

INNOVATIVE
SOLUTIONS IN PUBLIC DEFENSE

Alameda County

Piloting Public Defender Representation at Arraignment



Problem

For decades, criminal justice systems nationwide have been over-reliant on locking up the accused before they've had a trial on the facts of their case. Despite the U.S. Supreme Court's declaration in *United States v. Salerno* (1987) that **"liberty is the norm, and detention prior to trial or without trial is the carefully limited exception,"** at least 60 percent of American jail populations are made up of people who have not been convicted or sentenced. Pretrial incarceration has been shown to result in higher rates of recidivism, and in guilty pleas in cases that would have otherwise been litigated. The negative impact on individuals and communities has had a disparate effect on racial and ethnic minorities.

Solution

Arraignment, typically the accused individual's first appearance in a criminal case in front of a judge or other judicial officer, is a key proceeding in addressing pretrial over-incarceration. This is where the court decides whether to hold the accused in jail pending disposition of the case; release the accused; or set bail, which is tantamount to a price for freedom. Having a defense lawyer argue for release or a lower bail amount is crucial to the outcome: representation by counsel at arraignment has been shown to reduce the likelihood that the accused will remain in custody. Nevertheless, **every day, accused persons go into these critical proceedings without an attorney for the simple reason that they cannot afford to hire one.**

Program

Alameda County had been the only large county in California in which arraignment hearings were conducted with both a judicial officer and district attorney, but without defense counsel present. Through

By the Numbers

>3,600

clients represented in felony cases during one-year pilot

20 times

increase in pretrial release rate at arraignment for detained clients who were represented by counsel, compared to those who appeared on their own

2,974

days of incarceration per year avoided by providing representation at arraignment

\$422,308

in jail costs avoided by providing counsel at arraignments for one year

the support of the Bureau of Justice Assistance, the Alameda County Public Defender's Office (ACPDO) implemented a pilot project to represent incarcerated clients at their very first court appearance. In collaboration with researchers at Impact Justice, the ACPDO tracked and collected data on public defenders' representation in these cases. This data included actions taken by defense counsel on behalf of the client at arraignment (e.g., motions for release from custody, to reduce bail, or for speedy trial), case outcomes, and client demographic information, such as gender and race. Similar data was collected for a comparison period where the ACPDO had not provided representation at first appearance.

This program was developed to address Principle #3 of the ABA Ten Principles of a Public Defense Delivery System, which recommends that “[eligible] [c]lients [have] defense counsel assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.”

Results

Over the course of the year-long project, the ACPDO **represented more than 3,600 people** facing felony charges or on felony probation at arraignment. As compared with a sample period where the ACPDO did not provide counsel at arraignment, ACPDO representation yielded substantial benefits for clients and for the system:

- **The percent of cases where the accused was released at arraignment increased from less than 1 percent to 20 percent. In other words, before the program, almost none of the cases resulted in release, but with counsel, almost 1 in 5 (20 percent) of the cases resulted in release.**
- **The percent of cases where motions to release were made at arraignment increased from 0 percent to 27 percent. Motions to release had a 75 percent success rate. Similarly, motions to reduce bail had an 83 percent success rate.**
- **Cumulatively, the increased release rate through provision of counsel avoided 2,974 days of incarceration. With a \$142-per-day jail cost, that translated to a savings of \$422,308 in a single year.**