CHANGING THE INITIAL APPEARANCE PROCESS IN THREE SITES

Executive Summary

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SAFETY+JUSTICE CHALLENGE
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Lastly, we acknowledge the 887,354 individuals who are at the center of this research. Their lived experience tells an important story for the larger pretrial community about the meaningfulness of initial appearances in the larger pretrial experience. Their experience helps inform how the larger courtroom workgroup can center a more compassionate and effective approach to initial appearances and treat this appearance as the critical stage that it is in case processing.

STUDYING DEFENSE ATTORNEY-LED CHANGES TO INITIAL APPEARANCES

The need for greater due process at initial appearance

Every year, over 10 million individuals experience a jail booking and must appear in court, usually within 24 to 72 hours, for a formal arraignment. During this initial appearance, the court informs the individual of the charges against them and the individual can enter a plea. Most jurisdictions also make decisions about pretrial release at this arraignment hearing.

Many state laws and constitutions require their local courts to prioritize pretrial release and, if judges must use cash bail to ensure court appearance, to rely on affordable amounts for individuals to secure release. Despite state constitutional and legislative requirements, local judges regularly order individuals to pay unaffordable bail amounts, resulting in a court culture effectively relying on ***pretrial detention***, or detaining individuals in jail during case processing, to secure an individual's court attendance.

This has led to sizable increases in pretrial populations across local jails. This overreliance on unaffordable bail and thus, pretrial detention, impacts Black and historically racialized Brown[i] individuals such as Asian, Indigenous, Latine, Middle Eastern, Multiracial, and Pacific Islander individuals, at higher rates than their white peers.[ii]

With the greater understanding of the impacts of bail and pretrial detention, and the disparate impacts specifically, judges have begun to make decisions more aligned with state constitutions and legislative requirements and rely on the ***presumption of pretrial release***. However, judges still feel the need for assurances that individuals will attend court as scheduled, and therefore order conditions such as relatively affordable bail amounts, reporting to pretrial monitoring, electronic monitoring (EM) or Global Positioning Systems (GPS) monitoring devices, submitting to urinalysis testing, or a combination of all of these conditions.

Although people may experience pretrial release, individually these conditions are still restrictive in nature.

Collectively, they may be especially onerous, resulting in individuals remaining in pretrial detention or returning to jail for non-compliance to pretrial release conditions. The *presumption of release* is no longer enough to enhance due process and reduce racial and ethnic disparities early after arrest. Instead, there is a need for the presumption of the ***least expensive and the least restrictive pretrial release*** possible.

However, securing the least restrictive pretrial release possible at initial appearance oftentimes requires representation by an attorney. The sixth amendment constitutionally guarantees the right to counsel for all individuals facing criminal charges at critical stages of their case processing. Unfortunately, the US Supreme Court does not recognize initial appearances or appearances involving arraignment and pretrial release decisions as a critical stage of prosecution. As a result, there is no federal constitutional right to counsel at these hearings. State and local jurisdictions must decide whether they will provide indigent defense at the initial stage. As a result, for individuals booked across 50% of US jails, their local jurisdiction does not provide indigent defense at this stage.[iii] Nearly immediately then, individuals must navigate the complexities of the criminal legal system on their own or with a restricted ability to consult with counsel. This version of the system minimizes due process and reinforces an assembly-line approach to justice.[iv]

Across three SJC sites—Cook County, Illinois; Multnomah County, Oregon, and; Lucas County, Ohio—local defense agencies do appear at initial appearance and have led programs which systematically enhance due process for individuals at initial appearances. They have provided access to defense attorneys nearly immediately after jail booking, collected more information about the person prior to their initial appearance, and provided representation at initial appearances. By doing so, defense attorneys can make more informed and convincing release arguments to secure the fastest, least expensive, least restrictive pretrial release possible.

While courts across the country have rarely considered initial appearances a critical stage in case processing, these three SJC sites are treating these hearings as a meaningful and critical stage regardless of its legal designation as such.

By studying these defense attorney-led strategies, we can begin to understand how these strategies may increase the least restrictive pretrial release possible, enhance due process, reduce racial and ethnic disparities among pretrial release outcomes, and limit the punishing and harmful effects of pretrial detention.

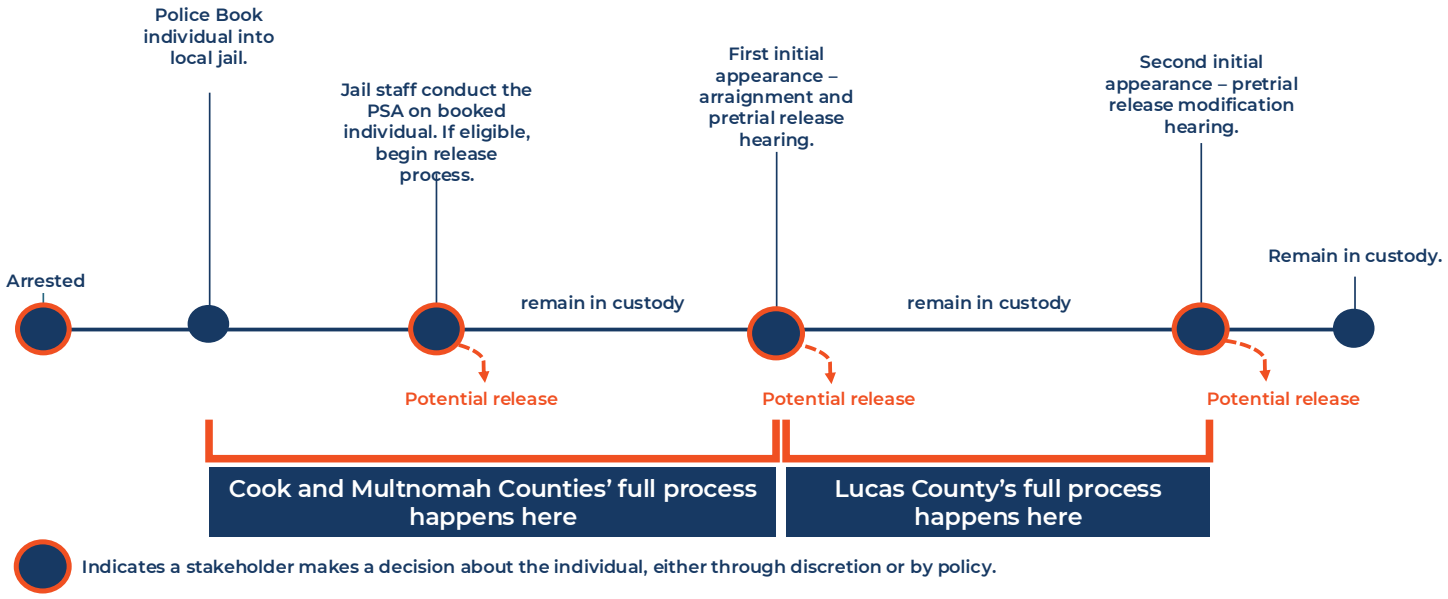
Goal of Research Study

The goal of the study was to understand how each of the defense attorney-led strategies operate in their sites, how the new strategy may have led to the least restrictive pretrial release possible for individuals, and how, if at all, the new strategy affected racial and ethnic disparities across pretrial release outcomes in each of the sites. The study uses a mixed-methods approach and JSP researchers relied on process mapping data, in-person observation data (i.e., Cook and Multnomah counties), interview data (virtual and in-person), and administrative data from both local courts and jails via sheriff's office.

Defense Attorney-Led Changes to Initial Appearances Across Three Sites

Local indigent defense providers in the three sites acknowledged that while their court was moving towards releasing more individuals pretrial, their court still relied on expensive and restrictive pretrial release conditions. In response, defense providers implemented strategies which systematically collect more information about individuals recently booked into jail. In Cook and Multnomah Counties, they collected information about individuals in custody prior to their first initial appearance. In Lucas County, the defense provider collected information about individuals after the first initial appearance but before their second initial appearance, as shown in *Figure 1* below. Defense providers across the three sites believed they could leverage this information to advocate for the least expensive and least restrictive pretrial release possible.

FIGURE 1, *Overview of Initial Appearance Processes Across Study Sites*



Key Defense Attorney-Led Program Differences

While the defense attorney-led programs use similar strategies, they differ in three major ways: (1) where in the process they collect information about the individual; (2) when the information is presented in court, and; (3) extent of involvement from case managers. *Table 1* provides a description of these key differences.

Table 1, Description of Strategy Differences

Strategy Differences	***Cook County, IL***	***Multnomah County, OR***	***Lucas County, OH***
Where in the process information is collected.	SAFER case managers collect information directly from individuals in custody prior to the individual appearing for first initial appearance.	MPD defense attorneys collect information from individuals in custody prior to the individual appearing for their first initial appearance.	OP case managers collect information from individuals after their first initial appearance, but before they are set to appear for their second appearance.
When the information is presented.	A defense attorney from the Law Offices of the Cook County Public Defender presents the information during the first initial appearance. This information is part of the hearing, but not the focus.	A defense attorney from the Metropolitan Public Defenders presents the information during the first initial appearance. This information is the focus.	A defense attorney from the Toledo Legal Aid Society presents the information during the second initial appearance. This information is the focus.
Extent of involvement from case managers.	Case managers are only responsible for collecting information. They can recommend community providers during the screening process.	There is no involvement of a case manager in the process. The defense attorney can recommend community providers during the interview.	Case managers collect information, make links to the community, provide bio-sketch to TLSA defense attorney, and follow up with individuals after their release.

KEY FINDINGS ACROSS SITES

Synthesizing the findings from each of the study sites, we find nine key findings. This includes procedural findings about pretrial release practices, perceptual findings from people closest to the work, measured impacts to pretrial release outcomes across sites, and findings related to wellbeing for many individuals involved in initial appearances.

Importance of Pretrial Release and Transparency of Initial Appearance Prior to Arraignment

Finding 1: Individuals may be eligible for pretrial release after booking and prior to their initial appearance at arraignment. This pre-arraignment release may contribute to racial and ethnic disparities among the least restrictive form of pretrial release possible—release on recognizance.

Finding 2: Visits with defense counsel or case managers prior to arraignment can enhance transparency and due process of initial appearances.

Perceived Importance of Counsel and Additional Information at Initial Appearances

Finding 3: Defense Attorneys are a necessary component of initial appearances.

Finding 4: Defense Attorneys are a necessary component of initial appearances, but not a sufficient component alone.

Collecting Information Prior to Initial Appearance Shows Promising Results for Improving Pretrial Release Outcomes.

Finding 5: Collecting information about individuals prior to initial appearances shows promising results for less expensive and less restrictive pretrial release outcomes, including reductions in judges ordering bail less often.

Finding 6: Collecting information about individuals prior to initial appearances shows promising reductions in racial/ethnic disparities among the least expensive and least restrictive pretrial release types, especially bail.

The Initial Appearance Process Impacts Everyone, and in Important Ways Related to Wellbeing.

Finding 7: There is a consistent and pervasive transporting and assessing of bodies, particularly Black and Brown bodies, within 24 to 72 hours of arrest.

Finding 8: Support networks for individuals appearing at initial appearance are also impacted by the initial appearance process.

Finding 9: Staff, particularly Black and Brown staff, report experiencing emotional fatigue and carry a heavier weight of the job while working for a system processing their own communities.

POLICY & PRACTICE RECOMMENDATIONS

This research offers insights for how other sites can treat initial appearances as the meaningful and critical stage that it is, regardless of its legal distinction as one. Below, we detail several policy and practice implications for improving and scaling these strategies.

Defense Attorneys Must See Themselves as Collaborative System Actors

Although some sites provide county funding for public defense, many sites across the country do not allocate financial resources for these services. As a result, nonprofit defense firms might see themselves as adjacent to agencies embedded in the county's system (e.g., prosecution, court administrators, sheriff's offices), and not as a critical system actor. This position is then complicated by underfunding and understaffing which challenge the feasibility of advocating for clients while simultaneously working to address systemic issues.

However, across the three SJC sites in this study, defense attorneys—regardless of their positionality as a county or nonprofit agency—considered themselves critical actors to improving and scaling due process for all individuals. Implementing and scaling initial appearance improvements requires indigent defense providers to see themselves as collaborative system actors.

Implementing Attorney Interviews Prior to the First Initial Appearance and Universal Interviews Prior to the First Initial Appearance is Best.

The various approaches across the three sites and findings suggest that sites should: (1) implement interviews collecting more information about individuals at least, in part, led by an attorney; (2) facilitate these interviews prior to the first initial appearance for greatest effect, and; (3) include all individuals held in custody awaiting both felony and misdemeanor arraignment.

System Collaborators Must Infuse Dignity and Due Process beyond an Attorney-Led Interview.

Study findings reveal a consistent and persistent shuffling of people between an arrest and initial appearance hearing. It is unclear how consistent movement, invasive strip searches, and intimate assessments may create traumatic and triggering experiences, and how that might present itself for individuals during their arraignment hearing. There is a need to infuse dignity and due process throughout the first 72 hours after arrest. This could include:

- Limiting the number of times an agency must move individuals between locations either between jails and courts or within a jail, especially en masse.
- Severely restrict or eliminate the collection of personal socio-demographic information by individuals not associated with defense providers.
- Keep participation in any defense attorney-led initial appearance strategy confidential from judicial officers.
- Remove lengthy discussions of arrest and conviction history from initial appearance proceedings.
- Presume that the information individuals provide about themselves at initial appearance is true and accurate in the absence of triangulation and confirmation — give everyone the benefit the doubt.

Enhance Transparency for Individuals' Support Networks, too.

The study suggested families/support networks appearing in court can serve as a mitigating factor for release. They can also collect more information from court/jail staff about the process of posting bail and instructions about how to help their loved one comply with other pretrial conditions. However, their attendance at initial appearance requires substantial social capital, but the process lacks transparency for them to participate effectively. To the extent possible, courts and system collaborators must enhance transparency of the initial process for support networks. Doing so will allow them to more effectively leverage their time and attendance to help secure the least restrictive release possible for their loved one.

Create Intentional Workspaces Centering the Safety and Wellness of Staff, especially Black and Brown staff.

Black and Brown staff reported their racial identity, social proximity to individuals in custody, and previous justice involvement gave them unique expertise to help individuals during the initial appearance process. However, they also reported personal and emotive impacts to watching the court pathologize their communities. As sites diversify their workforces, it will require building organizational workspaces that are culturally responsive and competent. This will require implementing strategies to help staff center their own wellbeing as they navigate working within and for a system incarcerating their communities.

RECOMMENDATIONS FOR CONTINUED RESEARCH ON INITIAL APPEARANCES

Based upon the findings, we offer several research recommendations for both initial appearance research and racial/ethnic disparity research.

Refer to Outcomes as 'Pretrial Release Outcomes,' and Consider More Expansive Outcome Measures.

Researchers measuring outcomes at initial appearance use the term "bail outcomes" to describe different phenomena. Some researchers and practitioners use the terms to exclusively describe monetary obligations to secure release from jail while others use the term to describe the various types of release from jail (e.g., release on recognizance, pretrial supervision, and release with monetary obligation). Moving forward, we believe there is a critical need to consistently use the language ***pretrial release outcomes*** to include, but not limited to, monetary obligation, supervised release, and release on recognizance. From this taxonomy, we can be more explicit about what type of release we are measuring and have a standardized approach to differentiating the more specific pretrial release types.

Understand the Overall Rate and Intersectionality Rates of Individuals who Secure Release on Recognizance Prior to the First Initial Appearance.

The pervasive overuse and overreliance of US jails have led many SJC sites – and non-SJC sites—to implement eligibility-based policies expediting pretrial release prior to an individual's first initial appearance. These releases are incredibly important to help individuals secure the least restrictive, least expensive release possible. However, there is scant research unpacking eligibility-criteria for these near immediate release types or how these criteria could be expanded. There is also no research on the impacts of immediate releases specifically on case processing outcomes, and how, if at all, immediate release practices create racial/ethnic disparities among individuals who remain in custody until initial appearance. This understudied decision point may be a driver to

compounding racial/ethnic disparities in case processing. Future research must empirically evaluate this decision point, especially because it holds promise for substantially changing the case processing experience.

Consider Other Outcome Measures Beyond Pretrial Release Outcome Measures.

Stakeholders across sites detailed various ways they believe defense attorney-led programs impacted processes and individuals, beyond pretrial release outcome measures. Emergent measures included impacts on (1) efficiencies, (2) due process, (3) involvement of additional parties, and (4) safety.

These important outcomes emerged from qualitative data, and we did not empirically measure them. However, as new sites adopt similar practices, researchers must consider a more holistic approach to the impacts of defense attorney-led strategies at initial appearances and on the court community more globally.

Measure Both Between Group Relative and Within Group Relative Racial/Ethnic Disparities Related to Changes in Pretrial Release Outcomes.

Given the understanding that racial/ethnic disparities persist in the criminal legal system, racial/ethnic disparity research must consider both *within-group relative* and *between-group relative* disparities. Within-group relative disparities in this research context refer to the proportional differences in outcomes within a subgroup before and after members of that group experienced an intervention (e.g., proportional pretrial release outcomes for Black men before and after the implementation of defense attorney-led programs). Between-group relative disparities then refer to the proportional differences between subgroups before and after they experience an intervention (e.g., how the proportion of all Black men compare to the proportion of all white men who experienced that outcome before and after a change in policy/practice, and how Black men and white men compare after the change).

Currently, most research in the racial/ethnic disparity space focuses on between-group relative disparities. This focus can obscure the changes the subgroup experiences with new interventions. Therefore, exclusively measuring between-group disparities may lead practitioners to abandon innovative and thoughtful interventions that are having measurably positive impacts on racialized subgroups. Researchers who continue to conduct research at initial appearances and throughout case processing must consider racial/ethnic disparities but consider both within-group relative disparities and between-group relative disparities. Otherwise, researchers may miss the measurable positive impacts to the lived experience of Black and Brown individuals navigating the criminal legal system after reform efforts.

Evaluate the Necessary Conditions Driving Courtroom Actors to Adopt a Culture of the Least Restrictive, Least Expensive Pretrial Release Possible.

It is the presumption of the least expensive, least restrictive release that shows the most promise for enhancing due process and reducing racial/ethnic disparities at initial appearance. Yet, there is no understanding of how to drive this next iteration of philosophical change. Future research must consider, from a change management lens, sites discussing this shift in culture, sites implementing strategies to create shifts in culture, and sites sustaining shifts in culture. With this information, researchers can understand the drivers moving a court towards the ***presumption of the least expensive, least restrictive pretrial release possible.*** Identifying the mechanisms of cultural change holds promise for how to effectively scale reform efforts, enhance due process, and reduce racial/ethnic disparities across initial appearances.

END NOTES

i In this report, we refer to "Black" as anyone belonging to the African diaspora and "Brown" as persons racialized as Asian, Indigenous, Latine, Middle Eastern, Pacific Islander, and/or multiracial. Throughout this report, and in line with Crenshaw (1988:1332) we capitalize "Black" as Black individuals constitute a specific cultural group and as such, require denotation as a proper noun. Those of the African diaspora have a shared culture and experiences. We do not capitalize white, as white people are not a single cultural group. Crenshaw, Kimberle (1988). Race, Reform, and Retrenchment: Transformation and Legitimation in Anti-Discrimination Law. Harvard Law Review.

ii Demuth, S. (2003). Racial and Ethnic Differences in Pretrial Release Decisions and outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees. Criminology. 41(3), 873-908.

iii Anwar, S., Bushway, S.D., Engberg, J. (2023). The Impact of Defense Counsel at Bail Hearings. Rand Corporation. Retrieve from: https://www.rand.org/pubs/research_briefs/RBA1960-1.html.

iv Wheeler, G. R. & Wheeler, C. L. (1980) Reflections on Legal Representation of the Economically Disadvantaged: Beyond Assembly Line Justice: Type of Counsel, Pretrial detention, and Outcomes in Houston. Crime & Delinquency, 26(3).

PHOTO CREDITS

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[2] Photo by Jason Goodman on Unsplash

[3] Photo by Jason Goodman on Unsplash