



## **OFFICE OF THE PUBLIC DEFENDER MEASURE X PROPOSAL FRONT-END ADVOCACY TEAMS**

The Public Defender's Office proposes an innovative program to reduce pretrial incarceration by connecting those who are recently arrested with legal advocacy teams. These holistic, multi-disciplinary **Front-End Advocacy Teams (FEATs)** will include attorneys, social workers, investigators, paralegals, and clerical support. This will allow those who cannot afford private attorneys to have access to legal representation, mitigation expertise, early investigation, and robust case management to connect them with community-based resources. This early intervention approach will reduce days in jail, increase connection to community-based resources, and increase stability for community members and families impacted by the criminal legal system. We request funding for three teams, one to serve each of the three geographic judicial regions (Central, East and West). The total cost will be roughly \$2M, which includes potential funding for housing navigation and other reentry services.

### **Justification**

The Contra Costa County Office of the Public Defender is the front-line defense for indigent persons who are cited, arrested, detained in custody and accused of criminal behavior in Contra Costa County. We provide vigorous, client-centered advocacy to those we represent. We believe justice can only be served when the most vulnerable among us are treated with the same attention, dignity, and respect as the most powerful. We represent clients in a range of cases from low level misdemeanors to serious felonies. Most persons brought into the criminal legal system in Contra Costa are represented by Public Defenders. Last year, approximately 15,447 cases were referred to our office for legal representation.

In recent years the Office of the Public Defender has moved toward a practice that focuses on holistic defense. The holistic defense model is an interdisciplinary model that looks beyond an individual's immediate legal service needs and engages attorneys as well as social workers and non-lawyer specialists to assist with issues such as housing, mental health treatment,

immigration, and public benefits. It also includes working with clients to alleviate the long-lasting consequences of an arrest or conviction by assisting with record clearing and sentence-reduction. This model differs from traditional public defense by addressing underlying issues that contribute to a client's criminal legal system involvement.<sup>1</sup> Holistic defense has been found to reduce jail populations, reduce future criminal legal system involvement, and to improve case outcomes and efficiency.<sup>2</sup>

### **Funding Gap – Why Measure X Funds are Necessary**

Public Defender services are a mandated function funded by the county. However, this funding mandate is limited to providing an attorney to defend the accused person once charges are filed against them in court. Holistic services, such as those described in this proposal, are not traditionally funded at the county level. Rather, in order to provide the type of innovative interventions and support that can keep our clients from returning to the criminal system, we have had to look to grant funding and other avenues of support.

This approach has proved successful. In recent years, our office has launched innovative grant-funded programs designed to expand early access to attorneys for our misdemeanor clients who are not in jail. These efforts have greatly reduced the number of persons who end up in jail due to a missed court date. In 2016, we launched the Early Representation Program (EarlyRep) to help provide legal representation from the moment of law enforcement contact in misdemeanor cases. EarlyRep has been very successful at lowering the rate of failure to appear in court, reducing bench warrants, and providing legal assistance beyond traditional public defense. In addition, last year we launched the Holistic Intervention Partnership (HIP), a public-private partnership that provides support for our misdemeanor clients by connecting them with funded housing and reentry services.

With funding from Measure X, we hope to extend similar early advocacy and holistic support services to those held in custody in our jails.

### **The Need for Front-End Advocacy for Persons in Custody**

The vast majority of those in Contra Costa's jails are being held pretrial and have not yet been convicted or sentenced.<sup>3</sup> In working with our clients, we often find that those with mental health issues and the unhoused do not get

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<sup>1</sup> Cynthia G. Lee, Brian J. Ostrom, & Matthew Kleiman, *The Measure of Good Lawyering: Evaluating Holistic Defense in Practice*, 78 ALB. L. REV. 1215 (2014/2015).

<sup>2</sup> Dottie Carmichael, Nicholas Davis, Heather Caspers, & George Naufal, *Indigent Defense Spending and Cost Containment in Texas*. Public Policy Research Institute, Texas A&M University (2018).

<sup>3</sup> On July 7, 2020, 88.5% of persons in county jail were awaiting trial or sentencing according to CCSO data.

released pretrial or that they are in custody longer than needed in order to coordinate a release plan that the court finds suitable. The delay between arrest and arraignment and the lack of social work support for those recently arrested impacts our office's ability to quickly coordinate a robust release plan by the first court date.

Research shows that even a few days in custody can have a significant destabilizing effect for those living on the margins and can result in a loss of employment and housing, mental health decompensation, and other serious negative outcomes.<sup>4</sup> Legal outcomes are also negatively impacted by being kept in jail. Persons kept in custody while their case moves through the court system plead guilty at higher rates, are more likely to be convicted, and face longer sentences than similarly charged persons who are released from custody.<sup>5</sup> For these reasons, every effort must be made to advocate effectively and early for an individual's release from custody.

The time between arrest and the first court date is critical to this effort. In Contra Costa County, approximately 1830 individuals are booked into the county jail each month.<sup>6</sup> After individuals are arrested, many are held in jail for 3-5 days before they see a judge. When they first come before a judge, the court will decide whether an individual should be held in custody or released while their case is working its way through the system. Our office, like most Public Defender's Offices, cannot provide representation for individuals until they are brought into court, usually after individual has been in jail for several days. During this critical period, law enforcement often continues their investigations and the District Attorney's office reviews cases for filing, while the accused wait in custody without access to counsel or other resources.

Representation for those accused of a crime should start right away for indigent persons who cannot afford to hire an attorney. As with detained persons with means who can afford to hire a private attorney, public defender clients should have options for release immediately reviewed and mitigation workups begin at the time of arrest.

**To address this gap in services between arrest and first court date, the Public Defender's Office proposes an innovative pilot program to reduce pretrial incarceration by connecting those who are recently arrested with legal advocacy teams. These holistic, multi-disciplinary advocacy teams will include attorneys, social workers, investigators, paralegals, and clerical support. This will allow those who cannot afford**

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<sup>4</sup> Subramanian, R. et. al. Incarceration's Front Door: The Misuse of Jails in America. Vera Institute of Justice, (February 2015).

<sup>5</sup> California Policy Lab Policy Brief, June 2018, Alena Yarmosky, <https://www.capolicylab.org/wp-content/uploads/2018/06/Policy-Brief-Early-Representation-Alena-Yarmosky.pdf>.

<sup>6</sup> Monthly average jail bookings according to CCSO data for 2019.

**private attorneys to have access to legal representation, mitigation expertise, early investigation, immigration resources and robust case management to connect them with community-based resources. This early intervention approach will reduce days in jail, increase connection to community-based resources, and increase stability for community members and families who are impacted by the criminal legal system.**

Providing early access to counsel and advocacy support for the indigent in our jails has proven very effective at reducing pretrial incarceration in other jurisdictions. For example, in 2017, San Francisco Public Defender's Office launched a Pre-Trial Release Unit to provide legal advice and advocacy to arrestees between booking and arraignment. This pilot program was found to have saved nearly a million dollars of taxpayer money and thousands of jail beds during its first five months of operation.<sup>7</sup> Having pre-arraignment representation doubled the likelihood of release at arraignment, and substantially reduced the time that arrestees on parole were kept in custody.

### **The Model – Front-End Advocacy Teams**

This front-end representation effort will require a holistic, multidisciplinary team that will provide attorney representation by meeting with clients in the jail, contacting family members and support persons, working to gather mitigating information to encourage releases, preparing for bail hearings, and beginning critical early investigation in cases.

Our front-end advocacy team will consist of the following members:

Attorney	Provides direct legal representation, prepares for bail and release hearings, connects with family members and support persons to explain the legal process.
Social Worker	Provides case management by conducting trauma-informed needs assessments and providing linkage to community-based services. This includes locating housing/programming options for release, coordinating a transition plan, and supporting clients during and after release.
Investigator	Conducts critical front-end investigation to gather background information and supporting documentation. Also ensures evidence is collected including any video footage and witness interviews that may help in determining the case outcome.
Clerical and Legal Assistant	Conduct intake interviews at the jail, locate and review client case records, and provide administrative support to the advocacy team.

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<sup>7</sup> An Analysis of the San Francisco Public Defender's Pre-Trial Release Unit, June 2018, Alena Yarmosky, <http://public.sfpdr.com/wp-content/uploads/sites/2/2018/05/The-Impact-of-Early-Representation-PRU-Evaluation-Final-Report-5.11.18.pdf>.

Some of the common tasks the team members will conduct will include:

- Contacting family members and support persons
- Legal advocacy regarding bail motions including gathering information to document a client's inability to pay money bail
- Locating appropriate community-based resources including residential placement, SUD programs, and mental health treatment
- Gathering documentation regarding employment and assisting in communicating with employers
- Assisting with applications for benefits or the reinstatement of benefits

### **Impact on Racial Disparities in the Criminal System**

In Contra Costa County, as in much of the nation, there are higher arrest and pretrial detention rates for those who are Black and Latino. Black residents of Contra Costa are held in pretrial detention at 7 times the rate of White residents and Latino residents are held in pretrial detention at 2.5 times the rate of Whites.<sup>8</sup> Data collected by the county shows that persons in our jails awaiting trial are 40% Black, 20% Latinx, and 34% white (the county population as a whole is 10% Black, 25% Latinx and 46% white). For individuals held in pretrial confinement, this is often due to an inability to pay money bail required for release and to court decisions regarding bail. With front-end advocacy, we will be able to directly reduce these disparities.

### **Making a Difference for Persons with Mental Health and Substance Use Disorders**

Providing pre-arraignment advocacy teams will directly address the crisis of mentally ill individuals in our local jails by connecting individuals with mental health resources to provide crisis stabilization. Front-end advocacy will allow for the early diversion of persons with mental health related cases from the county jails and away from our criminal legal system. Our pretrial advocacy team will work to reduce the number of mentally ill individuals in our local jails and to find appropriate release options for those who suffer from a mental illness.

Contra Costa County has committed to addressing the high rates of mental illness among individuals incarcerated locally by joining the Stepping

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<sup>8</sup> Racial Justice Task Force – Final Report and Recommendations to the Contra Costa County Board of Supervisors, June 2018, at page 7.

Up Initiative. The Stepping Up Initiative has explored the problem of mentally ill individuals in our county jails and frames it as follows:

“Approximately 2 million times each year, people who have serious mental illnesses are admitted to jails across the nation. Almost three-quarters of these adults also have drug and alcohol use problems. Once incarcerated, individuals with mental illnesses tend to stay longer in jail and upon release are at a higher risk of returning to incarceration than those without these illnesses.

The human toll of this problem—and its cost to taxpayers—is staggering. Jails spend two to three times more money on adults with mental illnesses that require intervention than on those without those needs, yet often do not see improvements to public safety or these individuals’ health. Although counties have made tremendous efforts to address this problem, they are often thwarted by significant obstacles, including operating with minimal resources and needing better coordination between criminal justice, mental health, substance use treatment, and other agencies. Without change, large numbers of people with mental illnesses will continue to cycle through the criminal justice system, often resulting in tragic outcomes for these individuals and their families, missed opportunities for connections to treatment, inefficient use of funding, and a failure to improve public safety.”<sup>9</sup>

According to detention mental health reporting, roughly 50% of individuals incarcerated in Contra Costa County are living with mental health challenges and/or substance use disorders. Indeed, many of those in our jails are in custody due to a mental health break or because of a substance use disorder. Our front-end advocacy teams will work to connect these persons with treatment options and locate placements in substance use disorder or dual diagnosis programs. Our team will work to coordinate transportation to programs upon release and ensure transitions from jail to community are properly handled.

Specifically, the front-end advocacy team will:

- Connect clients in custody with community mental health case managers and outpatient clinics.
- Leverage any existing services our clients already have in place and engage service providers into the current release planning.
- Help encourage a continuity of mental health treatment and keep existing providers connected to their patients. For those who are not connected with community-based services, we will work to connect them with community-based resources upon release.

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<sup>9</sup> <https://stepuptogether.org/the-problem>

- Connect clients with benefits, reinstate any existing benefits, and leverage any private insurance plans clients are eligible for.
- Ensure that any prescribed medication is provided for those who are released and that they are released with a future appointment with a community mental health provider.
- Negotiate with the DA's office and provide mitigating information much closer to the time of arrest to divert persons out of the system before a criminal charge is filed.
- Expedite the screening for mental health diversion, which now takes 2-3 months.
- Identify and begin to work with those who are potentially incompetent to stand trial earlier in the process.

### **Making a Difference for Persons Facing Immigration Consequences**

Approximately 14% of Contra Costa Public Defender clients are non-citizens.<sup>10</sup> For these individuals time is of the essence in getting access to immigrant legal services and deportation defense attorneys. We will connect these clients and their families from the point of arrest with legal services for immigrants and other community-based resources through Stand Together Contra Costa (STCC).

### **Conclusion**

A countywide investment in front-end, holistic advocacy for newly incarcerated persons will further the goals of Measure X in multiple ways. The population targeted for front-end advocacy are the most vulnerable members of our community: persons of color, persons living in poverty and persons living with mental health challenges and substance use disorders. The focus on a holistic approach to support detained persons, at the earliest possible point of intervention, will enhance public safety by fostering a connection to services and community support for those in our jails and their families. This early support can greatly improve the chances that an individual will come out of the process with the hope of permanently avoiding a return to custody. The \$2M requested is a small ask with the potential for radically transforming our approach to legal advocacy and saving hundreds of lives.

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<sup>10</sup> Based on internal Public Defender's Office data from 2019.



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

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

### Context

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

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

Pre-trial release can have tremendous impact on defendants' lives and later case proceedings. Defendants who are incarcerated pre-trial plead guilty at higher rates, are more likely to be convicted, and face longer sentences than similarly-situated releasees.<sup>ii</sup> Researchers have found that even a relatively short period in jail pre-trial – as few as two days – correlates with negative outcomes for defendants and for public safety when compared to those defendants released within 24 hours.<sup>iii</sup>

### Overview of the PRU

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



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

One rationale motivating these multiple initiatives is San Francisco's effort to avoid the construction of a new jail by reducing the overall county jail population by 83,020 jail bed-days per year.<sup>vi</sup> The county was further motivated to establish the PRU as it believed that providing pre-arraignment representation could reduce wealth-based inequities in access to justice.

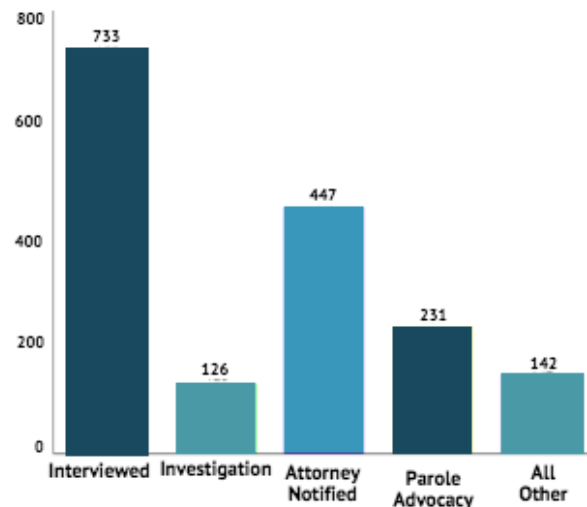
The PRU provides two primary interventions. Clients arrested on new criminal activity may receive "arrest-responsive" interventions designed to help build their case, which include client interviews, case investigation, notification of a prior attorney of record, family/friend contacts, and recruitment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

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

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

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

**Figure 1: PRU Services, by Intervention Type<sup>vii</sup>**



## Methodology

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

To compare outcomes for those who received PRU services to those who did not, we used a propensity score matching approach to minimize differences between treated and non-treated arrestees. The propensity score indicates the likelihood that a client receives arrest-responsive PRU treatment given: age, race, gender, severity of booking charge, out-of-county warrants, parole or probation holds, and criminal history. We then used a "nearest neighbor" matching technique to match clients treated by the PRU with similarly-scored defendants who did not receive treatment.

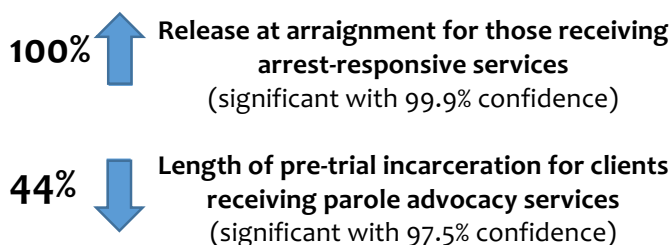
Because there was little selection bias associated with parole advocacy, we used a regression

model to measure impact of parole advocacy on eligible parolees' length of incarceration.<sup>viii</sup>

## Findings

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

Specifically, our analysis reveals that **individuals who receive arrest-responsive services are twice as likely to be released at arraignment when compared with similarly situated, non-treated arrestees**. Similar, not-treated arrestees are released at arraignment 14 percent of the time, compared to a 28 percent rate for treated arrestees. Though results were consistent in several robustness tests, confirmation of this result via randomized trial would strengthen the causal nature of the finding.



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

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

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

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

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

## Further Research

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

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

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

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

<sup>ii</sup> Dobbie, W. et. al. (2018). The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges. American Economic Review, 108(2), 201-240. doi:10.1257/aer.20161503

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

<sup>iv</sup> Miami-Dade County, FL began providing early representation in 2013.

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

<sup>vi</sup> Work Group to Re-envision the Jail Replacement Project. (2017). Final Report.

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



# Final Report to Board of Supervisors

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## Introduction

### Overview of Racial Justice Task Force

On April 12, 2016 the Contra Costa County Board of Supervisors (Board) unanimously voted to create the Racial Justice Task Force (RJTF), prompted in large part by the activism and advocacy of the Contra Costa County Racial Justice Coalition. Tasked with building on the County's 2008 report and recommendations, "Disproportionate Minority Contact: Reducing Disparities in Contra Costa County," the 17-member body was designed to represent a range of local stakeholders, including County criminal and juvenile justice agencies, County health and behavioral health, community-based organizations, local school districts and law enforcement agencies, and the community at large. In February 2017, Resource Development Associates (RDA) was hired to provide Task Force facilitation and data analysis services and on April 5, 2017, the RJTF convened for the first time.

The RJTF met monthly from April 2017 through June 2018 to review data on local criminal and juvenile justice systems and processes, discuss best practices and emerging practices for addressing racial disparities in those systems and processes, and develop recommendations for action to address those disparities. Two ad hoc subcommittees were also convened to foster community engagement and plan for two series of community forums. In November 2017, the RJTF hosted 5 community forums to solicit residents' input on priority areas for the Task Force to focus on and in May 2018, the RJTF hosted 3 additional forums to solicit input on preliminary recommendations. On June 6, 2018, the Task Force met for the last time to vote on recommendations to present to the Board of Supervisors.

The purpose of this memo is to present those recommendations to the Board and the larger body of local stakeholders in order to move forward their adoptions and implementation. This memo begins with a brief discussion of the considerations taken into account by the RJTF as it developed these recommendations, followed by an overview of the racial disparities in Contra Costa County, and then a presentation of recommendations. Appendices provide more information on the Task Force voting process, including a breakdown of how each RJTF member voted on each recommendation, as well as additional data on disparities in local criminal and juvenile justice systems.

### Considerations in RJTF Areas of Focus and Recommendations

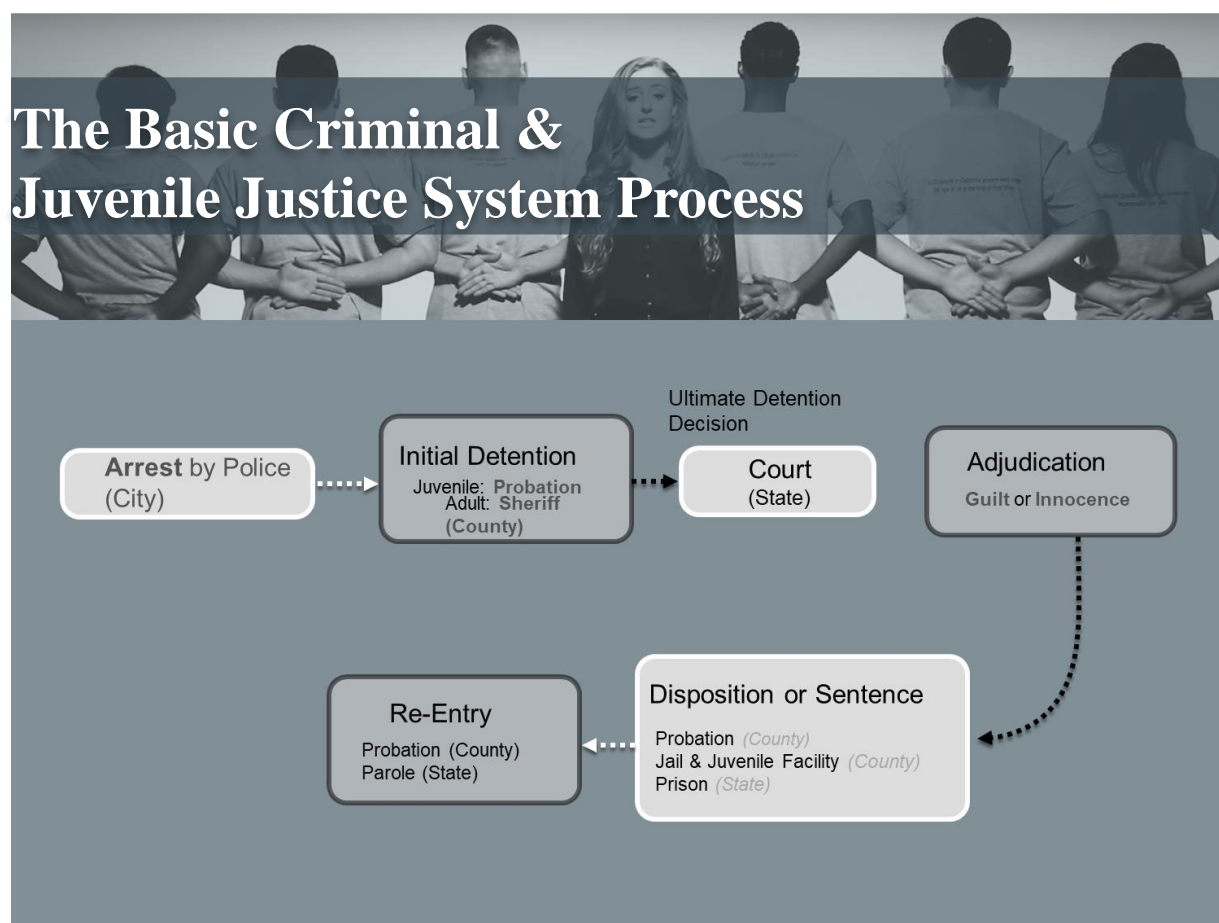
The criminal and juvenile justice systems are comprised of a wide array of agencies and organizations that have different statutory responsibilities and authority and operate in different jurisdictions (Figure 1). As the RJTF began its work, the group had to grapple with two key considerations related to the scope of the justice system and of the Task Force itself: 1) whether to focus only on agencies and processes under County jurisdiction and authority, and 2) how to prioritize breadth, and make recommendations across

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the justice system, or depth, and make a smaller number of recommendations but with greater specificity and readiness for implementation.

In terms of the former, RJTF members quickly agreed that despite the body having been convened to make recommendations for County action, it was impossible to understand disparities in County justice processes without first examining adults' and youths' entry into these processes, namely arrests and other issues related to local law enforcement. Therefore, both data and recommendations below are inclusive of criminal justice system agencies that operate within Contra Costa County but do not report to the Board, including local law enforcement agencies and the Superior Court. There are also recommendations for the school districts that operate within the County.

**Figure 1. Overview of Criminal and Juvenile Justice System Process**



In addition to taking a more expansive approach in deciding which justice system agencies and processes to include under its purview, the RJTF also agreed to take a broad focus, looking at disparities across criminal and juvenile justice processes and putting forth an extensive set of recommendations to address all of them, rather than a narrower focus on any one process or area of focus. As a consequence, the recommendations made here should be viewed as a starting point as part of a longer implementation process.

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In addition to the two considerations described above, as the RJTF engaged in the process of developing recommendations, one other key decision point regularly emerged for consideration: whether and how much to focus on feasibility—and affordability—in making recommendations to the Board. Ultimately, the majority of RJTF members felt strongly that the task of this body was to review data and make recommendations based on observed disparities; RJTF members did not want the scope of these recommendations to be constrained by “likely” County action, agreeing that if a recommendation was important, the Task Force should make it rather than pre-determining what the County might ultimately implement.

## **Key Findings: Overview of Racial Disparities in Contra Costa County Criminal and Juvenile Justice Systems and Processes**

Obtaining and examining data on racial disparities within the justice system was a critical step in the RJTF’s process and allowed the Task Force to identify key junctures where disparities exist in order to target interventions. A number of data limitations, tied to both data availability and data access, meant that the RJTF was not able to examine all data points of interest, driving a number of recommendations related to data collection and reporting. The lack of available data was a consistent challenge throughout this process, and key challenges included:

- Inconsistent data collection across the many local law enforcement agencies (LEAs) in Contra Costa County meant that the RJTF was not able to obtain up-to-date, racially specific data about law enforcement processes and practices; different LEA collect different data elements, have different policies and procedures around the dissemination of data collected, and have varying internal capacity for data management and analysis;
- Concerns about protecting youth’s confidentiality limited the Court’s willingness to make juvenile delinquency court data available; and
- California Judicial Council guidance to the Contra Costa County Court Executive Officer discouraged the Court from sharing individual-level criminal court data.

Because of these challenges, the RJTF had limited ability to obtain the type of individual-level data necessary to track racial disparities across different points in the criminal or juvenile justice process and relied largely on aggregate data and/or data available through public data sources. Data were collected from the State of California Department of Justice (DOJ) Criminal Justice Statistics Center (CJSC), the Contra Costa County Probation Department, the Contra Costa County Superior Court, the Contra Costa County Sheriff’s Office, and the Contra Costa County Racial Justice Coalition. Because different data are available from different sources at different points in time, these data span from 2013 through 2017.

Based on the data that was available, the following findings emerged:

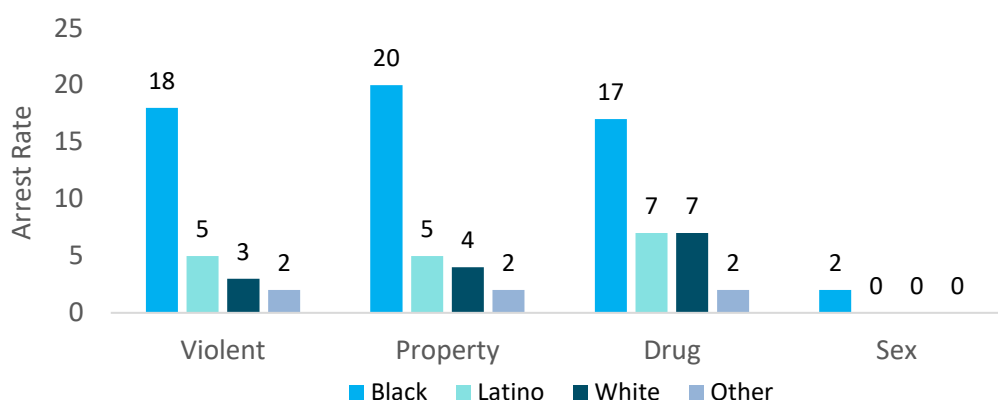
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## Law Enforcement Disparities

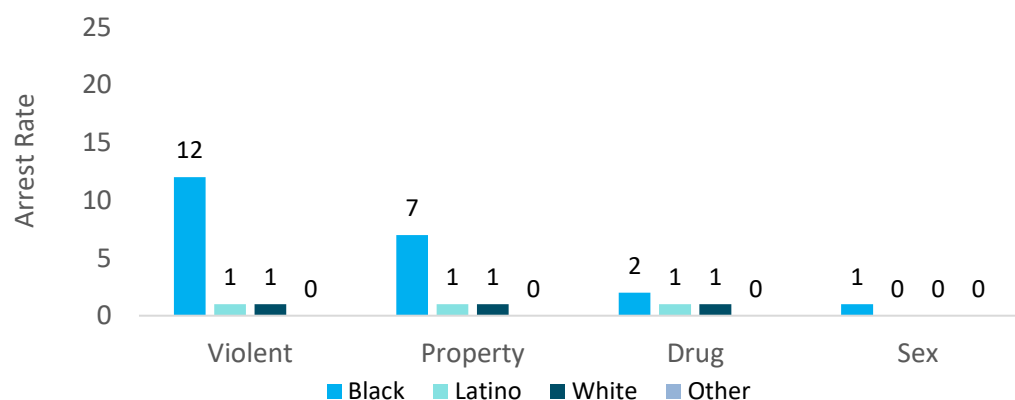
**Finding 1. Higher arrest rates for Black youth and adults across Contra Costa County drive disparities in justice system involvement and outcomes.**

According to data from the State of California DOJ CJSC, in both 2013 and 2014, Blacks were more likely to be arrested than individuals from any other racial/ethnic group in every city except one in Contra Costa County. While the specific rate of the disparity varied by city the disparity tended to be higher in cities with smaller black populations (see Appendix B for more information). Across the County, Black adults were more than 3 times more likely to be arrested than adults from any other racial/ethnic group, and Black youth were more than 7 times more likely to be arrested than youth from any other racial/ethnic group.

**Figure 2. Contra Costa County, 2014 Adult Arrests per 1,000**



**Figure 3. Contra Costa County, 2014 Juvenile Arrests per 1,000**





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**Finding 2. While this finding is consistent across cities in the County, differences in the offenses with the greatest disparities indicates that different local contexts drive these disparities.**

Despite the clear and consistent trend in Blacks being arrested more than any other racial/ethnic group, 2013 and 2014 DOJ data that there are notable differences in the rate of this disparity, as well as in the specific offenses for which Black residents are disproportionately arrested. For example, some cities show the greatest rate of disparity for felony offenses, while others show greater disparities for misdemeanors; similarly, some cities show greater disparities for violent offenses, while others show greater disparities for property or drug crime. What these data make clear is that different local patterns and practices drive these disparities.

This finding was also supported by qualitative data collection, which showed that the practices related to routing people away from formal criminal or juvenile justice processing—known as “diversion”—vary greatly across Contra Costa County. Different cities have different approaches to both formal and informal diversion, including different offenses for which they are willing to divert people and differences in whether and to what extent individuals who are arrested may be diverted to local organizations to address underlying issues that may lead to criminal or delinquent behavior and, subsequently, arrests.

### Juvenile Justice Disparities

**Finding 3. Black youth in Contra Costa County were much more likely than Latino and White youth to be referred to Probation.**

Unsurprisingly given the disproportionate rate at which Black youth are arrested, data from the Contra Costa County Probation Department indicate that Black youth are more likely to be referred to Probation for possible further delinquency system processing. According to data from the Probation Department, in 2014 and 2015, Black youth were between 9-11 times more likely to be referred to Probation than White youth and 5-6 times more likely to be referred than Latino youth. Latino youth were also approximately twice as likely to be referred to Probation as White youth. As noted above, the RJTF was not able to obtain individual-level data on youth arrests or referrals, so we could not determine whether or not Black youth were more likely to be referred for similar offenses.

**Finding 4. Black and Latino youth were more likely than White youth to be detained prior to adjudication.**

Among youth who were referred to the Probation Department, both Black and Latino youth were more likely to be detained in the County’s Juvenile Hall, based on Probation data from 2014 and 2015. Both Black and Latino youth were 50% more likely to be detained than White youth after being referred to Probation and, because Black youth are already overrepresented in youth who are arrested and referred to Probation, Black youth who live in Contra Costa County are detained in Juvenile Hall at 14-16 times the rate of White youth. Again, data limitations limited the RJTF’s ability to compare the specific circumstances under which different youth were detained.

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**Finding 5. In 2014, Black youth were sent to secure confinement at a higher rate than all other races; relative to being a ward of the Court, Hispanic youth were securely confined at a higher rate.**

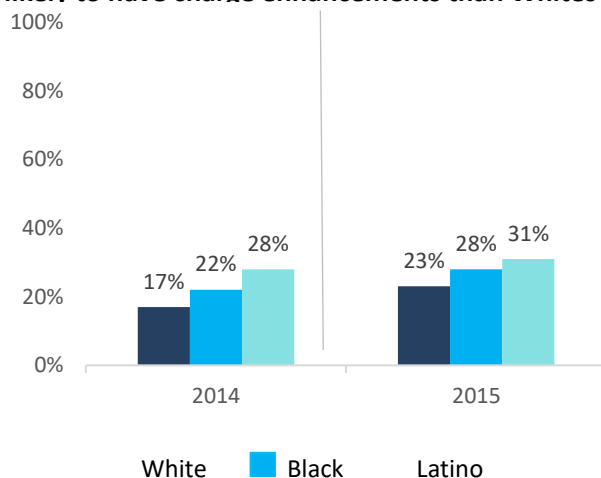
Among youth who are adjudicated delinquent, Black and Latino youth are more likely to receive a disposition that involved secure confinement, including either the Orin Allen Youth Rehabilitation Facility (“the Ranch”) or the California Department of Juvenile Justice (DJJ). According to Probation data from 2014 and 2015, Black youth were 50% to 200% more likely to be sent to secure confinement and Latino youth were 80% to 300% more likely than Whites; because of the cumulative disparities across the juvenile justice system, Black youth in Contra Costa County are confined 16-14 times often as White youth.

## Criminal Justice Disparities

**Finding 6. In 2014 and 2015, a greater proportion of cases with Latino or Black defendants had charge enhancements than cases with White defendants.**

Sentencing enhancements are additional charges within the California Penal Code that allow for additional prison time if an underlying fact or condition is met. There are two kinds of enhancements that can increase the penalties for individuals who are convicted of a criminal offense, “charge enhancements” and “person enhancements.” Charge enhancements can occur when something about the way a crime is committed make the offense eligible for a more serious sentence than it would usually be, for example if someone is convicted of possessing or distributing drugs in a “drug free zone,” around a school or other designated area. Data from the Contra Costa County Superior Court for 2015 and 2016 show that a greater proportion of Black and Latino defendants have charge enhancements, meaning that they are likely receiving more serious penalties for comparable offenses as White defendants.

**Figure 4. Black and Latino defendants are more likely to have charge enhancements than Whites**



**Finding 7. In 2014 and 2015, a greater proportion of Black defendants had person enhancements than either Latino or White defendants.**

An individual can also be eligible for a more serious sentence if he or she has a prior criminal history via “person enhancements,” such as three strikes laws and other “habitual offender” laws. Data from the Contra Costa County Superior Court for 2015 and 2016 show that a greater proportion of Black defendants have person enhancements than White defendants, meaning that they are likely receiving more serious penalties for comparable offenses as White defendants. Although the data available to the RJTF did not allow us to compare the outcomes of defendants of different race/ethnicity with the same charges, this



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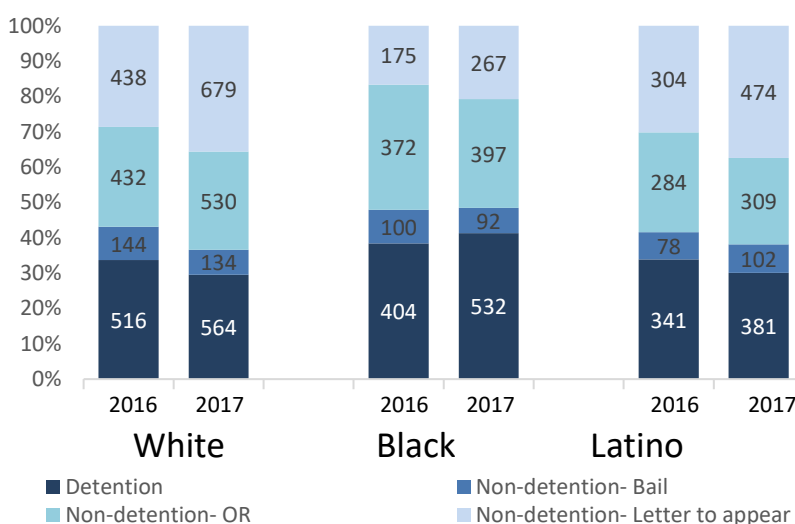
pattern is nonetheless important in light of a growing body of research showing that both kinds of enhancements are a major driver of disparities in imprisonment.<sup>i</sup> In particular, research has shown that Blacks are more likely to live in “drug free zones,” increasing the likelihood that they will be eligible for place-based enhancements; in addition, higher overall context with law enforcement and the criminal justice system has cumulative effects whereby Black defendants are more impacted by habitual offender laws.<sup>ii iii</sup>

**Finding 8. From 2015 to 2017, Black adults in Contra Costa County were more likely than Latino or White adults to be detained pre-trial.**

Data from the Contra Costa County Sheriff’s Office showed that in 2016 and 2017, Black and Latino defendants were disproportionately likely to be detained pretrial than White defendants. The reasons for this included both court decisions related to bail and release as well as defendants’ ability to pay bail and obtain release.

Given the cumulative disparities across criminal justice processes, Black residents of Contra Costa County are held in pretrial detention at almost 7 times the rate of White residents; Latino residents are held in pretrial detention at 2.5 times the rate of Whites.

**Figure 5. Black defendants are most likely to be detained pretrial**



**Finding 9. Changes to County jury selection processes have increased disparities in who services on juries in Contra Costa County.**

Starting in 2011, Contra Costa County Superior Court made changes to the jury selection process and misdemeanor trial locations. Whereas previously, jurors for misdemeanor trials had been selected regionally to serve on trials in East, West and Central county regions, so that the jury pool was representative of the region in which an alleged crime occurred, beginning in 2011, the Court centralized the trials to occur at the Martinez Courthouse and began selecting jurors from a countywide pool. In tandem, these processes appear to have resulted in juries that are more White and less representative of the overall County population.

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## Recommendations

### Oversight and Accountability

While the Contra Costa County RJTF has made critical progress in developing a broad set of recommendations for addressing racial disparities in the County's criminal and juvenile justice systems, there is much work to be done to implement these recommendations and assess their efficacy. Moreover, it is critical to the RJTF that this be done transparently and with ongoing input from a diverse array of stakeholders.

#### Recommendations

- 1) The Racial Justice Task Force recommends that the Board of Supervisors appoint a Racial Justice Oversight Body (RJOB) to oversee the implementation of the recommendations made by the Task Force, as specified by the Board of Supervisors. The RJOB would meet on a quarterly basis and report to the Board on an annual basis. The RJOB shall be made up of the following members:
    1. A representative from the Superior Court, as a non-voting member
    2. The Sheriff or his designee
    3. The Chief Probation Officer or his designee
    4. The Public Defender or her designee
    5. The District Attorney or her designee
    6. A representative from a local law enforcement agency, nominated by the Contra Costa County Police Chiefs' Association
    7. A representative from the Contra Costa County Board of Education
    8. A representative from Contra Costa County Health Services
    9. Eight community-based representatives, that include at a minimum:
      - a. Two members of the Racial Justice Coalition,
      - b. Two individuals with prior personal criminal or juvenile justice system involvement,
      - c. Three representatives from community-based organizations that work with individuals in the justice system, including at least one person who works directly with youth
      - d. One representative from a faith-based organization
- Any individual may meet more than one of these qualifications.*

The RJTF further recommends that the work of this body be staffed by the County Office of Reentry and Justice, and that funds for facilitation be allocated through an RFP process.

- 1) a. The RJOB should or a subcommittee thereof should review local criminal and juvenile justice data in order to identify and report on racial disparities. This will include a review of use-of-force data, as available from the California Department of Justice's Open Justice data.

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**Diversion**

Diversion is a broad umbrella term that refers to the process of diverting individuals from formal criminal or delinquent processes following an encounter with law enforcement. Informal diversion may include the decision by a law enforcement officer not to arrest someone from criminal or delinquent behavior or, after arresting someone, choosing not to refer the person onto the District Attorney or Probation Department. Formal diversion generally involves linking individuals to services, supports, and opportunities that can help them address underlying issues that may lead to criminal or delinquent behavior. By helping people avoid formal justice system processing, diversion can be a critical vehicle for reducing racial disparities in the justice system.<sup>iv v</sup>

While diversion programs and practices redirect contact with the justice system, local jurisdictions must be aware that racial disparities can exist in this decision point and further exacerbate racial disparities if decision-making is not carefully monitored. In addition, because Blacks are so much more likely to have contact with the justice system and are often charged with more serious offenses than individuals from other racial/ethnic groups, diversion efforts that exclude people with prior justice system contact and/or are only limited to the most minor offenses often exacerbate racial disparities. Effective diversion programs are targeted, collaborative, and data driven.

**Current Practices in Contra Costa County**

Diversion is currently implemented inconsistently across Contra Costa County. May local law enforcement agencies have their own diversion approaches and programs, but neither diversionary offenses nor diversion programs/processes are standardized across the county. At the County level, the District Attorney's Office has some limited diversion programs, such as the Bad Check Diversion Restitution program, and the Probation Department informally diverts youth whose offense are not determined appropriate for formal processing.

**Recommendations**

- 2) With the goal of reducing racial disparities in the Contra Costa County criminal justice system, form a committee to recommend countywide criteria and protocols for formal and informal diversion. The recommendations shall be evidence-based and follow established best practices. In considering what criteria and protocols to recommend, the committee shall
  1. Develop separate recommendations for adult and juvenile populations.
  2. Strive to ensure the broadest possible pool of eligible participants.
  3. Strive to ensure that prior criminal justice involvement does not bar a person's eligibility for diversion.
  4. Ensure that the inability to pay for the costs of diversion will not prohibit participation.
  5. Recommend, as appropriate, partnerships between law enforcement agencies and community-based organizations to provide diversion services and oversight.

This committee may be a subgroup of the Racial Justice Oversight Body (RJOB) and will report to the RJOB.

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- 3) Expand the use of crisis intervention teams, mobile crisis teams, and behavioral health assessment teams so they are available across the County.
- 4) Local law enforcement agencies shall issue citations and establish non-enforcement diversion programs as an alternative to arrests.

**Data**

Thorough data collection and use are essential to monitoring and tracking whether agencies are producing equitable outcomes across race and ethnicity, and efforts to address bias and disproportionate minority contact throughout justice systems are succeeding.

Data collection, analysis and reporting disaggregated by race, ethnicity, geography and offense will give stakeholders visibility on efficacy and implementation fidelity of interventions, where disparities persist, whether progress to reduce disparities is being made, and whether the strategies are properly implemented. Ultimately, data driven processes increase transparency and legitimacy to broader stakeholders about the initiatives to reduce disparities in the county.

**Current Practices in Contra Costa County**

Although County criminal justice system agencies and local law enforcement agencies in Contra Costa County generally collect data about individual contact with different criminal or juvenile justice systems, there has been no systematic countywide effort to standardize what data are collected, define how race is identified and tracked across different systems, or agree on reporting processes. In addition, although the County has used AB 109 funds to invest in client data management systems for several public agencies, these agencies tend to lack the capacity to extract and analyze these data on a regular basis.

**Recommendations**

- 5) All Contra Costa County criminal justice agencies and local law enforcement agencies shall collect individual-level data on all individual encounters with criminal and juvenile justice systems and processes. In so doing, they should consult best practices to balance data needs with confidentiality regulations.
  - a. Office of Reentry and Justice shall publish race-specific data online on all of the above to create greater transparency and accountability of the County criminal justice agencies and local enforcement agencies.
  - b. All Contra Costa County criminal justice agencies and local law enforcement agencies shall improve capacity for data collection and analysis including expanding staff with data analysis capabilities.
  - c. Office of Reentry and Justice shall support analysis of interventions implemented through the RJTF to measure efficacy and assess impact on racial disparities.

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## County Support for Local Agencies

As Figure 1. Overview of Criminal and Juvenile Justice System Process on page 2 makes clear, county-level criminal and juvenile justice agencies are fundamentally connected to and impacted by the policies and practices of non-county agencies. In particular, city-level law enforcement practices necessarily determine who ends up in County-level justice system agencies. In addition, school district approaches to school discipline have a direct relationship with whether or not youth are referred to county juvenile justice systems. Thus, while the RJTF was convened by the Contra Costa County Board of Supervisors to make recommendations for County processes, the following recommendations are based on addressing the inherent interconnectedness of County and more local processes.

### Recommendations

- 6) The County shall work with local enforcement agencies to seek funds that support the integration of de-escalation and behavioral health intervention trainings into local enforcement agency regional academy and/or department orientations.
  - a. The County shall work with local enforcement agencies to seek funds to implement improved procedural justice practices and implicit bias training.
    - i. Identify funding for procedural justice training utilizing the train the trainer model.
    - ii. Work with the Chief's Association to create a forum to share information and strengthen promising practices around procedural justice and implicit bias trainings.
- 7) In addition, local enforcement agencies in Contra Costa County should:
  - i. Ensure inclusion of de-escalation and behavioral health intervention trainings into local enforcement agency regional academy and/or department orientations
  - ii. Provide procedural justice and implicit bias training to all staff
- 8) The County Office of Education shall provide resources to incentivize school districts to explore, evaluate, implement or expand existing non-punitive discipline practices, such as Positive Behavioral Interventions Support (PBIS) and Restorative Justice (RJ) practices.
  - i. Identify funding for continuous training and technical assistance to all schools in the County to support implementation of PBIS and Restorative Justice, as well as data collection to assess implementation and impact.
- 9) The County Office of Education shall work with school districts to provide behavioral health services such as counseling, peer support, and early intervention services for youth presenting signs of emotional, mental, and/or behavioral distress.

## Community Engagement and Services

Collaboration and structured partnerships with the community is essential. The justice system needs to recognize community based organizations and faith-based organizations as legitimate partners in reducing disparities. The community brings urgency, insight and creative solutions that can acutely reduce

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disparities and bring about a lasting change especially around reintegration and serving as alternatives to justice involvement.

**Current Practices in Contra Costa County**

Reentry programming in Contra Costa County is provided regionally using AB 109 funding, with the Reentry Success Center serving West County and HealthRIGHT360 delivering services under the Central-East Network of Services, also known as The Network. The Reentry Success Center provides services to individuals and families impacted by incarceration, helping to plan critical next steps after contact with police or courts. In addition, AB 109 funding supports a range of services and supports for any individual with a history of justice system involvement.

The County is also in the process of revising its reentry strategic plan through a community-engagement and planning process.

**Recommendations**

- 10) County criminal justice agencies shall establish formal partnerships with community-based organizations to provide greater capacity for
  - i. diversion,
  - ii. reentry programs,
  - iii. alternatives to detention
  - iv. pretrial services
  - v. in custody programming

All community-based organizations receiving funding from the County shall be evaluated for efficacy and effectiveness of program goals and objectives to ensure populations are appropriately served. Community input shall be an integral part of this process.

- 11) Establish a community capacity fund to build the capacity of community-based organizations – especially those staffed by formerly incarcerated individuals – to contract with the County and provide services to reentry clients.
- 12) The County and/or RJOB shall collaborate with the Community Corrections Partnership- Executive Committee (CCP-EC) to consider increasing realignment funding for community services.

**Practices Related to Trial and Adjudication Processes**

There are a number of practices that agencies involved in the adjudication process – courts, prosecution, and defense – can implement to reduce racial disparities in the justice system. For the Court, using a jury pool that is as representative as possible to the local population increases the likelihood that individuals are judged by a jury of their peers. District Attorney's Offices wield a great deal of power through their ability to decide whether and how to charge an individual with a criminal offense, as well as whether to request money bail or a release on recognizance. Public Defenders Offices, as the public agency advocating for the rights of individuals accused of crimes, are uniquely situated to support defendants, not only through vigorous defense but also by providing other services aimed at both addressing



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underlying issues that may be associated with justice system involvement, such as behavioral health issues, as well as by providing legal services to help people address some of the collateral consequences of criminal justice contact, such as immigration or child welfare issues.

#### **Current Practices in Contra Costa County**

Contra Costa County uses a master jury list created by combining a list of all registered voters as well as persons who have a valid driver's license or identification card issued by the Department of Motor Vehicles. Contra Costa County employs a One Day/One Trial system, where<sup>vi</sup> Under this system, individuals are typically assigned to jury selection after one day at the courthouse, and then their service is complete for at least 12 months.<sup>vii</sup> Individuals are selected from a countywide pool. The District Attorney's Office does not currently have any official policies regarding the use of sentence enhancements or bail requests.<sup>1</sup> The Public Defender's Office currently employs several social workers, funded through AB 109, who work with clients to support both legal advocacy and linkage to services to address psychosocial needs.

#### **Recommendations**

- 13) Encourage the Superior Court to return to the process of jury selection whereby jurors are called to service to their local branch court for misdemeanor trials.
- 14) The Public Defender's Office shall hire social workers who can assess clients' psychosocial needs and link them to services.
- 15) The Public Defender's Office, either directly or through partnerships with community-based organizations, should offer civil legal representation to clients. For youth, this should focus on educational advocacy.

#### **Confinement**

Indiscriminate use of confinement increases racial and ethnic disparity. Disparities in confinement can be reduced when successful and robust strategies are implemented at the front end of the justice system. Strategies to reduce racial and ethnic disparities in confinement address policies and practices that affect discipline, conditions of confinement, and facilitate smooth reintegration into the community.

#### **Current Practices in Contra Costa County**

Contra Costa County has placed emphasis on developing formalized partnerships between the Office of the Public Defender, Probation, the Sheriff's Department, and the District Attorney's Office in order to decrease the pretrial in-custody population. Through this collaboration, the County has developed the cross-departmental Pre-trial Services (PTS) and Arraignment Court Early Representation (ACER) program. PTS provides judges with greater information by using a modified version of the Virginia Pretrial Risk Assessment Instrument (VPRAI). ACER ensures the presence of attorneys at defendants' initial court appearances and is intended to increase the likelihood that appropriate defendants will be released on

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<sup>1</sup> The RJTF considered but did not ultimately support a recommendation to limit the use of sentence enhancements.





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their own recognizance (OR) for the duration of the court process and allow for the expedited resolution of cases.

Contra Costa County also worked with RDA to develop a pre-release planning pilot program plan, and has recently implemented this pilot. Finally, the County's Custody Alternative Facility allows individuals who are low risk to public safety to be released from custody and supervised by deputies from the Sheriff's Office.

## Recommendations

- 16) Expand eligibility for Pre-Trial Services and increase Pre-Trial Services staffing, with a focus on reducing racial disparities and replacing the money bail system.
- 17) Expand the current pre-release pilot to serve all individuals in custody.
- 18) Establish an independent grievance process for individuals in custody in County adult detention facilities to report concerns related to conditions of confinement based on gender, race, religion, and national origin. This process shall not operate via the Sheriff's Office or require any review by Sheriff's Office staff.
- 19) Establish an independent monitoring body to oversee conditions of confinement in County adult detention facilities based on gender, race, religion, and national origin and report back to the Board of Supervisors.

## Other

- 20) All County staff shall participate in and complete implicit bias training.

## Next Steps

The RJTF has made important progress in reducing racial disparities in Contra Costa County justice systems and there are a number of next steps that will be essential for carrying this work forward. The first recommendations provided here – the creation of a Racial Justice Oversight Body – will be an essential vehicle for taking these steps, and establishing the RJOB is an important next step. Once this Body has been established, staffed, and membership recruited, there are several steps necessary to ensure its progress and efficacy:

1. **Prioritization of recommendations:** the RJTF intentionally choose to take a broad view of its charge and developed a lengthy set of recommendations across justice systems and processes. Further action will now require greater focus on a smaller set of recommendations in order to delineate and then implement the concrete steps necessary for implementation. Toward this end, the County and/or RJOB must prioritize those recommendations of greatest interest, in particular identifying those that will be addressed in the upcoming fiscal year versus those that will be addressed in subsequent years.
2. **Establish subcommittees:** For each recommendation selected for immediate action, the RJOB should convene a subcommittee of RJOB members who bring expertise in and commitment to



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addressing that issue or topic area. These subcommittees should include public agency and community member representation and be small enough to do concrete implementation planning.

3. **Develop workplans:** Each subcommittee must develop a workplan that delineates core steps for implementing the recommendation(s) that it is working on, including timelines and roles and responsibilities. This will require identifying the individuals and organizations that have influence and authority over changes to policy and practice and establishing processes for engagement them in next steps.

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<sup>i</sup> Nazgol Ghandnoosh. “Black Lives Matter: Eliminating Racial Inequity In The Criminal Justice System,” *The Sentencing Project*. 2015.

<sup>ii</sup> Ibid.

<sup>iii</sup> John MacDonald and Steven Raphael. “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.” (2017).

<sup>iv</sup> Ryan C. Wagoner, Carol A. Schubert, and Edward P. Mulvey, “Probation Intensity, Self-Reported Offending, and Psychopathy in Juveniles on Probation for Serious Offenses,” *Journal of the American Academy of Psychiatry and the Law Online* 43, no. 2 (June 1, 2015): 191–200.

<sup>v</sup> Youth.Gov: Points of Intervention. (2017). Retrieved December 15, 2017 from <https://youth.gov/youth-topics/juvenile-justice/points-intervention>

<sup>vi</sup> <http://www.cc-courts.org/jury/general.aspx>

<sup>vii</sup> <http://www.courts.ca.gov/documents/jurysys.pdf>

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## Appendix A: Detailed Summary of Votes

When the RJTF began meeting, members established a series of working agreements that were designed to ensure that all perspectives were valued and that dissenting views were given due consideration. Toward that end, the Task Force agreed to a voting process whereby members could choose one of three options in responding to recommendations: 1. support, 2. do not support, and 3. oppose. If four or more RJTF members—or one-quarter—of the voting RJTF members oppose any action or recommendation, the Task Force agreed that it would not pass. Task Force members could also abstain from any vote.

## Oversight and Accountability

### Recommendation #1<sup>1</sup>

- 1) The Racial Justice Task Force recommends that the Board of Supervisors appoint a Racial Justice Oversight Body (RJOB) to oversee the implementation of the recommendations made by the Task Force, as specified by the Board of Supervisors. The RJOB would meet on a quarterly basis and report to the Board on an annual basis. The RJOB shall be made up of the following members:
    1. A representative from the Superior Court, as a non-voting member
    2. The Sheriff or his designee
    3. The Chief Probation Officer or his designee
    4. The Public Defender or her designee
    5. The District Attorney or her designee
    6. A representative from a local law enforcement agency, nominated by the Contra Costa County Police Chiefs' Association
    7. A representative from the Contra Costa County Board of Education
    8. A representative from Contra Costa County Health Services
    9. Eight community-based representatives, that include at a minimum:
      - a. Two members of the Racial Justice Coalition,
      - b. Two individuals with prior personal criminal or juvenile justice system involvement,
      - c. Three representatives from community-based organizations that work with individuals in the justice system, including at least one person who works directly with youth
      - d. One representative from a faith-based organization
- Any individual may meet more than one of these qualifications.*

The RJTF further recommends that the work of this body be staffed by the County Office of Reentry and Justice, and that funds for facilitation be allocated through an RFP process.

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<sup>1</sup> The RJTF spent several meetings discussing and refining these recommendations. Through this process, some recommendations were combined or rearranged; as a result, there are sometimes gaps in numbering.

**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Todd Billeci, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>14</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

**Result:** Passed**Recommendation #1a**

- 1) a. The RJOB should or a subcommittee thereof should review local criminal and juvenile justice data in order to identify and report on racial disparities. This will include a review of use-of-force data, as available from the California Department of Justice's Open Justice data.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Todd Billeci, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>14</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

**Result:** Passed**Diversion****Revised Recommendation #2**

With the goal of reducing racial disparities in the Contra Costa County criminal justice system, form a committee to recommend countywide criteria and protocols for formal and informal diversion. The recommendations shall be evidence-based and follow established best practices.

In considering what criteria and protocols to recommend, the committee shall

1. Develop separate recommendations for adult and juvenile populations.
2. Strive to ensure the broadest possible pool of eligible participants.
3. Strive to ensure that prior criminal justice involvement does not bar a person's eligibility for diversion.
4. Ensure that the inability to pay for the costs of diversion will not be a bar to eligibility or participation.



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Recommend, as appropriate, partnerships between law enforcement agencies and community based organizations to provide diversion services and oversight.

This committee may be a subgroup of the Racial Justice Oversight Body (RJOB) and will report to the RJOB.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Todd Billeci, Leslie Takahashi, Venus Johnson, Marcus Walton, William Walker, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>12</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>	John Lowden, Cardenas Shackelford	<b>2</b>

**Result:** Passed

**Recommendation #2**

County criminal and juvenile justice agencies and the Police Chief's Association shall establish criteria for informal and formal diversion, with a focus on those offenses with greatest racial disparity. Toward that end, the County shall identify the offenses for which Black and Latinos are most disproportionately arrested, charged, and convicted and use those as a starting point for diversion efforts.

**Vote by Members\***

Vote	Members	Total
<b>Support</b>		<b>0</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

\* Members did not vote as Revised Recommendation #2 passed

**Result:** Failed

**Recommendation #2a**

Criteria for diversion shall include non-violent felony level crimes such as burglary.

**Vote by Members\***

Vote	Members	Total
<b>Support</b>		<b>0</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

\* Members did not vote as Revised Recommendation #2 passed



**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations*

**Result:** Failed

**Recommendation #2b**

Criteria for diversion shall allow individuals with prior justice system involvement to be diverted.

**Vote by Members\***

Vote	Members	Total
<b>Support</b>		<b>0</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

\* Members did not vote as Revised Recommendation #2 passed

**Result:** Failed

**Recommendation #3**

Local enforcement agencies shall establish formal partnerships with community based organizations to provide diversion programs and services for youth and adults. Inability to pay shall not prohibit participation in diversion programs.

**Vote by Members\***

Vote	Members	Total
<b>Support</b>		<b>0</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

\* Members did not vote as Revised Recommendation #2 passed

**Result:** Failed

**Recommendation #3a**

County criminal and juvenile justice departments shall establish formal partnerships with community based organizations to provide diversion programs and services for youth and adults. Inability to pay shall not prohibit participation in diversion programs.

**Vote by Members\***

Vote	Members	Total
<b>Support</b>		<b>0</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

\* Members did not vote as Revised Recommendation #2 passed



**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations*

**Result:** Failed

**Recommendation #4**

Expand the use of crisis intervention teams, mobile crisis teams, and behavioral health assessment teams so they are available across the County.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Todd Billeci, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>14</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

**Result:** Passed

**Recommendation #5**

Local law enforcement agencies shall issue citations and establish non-enforcement diversion as an alternative to arrests.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Todd Billeci, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>13</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>	Harlan Grossman	<b>1</b>

**Result:** Passed

**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Data****Recommendation #6**

All Contra Costa County criminal justice agencies and local law enforcement agencies shall collect individual-level data on all individual encounters with criminal and juvenile justice systems and processes. In so doing, they shall consult best practices to balance data needs with confidentiality concerns.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>13</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>	Todd Billeci	<b>1</b>

**Result:** Passed

**Recommendation #6a**

Office of Reentry and Justice shall publish race-specific data online on all of the above to create greater transparency and accountability of the County criminal justice agencies and local enforcement agencies.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Todd Billeci, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>14</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

**Discussion:** Todd Billeci shared there may be court-involved issues attaining juvenile data

**Result:** Passed

**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Recommendation #6b**

All Contra Costa County criminal justice agencies and local law enforcement agencies shall improve capacity for data collection and analysis including expanding staff with data analysis capabilities.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Leslie Takahashi, Venus Johnson, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>11</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>	Bisa French, Todd Billeci, John Lowden,	<b>3</b>

**Discussion:** Bisa French shared concern about the fiscal impact of this recommendation. Todd Billeci shared he does not like the word “shall” in this recommendation. Venus Johnson shared she whole heartedly believes system change is driven through data and policy however, the Board does not have the authority to make this happen. She stated all agencies should be working independently towards better data collection and analysis to drive policy change. . John Lowden shared he will abstain in interest of other agencies. Harlan Grossman shared he is unsure who has the authority to do this.

**Result:** Passed

**Recommendation #6c**

Office of Reentry and Justice shall support analysis of interventions implemented through the RJTF to measure efficacy and assess impact on racial disparities.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Todd Billeci, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>14</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

**Result:** Passed



**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***County Support for Local Agencies****Recommendation #8**

The County shall provide resources to ensure integration of de-escalation and behavioral health intervention trainings into local enforcement agency regional academy and/or department orientations.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Marcus Walton, Tamisha Walker	<b>3</b>
<b>Do Not Support</b>	Leslie Takahashi, Stephanie Medley	<b>2</b>
<b>Oppose</b>	Todd Billeci, Venus Johnson, John Lowden, William Walker, Cardenas Shackelford, Harlan Grossman, Dennisha Marsh, Robin Lipetzky	<b>8</b>
<b>Abstain</b>	Debra Mason	<b>1</b>

**Discussion:** Leslie Takahashi shared while she understands the Board may not have the jurisdiction to do this, it is important to identify the resources needed to make this recommendation happen.

**Result:** Failed

OR

**Revised Recommendation #8**

The County shall work with local enforcement agencies to seek funds that support the integration of de-escalation and behavioral health intervention trainings into local enforcement agency regional academy and/or department orientations.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Todd Billeci, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>14</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

**Result:** Passed

**Recommendation #8a**

The County shall provide resources to incentivize local enforcement agencies to implement improved procedural justice practices and implicit bias training.

- i. Identify funding for procedural justice training utilizing the train the trainer model
- ii. Work with the Chief's Association to create a forum to share information and strengthen promising practices around procedural justice and implicit bias trainings.



**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Todd Billeci, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>14</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

**Result:** Passed**Recommendation #9**

In addition, local enforcement agencies in Contra Costa County shall:

- i. Ensure inclusion of de-escalation and behavioral health intervention trainings into local enforcement agency regional academy and/or department orientations
- ii. Provide procedural justice and implicit bias training to all staff

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Todd Billeci, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>14</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

**Result:** Passed**Recommendation #10**

The County Office of Education shall provide resources to incentivize school districts to explore, evaluate, implement or expand existing non-punitive discipline practices, such as Positive Behavioral Interventions Support (PBIS) and Restorative Justice practices.

- i. Identify funding for continuous training and technical assistance to all schools in the County to support implementation of PBIS and Restorative Justice, as well as data collection to assess implementation and impact.

**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Leslie Takahashi, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>12</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>	Todd Billeci, Venus Johnson	<b>2</b>

**Result:** Passed**Recommendation #10a**

The County Office of Education shall work with school districts to provide supportive behavioral health services such as counseling, peer support, and early intervention services for youth presenting signs of emotional, mental, and/or behavioral distress.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>13</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>	Todd Billeci	<b>1</b>

**Result:** Passed**Revised Recommendation #11**

In their review and approval of Local Control and Accountability Plans (LCAPs) and supplemental funding, the County Office of Education shall prioritize the following, as far as legally possible.

- Exploring and identifying programs that focus on faculty and staff trainings and their interactions with students. Such programs shall support developing strategies that address behavior issues to achieve positive outcomes such as My Teacher Partner Program (MTP).
- Requiring school districts to create partnerships with culturally specific organizations to routinely train faculty and staff on the issues facing communities of color.

**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Vote by Members**

Vote	Members	Total
<b>Support</b>	Leslie Takahashi, , William Walker, Tamisha Walker, Stephanie Medley, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>7</b>
<b>Do Not Support</b>	Marcus Walton, Cardenas Shackelford, Harlan Grossman	<b>3</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>	Bisa French, Todd Billeci, Venus Johnson, John Lowden	<b>4</b>

**Result:** Failed**Community Engagement and Services****Recommendation #12**

County criminal justice agencies shall establish formal partnerships with community-based organizations to provide greater capacity for

- i. diversion,
- ii. reentry programs,
- iii. alternatives to detention
- iv. pretrial services
- v. in custody programming

All community-based organizations receiving funding from the County shall be evaluated for efficacy and effectiveness of program goals and objectives to ensure populations are appropriately served. Community input shall be an integral part of this process.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Todd Billeci, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>14</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

**Result:** Passed**Recommendation #13**

Establish a community capacity fund to build the capacity of community-based organizations – especially those staffed by formerly incarcerated individuals – to contract with the County and provide services to reentry clients.

**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Todd Billeci, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, , Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>13</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>	Tamisha Walker	<b>1</b>

**Result:** Passed**Recommendation #15**

The County and/or RJOB shall collaborate with the Community Corrections Partnership- Executive Committee (CCP-EC) to consider increasing realignment funding for community services.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>12</b>
<b>Do Not Support</b>	Todd Billeci	<b>1</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>	Bisa French	<b>1</b>

**Result:** Passed**Practices Related to Trial and Adjudication Processes****Recommendation #16a**

Encourage the Superior Court to return to the process of jury selection whereby jurors are called to service to their local branch court for misdemeanor trials.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Todd Billeci, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>14</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

**Result:** Passed

**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Recommendation #16b**

Encourage the Superior Court to assign felony jury trials to the branch courts having jurisdiction over the location where the alleged offense occurred.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Leslie Takahashi, Venus Johnson, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Robin Lipetzky	<b>5</b>
<b>Do Not Support</b>	John Lowden, Harlan Grossman, Dennisha Marsh, Debra Mason	<b>4</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>	Bisa French, Todd Billeci, , Marcus Walton, William Walker,	<b>5</b>

**Result:** Failed

**Recommendation #17**

Establish circumstances where DA won't seek sentence enhancements. As a starting point, the DA's Office shall not seek enhancements for any offenses in which defendants are eligible for Prop 47 relief.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Leslie Takahashi, William Walker, Tamisha Walker, Stephanie Medley, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>7</b>
<b>Do Not Support</b>	John Lowden	<b>1</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>	Bisa French, Todd Billeci, Venus Johnson, Marcus Walton, Cardenas Shackelford, Harlan Grossman	<b>6</b>

**Discussion:** Venus Johnson shared there is a caveat to this recommendation. She shared there are currently cases going through the justice system where the courts are deciding if Prop 47 applies to certain offense that may not have been specifically listed in the ballot initiative. . Depending on the results of those cases, charging decisions will be impacted. Venus shared she does not disagree with the recommendation, but due to the way it is written and the stance of the legal system, she will abstain.

**Result:** Failed

**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Recommendation #18a**

Public Defender's Office shall hire social workers who can assess clients' psychosocial needs and link them to services.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Leslie Takahashi, Venus Johnson, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>12</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>	Todd Billeci, John Lowden	<b>2</b>

**Result:** Passed

**Recommendation #18b**

The Public Defender's Office, either directly or through partnerships with community-based organizations, shall offer civil legal representation to clients. For youth, this shall focus on educational advocacy

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Leslie Takahashi, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>10</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>	Harlan Grossman	<b>1</b>
<b>Abstain</b>	Todd Billeci, Venus Johnson, John Lowden	<b>3</b>

**Discussion:** Tamisha Walker shared the County does not currently provide enough funding for the Public Defender's Office so she will support it. Stephanie Medley shared similar sentiments as Tamisha and shared the recommendation as it is written does not attach any resources to it or identifies any.

**Result:** Passed

**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Confinement****Recommendation #19**

Expand eligibility for Pre-Trial Services and increase Pre-Trial Services staffing, with a focus on reducing racial disparities and replacing the money bail system.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Todd Billeci, Leslie Takahashi, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>13</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>	Bisa French	<b>1</b>

**Result:** Passed

**Recommendation #20**

Expand the current pre-release pilot to serve all individuals in custody.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Todd Billeci, Leslie Takahashi, Venus Johnson, , Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Robin Lipetzky	<b>12</b>
<b>Do Not Support</b>	John Lowden, Debra Mason	<b>2</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>		<b>0</b>

**Discussion:** Todd Billeci clarified this recommendation pertains to a pre-release program not pre-trial

**Result:** Passed

**Recommendation #21**

Establish an independent grievance process for individuals in custody in County adult detention facilities to report concerns related to conditions of confinement based on gender, race, religion, and national origin. This process shall not operate via the Sheriff's Office or require any review by Sheriff's Office staff.

**Vote by Members**



**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations*

Vote	Members	Total
<b>Support</b>	Leslie Takahashi, Venus Johnson, , Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Robin Lipetzky	<b>10</b>
<b>Do Not Support</b>	Todd Billeci, Debra Mason	<b>2</b>
<b>Oppose</b>	John Lowden	<b>1</b>
<b>Abstain</b>	Bisa French	<b>1</b>

**Discussion:** Debra Mason shared she does not support the recommendation if it requires the elimination of the Sherriff's current process. She shared she believes there should be an additional step to process any complains if one is not satisfied with the Sherriff's process.

**Result:** Passed

**Recommendation #22**

Establish an independent monitoring body to oversee conditions of confinement in County adult detention facilities based on gender, race, religion, and national origin and report back to the Board of Supervisors.

**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Leslie Takahashi, Venus Johnson, , Marcus Walton, William Walker, , Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>11</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>	Todd Billeci, John Lowden	<b>2</b>
<b>Abstain</b>	Cardenas Shackelford	<b>1</b>

**Discussion:** Todd Billeci shared that even though he opposes this recommendation, he appreciates the engagement and involvement of the community throughout this process.

**Result:** Passed

**Added Recommendation****Recommendation #23**

All County staff shall participate and complete implicit bias training.



**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations*

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**Vote by Members**

Vote	Members	Total
<b>Support</b>	Bisa French, Venus Johnson, John Lowden, Marcus Walton, William Walker, Cardenas Shackelford, Tamisha Walker, Stephanie Medley, Harlan Grossman, Dennisha Marsh, Debra Mason, Robin Lipetzky	<b>12</b>
<b>Do Not Support</b>		<b>0</b>
<b>Oppose</b>		<b>0</b>
<b>Abstain</b>	Todd Billeci, Leslie Takahashi	<b>2</b>

**Discussion:** Todd shared that he will abstain because he has heard that recent studies indicate that implicit bias training may cause more harm than good.

**Result:** Passed



## Appendix B: Data reviewed by RJTF

This appendix includes a summary of all quantitative data obtained and reviewed by the RJTF. As noted in the project Findings above, data were obtained from a variety of sources, including the State of California Department of Justice (DOJ), the Contra Costa County Probation Department, the Contra Costa County Superior Court, the Contra Costa County Sheriff's Office, and the Contra Costa County Racial Justice Coalition. Because different data are available from different sources at different points in time, these data span from 2013 through 2017.

### Local Law Enforcement Data

All data provided below are from the State of California DOJ Criminal Justice Statistics Center (CJSC). Data are from 2014, unless otherwise indicated.

**Across cities in Contra Costa County, Blacks are more likely to be arrested than other racial/ethnic group.**

**Figure 1. Contra Costa County, Adult Arrests per 1,000**

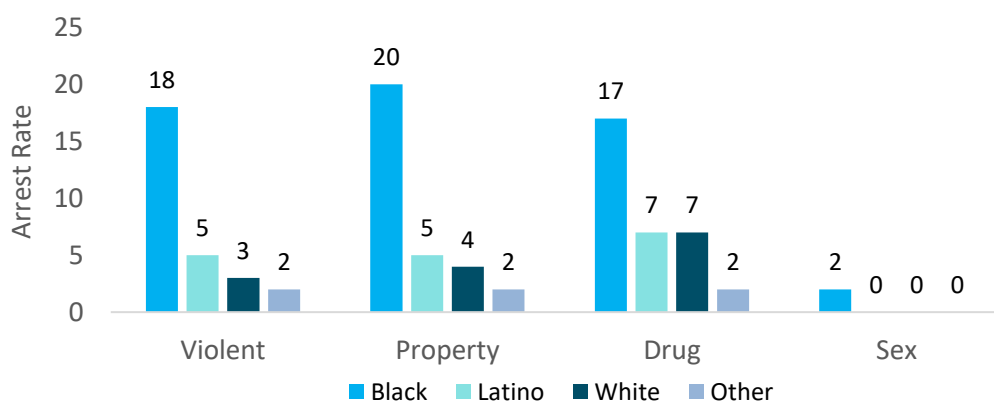


Figure . Illustrates countywide arrest trends among Black, Latino, White and Other adults. Black adults are 6 times more likely than White adults to be arrested for a violent offense, as well as 5 times more likely to be arrested for a property crime and over 2 times as likely to be arrested for a drug offense.

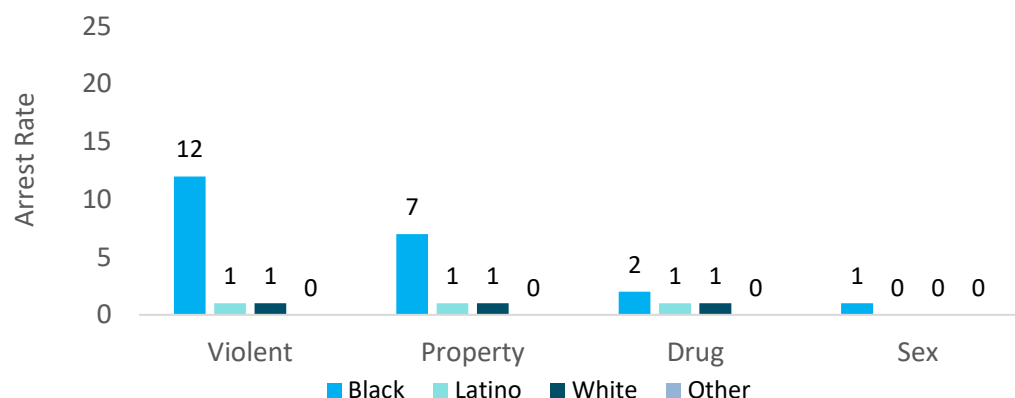
**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Figure 2. Contra Costa County, Juvenile Arrests per 1,000**

Figure 2. illustrates countywide arrest trends among Black, Latino, White and Other youth. Black youth are 12 times more likely to be arrested for a violent crime than White youth, while they are 7 times more likely to be arrested for a property offense and twice as likely to be arrested for a drug offense than White youth. A greater disparity among arrests rates by race exists within youth as compared to adults.

**Racial disparities in arrests are often greater in cities with smaller Black populations.**

*While these graphs are city specific data, they are examples of a larger trend across most cities in Contra Costa County.*

**Figure 3. El Cerrito Population**

Total Population: 24, 136

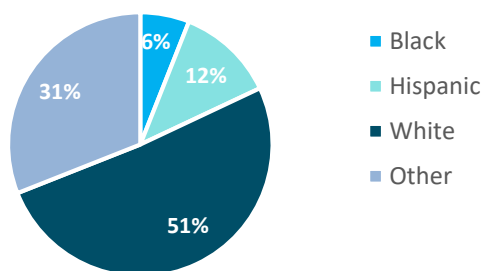
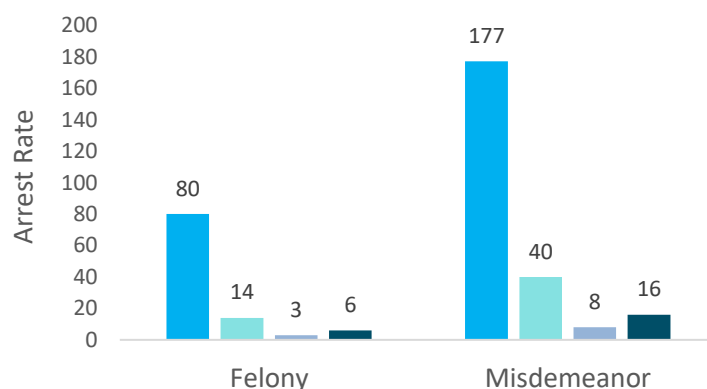
**Figure 4. El Cerrito Adult Arrest Rates per 1,000**

Figure 3. represents a breakdown of El Cerrito's total population, which is relatively a small population. Of El Cerrito's total population, 6% are black. Figure 4. shows that Black individuals are approximately 13 times as likely as White individuals to be arrested for a felony and approximately 11 times more likely to be arrested for a misdemeanor.

**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Figure 5. Richmond City Population**

Total Population: 106,469

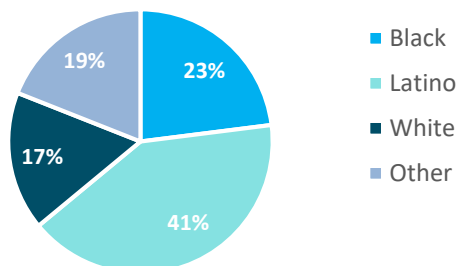
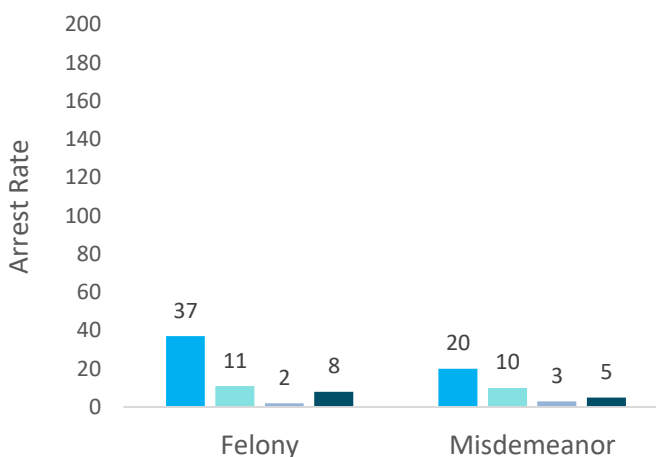
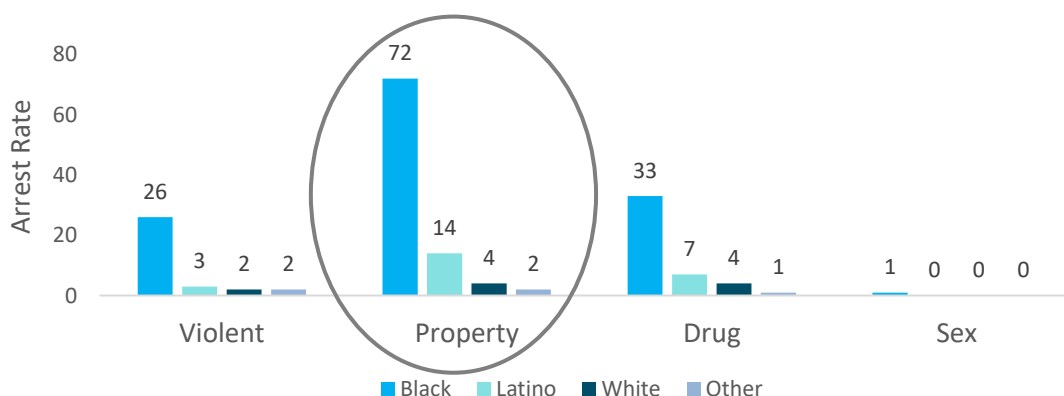
**Figure 6. Richmond Adult Arrests Rate per 1,000**

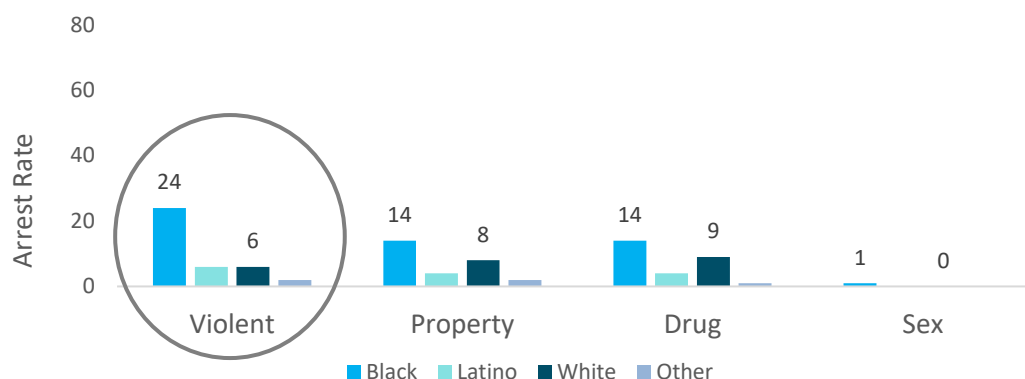
Figure 5. represents a breakdown of Richmond's total population, which is a much larger city with a larger black population (23%) than El Cerrito. While the racial disparities are not as great as those in El Cerrito or smaller cities, disparities remain. As seen in Figure 6, Black adults are approximately 4.5 times as likely as White adults to be arrested for a felony and approximately 4 times as likely to be arrested for a misdemeanor.

**While Black adults are more likely to be arrested than White adults, there are variations across cities for what offenses disparities are greatest.**

*While these graphs are city specific data, they are examples of a larger trend across most cities in Contra Costa County.*

**Figure 7. City of El Cerrito, Adults Arrest Rates per 1,000**

As Figure 7. illustrates, disparities are greatest for property offenses in El Cerrito where Black adults are approximately 18 times as likely as White adults to be arrested for a property offense.

**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Figure 8. City of Antioch, Adult Arrest Rates per 1,000**

As seen in Figure 8., disparities are greatest for violent offenses in Antioch where Black adults are 4 times more likely than White adults to be arrested for a violent offense compared to only 1.5 times more likely to be arrested for a property or drug offense respectively.

Across most cities in Contra Costa County, Black youth are more likely to be arrested than White or Latino youth. Disparities for Black youth are greater than disparities for Black adults.

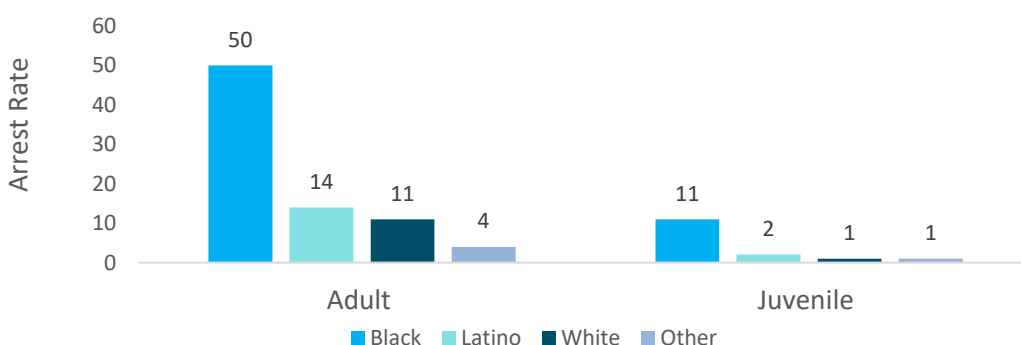
**Figure 9. Contra Costa County, Felony Arrest Rates per 1,000**

Figure 9. illustrates countywide data in which compared to White adults, Black adults are approximately 5 times more likely to be arrested for a felony while Black youth are 11 times more likely to be arrested than White youth.

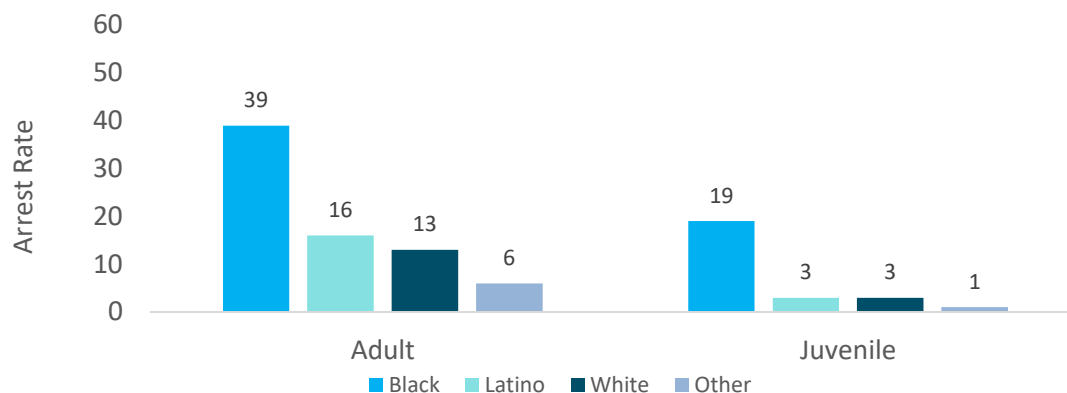
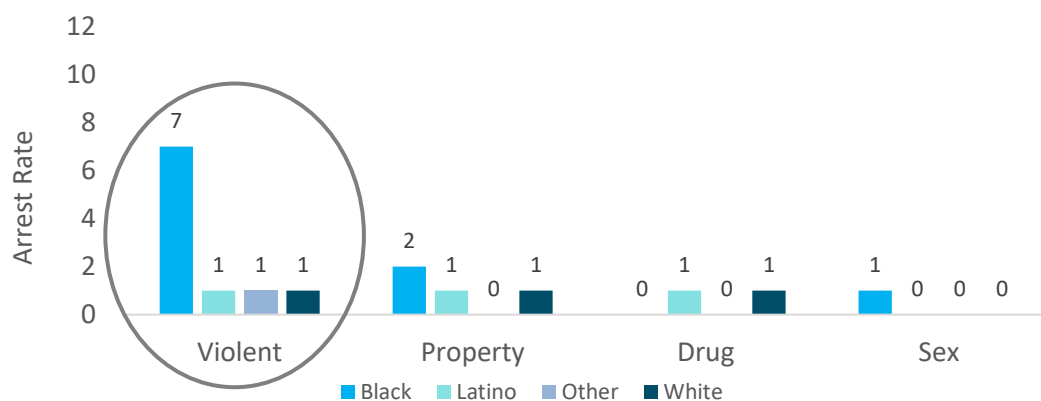
**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Figure 10. Contra Costa County, Misdemeanor Arrest Rates per 1,000**

Figure 10. illustrates countywide data in which compared to White adults, Black adults are 3 times more likely to be arrested for a misdemeanor while Black youth are approximately 6 times more likely to be arrested.

While Black youth are more likely to be arrested than White youth, there are variations across cities for what offenses disparities are greatest.

**Figure 11. City of Richmond, Juvenile Arrest Rates per 1,000**

As seen in Figure 11, disparities are greatest for violent offenses in Richmond where Black youth are 7 times more likely to be arrested for a violent offense than White or Latino youth.



**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations***Figure 12. City of Pittsburg, Juvenile Arrest Rates per 1,000**

As seen in Figure 12, disparities are greatest for property offenses in Pittsburg where Black youth are 3 times more likely to be arrested for a property offense than White or Latino youth.

**Although LEAs have implemented diversion practices, there is no systematic data collection on these programs, who is diverted, or their impact**

None of the following law enforcement agencies collect race-specific data on diversion practices:

- Richmond PD partners with RYSE to divert youth from official processing.
- Antioch PD partners with Reach to divert youth from official processing.
- Pittsburg and Concord PD have implemented the community court model to divert some adult and juvenile cases from formal processing.

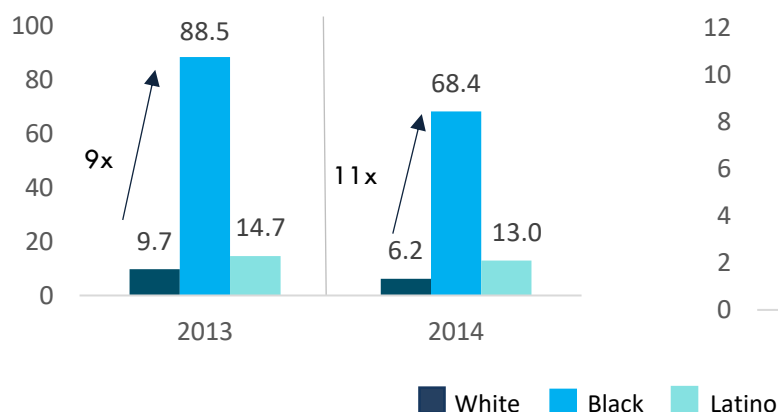
**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations*

## Juvenile Justice Data

All data provided below are from the Contra Costa County Probation Department. Data are from 2013 and 2014.

**In 2014, Black youth in Contra Costa County, were much more likely than Latino and White youth to be referred to Probation.**

**Figure 13. Rated of Referral to Probation per 1,000 youth, by Race**



**Figure 14. Referrals to Probation RRI, by Race**

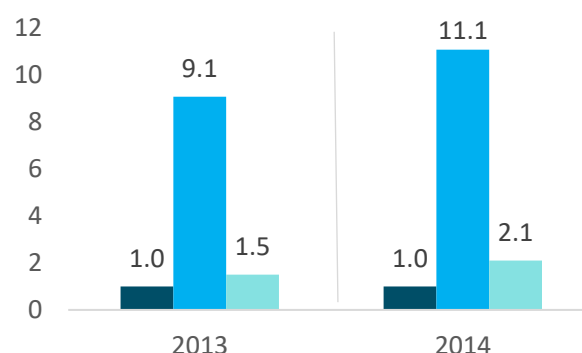
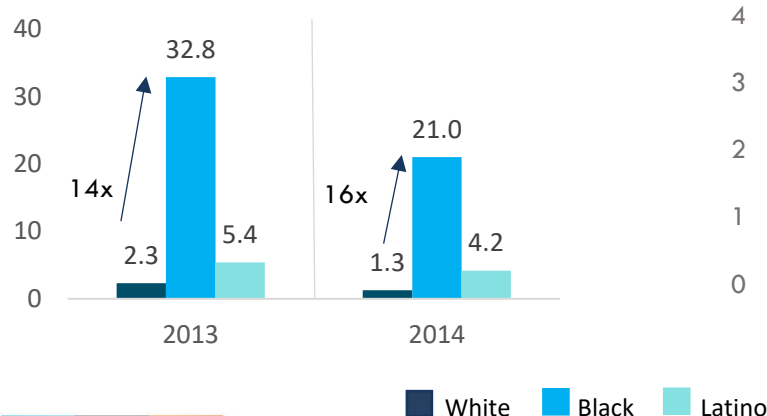


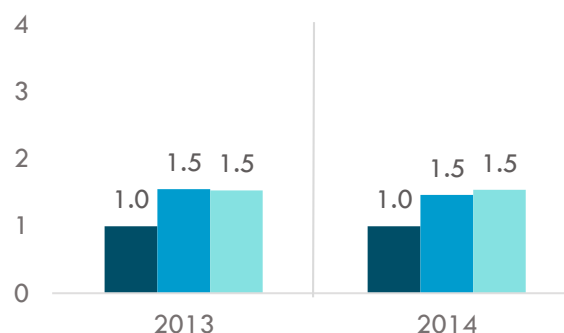
Figure 13 and Figure 14. Rated of Referral to Probation per 1,000 youth and Referrals to Probation RRI, illustrate overall, in 2013 and 2014, Black youth were 9 times more likely than White youth and 6 times more likely than Latino youth to be referred to Probation.

**In 2014, Black and Latino youth are more likely than White youth to be detained prior to adjudication.**

**Figure 15. Pre-Adjudication Detention Rates per 1,000 Youth, by Race**



**Figure 16. Pre-Adjudication Detention RRI, by Race**

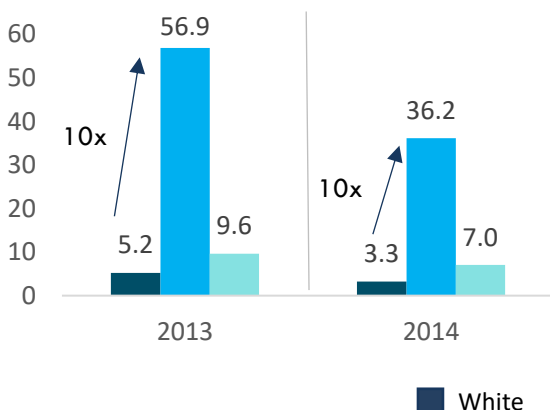


**Contra Costa County****Racial Justice Task Force – Final Report and Recommendations**

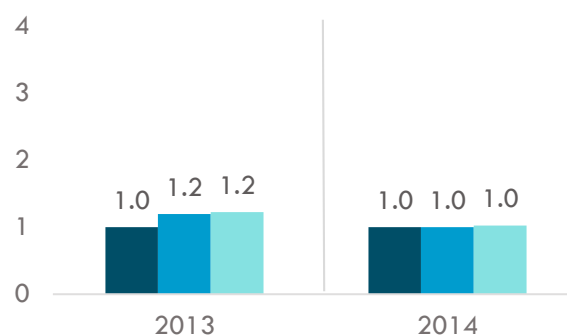
As seen in Figure and Figure 16, of all youth referred to Probation, Black and Latino youth are 50% more likely than White youth to be detained prior to adjudication.

**In 2014, petitions filed for Black youth were at a higher rate than all other groups, however relative to referrals the rate was the same as all other groups.**

**Figure 18. Pre-Adjudication Detention Rates per 1,000 Youth, by Race**



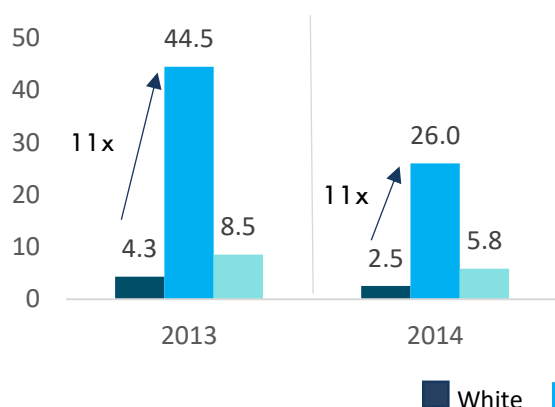
**Figure 17. Pre-Adjudication Detention RRI, by Race**



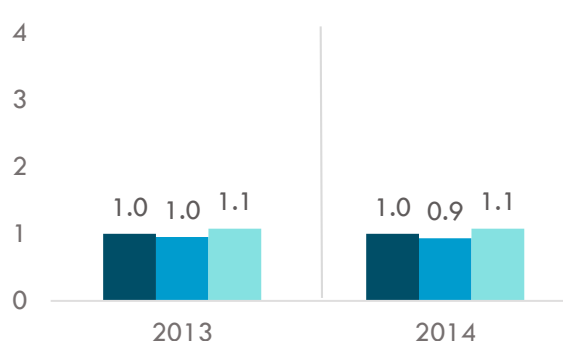
Figures 17 and 18 show that the Probation Department filed petitions at the same rate for all referred youth regardless of race; however, relative to their proportion of the overall county population, Black youth were 10 times more likely to have petitions filed than all other groups.

**In 2014, Black youth were deemed to be a ward of the court at a higher rate than all other groups, however relative to petitions filed, the rate was approximately the same across all groups.**

**Figure 19. Rates of Petitions Filed per 1,000 youth by Race**



**Figure 20. Petitions Filed RRI, by Race**

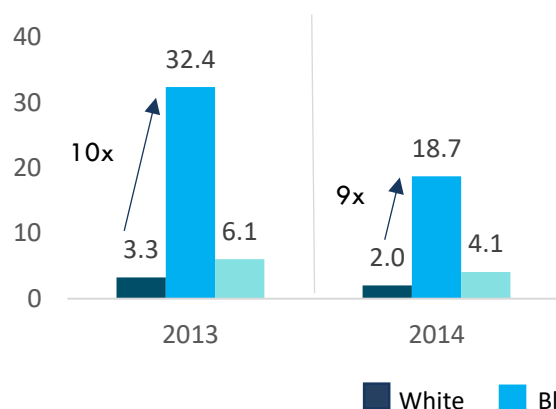


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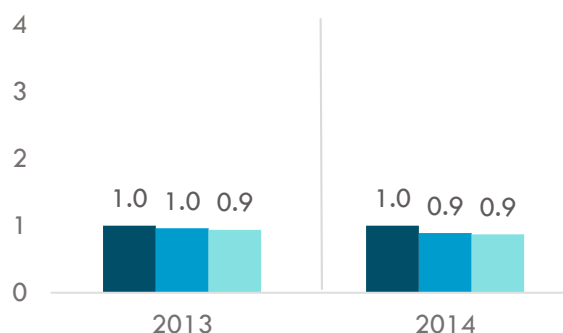
Among youth who had petitions filed, there were not disparities in who was deemed to be a ward of the court. There were still disparities compared to the overall rate within the population.

**In 2014, Black youth received placement at a higher rate than all other groups, however relative to being a ward of the court the rate was relatively the same across all groups.**

**Figure 21. Ward of the Court Rates per 1,000 by Race**



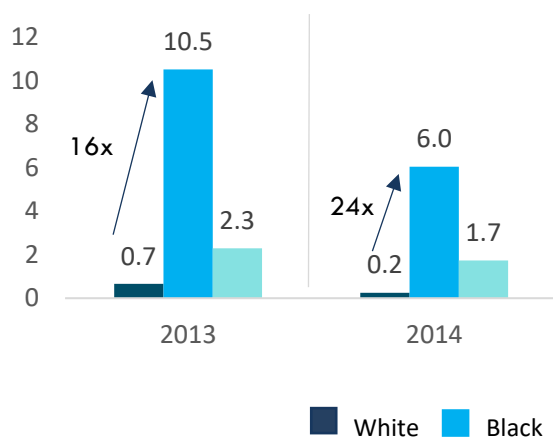
**Figure 22. Ward of the Court RRI, by Race**



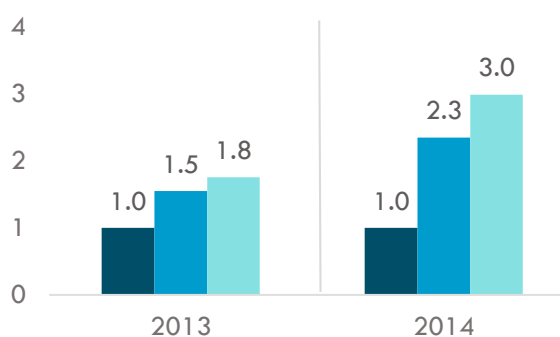
As Figures 21 and 22 illustrate, among youth who were adjudicated delinquent, there were no disparities in which youth received a disposition of placement. There were still disparities compared to the overall rate within the population.

**In 2014, Black youth were sent to secure confinement at a higher rate than all other races, however relative to being a ward of the court Latino youth were securely confined at a higher rate.**

**Figure 23. Placement Rates per 1,000 Youth, by Race**



**Figure 24. Placement RRI, by Race**





## Contra Costa County

### *Racial Justice Task Force – Final Report and Recommendations*

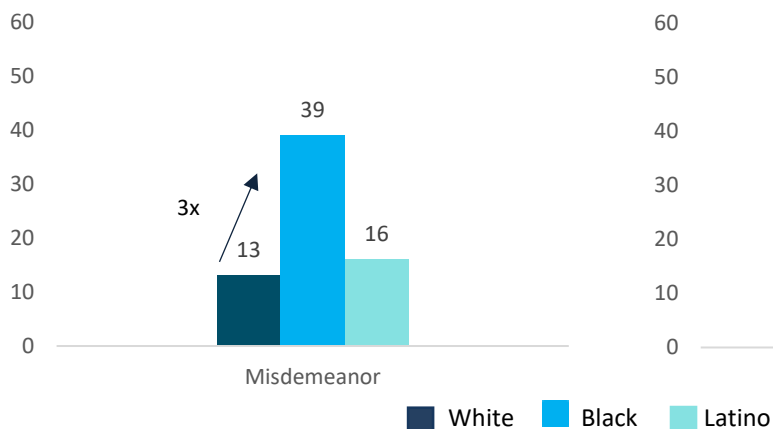
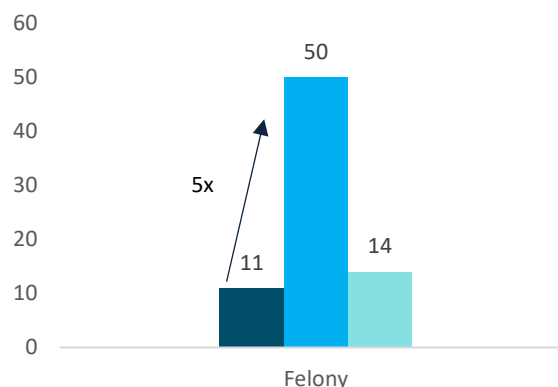
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Among all youth who were made a ward of the court, Latino youth were 3 times more likely to be placed in secure confinement compared to White youth and Black youth were 2 times more likely to be placed in secure confinement compared to White youth.

**Contra Costa County****Racial Justice Task Force – Final Report and Recommendations****Criminal Justice Data**

Data provided below are from the California DOJ CSJC, Contra Costa County Superior Court, and Contra Costa Sheriff's Office. Data are from 2014-2017. Specific data sources and dates are provided below.

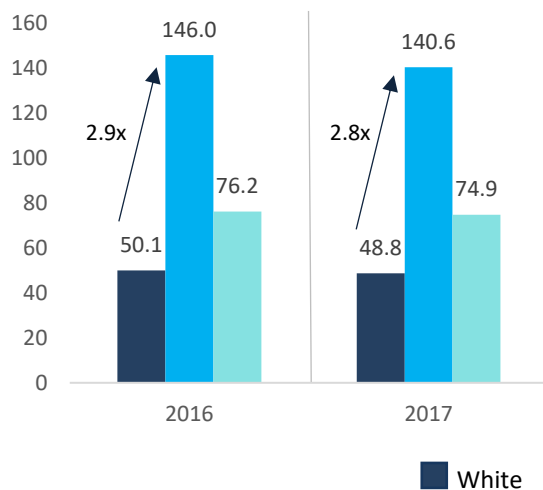
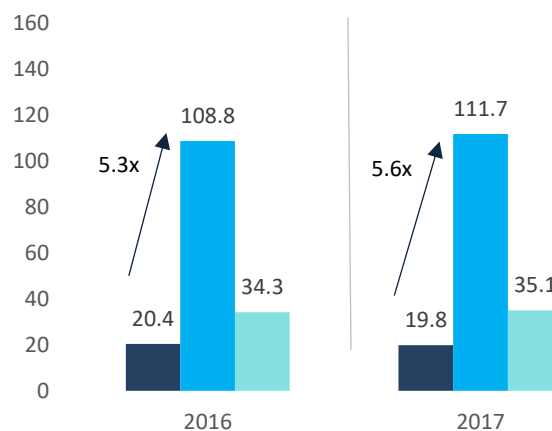
**In 2014, compared to Whites, Black adults were more likely to be arrested for a misdemeanor and felony.**

**Figure 25. Misdemeanor Arrest Rates, by Race\*****Figure 26. Felony Arrest Rates, by Race\***

*\*Data from across all cities in Contra Costa County from California DOJ CSJC*

As Figure 25 illustrates, Black adults were three times more likely to be arrested for a misdemeanor compare to Whites. Similarly, Figure 26 shows Black adults were four times more likely to be arrested for a felony than White adults.

**Black adults were more likely than White adults to have any case filed against them.**

**Figure 27. Misdemeanor Case Filing Rates, by Race\*****Figure 28. Felony Case Filing Rates, by Race\***

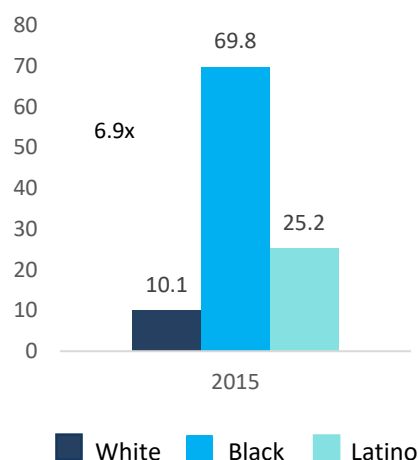
*\*Data from Contra Costa County Criminal Court*

**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations*

Figure 27 shows how in both 2016 and 2017, Black adults were approximately three times more likely to have a misdemeanor case filing than their White counterparts. Similarly, as shown in Figure 28, Black adults were more than five times more likely to have a felony case filing than White adults.

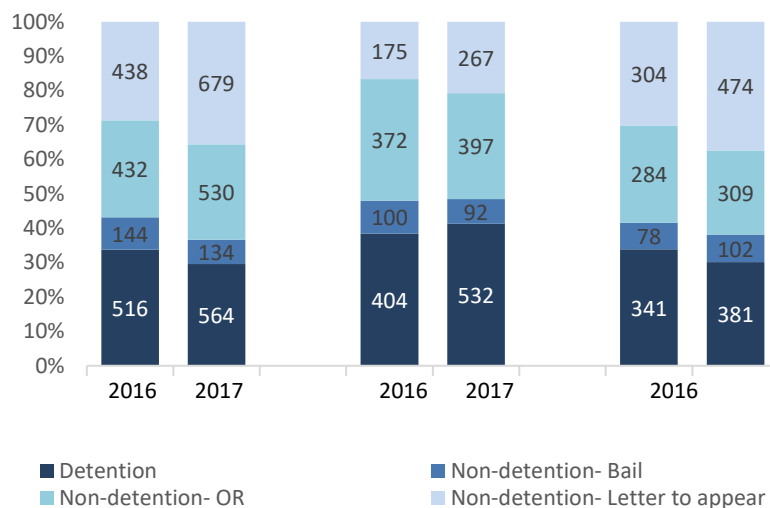
**Black adults in Contra Costa County were more likely than Latino or White adults to be detained pre-trial.**

**Figure 29. Pre-Trial Detention Rates, by Race\***



\*Data is a snapshot of detained population on 7/9/2015  
Contra Costa County Sheriff's Office

**Figure 30. Pre-Trial Detention versus Non-Detention, by Race\***



\*Data from Contra Costa County Criminal Court

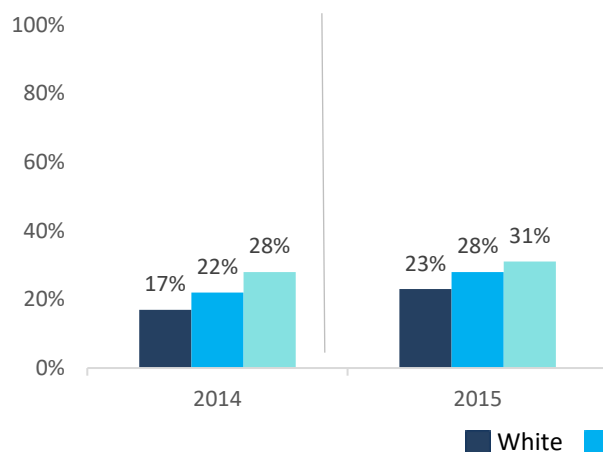
As Figure 29 illustrates, in 2015, Black adults were approximately 7 times more likely to be detained pre-trial than White adults. Figure 30 shows in both 2016 and 2017, Black adults were more likely to be detained as compared to White adults who have higher rates of non-detention OR and letter to appear. Black adults are also significantly less likely to be given a letter to appear than both White and Latino adults.



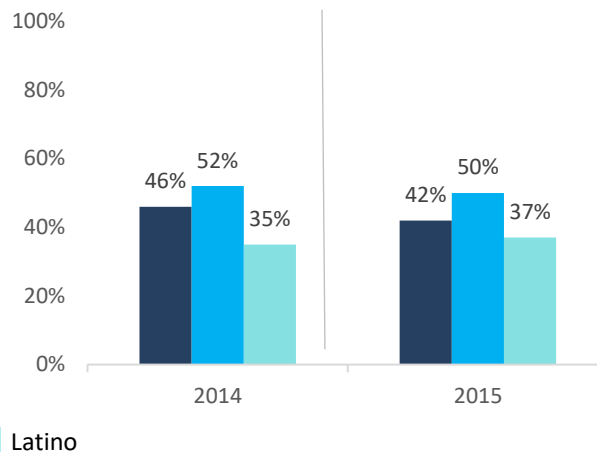
**Contra Costa County****Racial Justice Task Force – Final Report and Recommendations**

A greater proportion of cases with Latino or Black defendants had charge or person enhancements than cases with White defendants.

**Figure 31. Proportion of Cases with Charge Enhancements, by Race\***



**Figure 32. Proportion of Cases with Person Enhancements, by Race\***

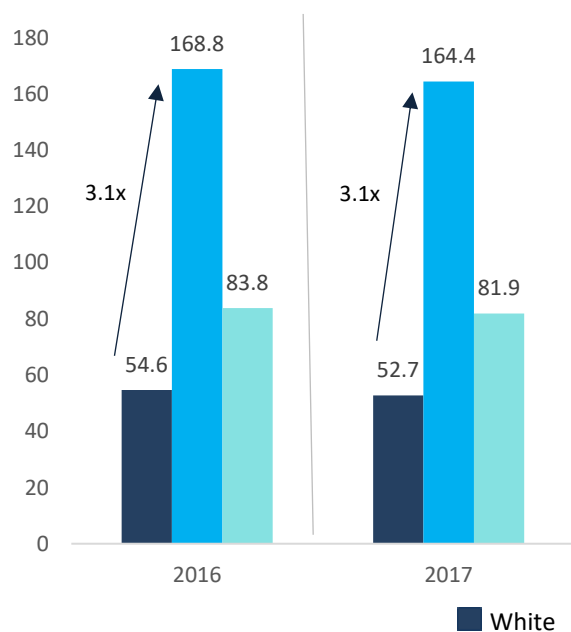


\*Data from the Public Defender's Office

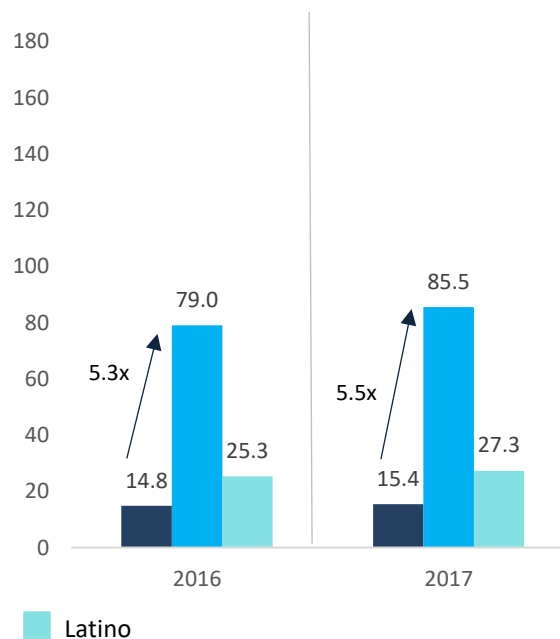
Figure 31 shows in both 2014 and 2015, Latino adults had the highest proportion of cases with charge enhancements. Figure 32 shows both in 2014 and 2015, Black adults had the highest proportion of cases with person enhancements, followed by White adults.

Black adults were more likely than white adults to have a misdemeanor or felony case filed against them.

**Figure 33. Misdemeanor Conviction Rates, by Race\***



**Figure 34. Felony Conviction Rates, by Race\***



\*Data from Contra Costa County Criminal Court





## Contra Costa County

### *Racial Justice Task Force – Final Report and Recommendations*

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Figure 33 shows Black adults were three times more likely to have a misdemeanor conviction than White adults. Figure 34 shows Black adults were more than five times as likely to get a felony conviction than White adults in 2016 and 2017.

**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations*

## Appendix C. Community Forums

The Racial Justice Task Force hosted two rounds of community forums throughout Contra Costa County. The goal of each community forum was to engage community members with the project and gather community input and feedback on the projects' areas of focus and set of draft recommendations.

The first round of community forums took place in November and consisted of five community forums in the cities of Concord, Danville, Pittsburg, Richmond, and Antioch. The focus of the first round of community forums was to share the purpose of the Racial Justice Task Force and share work to date. Community members also had the opportunity to provide input towards the project's areas of focus.

**Table 1. Attendees per Location**

Location	Number of Public Attendees
Concord	32
Danville	35
Pittsburg	34
Richmond	28
Antioch	25

The Racial Justice Coalition, District Attorney, Board of Supervisors, School Board, Teachers, Public Defender, faith-based organizations, and Local Law Enforcement were some of the stakeholders in attendance.

**Figure 35. November Community Forums Key Themes**

Impact of Historical Trauma	Implicit & Explicit Bias	School to Prison Pipeline	Mistrust of Law Enforcement	County Processes
<ul style="list-style-type: none"><li>•Lack of cultural competence/awareness in schools and justice system agencies</li><li>•Restorative justice</li><li>•Need for increased mental health services</li></ul>	<ul style="list-style-type: none"><li>•Need for cultural responsive implicit bias training for all justice stakeholders</li></ul>	<ul style="list-style-type: none"><li>•Role of schools pushing youth of color into the justice system</li><li>•Youth development</li></ul>	<ul style="list-style-type: none"><li>•Sherriff's Office's relationship to ICE</li></ul>	<ul style="list-style-type: none"><li>•Expand and standardize diversion programs, policies, and procedures.</li><li>•Standardize data collection across the county</li><li>•Reform bail cash system</li></ul>

**Contra Costa County***Racial Justice Task Force – Final Report and Recommendations*

Following the first round of community forums, the Racial Justice Task Force analyzed community input and integrated feedback into areas of focus. After a series of discussions of best practices, current practices, and analysis of racial disparities in the county, the Racial Justice Task Force drafted a set of preliminary recommendations for the Board of Supervisors. The purpose of the second round of community forums was to share the set of preliminary set of recommendations and solicit feedback for any revisions, additions, or removals of drafted recommendations.

**Table 2. Attendees per Location**

Location	Number of Public Attendees
Walnut Creek	59
Antioch	24
Richmond	28

The Racial Justice Coalition, District Attorney, Board of Supervisors, School Board, Teachers, Public Defender, Behavioral Health, community-based organizations, faith-based organizations, Local Law Enforcement, and residents were some of the stakeholders in attendance.

**Figure 36. May Community Forums Key Themes**

Highest Priorities	Key Concerns	Gaps
<ul style="list-style-type: none"><li>•Expand diversion and criteria</li><li>•Establish sliding scale fees/ fee waivers for pre-trial and diversion programs</li><li>•Develop data collection and accountability measures</li><li>•Establish oversight committee for implementation process that includes community members</li><li>•Ensure recommendation planning process includes community input</li></ul>	<ul style="list-style-type: none"><li>•Available funding and budget prioritization for recommendations</li><li>•Misuse of publically available data</li><li>•Buy-in from implementin partners such as education</li><li>•Language accessibility for programs/ services</li></ul>	<ul style="list-style-type: none"><li>•Use of force policies and police engaged violence</li><li>•Police disclosure and monitoring of police misconduct</li><li>•Body cameras for law enforcement</li><li>•Recruitment and retention of school staff that are reflective of communities they serve</li><li>•Community centered services that prevent any contact with the justice system</li><li>•Staffing and racial disparities in various policing agencies</li></ul>



THE IMPACT OF  
EARLY REPRESENTATION:

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

Alena Yarmosky, MPP 2018

University of California, Berkeley

Goldman School of Public Policy

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# Executive Summary

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## 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

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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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

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<sup>1</sup> San Francisco Public Defender. Retrieved from <http://sfpublicdefender.org/about/>

<sup>2</sup> 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>

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

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

<sup>5</sup> Deputy Public Defenders, Felony Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March - April)

<sup>6</sup> 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

<sup>7</sup> 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](http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf)

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

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

# Policy Background

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## 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.<sup>8</sup>

## 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.<sup>9</sup> A significant portion of this funding is used to house individuals within the City's jail system: County Jail #2 (located at 425 7<sup>th</sup> St.), County Jails #3 and #4 (located at 850 Bryant St.), and County Jail #5 (located at #1 Moreland Dr. San Bruno).<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

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

<sup>9</sup> Final Report, Work Group to Re-envision the Jail Replacement Project. (2017).

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

<sup>11</sup> San Francisco County Jail System Facility Descriptions. Retrieved from [http://www.sfsheriff.com/jail\\_info.html](http://www.sfsheriff.com/jail_info.html)

<sup>12</sup> Final Report, Work Group to Re-envision the Jail Replacement Project. (2017).

<sup>13</sup> 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.<sup>14</sup>

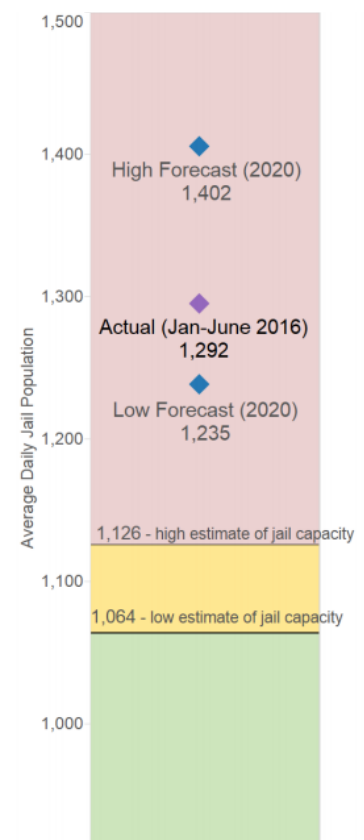
To assess the reduction required, the Work Group compared the total number of usable beds in San Francisco’s jail system to the average daily jail population in the first six months of 2016. They concluded that in order to allow for the permeant closure of County Jails #3 and #4, the jail population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

### 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.<sup>17</sup> 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.<sup>18</sup> 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)**

<sup>14</sup> 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>

<sup>15</sup> 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.

<sup>16</sup> Final Report, Work Group to Re-envision the Jail Replacement Project. (2017).

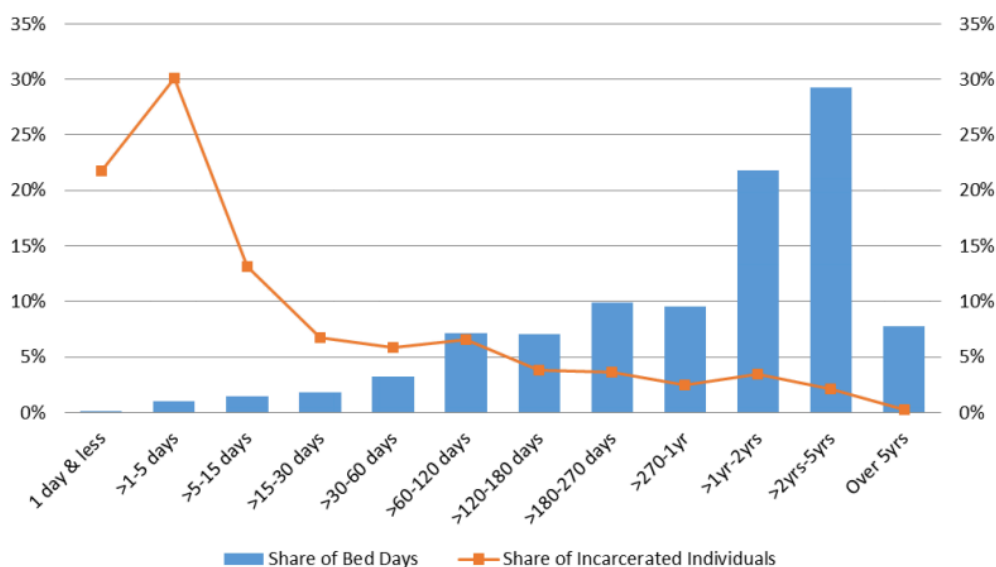
<sup>17</sup> Update to the Jail Population Forecast (Rep.). (2015). City Services Auditor, Office of the Controller, City and County of San Francisco.

<sup>18</sup> 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).<sup>19</sup>

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.

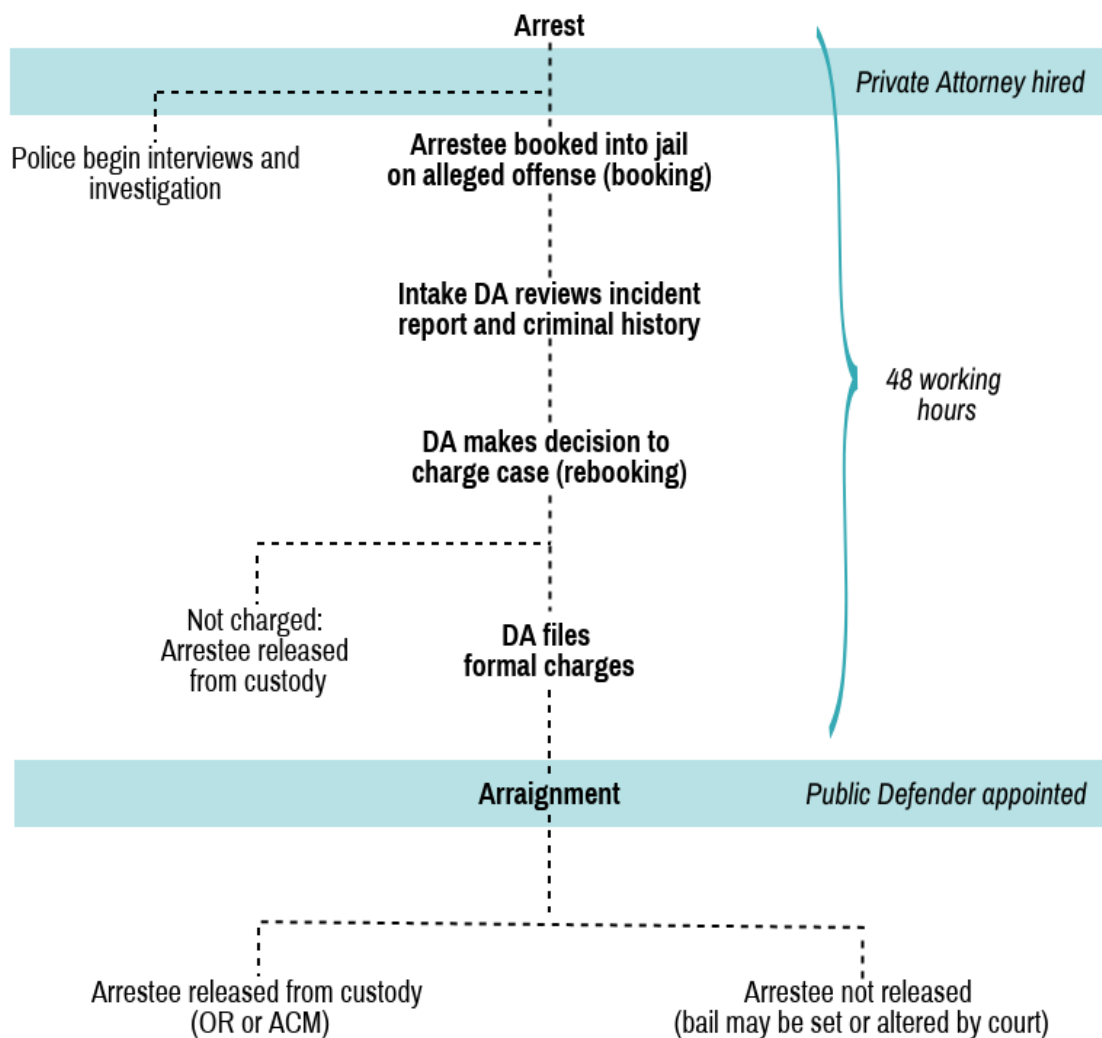
The Pre-Trial Release Unit was launched on October 2, 2017, supported by \$355,000 in funding from the Mayor's FY 2017 – 2018 budget. The goals of the unit reflect the twin priorities of its founding: 1) rectify wealth disparities in pre-trial outcomes, and 2) reduce San Francisco's jail population.

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

# Wealth Disparities in Pre-Arraignment Representation

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

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



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

As noted in Figure 3, California law requires that individuals are arraigned no more than 48 *working* hours after arrest.<sup>20</sup> 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.<sup>21</sup>

The San Francisco District Attorney's Office is currently working to reduce these delays by extending charging decisions to non-working days (weekend rebooking).<sup>22</sup> However, it is important to note that arraignment hearings continue to occur exclusively during working hours.<sup>23</sup> 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.<sup>24</sup>

## 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 5<sup>th</sup> and 6<sup>th</sup> 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.<sup>25</sup> 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.

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<sup>20</sup> California Penal Code §825

<sup>21</sup> Final Report, Work Group to Re-envision the Jail Replacement Project. (2017).

<sup>22</sup> Ibid.

<sup>23</sup> The Superior Court, County of San Francisco maintains normal working hours and does not operate on weekends or holidays.

<sup>24</sup> 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.

<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> When an individual is incorrectly or overly-charged by police, rebooking is the earliest opportunity to correct this injustice.

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

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

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

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



# Wealth Disparities in Pre-Arraignment Release

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

## 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.<sup>30</sup> At arraignment, a judge may decide to alter a defendant's bail amount based on community ties, criminal history, and public safety risk.<sup>31</sup>

Wealthy arrestees who can afford to post the full bail amount (as indicated by the Superior Court's fixed fee schedule) are able to remain in their homes and communities while awaiting formal charges and/or arraignment. If the District Attorney decides not to file charges in their case or they are exonerated at trial, these individuals get a full bail refund. In contrast, indigent arrestees who wish to be released pre-arraignment must pay a nonrefundable bail fee (generally 10 percent of set bail) to a bail bondsman.<sup>32</sup> 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.<sup>33</sup>

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.<sup>34</sup> 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.<sup>35</sup>

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

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<sup>29</sup>"Not in it for Justice" | How California's Pretrial Detention and Bail System Unfairly Punishes Poor People. Human Rights Watch. (2017, June 06).

<sup>30</sup> Superior Court of California, County of San Francisco, Felony-Misdemeanor Bail Schedule. (2017, July 1).

<sup>31</sup> California Penal Code §1275

<sup>32</sup> Do the Math: Money Bail Doesn't Add Up for San Francisco. (2017). San Francisco Financial Justice Project, Office of the Treasurer & Tax Collector.

<sup>33</sup> Ibid.

<sup>34</sup> 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.

<sup>35</sup> Do the Math: Money Bail Doesn't Add Up for San Francisco. (2017). San Francisco Financial Justice Project, Office of the Treasurer & Tax Collector.

<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup> 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.

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<sup>37</sup> Deputy Public Defenders, Felony Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March - April)

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

# The Impact of Pre-Trial Incarceration

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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.<sup>40</sup> 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.<sup>41</sup>

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.<sup>42 43</sup>

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.<sup>44</sup> 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.<sup>45</sup>

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

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<sup>40</sup> 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

<sup>41</sup> Ibid.

<sup>42</sup> 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

<sup>43</sup> 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>

<sup>44</sup> 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

<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup> Kentucky arrestees detained pre-trial were found to have jail sentences nearly three times as long.<sup>49</sup>

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.<sup>50</sup> 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.<sup>51</sup>

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

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<sup>46</sup> 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.

<sup>47</sup> Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). Investigating the Impact of Pretrial Detention on Sentencing Outcomes. Laura and John Arnold Foundation.

<sup>48</sup> 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.

<sup>49</sup> Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). Investigating the Impact of Pretrial Detention on Sentencing Outcomes. Laura and John Arnold Foundation.

<sup>50</sup> Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). The Hidden Costs of Pretrial Detention. Laura and John Arnold Foundation.

<sup>51</sup> Ibid.

# Program Overview

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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.<sup>52</sup>

**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.<sup>53</sup>

**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.

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<sup>52</sup> 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.

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

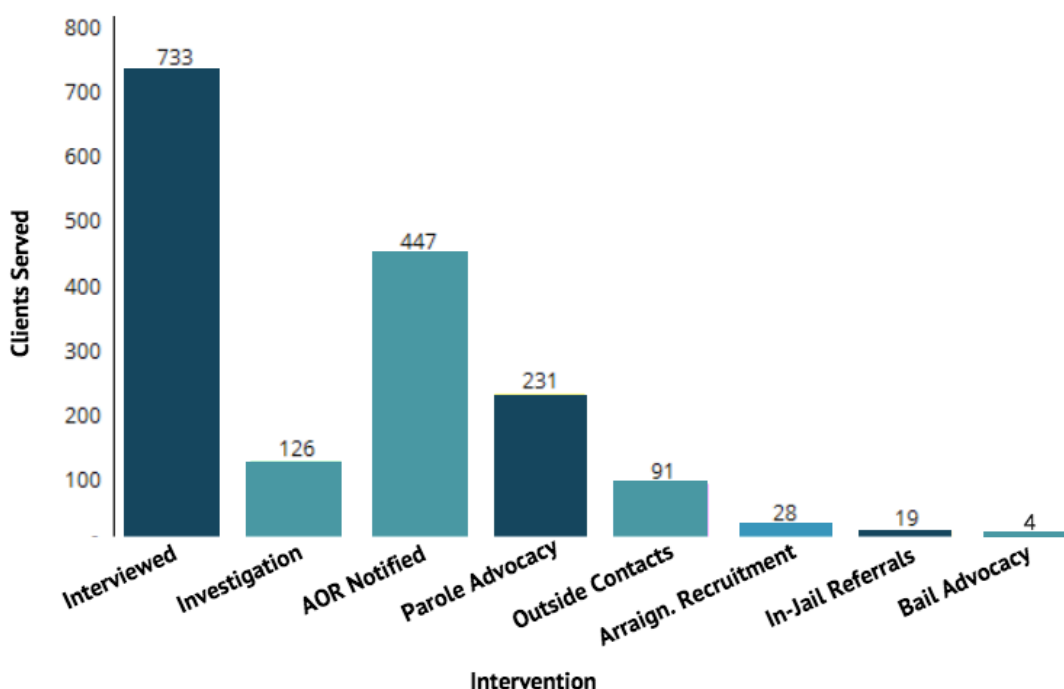
**Family/Friend Contacts:** Arrestees are often unable to alert their friends or family members upon being booked into jail. Outside assistance can be critical, however; If contacted, a clients' friends/families can help to coordinate childcare, ensure housing is maintained, communicate work absences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

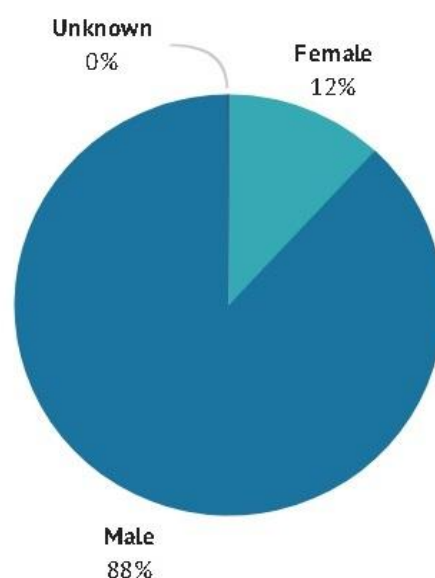
It is important to note that PRU intervention falls into two primary categories: arrest-responsive intervention, which includes pre-arraignment interviews, case investigation, attorney notification, contacts to family or friends, and pre-arraignment recruitment; and parole advocacy, which is provided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

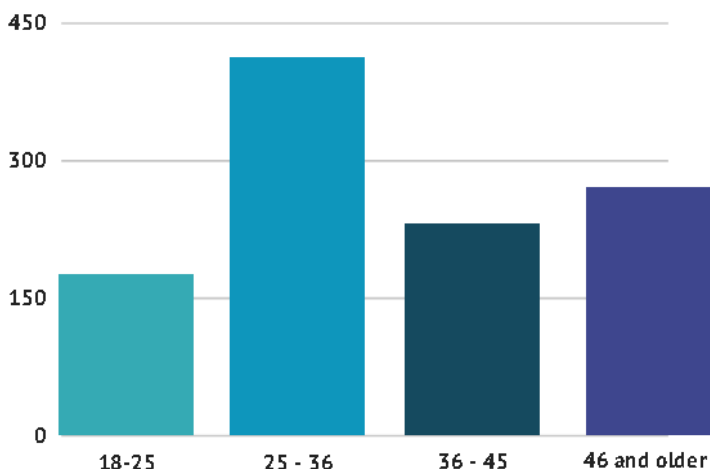
It is important to note that while the PRU represented at least 2 clients who identify as transgender, this information is not provided in gender data obtained from the Court Management System (CMS). Until February 20<sup>th</sup> of this year, the San Francisco Sherriff's Department classified jailed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



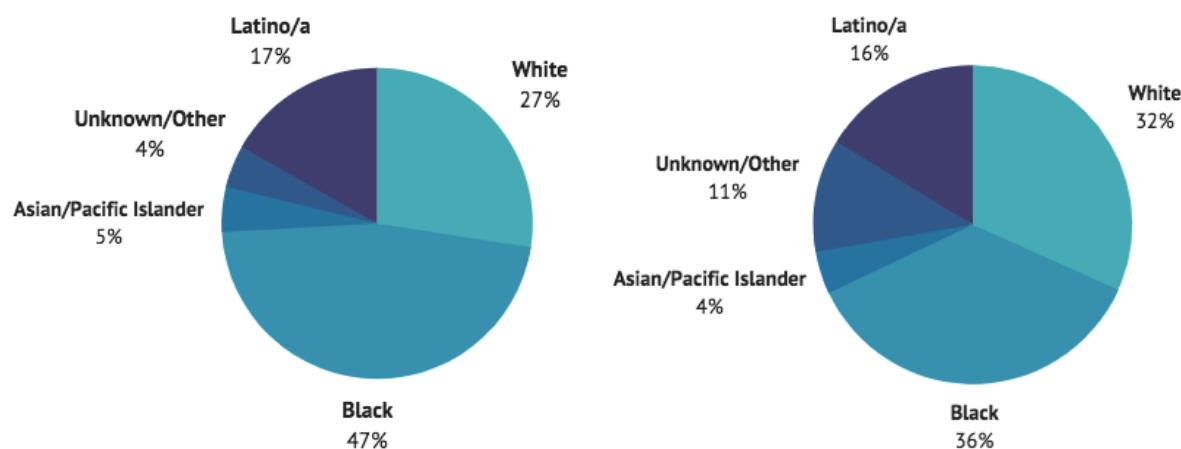


Using data accessed through the CMS/Gideon systems, we determined that the racial demographics of PRU clients largely reflect the racial makeup of the total jail population (see Figure 7). Approximately 27 percent of PRU clients are white, 47 percent are black, 17 percent are Latino/a, 5 percent are 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.<sup>54</sup>

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).<sup>55</sup> Summary codes range from 1- 74, with 1 constituting the most severe charge (“Willful Homicide”), and 74 constituting the least severe (“Misc. Traffic Violations”).

<sup>54</sup> 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.

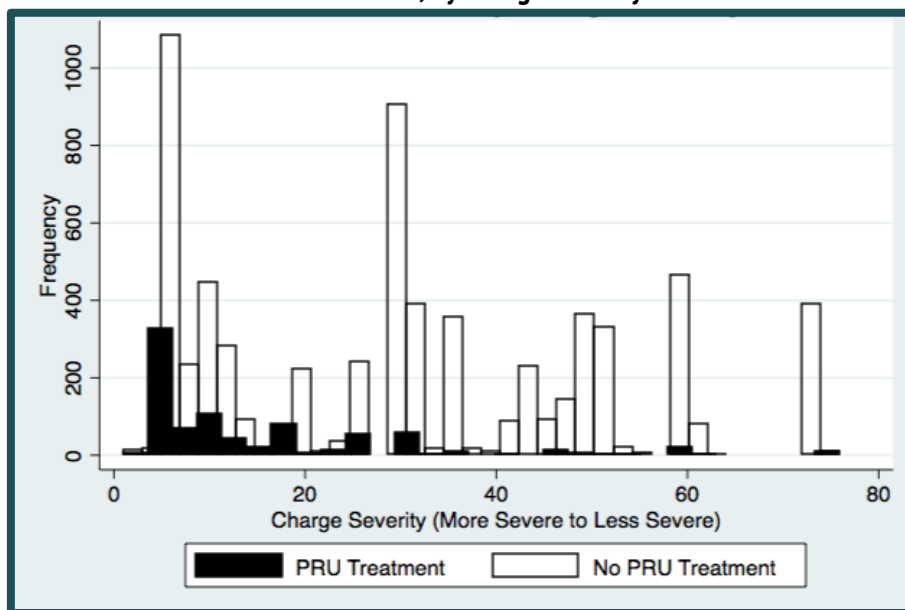
<sup>55</sup> Clients’ top charge is determined by a Public Defender clerk, who reviews all charges and chooses the most severe (“top”) offense to enter into the Gideon database. While there is potential for human error here, we were unable to access additional client charges in an operational form.

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)
<b>FELONY</b>	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
<b>MISD.</b>	29 - 40	Dangerous drugs, petty theft, indecent exposure
	40 - 64	Prostitution, disorderly conduct, trespassing, DUI
	60	Public nuisance, contempt of court, perjury, highway
	65 - 67	Misc. traffic offenses

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



# Evaluation Methods

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## 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:<sup>56</sup>

- 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

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<sup>56</sup> 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,<sup>57</sup> yet due to information barriers, it can be difficult to evaluate statistically.<sup>58</sup> 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.<sup>59</sup> We then projected these ratios onto the remaining 890 non-treated defendants.

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<sup>57</sup> California Penal Code §§1318-1319.5, 1270 govern release on one's own recognizance.

<sup>58</sup> 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.

<sup>59</sup> 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

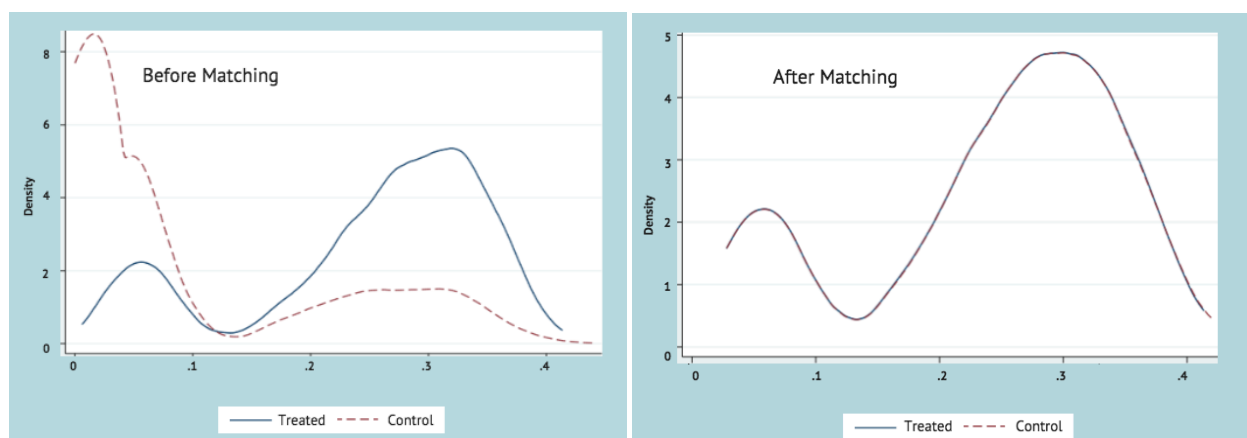
## PRU Intervention Reduces Length of Pre-Trial Incarceration

### 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
<b>14%</b> released at arraignment	<b>28%</b> released at arraignment	<b>100 percent increase</b> <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).<sup>60</sup>

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.<sup>61</sup>

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.<sup>62</sup> 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.”<sup>63</sup>

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.<sup>64</sup> At its most effective, early investigation has provided attorneys with compelling exculpatory evidence that they have used to argue for their clients' immediate release.<sup>65</sup>

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<sup>60</sup> See Appendix B for summary statistics

<sup>61</sup> Deputy Public Defenders, Felony Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April)

<sup>62</sup> Program Staff, Pre-Trial Release Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March - April)

<sup>63</sup> Deputy Public Defenders, Felony Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April)

<sup>64</sup> Ibid.

<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup>

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.”<sup>68</sup>

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.”<sup>69</sup>

## **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).

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

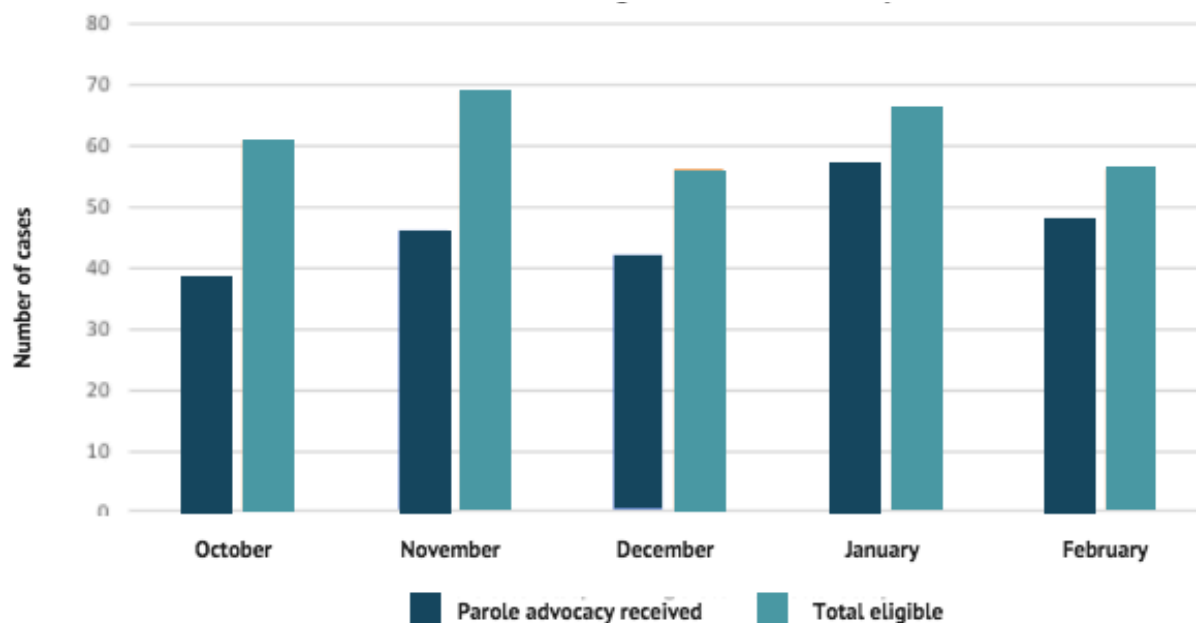
<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> 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).<sup>70</sup> 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).**<sup>71</sup>

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

<sup>70</sup> 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).

<sup>71</sup> 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.<sup>72</sup> 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.<sup>73</sup>

## 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

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

<sup>73</sup> 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.<sup>74</sup>

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.<sup>75</sup> 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.<sup>76</sup>

Unfortunately, many arrestees find it difficult to navigate the complicated legal system in which they find themselves.<sup>77</sup> This can further erode arrestees' trust in the system, increasing their likelihood to reoffend.<sup>78</sup> 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.”<sup>79</sup>

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<sup>74</sup> Program Staff, Pre-Trial Release Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April).

<sup>75</sup> Gallup, Inc. (2017). Confidence in Institutions. Retrieved from <http://news.gallup.com/poll/1597/confidence-institutions.aspx>

<sup>76</sup> LaGratta, E. (2017). To Be Fair: Conversations About Procedural Justice. New York, NY: Center for Court Innovation.

<sup>77</sup> 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>

<sup>78</sup> Beijersbergen, K. A., Dirkzwager, A. J., & Nieuwbeerta, P. (2015). Reoffending After Release. *Criminal Justice and Behavior*, 43(1), 63-82. doi:10.1177/0093854815609643

<sup>79</sup> 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.<sup>80</sup>

### **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.<sup>81</sup> 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.<sup>82</sup> Other former clients reported that they found the jail phones complicated and virtually impossible to use.<sup>83</sup>

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.<sup>84</sup>

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.<sup>85</sup>

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<sup>80</sup> Beijersbergen, K. A., Dirkzwager, A. J., & Nieuwbeerta, P. (2015). Reoffending After Release. *Criminal Justice and Behavior*, 43(1), 63-82. doi:10.1177/0093854815609643

<sup>81</sup> Former PRU Clients. [Personal interviews]. (2018, April).

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Program Staff, Pre-Trial Release Unit, San Francisco Public Defenders Office. [Personal interviews]. (2018, March – April).

<sup>85</sup> 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).<sup>86</sup>

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

Not Released at Arraignment	Released at Arraignment
<b>1320.36 hours</b> avg. hours of incarceration	<b>369.08 hours</b> avg. hours of incarceration
<b>55 days</b> avg. days of incarceration	<b>15 days</b> 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.<sup>87</sup>

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<sup>86</sup> 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.

<sup>87</sup> 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

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

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

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

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

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

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

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

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

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

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

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

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

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

# Works Cited

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- Baughman, S. B. (n.d.). The Costs of Pre-Trial Detention (Rep.). Boston University Law Review.
- Beijersbergen, K. A., Dirkzwager, A. J., & Nieuwbeerta, P. (2015). Reoffending After Release. *Criminal Justice and Behavior*, 43(1), 63-82. doi:10.1177/0093854815609643
- Do the Math: Money Bail Doesn't Add Up for San Francisco. (2017). San Francisco Financial Justice Project, Office of the Treasurer & Tax Collector.
- Dobbie, W., Goldin, J., & Yang, C. S. (2018). The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges. *American Economic Review*, 108(2), 201-240. doi:10.1257/aer.20161503
- Final Report, Work Group to Re-envision the Jail Replacement Project. (2017).
- Fuller, T., & Stevens, M. (2018, February 28). California Today: Should Bail Be Set Above What Defendants Can Pay? Retrieved from <https://www.nytimes.com/2018/02/28/us/california-today-bail-hearings-san-francisco.html>
- Gunnell, J. J., & Ceci, S. J. (2010). When emotionality trumps reason: A study of individual processing style and juror bias. *Behavioral Sciences & the Law*, 28(6), 850-877. doi:10.1002/bsl.939
- Heaton, P., Mayson, S., & Stevenson, M. (2016). The Downstream Consequences of Misdemeanor Pre-Trial Detention. Quattrone Center for the Fair Administration of Justice, University of Pennsylvania School of Law.
- LaGratta, E. (2017). To Be Fair: Conversations About Procedural Justice. New York, NY: Center for Court Innovation.
- Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). Investigating the Impact of Pretrial Detention on Sentencing Outcomes. Laura and John Arnold Foundation.
- Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). The Hidden Costs of Pretrial Detention. Laura and John Arnold Foundation. Retrieved from [http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF\\_Report\\_hidden-costs\\_FNL.pdf](http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf)
- "Not in it for Justice" | How California's Pretrial Detention and Bail System Unfairly Punishes Poor People. Human Rights Watch. (2017, June 06).
- Owens, E., Kerrison, E. M., & Da Silva, B. S. (2017). Examining Racial Disparities in Criminal Case Outcomes among Indigent Defendants in San Francisco. Quattrone Center for the Fair Administration of Justice, University of Pennsylvania Law School.
- MacDonald, J., and Raphael, S. (2017). An Analysis of Racial and Ethnic Disparities in Case Dispositions and Sentencing Outcomes for Criminal Cases. Presented to and Processed by the Office of the San Francisco District Attorney.
- Meghan Sacks & Alissa R. Ackerman (2012) Pretrial detention and guilty pleas: if they cannot afford bail they must be guilty, *Criminal Justice Studies*, 25:3, 265-278, DOI: 10.1080/1478601X.2012.705536
- Pinto, N. (2015, August 13). The Bail Trap. *The New York Times Magazine*.
- Rogers, R. (2011, November). Getting it wrong about Miranda rights: False beliefs, impaired reasoning, and professional neglect. Retrieved from <https://www.ncbi.nlm.nih.gov/pubmed/22082397>
- Update to the Jail Population Forecast (Rep.). (2015). City Services Auditor, Office of the Controller, City and County of San Francisco.



# Appendix A: Study Assumptions and Limitations

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## 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.<sup>88</sup>

## 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.<sup>89</sup> 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.<sup>90</sup>

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,

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<sup>88</sup> 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.

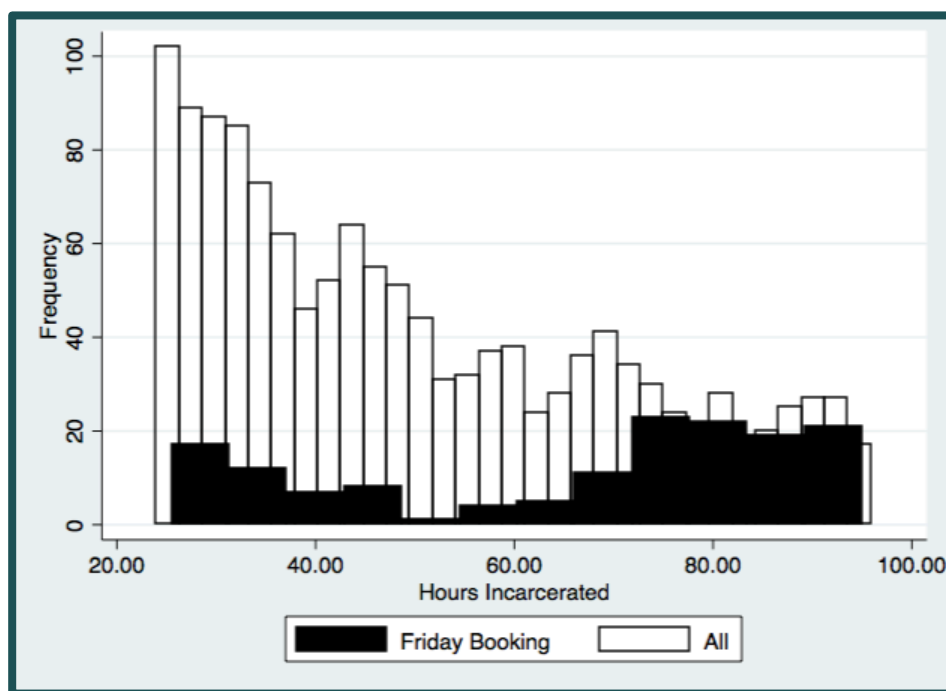
<sup>89</sup> Final Report, Work Group to Re-envision the Jail Replacement Project. (2017).

<sup>90</sup> 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.<sup>91</sup>

<sup>91</sup> 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.<sup>92</sup> 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.<sup>93</sup>

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.<sup>94</sup> We then assumed that

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<sup>92</sup> Hours incarcerated is calculated using booking time, and not time of arrest.

<sup>93</sup> 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.

<sup>94</sup> 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.<sup>95</sup> 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.<sup>96</sup>

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

<sup>95</sup> 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.

<sup>96</sup> 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	<b>.13970</b>	.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)
<b>parole advocacy</b>	<b>-245.2 (105.4)</b>	<b>-229.4 (101.8)</b>
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)