

**INNOVATIVE
SOLUTIONS** IN PUBLIC DEFENSE

Contra Costa County

*Partnering with Police to Provide Early Representation in
Misdemeanor Cases*

Problem

In Contra Costa County, California, most misdemeanor cases result in citations issued by police instructing an individual to appear in court on a future date. Seemingly a sensible practice that avoids incarcerating individuals for minor offenses, the strategy has often had the opposite effect. Historically, nearly 40 percent of these individuals cited for low-level misdemeanors fail to appear (FTA) at their initial court date, arraignment. Failure to appear results in the issuance of an arrest warrant, incarceration, disruption to the lives of detained individuals and their families, and the attendant costs of incarceration. The high FTA rate has apparently been the result of confusion and miscommunication.

- Due to case backlogs, the District Attorney almost never filed charges by the date listed on the citation, thus no “case” is called in court on that date. Some individuals appeared and assumed that if no case was on the docket, then there was no case against them, and that therefore there was no further need to return to court.
- Mailed court notices about date changes are sometimes not received by cited individuals.
- Many county residents are monolingual Spanish speakers and the citation forms are in English only.

These people who had received citations needed help understanding the court process and ways to protect themselves from avoidable arrest and detention. The Contra Costa County Office of the Public Defender (CCPD) knew that waiting to be appointed to eligible defendants at arraignment was simply too late to address a significant problem with a relatively straightforward client-centered solution.

Solution

CCPD, in partnership with local and state law enforcement and community organizations, launched the Early Representation Project (EarlyRep) in January 2017 to offer immediate representation to indigent persons cited for low-level misdemeanors, rather than waiting until an initial court date.

By the Numbers

**Down
nearly 50%**

*Reduction in FTA rate at arraignment
for individuals released on citations in
misdemeanor cases from before
EarlyRep began (drop from approximately
37% to approximately 20% FTA rate).*

90%

*Rate of appearance at arraignment
among those individuals who had
affirmative contact with EarlyRep*

Program

EarlyRep ensured that people cited for misdemeanors were well-informed about the status of their cases and upcoming arraignments. It connected people with public defenders before their first court date, resulting in better preparation by public defenders and better outcomes for defendants.

With the help of police officers and court clerks, the CCPD distributed cards printed in both English and Spanish to inform those who are cited and released how to contact EarlyRep staff: by call or text, to “get information and prepare yourself early for court.” CCPD also affirmatively contacted potential clients using weekly lists of individuals issued citations, provided by law enforcement and the district attorney’s office. EarlyRep also worked together with Uptrust, an innovative county partner providing court date reminders through texts to cell phones.

EarlyRep’s approach aligns with Principle #3 of the ABA Ten Principles of a Public Defense Delivery System, which recommends that “[c]lients [be] screened for eligibility, and defense counsel [be] assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.”

Results

In just two years, EarlyRep yielded impressive reductions in FTAs at arraignment for misdemeanor citation cases in Contra Costa. In 2015 to 2016, before the program started, approximately **37 percent** of defendants cited for low-level misdemeanors did not appear at arraignment in the courts of the Cities of Antioch and Richmond (East and West County). Working with research partners, Justice Management Institute, EarlyRep found that the FTA rate at arraignment for its clients dropped to **just under 20 percent** by 2018; **an almost 50 percent decline**. Almost half of those people who made it to their arraignment affirmed that they came to court as a direct result of EarlyRep outreach. Put another way, those who had affirmative contact with EarlyRep appeared at their arraignment **90 percent of the time**, driving the FTA rate of that cohort down to just 10 percent. Due to this success, the model has grown to include three municipalities and the California Highway Patrol.

In addition to reducing FTAs, EarlyRep aims to improve individual case outcomes by providing early case evaluation, investigation, and negotiation to mitigate the collateral consequences of criminal justice involvement. These holistic representation efforts have already uncovered common problems with bail bond companies and civil asset forfeiture practices.

Implementing EarlyRep proved to yield system-wide improvements and could not be done without coordination and changes in the ways that participating law enforcement agencies, the district attorney’s office, court staff, judges, and public defender staff perform their duties. EarlyRep showed these partner organizations that systemic problem collaboration can benefit their own work.

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