

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 Sheriff'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

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 Sheriff'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 aids 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

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 Sheriff 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

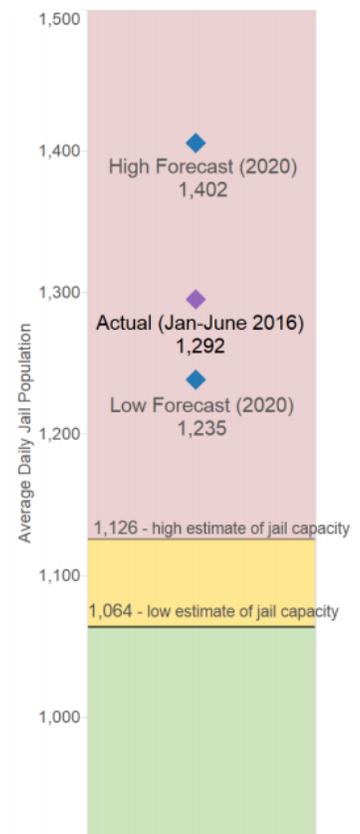
To assess the reduction required, the Work Group compared the total number of usable beds in San Francisco’s jail system to the average daily jail population in the first six months of 2016. They concluded that in order to allow for the permanent closure of County Jails #3 and #4, the jail population 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}

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)

Figure 1: Jail Population vs. Capacity



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

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).

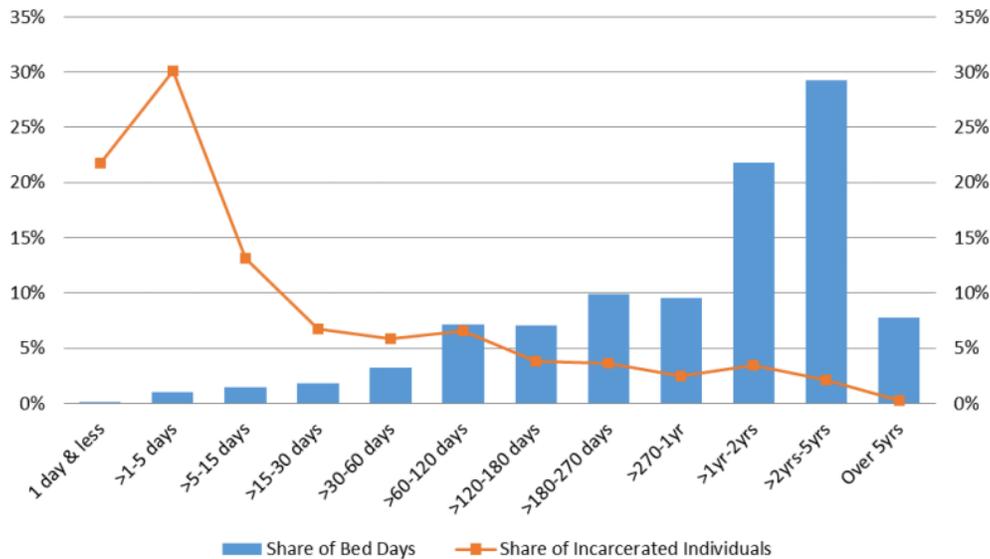
¹⁷ Update to the Jail Population Forecast (Rep.). (2015). City Services Auditor, Office of the Controller, City and County of San Francisco.

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.

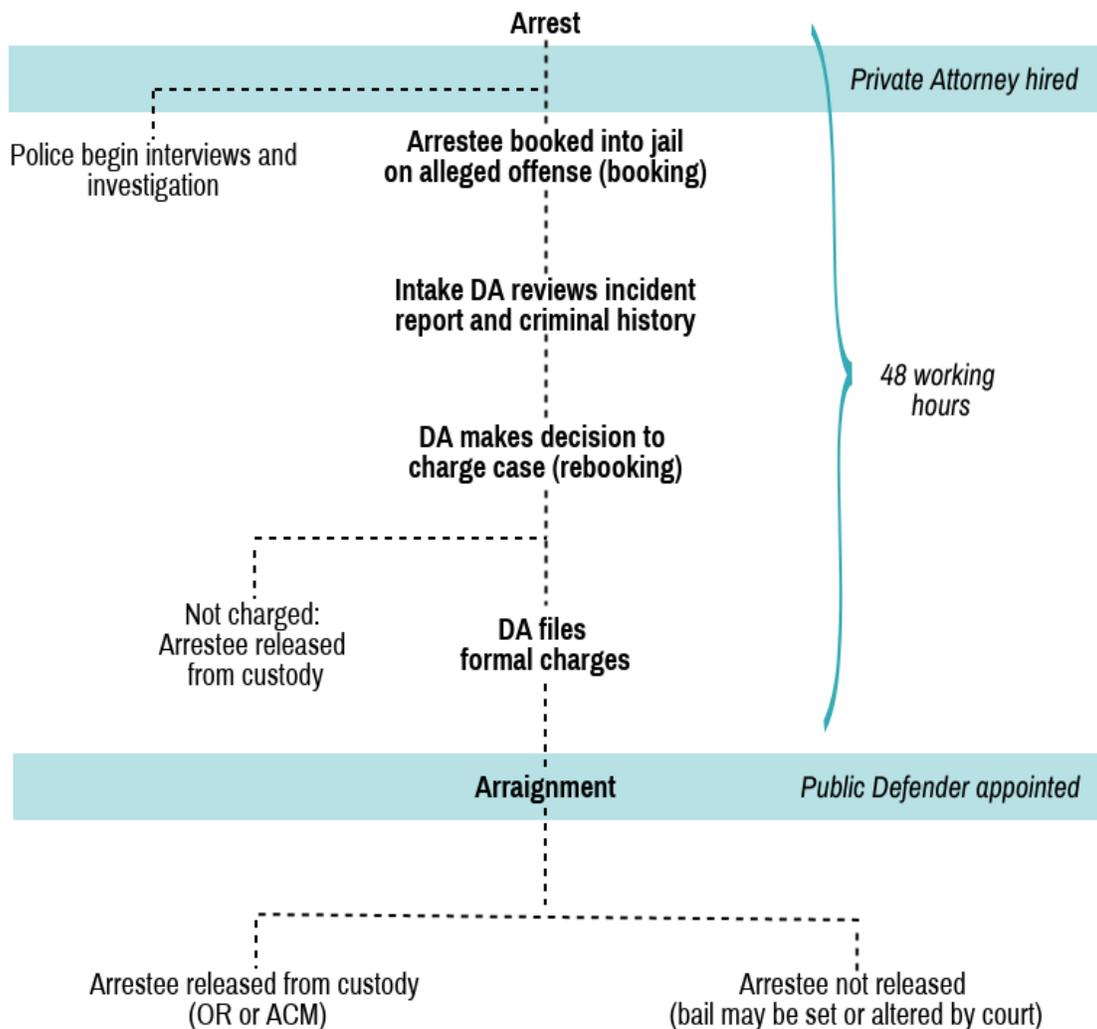
The Pre-Trial Release Unit was launched on October 2, 2017, supported by \$355,000 in funding from the Mayor’s FY 2017 – 2018 budget. The goals of the unit reflect the twin priorities of its founding: 1) rectify wealth disparities in pre-trial outcomes, and 2) reduce San Francisco’s jail population.

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

Wealth Disparities in Pre-Arrest Representation

Significant wealth disparities exist in access to pre-arrest 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-arrest 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.

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-Arrest Release

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

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.

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)

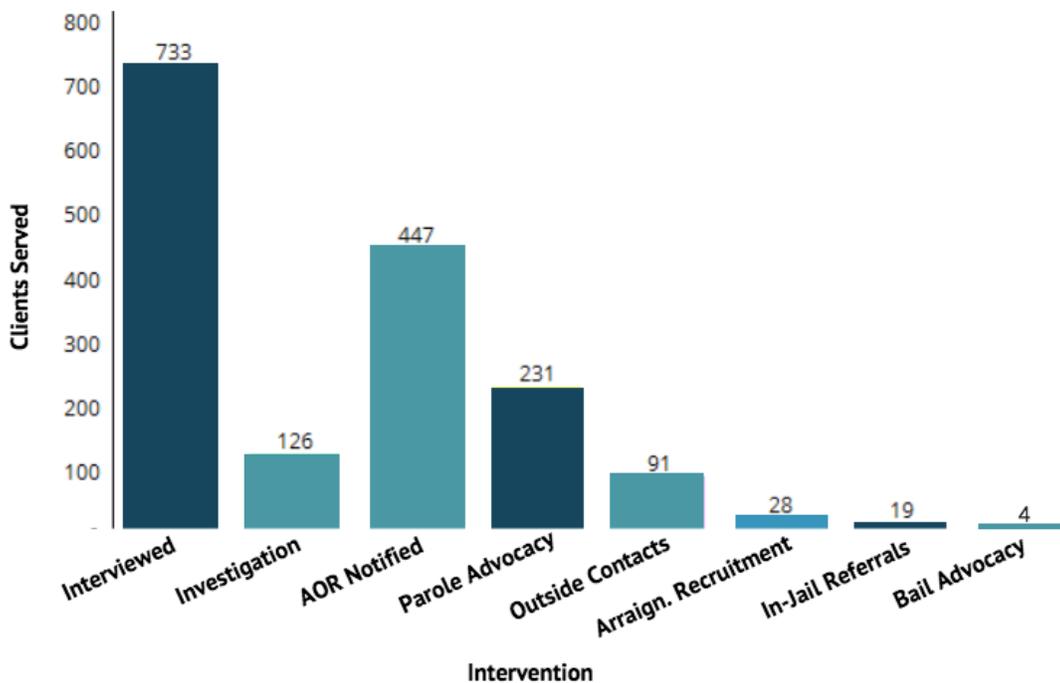
Family/Friend Contacts: Arrestees are often unable to alert their friends or family members upon being booked into jail. Outside assistance can be critical, however; If contacted, a clients' friends/families can help to coordinate childcare, ensure housing is maintained, communicate work absences to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

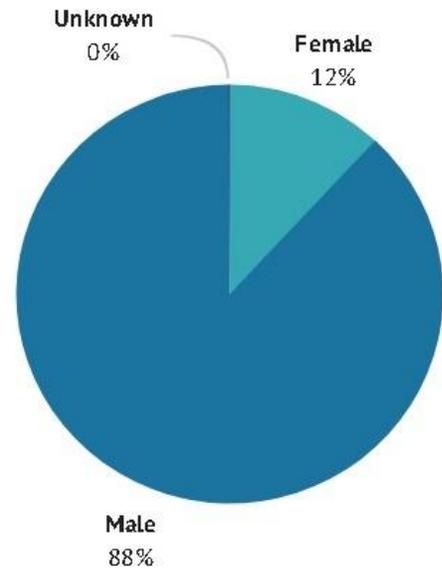
It is important to note that PRU intervention falls into two primary categories: arrest-responsive intervention, which includes pre-arraignment interviews, case investigation, attorney notification, contacts to family or friends, and pre-arraignment recruitment; and parole advocacy, which is provided 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.

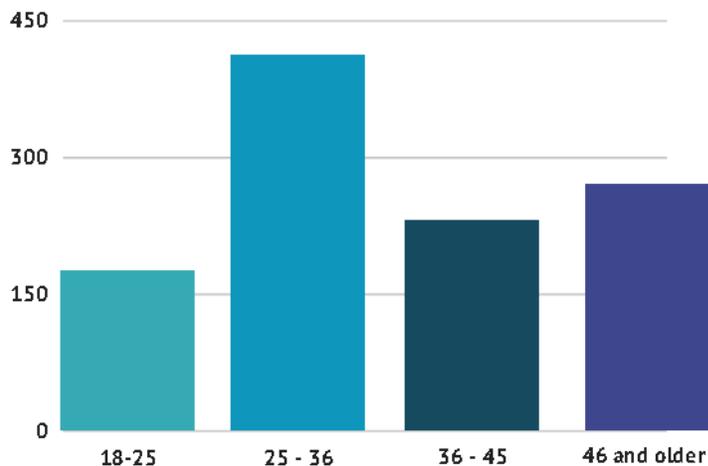
It is important to note that while the PRU represented at least 2 clients who identify as transgender, this information is not provided in gender data obtained from the Court Management System (CMS). Until February 20th of this year, the San Francisco Sherriff's Department classified jailed individuals 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.

Figure 5: PRU Clients, by Gender



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 25 percent 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

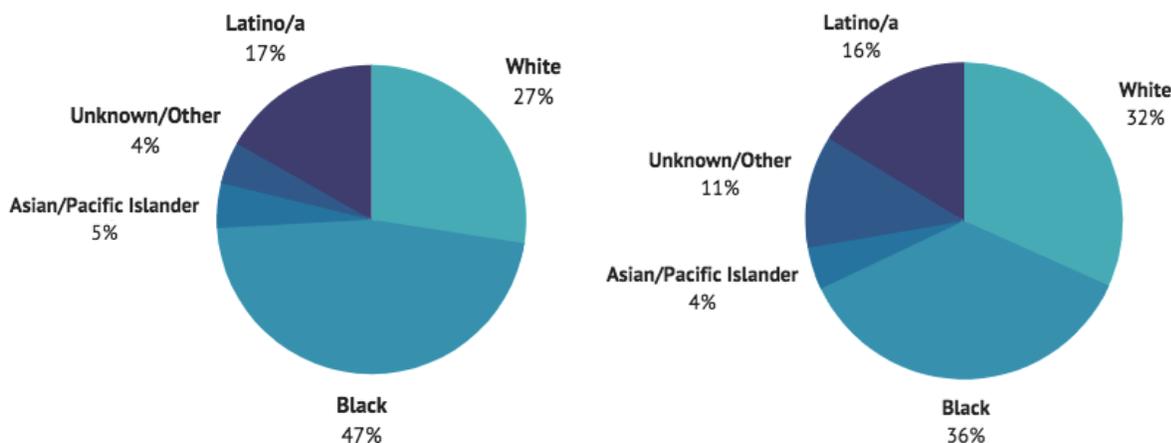


Using data accessed through the CMS/Gideon systems, we determined that the racial demographics of PRU clients largely reflect the racial makeup of the total jail population (see Figure 7). Approximately 27 percent of PRU clients are white, 47 percent are black, 17 percent are Latino/a, 5 percent are 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.

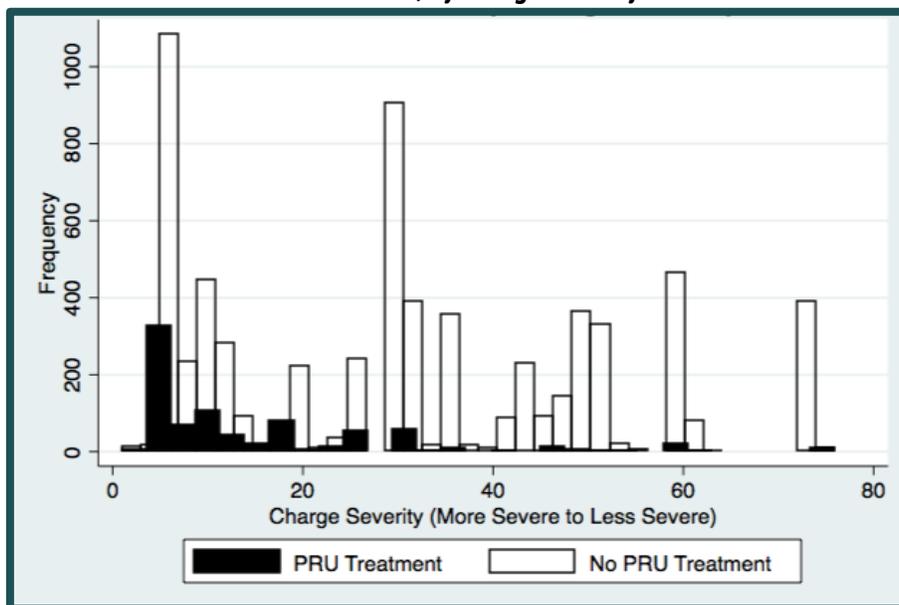
⁵⁵ Clients’ top charge is determined by a Public Defender clerk, who reviews all charges and chooses the most severe (“top”) offense to enter into the Gideon database. While there is potential for human error here, we were unable to access additional client charges in an operational form.

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
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.

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)
 - o Director, Specialty Courts & Reentry Programs
 - o 2 Deputy Public Defenders, Pre-Trial Release Unit
 - o Investigator, Pre-Trial Release Unit
- Attorney Interviews (6)
 - o 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)
 - o 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

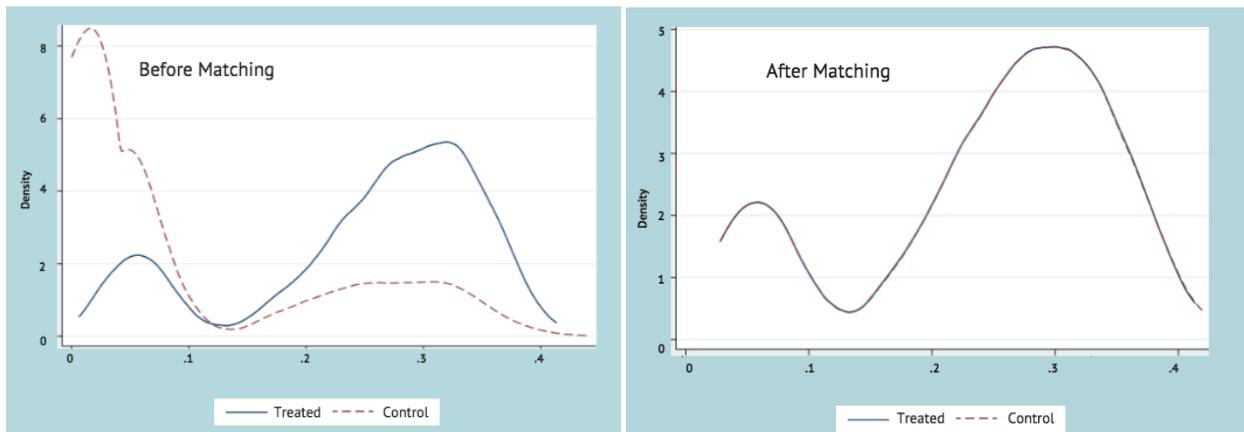


Figure 11: Effect of Treatment on Likelihood of Release at Arraignment:

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

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).

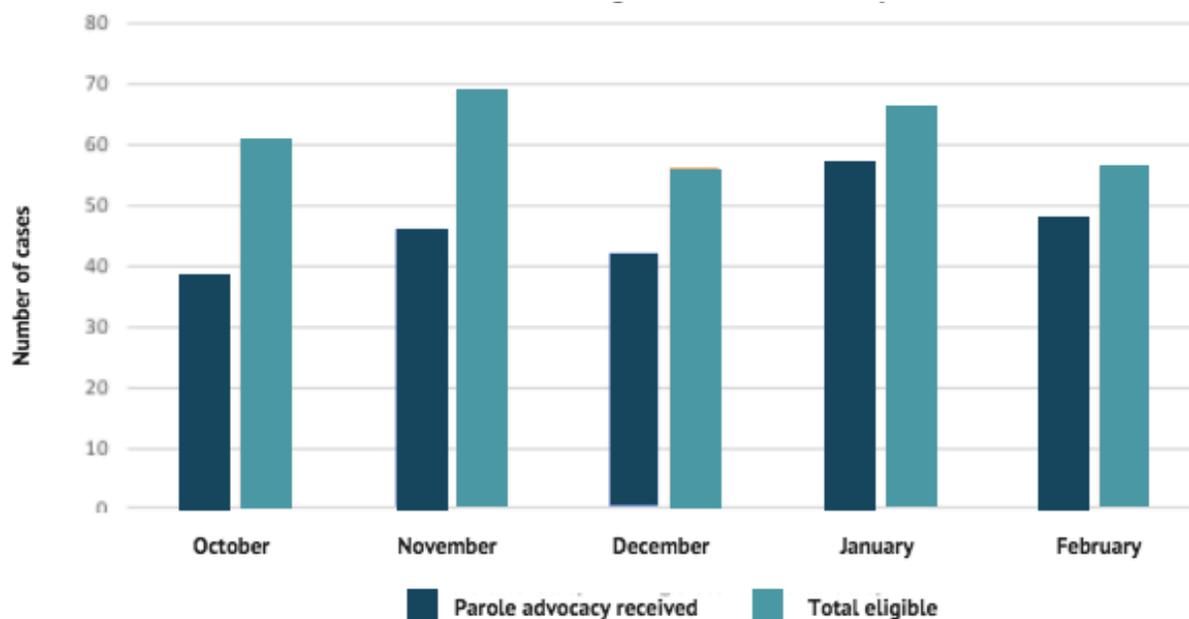
⁶⁶ Deputy Public Defenders, Felony Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April)

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

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-Arrest 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 ailments. 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 the 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

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 Sheriff 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

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:

$$(.28 * 369.08) + (.72 * 1320.36) = \underline{1,054 \text{ avg. hours if treated}}$$

$$(.14 * 369.08) + (.86 * 1320.36) = \underline{1,187.18 \text{ avg. hours if non-treated}}$$

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.

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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.

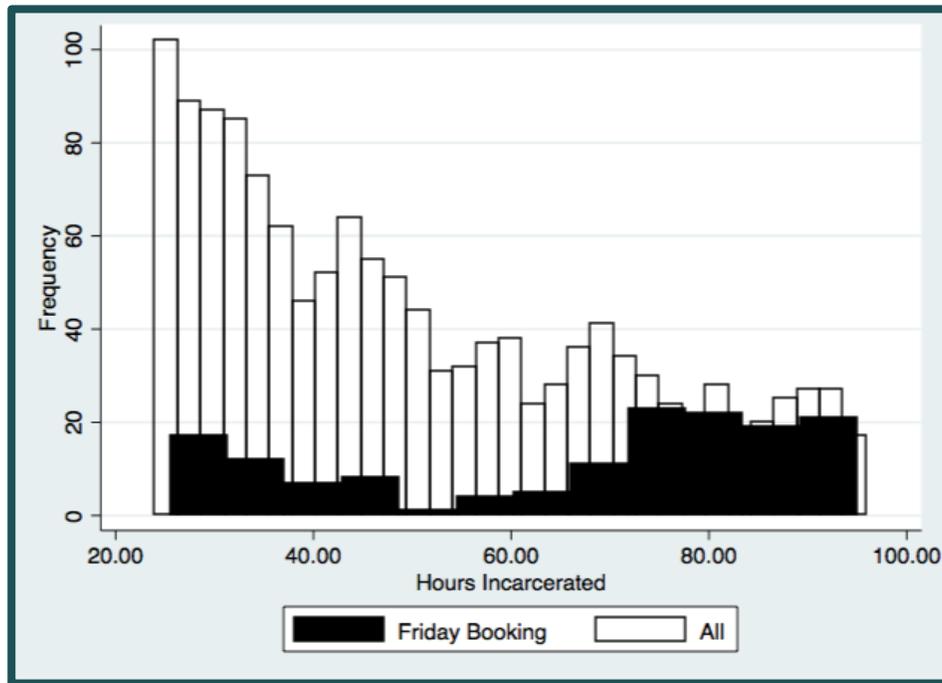
⁸⁹ Final Report, Work Group to Re-envision the Jail Replacement Project. (2017).

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

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)