



Public Defense at Preliminary Arraignments Associated with Reduced Jail Bookings and Decreased Disparities

October 2020

In Allegheny County, a preliminary arraignment is a defendant's first court appearance following a custodial arrest (i.e., detainment by the police). At this court appearance, a judge notifies the defendant of the charges against him/her and a bail determination is made. Historically in the County, individuals appearing for preliminary arraignments were not provided free legal representation, and even those who were able to obtain a private attorney were rarely represented at preliminary arraignments. Lack of legal representation can have serious consequences for fairness and equity in court proceedings, as well as a substantial impact on the jail population.

In April of 2017, the Allegheny County Office of the Public Defender (OPD) began a pilot project utilizing existing staff to provide legal representation for all people arraigned during business hours at Pittsburgh Municipal Court (PMC). The outcomes of the first year of the pilot are encouraging. People represented by a public defender (PD) at this stage were less likely to receive cash bail and less likely to be booked into the Allegheny County Jail (ACJ) compared to a matched sample of people not represented. Even with additional people released at this stage, the rates of failure to appear and new arrests between the pilot group and the pre-pilot matched sample remained relatively constant.

While this data brief focuses on year one of the pilot, the OPD was able to expand the project in April 2019 to represent additional people arraigned at PMC outside of business hours. The expansion was made possible with the assistance of money from the John D. and Catherine T. MacArthur Foundation's Safety and Justice Challenge (SJC) grant. As a result of the initiative, PDs now represent half of all defendants arraigned at PMC.¹

METHODOLOGY

This data brief presents outcomes of the first year of the pilot project (April 1, 2017–March 31, 2018) for the 3,203 arraignments at which people were represented by the OPD. PDs represented people with a preliminary arraignment at Pittsburgh Municipal Court during business hours (M–F, 8:30 a.m.–4:30 p.m.)². The outcomes of these arraignments were compared to the outcomes of 5,241 preliminary arraignments for people without legal representation that occurred in the year prior to the pilot project (April 1, 2016–March 31, 2017) at PMC during business hours.

1 This accounts for 76% of all preliminary arraignments in Allegheny County. The remaining preliminary arraignments occur at MDJ locations around the county.

2 There were 1,788 preliminary arraignments that occurred during this time at PMC where there was no PD available. The arraignments that did not have a PD were random (i.e., characteristics of the case did not affect whether a PD was present); rather, some cases did not have a PD due to staff absence

during some shifts or gaps in transition from one PD to another. Since the pilot, the OPD has successfully increased the number of qualifying arraignments that have representation.

The sources for this analysis are:

- **Magisterial District Judge Case Management System (MDJS):** tracks all preliminary arraignments and preliminary hearings in the Fifth Judicial District of Pennsylvania (PA).
- **Common Pleas Case Management System (CPCMS):** tracks all cases that are held for court in the Fifth Judicial District of PA.
- **Allegheny County Pretrial Services Case Management System (APCMS):** tracks all pretrial risk assessments for people arraigned at PMC.
- **Allegheny County Jail Offender Management System (OMS):** tracks all bookings into and releases from the ACJ.
- **Allegheny County Office of the Public Defender:** the OPD tracks all clients represented by a PD at preliminary arraignment.

The analysis presented in this data brief is descriptive in nature and not intended to be a rigorous program evaluation. There may be other factors besides the inclusion of the PD at preliminary arraignments that affected outcomes. For example, Pretrial Services introduced a re-validated pretrial risk tool in October 2016 that may have affected judges' decision-making.³

Allegheny County is currently partnering with the RAND Corporation to do a random control trial of this project with the hope of more fully understanding the impact of the provision of public defense at the preliminary arraignment stage.

BACKGROUND

In any given month, Magisterial District Judges (MDJs) make bail decisions at about 1,700 preliminary arraignments. The MDJs may decide to let the person go on their own recognizance (ROR), let the person go with conditions, impose a cash bail, or hold the person without bail. From January 2015 through September 2016, MDJs used cash bail in 49% of all initial preliminary arraignments, even though there is no evidence to suggest that cash bail prevents crimes or failures to appear.⁴ Instead, defendants who can afford to pay bail get out while those who cannot remain in jail.

Only about 10% of the ACJ population is serving a jail sentence. Another 70–75% of people in jail are awaiting the resolution of a case, with some detained because they were not offered cash bail or could not afford to pay it and others detained for violating their current probation or parole.⁵ Unlike those in a Pennsylvania state prison,

3 The risk assessment tool uses a range of variables including a person's criminal history and current charge to assess the likelihood that a person will fail to appear for a hearing and/or have new criminal activity during their pretrial period.

4 Melissa Neal. 2012. "Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail." Justice Policy Institute. Retrieved from <http://www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf>

5 The remaining 15–20% of people are being held by another jurisdiction (e.g., another county, state or federal entity).

where everyone has been sentenced to a term of incarceration of at least two years, half of the people booked into the ACJ stay for 12 days or fewer.

Unnecessary pretrial detentions have a documented negative impact on public safety. A 2013 report by the Arnold Foundation found a strong correlation between holding lower-risk pretrial defendants in jail for even a few days and new criminal activity — effects felt not only during the pretrial period, but also years after case disposition — because defendants can face serious long-term impacts of their detention such as loss of jobs, public benefits or housing.⁶

Prior Process

Prior to the provision of representation, MDJs relied on information from the police — who file charges and the affidavit of probable cause — and from a pretrial risk assessment provided to them by Allegheny County Pretrial Services (Pretrial Services). Since 2007, Pretrial Services has provided MDJs at PMC with information from the locally validated risk assessment,⁷ as well as a recommendation of what factors (if any) would help mitigate risk if the person were released.

Pretrial Services recommends to MDJs one of the following:

- 1) Release the person without any conditions (release on their own recognizance, or ROR)
- 2) Release and have the person report by phone to Pretrial Services (non-monetary)
- 3) Release and have the person report in person to Pretrial Services (non-monetary)
- 4) Do not release the person into the community
- 5) Do not release the person and hold them without bail (used infrequently for only very serious charges)

Though Pretrial Services never recommends cash bail to MDJs at preliminary arraignment, MDJs may still choose to impose cash bail if they deem it appropriate.

The Pilot

In April 2017, the OPD began representing defendants at preliminary arraignments at PMC. All people arrested by the Pittsburgh Police Department, all people arrested after work hours in the County and people arrested during the day whom police departments bring to jail are arraigned at PMC.

6 Christopher T. Lowenkamp, Marie VanNostrand & Alexander Holsinger. 2013. “The Hidden Costs of Pretrial Detention.” Arnold Foundation. Retrieved from http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf.

7 Since October 2016, the risk assessment tool has also been available to MDJs in outlying districts.

During the pilot, representation was provided at 3,203 arraignments (**Table 1**). The OPD could cover these appearances (which constituted two-thirds of all regular-hours preliminary arraignments at PMC and 15% of all arraignments countywide) at no additional cost because its attorneys were already at PMC for hearings related to other cases.

TABLE 1: Total Preliminary Arraignments (April 2017–March 2018)

	HEARINGS	% OF TOTAL
Preliminary arraignments with PD representation	3,203	15%
Other arraignments at PMC	13,630	62%
Other arraignments (outlying MDJs)	5,173	24%
Total	22,006	100%

Data on the 3,203 arraignments with PD representation were compared to the 5,241 arraignments that had taken place at PMC during the previous year (April 2016–March 2017) during business hours. The comparison encompassed three measures:

- The use of cash bail
- Agreement rates with Pretrial Services’ recommendations
- Jail bookings at the time of arraignment

In addition, outcomes at stages after the preliminary arraignment (preliminary hearing and pretrial failure) were examined for the two groups.

Pre-Pilot and Pilot Group Comparisons

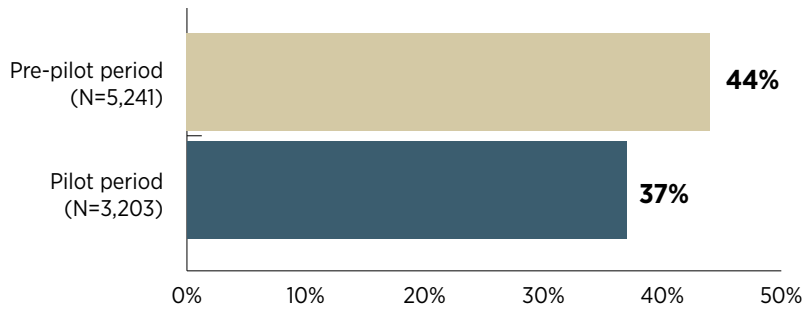
The pre-pilot and pilot group are relatively similar when looking at race, legal sex, age and charge. Fifty percent (1,612) of defendants in the pilot group were Black compared to 48% (2,523) in the comparison group. Seventy-seven percent (2,480) of the pilot group was male compared to 78% (4,076) of the comparison group. Forty-five percent of both groups had a felony as their highest charge. For more details about the pre-pilot and pilot groups, see the Appendix.

PILOT RESULTS

Cash Bail

MDJs set cash bail at preliminary arraignments in 37% of cases that had representation by a PD compared to 44% of preliminary arraignments in the pre-pilot period (**Figure 1**). This reduction resulted in an increase in non-monetary bonds, which increased from 38% of all bonds in the pre-pilot period to 53% in the pilot period. Bail was denied in 1% (51) of the cases in the pre-pilot period and 1% (31) of cases in the pilot period.

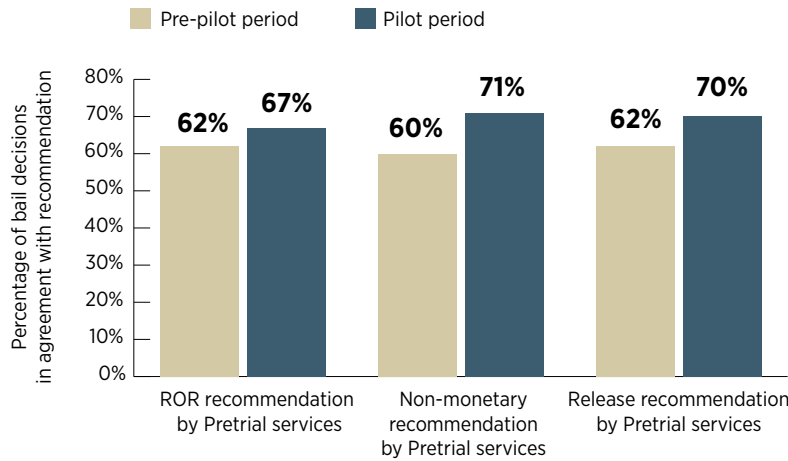
FIGURE 1: Percentage of Cases Where the Initial Bail Decision Was Cash Bail, Pre-Pilot Period and Pilot Period



Agreement with Pretrial Services’ Release Recommendations

During the pilot phase, Pretrial Services recommended release for 72% (2,313) of the people represented.⁸ MDJs agreed with this recommendation in 70% (1,629) of the cases (67% with ROR recommendations and 71% with non-monetary conditions). This was an increase of eight percentage points from the pre-pilot period. This increase was driven mostly by the 11-percentage-point increase in agreement with Pretrial Services’ recommendation for non-monetary conditions.⁹

FIGURE 2: Percentage of Cases Where the MDJ Agreed with Pretrial Services’ Release Recommendations



8 During the pilot, Pretrial Services had no recommendation for release in 26% (807) of the cases. For these cases, MDJs held the people without bail 3% (24) of the time, issued a cash bail 75% (609) of the time, and released the defendants 22% (174) of the time. This is compared to the 30% (1,297) of cases during the pre-pilot phase in which Pretrial Services had no recommendation

for release. For these, the MDJs held people without bail 1% (16) of the time, issued a cash bail 74% (955) of the time, and released the defendants 25% (326) of the time.

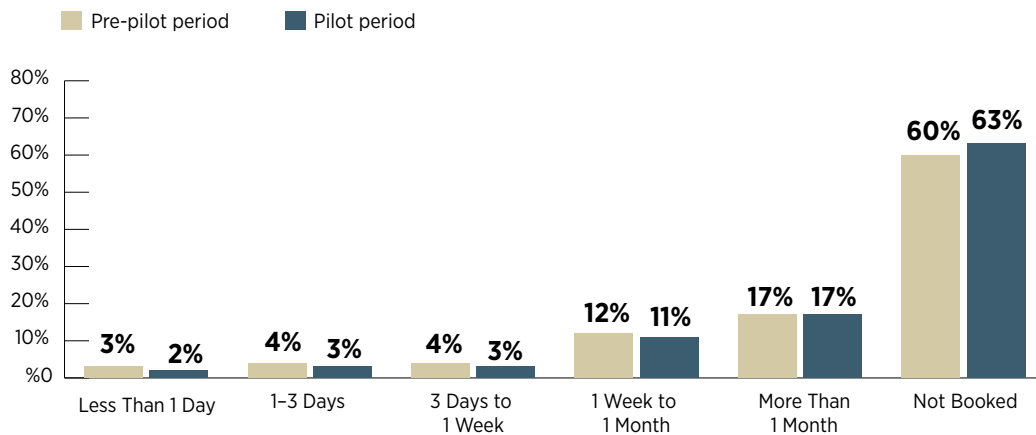
9 Agreement between Pretrial Services’ recommendation and the MDJ’s decision does not necessarily indicate the pilot’s success in all cases. For example, PDs may

ask judges for cash bond on non-monetary or ROR recommendations so that clients may obtain valuable jail credit that can be applied later if the defendant is convicted of a crime. In addition, PDs often ask judges to release clients on non-monetary or ROR bond when the recommendation was “no release.”

Jail Bookings

During the pilot period, 37% of defendants were booked into the jail at the time of arraignment, down from 40% in the pre-pilot period. This translates into 111 fewer bookings and an estimated savings of \$147,198 in jail costs. In addition, the number of short jail stays (one week or less), which are often unnecessary from a public safety perspective but can have an unfavorable impact on both recidivism outcomes and well-being outcomes, was reduced by four percentage points (Figure 3).

FIGURE 3: Percentage of People Booked and Not Booked at Preliminary Arraignment and Length of Stay in Jail



Pretrial Outcomes

There is no evidence that providing representation at the preliminary arraignment stage affected whether or not the case was held for court, i.e., whether or not a judge found that there was sufficient evidence for the case to proceed to trial. Fifty-two percent of cases during the pre-pilot period were held for court compared to 51% of cases during the pilot.

In addition, there was no evidence that the reduction in the use of cash bail and the increase in the number of people released at this stage adversely affected the rate at which people were re-arrested during the pretrial stage or the rate at which they failed to appear. Twenty-two percent of people in the pilot either failed to appear for at least one hearing or had a new arrest during their case compared to 24% of people during the pre-pilot period.

TABLE 2: Percentage of People Who Had a Pretrial Failure¹⁰

COHORT	FAILURE TO APPEAR		NEW ARREST		NEW ARREST FOR VIOLENT CHARGE		ANY FAILURE	
	#	%	#	%	#	%	#	%
Pilot (N=2,273)	269	12%	361	16%	120	5%	495	22%
Pre-Pilot (N=3,240)	386	12%	568	18%	210	6%	766	24%

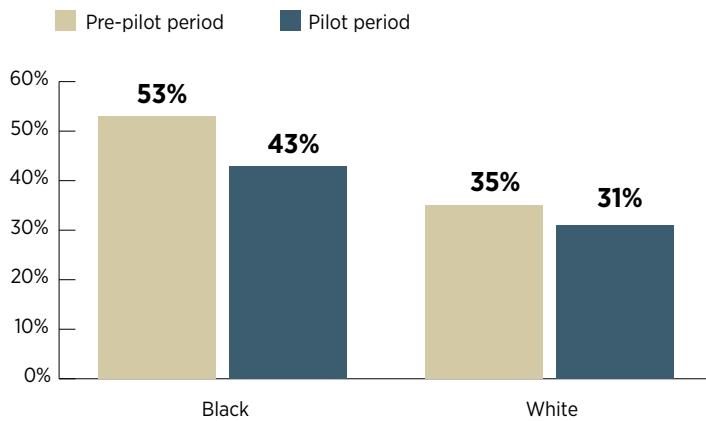
Reducing Disparities

The impact of providing representation to defendants was examined by racial group. Though Black defendants still receive cash bail and are booked into the jail at disproportionate rates, the disparity between Black and White defendants decreased during the pilot period when compared to the pre-pilot period.

Cash bail. The rate of cash bail used decreased for both White and Black defendants. During the pre-pilot period, 53% (1,337) of Black defendants received a cash bail compared to 43% (686) during the pilot period. Thirty-five percent (897) of White defendants received a cash bail prior to the pilot compared to 31% (419) during the pilot period.

Though Black defendants still receive cash bail at higher rates than White defendants, the disparity between Black and White defendants decreased during the pilot period – from an 18 percentage point difference to a 12 percentage point difference.

FIGURE 4: Percentage of Cases Where the Initial Bail Decision Was Cash Bail, by Race, Pre-Pilot Period to Pilot period¹¹

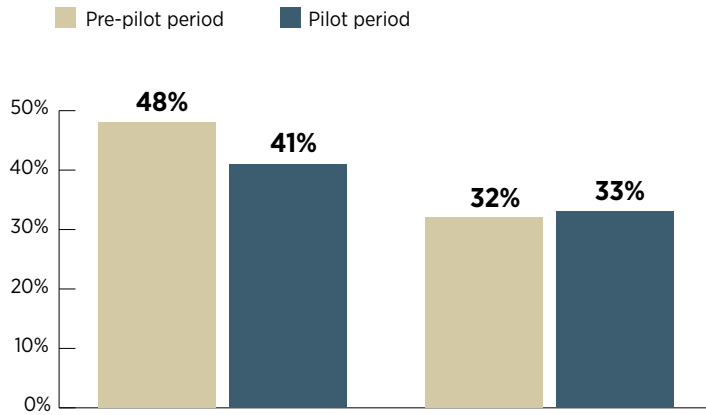


¹⁰ Includes all people whose cases were resolved and who were released from jail at some point during their pretrial period.

¹¹ Other race groups were removed due to low counts.

Jail bookings. Forty-eight percent (1,210) of Black defendants were booked into the ACJ during the pre-pilot period compared to 41% (661) during the pilot period. White defendants had a slight increase in the rate of jail bookings from the pre-pilot to the pilot period (from 32% [828] to 33% [456]). Because of this, the disparity between Black and White defendants decreased between the pre-pilot and pilot periods— from a 16 percentage point difference to an eight percentage point difference.

FIGURE 5: Percentage of Cases Where Defendants Were Booked Into the ACJ, by Race, Pre-Pilot Period to Pilot Period



EXPANSION

Due to the success of the pilot, Allegheny County expanded the project to cover additional preliminary arraignments at PMC. The PDs continue to cover all arraignments during regular weekday hours and the OPD was able to hire additional PDs to cover evenings, late nights and weekends at PMC through funding from the John D. and Catherine T. MacArthur Foundation as part of the Safety and Justice Challenge. (See a report about year one of the initiative [here](#).) Since the expansion of the project began in April 2019, the OPD has represented approximately 3,200 defendants during evening and overnight hours, in addition to the 3,103 defendants they continued to represent during daytime hours.

11 Other race groups were removed due to low counts.

Even with additional funding from the MacArthur Foundation, the OPD does not have the staff to represent all defendants during night and weekend arraignments or those who are arraigned in district courts. The OPD has used this fact to partner with the RAND Corporation to create a staff schedule that allows for a rigorous random control trial (RCT) of the effect of this project on defendant outcomes and overall judicial decision-making. The RCT will continue throughout the two-year grant and may inform both local and national officials on the benefits of having representation at this stage.

CONCLUSION

Since the beginning of the pilot period, the OPD has provided representation at 12,691 preliminary arraignments. Since the expansion, they have represented more than a third of all people arraigned in the county and half of all people arraigned at PMC. The people represented during year one of the pilot were less likely to receive cash bail and less likely to be booked into the Allegheny County Jail than those unrepresented during the pre-pilot period. The better outcomes may be the result, in part, of public defenders' ability to provide MDJs with a more complete picture of defendants and their risk to flee or commit a new crime, thereby helping judges make more equitable decisions. The County will continue to operate this pilot project through the fall of 2020 and is committed to rigorously evaluating it in partnership with RAND. In addition, the County is committed to exploring ways to ensure this pilot both continues and is expanded so that all defendants have representation at this stage, in addition to continuing to provide representation throughout the entire court process.

ANALYSIS

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APPENDIX: PRE-PILOT AND PILOT GROUPS

	PRE-PILOT		PILOT	
	N	%	N	%
Race				
Black	2,523	48%	1,612	50%
White	2,547	49%	1,366	43%
Other	171	3%	225	7%
Legal Sex				
Male	1,165	22%	723	23%
Female	4,076	78%	2,480	77%
Age Group				
<18	27	1%	17	1%
18-24	1,266	24%	748	23%
25-30	1,195	23%	692	22%
31-39	1,314	25%	830	26%
49-54	1,069	20%	666	21%
55+	370	7%	250	8%
Highest Charge				
Felony	2,370	45%	1457	45%
Misdemeanor	2,621	50%	1,656	52%
Other Grade	250	5%	90	3%
Type of Charge				
Drugs	1,021	19%	596	19%
DUI	210	4%	76	2%
Person	1,524	29%	1,150	36%
Property	1,360	26%	732	23%
Public Order	918	18%	525	16%
Weapons	180	3%	110	3%
Other Charge	28	1%	14	0%
Total	5,241	100%	3,203	100%