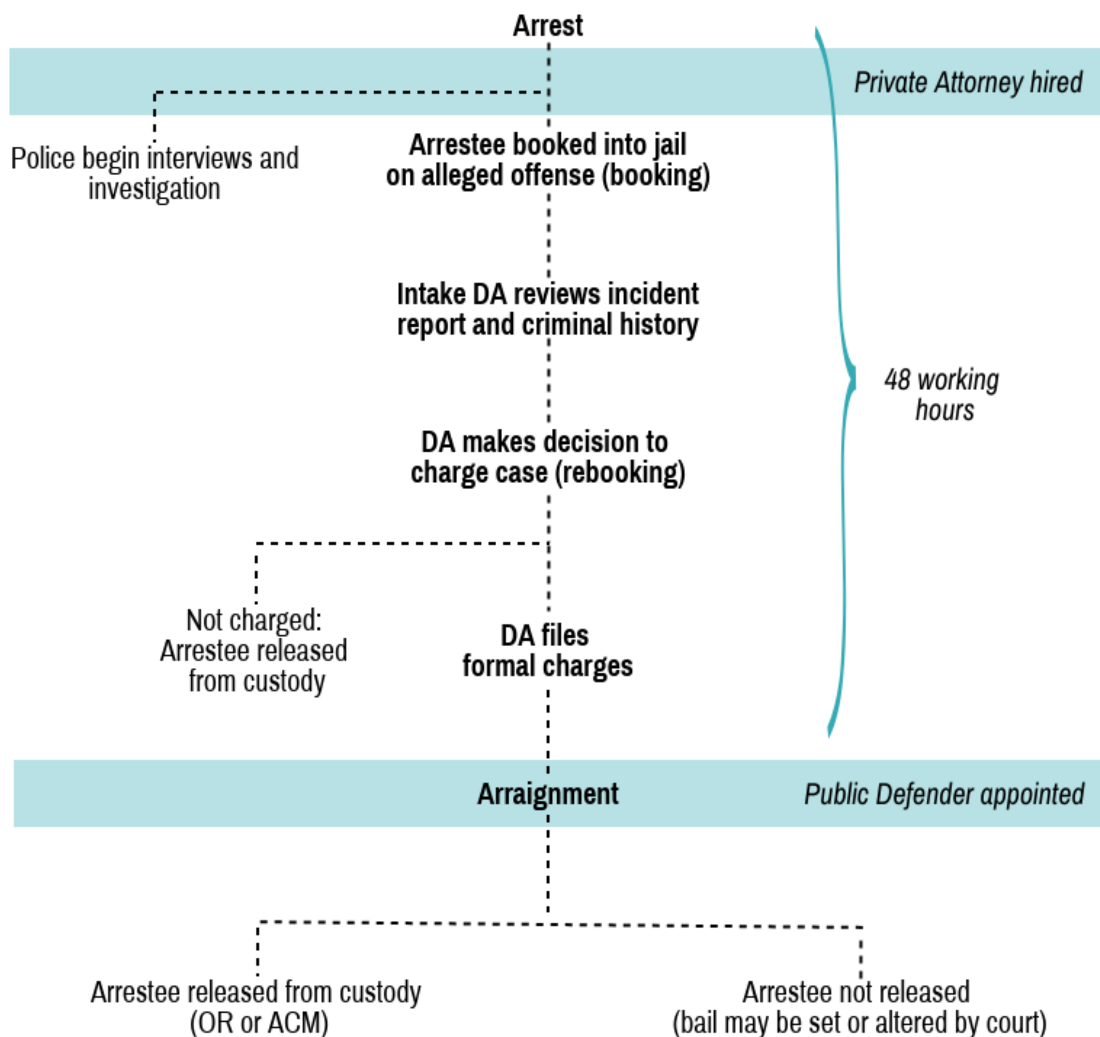
The Pre-Trial Release Unit was launched on October 2, 2017, supported by $355,000 in funding from the Mayor's FY 2017 – 2018 budget. The goals of the unit reflect the twin priorities of its founding: 1) rectify wealth disparities in pre-trial outcomes, and 2) reduce San Francisco's jail population.

[19] Final Report, Work Group to Re-envision the Jail Replacement Project. (2017).

Wealth Disparities in Pre-Arraignment Representation

Significant wealth disparities exist in access to pre-arraignment representation. Individuals who are able to hire a private attorney have access to legal representation and advocacy immediately upon being booked into jail. In contrast, prior to the launch of the Pre-Trial-Release Unit, low-income arrestees were not assigned a public defender until arraignment. Figure 3 provides a basic overview of the pre-arraignment process prior to the PRU.

Figure 3: Overview of Process from Arrest to Arraignment, Prior to PRU Implementation



Source: Arrest to Arraignment Process Maps, Office of the Controller, City and County of San Francisco

As noted in Figure 3, California law requires that individuals are arraigned no more than 48 *working* hours after arrest.[20] Practically, this means that individuals arrested during non-working hours (on the weekends or holidays) may have to wait several additional days before their case is either discharged or arraigned.[21]

The San Francisco District Attorney's Office is currently working to reduce these delays by extending charging decisions to non-working days (weekend rebooking).[22] However, it is important to note that arraignment hearings continue to occur exclusively during working hours.[23] Therefore, individuals arrested at the end of the week and formally charged by the DA may still have to wait up to 96 hours before arraignment.[24]

Criminal Case Impacts of Pre-Arraignment Representation

This disparate access to pre-arraignment representation can severely impact individuals' later criminal case proceedings. Wealthy individuals who retain private counsel prior to arraignment are more quickly informed of their constitutional rights, receive critical early investigation, and have access to direct re-booking advocacy. All of these services – traditionally unavailable to indigent defendants – can help to ensure individuals are not overly charged, wrongfully convicted, and/or unnecessarily incarcerated.

Invocation of Rights: Arrestees who can afford to pay for pre-arraignment representation are able to invoke their constitutional rights under the 5th and 6th amendments. Specifically, arrestees are informed by their attorney that they have a right to legal counsel in critically-important police interviews, and they are likely instructed by their attorney to invoke this right in any and all communication with police.

Despite media popularization of Miranda rights, the majority of arrestees do not fully understand the extent of their rights as criminal case defendants.[25] As a result, arrestees may unintentionally self-incriminate (or appear to self-incriminate) in conversations with police. Young adults, non-native English speakers, and people with cognitive disabilities and mental illness face particularly steep barriers to understanding, and are therefore particularly vulnerable to self-incrimination. However, because police interviews typically happen within 24 hours of arrest – the period before a public defender is traditionally assigned -- the most vulnerable arrestees are often those most likely to waive their constitutional rights. Future charging decisions, plea offers, and trial decisions may be significantly impacted as a result.

[20] California Penal Code §825

[21] Final Report, Work Group to Re-envision the Jail Replacement Project. (2017).

[22] Ibid.

[23] The Superior Court, County of San Francisco maintains normal working hours and does not operate on weekends or holidays.

[24] To account for this, our propensity score analysis does not incorporate individuals who are booked on Fridays. Nonetheless, PRU program staff report that individuals booked on Thursdays may also remain incarcerated over the weekend prior to arraignment. In order to maintain a conservative estimate, we assume 96 hours as the maximum time from booking to arraignment. See "Study Assumptions and Limitations" for further information.

[25] Rogers, R. (2011, November). Getting it wrong about Miranda rights: False beliefs, impaired reasoning, and professional neglect. Retrieved from https://www.ncbi.nlm.nih.gov/pubmed/22082397

Early Investigation: Pre-arraignment representation is also critically important to the successful assembly of evidence. Surveillance footage, an increasingly weighty component of criminal case evidence, often automatically updates every 48–72 hours and may be inaccessible even three days post-arrest. Early investigation is also important in securing witness testimony; the more time passes between an alleged incident and investigation, the more difficult it becomes to identify and locate witnesses. This can be a particular challenge in San Francisco due to the high proportion of transient and homeless individuals.[26] Without concrete home addresses or reliable contact information, it can be virtually impossible to access and interview these individuals even days post-arrest.

In interviews with deputy public defenders, numerous attorneys reinforced the importance of early investigation. When asked about challenges to legal defense, 5 out of 6 attorneys interviewed voluntarily reported difficulties in accessing some forms of evidence once they had been formally assigned to the case.[27] In contrast, wealthy arrestees who can afford pre-arraignment counsel have significantly increased likelihood of obtaining what may become critically important evidence in later case proceedings.

Rebooking Advocacy: As outlined in Figure 3, an arrestee is both booked and rebooked during the pre-arraignment period. Initial booking occurs at jail intake, when an SFPD officer files informal booking charges based on his/her interpretation of alleged offense. Rebooking occurs approximately 24 to 48 hours after initial booking, when the District Attorney makes a decision to file formal charges in an arrestees' case.

Unlike initial booking, the DA's rebooking decision is based on further case investigation. This makes rebooking a critical opportunity for legal advocacy: if attorneys are retained prior to rebooking, they can directly petition the DA to reduce or dismiss their clients' charges. Rebooking advocacy is also closely related to early investigation. If attorneys uncover critical or even exculpatory evidence during early investigation, they can present this evidence during rebooking to help secure their clients' immediate release.

From a systems perspective, rebooking is also an important check on police discretion exercised during the initial booking stage. A 2017 report by University of Pennsylvania's Quattrone Center found that racial bias in police booking charges is a primary driver of overall racial disparities in San Francisco's criminal case outcomes.[28] When an individual is incorrectly or overly-charged by police, rebooking is the earliest opportunity to correct this injustice.

Despite its importance, however, rebooking advocacy is primarily accessible only to wealthy arrestees. Because rebooking occurs prior to arraignment – and the start of traditional public defender representation – indigent individuals have been largely left out.

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[26] Program Staff, Pre-Trial Release Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April)

[27] Deputy Public Defenders, Felony Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March - April)

[28] Owens, E., Kerrison, E. M., & Da Silveira, B. S. (2017). Examining Racial Disparities in Criminal Case Outcomes among Indigent Defendants in San Francisco. Quattrone Center for the Fair Administration of Justice, University of Pennsylvania Law School.

Wealth Disparities in Pre-Arraignment Release

Due in part to differences in access to pre-arraignment representation, significant wealth disparities continue to exist in pre-arraignment release. When compared to wealthy arrestees, low-income arrestees are more likely to remain in custody pre-arraignment.[29]

The Role of Money Bail

A primary driver of this disparity is the United States' reliance on money bail. When an individual is booked into jail, his/her bail is set according to alleged offense.[30] At arraignment, a judge may decide to alter a defendant's bail amount based on community ties, criminal history, and public safety risk.[31]

Wealthy arrestees who can afford to post the full bail amount (as indicated by the Superior Court's fixed fee schedule) are able to remain in their homes and communities while awaiting formal charges and/or arraignment. If the District Attorney decides not to file charges in their case or they are exonerated at trial, these individuals get a full bail refund. In contrast, indigent arrestees who wish to be released pre-arraignment must pay a nonrefundable bail fee (generally 10 percent of set bail) to a bail bondsman.[32] Because this fee is non-refundable, indigent individuals and their families may find themselves thousands of dollars in debt, even if charges are never filed against them.[33]

Some low-income arrestees are able to pay the non-refundable fee needed to secure release on bail. However, given San Francisco's particularly high bail schedule, the majority of the city's indigent arrestees are unable to afford even this 10 percent fee.[34] A recent report from the San Francisco Treasurer's office found that 40 – 50 percent of San Francisco's pre-trial jail population would be released if they could afford to pay bail.[35]

Unequal Access to Bail Advocacy: Unequal access to early representation reinforces this disparity in pre-arraignment release. Although bail is set at booking using a fixed fee schedule, the California Penal Code empowers most arrestees to make an application for reduced bail prior to arraignment -- within 8 hours of being booked into county jail.[36] Without legal counsel, there is no mechanism for an incarcerated individual to file this

[29]"Not in it for Justice" | How California's Pretrial Detention and Bail System Unfairly Punishes Poor People. Human Rights Watch. (2017, June 06).
[30] Superior Court of California, County of San Francisco, Felony-Misdemeanor Bail Schedule. (2017, July 1).
[31] California Penal Code §1275
[32] Do the Math: Money Bail Doesn't Add Up for San Francisco. (2017). San Francisco Financial Justice Project, Office of the Treasurer & Tax Collector.
[33] Ibid.
[34] Median felony bail in California is estimated to be $50,000, more than five times the national average. San Francisco's bail schedule is estimated to be in the top highest quartile in the state.
[35] Do the Math: Money Bail Doesn't Add Up for San Francisco. (2017). San Francisco Financial Justice Project, Office of the Treasurer & Tax Collector.
[36] California Penal Code §§1268–1276.

petition. But if an arrestee is wealthy enough to hire private counsel pre-arraignment, his/her attorney can use this approach to advocate for reduced bail almost immediately.

Wealth Disparities in Release at Arraignment

Indigent arrestees are similarly disadvantaged in their access to release *at* arraignment. This is primarily due to differences in attorneys' capacity to present a robust, individualized case for release.

Private attorneys hired immediately upon arrest or booking have approximately 48 hours to conduct early investigation, gather evidence of clients' community ties, and otherwise prepare a strong case for their client's release at arraignment. In contrast, public defenders must attempt to gather any/all relevant information on the day of arraignment itself.

Aside from obvious preparation limitations, public defenders face barriers in communicating with clients and receiving critical case information. First, attorney-client interaction is extremely limited prior to arraignment. In interviews, attorneys reported having an average of 5-10 minutes to meet and speak with each client prior to the start of proceedings.[37] The scope of their conversation is also limited. Because all pre-arraignment interviews take place in large communal holding cell, attorneys are unable to discuss case specifics with their client out of concern for confidentially. And while attorneys do ask their clients questions about community ties, they have no opportunity to verify or illustrate this information before presenting it to the judge. Finally, public defenders are only provided access to critical case information (including client's arrest report and RAP sheet) immediately prior to the start of arraignment. With limited time to read and process this information – which may be extensive – public defender attorneys have little ability to prepare robust, case-specific arguments for their clients.[38]

Private attorneys hold a final advantage in their ability to argue for release at arraignment: clients' community contacts. Private attorneys who are hired 24-48 hours prior to arraignment can recruit clients' friends, family members, and even employer(s) to attend the arraignment hearing in-person. Attorneys report that an in-person presence at arraignment can be incredibly helpful in securing a clients' release, mainly by demonstrating the strength of an individual's local and community ties.[39] However, prior to the PRU, in-person recruitment was a virtual impossibility for indigent arrestees. If the first time a public defender meets his/her client is at arraignment, it is too late to bring anyone else to the courtroom.

[37] Deputy Public Defenders, Felony Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March - April)
[38] Ibid.
[39] Ibid.

The Impact of Pre-Trial Incarceration

Wealth disparities in pre-trial release are particularly problematic when considering the severe consequences of pre-trial detention on conviction, sentencing, and stability post-release. Research demonstrates that defendants who are detained pre-trial are more likely to be convicted, sentenced to jail, and remain in jail for longer periods of time.

Recent studies have found significant correlation between pre-trial detention and increased likelihood of conviction. A 2016 study conducted by the National Bureau of Economic Research found that defendants detained pre-trial were significantly more likely to be convicted than similarly situated defendants who had been released pre-trial.[40] It is important to note that this disparity is driven both by an increase in guilty pleas and guilty findings: pre-trial detention was found to be associated with a 27.5 percent increase in the likelihood of a defendant pleading guilty and a 27.3 percent increase in the likelihood of being found guilty by judge or jury.[41]

Considering that criminal cases can take several months and even years to resolve, it is unsurprising that defendants detained pre-trial tend to plead guilty more quickly and at higher rates. Even individuals who are innocent of alleged crimes may decide that pleading guilty is the best way to secure release; this is particularly true for defendants who, due to credit for time served, become eligible for release immediately upon entering a guilty plea. [42] [43]

On the other hand, a defendant's appearance during trial has been shown to have a significant effect on his/her likelihood of being found guilty.[44] The positive relationship between pre-trial detention and guilty findings may be due in part to this appearance bias; jail jumpsuits and shackles may make a defendant appear "more guiltily" when compared with a professionally dressed defendant. Jurors may also assume that defendants who do not qualify for pre-trial release are in fact a threat to public safety, further biasing their perceptions of the defendant.[45]

In addition to increased likelihood of conviction, defendants detained pre-trial face increase likelihood of being sentenced to jail. A 2016 study of 380,000 misdemeanor defendants in Harris County Texas found stark differences in sentencing among detained and non-detained defendants: defendants detained pre-trial were 43

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[40] Dobbie, W., Goldin, J., & Yang, C. S. (2018). The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges. American Economic Review, 108(2), 201-240. doi:10.1257/aer.20161503
[41] Ibid.
[42] Meghan Sacks & Alissa R. Ackerman (2012) Pretrial detention and guilty pleas: if they cannot afford bail they must be guilty, Criminal Justice Studies, 25:3, 265-278, DOI: 10.1080/1478601X.2012.705536
[43] Pinto, N. (2015, August 13). The Bail Trap. The New York Times Magazine. Retrieved from https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html
[44] Gunnell, J. J., & Ceci, S. J. (2010). When emotionality trumps reason: A study of individual processing style and juror bias. Behavioral Sciences & the Law, 28(6), 850-877. doi:10.1002/bsl.939
[45] Dobbie, W., Goldin, J., & Yang, C. S. (2018). The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges. American Economic Review, 108(2), 201-240. doi:10.1257/aer.20161503

percent more likely to be sentenced to jail time.[46] A 2013 study of over 150,000 bookings into a Kentucky county jail found similar results for both felony and misdemeanors offenses: detained defendants were over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released pre-trial.[47] Pre-trial detention is associated with longer sentencing. In Harris County Texas, detained defendants received sentences that were more than twice as long, on average, when compared to similarly situated defendants who had been released pre-trial.[48] Kentucky arrestees detained pre-trial were found to have jail sentences nearly three times as long.[49]

Finally, pre-trial detention is correlated with increased likelihood of recidivism. Another study analyzed the same sample of 150,000 bookings into a Kentucky jail from July 2009 to July 2010. The authors found that defendants detained pre-trial were 1.3 times more likely to be rearrested within the next 24 months, compared with similarly-situated releasees.[50] This relationship was shown to strengthen over time; the longer a defendant was detained pre-trial, the greater the likelihood of later arrest. This effect is particularly great for low-risk defendants – even 48 hours in jail was shown to increase recidivism of low-risk or first-time offenders by almost 40 percent.[51]

The long-term consequences of pre-trial detention are important to understand, not only as they impact the integrity of our justice system, but also as they drive overall trends in jail population. Practically, an increase in the number of defendants detained pre-trial not only results in more jail bed days used during the pre-trial period, but also leads to a proven increase in jail bed days required post-conviction and in future arrests. Pre-trial release is therefore an investment that continues to yield returns.

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[46] Heaton, P., Mayson, S., & Stevenson, M. (2016). The Downstream Consequences of Misdemeanor Pre-Trial Detention. Quattrone Center for the Fair Administration of Justice, University of Pennsylvania School of Law.
[47] Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). Investigating the Impact of Pretrial Detention on Sentencing Outcomes. Laura and John Arnold Foundation.
[48] Heaton, P., Mayson, S., & Stevenson, M. (2016). The Downstream Consequences of Misdemeanor Pre-Trial Detention. Quattrone Center for the Fair Administration of Justice, University of Pennsylvania School of Law.
[49] Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). Investigating the Impact of Pretrial Detention on Sentencing Outcomes. Laura and John Arnold Foundation.
[50] Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). The Hidden Costs of Pretrial Detention. Laura and John Arnold Foundation.
[51] Ibid.

Program Overview

The San Francisco Public Defender's Pre-Trial Release Unit is staffed by two full-time attorneys and one full-time investigator. From October 2, 2017 through February 28, 2018, the PRU provided 1,024 defendants with pre-trial representation.

Types of PRU Intervention

PRU staff provide clients with a variety of pre-arraignment representations. In order to be considered a PRU client, defendants must receive at least one of 8 distinct services (detailed below and in Figure 4).

Direct Representation: Attorneys provide direct representation in the form of interviews with recently-booked indigent defendants. The purpose of these interviews is to 1) Generate leads on potential helpful or exculpatory evidence, (including witness names and details of arrest) as possible, 2) Compile information on clients' life circumstances, including family, job history, health, and community ties, for use in future court proceedings, and 3) Allow for invocation of rights in any future interaction with police.[52]

Attorney of Record Notification: Staff notifies fellow PD attorneys when their client has been re-arrested. Prior to the PRU, PD attorneys often did not know their client had been re-arrested until after they had been arraigned.[53]

Early Investigation: PRU staff conducts investigations into circumstance of arrest, identifies weaknesses in the charges levied against the defendant, if possible, and compiles exculpatory and/or helpful evidence for use in future case proceedings. PRU investigations may include identification of key witnesses, interviews with witnesses, review of surveillance footage, and/or contemporaneous documentation of mental or physical ailments.

Parole Advocacy: The PRU also provides parole advocacy for defendants arrested while on parole. Parolees can be arrested for failing to adhere to strict parole guidelines, or for an alleged offense unrelated to their parole status. When these individuals are arrested, they face an automatic "Parole Hold" for up to 10 days. Parole holds can only be lifted by a defendant's Parole Agent. PRU staff contacts defendants' Parole Agents and requests that their holds be lifted. At the Agent's request, and often as a condition of release, PRU staff meets with the defendant, relays communication from their Agent, and urges adherence to parole conditions.

[52] Prior to every visit, PRU staff use CMS and Gideon to identify conflicts of interest. If there is an actual or possible conflict of interest, the booked individual will not be interviewed by the PRU.

[53] Deputy Public Defenders, Felony Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April)

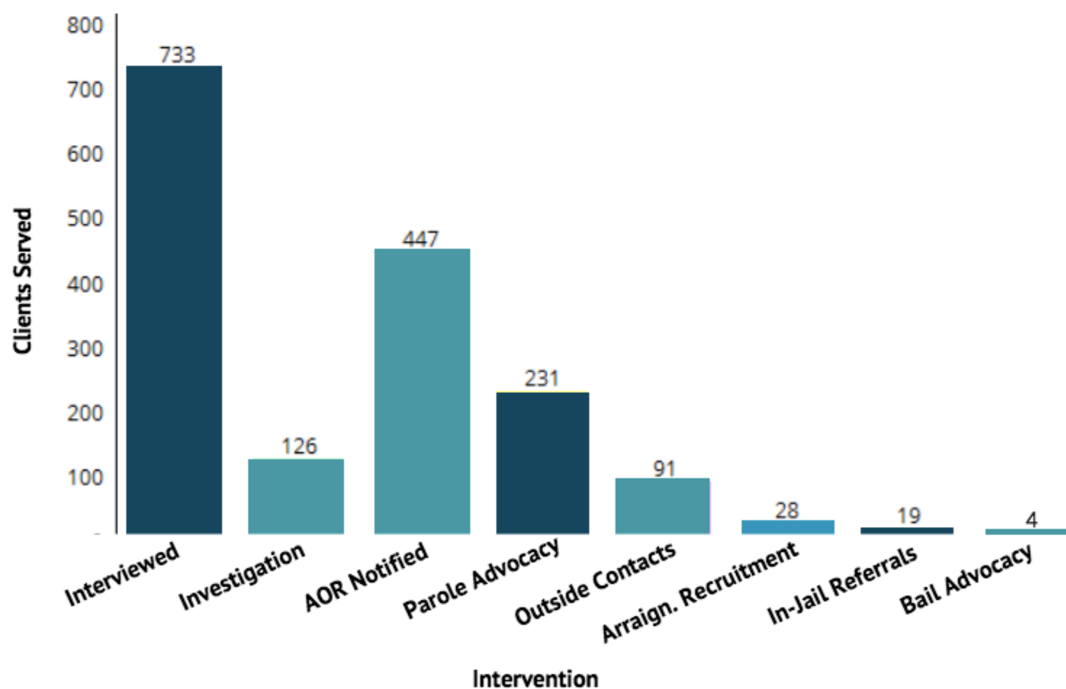
Family/Friend Contacts: Arrestees are often unable to alert their friends or family members upon being booked into jail. Outside assistance can be critical, however; If contacted, a clients' friends/families can help to coordinate childcare, ensure housing is maintained, communicate work absences to employers, and otherwise help to fulfill client's obligations while incarcerated.

In-Person Arraignment Recruitment: For defendants who have strong family and community ties, PRU staff recruits supportive individuals to attend the defendant's arraignment. In-person attendance can demonstrate a defendant's investment in the local community, an important indicator of "flight risk".

In-Jail Referrals: For defendants who are injured, ill, or suffering from mental illness, PRU staff provides immediate referrals to in-jail medical and psychiatric assistance.

Bail Advocacy: To facilitate pre-arraignment release for indigent defendants, attorneys submit 1269c petitions to the Court for release or reduction of bail.

Figure 4: Total PRU Client Per Intervention Type



Client Selection Process

While PRU attorneys aim to provide assistance to all individuals booked into San Francisco county jail, the unit's limited capacity makes this unrealistic. Instead, attorneys prioritize clients for intervention based on the following factors:

Charge severity: PRU attorneys provide representation almost exclusively to individuals charged with felonies. Of those charged with felonies, attorneys prioritize individuals charged with serious and/or violent offenses.

Previous criminal history: When possible, PRU attorneys prioritize individuals who, due to previous convictions or current charges, may qualify for sentencing enhancements under California's "Three Strikes" law.

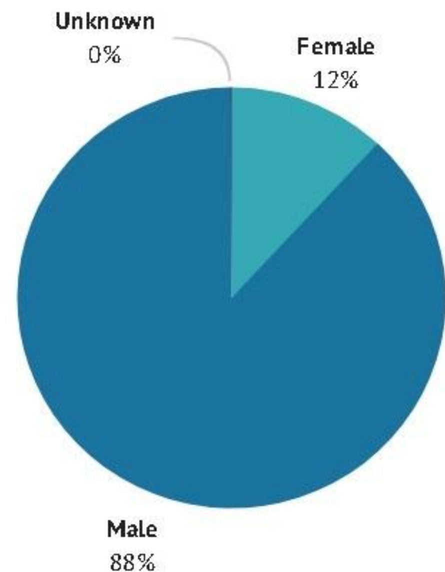
Parole violations: PRU attorneys provide parole advocacy to individuals at risk of flash incarceration or parole revocation. This intervention is provided regardless of presence or severity of criminal charge.

It is important to note that PRU intervention falls into two primary categories: arrest-responsive intervention, which includes pre-arraignment interviews, case investigation, attorney notification, contacts to family or friends, and pre-arraignment recruitment; and parole advocacy, which is provided to clients regardless of presence or severity of criminal charge. This distinction is important in determining the impact of PRU intervention and is discussed further in our "Evaluation Results" section (see page 27).

Client Characteristics

Defendants receiving PRU services are predominately male. More than 88 percent of PRU clients (901) are male, compared with 12 percent (122) female clients. This is consistent with the over-representation of men in the criminal justice system overall.

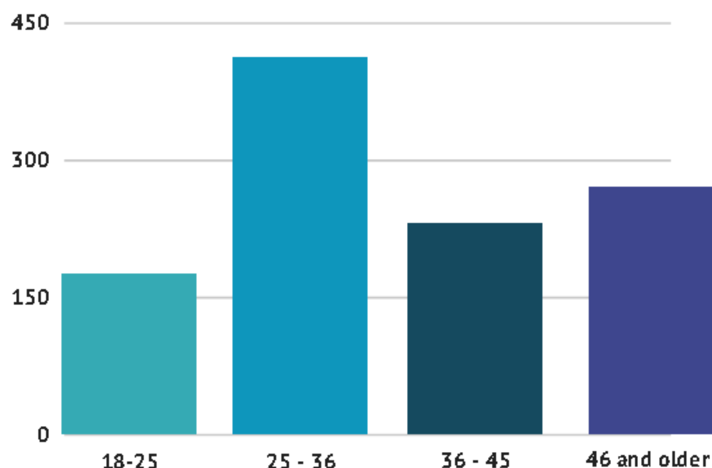
Figure 5: PRU Clients, by Gender



It is important to note that while the PRU represented at least 2 clients who identify as transgender, this information is not provided in gender data obtained from the Court Management System (CMS). Until February 20th of this year, the San Francisco Sherriff's Department classified jailed individuals by the gender assigned to them at birth. While the Sherriff's Department now allows transgender individuals to be classified according to their gender identity (a necessary step to ensure transgender women are not housed with cis-gendered men), this policy took effect only 8 days prior to the end of our 5-month data sample. As such, gender information provided here largely does not account for transgender individuals.

The average age of PRU clients is 37. Approximately 38 percent of PRU clients are between the ages of 25 and 36; 16 percent are between the ages of 18 and 25; 22 percent are between the ages of 36-45; and 25percent are 46 or older. Clients who received PRU treatment are an average of one year older than non-treated clients, and this difference was found to be statistically significant. Because age of client is not a factor in client selection (see "Client Selection Process" above), this is likely due to the fact that age is significantly correlated with likelihood of prior arrest. Clients' criminal history is considered in prioritization of PRU clients, likely explaining the difference in average age among treated and non-treated groups.

Figure 6: PRU Clients, by Age

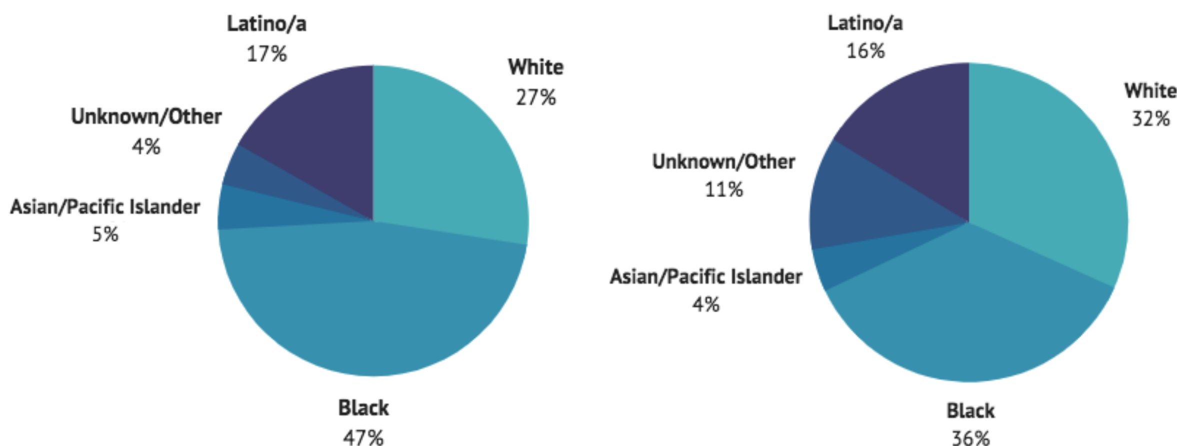


Using data accessed through the CMS/Gideon systems, we determined that the racial demographics of PRU clients largely reflect the racial makeup of the total jail population (see Figure 7). Approximately 27 percent of PRU clients are white, 47 percent are black, 17 percent are Latino/a, 5 percent are Asian or Pacific Islander, and 4 percent are identified as either "Unknown" or "Other".

As was the case with gender data, it is important to note the limitations of the race data available within San Francisco's Court Management System. Although PRU attorneys keep detailed race data within client files and case notes, this information has not yet been uploaded to shared tracking spreadsheets. CMS/Gideon data only classifies individuals as "White," "Black," "Asian/Pacific Islander," and "Other" -- noticeably missing is a classification for Latino/a individuals. This is problematic for the purposes of this research, because evidence shows that Latino/a arrestees in San Francisco face more severe pre-trial case outcomes than similarly situated White defendants.[54]

To more accurately categorize Latino/a individuals, we used 2010 census data to identify surnames for which at least 85 percent of census respondents identified as Latino/a. By matching the surnames of arrestees' in our sample with these assumed-Latino surnames, we were able to appropriately classify Latinos as 17 percent of PRU clients and 16 percent of the jail population overall.

Figure 7: PRU Clients and All Booked Individuals, by Race



Finally, PRU clients face significantly more severe booking charges than non-treated arrestees. Clients' top booking charges were grouped into 11 distinct categories based on charge summary code (see Figure 8).[55] Summary codes range from 1- 74, with 1 constituting the most severe charge ("Willful Homicide"), and 74 constituting the least severe ("Misc. Traffic Violations").

[54] Indigent Latino defendants in San Francisco are convicted of 10 percent more misdemeanors and receive probation sentences that are 55 percent longer than white defendants. Source: Owens, E., Kerrison, E. M., & Da Silveira, B. S. (2017). Examining Racial Disparities in Criminal Case Outcomes among Indigent Defendants in San Francisco. Quattrone Center for the Fair Administration of Justice, University of Pennsylvania Law School.

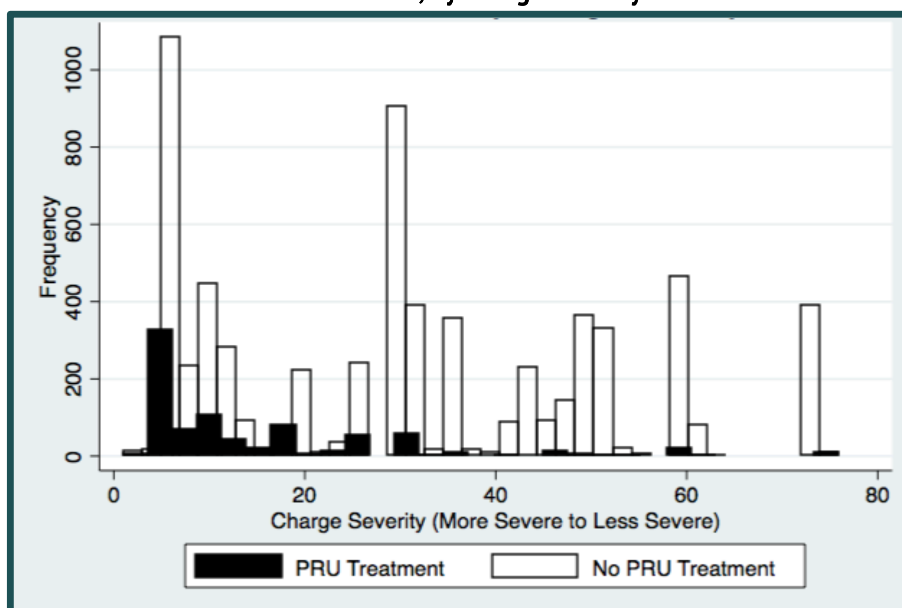
[55] Clients' top charge is determined by a Public Defender clerk, who reviews all charges and chooses the most severe ("top") offense to enter into the Gideon database. While there is potential for human error here, we were unable to access additional client charges in an operational form.

The average summary code of PRU clients' charges is 15.29. The median summary code associated with PRU charges is 9. In contrast, non-PRU defendants have an average charge summary code of 33.28 and a median of 31. Given the fact that PRU staff prioritizes more severe booking charges for representation, it is unsurprising that these differences are statistically significant.

Figure 8: Booking Charge by Summary Code Category

	SUMMARY CODE	CHARGES INCLUDED (SAMPLE)
FELONY	1 - 6	Willful homicide, manslaughter (non-vehicular and vehicular), forcible rape, robbery, assault
	7 - 11	Kidnapping, burglary, theft, motor vehicle theft, forgery, checks, access cards
	12 - 15	narcotics, dangerous drugs, other drug violations
	16 - 18	Lewd or lascivious, unlawful sexual intercourse, other sex law violations
	19 - 24	Weapons, DUI, hit-and-run, escape, bookmaking, arson
	25	Felony traffic, accessory, treason, bigamy, bribery, extort, neglect, perjury, malicious mischief, and gambling
	26 - 28	Federal offenses
MISD.	29 - 40	Dangerous drugs, petty theft, indecent exposure
	40 - 64	Prostitution, disorderly conduct, trespassing, DUI
	60	Public nuisance, contempt of court, perjury, highway
	65 - 67	Misc. traffic offenses

Figure 9: PRU Treated and Non-Treated Individuals, by Charge Severity



Evaluation Methods

Research Questions

The following research questions guided our evaluation:

1. Does early representation provided by the PRU have an impact on defendants' length of pretrial incarceration? Specifically, does PRU intervention increase clients' likelihood of release at arraignment?
2. Does early representation help reduce wealth disparities in pre-arraignment outcomes? Specifically, does PRU intervention provide additional benefits to clients in the form of procedural justice, later case outcomes, and economic or family stability?
3. How many jail bed days, if any, are saved as a result of PRU treatment?

A mixed-methods approach was used to answer the research questions above.

Quantitative Analysis

To quantitatively measure the impact of PRU treatment, we conducted an analysis of pre-trial criminal case outcomes for indigent arrestees booked during the first 5 months of the PRU program: October 2, 2017 - February 28, 2018.

This dataset was generated primarily from the Public Defender's GIDEON case management system, which draws from data maintained by the San Francisco County Superior Court's larger case management database. Included in this dataset was client demographic information, information on booking charge, length of pre-trial incarceration, and out-of-county, parole, and probation holds, if applicable.

We also analyzed internal PRU data, which is currently tracked by staff in a shared spreadsheet. While data is occasionally coded by activity, it is stored primarily in the form of qualitative case notes. A review of this data indicated that PRU representation can be separated into 8 primary categories:[56]

- Client interviews;
- Early case investigation;
- Attorney notification/referral;
- Parole advocacy;
- Contacts to outside family, friends, employers, and housing;
- In-person arraignment recruitment; and
- In jail assistance
- Bail advocacy

[56] The details of specific PRU interventions are explained in the "Program Overview" section.

Using PRU case notes, we coded these 8 distinct PRU interventions for each client served. We then merged PRU treatment data with our primary GIDEON booking dataset to generate a universe of 8,179 unique booking spells from October 2 2017 – February 28, 2018. Of all unique bookings into San Francisco jail during this time period, 1,024 received some form of PRU representation.

It is important to note that this dataset does not consist of 8,179 unique individuals, as individuals may be booked into jail multiple times over the five months studied. Unlike GIDEON and PRU data, this dataset is also not stored according to unique court number. This is due to the fact that an individual booked into jail at a specific time may be assigned multiple court numbers for the same booking spell, depending on his/her probation/parole holds and existing warrants. To isolate clients' unique booking spells, we merged arrest charge, hold, and warrant information for each client booked into jail at a unique time.

In evaluating arraignment outcomes, it is also important to incorporate an analysis of defendants' criminal history. Criminal history is a significant factor in the decision to release a client at arraignment,[57] yet due to information barriers, it can be difficult to evaluate statistically.[58] To approximate a defendant's criminal history as closely as possible, we evaluated case information for all individuals arrested and booked into San Francisco County jail between January 1, 2013 and October 1, 2017 (immediately prior to the start of the PRU). Using arrestees' SF number, a unique identifier within the Superior Court's case management system, we matched defendants in our sample database with their local misdemeanor and felony arrest history over the previous 58 months.

While the PRU spreadsheet provided information on clients' arraignment outcomes, this information was not available for non-PRU defendants. However, we were able to approximate custody status at arraignment using length of incarceration as a proxy. Given the typical arraignment timeline (in which defendants are arraigned anywhere from 24 to 96 hours after booking), we assumed that any individual incarcerated for 24 hours or less had been released prior to arraignment. We then assumed that individuals incarcerated for 96 hours or more had: 1) been arraigned while in custody, and 2) had not been released at arraignment.

That analysis left us with 988 non-treated defendants who had spent anywhere from 24 to 96 hours in jail. We pulled individual CMS records for 10 percent (98) of these cases and found that only 20 percent of these marginal defendants had been in custody at arraignment. Of these individuals, 80 percent were released at arraignment. 20 percent were denied release. [59] We then projected these ratios onto the remaining 890 non-treated defendants.

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[57] California Penal Code §§1318-1319.5, 1270 govern release on one's own recognizance.

[58] The Public Defender does not have access to clients' RAP sheets in aggregate form, making it difficult to operationalize clients' conviction information. See "Assumptions and Limitations" for additional information on data challenges.

[59] For the purposes of this analysis, "in custody at arraignment" indicates that a client was arraigned on a criminal charge while in custody. "Not in custody at arraignment" indicates that a client was not arraigned on a criminal charge while in custody. Note that individuals classified as "not in custody" may have either: 1) been released prior to criminal charge arraignment, 2) had his/her charge dropped or dismissed prior to arraignment, or 3) did not face criminal arraignment due to parole/probation violation or out-of-county warrant.

The non-random nature of PRU selection prevented us from directly comparing pre-trial outcomes across treated and non-treated groups. Instead, we used a propensity score method to generate a control group of defendants similarly-situated to PRU clients. The propensity score (measured from 0 to 1) indicates the likelihood that a client would receive arrest-responsive PRU treatment given the following characteristics:

- Age
- Race
- Gender
- Out-of-county warrants (misdemeanor and felony)
- Parole or probation holds
- Criminal history (previous felony arrests and previous misdemeanor arrests)
- In custody for at least 6 hours (to eliminate those ineligible for treatment due to immediate dismissal)

We then used a "nearest neighbor" matching technique to match clients treated by the PRU with similarly-scored defendants who did not receive treatment. With comparable control and treatment groups, we could then isolate the average effect of PRU treatment.

Because there was little selection bias associated with parole advocacy, a less extensive process was required to isolate treatment effect. After checking for randomness, we used a regression model to measure impact of parole advocacy on eligible parolees' length of incarceration.

Qualitative Interviews

To further evaluate the impact of the PRU on pre-trial detention, clients' stability, and likelihood of repeat involvement with the criminal justice system, the research team conducted interviews with a total of 14 stakeholders.

- Program Staff Interviews (4)
  - Director, Specialty Courts & Reentry Programs
  - 2 Deputy Public Defenders, Pre-Trial Release Unit
  - Investigator, Pre-Trial Release Unit

- Attorney Interviews (6)
  - Deputy Public Defenders (Felony team) who have used information collected by the PRU in their arraignment proceedings. These interviews sought to determine whether information gathered by the PRU increased attorneys' ability to argue effectively for their clients' pre-trial release.

- Former Client Interviews (4)
  - Individuals who received pre-trial representation through the PRU. Interviews with former clients sought to isolate the impact of pre-trial incarceration on defendants' health, family, and economic stability.

Evaluation Results

PRU Intervention Reduces Length of Pre-Trial Incarceration

i. Individuals who Receive Arrest-Responsive Intervention are Twice as Likely to be Released at Arraignment:

Using a propensity score model to control for differences in characteristics across treatment and non-treatment groups (including age, race, gender, prior felony and misdemeanor arrests, out-of-county warrants, and severity of booking charge), we found that individuals who receive PRU intervention are more likely to be released at arraignment than similarly situated, non-treated arrestees.

Figure 10 below illustrates the propensity scores of treated and control individuals before and after matching. While propensity scores differ significantly between the control and treatment groups prior to matching, the nearest-neighbor matching technique creates a new, parallel control group that consists only of individuals with like propensity scores.

Figure 10: Propensity Scores of Treated and Non-Treated Individuals, Before and After Matching

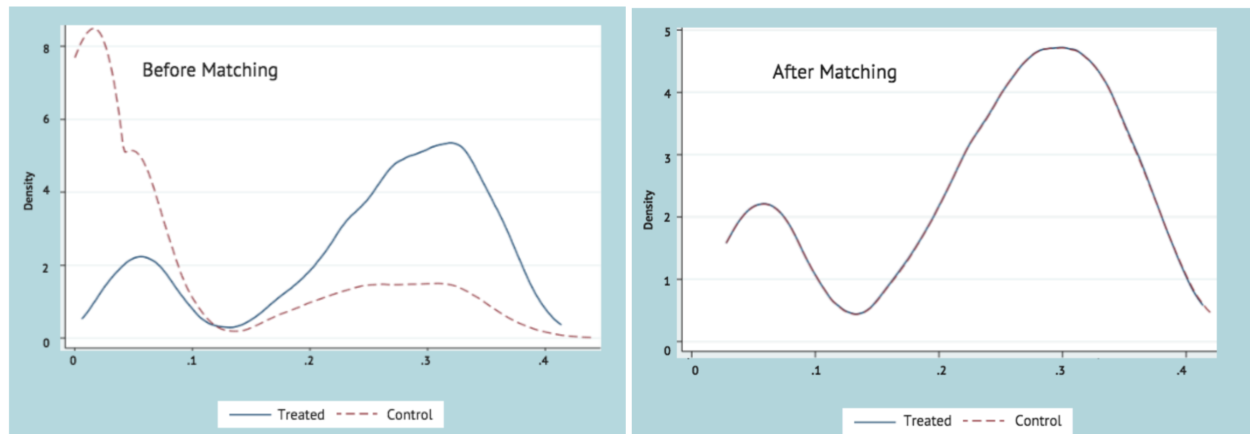


Figure 11: Effect of Treatment on Likelihood of Release at Arraignment:

Not Treated	Received Treatment	Average Treatment on the Treated
14% released at arraignment	**28%** released at arraignment	**100 percent increase** *(standard error .0282, T-stat 4.95)*

Because the likelihood of treatment (propensity score) is based on individuals' underlying characteristics, our treatment and control groups consist of individuals who share similar booking charges, criminal history, and demographic makeup (age, race, and gender). Matching on these characteristics allows us to isolate the average

impact of treatment on individuals receiving arrest-responsive intervention: a 100 percent increase in likelihood of release at arraignment (Figure 11).[60]

The PRU's significant influence on release at arraignment is consistent with the assessment of attorneys interviewed. As discussed at length on page 15, public defenders universally reported that – prior to the formation of the PRU – they had limited opportunities to prepare a robust case for release. Attorneys were not able to meet with their clients until the afternoon of arraignment, and once there, could only spend an average of 5-10 minutes with them in a crowded, non-confidential holding cell. In addition, because public defenders have extremely limited time to read case information and police reports at arraignment (the first time they have access to these documents) they have little information about their clients' circumstance of arrest, criminal history, or ties to the community.

In contrast, **attorneys who relied on PRU-gathered information in their arraignment proceedings reported significant increases in their ability to argue for release.** Six out of six attorneys interviewed reported that information provided by the PRU had "enabled them to successfully negotiate an improved outcome for their client at arraignment." Five out of six attorneys stated that they would not have been as successful without this information; all attorneys interviewed reported that the PRU had helped them argue successfully for at least one client's release on his/her own recognizance at arraignment.[61]

When asked to explain why they believed the PRU had been so impactful, attorneys reported it was primarily due to increased access to client information. After the PRU interviews a client, staff compiles relevant case and client information into a detailed memo, which is uploaded onto the public defenders' shared Gideon database.[62] According to attorney interviews, PRU memos provide critical information about clients' circumstance of arrest that would be otherwise unavailable before arraignment. In addition, the PRU gathers information about clients' family and community ties – a critical factor in the decision to release at arraignment. As one attorney stated: "We can now offer documentation of the program [our client] is in, their living situation…it's very important." [63]

Attorneys also attribute increased efficacy at arraignment to early investigation provided by the PRU. As discussed on page 10, early investigation involves interviews with key witnesses and family members, recovery of surveillance footage, and in some cases, conversations with complaining witnesses/victims. At its most basic, early investigation has been used to corroborate or enhance evidence of a clients' community ties through documented conversations with family members, neighbors, and local organizations.[64] At its most effective, early investigation has provided attorneys with compelling exculpatory evidence that they have used to argue for their clients' immediate release.[65]

[60] See Appendix B for summary statistics
[61] Deputy Public Defenders, Felony Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April)
[62] Program Staff, Pre-Trial Release Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March - April)
[63] Deputy Public Defenders, Felony Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April)
[64] Ibid.
[65] Ibid.

Early investigation, as provided by the PRU, may also assist attorneys in crafting a sound legal defense. For example, even if a client discloses the details of his/her case to a public defender in their short pre-arraignment interview (discouraged by attorneys due to confidentiality concerns) *and* is able to provide a compelling alibi, attorneys are often hesitant to present this information to the court out of fear that it cannot be externally validated.[66] In contrast, early investigation provides attorneys the verified information they need to begin building a robust case for release and/or exoneration from the first court appearance.[67]

In fact, attorneys reported that early investigation may be helpful in securing release at arraignment even if no evidence is produced. As one attorney explained in discussing the procurement of surveillance footage, the absence of information can be information itself. "Even if a store refuses to provide video, we can sometimes use this refusal as evidence of bias…if we can start to plant the seed that this client might be innocent, the judge may decide to release."[68]

Finally, attorneys repeatedly stressed the importance of having clients' friends and/or family members attend arraignment. As one attorney stated, "[In-person attendance] makes a huge difference. There are some judges where as long as someone comes for you, they'll release you…that's all they need, really." The PRU contacted clients' friends or family members in 91 cases over the study period, and formally recruited for an in-person presence at arraignment in 19 cases.

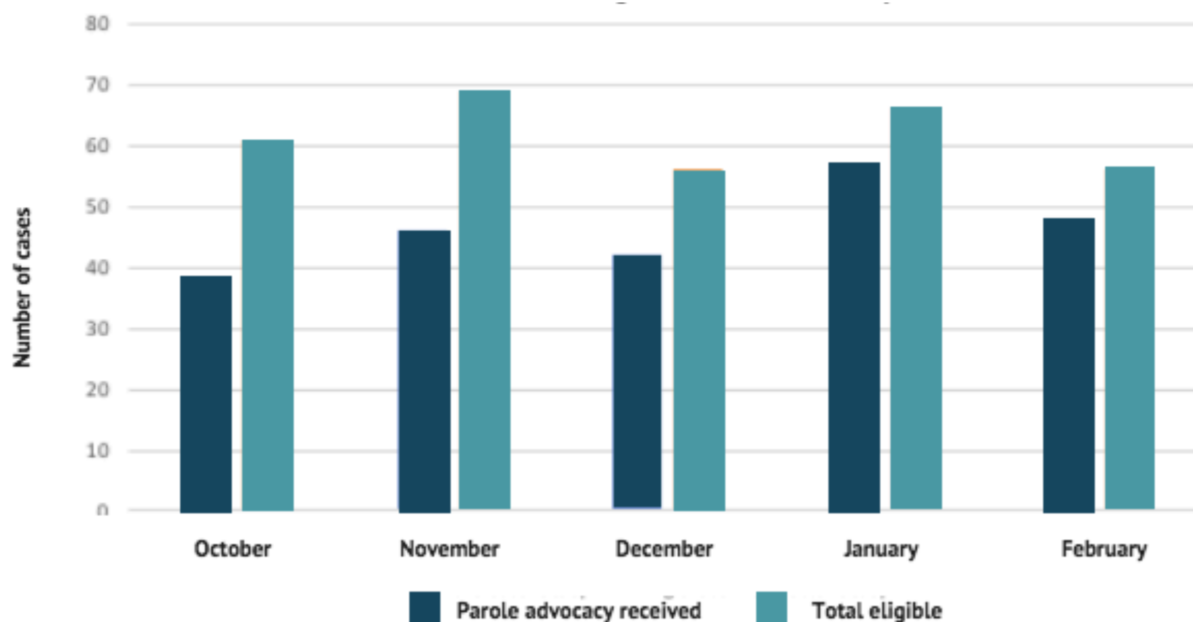
According to attorney interviews, this recruitment has made a significant difference in arraignment outcomes. "If [arraignment is] the first chance for [my client] to talk to an attorney, he could give me information about his family… and I could tell the judge 'okay he's got a mother and a father and a fiancé here,'" this attorney continued. "But if they're not in court, it doesn't matter. When the PRU talks to my clients ahead of time, the courtroom is filled with their family members…that makes a huge difference."[69]

ii. Parole Advocacy Reduces the Length of Parolee Incarceration by Avg. of 9 days:

Over the course of the 5-month study period, 308 cases were charged with parole holds or violations. Of these 308 cases, PRU attorneys provided parole advocacy in 231 (75 percent).

[66] Deputy Public Defenders, Felony Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April)
[67] Ibid.
[68] Ibid.
[69] Ibid.

Figure 13: Cases Receiving PRU Parole Advocacy, by Month



We observed no statistically significant difference in the booking charges, age, or gender of those who received parole advocacy (75 percent of all eligible) and those did not receive parole advocacy (25 percent of all eligible).[70] This is consistent with the reports of PRU staff, who indicated that they have no mechanism for prioritizing treatment among clients eligible for parole.

To confirm that selection into parole advocacy was in fact random, we regressed a dummy variable indicating whether or not an individual had received parole advocacy on hours of pre-trial incarceration for eligible parolees, controlling for various covariates (including age, race, gender, prior felony and misdemeanor arrests, out-of-county warrants, and severity of booking charge). We then ran an identical regression without controlling for these covariates.

Because controlling for covariates appears to have negligible effect on parole advocacy's impact, we concluded that selection into parole advocacy was sufficiently random to validate the results of regression analysis. **Among all eligible parolees, parole advocacy provided by the PRU reduced the length of incarceration by 230 hours (approx. 9.5 days).** [71]

Qualitative evidence reinforces these findings. Internal tracking data counts 95 unique cases in which parole agents decided to lift a hold after being contacted by PRU staff. Although it is likely that a portion of these holds would have been lifted regardless of contact, data from case notes and program staff interviews suggest that agents may lift holds sooner than they otherwise would. For example, agents may have trouble accessing

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[70] Interestingly, we found that individuals who received parole advocacy were more likely to be Black or Asian/Pacific Islander than those who did not receive treatment. While these differences were statistically significant, race did not have a statistically significant impact on hours of incarceration for parolees in our regression models, nor did inclusion of race controls significantly change the impact of parole advocacy on hours of incarceration (see Appendix B for full summary statistics).

[71] See Appendix B for full summary statistics

information on their client's arrest, charge, and/or case progress; PRU provides this information and prompts a hold decision. In some cases, a parole agent may not yet even be aware of their client's arrest; PRU contact provides these agents the opportunity to make a decision much earlier than otherwise possible.

PRU staff may further reduce the length of parolee incarceration by offering to serve as a line of communication between agent and client. In several cases within the 5-month study period, PRU staff delivered messages or reprimands from agent to client as a condition of release. Prior to the PRU, agents' main mechanism for reprimanding an incarcerated parolee was keeping him or her incarcerated (via either a flash incarceration or a parole petition). With PRU intervention, agents who may have otherwise filed a petition against a client – or kept them waiting in jail for additional days – can now stress the importance of parole adherence without increased incarceration.

Finally, there is evidence that PRU intervention may keep parolees from having their parole violated. In one case, an individual had been unknowingly absconding from parole for several years. This is a very serious offense, particularly for a parolee of his status, and virtually always results in parole revocation. However, PRU staff was able to provide evidence of this individuals' stable life (including documentation of steady employment, community ties, and improved health) to his parole agent. What would have almost certainly been a revocation of parole – with a maximum of 90 days in county jail and a likely prison sentence – became a brief jail stay instead.[72] In another case, a parole agent was getting pressure to violate her client after a misdemeanor offense. Because PRU staff was able to get this client on alcohol treatment instead, the agent chose not to violate.[73]

PRU Intervention Helps Close the Pre-Arraignment Wealth Gap

As explained at length on pages 11-12, pre-trial representation is likely to benefit defendants' in later criminal case proceedings. While these benefits were previously only available to wealthy arrestees with access to private attorneys, evidence suggests that PRU intervention may provide similar positive benefits for indigent arrestees.

1. PRU Intervention May Positively Impact Later Case Outcomes:

As described on page 12, early investigation may uncover evidence that would be otherwise inaccessible. Surveillance footage often automatically updates every 48 to 72 hours, and witnesses may be difficult to locate and interview even a few days after an arrest. Early investigation allows for the discovery of evidence that – while critical to ensuring a just case outcome – may have otherwise been lost. PRU-provided witness accounts, contemporaneous documentation and available surveillance videos are all used by attorneys to build a robust defense for their clients.

PRU intervention may also allow for the preservation of certain evidence. Throughout the course of the 5-month study period, PRU attorneys referred 28 clients to in-jail medical or psychological treatment. These referrals serve a dual purpose that is often overlooked: while they help to ensure that jailed individuals receive the treatment they need, in-jail referrals also provide an opportunity for contemporaneous documentation of medical

[72] Program Staff, Pre-Trial Release Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April); Former PRU Clients. [Personal interviews]. (2018, April).

[73] Program Staff, Pre-Trial Release Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April);

or psychological aliments. An individual who was struggling with mental health challenges during an alleged offense, for example, may later use this as part of his/her legal defense. However, because trial proceedings often occur months after arrest, this same individual may appear completely stable by the time his/her trial begins. Contemporaneous documentation of mental or physical issues, provided by the PRU, can be critical in ensuring that jurors or trial judges understand the reality of an incident regardless of time elapsed.[74]

Finally, PRU staff instructs clients to avoid self-incrimination by: 1) avoiding case discussions on jail phones, and 2) invoking their right to a lawyer in critically important police interviews. By increasing arrestees' knowledge of their constitutional rights, PRU intervention may reduce the likelihood of self-incrimination – particularly among vulnerable populations most typically served by the Public Defender's Office. Future charging decisions, plea offers, and trial decisions may be positively impacted as a result.

2. PRU Intervention Likely Increases Procedural Justice:

A 2017 Gallup poll found that only 27 percent of Americans have a "great deal" or "quite a bit" of trust in our criminal justice system.[75] This lack of confidence – while perhaps unsurprising – is concerning given its impact on what is referred to as "procedural justice". As it relates to the criminal justice system, procedural justice is most often defined as they way in which justice-involved individuals feel about the laws, processes, and procedures that govern them. Research indicates that if individuals trust the fairness of the laws and the actors that enforce them, they are more likely to follow the law.[76]

Unfortunately, many arrestees find it difficult to navigate the complicated legal system in which they find themselves.[77] This can further erode arrestees' trust in the system, increasing their likelihood to reoffend.[78] This challenge is central to current criminal justice reform efforts, and although important, is largely outside the scope of this research. However, evidence gathered during interviews with former PRU clients suggests that PRU intervention may improve procedural justice – with the potential for significant long-term benefit.

In interviews, the majority of former clients reported that the PRU had helped them better understand the charges against them, their case, and the legal system overall. Three out of four clients interviewed reported that, prior to PRU intervention, they had little understanding of the process in which they found themselves. They described their experiences using the following phrases: "I had no idea how the system worked," "I wasn't sure how the process was going to work," "no one told me anything." After meeting with PRU attorneys however, they reported feeling respected, heard, and more knowledgeable about the process to come. One former client explained that after feeling previously like his word meant nothing, PRU attorneys were finally listening: "I believed [my attorney] believed me."[79]

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[74] Program Staff, Pre-Trial Release Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April).
[75] Gallup, Inc. (2017). Confidence in Institutions. Retrieved from http://news.gallup.com/poll/1597/confidence-institutions.aspx
[76] LaGratta, E. (2017). To Be Fair: Conversations About Procedural Justice. New York, NY: Center for Court Innovation.
[77] Rogers, R. (2011, November). Getting it wrong about Miranda rights: False beliefs, impaired reasoning, and professional neglect. Retrieved from https://www.ncbi.nlm.nih.gov/pubmed/22082397
[78] Beijersbergen, K. A., Dirkzwager, A. J., & Nieuwbeerta, P. (2015). Reoffending After Release. Criminal Justice and Behavior, 43(1), 63-82. doi:10.1177/0093854815609643
[79] Former PRU Clients. [Personal interviews]. (2018, April).

Former clients' feelings of comfort and acknowledgement suggest that the PRU is providing high-quality counsel on par with that previously only accessible to the wealthy. In addition, it is possible that by increasing clients' sense of procedural justice, the PRU may help to reduce likelihood of re-arrest and recidivism.[80]

3. PRU Intervention May Help Clients' Maintain Stability During and Post-Incarceration

Finally, evidence suggests that PRU intervention may help clients maintain their economic, family, and personal stability during and post-arrest. This is achieved primarily by PRU staff contacting arrestees' friends, family members or employers during the time of incarceration. Over the 5-month study period, PRU staff contacted family members, friends, or employers of arrestees in 91 unique cases.

Although contact with the outside world is technically feasible via jail telephone, it is often difficult for arrestees to get in touch with friends or family members outside. Cell phones are taken during jail booking, forcing arrestees to rely only on memorized contact information.[81] If an individual cannot remember any specific phone number (increasingly common given modern technology), they may not be able to contact anyone at all.

Even if arrestees' have access to their loved ones' contact numbers, they might choose to avoid jail phones due to privacy concerns. As mentioned previously, PRU attorneys instruct clients to avoid talking about their case on jail phones, which are recorded by the Sherriff and may be used as incriminating evidence. Arrestees may also have more immediate concerns: one former client reported that, despite his need to call in sick to work, he would not contact his employer on the jail phone for fear of being identified as calling from jail.[82] Other former clients reported that they found the jail phones complicated and virtually impossible to use.[83]

In these cases, PRU staff may be arrestees' only means of interacting with outside family, loved ones, or employers. If an individual knows the number of the person he/she would like to reach, PRU staff will contact them to relay messages and case information, as relevant. If an individual does not know the number of the person he/she needs to reach, PRU staff will often search for individuals' contact information. If necessary, PRU staff may even contact an individual via social media platforms such as Facebook.[84]

These outside contacts can make a significant difference in arrestees economic, family, and personal stability. Because individuals are often arrested unexpectedly, they likely do not have time to alert their family members or employers of their arrest. PRU contacts may therefore be a clients' only means of arranging childcare, alerting their employers of time missed, or holding their housing. In addition to improving economic, personal and family stability during incarceration, PRU contacts may have long-term benefits; an arrestee that loses employment due to pre-trial incarceration may face up to a 40 percent reduction in annual earnings.[85]

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[80] Beijersbergen, K. A., Dirkzwager, A. J., & Nieuwbeerta, P. (2015). Reoffending After Release. Criminal Justice and Behavior, 43(1), 63-82. doi:10.1177/0093854815609643
[81] Former PRU Clients. [Personal interviews]. (2018, April).
[82] Ibid.
[83] Ibid.
[84] Program Staff, Pre-Trial Release Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April).
[85] Baughman, S. B. The Costs of Pre-Trial Detention (Rep.). Boston University Law Review.

Total Jail Bed Days Saved

Given the limitations of the data available and the early nature of this evaluation, it is difficult to quantify the PRU's impact on jail bed day reduction. Many of the PRU's outcomes are either difficult to measure quantitatively (such as increased access to procedural justice or stability post-arrest) or require a much longer timeframe before impact can be observed (such as PRU's impact on conviction, sentencing, and recidivism). However, because reduction of the San Francisco jail population remains a priority for the PRU, we provide a high-level estimate of jail bed days saved, below.

Using our 5-month study period as a guide, we found that jailed individuals who received treatment and were released at arraignment were incarcerated for an average of 369.08 hours, as opposed to an average of 1320.36 hours for those treated and not released (see Figure 13).[86]

Figure 14: Average Hours of Incarceration Among Treated Individuals, Released and Non-Released

Not Released at Arraignment	Released at Arraignment
1320.36 hours avg. hours of incarceration	**369.08 hours** avg. hours of incarceration
55 days avg. days of incarceration	**15 days** avg. days of incarceration

Because we know that 28 percent of treated individuals are released at arraignment and 14 percent of non-treated individuals are released, we can calculate the expected value of hours incarcerated for the average treated and non-treated individuals:

(.28 * 369.08) + (.72 * 1320.36) = 1,054 avg. hours if treated

(.14 * 369.08) + (.86 * 1320.36) = 1,187.18 avg. hours if non-treated

Subtracting the expected value hours incarcerated (treated) from the expected value of hours incarcerated (non-treated) we find that **PRU treatment saves 133.18 hours (5.5 days) per treated individual**. Summing this across the 845 individuals who received arrest-responsive treatment during the first 5 months of PRU operation, we can conclude that **arrest-responsive PRU intervention saved approximately 112,537 hours of incarceration (4,689 jail bed days) from October 2, 2017 – Feb. 28, 2017.** This is an average savings of 940 jail bed days a month, or approximately 11,253 jail bed days saved per year. [87]

[86] This number is higher than we would expect if individuals are indeed being arraigned and released within 48 to 96 hours of booking. This could be due to individuals being technically released at arraignment but remaining incarcerated until they can be picked up by another county for an outstanding warrant. Alternatively, this average could be skewed by individuals who are serving flash parole incarcerations or awaiting parole petitions. We recommend investigating this further in future studies.

[87] The cost of incarcerating an individual in San Francisco county jail is approximately $172/day. In reducing jail bed days by 4,689 over the first 5 months of operation, the PRU has saved the City approximately $806,508 in incarceration costs.

Final Recommendations

Based on the findings from our quantitative analysis and qualitative interviews, we conclude that the Public Defender's Pre-Trial Release Unit has demonstrated promising initial success in meeting its goals of 1) reducing wealth disparities in access to pre-arraignment representation, and 2) reducing the jail population through increased access to pre-trial release.

We recommend the Public Defender's Office implement the following recommendations to continue building on the PRU's initial successes:

1. Continue robust data collection practices by maintaining qualitative case notes and instituting protocols for increased quantitative data collection.

PRU staff maintain detailed case notes on each client with include extensive qualitative information. While these notes are occasionally coded by intervention type, quantitative coding is inconsistent. In order to ensure that the PRU can undergo future evaluation, we recommend all PRU staff code their client notes by activity type and outcome. While qualitative notes are certainly valuable, this change will allow future researchers to more easily measure program impact – particularly important if relying on months or years of data.

2. Investigate the Pre-Trial Release Unit's impact on recidivism, when feasible given data constraints.

Defendants who are detained pre-trial are more likely to be convicted, sentenced to jail, and remain in jail for longer periods of time. This indicates that the impact of the Pre-Trial Release Unit is likely to compound over time, as otherwise convicted or re-arrested individuals remain out of custody. In order to understand the true impact of the PRU, we recommend a future study examines the unit's impact on recidivism. Of course, because such a study would require at least 2-3 years of data, such an analysis is not currently possible.

3. Continue to investigate racial disparities within booking of indigent defendants, with a particular emphasis on mechanisms to correct for police over-booking of arrestees of color.

As mentioned within this report, significant racial disparities exist in pre-trial outcomes among San Francisco's indigent defendants. These disparities are largely driven by police over-charging defendants of color at the booking stage; when over-charging occurs, it is not corrected for in the DA's rebooking decision or beyond.

Due to limited data, we were unable to quantitatively evaluate the PRU's impact on rebooking within the context of report. Nonetheless, a cursory review of qualitative evidence suggests that the PRU may be helping to overcorrect police bias at booking by increasing the likelihood of DA discharge prior to arraignment.

We recommend that the Public Defender's Office advocate for additional research to: 1) further investigate police over-charging at the booking phase, and 2) evaluate mechanisms – including through the Pre-Trial Release Unit – to specifically reduce racial disparities in pre-trial outcomes.

4. Secure funding for the Pre-Trial Release Unit to continue operations past the 9-month pilot period.

Despite limited data and the challenges of early program evaluation, we found strong evidence to indicate that the PRU is meeting its goals. Early representation, as provided by the PRU, is associated with decreased time in pre-trial incarceration, including increased likelihood of release at arraignment and decreased length of detention for parolees. While more difficult to measure, it appears that the PRU may also increase arrestees' economic stability during incarceration, increase arrestees' sense of procedural justice, and result in positive benefits for arrestees in later case outcomes.

Based on these early successes, we recommend the Public Defender's Office secure funding to continue the Pre-Trial Release Unit past the 9-month pilot period.

Works Cited

Baughman, S. B. (n.d.). The Costs of Pre-Trial Detention (Rep.). Boston University Law Review.

Beijersbergen, K. A., Dirkzwager, A. J., & Nieuwbeerta, P. (2015). Reoffending After Release. Criminal Justice and Behavior, 43(1), 63-82. doi:10.1177/0093854815609643

Do the Math: Money Bail Doesn't Add Up for San Francisco. (2017). San Francisco Financial Justice Project, Office of the Treasurer & Tax Collector.

Dobbie, W., Goldin, J., & Yang, C. S. (2018). The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges. American Economic Review, 108(2), 201-240. doi:10.1257/aer.20161503

Final Report, Work Group to Re-envision the Jail Replacement Project. (2017).

Fuller, T., & Stevens, M. (2018, February 28). California Today: Should Bail Be Set Above What Defendants Can Pay? Retrieved from https://www.nytimes.com/2018/02/28/us/california-today-bail-hearings-san-francisco.html

Gunnell, J. J., & Ceci, S. J. (2010). When emotionality trumps reason: A study of individual processing style and juror bias. Behavioral Sciences & the Law, 28(6), 850-877. doi:10.1002/bsl.939

Heaton, P., Mayson, S., & Stevenson, M. (2016). The Downstream Consequences of Misdemeanor Pre-Trial Detention. Quattrone Center for the Fair Administration of Justice, University of Pennsylvania School of Law.

LaGratta, E. (2017). To Be Fair: Conversations About Procedural Justice. New York, NY: Center for Court Innovation.

Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). Investigating the Impact of Pretrial Detention on Sentencing Outcomes. Laura and John Arnold Foundation.

Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). The Hidden Costs of Pretrial Detention. Laura and John Arnold Foundation. Retrieved from http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf

"Not in it for Justice" | How California's Pretrial Detention and Bail System Unfairly Punishes Poor People. Human Rights Watch. (2017, June 06).

Owens, E., Kerrison, E. M., & Da Silveira, B. S. (2017). Examining Racial Disparities in Criminal Case Outcomes among Indigent Defendants in San Francisco. Quattrone Center for the Fair Administration of Justice, University of Pennsylvania Law School.

MacDonald, J., and Raphael, S. (2017). An Analysis of Racial and Ethnic Disparities in Case Dispositions and Sentencing Outcomes for Criminal Cases. Presented to and Processed by the Office of the San Francisco District Attorney.

Meghan Sacks & Alissa R. Ackerman (2012) Pretrial detention and guilty pleas: if they cannot afford bail they must be guilty, Criminal Justice Studies, 25:3, 265-278, DOI: 10.1080/1478601X.2012.705536

Pinto, N. (2015, August 13). The Bail Trap. The New York Times Magazine.

Rogers, R. (2011, November). Getting it wrong about Miranda rights: False beliefs, impaired reasoning, and professional *neglect*. Retrieved from https://www.ncbi.nlm.nih.gov/pubmed/22082397

Update to the Jail Population Forecast (Rep.). (2015). City Services Auditor, Office of the Controller, City and County of San Francisco.

Appendix A: Study Assumptions and Limitations

Criminal History

In evaluating arraignment outcomes, it is important to incorporate an analysis of defendants' criminal history. To approximate a defendant's criminal history as closely as possible, we evaluated case information for all individuals arrested and booked into San Francisco County jail between January 1, 2013 and October 1, 2017 (immediately prior to the start of the PRU). Using arrestees' SF number, a unique identifier within the Superior Court's case management system, we matched defendants in our sample database with their local misdemeanor and felony arrest history over the previous 58 months.

Although this approximation of criminal history allows for a more nuanced quantitative evaluation, it is an imperfect measure. First, arrest does not indicate conviction; it is very likely that some clients either had their cases discharged or dismissed post-arrest or were ultimately exonerated at the trial phase. Nonetheless, because arrests are included on clients' RAP sheets, arrest history may very well factor into a judges' decision to release at arraignment.

We were also limited in our ability to access information on any arrests or convictions outside of San Francisco. It is certainly feasible that a client who is arrested and booked in the city of San Francisco may also have been arrested and booked into jail in other counties or states, thereby impacting the validity of our analysis. Recent research is helpful here, however: In their study on racial disparities in San Francisco criminal case outcomes, University of California Professor Steve Raphael and co-author John MacDonald found that local criminal history reliably approximates non-local criminal history.[88]

Friday Bookings

California law requires that an arrestee is arraigned within 48 working hours of being arrested. The DA currently declines to file in approximately 50 percent of cases, meaning that an average of 50 percent of booked individuals are technically eligible for release within two working days.[89] Prior to October 2017, the DA did not file rebooking decisions on holidays or weekends. Practically, that meant that individuals booked on Thursdays and Fridays often faced up to 4 -5 days of incarceration prior to the charge decision.[90]

To rectify this disparity and reduce use of the jail beds, the District Attorney's Office received funding during the FY17-18 fiscal year to implement weekend rebooking. Staff began evaluating and filing charge decision in cases in late 2017. However, because weekend rebooking did not start at the same time as the Pre-Trial Release Unit,

[88] Table 3.5 of this report summarizes prior convictions, arrest cycles, and sentences at the time of arrest using the state ACHS data for criminal suspects in our data set by race/ethnicity. The patterns in table 3.5 largely parallel the patterns observed for local criminal history. Source: Raphael, S., & MacDonald, J. (2017). An Analysis of Racial and Ethnic Disparities in Case Dispositions and Sentencing Outcomes for Criminal Cases. Presented to and Processed by the Office of the San Francisco District Attorney.

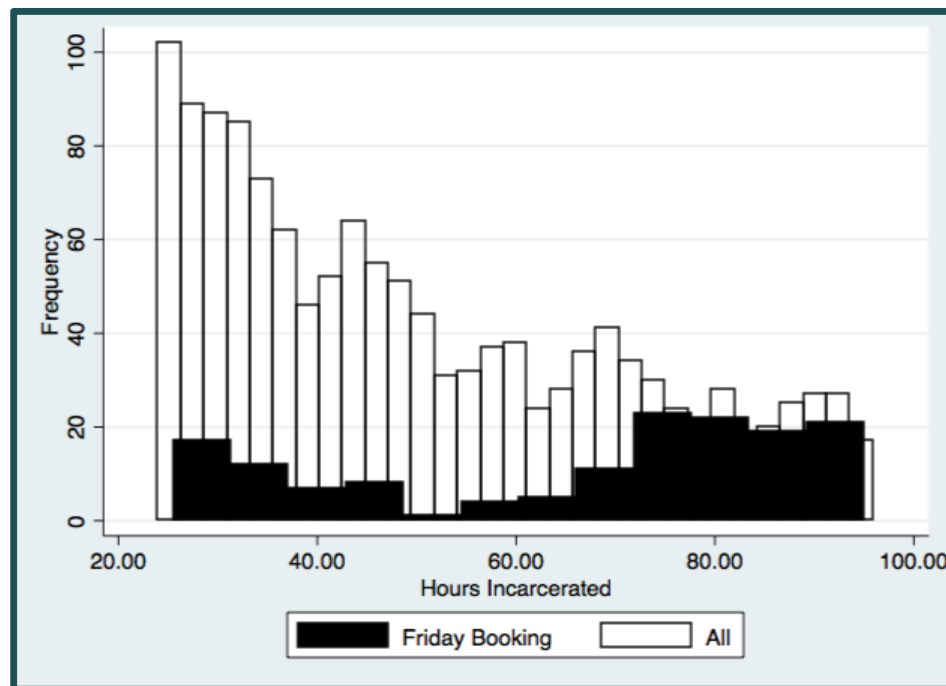
[89] Final Report, Work Group to Re-envision the Jail Replacement Project. (2017).

[90] Ibid.

individuals in our sample may have been charged at inconsistent intervals depending on day of the week booked.

Our dataset bears this out: in comparing hours incarcerated for individuals booked on Fridays within our 5-month research period, we found that individuals booked on Fridays have hours of incarceration that trends up, as opposed to the downward trend overall (see figure 13, below). To rectify these inconsistencies, we dropped individuals booked on Fridays prior to matching on propensity score.

Figure 13: Hours Incarcerated (24 – 96 hours), All Booked Individuals vs. Individuals Booked on Fridays



It is important to note that we do not drop Thursday bookings from our sample, despite the fact that an individual booked into jail on a Thursday may also remain incarcerated over the weekend prior to arraignment. To account for this extra time, we maintained a conservative estimate of length of pre-arraignment detention (96 hours) when formulating proxy custody and arraignment variables for non-treated individuals (see below). This may have underestimated our treatment effect; if we assumed instead that all non-treated individuals with over 72 hours of incarceration had not been released at arraignment, we would likely see an increase in the effect of PRU treatment.[91]

[91] Alternatively, because this 96-hour maximum may be too low for individuals booked on Thursdays prior to holiday weekends, we may be overestimating PRU impact. However, because we assume that the number of these Thursday bookings are relatively small, within our 5-month sample, any overestimation should be limited.

Hours of Incarceration

Using case booking time/date and case release time/date, we were able to calculate hours incarcerated for each unique observation in our sample.[92] However, Gideon booking data did not provide release dates for individuals in the following two categories: 1) Arrestees still incarcerated at time of initial data pull, and 2) Arrestees who had been booked and released at the same time, and therefore never spent time in county jail.

Because individuals in these categories have dramatically different underlying characteristics and case circumstances, it was critical to access more precise data on release date and hours incarcerated. To accomplish this, we pulled individual CMS case records for approximately 2,500 out of 3,000 observations with missing release dates.

It is important to note that individuals marked as incarcerated in CMS may have, in fact, remained in custody since booking. However, it is also possible that these individuals were released pre-trial, failed to appear for a future court date, and were re-incarcerated. In pulling individual case records, we attempted to account for these discrepancies as accurately as possible. Re-arrested individuals who failed to appear for arraignment (or were cited out/ bailed out prior to arraignment) were assigned 15.82 hours, the average hours of incarceration for an individual *not* in custody at arraignment. Individuals released at arraignment or later court hearings were assumed to have been released at approximately 10:00pm the day of court proceedings.[93]

After evaluating CMS case records, we were left with 501 cases that did not have a release date. It is important to note that these 501 cases were *not* treated by the PRU. In our propensity score analysis, we assumed all cases with missing release dates had spent 0 hours in jail, likely causing an underestimation of the treatment effect (see "Propensity Score Matching" below).

Projecting Custody and Arraignment Variables

To isolate the impact of treatment on likelihood of release at arraignment, we needed information on arraignment outcomes for all treated and non-treated individuals within our 5-month sample. However, while internal PRU tracking data provided information on clients' arraignment outcomes, this information was not available for non-PRU arrestees.

To account for this, we approximated custody status at arraignment using length of incarceration as a proxy. Given the DA's arraignment timeline (in which defendants are typically arraigned 48-72 hours after booking) we assumed that any individual incarcerated for 24 hours or less had been released prior to arraignment. In order to account for individuals booked later in the week and not arraigned until Monday (see above), we set a conservative estimate of 96 hours as maximum length of incarceration pre-arraignment.[94] We then assumed that

[92] Hours incarcerated is calculated using booking time, and not time of arrest.

[93] This estimation was based on interviews with PRU program staff. It is conservative; individuals ordered released at arraignment are often held in jail until after midnight that same day.

[94] The conservative estimate of 96 hours pre-arraignment may underestimate the impact of the PRU on release at arraignment. If we assumed instead that all non-treated individuals with over 72 hours of incarceration had not been released at arraignment, we would likely see an increase in the effect of PRU treatment. Alternatively, because this 96-hour maximum may be too low for individuals

individuals incarcerated for 96 hours or more had: 1) been arraigned while in custody, and 2) had not been released at arraignment.

That analysis left us with 988 non-treated defendants who had spent anywhere from 24 to 96 hours in jail. We pulled individual CMS records for 10 percent (98) of these cases and found that only 20 percent (20) of these marginal defendants had been in custody at arraignment. Of these individuals, 80 percent (16) were released at arraignment. 20 percent (4) were denied release. [95] We then projected these ratios onto the remaining 890 non-treated defendants.

Propensity Score Matching

Our propensity score was modeled using the following covariates:

- Age
- Race (dummy variables for each race category)
- Gender (dummy)
- Out-of-county warrants (number of misdemeanor and felony warrants, as listed in booking data)
- Parole or probation holds (dummy variables for each category, as listed in booking data)
- Criminal history (number of previous felony arrests and previous misdemeanor arrests)
- In custody for at least 6 hours (to eliminate those ineligible for treatment due to immediate dismissal)

After generating a propensity score for individuals within our sample, we prepared to run a "nearest-neighbor" match to generate a control group of similarly situated, non-treated defendants. Prior to matching, we made the following adjustments to our sample:

- Dropped individuals booked on Friday. See "Friday Bookings" above.
- Dropped individuals with Motions to Revoke Probation or Parole. Individuals with MTRs may have had their criminal charges dismissed in order to proceed with a motion to revoke, meaning they might have been arraigned on this motion and not on criminal charges. To eliminate this complication and ensure we were isolating impact of the PRU on criminal arraignments, we dropped anyone identified to have a MTR. [96]

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booked on Thursdays prior to holiday weekends (see "Friday Bookings"), we may be overestimating PRU impact. However, because we assume that the number of these Thursday bookings are relatively small, any overestimation should be limited.

[95] For the purposes of this analysis, "in custody at arraignment" indicates that a client was arraigned on a criminal charge while in custody. "Not in custody at arraignment" indicates that a client was not arraigned on a criminal charge while in custody. Note that individuals classified as "not in custody" may have either: 1) been released prior to criminal charge arraignment, 2) had his/her charge dropped or dismissed prior to arraignment, or 3) did not face criminal arraignment due to parole/probation violation or out-of-county warrant.

[96] Individuals with MTRs were identified via PRU case notes and individual data pulls from CMS on approx. 2000 observations. Because we were unable to pull individual CMS records for each observation within our sample, it is likely that some individuals with MTRs remain. However, this effect should be largely controlled for by including parole/probation holds and violations in our propensity score estimator.

- Dropped individuals identified as having a conflict of interest with the Public Defender's Office. Conflict individuals were represented by conflict counsel and not public defenders; eliminating conflicts did not impact our final result.
- Assumed hours of incarceration for individuals without a known release date was zero (ie: no time spent in jail). As mentioned above, approximately 500 non-treated individuals had unknown release dates. Zeroing out hours of incarceration for these individuals is likely to have caused us to underestimate the treatment effect (as only non-treated had length of time reduced).

Appendix B: Summary Statistics

A. Propensity Score Match: Average Treatment on the Treated, Outcome at Arraignment

Variable	Sample	Treated	Controls	Difference	S.E.	T-stat
Outcome at arraignment	Unmatched	.28186	.12250	.15936	.0196	8.11
	Avg. Treatment on Treated	.28186	.14215	**.13970**	.0282	4.95

B. Regression models: Parole advocacy on hours of incarceration with/without controls:

	(1) hours incarcerated (with controls)	(2) hours incarcerated (without controls)
parole advocacy	**-245.2 (105.4)**	**-229.4 (101.8)**
age	7.061 (3.693)	
gender	-33.23 (279.8)	
race (White)	58.16 (296.9)	
race (API)	omitted (.)	
race (Black)	73.18 (289.1)	
race (Latino)	-15.16 (308.6)	
race (unknown)	-211.6 (383.5)	
enroute warrant (fel)	73.89 (166.5)	
enroute warrant (misd)	508.3 (349.7)	
previous arrest (fel)	-105.5 (120.6)	
previous arrest (misd)	212.9 (132.1)	
sc1_6	618.7 (171.7)	
sc7_11	882.0 (153.3)	
sc12_15	omitted (.)	
sc16_18	-261.9 (284.2)	
sc19_24	702.6 (232.9)	
sc25	-181.7 (359.3)	
sc26_28	-252.2 (109.5)	
sc29_40	-78.32 (168.8)	
sc40_64	189.4 (303.2)	
sc60	172.1 (207.9)	
sc65_67	-196.5 (284.5)	
sc68_72	0 (.)	
_cons	321.8 (444.8)	697.0 (87.80)

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THE EFFECT OF PRE-ARRAIGNMENT LEGAL REPRESENTATION ON CRIMINAL CASE OUTCOMES

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The Effect of Pre-Arraignment Legal Representation on Criminal Case Outcomes
Johanna Lacoe, Brett Fischer, and Steven Raphael
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ABSTRACT

Low-income individuals arrested on criminal charges face disproportionately high rates of pretrial detention and conviction. We study a novel approach to addressing this inequity: providing low-income individuals with access to legal counsel immediately following their arrest. Focusing on a pilot program in a large urban county, we estimate the causal impact of early representation by a public defender on release and case outcomes, leveraging quasi-random variation in access to counsel pre-arraignment. Low-income individuals who met with a public defender shortly after arrest were 28 percentage points more likely to be released pretrial, and 36 percent more likely to see their cases dismissed, relative to otherwise similar individuals who would first meet with a public defender at their arraignment. These results suggest that providing timely access to legal representation could improve release and case outcomes for public defender clients.

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A randomized controlled trials registry entry is available at https://osf.io/r2je8/

1. Introduction

Pretrial detention imposes serious legal and economic costs on individuals arrested on criminal charges, limiting access to their families, employers, and legal counsel. Under these circumstances, defendants often accept plea deals to secure quicker release (Digard and Swavola, 2019; Dobbie et al., 2018; Heaton et al., 2017; Lerman et al., 2021), resulting in higher rates of conviction (Davidson et al., 2019; Stevenson, 2018; Leslie and Pope, 2017) and post-sentencing incarceration (Phillips, 2012; Campbell et al., 2020; Koppel et al., 2022). Beyond the legal ramifications, pretrial detention disrupts families (Wakefield and Anderson, 2020) while reducing arrested individuals' earnings and likelihood of employment (Dobbie et al. 2018). Low-income individuals disproportionately bear the consequences of post-arrest incarceration: many are unable to post bail, nor can they afford to retain a defense attorney, who could help them negotiate more favorable release terms.

Providing legal representation for low-income individuals shortly after arrest may enable them to secure earlier release and improve their case outcomes. Public defenders who represent indigent defendants typically meet with clients for the first time at their arraignment, which occurs between 2 and 5 days after arrest, during which time many defendants remain in detention. By contrast, providing access to public defenders shortly after arrest opens the door for negotiations with prosecutors and robust advocacy at arraignment to remove bail requirements or other barriers to release. It also allows more time for attorneys to investigate and strengthen their case. Both effects might improve eventual case outcomes.

We evaluate the impact of a pilot effort to provide pre-arraignment legal services to arrested individuals developed by the Public Defender's Office in Santa Clara County, California. The County of Santa Clara's Pre-Arraignment Representation and Review (PARR)

model provides early legal assistance to detained individuals arrested for felony offenses and misdemeanor domestic violence offenses who qualify for public defender representation. The PARR model aims to increase pretrial release rates among low-income defendants, both by providing timely legal advice (within 48 hours of arrest), and by collecting information about the incident, the individual's family, and connections to the community (for example, their employment status) with which to advocate on their behalf prior to and during the arraignment.

During the PARR pilot phase in early 2020, the Public Defender's Office did not have the staff capacity to serve all individuals in custody on felony charges in Santa Clara County. To facilitate our evaluation of the intervention, and to fairly distribute access to the early representation legal services, the County of Santa Clara Public Defender agreed to provide the additional legal services one day per week, rotating the intervention day across weeks. Individuals booked on an intervention day were eligible for services and, absent bailing out on their own and procuring private counsel, consulted with their public defender prior to arraignment. By contrast, otherwise eligible individuals booked on non-treatment days who used public defender services met with their attorney for the first time at arraignment.

This study leverages the rotating PARR treatment window to compare pretrial release and case outcomes between eligible individuals booked on PARR service days (treatment group) and eligible individuals booked on non-PARR days (control group). We confirm balance on observable case characteristics between individuals booked on intervention days and those booked on non-intervention days. Using the PARR booking day as an instrument for receiving PARR services, we estimate the causal impact of PARR on defendant release and conviction rates in a two-stage least squares (2SLS) framework.

We find sizable intent-to-treat differences in outcomes between those individuals admitted on a PARR treatment day and those admitted on other days. Given that roughly one-third actually received treatment, treatment-on-the-treated effects estimated using 2SLS are roughly three time the size. Specifically, PARR clients were 75 percent (36 percentage points) more likely to secure pretrial release and spent 79 percent less time in detention before and after arraignment. Early access to a public defender also resulted in a significant, 75 percent (27 percentage points) decrease in the likelihood of conviction as well as a 27 percentage-point increase in the probability of case dismissal. Though noisy, point estimates suggest these effects stem from a reduction in plea deals among PARR clients. Although the PARR pilot treated a relatively small number of individuals, the magnitude of our estimates, combined with permutation tests that confirm their statistical significance, underscore the positive impact of pre-arraignment representation for low-income individuals.

The PARR program's benefits echo a range of similar studies that find a close link between post-arrest events, including detention and attorney assignment, and case dispositions. While prior work focuses on the quality of public defense (Agan, Freedman, and Owens 2021; Shem-Tov 2022) and the benefits of access to counsel at bail hearings (Anwar, Bushway, and Engberg 2022), we provide new evidence that shifting the timing and content of a public defender's intervention can substantially improve the effectiveness of public defense services. Our approach builds on a longstanding notion that ultimate case outcomes depend on factors other than the specifics of the case, from judge harshness (Augustine, Lacoe, Raphael, and Skog 2022; Dobbie, Goldin, and Yang 2018) to district attorney leniency (Agan, Doleac, and Harvey 2023) to idiosyncratic features of jurisdictions (Bird et. al. 2023; Feigenberg and Miller 2021). Our findings suggest that the inability to pay for access to legal counsel immediately after arrest

penalizes low-income individuals' ability to secure timely release from detention and eventual case outcomes. Changing the timing of initial contact between public defenders and clients, while jumpstarting a robust defense and providing support services, could go a long way towards improving the efficacy of public defense and the equity of the criminal justice system.

2. Policy Background

In Santa Clara County, as in most jurisdictions across the country, public defense services provide legal representation to arrested individuals who cannot afford their own attorney. Typically, public defenders meet with clients for the first time at their arraignment hearing which must occur within 48 hours from booking (excluding Sundays and holidays). In practice, the first arraignment generally occurs between two and five days after arrest. In the interim, many individuals who are eligible for public defenders' services are held in pretrial detention, frequently the default outcome for arrested individuals around the country.[1] At the arraignment, public defense attorneys only have a few minutes to meet their clients prior to appearing before a judge, and the attorneys provide representation for ten to twenty people at a single arraignment session. By contrast, individuals who can afford to retain their own counsel can meet with their

[1] The motivation for detaining people pretrial is two-fold: (1) to ensure their presence at future court hearings, and (2) to prevent further criminal offending while the case is processing. Certainly, pretrial detention prevents these events from happening, but at a cost. While it is impossible to compare pretrial misconduct rates between detained and released individuals, several studies compare outcomes between groups experiencing different types of release or lengths of pretrial detention. One descriptive study in Kentucky finds that individuals detained for 2 or 3 days and then released are more likely to fail to appear for court than individuals detained for shorter periods (e.g. up to one day). Moreover, the likelihood of failing to appear for court continues to grow with detention length (Lowenkamp et al. 2013). The HOPE randomized control trial in Hawaii found no difference in pretrial arrests between the program group and the control group receiving standard pretrial services. However, the program group was less likely to be arrested on a new criminal charge and less likely to be arrested on a felony during the pretrial period (Davidson et al., 2019). Still, questions regarding the potential public safety or court processing benefits of pretrial detention are largely unresolved.

lawyer immediately following arrest, at which point the attorney begins advocating for their release from detention and preparing a defense.

The divergent pretrial experiences of individuals who can and cannot afford private counsel have meaningful legal and economic consequences. Even a few days in jail can disrupt a person's life, including the loss of employment (Dobbie et al. 2018), and increases the likelihood of conviction and incarceration (Campbell et al., 2020; Koppel et al., 2022; Leslie and Pope, 2017 Phillips, 2012). Access to public defenders soon after arrest could improve indigent defendants' legal prospects by helping them secure timely release: Anwar, Bushway, and Engberg (2022) find that public defender representation at bail hearings markedly reduces the likelihood of pretrial detention. Furthermore, beyond raising the potential for a speedy release, quick access to an attorney provides additional time to prepare a defense and advocate for the defendant, which could improve their outcomes, as Yarmosky (2018) finds suggestive evidence for cases served by San Francisco's Pretrial Release Unit. Thus, there is ample reason to believe that earlier public defender intervention in the criminal process might substantially improve low-income individuals' case outcomes and limit the economic repercussions of an arrest.

Our study examines a novel policy intervention meant to reduce disparities in access to counsel between indigent and more affluent individuals: the Pre-arraignment Representation and Review (PARR) program. Launched in Santa Clara County, California (which contains the city of San Jose) in 2020, PARR provides eligible low-income individuals with legal representation between their booking into jail and their arraignment.[2] The program only serves individuals

[2] Only "indigent" individuals qualify for public defense in the County of Santa Clara; we use the terms "indigent" and "low-income" interchangeably in this paper. Per California's business and professions code (section 6210-6228) "indigent" refers to a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project

booked into custody on felony charges or misdemeanor domestic violence charges. Individuals booked on these charges face a much greater risk of pretrial detention (and post-sentencing incarceration) than those booked on misdemeanor charges and stand to gain the most from timely access to legal counsel.[3]

Though PARR remains active today, we focus on a period when PARR operated as a pilot, between January 2020 and March 2020.[4] During this time, the PARR unit only provided services to individuals booked on a particular day of the week, which rotated across weeks. This rotating calendar provides the basis for our identification strategy, which we discuss in the next section.

Eligible individuals—those who were booked into jail on that week's designated day, faced an eligible felony or misdemeanor domestic violent charge, and who were in custody awaiting arraignment—were compiled into a list of prospective clients. PARR attorneys then attempted to interview as many of the eligible clients on the list as possible, conducting in-person interviews with individuals on the list held at two jails in Santa Clara County, and representing their interests in the lead-up to the arraignment. The PARR attorney would then appear at

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which provides free services of attorneys in private practice without compensation, "indigent person" also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in Section 50079.5 of the Health and Safety Code.

[3] PARR excluded individuals booked on very serious felonies, such as homicide and sexual assault, since those cases are often much more complex and rarely result in pretrial release. The program also excluded those facing an outstanding hold for an ongoing criminal case, who are also much less likely to be released. Criminal history was not a factor in the selection of PARR cases.

[4] Unexpected changes in crime patterns and criminal processing due to COVID-19 and the shelter-in-place order affected the implementation of PARR during the pilot period and as a result, this study. Relative to February 2020, reported crimes dropped by approximately 40 percent in the four large California cities in March 2020, with the largest percentage drops in Bay Area cities (Lofstrom and Martin, 2020). Most of the declines were driven by decreases in property crimes, as well as declines in reported assaults and robberies. The County of Santa Clara instituted a shelter-in-place order on March 17th. In the following week, San Jose, the largest city in Santa Clara County, reported a 46 percent decline in violent crime relative to the same week in 2019, with declines in property crime as well (Salonga, 2020). The Santa Clara County Superior Court closed on March 13th, 2020, and all PARR services were suspended. Therefore, this study focuses on individuals booked through March 11, 2020.

arraignment with their client. Figure 1 illustrates the relative timing of these milestones in the criminal process and the PARR intervention.

During their meetings with individuals held in detention, PARR attorneys would learn the specifics of the case as well as collect information about the person's community ties, employment, and family and housing situation. With this information, PARR attorneys aimed to more effectively advocate for release prior to or at arraignment, begin investigations and collect time-sensitive evidence, communicate with the District Attorney's Office, reach out to families, and connect clients with social workers and other community resources.[5] The PARR attorney continued to work on the case following arraignment, advocating for subsequent pretrial release or bail review, as needed. These PARR services were intended to bolster the defense's case and blunt the potential harms of pretrial detention.

3. Data and Sample

Our data come from the County of Santa Clara's Criminal Justice Information Control ("CJIC") system, which contains all bookings and arraignments in Santa Clara County, from the case management systems of the Public Defender's Office, the District Attorney's Office, and the Pretrial Services Office. For each individual arrested and booked in Santa Clara County, CJIC identifies the booking dates and charges associated with their case, their final release date from jail, and their case disposition. From the charge records, we determine whether a given offense is a felony or misdemeanor and assess the overall case severity using the California

[5] The exact services provided by the PARR attorneys vary depending on the needs of the individual and the nature of their case. Some of the services simply provide a moment of human compassion, such as asking if the client has a car that needs to be moved or a child that needs to be picked up from school. Others aim to address needs that may be of particular concern to a judge, such as mental health services or connection to a social worker. PARR tracks the selection of its services in a case management system; in the appendix, we present the share of PARR clients receiving each type of service during the pilot period.

Department of Justice's categorical scoring system, which assigns lower values to more serious offenses (e.g., homicide has a score of 1, while burglary has a score of 8). The CJIC records also include demographic information, such as sex, race/ethnicity, and age. We combine these case-level records with reports from the Public Defender's Office indicating which, if any, pretrial services a person received as part of the PARR program.

From the CJIC records, we construct several outcome variables. Specifically, we construct a binary indicator for whether an individual secured release from jail—capturing the extensive margin of PARR's impact—as well as continuous measure of time to final release, which captures any intensive-margin effects.[6] We also consider how pre-arraignment representation shapes case dispositions, including whether the District Attorney's Office dropped all charges, whether the defendant was convicted, and whether they pled guilty.

In Santa Clara County, most individuals held in pretrial detention are male (88 percent) and more than half are Hispanic (52 percent). More than 80 percent of individuals in pretrial detention are booked on a felony, and of those, 42 percent are charged with a felony violent crime or assault (County of Santa Clara Office of Pretrial Services, 2019a). Currently, most individuals arrested on felony offenses are not eligible for release on their own recognizance or supervised release by the duty or night judge prior to their first arraignment (County of Santa Clara Office of Pretrial Services, 2019b).

Our data contain all cases booked in Santa Clara County between January 2 and March 11, 2020. However, the PARR program focused on a narrow subset of cases booked on relatively serious charges; logistical and legal barriers (see Section 2) further limited the types of cases and

[6] Our indicator for release captures only pretrial release outcomes, including the CJIC codes for "release" and "released on bail"; this indicator does *not* include releases following a completed jail sentence. By contrast, the time to final release will also capture any sentenced (post-trial) jail time, since the CJIC data only report an individual's final release date, and not intermediate release or (re-) booking spells.

defendants eligible for pre-arraignment representation. For our final research sample, we include only PARR-eligible cases, replicating the PARR eligibility criteria to the best of our ability, based on extensive discussions with the County of Santa Clara Public Defender's Office.[7] Specifically, we remove cases that contain only misdemeanor charges (charges with a severity score of more than 20); cases involving manslaughter or rape, which are not eligible for PARR; arrested individuals who have outstanding warrants, open cases, or who are immediately cited and released from custody; and individuals released within one day of booking (with whom PARR attorneys would not have had time to meet prior to their release).[8] These restrictions leave us with 600 PARR-eligible cases, of which 40 actually received PARR services.

Table 1 compares the full sample of cases booked during the PARR pilot period (N=4,223) to this analytical sample, as well as the subsamples of cases booked on PARR-designated days (N=101), and those "treated" by PARR (N=40). By design, PARR-eligible cases have lower severity scores (indicating more serious offenses) than the full sample, with an average score of 8.7, versus 19.5 among all cases booked in Santa Clara County. More than half (55 percent) of PARR-eligible cases have a Hispanic defendant, and 58 percent involve a person offense (e.g., assault). Participants in PARR are further selected along these margins: 63 percent of cases receiving pre-arraignment representation have a Hispanic defendant, while 65 percent involve a person offense.[9] Interestingly, we find that PARR-treated cases have noticeably more

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[7] The public defender's office and the PARR program only serve individuals who cannot afford their own attorney. We do not observe defendant earnings or wealth, so we cannot explicitly exclude defendants based on financial need. However, the PARR case lists also do not factor in (unobservable) earnings, and ultimately our goal is to approximate the PARR eligibility list on non-PARR days.

[8] Note that we apply these restrictions to all cases, including the 29 cases that did receive PARR services despite being technically ineligible. Conversations with the public defender's office suggest idiosyncratic attorney decisions likely explain these anomalous PARR cases; we omit them to maintain a consistent definition of PARR eligibility across our treated and untreated groups.

[9] As we discuss below, the PARR program randomly designated booking days for which PARR attorneys would provide services to eligible defendants. The program did not randomly select cases within PARR booking days to receive PARR, but rather worked through a case list subject to a time constraint. PARR attorneys further exercised

favorable outcomes than the PARR-eligible cases as a whole: the average defendant served by PARR attorneys spent 18 fewer days in jail, was 15 percentage points more likely to secure release, and was roughly half as likely to be convicted as the average PARR-eligible defendant. Of course, given selection into PARR, it remains to be seen whether these patterns represent the causal impact of pre-arraignment representation via PARR, or of underlying case characteristics.

4. Research Design

By design, PARR services are nonrandomly assigned, which complicates our effort to determine the causal impact of the program. The County of Santa Clara public defenders only met with individuals who qualified for a public defender—that is, those who could not afford to retain private counsel—and those charged with felony offenses (excluding homicide and sexual offenses, as noted above). Ex ante, individuals who are eligible for PARR would be expected to experience less favorable case outcomes than the average arrested individual. Indeed, Table 1 shows that people eligible for PARR were less likely to have their cases dropped and spent almost a week more in jail than the average person booked in Santa Clara County. Consequently, a simple OLS regression of case release on PARR receipt might understate the effectiveness of PARR services, particularly on case dispositions.

4a. Identifying the PARR Effect from Rotating PARR Calendar

To address this selection problem, we leverage quasi-random variation in the provision of pre-arraignment representation during PARR's pilot window between January and mid-March 2020. As we discussed in Section 2, during this period, the County of Santa Clara Public

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their discretion to deviate from the list in ways that we cannot replicate in our eligibility criteria. For example, if the PARR attorney inferred that a potential client had a co-defendant already being represented by the public defender's office, they would skip over that case, as serving both clients would pose a conflict of interest. As we discuss below, empirically, we find our results differ little when we control for a variety of case and defendant characteristics that PARR attorneys might select on.

Defender's Office only provided PARR services to people booked into jail on specific days of a given week. PARR-eligible individuals booked on those predefined dates were compiled into lists for PARR attorneys to work though; comparable individuals booked on the remaining days of the week would not appear on these lists and thus would not receive PARR services.

The designated PARR booking days rotated across weeks according to a preset calendar (Appendix Figure A1). For example, during the week of January 26, 2020, PARR attorneys only provided services to individuals booked on Tuesday and Wednesday; the following week (February 2nd), they only served clients booked on Friday and Saturday. Moreover, the PARR calendar, set up in advance to facilitate evaluation of the pilot program and unobserved by potential clients, is plausibly exogenous with respect to individual characteristics and expected case outcomes.[10] Indeed, in the appendix, we show that cases booked on designated days are observationally similar to those booked on non-PARR days, confirming that PARR days themselves are randomly assigned.

Note that eligible individuals booked on PARR days did not necessarily receive PARR services – on most PARR days, staff were unable to interview all those who were eligible. Conversations with the County of Santa Clara Public Defender’s Office and our own analysis of the data suggest that PARR attorneys did not systematically order defendants on each day’s list. While there is no guarantee of randomization of PARR services within PARR booking days, in the appendix, we show that PARR receipt within PARR days is not significantly related to case or individual characteristics, save for a marginally significant correlation with age. Though not essential for our research design, the absence of systematic selection into PARR on PARR-

[10] The only deviation from the pre-set calendar happened the week of January 20th, when PARR intended to serve individuals booked on Monday (January 20th), which was a public holiday (Martin Luther King Day). PARR services were instead provided to individuals booked on January 21st.

designated days provides some reassurance that our findings capture the effect of PARR and not an underlying correlation between placement order on the PARR list and ultimate case outcomes.

4b. Instrumental Variables Design

Our research design leverages variation in PARR service provision across booking days to estimate the causal effect of PARR pre-arraignment representation. Fundamentally, we use the fact that an individual was quasi-randomly booked on a PARR day as an instrument for their receipt of PARR services. Our preferred empirical specification isolates variation driven exclusively by the week-to-week rotation of PARR-designated booking days, using controls for the week, day of week, time (night versus day), and day-by-time of booking.[11] Though not essential for identification, these fixed effects help improve statistical inference by accounting for unobservable differences between, for example, cases booked at night or on weekends (which frequently involve DWI charges) from those booked during the daytime or on weekdays.

To estimate the causal impact of pre-arraignment representation on case outcomes, we use a 2SLS regression system. The first stage specification estimates the extent to which being booked on a designated PARR day (*PARRday*) affects the probability an individual receives PARR services (*PARR*). The second stage estimates the relationship between PARR representation (driven by PARR-day bookings) and case outcomes Y. For individual i booked at time t (daytime or nighttime) on day d of week w during the PARR pilot period, we estimate the following model:

$$PARR_{itdw} = \pi_0 + \pi_1 PARRday_{tdw} + \gamma_{tdw} + \eta_{itdw}$$

[11] We refer to any booking between 5:00 pm and 5:00 am as a nighttime booking. We distinguish between daytime and nighttime bookings in part because PARR-designated booking days frequently only covered particular times during the day–either 5:00 pm to midnight or midnight to 5:00pm. Cases booked on the same calendar date but outside these windows were ineligible for PARR, and we do not count them as being booked on PARR days.

$$Y_{itdw} = \beta_0 + \beta_1 PARR_{itdw} + \gamma_{tdw} + \epsilon_{itdw}, \qquad (1)$$

where the vector γ_{tdw} represents the day of week, week, nighttime booking, and day-by-night booking fixed effects we include in all specifications in order to control for unrelated variation in outcomes correlated with booking days (e.g., bookings on the weekends are more likely to be for DWI charges).[12] In some specifications, we include additional person and case covariates (X_i) to demonstrate the robustness of our results to different sets of controls. We cluster our standard errors by booking date.

To assess whether our results are being driven by a particularly large local average treatment effect among those who receive treatment, we also report estimates of the "intent-to-treat" effect of being booked on a quasi-randomly-assigned PARR day on release and case outcomes. We estimate the following reduced-form model, which regresses defendant i's outcome *Y* on an indicator for whether their booking time *t* on day *d* of week *w* made them eligible to receive PARR services, along with the same time fixed effects we include in our 2SLS specification:

$$Y_{itdw} = \alpha_0 + \alpha_1 PARRday_{tdw} + \gamma_{tdw} + \alpha_2 X_i + \varepsilon_{itdw}. \quad (2)$$

The coefficient of interest, α_1, captures the reduced-form effect of being booked on a designated PARR day on PARR-eligible clients' outcomes.

[12] In the appendix, we show that our main results remain largely similar when we use different choices of fixed effects or omit fixed effects altogether. We discuss these results in Section 5 below.

5. Results

In this section, we present our empirical results. We first provide support for our identification assumption, that cases quasi-randomly booked on designated PARR days do not systematically differ from those booked on remaining days of the week. Then, we present the results of our primary models of the effect of PARR on release from detention and case outcomes. Finally, we discuss robustness tests that we use to evaluate our estimates.

5a. Validity of PARR Booking Day Instrument

Our research design is predicated on the assumption that cases booked on PARR-designated days do not differ from those booked on non-PARR days (our "control" group). That is, the coefficient of interest in Equation 1, β_1, delivers the causal effect of PARR services only if our instrument, *PARRday*, is uncorrelated unobserved determinants of case outcomes, represented by ϵ. We cannot test this identification criterion directly. However, we can evaluate whether PARR-eligible cases booked on PARR days differ from those booked on non-PARR days along observable dimensions. To do so, we estimate a single model in which we regress an indicator for whether a defendant was booked on a PARR day on the set of individual and case characteristics (Table 2); we also include our set of time, day, week, and time-by-day fixed effects, to mirror Equations 1 and 2. Overall, we do not find evidence of systematic differences that distinguish cases booked on PARR days from those booked on non-PARR days. The test of the overall significance of this regression model yields an F-statistic 1.12, an indication that PARR days are uncorrelated with demographic and case characteristics that might bias our findings.

5b. Effect of PARR on Pretrial Release

We first investigate the effect of pre-arraignment representation provided by the PARR program on the likelihood and timing of an individual's release from custody. A key aim of the public defender in fielding the pilot was to secure quicker pretrial release for indigent clients; using the PARR booking day instrument and Equations 1 and 2, we examine whether they succeeded. Our results appear in Table 3.

Point estimates in the first panel of Table 3 show that PARR resulted in more and earlier releases from custody. Reduced-form estimates in columns 2 and 3 indicate that individuals booked on PARR-designated days were 7.9 to 8.9 percentage points more likely to be released than those booked on non-PARR days. Likewise, PARR-eligible individuals booked on PARR days were released from 12.4 to 12.6 days earlier than similar people booked on non-PARR days, resulting in roughly 23 percent less time in jail. Recall that time to release includes any eventual, post-conviction jail sentence, so this effect captures both the reduced time spent in pretrial detention, as well as potential reductions in the probability and length of incarceration imposed at sentencing. Though point estimates from specifications with and without additional individual and case covariates vary slightly, these differences do not point to systematic nonrandom selection that would bias our findings.

The remaining columns of Table 3 present our treatment-on-the-treated, 2SLS estimate based on equation (1) above. The results indicate that PARR had a substantial impact on stays in custody. PARR recipients were up to 28 percentage points more likely to secure release than non-recipients and had 78.6 percent shorter stays in custody. Our strong first stage estimates (F-statistics are around 40) support our claim that these estimates reflect the impact of pre-

arraignment services per se.[13] Taken together, our findings support the conclusion that PARR's intervention dramatically reduced the rate of pretrial confinement.

5c. Effect of PARR on Case Outcomes

We turn to examining how pre-arraignment representation through PARR affects final case dispositions. Receiving PARR could improve case outcomes directly, since, for example, PARR attorneys initiate the discovery and investigation process pre-arraignment, which might give them time to mount a stronger defense. PARR could also generate more favorable dispositions indirectly via its effect on release, if, as prior work as found, quicker release from jail reduces the necessity of plea deals.

Our findings appear in the second panel of Table 3. The 2SLS estimates in the fourth and fifth columns indicate that PARR recipients were up to 36 percentage points more likely to see their cases dismissed by the County of Santa Clara District Attorney's Office, and were likewise up to 26.8 percentage points less likely to be convicted. Though noisy, point estimates indicate that these effects might stem from fewer plea deals: PARR recipients were 23 percentage points less likely to plead guilty.

5d. Robustness

In the appendix, we provide two additional sets of results that speak to the robustness of our findings to alternative specifications and approaches to statistical inference. First, we examine how our reduced-form results change depending on the specific fixed effects we employ. Using a stepwise approach, adding in additional levels of fixed effects, we test the

[13] We must assume that the PARR assignment mechanism is monotonic—that is, no defendant booked on a designated PARR day is less likely to receive PARR services than they would have been if they had been booked on a non-PARR day. By definition, we cannot test this assumption, although it follows from our policy context. In the appendix, we provide evidence that our first stage estimates remain uniformly positive and quantitatively similar across a range of subsamples, which is consistent with monotonicity.

sensitivity of our estimates to different controls. Encouragingly, we obtain quantitatively similar estimates to those from our preferred specification when we exclude our time-based fixed effects, although, not surprisingly, these estimates are generally less precise than those from our preferred model. This comparison bolsters our claim that our design recovers the treatment effect of PARR.

Second, given our relatively small sample size, a key concern is whether our traditional standard errors can be trusted to gauge the significance of our estimates. We therefore conduct permutation tests for all our primary outcomes, re-estimating our reduced-form specification (Equation 1) 1,000 times while randomly assigning observations to the "treated" and "untreated" groups. In the appendix, we present the resulting distributions of estimates, along with our "true" reduced-form estimates given in Table 3 (Appendix Figure A2). Reassuringly, we find that our true release estimates are outliers: Fisher's exact p-values for release outcomes and guilty plea rates are less than 0.05, while p-values for dismissal and conviction rates are less than 0.10 (0.054 and 0.068, respectively). These tests provide us with additional confidence that, despite our small sample, our estimates capture statistically meaningful effects.

6. Discussion and Policy Implications

An extensive literature documents how an inability to pay for cash bail leads to future hardship for people arrested on criminal offenses. But that same inability to pay has a second, less-recognized consequence: limiting access to prompt legal representation after arrest. We provide new evidence that, for low-income individuals, early access to legal representation carries substantial benefits, reducing their time spent in jail and increasing the probability of case dismissal. Given the social and economic consequences associated with even a few days in

detention, these effects are meaningful, and stretch beyond the criminal justice system. Our findings suggest that the criminal justice system could achieve greater equity by balancing access to timely legal counsel across arrested individuals, regardless of their ability to pay.

It is important to recognize that the PARR pilot achieved this sizeable impact with a staff of just two full time public defender attorneys and at relatively low cost. The program shifted the point of contact between public defenders and their clients up by a few days, and in those days, they connected clients with support services, conducted investigations to strengthen the defense, and advocated for release. These initiatives had sizeable impacts on release and case outcomes for low-income individuals who typically are not afforded the same type of speedy defense. This change to the timing and format of public defender's services could help alleviate persistent gaps in the criminal justice system experiences and outcomes between individuals who can afford private representation and those who cannot.

7. Bibliography

Agan, A., Freedman, M., & Owens, E. (2021). Is your lawyer a lemon? Incentives and selection in the public provision of criminal defense. *The Review of Economics and Statistics*, *103*(2), 294-309.

Agan, A. Y., Doleac, J. L., & Harvey, A. (2021). Misdemeanor prosecution (No. w28600). National Bureau of Economic Research.

Augustine, E., Lacoe, J., Raphael, S., & Skog, A. (2022). The impact of felony diversion in San Francisco. *Journal of Policy Analysis and Management*, *41*(3), 683-709.

Anwar, S., Bushway, S. D., & Engberg, J. (2022). The Impact of Defense Counsel at Bail Hearings. R.A.N.D.

Bird, M, Gill, O., Lacoe, J., Pickard, M., Raphael, S., and A. Skog. (2023). Sentence Enhancements in California. Berkeley, CA: California Policy Lab.

Campbell, C. M., Labrecque, R. M., Weinerman, M., & Sanchagrin, K. (2020). Gauging detention dosage: Assessing the impact of pretrial detention on sentencing outcomes using propensity score modeling. *Journal of Criminal Justice*, *70*, 101719.

County of Santa Clara Bail and Release Work Group (2016). Final Consensus Report on Optimal Pretrial Justice. https://www.sccgov.org/sites/ceo/Documents/final-consensus-report-on-optimal-pretrial-justice.pdf

Davidson, J., King, G., Ludwig, J. & Raphael, S. (2019). Managing Pretrial Misconduct: An Experimental Evaluation of HOPE Pretrial. UC Berkeley Working Paper.

Digard, L. & E. Swavola (2019). Justice Denied: The Harmful and Lasting Effects of Pretrial Detention. Vera Institute of Justice. Available: https://www.vera.org/publications/for-the-record-justice-denied-pretrial-detention

Dobbie, W., Golden, J., & Yang, C. (2018). The Effect of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges. *American Economic Review, 108*(2): 201-240.

Heaton, P., Mayson, S., & Stevenson, M. (2017). The downstream consequences of misdemeanor pretrial detention. *Stan. L. Rev.*, *69*, 711.

Koppel, S., Bergin, T., Ropac, R., Randolph, I., & Joseph, H. (2022). Examining the causal effect of pretrial detention on case outcomes: a judge fixed effect instrumental variable approach. *Journal of Experimental Criminology*, 1-18.

Lerman, A. E., Green, A. L., & Dominguez, P. (2022). Pleading for justice: bullpen therapy, pre-trial detention, and plea bargains in American courts. *Crime & Delinquency*, *68*(2), 159-182.

Leslie, E., & Pope, N. G. (2017). The unintended impact of pretrial detention on case outcomes: Evidence from New York City arraignments. *The Journal of Law and Economics, 60*(3), 529-557.

Lofstrum, M., & Martin, B. (2020). COVID-19 and Crime in Major California Cities. PPIC report. Available: https://www.ppic.org/blog/covid-19-and-crime-in-major-california-cities/?utm_source=ppic&utm_medium=email&utm_campaign=blog_subscriber

Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. M. (2013). *The hidden costs of pretrial detention*. LJAF.

Phillips, M. T. (2012). *A decade of bail research in New York City*. CJA, New York City Criminal Justice Agency, Incorporated.

Santa Clara Office of Pretrial Services. (2019a). *Pretrial Jail Statistics – July 10, 2019.*

Santa Clara Office of Pretrial Services. (2019b). *Jail Statistics Report for Period 1/1/2017 to 6/30/2019*.

Shem-Tov, Y. (2022). Make or Buy? The Provision of Indigent Defense Services in the United States. *The Review of Economics and Statistics, 104*(4), 819-827.

Salonga, R. (2020). “San Jose reports sharp crime drop during first week of COVID-19 stay-at-home order.” The Mercury News, published March 24, 2020. Available: https://www.mercurynews.com/2020/03/24/san-jose-reports-sharp-crime-drop-during-first-week-of-covid-19-stay-at-home-order/

Stevenson, M. T. (2018). Distortion of justice: How the inability to pay bail affects case outcomes. *The Journal of Law, Economics, and Organization*, *34*(4), 511-542.

Wakefield, S., & Andersen, L. H. (2020). Pretrial detention and the costs of system overreach for employment and family life. *Sociological Science*, *7*, 342-366.

Yarmosky, A. (2018). The Impact of Early Representation: An Analysis of The San Francisco Public Defender's Pretrial Release Unit. California Policy Lab.

Figures and Tables

Figure 1. PARR Case Progression Diagram

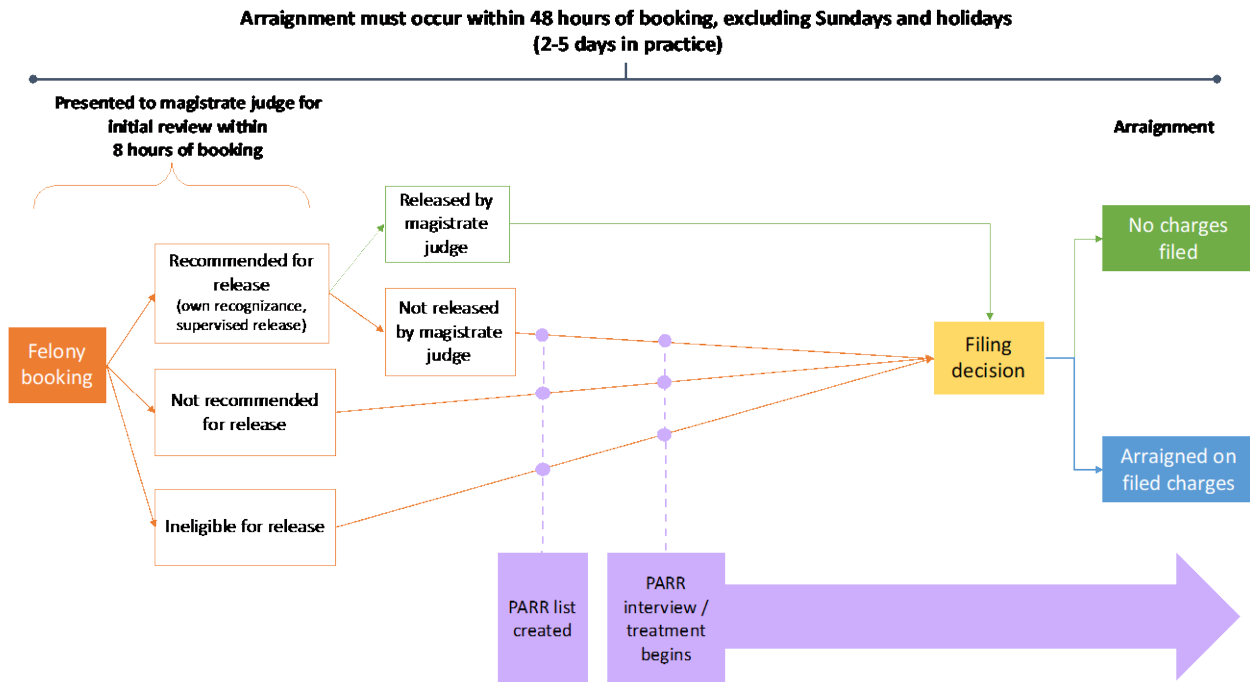

Table 1: Descriptive Statistics of Full Sample, PARR-eligible Cases, and PARR-treated Cases

	All Cases (1)	Eligible for PARR (2)	Booked on PARR Days (3)	Treated by PARR (4)
I. Demographic Characteristics				
White	0.24	0.21	0.19	0.18
	(0.43)	(0.41)	(0.39)	(0.39)
Black	0.13	0.14	0.13	0.08
	(0.33)	(0.35)	(0.34)	(0.27)
Hispanic	0.51	0.55	0.60	0.63
	(0.50)	(0.50)	(0.49)	(0.49)
Female	0.21	0.18	0.17	0.10
	(0.41)	(0.38)	(0.38)	(0.30)
Age	36.6	36.2	34.3	34.6
	(11.8)	(12.4)	(12.5)	(12.5)
II. Case Characteristics				
Severity (cat 1-76)	19.5	8.7	8.3	9.0
	(14.4)	(3.9)	(3.3)	(4.4)
Felony Offense	0.51	1.0	1.0	1.0
	(0.50)	(0)	(0)	(0)
Person Offense	0.36	0.58	0.59	0.65
	(0.48)	(0.50)	(0.49)	(0.48)
Property Offense	0.22	0.32	0.36	0.28
	(0.42)	(0.36)	(0.48)	(0.45)
Drug Offense	0.41	0.36	0.39	0.38
	(0.49)	(0.48)	(0.49)	(0.49)
Num Charges	3.5	3.7	3.7	3.5
	(3.6)	(3.2)	(3.3)	(2.8)
III. Case Outcomes				
Released	0.51	0.80	0.86	0.95
	(0.50)	(0.40)	(0.35)	(0.22)
Time to Release (days)	23.5	25.6	19.8	7.6
	(73.2)	(63.4)	(42.8)	(12.3)
Case Dropped	0.60	0.44	0.51	0.50
	(0.49)	(0.50)	(0.50)	(0.51)
Conviction	0.26	0.28	0.22	0.15
	(0.44)	(0.45)	(0.42)	(0.36)
N	4,223	600	101	40

Each column describes a different subsample of cases booked into Santa Clara County jail during the PARR pilot period (January 2 to March 11, 2020). Column 1 summarizes the mean characteristics of all cases booked during this period (N=4,223 for all outcomes except case severity, which is missing for 47 PARR-ineligible cases). Column 2 describes cases in our primary research sample, which includes cases we expect to be eligible for PARR (N=600). Column 3 describes PARR-eligible cases booked on designated PARR days (N=101). Column 4 includes cases that actually received PARR services (N=40). Standard deviations appear in parentheses.

Table 2: Baseline Balance: Comparing Eligible Cases Booked on PARR and Non-PARR Days

	Sample Mean	Balance Estimate
	(1)	(2)
White	0.220	0.023
	(0.408)	(0.052)
Black	0.138	0.023
	(0.346)	(0.052)
Hispanic	0.547	0.056
	(0.498)	(0.052)
Female	0.175	-0.033
	(0.380)	(0.027)
Age	36.2	-0.002
	(12.4)	(0.001)
Severity	8.7	-0.002
	(3.9)	(0.001)
Person Offense	0.363	0.020
	(0.495)	(0.054)
Property Offense	0.317	0.015
	(0.356)	(0.040)
Drug Offense	0.363	0.015
	(0.481)	(0.029)
Num Charges	3.7	-0.000
	(3.2)	(0.003)
	Joint F-statistic:	1.12
	p-value:	0.357

The sample includes all PARR-eligible cases (N=600). Column 1 provides the sample mean of each covariate in the left-hand column. Column 2 reports OLS coefficients from a single specification in which we regress an indicator for whether a case was booked on a PARR day on all of the listed covariates. The specification includes day of week and nighttime booking fixed effects, along with their interaction, and week fixed effects. Robust standard errors clustered by booking date appear in parentheses.

Table 3: Regression Estimates of PARR's Impact on Release and Case Outcomes

	Control-complier Mean	Reduced-form Estimates		Treatment-on-treated Estimates	
	(1)	(2)	(3)	(4)	(5)
I. Release Outcomes					
Released	0.742	0.078**	0.088**	0.250*	0.283**
		(0.038)	(0.036)	(0.130)	(0.131)
Time to Release (days)	28.6	-12.6**	-12.4**	-40.2**	-39.8**
		(6.1)	(5.9)	(18.9)	(18.4)
Time to Release (log)	2.133	-0.223*	-0.246**	-0.711*	-0.786**
		(0.123)	(0.119)	(0.381)	(0.385)
II. Case Disposition					
Case Dismissed	0.273	0.096**	0.111**	0.307**	0.359**
		(0.043)	(0.046)	(0.142)	(0.156)
Conviction	0.360	-0.075*	-0.084*	-0.240*	-0.268**
		(0.043)	(0.043)	(0.134)	(0.132)
Guilty Plea	0.323	-0.064	-0.072*	-0.204	-0.230*
		(0.040)	(0.042)	(0.132)	(0.139)
Booking Week, Day, Time FEs		Y	Y	Y	Y
Defendant, Case Covariates		N	Y	N	Y
First Stage Coefficient		–	–	0.314***	0.313***
				(0.050)	(0.050)
First Stage F-statistic		–	–	39.7	41.0

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

The sample includes all PARR-eligible cases (N=600). Column 1 provides the control-complier mean for the outcome in the left-hand column, following Imbens and Ruben (1997). Columns 2 and 3 present reduced-form regression estimates showing the difference in outcomes between cases booked on PARR and non-PARR days, following Equation 1. Columns 4 and 5 present 2SLS regression estimates of the PARR treatment effect, following Equation 2. Specifications reported in columns 3 and 5 include defendant- and case-level covariates: individual race/ethnicity, age, and sex, plus case severity, number of charges, and types charge(s) (drug, property, person, or other). All specifications include day of week and nighttime booking fixed effects, along with their interaction, and week fixed effects. Robust standard errors clustered by booking date appear in parentheses.

APPENDIX

Table A1: PARR Services and the Share of Clients Receiving Them

Service	Share
Visited Client in Custody	88.3%
PARR Arraignment Representation	65.1%
Contacted Family/Community Support	61.6%
Appeared at Arraignment	43.0%
Investigation Request	37.2%
Contacted Client's Employer	16.3%
Social Worker Referral	9.3%
Contacted DA	9.3%
PARR Motion Filed	8.1%
Defense Motion for Pretrial Release	7.0%
Advocacy re: Hold	3.5%

The table lists the PARR services provided by the Santa Clara County Public Defender's Office during the pilot window (January 2 - March 11, 2020). The second column provides the share of unique PARR clients who received the given service.

Table A2: Verifying Randomization of the PARR Calendar

	Sample Mean	Balance Estimate
	(1)	(2)
White	0.239	-0.024
	(0.426)	(0.023)
Black	0.125	-0.038
	(0.330)	(0.028)
Hispanic	0.514	-0.036
	(0.500)	(0.023)
Female	0.213	-0.005
	(0.409)	(0.016)
Age	36.6	-0.0003
	(11.8)	(0.0005)
Severity	19.5	-0.0001
	(14.4)	(0.001)
Person Offense	0.363	0.023
	(0.222)	(0.019)
Property Offense	0.223	0.029
	(0.416)	(0.023)
Drug Offense	0.408	-0.015
	(0.492)	(0.015)
Num Charges	3.49	0.002
	(3.63)	(0.002)
Felony Case	0.51	0.01
	(0.50)	(0.02)
Felony Case	0.51	0.01
	(0.50)	(0.02)
	Joint F-stat:	1.04
	p-value:	0.42

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

The sample includes all cases—PARR-eligible and otherwise—booked during the PARR pilot window (January 2 - March 11, 2020; N=4,186 because of 47 cases that are missing a severity score). Column 1 provides the sample mean of the covariate in the left-hand column. Standard deviations are in parentheses. Column 2 reports regression coefficients from a single model that regresses an indicator for whether a case was booked on a PARR day on all of the listed coviarates. Robust standard errors clustered by the booking day appear in parentheses.

Table A3: Selection into PARR within PARR Booking Days

	Sample Mean	Balance Estimates	
		All Covariates	Omitting Age
	(1)	(2)	(3)
White	0.188	-0.127	-0.179
	(0.393)	(0.312)	(0.327)
Black	0.129	-0.134	-0.244
	(0.337)	(0.224)	(0.220)
Hispanic	0.604	0.001	-0.118
	(0.492)	(0.289)	(0.286)
Female	0.168	-0.048	-0.036
	(0.376)	(0.157)	(0.156)
Age	34.3	0.009*	—
	(10.7)	(0.005)	—
Severity	8.3	0.026	0.039
	(3.3)	(0.022)	(0.026)
Person Offense	0.594	0.217	0.275
	(0.494)	(0.200)	(0.217)
Property Offense	0.356	0.097	0.101
	(0.481)	(0.123)	0.129
Drug Offense	0.386	-0.141	-0.125
	(0.489)	(0.118)	(0.125)
Num Charges	3.72	-0.009	-0.008
	(3.34)	(0.012)	(0.012
	Joint F-stat:	2.71	1.19
	p-value:	0.04	0.36

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

The sample includes all PARR-eligible cases booked on designated PARR days (N=101). Column 1 provides the sample mean of the covariate in the left-hand column. Standard deviations are in parentheses. Column 2 reports regression coefficients from a single model that regresses an indicator for whether the arrested individual received PARR services on all of the listed coviarates, as well as booking day fixed effects. Column 3 reports estimates from a similar model that omits age. Robust standard errors clustered by the booking day appear in parentheses.

Table A4: Monotonicity: First Stage Estimates by Defendant/Case Characteristics

		Case Severity		Case Type		
	Full Sample	More Severe	Less Severe	Person	Property	Drug
	(1)	(2)	(3)	(4)	(5)	(6)
PARR Intake	0.314***	0.345***	0.290***	0.344***	0.220***	0.236***
	(0.050)	(0.056)	(0.065)	(0.058)	(0.078)	(0.072)
N	600	355	245	345	190	218

	Ethnicity		Sex		Age	
	Hispanic	Non-Hispanic	Male	Female	< 36	> 36
	(7)	(8)	(9)	(10)	(11)	(12)
PARR Intake	0.328***	0.262***	0.229***	0.341***	0.323***	0.312***
	(0.078)	(0.067)	(0.081)	(0.055)	(0.066)	(0.060)
N	328	272	105	495	332	254

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Each cell reports an OLS first stage coefficient for a given subsample of cases or defendants, as indicated. The specification is Equation 1, where the outcome is an indicator for whether the defendant receives any PARR services. The model includes day of week and nighttime booking fixed effects, along with their interaction, and week fixed effects. Robust standard errors clustered by case booking data appear in parentheses. The full sample in column 1 includes all PARR-eligible cases (N=600). The remaining cells include only the subsample described in the column header. "More severe" cases have a severity score of less than 8, while "less severe" cases have a severity score of greater than or equal to 8. Sample sizes do not add up across case types (columns 4-6) because case types are not mutually exclusive.

Table A5: Interpreting the LATE: Complier Characteristics

	Sample Mean	Complier Mean
	(1)	(2)
White	0.220	0.151
	(0.408)	
Black	0.138	0.099
	(0.346)	
Hispanic	0.547	0.625
	(0.498)	
Female	0.175	0.132
	(0.380)	
Age	36.2	35.9
	(12.4)	
Severity	8.7	8.4
	(3.9)	
Person Offense	0.363	0.658
	(0.495)	
Property Offense	0.317	0.243
	(0.356)	
Drug Offense	0.363	0.296
	(0.481)	
Num Charges	3.7	3.1
	(3.2)	

The sample includes all PARR-eligible cases (N=600). Column 1 provides the mean characteristics of these cases. Standard deviations appear in parentheses. Column 2 reports the mean among "complier" cases. About 180 cases (or 30 percent of the sample) are compliers.

Table A6: Reduced-form Estimates of PARR's Impact on Bail and Arraignment

	Sample Mean	Reduced-form Estimates	
		Baseline Model	+Covariates
	(1)	(2)	(3)
Defendant Bailed	0.171	0.010	0.011
	(0.377)	(0.043)	(0.038)
Defendant Arraigned	0.183	0.014	0.013
	(0.387)	(0.038)	(0.037)
Time to Arraignment (days)	60.9	-18.1	-28.1
	(149.8)	(64.5)	(71.9)

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

The sample includes all PARR-eligible cases (N=600), with the exception of time to arraignment, which is conditional on the defendant being arraigned (N=110). Column 1 provides the sample mean for the variable in the left-hand column. Standard deviations are in parentheses. Columns 2 and 3 present regression estimates of the effect of PARR booking days on case outcomes, following Equation 1. Column 3 adds defendant- and case-level coavariates, which are listed below Table A8. All specifications include day of week and nighttime booking fixed effects, along with their interaction, and week fixed effects. Robust standard errors clustered by booking date appear in parentheses.

Table A7: Robustness of Reduced-form Results to Alternative Specifications

	No FEs	+Week FEs	+DoW FEs	+Night FE	**Preferred Model** +Interact Night/DoW
	(1)	(2)	(3)	(4)	(5)
Released	0.070**	0.080**	0.069**	0.080**	0.078**
	(0.032)	(0.035)	(0.036)	(0.035)	(0.038)
Time to Release (days)	-7.0	-8.4	-10.6*	-9.2*	-12.6**
	(6.0)	(5.5)	(5.7)	(5.3)	(6.1)
Case Dropped	0.080*	0.075*	0.085**	0.072*	0.096**
	(0.041)	(0.041)	(0.043)	(0.042)	(0.043)
Conviction	-0.073*	-0.073*	-0.082**	-0.067*	-0.075*
	(0.040)	(0.038)	(0.039)	(0.039)	(0.043)
Guilty Plea	-0.032	-0.029	-0.032	-0.030	-0.064
	(0.030)	(0.033)	(0.036)	(0.032)	(0.040)

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

The sample includes all PARR-eligible cases booked (N=600). Each cell reports a regression coefficient from a reduced form model estimating the relationship between PARR day booking and case outcomes. The baseline specification in column 1 includes only an indicator for a PARR booking day as an independent variable. Columns 2-5 add week, day of week, nighttime booking, and interacted day/nighttime booking fixed effects, as indicated. Column 5 presents our preferred specification, without covariates, exactly replicating column 2 of Table 3 in the text. Robust standard errors clustered by booking date appear in parentheses.

Figure A1: PARR Service Schedule

TX week	Arraignment day	Booking day	Booking time of day
1	Wednesday	Friday	5:00 pm-11:59 pm
		Saturday	12:01 am-11:59 pm
2	Wednesday	Sunday	12:01 am-11:59 pm
		Monday	12:01 am-5:00 pm
3	Monday	Thursday	12:01 am-5:00 pm
4	Tuesday	Thursday	5:01 pm-11:59 pm
		Friday	12:01 am-5:00 pm
5	Thursday	Monday	5:01 pm-11:59 pm
		Tuesday	12:01 am-5:00 pm
6	Friday	Tuesday	5:01 pm-11:59 pm
		Wednesday	12:01 am-11:59 pm

Figure A2. Permutation Tests

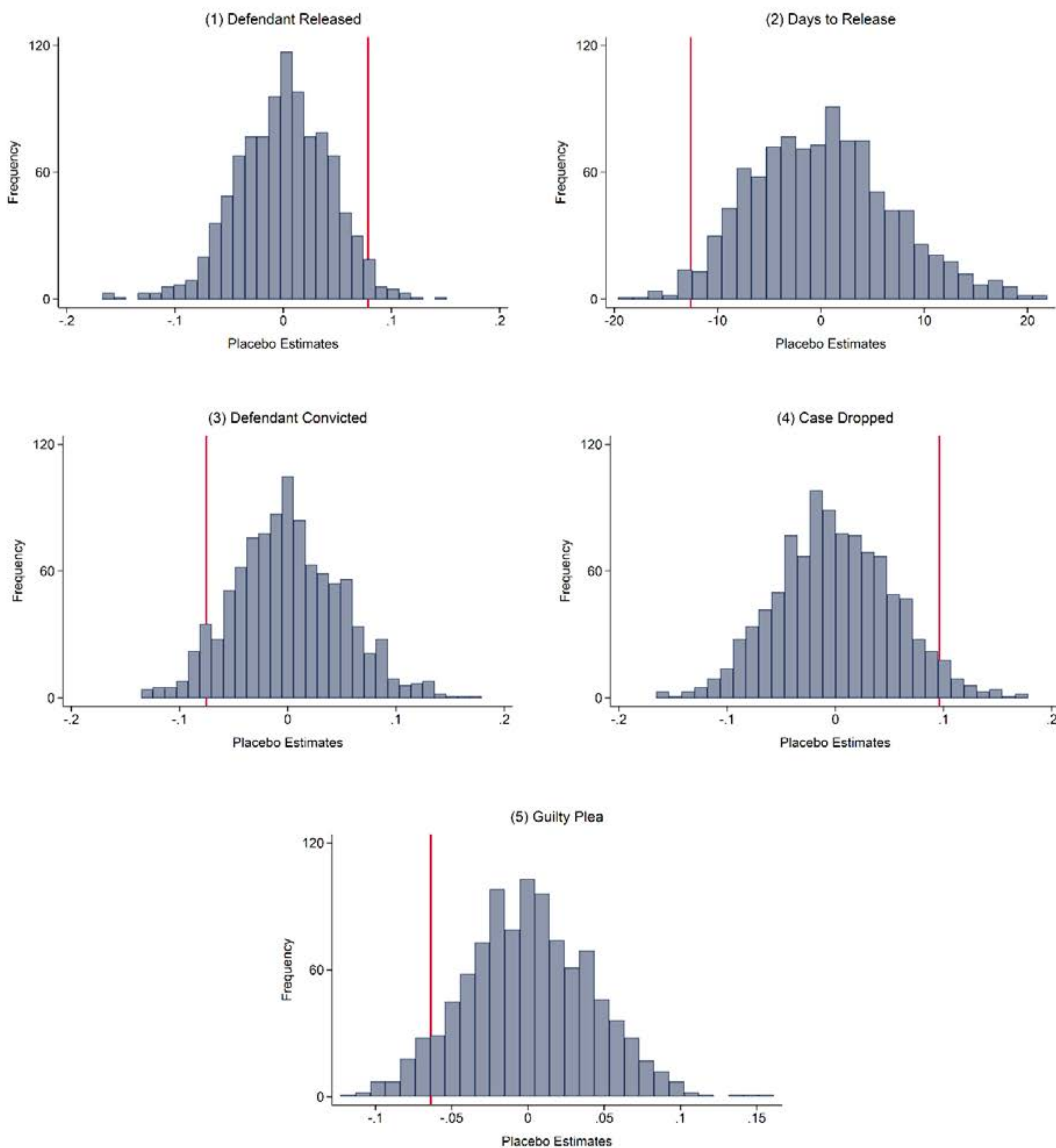

Figure A1: Each figure reports the distribution of placebo reduced-form estimates, following Equation 1, but using randomly-assigned outcome data. The Monte Carlo process creates 1,000 datasets with observations randomly assigned to outcomes. The height of each bar represents the number of generated datasets that yield a given point estimate. Solid red lines denote the "true" estimate from our actual data. The one-sided p-values for each figure are, respectively, 0.033, 0.021, 0.068, 0.054, and 0.045.

SOCIAL SCIENCES

The impact of defense counsel at bail hearings

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Roughly half of U.S. counties do not provide defense counsel at bail hearings, and few studies have documented the potential impacts of legal representation at this stage. This paper presents the results from a field experiment in Allegheny County, Pennsylvania, that provided a public defender at a defendant's initial bail hearing. The presence of a public defender decreased the use of monetary bail and pretrial detention without increasing failure to appear rates at the preliminary hearing. The intervention did, however, result in a short-term increase in rearrests on theft charges, although a theft incident would have to be at least 8.5 times as costly as a day in detention for jurisdictions to find this tradeoff undesirable.

INTRODUCTION

At the first court appearance after an arrest in the United States, a judge makes critical decisions about the conditions necessary for defendants to be released from jail until the case is resolved. Most jurisdictions operate a cash bail system in which the judge determines an amount that a person must pay to be released from detention (*1*). Recent studies have provided substantial causal evidence that pretrial detention leads to worse outcomes for the defendant and society at large, with longer jail stays and higher chances of conviction in the short term, and worse recidivism and employment outcomes over the long term (*2*–*7*).

Despite the importance of the bail hearing, the U.S. Constitution does not guarantee the provision of legal representation for defendants at this stage. While the Sixth Amendment guarantees the provision of defense counsel at all critical stages of a criminal prosecution, the U.S. Supreme Court has not recognized the bail hearing as a critical stage, which would require that the presence of defense counsel at this hearing have a direct impact on the case outcome. As a result, whether defense counsel is provided at bail hearings has been left up to states and local jurisdictions to decide. Although the exact number is not known, up to half of the counties in the United States do not provide defense counsel at this stage (*8*).

In this current landscape, research on the impact of defense counsel at bail hearings is crucial because it can simultaneously shed light on whether the bail hearing should be considered a critical stage at which defense counsel must be provided, as well as help state and local jurisdictions assess the efficacy of their policies regarding the provision of defense counsel. The latter is especially important if states and localities argue that providing defense counsel is too costly and/or that defense counsel does not have any real impact on defendant outcomes at these hearings (*8*). In particular, the reality of these hearings, which, in many large jurisdictions, are assembly line style hearings usually lasting less than 3 min and conducted via video feed, has bred some skepticism about the potential of attorneys to affect the outcome (*9*). Understanding the extent to which providing defense counsel at the bail hearing can affect the use of monetary bail and pretrial detention will thus provide policymakers with the necessary information on the effectiveness of this intervention.

Despite the importance of this issue, there is unexpectedly little known regarding the benefits of providing defense counsel at the bail hearing. The empirical evidence in this area is limited to three studies, two of which are now-dated experiments that suffered some deviation from the research design during implementation (*10*, *11*). The third is a study examining a policy change, comparing outcomes after the change to those before, without a comparison group (*12*, *13*). A recent related study examined the impact of providing bail advocates to support public defenders (*14*), although the study did not directly evaluate whether the public defenders themselves have an impact on bail hearing outcomes. While, collectively, these studies mostly support the claim that better defense representation at the bail hearing reduces pretrial detention with no increase in the rate at which defendants fail to appear at the next hearing, none of these studies are able to identify the causal impact of providing defense counsel at bail hearings.

To address this gap, this paper presents the results of an evaluation of the impact of a year-long initiative to provide public defenders at some bail hearings within the Pittsburgh Municipal Court (PMC), which holds the majority of the bail hearings that occur within Allegheny County. The jurisdiction only had sufficient resources to provide public defenders for half of the shifts that did not already have public defenders. Our experimental design generated a public defender work schedule such that the shifts in which a public defender was working had defendants and judges who were, on average, virtually identical to those in which a public defender was not working. This research design, akin to a randomized control trial, allows us to rigorously evaluate the impact of providing a public defender at the defendant's initial bail hearing on a variety of defendant outcomes.

The results indicate that providing a public defender at the bail hearing led to a significant decrease in the use of monetary bail and short-term pretrial detention, with no impact on failure to appear rates or the probable cause determination at the preliminary hearing. However, the intervention did result in an increase in rearrests for third-degree felony theft charges within the first 6 months of the bail hearing. For jurisdictions facing similar tradeoffs, whether this tradeoff is acceptable will depend on the factors that they consider. For jurisdictions whose primary concern about providing defense representation at this stage is ensuring defense counsel actually affect the proceedings, these results provide clear

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evidence of the benefit of this intervention. For jurisdictions concerned about the additional criminal activity arising from this intervention, our analysis indicates that for the tradeoff between reduced pretrial detention and increased criminal activity to be problematic, the cost of a theft charge to society would have to be at least 8.5 times more than the cost to society of a day in detention. Current survey estimates indicate that individuals perceive the societal cost of a theft charge and a day in detention to be roughly equivalent, implying that this tradeoff should be acceptable for many individuals (*15*). However, the distribution of individuals with outlying views and the workings of political and bureaucratic processes will determine whether this tradeoff is accepted in any given jurisdiction.

BACKGROUND

If an individual is arrested for alleged criminal activity within the Pittsburgh city limits at any time or in an outlying area within Allegheny County outside normal court business hours, then their initial bail hearing takes place in the PMC. Arrested individuals are brought to the jail, which is physically adjacent to PMC, where pretrial staff administer a risk assessment using a locally validated tool (which is similar to the Public Safety Assessment tool that is commonly used in many jurisdictions) and provide the results to the judge overseeing the bail hearing. The risk assessment predicts both the risk that the defendant will fail to appear at future criminal hearings, as well as the risk that they will commit new criminal activity during the pretrial period. The risk assessment algorithm recommends either unconditional pretrial release, release with nonmonetary conditions, or no release. Although monetary bail is never recommended, judges set a monetary bail roughly half the time. Judges examine the risk assessment paperwork and make their bail hearing decision before the bail hearing, without talking to the defendant. During the hearing, the judge typically will just read their final decision to the defendant, who is in the jail and appears via video in the courtroom. While it is technically possible for the judge to change their decision at the bail hearing (and redo the paperwork), our court observation indicates that, in practice, this rarely happens. Judges can elect to either release the defendant with no conditions (ROR), release them with nonmonetary conditions, assign a monetary bail, or detain the defendant without bail. Judges rarely use the detainment without bail option. Prosecutors have no role in these hearings.

In the absence of a lawyer for the defendant, the judge makes their decision solely on the basis of the risk assessment and the charge for which the individual was arrested. When a public defender is present, they will speak to the judge in the courtroom while the judge is reviewing the risk assessment paperwork and making their decision (before the hearing). The public defender will have already spoken to the defendant and can make the judge aware of relevant information about the defendant, such as informing the judge that the defendant has a regular job for which they need to show up or that the defendant has a place to live that is separate from where an alleged victim is living. Public defenders thus act as a conduit through which defendants can convey important mitigating information to the judge. Furthermore, public defenders can try to increase judge concurrence with the pretrial risk assessment; in particular, they can try to get judges to avoid setting a monetary bail in situations where the risk assessment recommends the defendant be released with nonmonetary conditions. Note that while these are some potential mechanisms through which the public defender can affect the outcomes of bail hearings, our study will not be able to definitively determine the exact mechanism responsible.

MATERIALS AND METHODS

In April 2017, Allegheny County began providing public defenders for all bail hearings at PMC during regular business hours (Monday through Friday from 8 a.m. to 4 p.m.). Allegheny County conducted an internal evaluation using a pre-post research design, which showed that providing a public defender appeared to reduce the use of monetary bail and pretrial detention (*16*). As a result, in early 2019, the county decided to expand their provision of public defense services to the bail hearings that take place during nonbusiness hours (bail hearings take place 24 hours a day, 7 days a week). To implement this expansion of services, the public defender's office hired two new public defenders to cover the bail hearings occurring in these off-hours. Because these two attorneys could only staff about half of the shifts during the evening, overnight, and weekend hours, we worked with the public defender's office to assign the attorneys in a way that would allow for a more rigorous evaluation of the impact of public defenders.

Our goal was to ensure that the cases in the shifts with a public defender (the treatment shifts) would look very similar to the cases in the shifts with no public defender (the control shifts). We also had to ensure that the resulting work schedule was relatively regular to make it amenable for the two attorneys staffing these shifts and could not reduce the staffing of business hour shifts. Figure 1 presents the schedule that was developed: Bail hearings that occur in cells with a "PD" were staffed with a public defender, and empty cells indicated shifts where no public defender was present. The public defender's office followed the Pay Period 1 schedule for 2 weeks, then alternated to the Pay Period 2 schedule for 2 weeks, then back to the Pay Period 1 schedule for 2 weeks, and so forth for the duration of the study. The study was in the field between 1 April 2019 and 13 March 2020. A public defender working a given shift represented all defendants who had their bail hearing during that time period, regardless of their eligibility for a public defender at subsequent hearings. The study received approval from RAND's Human Subjects Protection Committee, and all the guidelines were adhered to. We were not required to obtain informed consent because our study had minimal impact on defendants, as the intervention was going to happen anyways and our study did not alter the average probability of a defendant having a public defender at their bail hearing.

To have balanced treatment and control groups, our analyses only included defendants that had bail hearings in shifts where the public defender status varied across pay periods. For example, over the year with which our study was in the field, we expected that the set of defendants who had their bail hearing on Sunday between 4 a.m. and 8 a.m. to be relatively similar from week to week; those who happened to have their bail hearing during Pay Period 1 were provided a public defender, while those who happened to have their bail hearing during Pay Period 2 were not. In this way, we can only study the bail hearings that occur in the blue and orange cells in Fig. 1. The bail hearings that occur in the orange cells correspond to the treatment group, and the bail hearings that occur in the blue cells correspond to the control group. While our research design

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Pay Period 1 schedule

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
12 midnight–4 a.m.		PD	PD	PD			
4 a.m.–8 a.m.	PD	PD	PD	PD	PD		
8 a.m.–12 noon	PD	PD	PD	PD	PD	PD	
12 noon–4 p.m.		PD	PD	PD	PD	PD	
4 p.m.–8 p.m.		PD	PD	PD	PD	PD	
8 p.m.–12 midnight		PD	PD				

Pay Period 2 schedule

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
12 midnight–4 a.m.					PD	PD	
4 a.m.–8 a.m.		PD	PD	PD	PD	PD	
8 a.m.–12 noon		PD	PD	PD	PD	PD	
12 noon–4 p.m.		PD	PD	PD	PD	PD	PD
4 p.m.–8 p.m.			PD	PD	PD	PD	PD
8 p.m.–12 midnight				PD	PD	PD	

Fig. 1. Public defender shift schedule. The schedule alternates back and forth between these two shift schedules every 2 weeks. The orange shifts represent the treatment shifts, and the blue shifts represent the control shifts.

will only allow us to estimate the impact of public defenders for bail hearings that occur outside business hours, these off-hour hearings compose about 63% of all bail hearings in Allegheny County.

Allegheny County provided data on all bail hearings that occurred between 1 April 2019 and 13 March 2020. For each hearing, we observe information on the date and time that the bail hearing took place, the outcome, the demographics of the defendant and their criminal history, who the judge was, the complete set of charges associated with the arrest, and the defendant's pretrial risk assessment. The county also provided information on preliminary hearing outcomes (failure-to-appear rates and probable cause findings), rearrests, and jail booking data, which detail the jail stints for all individuals in our sample, as well as notes whether they had any holds that would require them to be detained in jail regardless of what happened at their bail hearing. The public defender's office provided data on all of the bail hearings that they staffed, which allowed us to identify which of the bail hearings actually had a public defender. More details on the construction of the data are provided in the Supplementary Materials. In total, we have 2002 cases in the treatment group and 2089 cases in the control group.

Table 1 examines whether our experiment design resulted in balanced treatment and control groups with respect to the key defendant and case covariates. For completeness, tables S1 and S2 examine balance for the full set of relevant covariates, which include judge indicators, month indicators, shift indicators, and a more detailed version of the key defendant and case covariates presented in Table 1. In particular, table S2 breaks out many of the core variables presented in Table 1 into multiple categories, which reflects how these variables factor into the pretrial risk assessment. To test for balance, we used two complementary approaches. First, we examined whether the treatment means were statistically different from the control means after accounting for shift and month controls. We account for shift (which reflects both the day of the week and the specific 4-hour time block) and month controls because we assume that after conditioning on these timing factors, defendants arrive randomly to shifts with and without an assigned public defender. Column 5 of Table 1 presents P values from t tests that compare the treatment and control means for each of the key covariates. In addition, we regressed a treatment indicator on the full set of 128 covariates presented in tables S1 and S2 and conducted an F test to determine the level at which the covariates were jointly significant. While only four of the differences in covariate means shown in Table 1 are statistically significant at the 0.05 level, the P value for the F test of joint significance was 0.000.

Because the results above indicate that at least some covariate means vary by treatment status, our second approach to checking for balance follows Imbens and Rubin (*17*), who note that good balance does not necessarily require that there be no statistically

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Table 1. Covariate balance between treatment and control groups.

	Overall mean	Overall SD	Treatment mean*	Control mean*	*P* value from *t* test comparing T and C means*	T/C difference as a percent of SD*
Defendant demographics						
Age (years)	35.0	12.0	35.0	35.1	0.761	1.0
Black	0.561	0.496	0.561	0.562	0.931	0.3
White	0.422	0.494	0.421	0.421	0.980	0.1
Female	0.274	0.446	0.257	0.294	0.008	8.4
Criminal history						
Age at first arrest (years)	21.3	8.2	21.2	21.3	0.802	0.8
Number of prior arrests	10.4	11.4	10.3	10.5	0.510	2.1
Number of prior felony convictions	1.50	2.83	1.52	1.49	0.741	1.0
Number of prior misd. convictions	2.70	3.48	2.60	2.80	0.062	5.9
Number of FTAs	1.20	2.14	1.17	1.23	0.391	2.7
Case and defendant characteristics						
Lead charge is felony	0.438	0.496	0.449	0.430	0.233	3.7
Number of charges	3.58	2.89	3.55	3.60	0.605	1.6
Multiple incidents being handled	0.064	0.244	0.068	0.061	0.375	2.8
Person charge	0.370	0.483	0.367	0.370	0.829	0.7
Property charge	0.228	0.420	0.227	0.233	0.677	1.3
Drug charge	0.137	0.344	0.153	0.122	0.004	9.1
Weapon charge	0.036	0.186	0.040	0.034	0.320	3.1
Public order charge	0.130	0.336	0.118	0.139	0.043	6.4
Other pending charges	0.350	0.477	0.350	0.348	0.905	0.4
Currently on probation	0.297	0.457	0.281	0.312	0.034	6.7
Hold/detainer issued	0.221	0.415	0.214	0.225	0.407	2.6
Arrest within Pittsburgh	0.553	0.497	0.564	0.543	0.179	4.2
Risk assessment recommendation						
Pretrial recommendation of ROR	0.084	0.278	0.085	0.083	0.817	0.7
Pretrial recommendation of nonmonetary release	0.672	0.470	0.671	0.672	0.934	0.3
Pretrial recommendation of detention	0.243	0.429	0.244	0.244	0.980	0.1
Observations	4091		2002	2089		

*The treatment and control means, as well as the last two columns, are OLS regression–adjusted for shift and month controls. Each characteristic was regressed on a treatment indicator, as well as shift and month controls. The control mean represents the average value in the control group, and the treatment mean reflects the sum of the control mean and the coefficient on the treatment indicator in the regression. Each month of the intervention includes approximately two treatment instances and two control instances of each shift. Treatment assignment is effectively randomized if there is no systematic difference between being arrested during a treatment instance and a control instance of each shift during each month.

significant differences between the treatment and control means across all covariates. Rather, what is required is that the differences between the treatment and control covariate means are small enough that simple regression methods will be reliable for removing biases associated with the differences in covariates. Imbens and Rubin (*17*) note that for a simple regression methodology to estimate unbiased treatment effects, the difference between the treatment and control means for a given covariate should be smaller than 25% of the SD of the covariate. We thus use this criterion based on the standardized difference in covariate means, after accounting for shift and month controls, to examine balance. The last column of Table 1 shows that all of these covariate differences are well within the required bounds; tables S1 and S2 further show that each of the 128 covariates included in these tables are also within the required bounds. When checking for balance simultaneously across many covariates, Imbens and Rubin (*17*) recommend

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calculating the Mahalanobis distance between the means of the treatment and control groups (which results in one number that summarizes how the treatment and control group compare with respect to the means of all of the covariates simultaneously). Using the full set of covariates listed in tables S1 and S2, we find an average scaled deviation of 0.0067, which is well below the 0.25 threshold. These results indicate that our experiment resulted in well-balanced treatment and control groups and that we should be able to identify unbiased treatment effects as long as we include covariate controls.

The Supplementary Materials provides further evidence of the validity of our experiment design. Table S4 provides evidence that the courts were not manipulating who was in the treatment and control groups. Table S3 indicates that there was extremely good compliance with the research design, such that public defenders worked the shifts that they were supposed to and were not present when they were not on the schedule. This compliance, along with the fact that, at the initial bail hearing, private attorneys were rarely involved and everyone qualified for the public defender, results in a situation in which the treatment-control comparison will reveal the impact of going from a situation where essentially no one has a lawyer to one in which everyone has the services of a public defender.

The analysis plan for this project was preregistered on Open Science Framework. The specifications used in this paper mirror the initial analysis plan closely, although we note in the Supplementary Materials exactly how the final specifications used differ from the preregistered specifications.

RESULTS

The impact of public defenders on bail hearings and pretrial detention outcomes

Figure 2 presents our main results regarding the impact that providing public defenders at bail hearings has on bail hearing and pretrial detention outcomes. These are estimates of intent-to-treat effects in that we are directly comparing the outcomes of defendants assigned to the treatment group with the outcomes of those assigned to the control group. Because our discussion in the previous section indicated that the covariate imbalances were not zero, all the treatment-control comparisons presented in Fig. 2 control for an extensive set of defendant and case characteristics. Specifically, we identify the treatment effect by regressing a given outcome on a treatment indicator and the full set of 128 covariates included in tables S1 and S2. The outcomes shown for the control group in Fig. 2 correspond to the average value of the outcome variable among the control group (i.e., the baseline value), while the outcomes for the treatment group are determined by adding the regression-adjusted coefficient on the treatment indicator to the baseline value for the control group. Figure S1 in the Supplementary Materials presents our main outcome results with no covariate controls included and shows that none of our main findings are appreciably changed by not including covariate controls.

The standard errors for our regression specification were clustered following the guidelines provided by Abadie *et al.* (*18*), which note that a cluster should be defined as a set of cases where the regression errors will be correlated with each other and where all cases received the same treatment status. As we are controlling for month, as well as the specific 4-hour shift block (which picks up both day of the week and time of day effects), we expect the main reason the remaining regression errors should be correlated is that the cases that happen in time periods that are close together are likely handled by either the same judge, the same public defender, or both. For example, within a 4-hour shift block, all bail hearing decisions are made by the same judge/public defender combination and all have the same treatment status; we thus must cluster by at least the shift time and date level. However, if there are adjacent shifts included in our sample where treatment status remains the same and either the same public defender or judge (or both) carry over, then those SEs could be correlated as well, and we thus group them into the same cluster. For example, on a given Monday, the 4 p.m. shift and the 8 p.m. shift are combined into one cluster (as the same judge and public defender staff both); the Tuesday 12 a.m. shift however falls into a separate cluster as both the judge and public defender change at 12 a.m. In this way, the 16 4-hour shifts included in our analysis each week are grouped into 12 clusters. As a sensitivity check, we also calculated *P* values using randomization inference and found similar results.

The results for the bail hearing outcomes show clearly that public defenders have a substantial impact on defendants receiving a favorable outcome at the initial bail hearing. While those in the control group received either an ROR or nonmonetary release only 49% of the time, those in the treatment group received this favorable outcome 59.2% of the time, which is a 21% increase. We also examine the proportion in the treatment and control groups that are assigned a monetary bail falling below a given threshold, where those who received either ROR or nonmonetary conditions are coded as being below the threshold. The results indicate that public defenders mainly influence outcomes for defendants that would have received a monetary bail of $10,000 or less. We also find that public defenders increased judges' concurrence with the risk assessment tool, which is defined as occurring when the judge's decision either follows the recommendation from the risk assessment or is more lenient. This increased concurrence thus seems to be one mechanism through which public defenders reduce the likelihood that a monetary bail will be set. One potential reason public defenders may increase judge concurrence with the risk assessment tool is that their presence will likely require a judge that is deviating from the risk assessment to explain why. While sometimes judges might deviate from the risk assessment because of well-defined reasons, in situations where they do not have well-defined, legitimate reasons, they may decide to go along with the risk assessment when questioned about it by the public defender.

The results for detainment outcomes indicate that having a public defender at the initial bail hearing resulted in a decline in immediate pretrial detention after the bail hearing of 4.6 percentage points, which is a 10% decrease. Note that there is not a one-to-one relationship between being assigned a monetary bail and being detained pretrial. Some of the defendants in the control group who were assigned a monetary bail paid the bail amount and were released, while some members of the treatment group who were released with either an ROR or with nonmonetary conditions were subsequently detained in jail because they had another hold (such as a probation detainer). For this reason, the impact of the public defender intervention was naturally somewhat smaller for pretrial detention than it was for the bail hearing decision.

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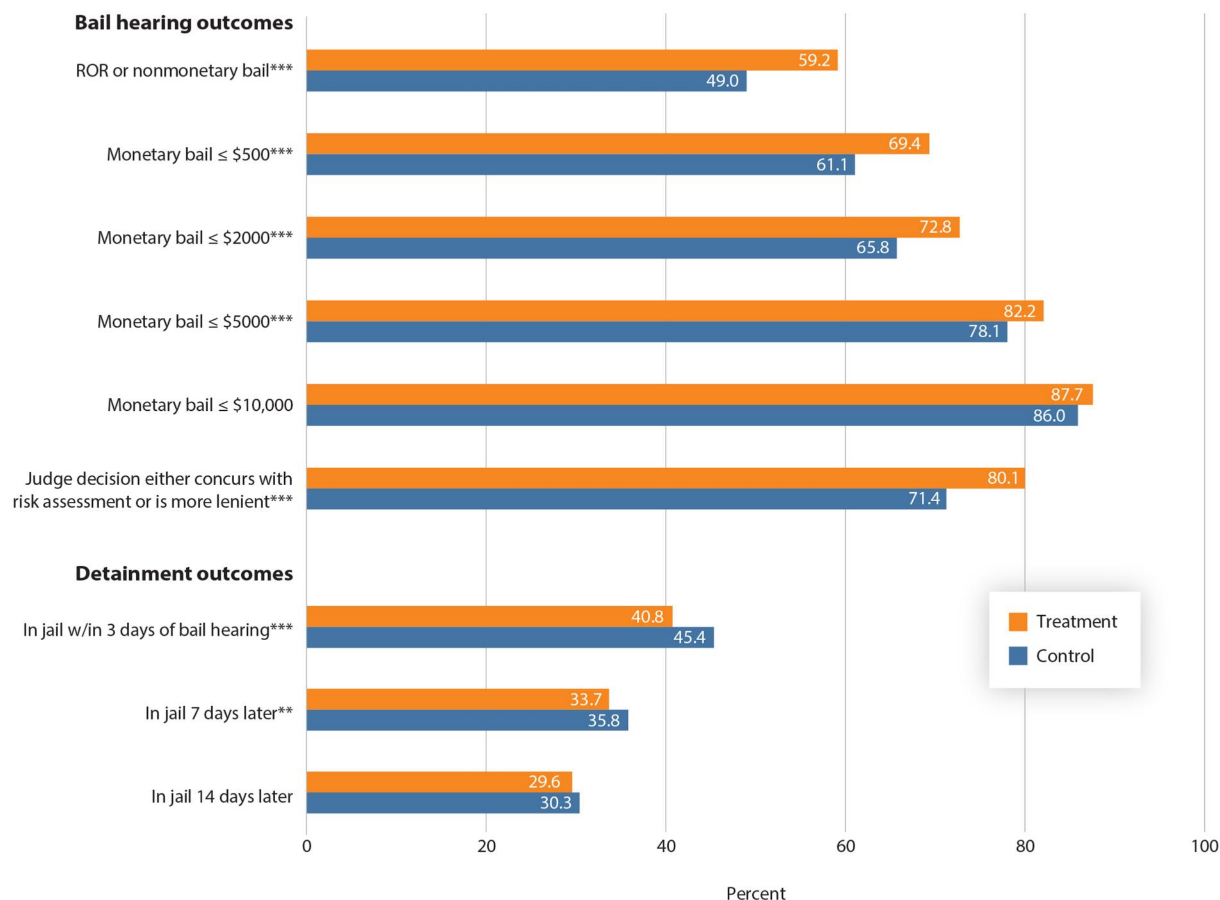

Fig. 2. Impact of public defender provision on bail hearing and pretrial detention outcomes. Asterisks ***, **, and * indicate that the difference between the treatment and control group is statistically significant at the 1, 5, and 10% level, respectively. The treatment-control comparisons are ordinary least squares (OLS) regression–adjusted using controls for gender, race, age, and education level of the defendant; whether the offense occurred within Pittsburgh (versus the greater county); grade and type of dominant charge; prior record and failures to appear; whether the defendant had other pending charges or was on probation at the time of their bail hearing; whether the defendant had any holds; judge; and month controls, as well as indicators for the 16 different 4-hour shifts that composed the treatment and control groups. SEs were clustered by shift time and date; shifts that were adjacent, which shared the same treatment status and either the same public defender or judge, were grouped into the same cluster (see Results for more details). With the exception of the 7- and 14-day later detainment outcomes, all comparisons use the sample of 4091 bail hearings that occurred between 1 April 2019 and 13 March 2020. The 7- and 14-day later detainment outcomes truncate 1 and 2 weeks from the sample, respectively, so that the detainment outcome can be measured before the onset of the pandemic.

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While the public defender had a significant impact on immediate pretrial detention, the results indicate that 14 days after the bail hearing, those in the treatment and control groups were equally likely to be in jail. The dissipation of this pretrial detention effect likely occurred because bail review hearings were conducted on all individuals who remain in jail solely because they were assigned a monetary bail that they cannot pay and for whom the pretrial risk assessment recommended release. At these review hearings, which typically happen within 3 days of the initial bail hearing, public defenders are present for all defendants. Thus, eventually, the treatment and control groups ended up in the same situation with respect to pretrial detention, but it took those in the control group longer to get there because it took them longer to get access to a public defender.

Results from a heterogeneity analysis, which examines whether certain groups benefited more than others from the provision of a public defender, are presented in the Supplementary Materials. Table S5 indicates that the observed reduction in pretrial detention only occurred among individuals charged with a nonviolent offense. We also estimate a significantly larger impact on receiving ROR or nonmonetary release for individuals charged with a nonviolent offense versus those charged with a violent offense. Both of these findings imply that judges might have been more open to listening to the public defender's recommendation for individuals charged with nonviolent offenses. The treatment effects do not appear to vary by the defendant's gender or race at a statistically significant level, but the treatment did have a larger negative impact on pretrial detention for defendants older than 30 than for younger defendants.

The impact of public defenders on downstream defendant outcomes

As noted in the Introduction, prior research has demonstrated that interventions that affect pretrial detention rates can also affect failure-to-appear rates at court hearings, case outcomes, and rearrest rates. To better understand the broader impacts of providing

public defenders at bail hearings, the results in this section evaluate the impact that the intervention had on these downstream outcomes.

Our results in this section have two key caveats. First, public defenders were already being provided at bail review hearings that occurred within 3 days of the first hearing. Therefore, our estimates reflect only the impact relative to the status quo of a public defender at the bail review hearing. Second, at the onset of the coronavirus disease 2019 (COVID-19) pandemic in Allegheny County, we decided that we were not going to use data on any outcomes that occurred after 13 March 2020; we thus stopped requesting data from our partners at this time. After this date, several changes were made to various criminal justice processes within Allegheny County that had the potential to significantly affect the outcomes examined here. In particular, court cases were substantially delayed, and eventual outcomes were potentially affected, as there was likely a higher propensity to dismiss cases to reduce the backlog in the courts. Arrest activity around the county also declined once the pandemic began, and the county also made it a priority to release all individuals charged with a nonviolent offense who were in jail solely because they could not pay their monetary bail. Using data after the pandemic began would thus identify the impact that this intervention had on outcomes under the policies and trends present during the pandemic, which, while interesting, would not provide generalizable insights about the impact of a public defender at this stage. Because the intent of this study is to provide an estimate of the impact of this intervention in prepandemic times, our analysis necessarily focuses on short-term outcomes, as these are unaffected by the pandemic. We thus examine the impacts that the intervention had on preliminary hearing outcomes (as opposed to the final case disposition), as well as rearrest activity within 180 days from the bail hearing (versus a longer 2- or 3-year follow-up period). Each of the outcomes examined in this section requires a different level of sample truncation to ensure that the outcome for everyone in the sample can be measured by 13 March 2020. For example, to measure whether individuals were rearrested within 180 days of their bail hearing, we can only use individuals that had their bail hearings on or before 15 September 2019 so that the entire 180-day follow-up period occurs before 13 March 2020.

Figure 3 shows the impact that public defender provision at the bail hearing had on downstream outcomes; the methodology used to obtain these results mirrors that used to obtain Fig. 2. The estimates indicate that the public defender intervention had no statistically significant impact on whether the defendant failed to appear at their preliminary hearing or on the outcome of the preliminary hearing. These results are expected given the impact of the intervention. With respect to failure to appear rates, these preliminary hearings typically do not take place until at least 2 weeks after the bail hearing. By that point, the intervention no longer had any impact on whether a defendant was in jail, and thus, there should be no impact on failure to appear rates. With respect to the outcome of the preliminary hearing, the public defender intervention only provided assistance to the defendant regarding the outcome of their bail hearing. A different public defender was then assigned to represent the individual at their preliminary hearing if they were eligible for a public defender. Those in the treatment group were not receiving any extra access to services from the public defender's office between the time of their bail hearing and their preliminary hearing that would decrease the likelihood that the judge would determine probable cause to exist (thus allowing the case to move to the next level of prosecution).

The final outcome that we consider in Fig. 3 is whether individuals were charged with a new crime by law enforcement within 180 days of their initial bail hearing, which we term a rearrest. Note that this measure of rearrest does not include arrests for failures to appear in court on the initial charge, as those incidents were already examined in the failure to appear outcome. The results indicate that those in the treatment group were 3.2 percentage points more likely than those in the control group to be rearrested for any crime within the first 180 days of their bail hearing. The remaining rearrest specifications examine which specific crime types increased after this intervention. Once we identify that the treatment only had a statistically significant impact on rearrests for felony crimes (as opposed to misdemeanor or summary offenses), we then further parse which sets of felony crimes drive this result. (While the significance levels for the rearrest outcomes in Fig. 3 are not corrected for multiple hypothesis testing, we obtain similar results when we apply the conservative Bonferroni test.) Notably, the results indicate that the intervention has no impact on rearrests for violent felonies. Instead, we find that the overall increase in rearrests was being driven by an increase in rearrests for third-degree felony theft charges (which make up 55% of third-degree felony rearrests). In particular, while 2% of those in the control group were rearrested within the first 180 days of their bail hearing for a third-degree felony theft charge, 5.4% of those in the treatment group were. Although third-degree felony theft charges can potentially involve theft of items worth a significant monetary amount, almost three-quarters of these rearrests were for retail theft. Under Pennsylvania law, if the individual has two prior theft convictions, an incident of retail theft will be charged as a third-degree felony regardless of the value of the item stolen. While we do not observe the value of items stolen in our data, it is possible that many of these rearrests involved minor retail thefts.

The rearrest results suggest that reductions in monetary bail and pretrial detention (which are the main ways that the intervention affected individuals) led to an increase in rearrests for lower-grade theft charges. There are several potential reasons why this might have happened. While incapacitation (whereby those in jail are physically prevented from reoffending) is often put forth as an explanation for why reductions in pretrial detention can lead to increases in rearrest rates, our results are not consistent with an incapacitation effect. The decrease in pretrial detention caused by the intervention was not large enough to incapacitate individuals from reoffending over a 180-day time frame. In the Supplementary Materials, we show that our findings imply that the treatment causes an average decrease in detention of 0.29 days, which is a very small change in incapacitation relative to the 180-day time frame. This average reduction in detention ignores the possibility that some people see no impact on their detention and others have a larger impact. Using the findings at the bottom of Fig. 2, we see that 55% of the control group did not go to jail (i.e., were not in jail within 3 days of their bail hearing) and 30% were still in jail after 14 days. If we assume that all the impact on detention was on the remaining 15% who were in jail between 1 and 14 days, then this subset would have experienced a 1.9-day decrease in detention days (as 0.29/0.15 = 1.9). We think that it remains unlikely that having the opportunity to offend for roughly two extra days over

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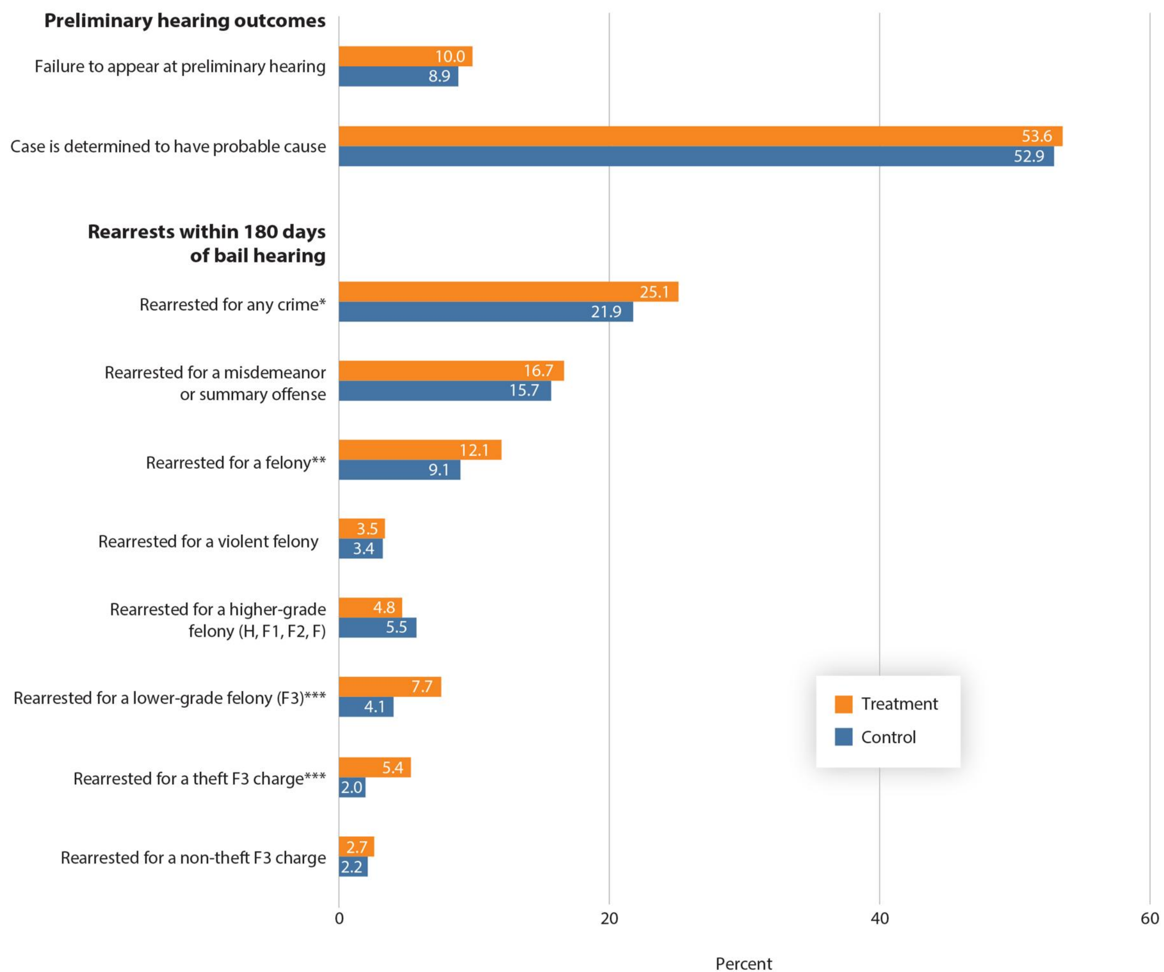

Fig. 3. Impact of public defender provision on downstream outcomes. Asterisks ***, **, and * indicate that the difference between the treatment and control group is statistically significant at the 1, 5, and 10% level, respectively. The treatment-control comparisons are OLS regression–adjusted using the same specification as described in Fig. 2. To only use data collected before the pandemic, sample sizes vary across the outcomes used. For failures to appear, we used all bail hearings that occurred between 1 April 2019 and 30 November 2019 (n = 2993); the probable cause determination dropped 261 additional observations that had not had their preliminary hearing as of 13 March 2020. For the rearrest within 180-day outcome, we use the 2167 bail hearings that occurred between 1 April 2019 and 15 September 2019. A crime of grade "F" corresponds to an ungraded felony drug charge. For this charge, the maximum punishment is driven by prior convictions, and thus, it does not have a specific grade attached to it like the other charges do.

the course of 6 months was enough to explain why those in the treatment group were almost three times as likely to be rearrested for a third-degree felony theft charge. As further evidence that our results are not the result of incapacitation, we find that the estimated treatment effect on rearrest presented in Fig. 3 remains virtually unchanged when we add an explicit control for the number of days (over the 180-day period) that the individual was out of jail. Thus, the additional time outside of jail does not seem to be driving the impact on rearrests.

Although the relatively small average reduction in jail time suggests that an increase in overall incapacitation is not driving the increase in minor felony rearrests, it is possible that the public defender's presence leads to "selective incapacitation," whereby more defendants at risk for these minor felonies are being released while awaiting trial but fewer other defendants are being released. Such reallocation of pretrial confinement could account for increased minor felony rearrests without changing the average number of days of pretrial confinement in the population much. We do not have any reason to think that the public defender's presence would increase confinement of some other group of defendants who are not at risk of reoffending nor do we find evidence of reductions in other types of rearrests, but we raise this as a possibility for consideration.

Beyond an incapacitation effect, there are a couple deterrence-based reasons why the intervention might have led to an increase in rearrests. Specifically, because those in the control group were more likely to have to pay a monetary bail and more likely to be detained pretrial, the negative experience of those events might deter them from offending in the future. Alternatively, those in the treatment group who received public defender services might have been emboldened by their experience of getting out of pretrial detention and thus perceived the consequences of being arrested again to not be as serious. Note that Allegheny County does not require individuals to forfeit their bail if they reoffend during the

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pretrial period, and thus, the monetary bail itself should not directly incentivize individuals to avoid offending during the pretrial period (although the experience of having to pay the monetary bail might).

In terms of why the increase in rearrest rates only occurred for third-degree felony theft charges, one reason this might have occurred is that the people who were most affected by the intervention were more likely to commit these types of offenses. Specifically, the heterogeneity analyses presented in table S5 indicate that the public defender intervention only reduced the likelihood of detention for those who had a nonviolent arrest charge. This group was much more likely to have their focal arrest charge classified as a theft charge, implying that their future rearrests might fall in this category as well. An alternative possibility is that the experience of paying a monetary bail deters individuals specifically from committing financial crimes. For example, the benefit to an individual of committing a financial crime should decrease if they feel that they may have to pay a monetary bail.

Last, several previous studies evaluating the impact of pretrial detention on rearrest rates have found that pretrial detention caused rearrest rates to increase, while our results imply the opposite. One potential reason for these different findings is that we are only able to examine short-term rearrest outcomes, while previous literature has followed the impact on arrest over a 2- or 3-year follow-up period. This longer follow-up period allows the impact of pretrial detention to change over time. For example, early on, those who are detained pretrial might be deterred from reoffending. In the long-term, however, even two extra days of pretrial detention can be extremely disruptive to individuals if it causes them to lose their job and custody of their children, as well as increases their exposure to criminogenic influences, which can then lead to disruptions in the individual's living situation and health (*19*). This pattern, whereby the causal relationship between pretrial detention and rearrest rates is first negative but then becomes positive as the follow-up window increases, has been observed in several studies (*3*, *5*). Future work should thus evaluate the impact of this intervention on rearrest rates over a longer time window.

The tradeoff between pretrial detention and rearrests

Our results indicate that, in this setting, providing a public defender at bail hearings appears to involve a tradeoff between lowering pretrial detention rates and increasing rearrests for third-degree felony theft charges. In this section, we discuss how to think about this tradeoff, albeit recognizing that this tradeoff will not be relevant to all jurisdictions. First, for some jurisdictions, the question of whether to provide a public defender at this stage will be normative. Within this perspective, because the bail hearing can have important consequences for a defendant, representation should be provided to defendants at this stage regardless of what any analysis shows. Second, some jurisdictions might be willing to staff public defenders at bail hearings so long as these attorneys are shown to have a positive effect on defendant outcomes at these hearings. The results presented here provide clear evidence of this, and thus, a discussion of the tradeoffs between pretrial detention and rearrest rates would be irrelevant for these jurisdictions as well. However, given the intense public focus that often occurs whenever changes in pretrial policy are thought to increase crime rates (*20*), it is likely that some jurisdictions will consider both the immediate and downstream consequences of potential interventions and may only support the provision of representation at the initial bail hearing if the tradeoffs between pretrial detention and rearrests are favorable. We thus directly consider these tradeoffs in this section to help inform these discussions.

While monetary cost-benefit analyses can often be helpful in situations where an intervention involves clear tradeoffs, in this setting, with wide variation in estimates of the benefit of staying out of jail, the results can be more difficult to interpret. A monetary cost-benefit analysis will essentially identify a threshold in dollar terms such that the policy should be implemented if a day of someone's freedom is worth more than the threshold. However, because there will inevitably be a large amount of variation in terms of the amount individuals are willing to pay to stay out of jail (i.e., the value of freedom) and this amount is likely to be related to income level, this monetary threshold is unlikely to help policy-makers come to a consensus conclusion about whether the tradeoff that the intervention presents is worth it. Instead, we follow a cost-benefit approach developed by Stevenson and Mayson (*15*), which involves directly comparing the number of pretrial detention days avoided with the number of additional crimes committed. Results from a traditional monetary cost-benefit analysis are presented in the Supplementary Materials and indicate that if society values the damage from incarcerating an individual for 1 day to be greater than $488 (which is only 3% of the higher estimate of the societal cost of a day in jail), then this intervention should be considered cost-effective.

The results from Figs. 2 and 3 indicate that the average treatment group member served 0.29 less days of detention and committed 0.034 more third-degree felony theft crimes than the average control group member. This means that, for the tradeoff presented by this intervention to be undesirable, the cost of a third-degree felony theft charge to society must be at least 8.5 times more than the cost to society of a day in detention (0.29/0.034 = 8.5). Put another way, for this tradeoff to be bad, individuals would have to be willing to spend at least 8.5 days in jail to avoid being the victim of a third-degree felony theft crime. Stevenson and Mayson (*15*) surveyed individuals in the general population and found that the median respondent would only be willing to spend 1 day in jail to avoid being the victim of a burglary. A third-degree felony theft offense is less harmful than a burglary, and thus, these survey results indicate the median individual would be willing to accept the tradeoff the public defender intervention induces. We provide Stevenson and Mayson's (*15*) valuation of the tradeoff between incarceration and burglary merely as a point of reference as individuals, policy-makers, and jurisdictions will have their own valuations of this tradeoff. For simplicity, our analyses of these tradeoffs only use the point estimates from our empirical analysis and are not accounting for the uncertainty in these estimates.

The analysis conducted in this section is constrained to considering the short-term tradeoffs. As noted earlier, the relationship between pretrial detention and rearrest rates might have been neutral or even positive if we had been able to use a longer follow-up window, which would eliminate the need to consider the tradeoff between these two factors.

DISCUSSION

This paper presents experimental evidence that providing public defenders at bail hearings increased the probability of receiving an ROR or nonmonetary release at bail hearings by 21%, reduced

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the probability an individual was in jail 3 days after their bail hearing by 10%, and had no impact on failure to appear rates or the probable cause determination at the preliminary hearing. This evidence is important for constitutional arguments about whether bail hearings should be considered a critical stage requiring a lawyer (*14*). Furthermore, in the absence of this designation, these results should help inform local jurisdictions, who are currently responsible for deciding whether defense counsel will be provided at bail hearings. These results are especially relevant given that recent widespread efforts at the local level to reform the monetary bail system have focused almost exclusively on implementing risk assessment instruments that recommend to judges that they replace monetary bail with supervisory conditions. However, research has found that judges often do not follow these recommendations and continue to set monetary bail (*21*). The results that we find in Allegheny County indicate that, in these situations, providing a public defender at the bail hearing appears to increase concurrence with the risk assessment, which will subsequently help jurisdictions reduce their use of monetary bail and pretrial detention.

For jurisdictions that are concerned with the increase in rearrests for third-degree felony theft charges that arose as a downstream impact of this intervention, our analysis indicates that for the tradeoff between reduced pretrial detention and increased rearrests to be problematic, the cost of a theft charge to society must be at least 8.5 times more than the cost to society of a day in detention. Current survey estimates of how individuals value these costs indicate that this tradeoff should be acceptable for most individuals. Note that, because of the COVID-19 pandemic, we were prevented from evaluating the long-term impact of the intervention on rearrest rates. This is important for future research to consider, as the impact on rearrest rates might have changed if we were able to examine a longer time window for rearrests, potentially nullifying the concern about these tradeoffs.

Last, note that there are many aspects regarding how bail hearings are conducted that vary by jurisdiction. The bail hearing process in Allegheny County does not include prosecutors, does provide judges the use of a risk assessment score, typically does not involve the judge basing their decision on information that they learn from the defendant during the bail hearing, and allows for bail review hearings within a few days of the initial hearing. While none of these components are unique to Allegheny County, there are likely to be many other jurisdictions that have a bail hearing process that differs in important ways than the one we study here. More research in this area is needed to understand the extent to which the results that we find here are generalizable to other jurisdictions with different process components. For example, the fact that bail review hearings (during which a public defender is always present) occur within 3 days of the initial bail hearing in this jurisdiction means that, a priori, the public defender who appears at the initial bail hearing could only have a limited impact on the length of time spent in detention. In jurisdictions where bail review hearings are either not conducted or conducted without a public defender, the provision of public defenders at bail hearings might have a bigger impact on the number of days a defendant was detained pretrial, which, in turn, might affect case outcomes and rearrest outcomes in different and more substantial ways.

Supplementary Materials

This PDF file includes:
Supplementary Materials and Methods
Figs. S1 to S3
Tables S1 to S5
References

REFERENCES AND NOTES

1. L. Hunter, "Fact sheet: what you need to know about ending cash bail" (Center for American Progress, 2020); www.americanprogress.org/article/ending-cash-bail/.
2. S. H. Didwania, The immediate consequences of federal pretrial detention. *Am. Law Econ. Rev.* **22**, 24–74 (2020).
3. W. Dobbie, J. Goldin, C. S. Yang, The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *Am. Econ. Rev.* **108**, 201–240 (2018).
4. A. Gupta, C. Hansman, E. Frenchman, The heavy costs of high bail: evidence from judge randomization. *J. Legal Stud.* **45**, 471–505 (2016).
5. P. Heaton, S. G. Mayson, M. Stevenson, The downstream consequences of misdemeanor pretrial detention. *Stanford Law Rev.* **69**, 711 (2017).
6. E. Leslie, N. G. Pope, The unintended impact of pretrial detention on case outcomes: Evidence from New York city arraignments. *J. Law Econ.* **60**, 529–557 (2017).
7. M. T. Stevenson, Distortion of justice: How the inability to pay bail affects case outcomes. *J. Law Econ. Organ.* **34**, 511–542 (2018).
8. D. Colbert, Prosecution without representation. *Buffalo Law Rev.* **59**, 333–453 (2011).
9. H. Nelson-Major, The Pennsylvania Supreme Court is serious about investigating bail practices in Philly (ACLU of Pennsylvania, 2019).
10. D. Colbert, R. Paternoster, S. Bushway, Do attorneys really matter? The empirical and legal case for the right of counsel at bail. *Cardozo Law Rev.* **23**, 1719 (2011).
11. E. F. Fazio, S. Wexler, T. Foster, M. J. Lowy, D. Sheppard, "Early representation by defense counsel field test: Final evaluation report" (National Institute of Justice, 1984).
12. A. P. Worden, K. Morgan, R. V. Shteynberg, A. Davies, What difference does a lawyer make? Impacts of early counsel on misdemeanor bail decisions and outcomes in rural and small town courts. *Crim. Justice Policy Rev.* **29**, 710–735 (2018).
13. A. P. Worden, R. V. Shteynberg, K. Morgan, A. Davies, The impact of counsel at first appearance on pretrial release in felony arraignments: The case of rural jurisdictions. *Crim. Justice Policy Rev.* **31**, 833–856 (2019).
14. P. Heaton, Enhanced public defense improves pretrial outcomes and reduces racial disparities. *Indiana Law J.* **96**, 701 (2021).
15. M. T. Stevenson, S. G. Mayson, Pretrial detention and the value of liberty. *Va. Law Rev.* **108**, 709 (2022).
16. Allegheny County Analytics, *Public Defense at Preliminary Arraignments Associated with Reduced Jail Bookings and Decreased Disparities* (Allegheny County Analytics, 2020).
17. G. W. Imbens, D. Rubin, *Causal Inference for Statistics, Social, and Biomedical Sciences: An Introduction* (Cambridge Univ. Press, ed. 1, 2015).
18. A. Abadie, S. Athey, G. W. Imbens, J. Wooldridge, When should you adjust standard errors for clustering? *Q. J. Econ.* **138**, 1–35 (2022).
19. L. Beyerstein, Did bail reform really cause a crime wave? An honest look at the numbers (City & State New York, 2020).
20. H. Lybrand, T. Subramaniam, Fact-checking claims bail reform is driving increase in violent crime (CNN Politics, 2021).
21. M. T. Stevenson, Assessing risk assessment in action. *Minnesota Law Rev.* **103**, 303–384 (2018).
22. D. Abrams, C. Rohlfs, Optimal bail and the value of freedom: Evidence from the Philadelphia bail experiment. *Econ. Inq.* **49**, 750–770 (2011).
23. M. A. Cohen, A. R. Piquero, New evidence on the monetary value of saving a high risk youth. *J. Quant. Criminol.* **25**, 25–49 (2009).

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cost-benefit analysis. All three authors discussed the results and jointly wrote the final manuscript. **Competing interests:** The authors declare that they have no competing interests. **Data and materials availability:** All data needed to evaluate the conclusions in the paper are present in the paper and/or Supplementary Materials. The Data Use Agreement (DUA), which was executed between RAND and the Allegheny County Department of Human Services, precludes us from making the individual-level data publicly available. Other researchers wishing to gain access to these data will need to execute a DUA with the Allegheny County Department of Human Services.

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By: *s/ Ryan O'Connor*
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DATED June 13, 2024.

Respectfully Submitted,

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