



Providing Early Legal Counsel Reduces Jail Time and Improves Case Outcomes

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When someone is arrested and cannot afford bail or a private lawyer, they stay in jail and have to wait several days before they are assigned a public defender at arraignment. This time in jail imposes legal, social, and economic costs, from a higher chance of conviction to loss of employment or wages. Low-income individuals bear the brunt of these costs because many cannot afford to post bail to secure their own release, nor can they afford to hire a lawyer to negotiate their release. The County of Santa Clara Public Defender's Office designed a program to address these problems by providing legal counsel to low-income people shortly after their arrest. In early 2020 they piloted the Pre-Arrest Representation and Review (PARR) program using a rotating schedule that offered PARR services one day per week. This quasi-random implementation enabled the research team to estimate the impact receiving PARR services had on release and case outcomes. Participation in the program decreased jail time and convictions, and increased case dismissals. This policy brief is a condensed version of a National Bureau of Economic Research working paper: [The Effect of Pre-Arrest Legal Representation on Criminal Case Outcomes](#).

Key Findings

- Arrested individuals who received PARR services were detained in jail, on average, for 23 fewer days relative to comparable people who did not receive PARR services (6 total days vs. 29 total days). This reduction reflects both reductions in pretrial detention, as well as potential reductions in the probability and length of incarceration imposed at sentencing.
- PARR participants were more than twice as likely to have their cases dismissed altogether, thereby avoiding a criminal conviction. Specifically, receiving PARR services reduced the probability that an individual was convicted by about 75% relative to comparable people whom PARR did not serve.

These findings underscore how providing faster access to legal representation following an arrest can improve case outcomes for low-income individuals.

Pretrial Detention and Representation

Across the United States, court systems detain arrested individuals in jail while they await their arraignment (first appearance in front of a judge) and trial. Many avoid this pretrial detention by posting bail, although low-income arrestees may not be able to afford the bail terms. Faced with remaining in jail, many agree to plea deals and accept a criminal conviction in order to get out sooner. By contrast, wealthier individuals can hire a private attorney soon after arrest, who can negotiate with the prosecutors to eliminate bail requirements, or even have the case dropped.

Public defenders' offices typically provide legal counsel to individuals who cannot afford their own defense attorneys. Traditionally, public defenders don't meet their clients until the time of first arraignment, which takes place up to 5 days after arrest. A public defender typically has only a few minutes to meet a client before appearing in front of the judge, and they are often also representing many new clients at a single arraignment session. This inequitable access to early legal representation may contribute to well-documented gaps between more- and less-affluent arrestees in pretrial detention rates and time spent in jail. However, little empirical evidence exists to inform policymakers on the potential benefits of providing arrested individuals with access to legal counsel earlier in the criminal process. This study aims to bridge that gap.

The PARR Program

The County of Santa Clara's Public Defender's Office designed their Pre-Arraignment Representation and Review (PARR) program to facilitate faster pretrial release for their clients. Starting in January 2020, public defenders began meeting with eligible clients shortly after their arrest.¹ During these meetings, the lawyers gather details about the client's case, advocate for release from detention, and offer support services, such as contacting family members, employers, and other community members. Eligible clients include only those booked on relatively serious felony charges (such as burglary or assault), who face the greatest risk of pretrial detention and post-sentencing incarceration without PARR intervention.

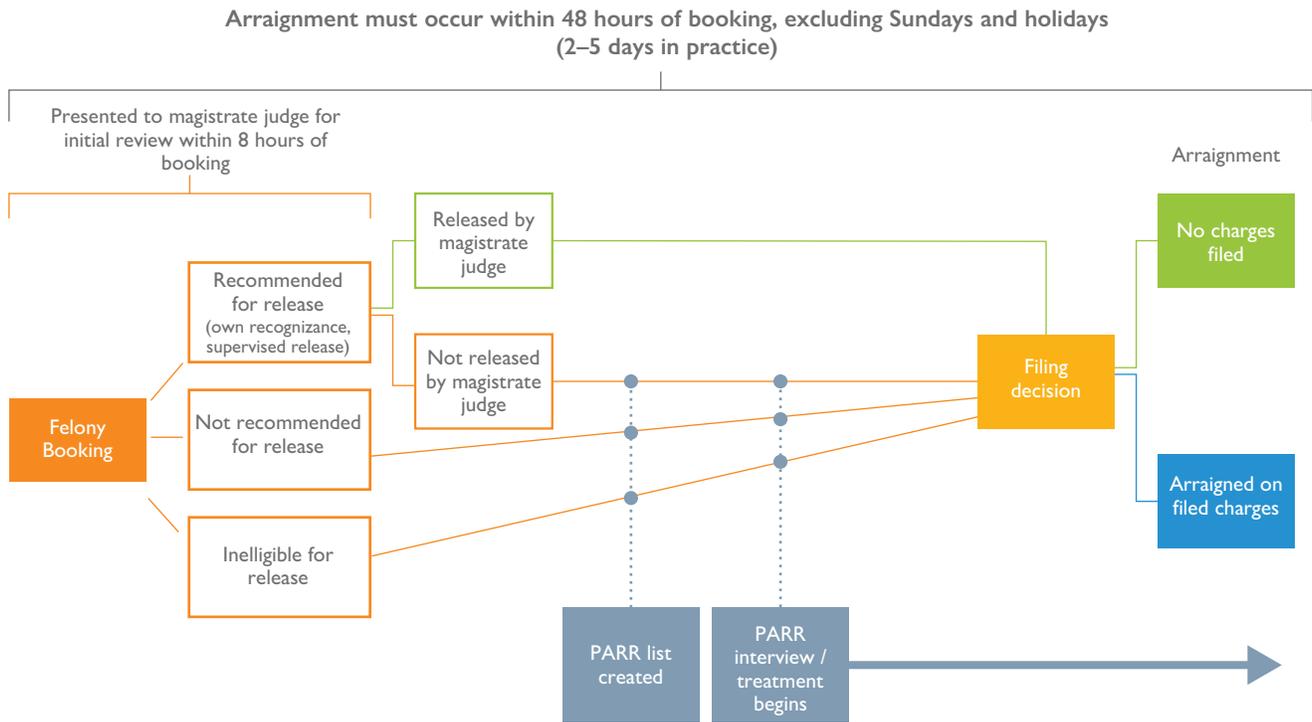
The Study

In its pilot phase from January 3, 2020, to March 13, 2020, PARR did not have capacity to serve all eligible defendants. Therefore, the PARR unit provided services only for individuals booked on one day of the week and rotated that day across weeks. This rotating schedule made access to PARR effectively random across individuals arrested on different days of the week. We use the rotating schedule to estimate the causal impact of the program on release and case outcomes, including pretrial release, time to release, plea bargaining, and conviction. We compare individuals who received PARR services because they happened to be booked on designated PARR days (the "treated" group) to otherwise similar individuals who happened to be booked on non-PARR days and therefore did not receive PARR services (the "control" group).²

During the pilot period, eligible individuals booked on designated PARR days met with a PARR attorney shortly after their arrest, usually within 48 hours ([Figure 1](#)). These individuals met both the case eligibility rules (such as being charged with a serious felony) and had not been released within 24 hours of their booking, either by the magistrate judge or by posting bail.

In contrast, individuals who were booked on non-PARR days met with a public defender for the first time at their arraignment (up to five days after arrest) or tried to retain private counsel. The PARR attorneys were not able to meet with all eligible individuals booked on PARR days. During the pilot period, 600 people were booked into jail who appeared eligible for PARR. However, only 101 were booked on the PARR days, and 40 people ultimately received PARR services.

FIGURE 1. Flow of cases from booking to arraignment



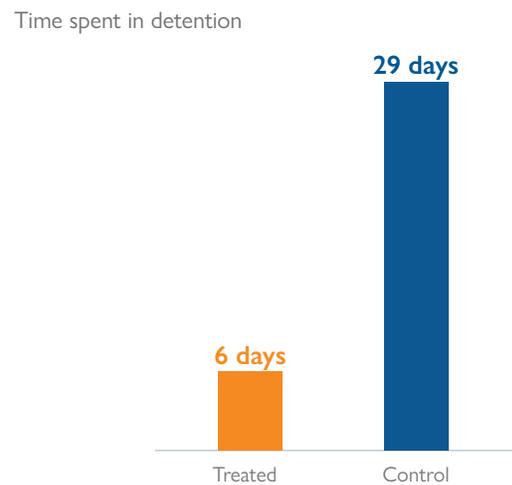
We use a two-stage regression model to identify the causal effect of PARR on individual outcomes. This approach allows us to compare individuals who received PARR after being booked on PARR days to individuals who would likely have received PARR had they been booked on a PARR day.

Findings

1. PARR Participants spent less time in jail

The average person who received PARR services as a result of being booked on a PARR day spent 6 total days in jail (pre- and post-trial), whereas comparable people booked on non-PARR days spent 29 total days in jail (Figure 2).³ In other words, PARR participants spent 23 fewer days in jail, on average. This 79% reduction suggests PARR achieved its primary goal of securing timely earlier releases from pretrial detention for low-income individuals.

FIGURE 2. PARR Participants spent 23 fewer days in jail, on average



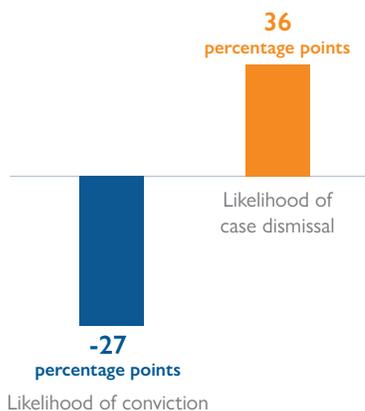
Source: Authors' calculations using data from Santa Clara County's Case Management System.

Note: Bars report the mean number of days elapsed between booking and final release from detention among treated-complier ("treated") and control-complier ("control") individuals.

2. PARR Participants experienced better case outcomes

Receiving PARR services reduced the probability that an individual was convicted by 27 percentage points, or about 75% relative to comparable people whom PARR did not serve. Likewise, PARR participants were 132% — or 36 percentage points — more likely to see their cases dismissed by the prosecution than non-PARR participants (Figure 3).

FIGURE 3. PARR Participants had a 27 percentage point lower likelihood of being convicted and a 36 percentage point higher likelihood of having their case dismissed



Source: Authors' calculations using data from Santa Clara County's Case Management System.

Note: $p < 0.05$ for both bars. Each bar reports an estimate from a separate regression specification of the causal effect of PARR on the probability of conviction and case dismissal. Among similar individuals booked on non-PARR days, 36% were convicted, while 27% saw their cases dismissed.

These findings could stem from two effects. First, by securing a faster pretrial release from custody, PARR representation could put clients in a stronger position during plea bargaining, leading PARR participants to reject plea deals that involve admissions of guilt and convictions. This hypothesis is supported by numerous prior studies conducted in other jurisdictions, which have consistently found that pretrial detention increases the likelihood that defendants enter guilty pleas.⁴

Second, because they meet with people earlier than they normally would before an arraignment, PARR attorneys could directly shape case outcomes by building a stronger defense, for example by finding exculpatory evidence. These explanations are not mutually exclusive. However, our small sample makes it difficult to disentangle their relative importance.

Discussion

Criminal justice research highlights the myriad ways in which an inability to pay for legal representation or for bail can adversely affect a person's legal outcomes and economic well-being. The PARR program addresses this challenge by providing timely, pre-arraignment legal counsel to arrested individuals who cannot afford their own attorney. We find compelling causal evidence that PARR representation for indigent arrestees substantially reduces the amount of time they spend in jail and improves their overall case outcomes.

The PARR program continues to serve low-income defendants in Santa Clara County. Since the 2020 pilot, the PARR team has grown and now serves about 30% of felony cases in the public defender's office each year, with plans for additional expansion. Understanding how effectively these services operate at scale remains a priority for the County of Santa Clara Public Defender's Office and we continue to work with them on this program. In future work, we plan to evaluate the current iteration of PARR, and more closely examine different explanations for the program's success, particularly at improving case dispositions. Does a faster release improve an individual's negotiating position during plea bargaining? Does extra time for attorneys to investigate before arraignment play a role? Do connections to support services such as social workers and mental health services make a difference for client outcomes? The answers to these questions will help guide future efforts to increase the efficacy of public defenders' offices and improve equity in the criminal justice system.

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Methodology

Sample restrictions. In addition to the eligibility rules mentioned in the brief, PARR restricted eligibility in other ways as well, in order to focus on cases with a chance at pretrial release. The program excluded people with outstanding warrants, those booked on manslaughter or rape charges, those cited and immediately released from custody, and those booked but released too soon for a PARR attorney to meet with them in jail. We mirror these eligibility restrictions when constructing our research sample.

Research design. Formally, we use the fact that a person was (not) booked on a PARR day as an instrumental variable for PARR access. Since the PARR calendar was drawn up before the pilot began, and people were unlikely to have chosen their date of arrest with the goal of getting PARR representation, we argue that whether a person is booked on a PARR day is effectively random. Encouragingly, we do not find any systematic differences between people booked on PARR and non-PARR days that would undermine this assumption. In our companion [working paper](#), we discuss these identification assumptions and econometric design in more detail.

This research publication reflects the views of the authors and not necessarily the views of our funders, our staff, our advisory board, the County of Santa Clara Public Defender's Office, or the Regents of the University of California.

Endnotes

- 1 The term "indigent person" is defined by California's business and professions code (section 6210-6228) and is based on individual income relative to the federal current poverty threshold.
- 2 We find no differences between the treatment and control group in demographic composition (race, ethnicity, gender, age) or case characteristics (charge severity, charge type, number of charges).
- 3 "Control-complier" individuals—those who would likely have received PARR services had they been booked on PARR days—spent roughly 23 more days in jail on average than "treated-complier" individuals, those who only received PARR by virtue of being booked on a PARR day.
- 4 See for example: 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.; 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.