

UC Berkeley
California Policy Lab

Title

Early Criminal Defense Yields Large Reductions in Pre-Trial Detention

Permalink

<https://escholarship.org/uc/item/5nn3d9nr>

Author

Yarmosky, Alena

Publication Date

2018-06-22



The Impact of Early Representation: An Analysis of the San Francisco Public Defender's Pre-Trial Release Unit

In October 2017, the San Francisco Public Defender's Office piloted the Pre-Trial Release Unit (PRU) to enhance access to pre-arraignment legal representation for indigent arrestees. Using data provided by the Office, this study finds the pilot program doubled the likelihood of release at arraignment – from 14% to 28% – for arrestees who received arrest-responsive interventions from the PRU. The intervention is projected to save approximately 11,200 jail bed-days per year at an annual cost of approximately \$335,000.ⁱ Furthermore, the PRU's efforts to advocate for the dismissal of parole holds reduced pre-trial incarceration by 44%, or an average of 9.5 days, among eligible parolees who were held in custody for violation of their parole orders.

Context

When individuals are arrested, they are often held in jail until their arraignment hearing (the first time a defendant is brought before a judge). At arraignment, the court decides whether an individual should be held in custody or released pre-trial, with or without court supervision. Public defenders traditionally provide representation for indigent defendants starting at arraignment.

However, the pre-arraignment period is critical for a number of reasons: bail is set, formal charges are filed, and case investigation begins. Individuals who can afford a private attorney immediately after booking have access to services that may increase the likelihood that they will be released from jail prior to arraignment, or that their charges will be dropped altogether. Indigent arrestees – who are not provided a public defender until the arraignment hearing – do not receive these benefits.

Pre-trial release can have tremendous impact on defendants' lives and later case proceedings. 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.ⁱⁱ Researchers have found that even a relatively short period in jail pre-trial – as few as two days – correlates with negative outcomes for defendants and for public safety when compared to those defendants released within 24 hours.ⁱⁱⁱ

Overview of the PRU

Against this backdrop, the San Francisco Public Defender's Office began providing pre-arraignment representation to a subset of criminal defendants in October 2017, in a program called the Pre-Trial Release Unit (PRU). San Francisco is among the first counties in the United States to provide pre-arraignment representation to indigent defendants.^{iv}

In addition to the PRU, San Francisco has enacted other important policy and programmatic changes to make pre-trial release more equitable. For example, the San Francisco Pretrial Diversion Project supports pre-trial release through various programs. In 2016, San Francisco adopted the Public Safety Assessment (PSA), which provides judges with an evidence-based risk score to inform release decisions and an alternative to money bail. Initial analysis by participating agencies suggests that the PSA has led to a decrease in the number of pre-trial detainees and the frequency of pre-trial detention.^v

One rationale motivating these multiple initiatives is San Francisco’s effort to avoid the construction of a new jail by reducing the overall county jail population by 83,0202 jail bed-days per year.^{vi} The county was further motivated to establish the PRU as it believed that providing pre-arraignment representation could reduce wealth-based inequities in access to justice.

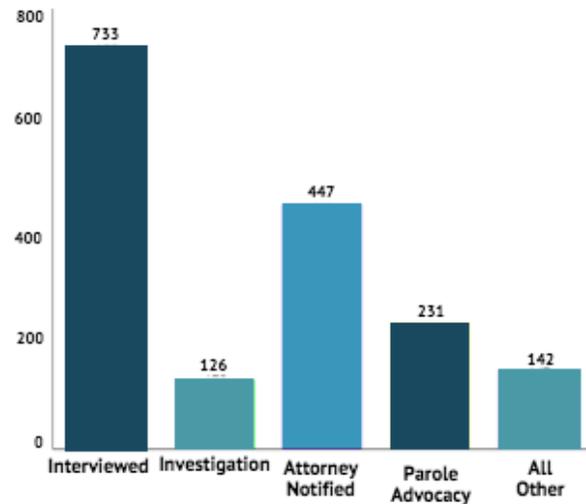
The PRU provides two primary interventions. Clients arrested on new criminal activity may receive “arrest-responsive” interventions designed to help build their case, which include client interviews, case investigation, notification of a prior attorney of record, family/friend contacts, and recruitment of community members to attend arraignment.

The PRU also provides “parole advocacy” when the primary reason behind the detention is violation of one’s parole orders. Parole advocacy involves PRU staff directly contacting agents to advocate for dismissal of clients’ parole holds.

During our five-month study period, the PRU provided services to a subset of indigent defendants (1,024 unique cases). Two attorneys and one investigator provided PRU arrest-responsive services in an average of 42 cases per week. The cost of the program was \$335,000 for the first year. Given resource limitations, PRU staff prioritized defendants with more serious booking charges and more extensive criminal histories, when possible. Parole advocacy was

provided unprioritized to every defendant for which unit staff had time (231 out of 308 eligible parolees, or 75 percent of cases). **Figure 1** provides a breakdown of interventions provided.

Figure 1: PRU Services, by Intervention Type^{vii}



Methodology

To quantitatively assess the impact of the PRU on length of pre-trial incarceration, we generated a dataset of booking, charge, and demographic information for all arrestees booked into county jail during our study period (October 2, 2017 - February 28, 2018) from the Public Defender’s GIDEON case management system. We then merged this booking data with PRU treatment information, coded by intervention type.

To compare outcomes for those who received PRU services to those who did not, we used a propensity score matching approach to minimize differences between treated and non-treated arrestees. The propensity score indicates the likelihood that a client receives arrest-responsive PRU treatment given: age, race, gender, severity of booking charge, 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.

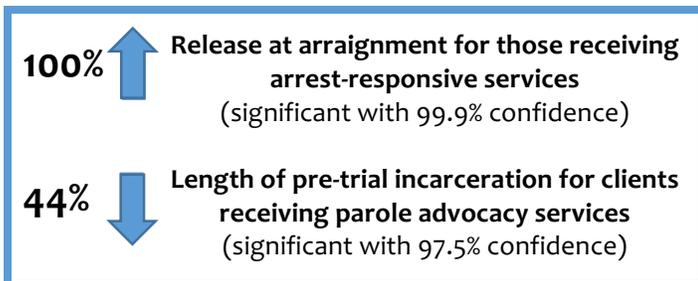
Because there was little selection bias associated with parole advocacy, we used a regression

model to measure impact of parole advocacy on eligible parolees' length of incarceration.^{viii}

Findings

Our findings suggest that the PRU has demonstrated promising initial success in decreasing the length of pre-trial detention.

Specifically, our analysis reveals that **individuals who receive arrest-responsive services 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. Though results were consistent in several robustness tests, confirmation of this result via randomized trial would strengthen the causal nature of the finding.



Interviews with the Public Defender's Office suggest this result may be due to attorneys' increased ability to argue for release at arraignment, including increased access to client information, early case investigation, and the presence of community members at arraignment.

Using a rough extrapolation, we estimate that the PRU's arrest-responsive treatment saved

ⁱ Annual cost retrieved from: Office of the Controller, City & County of San Francisco. (2018). Evaluation of Pilot Programs Funded to Reduce the Jail Population.

ⁱⁱ Dobbie, W. et. al. (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

ⁱⁱⁱ Subramanian, R. et. al. *Incarceration's Front Door: The Misuse of Jails in America*. Vera Institute of Justice, (February 2015).

approximately 4,689 jail bed-days during its initial 5 months of operation or an average of 11,253 jail bed-days saved per year.

Finally, we found that parole advocacy as an independent intervention significantly reduced the length of incarceration. Among eligible parolees, **parole advocacy provided by the PRU reduced the average length of pre-trial incarceration by 44%, or 230 hours (approx. 9.5 days)**. Interviews also suggested that parole advocacy increases the speed at which parole holds are lifted and reduces the number of parole petitions filed.

These promising findings suggest that other jurisdictions may wish to experiment with early representation. We suspect that the impact of early representation may be even larger in a jurisdiction that has not undertaken extensive efforts to reduce pre-trial detention.

Further Research

Our findings indicate that pre-arraignment representation significantly impacts the likelihood of release at arraignment. We recommend that the Public Defender's Office repeat this analysis at the PRU's 18-month mark to confirm our findings with a larger sample size.

The California Policy Lab builds better lives through data-driven policy. We are a project of the University of California, with sites at the Berkeley and Los Angeles campuses.

This research publication reflects the views of the author and not necessarily the views of our funders, our staff, our advisory board, the Regents of the University of California, or the San Francisco Public Defender's Office.

^{iv} Miami-Dade County, FL began providing early representation in 2013.

^v CPL is partnering with the San Francisco Sheriff's Department to analyze the PSA's effect on pre-trial release.

^{vi} Work Group to Re-envision the Jail Replacement Project. (2017). Final Report.

^{vii} The category "all other" includes the following interventions: outside contacts (91 cases), in-person arraignment recruitment (28 cases), in jail referrals (19 cases), and bail advocacy (4 cases).