

Counsel at First Appearance Evaluation

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Table of Acronyms

CAFA	Counsel at First Appearance
CLE	Continuing legal education
ERDC	Early representation by defense counsel
FTA	Failure to appear
ILS	Indigent Legal Services
LAB	Lawyers at Bail Project
NACDL	National Association of Criminal Defense Lawyers
OLS	Ordinary Least Squares
PMC	Pittsburgh Municipal Court
PR	Personal recognizance
RAP	Record of arrests and prosecution
RCT	Randomized control trials
TIDC	Texas Indigent Defense Commission

Executive Summary

1. This report documents the impact of defense counsel at an individual's first appearance before a court in a criminal case, also sometimes known as a "bond hearing" or a "bail hearing." At these proceedings, the inquiry is limited to whether the accused shall remain incarcerated or be released, and if the latter, the conditions (including deposit of money bail with the court) to be met before release. In Texas, where the study was conducted, these proceedings are also known as magistration hearings.
2. The study analyzed primary and secondary outcomes. Primary outcomes included bond amount, bond type, bond conditions, whether the individual requested court-appointed counsel, whether the court ordered a §16.22 evaluation,² and the number of days incarcerated from magistration until release. Secondary outcomes included failure to appear at subsequent hearings, recidivism, time to disposition, type of disposition, and cost.
3. The study occurred in two counties in Texas with populations of about 250,000 (Hays County) and 120,000 (Potter County) placing them among the 40 most populous counties in Texas. Hays County is one of Texas' 25 most populous counties.
4. The study used a randomized control trial design and supplemented it with qualitative analysis (through interviews and observations). This report also presents a cost analysis of the intervention. All quantitative results in this report were replicated.
5. In both counties, magistration occurred once a day every day including weekends and holidays. The research team randomized days in which defense attorneys were present at magistration for a full year. In both counties, on days in which attorneys were present, defense counsel met with defendants and then advocated on their behalf in front of the judge. In Hays County, a prosecutor was also present when defense counsel was representing defendants, but not on days in which defense counsel was not present and presented first their own bond recommendations. The magistrate judge made their bond decision after hearing from defense counsel.

Hays County

6. Attorneys met with defendants for an average of 8.6 minutes.
7. About 8% of defendants refused counsel.

² Early Identification of Defendant Suspected of Having Mental Illness or Intellectual Disability, 1 Tex. Code of Crim. Pro. §16.22 (2017).

8. In summary, the presence of defense counsel in Hays County:
 - a. Lowered the average bond amount from about \$15,000 to around \$12,500;
 - b. Increased the likelihood of a PR bond at the offense level (by 19%), as well as the likelihood of bond conditions (by 44%); and
 - c. Increased the likelihood of requests for court-appointed counsel (by 21%); but that
 - d. Despite these changes in magistrate's decisions and attorney requests, had no effect on
 - i. the number of days that individuals spent incarcerated pretrial;
 - ii. the overall type of bond across a booking event (all offenses);
 - iii. the number of \$16.22 (mental health) evaluations ordered;
 - iv. the time required for the case to reach disposition, nor the case's ultimate result;
 - v. recidivism; nor
 - vi. failure to appear.
9. During the study period, the average cost per represented defendant was \$81.66. Because there was no statistically significant difference in number of jail days, we cannot project any cost differences for Hays County.

Potter County

10. Attorneys met with defendants for an average of 9.5 minutes.
11. About 10% of defendants refused counsel.
12. In summary, the presence of defense counsel in Potter County:
 - a. Lowered the average bond amount from about \$11,400 to around \$10,700;
 - b. Increased the likelihood of a PR bond of an overall PR bond across a booking event (all offenses) (by 27%); and
 - c. Increased the likelihood of requests for court-appointed counsel (by 5%);
 - d. Lowered the number of jail days individuals experienced by 5.6 on average,
 - e. Had no effect on
 - i. the conditions that magistrates ordered;
 - ii. the number of \$16.22 (mental health) evaluations ordered;
 - iii. the time required for the case to reach disposition, nor the case's ultimate result; nor
 - iv. recidivism.
 - f. Poor data quality prevented study of failure to appear in Potter.
13. During the study period, the average cost per represented defendant in Potter County was \$32.18 while the average savings per represented defendant was \$390.54. Because

defense counsel lowered the number of jail days, Potter County can expect yearly savings of around \$1.1 million if defense counsel is present at all magistrature hearings (assuming 3,000 defendants magistrated).

In general, lessons to jurisdictions considering defense counsel at magistrature include:

- a. Magistrature hearings may take longer when defense counsel is present.
- b. Jurisdiction should
 - i. make sure attorneys are trained on magistrature processes;
 - ii. determine whether attorneys will participate in-person or virtually;
 - iii. consider the resource implications of such a program including physical space and equipment requirements, the resources needed to provide counsel with information regarding clients prior to representation, and the logistics of moving incarcerated defendants to designated locations to meet with counsel; and
 - iv. set up a scheduling system where attorneys can independently update their schedule and cover for each other.

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Introduction and Motivation

Introduction

At first appearance, a magistrate makes a determination regarding an arrestee's liberty pending trial based on, among other things, the court's perception of the risk that the individual will fail to appear at subsequent court proceedings and to public safety.³ Although indigent defendants make up the majority of criminal defendants in the United States,⁴ only fourteen states guarantee legal representation at first appearance.⁵ Without a lawyer present, the judge typically orders a financial condition on release, requiring an arrestee "either to post the full bond amount or to pay a bail bondsman a non-refundable, ten percent fee and be responsible for the remaining debt if the defendant fails to appear."⁶ Each year, the United States detains approximately 7.8 million people pending trial.⁷ Indigent detainees are disproportionately people of color individual of nonviolent crimes.⁸

This document serves as a final report to Arnold Ventures regarding an empirical evaluation of CAFA in two counties in Texas: Hays and Potter. The study addressed the question of whether providing counsel to an arrestee at the first appearance hearing, at which the first decision regarding predisposition release was made, altered criminal justice outcomes. Part II of this report provides a literature review describing existing research on the topic. Part III discusses findings for each county regarding the outcomes affected by the provision of CAFA presenting quantitative and qualitative findings. Part IV offers some conclusions and opportunities for further research.

³ Charlie Gerstein, *Plea Bargaining and the Right to Counsel at Bail Hearings*, 111 MICH. L. REV. 1513, 1526 (2013) ("The parties at a bail hearing argue about whether the defendant is a flight risk or a risk to [their] community . . .").

⁴ *Id.* at 1516 (citing 1991 data indicating that about 75% of state prison inmates were represented by appointed counsel); Nat'l Right to Couns. Comm., *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel* 52 n.23 (2009) ("Of the 8 million people accused of crimes each year, more than half required that counsel be appointed to defend them.") (citing Nat'l Legal Aid and Defender Ass'n, *the Other Face of Justice* 70-71 (1973)).

⁵ Alissa Pollitz Worden et al., *The Impact of Counsel at First Appearance on Pretrial Release in Felony Arraignments: The Case of Rural Jurisdictions*, 31 CRIM. JUST. POL'Y REV. 833, 838 (2020).

⁶ Const. Project Nat'l Right to Couns. Comm., *Don't I Need a Lawyer? Pretrial Justice and the Right to Counsel at First Judicial Bail Hearing* 11 (2015) (citing Brian A. Reaves, Bureau of Justice Statistics, *Felony Defendants in Large Urban Counties, 2009 — Statistical Tables* 15 (2013), <http://www.bjs.gov/content/pub/pdf/fdluc09.pdf>).

⁷ Gerstein, *supra* note 2, at 1527 ("Approximately 7.8 million people are held before trial in our nation's jails each year.").

⁸ Const. Project Nat'l Right to Couns. Comm., *supra* note 5, at 5.

Motivation

Despite the potential for pretrial incarceration, most states (including Texas) do not supply an attorney to advocate for a defendant's release at this first appearance.⁹ As a result, a judge's response in these circumstances often draws on a bail "schedule" that accounts for the severity of initial charges.¹⁰ Without the assistance of counsel, at least some defendants can be ill-equipped to challenge the bail schedule, much less the prospect of their own detention.¹¹ Thus, when considered alongside the argument that the first appearance amounts to a trial-like confrontation,¹² a growing chorus of legal scholarship contends that the first appearance is crucial to the integrity of an individual's defense.¹³

Scholars and practitioners suggest several reasons why defendants should be represented by CAFA. These arguments run as follows. First, an inability to secure one's release or make bail corresponds with guilty plea outcomes.¹⁴ In addition, pretrial detention correlates with jail and prison sentencing,¹⁵ loss of employment and/or housing,¹⁶ and the exacerbation of poor health conditions.¹⁷ CAFA, however, may right-size pretrial release conditions by contextualizing defendant circumstances linked to bail decisions (e.g., prior record, employment, community ties, etc.).

⁹ Lauren Sudeall Lucas, Public Defense Litigation: An Overview, 51 Ind. L. Rev. 89 (2018); Douglas L. Colbert, The Maryland Access to Justice Story: Indigent Defendants' Right to Counsel at First Appearance, 15 U. Md. L.J. Race, Religion, Gender & Class (2105): 1. 21-22 (notes that funding of indigent defense is an appropriation of either a state-based or local government, originating in the legislative branch when setting budget allocations. It is no coincidence that the bail bondsmen industry has a strong lobby to safeguard the often 10% fee payable on every bond, a sum that more often than not affects individuals with no funding or collateral to support payment of a full bond (those who are indigent) and thus also cannot afford their own attorney. By underfunding indigent defense systems, legislatures are sanctioning the use of a predatory bond industry and forcing indigent defense systems to choose when to allocate scarce resources.)

¹⁰ This essentially amounts to a work around for the lack of representation for indigent defendants.

¹¹ Alissa Pollitz Worden, Kirstin Morgan, Reveka Shteynberg, & Andrew Davies, Guaranteeing Representation at First Court Appearances may be Better for Defendants, and Cheaper for Local Governments, American Politics and Policy Blog (August 28, 2018).

¹² United States v. Ash, 413 U.S. 300 (1973).

¹³ Bunin, Alexander. 2016. "The Constitutional Right to Counsel at Bail Hearings." *Crim. Just.*, 31(1), 23-26.

¹⁴ The Bronx Freedom Fund. 2016. Available from <http://thebronxfreedomfund.org/>; Heaton, Paul S., S. Mayson, and Megan Stevenson. 2017. "The Downstream consequences of misdemeanor pretrial detention." *Stanford L. Rev.*, 69, 711.

¹⁵ Sacks, Megan and Alissa R. Ackerman. 2014. "Bail and sentencing: Does pretrial detention lead to harsher punishment? *Crim. Just. Pol' Rev.*, 25, 59-77.

¹⁶ Western, Bruce. 2002. "The impact of incarceration on wage mobility and inequality." *Am. Socio. Rev.*, 67(4), 526-546.

¹⁷ Clark, John. 2016. Finished the job: Modernizing Maryland's bail system. *The Abell Rep.*, 29(2).

Counsel may ameliorate, if not eliminate, some of the negative externalities described above.¹⁸ Counsel may also explain to defendants the nuances of the criminal legal system and related consequences. Explanations of the details and requirements of pretrial release conditions may, for example, reduce FTA rates by allowing defendants a clearer understanding of the precariousness of their circumstances.¹⁹ This explanation may have collateral benefits for local communities as well: in the case of increased rates of pretrial release, anecdotal evidence suggests that costs to communities resulting from pretrial confinement - sometimes measuring \$100 a day or more to house a single inmate - might be reduced without increasing the risks to public safety.²⁰

Second, there is a growing sentiment among legal scholars that the right to CAFA should be considered among Sixth Amendment guarantees following *Gideon v. Wainwright*, which guarantees that counsel be provided by the state on account of the inherently adversarial nature of the criminal justice system.²¹ Building upon this right to Counsel, the U.S. Supreme Court argued in *Rothgery v. Gillespie County* that "a criminal defendant's initial appearance before a judicial officer, where he learns of the charge against him and his liberty is subject to restriction, marks the start of adversarial judicial proceedings that trigger attachment of the Sixth Amendment right to counsel."²² The guaranteed right to Counsel is consequently "applies at the first appearance before a judicial officer at which a defendant is told of the formal accusation against him..."²³ Despite the ruling, "the contours of the Sixth Amendment right to counsel are still somewhat obscure."²⁴ That obscurity largely stems from an ambiguity in terms used by the Court "to refer to the proceeding at which the right to counsel attaches, while intending to refer to a single moment in the criminal process, may, in light of a particular state's procedure, refer to two separate and distinctly different moments in the criminal process."²⁵

¹⁸ *Supra* note 5. Without such counsel, this institutional arrangement particularly disadvantages the poor or indigent. In *Supra*, note 4, authors note that observational analysis shows that the presence of counsel can change the pattern of decisions judges make, allowing for reduced release conditions, including financial release conditions, and resulting in less pretrial detention. However, we do not know why this is happening. Hypotheses include the ability of counsel to make more persuasive arguments or provide judges with a more comprehensive understanding of the individual circumstances of each defendant which may allow for, or prevent, compliance with conditions and ensure community safety.

¹⁹ *Id.*

²⁰ *Id.* See also: Worden, Alissa Pollitz, Andrew LB Davies, Reveka V. Shteynberg, and Kirstin A. Morgan. "Court Reform: Why Simple Solutions Might Not Fail: A Case Study of Implementation of CAFA." Ohio St. J. Crim. L. 14 (2016): 521.

²¹ *Gideon v. Wainwright*, 372 U.S. 335 (1963) <https://supreme.justia.com/cases/federal/us/372/335/>.

²² *Rothgery v. Gillespie County*, 554 U.S. 191, 212-13 (2008). See also Yoder, R. (2011). *Rothgery v. Gillespie County*: Applying the Supreme Court's Latest Sixth Amendment Jurisprudence to North Carolina Criminal Procedure. *Campbell Law Review* (33) 2 p. 478

²³ Yoder, R. p. 481.

²⁴ *Id.*

²⁵ *Id.*

The above highlights the possible economic, social, and legal reasons for which CAFA seems vital, but the scholarly research on the situation is modest and the causal impact of representation at first appearance on several important outcomes is an open question.²⁶

Systematic and rigorous analysis of the effects of CAFA is limited, but some evidence regarding such intervention exists and is summarized below.

Literature Review

Prior Evaluations

Two RCTs,²⁷ one quasi-experimental study,²⁸ and three observational studies²⁹ examined the effect of the presence of CAFA on outcomes.

Randomized Studies

In 1985, the National Institute of Justice published the results of a randomized study examining the effect of Early Representation by Defense Counsel (ERDC).³⁰ Under the ERDC Field Test, three public defender offices operating within Passaic County, New Jersey, Shelby County, Tennessee, and Palm Beach County, Florida, created test groups of approximately 600 randomly selected non-capital felony clients who would receive continuous representation from a public defender as soon after arrest as possible and before first appearance.³¹ The public defender offices provided traditional services to control groups of approximately 600 similarly situated, randomly selected clients.³² Researchers collected data via intake forms, case processing forms, and interviews with public defender office staff, clients, and other key actors.³³ Prior to the study, the three counties conducted bail hearings differently with one involving only the

²⁶ Nor is it well-understood how such counsel affects defendants as they process through the criminal justice system after that initial representation opportunity in front of a magistrate.

²⁷ See, Ernst J. Fazio et al., Early Representation by Defense Counsel Field Test: Final Evaluation Report 4 (1985) and Douglas L. Colbert et al., *Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail*, 23 CARDOZO L. REV. 1719, 1749 (2002).

²⁸ Shamena Anwar, Shawn D. Bushway, John Engberg, *The Impact of Defense Counsel at Bail Hearing* *Science Advances*, 9(18) (2023).

²⁹ Alissa Pollitz Worden et al., Court Reform: Why Simple Solutions Might Not Fail? A Case Study of Implementation of Counsel at First Appearance, 14 Ohio St. J. Crim. L. 521, 522 (2017); Alissa Pollitz Worden et al., What Difference Does a Lawyer Make? Impacts of Early Counsel on Misdemeanor Bail Decisions and Outcomes in Rural and Small Town Courts, 29 Crim. Just. Pol'y Rev. 710 (2018); and Worden et al., *supra* note 4, at 833. There are two additional observational studies of interest—a study by Paul B. Wice and a study by Alfred Allan—but since the results are only briefly mentioned, their methodology will be described as the studies themselves are cited. See discussion *infra* notes 68 and 71.

³⁰ Fazio, *Supra*, n. 26.

³¹ *Id.* at i., 4, 203.

³² *Id.* at 4.

³³ *Id.* at 79-80, 82, 86-89.

prosecutor, one involving both the prosecutor and defense counsel, and one involving neither.³⁴ However researchers found the treatment groups remained comparable.³⁵

In 1998, the Lawyers at Bail Project (“LAB”) conducted an RCT in the Baltimore City Criminal District Courts.³⁶ A staff of paralegals randomly assigned legal representation to arrestees drawn from a pool of the 300 nonviolent criminal suspects.³⁷ Because randomization happened at the point arrestees were drawn from the pool rather than after a brief interview with the arrestee, departures from the assigned treatment occurred.³⁸ This resulted in an uneven distribution within the treatment and control. 57% (175) of the suspects were assigned a LAB lawyer, while 43% (125) were not.³⁹ The study noted three statistically significant differences between the test group and the control group: a higher proportion of the control group had pending charges against them (56% compared with 44%), a higher proportion of the test group had an arrest in the past five years (87% compared with 74%), and a higher proportion of the test group had a conviction in the past year (44% compared with 31%).⁴⁰ Researchers attended each bail review hearing, recorded critical information about each case, and interviewed the arrestees afterward.⁴¹ Recidivism was reviewed at the six-month mark.⁴²

The Quasi-Experimental Study

Researchers worked with the Pittsburgh Municipal Court (PMC) in Pennsylvania to understand the effect of CAFA.⁴³ Prior to the study, CAFA was already present during customary day-time business hours. However, the PMC was a 24/7 operation which means CAFA was not present during evenings, overnight, on holidays, or on weekends. The researchers created a CAFA work schedule allowing for half of the typically uncovered shifts to have counsel and the other half to not have counsel.⁴⁴ The CAFA counsel primarily served as an off-the-record conduit between the defendant and the judge with the judge making their decision prior to any hearing and while reviewing the risk assessment paperwork.⁴⁵ In this way, counsel hoped to increase the likelihood that the judge would make a decision that aligned with the risk assessment, especially in the instance of one that recommended non-monetary conditions of release.⁴⁶

³⁴ *Id.* at 31.

³⁵ *Id.* at 135.

³⁶ Colbert, *supra* n. 8.

³⁷ *Id.*

³⁸ Departures occurred because “suspects refused lawyers, could not be found, or posted bail before the hearing.” *Id.* at 1750.

³⁹ *Id.* at 1749.

⁴⁰ *Id.* at 1750.

⁴¹ *Id.* at 1750-1.

⁴² *Id.* at 1749.

⁴³ *Supra* n. 27.

⁴⁴ *Id.* at 3.

⁴⁵ *Id.* at 4.

⁴⁶ *Id.* at 5.

Observational Studies

In 2017, researchers released the results of an observational study conducted in rural New York.⁴⁷ In 2013, the New York State Office of Indigent Legal Services (ILS) offered a grant to upstate counties interested in implementing CAFA.⁴⁸ Five counties were selected for the study.⁴⁹ The researchers conducted on-site observations through multiple visits that in total covered around 100 days.⁵⁰ Researchers collected data by reviewing historical documents about the indigent defense programs, notes from formal and informal meetings with court staff, public defenders, and ILS staff, relevant media accounts, and program reports on caseloads, spending, and funding requests.⁵¹

In 2018, a different group of researchers released the results of a similar observational study.⁵² This study was conducted in three rural upstate New York counties and analyzed case record data from before and immediately after the implementation of a state-funded program targeted at providing CAFA.⁵³ The program administrators in the three counties sought and secured the grants, suggesting the counties may be atypical.⁵⁴ The researchers limited the study to cases involving arrests for misdemeanors and violations.⁵⁵ Researchers utilized data from defense providers' offices, observed program operations, and interviewed participants.⁵⁶ In one county, researchers studied cases during the five months before the CAFA program and then the cases arraigned during the following four months, for a total of 156 pre-CAFA cases and 68 post-CAFA cases. In another county, researchers studied cases three months beforehand and a month and a half after, for a total of 335 pre-CAFA cases and 153 post-CAFA cases. In the final county, researchers examined cases from the year before and the year after for a total of 2,336 pre-CAFA cases and 1,761 post-CAFA cases.⁵⁷ Researchers conducted archival research in local news outlets in order to evaluate the risk of history effects—"shifts in court, community or state conditions that might account for any changes"—and found of no evidence of obvious changes coinciding with the adoption of the CAFA program.⁵⁸

A third group of researchers released the results of a third observational study in 2020.⁵⁹ They conducted this study in two rural upstate New York counties and utilized data from before and immediately after the implementation of a state-funded program targeted at providing CAFA.⁶⁰

⁴⁷ Worden et al., *Court Reform*, *supra* n. 28.

⁴⁸ *Id.* at 529.

⁴⁹ *Id.* At 529-30.

⁵⁰ *Id.* at 532.

⁵¹ *Id.* At 532-3.

⁵² Worden et al., *What Difference*, *supra*, n. 28.

⁵³ *Id.* at 715.

⁵⁴ *Id.* At 726-7.

⁵⁵ *Id.* at 720.

⁵⁶ *Id.* at 719, 726.

⁵⁷ *Id.* at 716-7.

⁵⁸ *Id.* at 725-6.

⁵⁹ Worden et al., *supra* note 4, at 833.

⁶⁰ *Id.* at 840.

Researchers collected data regarding arrestee demographics and charges and information regarding release decisions, bail amounts, and pretrial detention duration.⁶¹ For one of the two counties, researchers collected data from the jail records only for a random sample of cases (43%) because of the labor-intensive coding required.⁶² The researchers limited themselves to cases involving felonies and excluded cases involving probation or parole violations and cases in which the primary charge was a vehicle or traffic offense.⁶³ For one county, researchers examined data from a calendar year before implementation of CAFA and a year and five months after, for a total of 166 pre-CAFA cases and 248 post-CAFA cases.⁶⁴ For the other county, researchers examined data from four months before implementation and eleven (non-consecutive) months afterward, for a total of 61 pre-CAFA cases and 121 post-CAFA cases.⁶⁵

Findings from Literature Review

From this body of literature, evidence suggests the presence of CAFA allows for a few findings. We summarize those findings here.

The literature suggests that the presence of CAFA improves the attorney-client relationship.

The study conducted by the National Institute of Justice suggests that early representation results in an “an increased level of confidence and communication” between the attorney and client.⁶⁶ These results, while contained within an RCT, are observational in nature. Attorneys reported feeling they were able “to establish rapport earlier and to achieve better client control.”⁶⁷ Even when the first appearance attorneys were not ultimately assigned to the case, they advised arrestees to complete indigent defense eligibility paperwork promptly, leading to the establishment of a relationship with the assigned attorney more quickly.⁶⁸ The initial attorneys were also able to pass along their notes and observations.⁶⁹ When arrestees received early assistance in the lower courts, they seemed “better informed about their cases, better prepared to assist in their defense, and easier to establish rapport with” at the felony level.⁷⁰

⁶¹ *Id.* at 842.

⁶² *Id.*

⁶³ *Id.* at 841.

⁶⁴ *Id.*

⁶⁵ *Id.* at 842. CAFA was instituted at different times in the county’s two city courts, so researchers accounted for that by examining data from between May and November 2013 and between August and November 2014. *Id.* at 842, 842 n.9.

⁶⁶ Fazio et al., *supra* note 8, at 157 (quoting the Shelby County final report) (finding that a majority of test attorneys at all three sites felt CAFA had a positive effect on the attorney-client relationship, a sentiment reinforced by the follow-up client survey).

⁶⁷ *Id.* At 363 (reporting that test attorneys at all three sites felt this way).

⁶⁸ See Worden et al., *supra* note 27, at 538 (noting that program personnel reported this result in most of the five participating counties).

⁶⁹ See *id.* (noting that program personnel reported this result in most of the five participating counties).

⁷⁰ See Fazio et al., *supra* note 8, at 363 (reporting the observations of felony attorneys in the two counties with horizontal representation).

The literature suggests that the presence of CAFA increased the arrestee's sense of respect for the system's fairness and legitimacy.

The LAB study, a randomized experiment, suggests that arrestees provided with lawyers at first appearance are more satisfied with the outcome of the bail hearing and their treatment at the hands of the judge.⁷¹ Arrestees reported feeling that the presence of assigned counsel influenced the bail decision.⁷² They were more likely to believe that the hearing officer acted respectfully toward them,⁷³ that the hearing officer considered their side of the story,⁷⁴ and that they were able to influence the decision making process.⁷⁵ Ultimately, arrestees with assigned lawyers more easily accepted the results of the bail decision.⁷⁶ Unrepresented arrestees, on the other hand, were more likely to feel that the bail review hearing officer did not devote enough time to their bail review⁷⁷ and that the hearing officer showed very little concern for their legal rights.⁷⁸

The literature suggests that presence of CAFA promoted an earlier pretrial release while also increasing the likelihood of pretrial release overall.

Randomized and observational studies showed that arrestees who receive the assistance of counsel prior to first appearance tend to be released earlier than those who do not receive such assistance.⁷⁹ According to the randomized LAB study, arrestees with legal representation at first appearance are almost twice as likely to be released on the day of arrest, spending less than 24 hours in jail.⁸⁰ Further, the median time spent in jail for participants with CAFA was two days as compared to the nine days for those without CAFA.⁸¹ According to an observational

⁷¹ Colbert et al., *supra* note 18, at 1758.

⁷² See *id.* at 1761 (finding that 61.5% of represented arrestees thought their attorneys influenced the bail decision).

⁷³ See *id.* at 1760 (finding that 91% of represented arrestees felt the hearing officer was polite and respectful, compared with 79% of unrepresented arrestees).

⁷⁴ See *id.* (finding that 48.1% of represented arrestees felt the hearing officer considered their side of the story, compared with 24.6% of unrepresented arrestees).

⁷⁵ See *id.* (finding that 75.8% of unrepresented arrestees felt they had no influence over the decision, compared with 56.4% of represented arrestees).

⁷⁶ See *id.* at 1762 (finding that 89.7% of represented arrestees intended to abide by the bail decision, compared with 67.7% of unrepresented arrestees).

⁷⁷ See *id.* At 1759 (finding that 41.9% of unrepresented arrestees felt the bail review hearing officer failed to devote enough time to their bail review, compared with 28.2% of represented arrestees).

⁷⁸ See *id.* at 1760 (finding that 38.7% of unrepresented arrestees felt the hearing officer showed very little concern for their legal rights, compared with 26% of represented arrestees).

⁷⁹ Fazio et al *supra* note 8, at 156 (finding that for all three sites, "test clients obtained their release sooner than did control clients," with the average difference in timing of pretrial release extending up to one week for one test site); Worden et al., *supra* note 4, at 847 (finding a notable decrease in the duration of pretrial detention for both participating counties); Worden et al., *supra* note 32, at 722, 724 (finding that for two of three participating counties, there was a decrease in the average number of days spent in pretrial detention).

⁸⁰ Colbert et al., *supra* note 18, at 1755 (finding that 38.7% of represented arrestees were released on the same day they were arrested, compared with 20.5% of unrepresented arrestees).

⁸¹ *Id.*

study, participants with CAFA made bail at a rate of 47%, rising from 7%, with a corresponding decline in jail bed days.⁸² Both randomized and observational studies indicated that represented arrestees were more likely to be released on their own recognizance than their unrepresented peers,⁸³ to have their bail reduced,⁸⁴ and to have that bail reduced to an affordable amount.⁸⁵

Studies indicate that a higher percentage of arrestees are also able to obtain pretrial release when they have representation during first appearance.⁸⁶ According to the randomized LAB

⁸² Worden et al., *supra* note 32, at 723. Interestingly, the researchers attributed this change not to lowered bail, but to attorneys' efforts to keep their clients out of jail, primarily by locating those who might assist the arrestee in making bail. *Id.*

⁸³ See Colbert et al., *supra* note 18, at 1753 (finding that 34% of represented arrestees were released on their own recognizance, compared with 13% of unrepresented arrestees); Worden et al., *supra* note 27, at 537 (noting that in all five participating counties, public defenders believed more arrestees were released on recognizance); Worden et al., *supra* note 32, at 722-4 (noting that for one of the three participating counties, 9% more arrestees were released on recognizance, and for another, 10% more defendants were released on recognizance or under supervision; the third county did not see a significant difference in the number of arrestees released on recognizance); Paul B. Wice, Freedom for Sale 49 (1974) (finding that 74.6% of represented arrestees were released on their own recognizance, compared with 25% of unrepresented arrestees). The author observed preliminary arraignment court in Detroit for a full week, observing the initial bail decision for 345 felony cases. *Id.* Of the arrestees, 30.4% were represented and 69.6% were unrepresented. *Id.* But see Worden et al., *supra* note 4, at 844 (noting that the change in rate of releases without bail failed to reach a conventional level of statistical significance for either participating county). The consistent result that represented arrestees were more likely to receive release on recognizance takes on additional importance when one recognizes that the Manhattan Bail Project found that those released on recognizance were as likely to appear for court as those released on cash bail. See Charles E. Ares et al., *The Manhattan Bail Project: An Interim Report on the Use of Pre-Trial Parole*, 38 N.Y.U. L. REV. 67, 89-90 (1963).

⁸⁴ Colbert et al., *supra* note 18, at 1753 (finding the bail review hearing judge reduced the bail for 59% of represented arrestees, compared with 14% of unrepresented arrestees); Worden et al., *supra* note 4, at 845 (finding that for one of the two counties, 48% of post-CAFA arrestees were given bail amounts below \$10,000, compared with 38% of pre-CAFA arrestees; the difference in bail distributions did not reach statistical significance for the other county).

⁸⁵ See Colbert et al., *supra* note 18, at 1755 (finding that 22% of represented arrestees had bail set at \$500 or under, compared with 13% of unrepresented arrestees); WICE, *supra* note 64, at 49 (noting that a significant number of unrepresented arrestees had bond set at \$5,000 or above, compared with a range of \$500 to \$2,000 for represented arrestees); Worden et al., *supra* note 27, at 537 (noting that in all five participating counties, public defenders believed more arrestees were granted reasonable bail); Worden et al., *supra* note 32, at 721-2, 24 (noting that for two of the three participating counties, there was an increase in the number of cases with bail set below \$500; the difference for the third county was not statistically significant).

⁸⁶ See Fazio et al., *supra* note 7, at 156-57, 203-04 (noting that one of three test sites, the only site not facing substantial jail overcrowding and thus pressure to release all arrestees possible, released 46% of represented arrestees compared with 34% of unrepresented arrestees); Alfred Allan et al., *An Observational Study of Bail Decision-Making*, 12 PSYCHIATRY, PSYCHOL. AND L. 319, 327 (2005) (indicating that legal representation significantly increases the likelihood of bail being granted). This observational study conducted in Western Australia examined the first appearances of 648 juvenile and adult defendants. *Id.* at 323. Three trained observers attended a full day of court proceedings over the course of 138 preselected court days. *Id.* The observers recorded the bail decision, socio-

study, participants with CAFA were released pretrial 65% of the time as compared to 50% for those without CAFA.⁸⁷ For one county participating in an observational study, the chief public defender even believed law enforcement officers took fewer potential offenders into custody and issued more appearance tickets when they knew they would otherwise need to coordinate with defense attorneys for a court appearance.⁸⁸

These changes do not appear to come at the cost of public safety. The results of a randomized study suggest that CAFA will not result in the increased release of arrestees who pose a risk to the public but will merely promote release for those who do not pose a risk to the public (or a risk of failure to appear).⁸⁹ An observational study analyzing rates of rearrests similarly indicated that an increase in the number of released arrestees overall does not pose a threat to public safety.⁹⁰

Failure to attain freedom pending trial can have consequences for the arrestee: pretrial detainees are more likely to be convicted and to receive a harsher sentence.⁹¹ Studies also suggest that an inability to secure release results in a higher rate of guilty pleas, potentially because an arrestee views a guilty plea as the only alternative to indefinite detention.⁹² A study conducted in Harris County, Texas, finds a causal connection between pretrial detention and increased conviction rates, likelihood of carceral sentence and the length of that sentence and

demographic variables, whether there was legal representation, what arguments were made by defendants and prosecutors, the magistrate's rationale, and other court and offense variables. *Id.*

⁸⁷ Colbert et al., *supra* note 18, at 1757.

⁸⁸ Worden et al., *supra* note 27, at 538-9.

⁸⁹ See Fazio et al., *supra* note 8, at 361 (finding that for two of the three sites, "there was no change in the proportion of defendants who obtained their release, only in the timing of that release"). The one site that saw an increase in the proportion of arrestees obtaining release was also the only site with a jail not under federal court order for overcrowding, suggesting that unlike the other sites, this site was "not geared to release the maximum number of defendants possible to honor that order." *Id.* But see, *supra*, n. 9. (finding an increase in subsequent arrests for third-degree felony theft charges for those that are released pre-trial).

⁹⁰ See Colbert et al., *supra* note 18, at 1757 n.123 (finding "identical rates of rearrests of 10 percent for those who had a lawyer at the bail hearing and those who did not, suggesting that the extra releases resulting from representation did not lead to additional crime/arrest").

⁹¹ *Id.* At 1763 (citing Barry C. Field, Juvenile and Criminal Justice Systems' Responses to Youth Violence, 24 Crime & Just. 189, 230 (1998); Stevens H. Clarke & Susan T. Kurtz, Criminology: The Importance of Interim Decisions to Felony Trial Court Dispositions, 74 J. Crim. L. & Criminology 476, 502 (1983); Jeffrey A. Kruse, Substantive Equal Protection Analysis Under State v. Russell and the Potential Impact on the Criminal Justice System, 50 Wash. & Lee L. Rev. 1791, 1824 (1993)); Const. Project Nat'l Right to Couns. Comm., *supra* note 4, at 4 (citing Christopher T. Lowenkamp, et al., Arnold Foundation, Investigating the Impact of Pretrial Detention on Sentencing outcomes 4 (2013); Gerald R. Wheeler & Gerald Fry, Project Orange Jumpsuit: Evaluation of Effects of Pretrial Status on Case Disposition of Harris County Felony & Misdemeanor A/B Defendants 4 (2013)).

⁹² See, e.g., Worden et al., *supra* note 32, at 713.

likelihood of subsequent arrests.⁹³ Attaining release, however, allows the arrestee to participate in their case in ways they cannot from jail.⁹⁴

Proponents of CAFA suggest that without a lawyer present, judges may be less likely to trust and rely upon an arrestee's representations regarding their financial resources, community ties, family, residence, employment, and schooling.⁹⁵ The arrestee may feel frightened, flustered, or angry.⁹⁶ Judges may be less likely to inform unrepresented arrestees about options such as a supervised release or unsecured bonds,⁹⁷ and unrepresented arrestees may not be savvy enough to present solutions like these on their own.⁹⁸

When an attorney is present, on the other hand, they can provide the position of the defendant to the court and address the specific considerations for release—ties to the community, employment, housing, etc.⁹⁹ Represented arrestees are more successful at presenting information with regard to appropriate bail than unrepresented individuals.¹⁰⁰ As a result, judges can make more appropriate bail setting decisions.¹⁰¹ Indeed, the quasi-experimental study found that the presence of counsel resulted in greater adherence to the risk assessment instrument, deterring financial bond conditions when the tool aligned with release with non-monetary conditions.¹⁰²

The literature suggests that the presence of CAFA led to an earlier resolution of cases.

When counsel is made available prior to first appearance, the result of a randomized study suggests, the case can be resolved more quickly.¹⁰³ This effect seemed to be the result of counsel successfully facilitating the reduction of charges from felonies to misdemeanors or

⁹³ Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 *Stan L. Rev.* 711, 715 (2017).

⁹⁴ Const. Project Nat'l Right to Couns. Comm., *supra* note 5, at 35.

⁹⁵ *Id.* At 10-1.

⁹⁶ Worden et al., *supra* note 4, at 835.

⁹⁷ Const. Project Nat'l Right to Couns. Comm., *supra* note 5, at 10.

⁹⁸ *Id.*

⁹⁹ See Fazio et al., *supra* note 8, at 156.

¹⁰⁰ Colbert et al., *supra* note 18, at 1755.

¹⁰¹ See Fazio et al., *supra* note 8, at 361 (noting that a majority of judges, prosecutors, and public defenders across all three sites agreed with this opinion).

¹⁰² *Supra*, n. 9.

¹⁰³ *Id.* at 363 ("For two [of the three] sites, test cases reached final disposition significantly sooner than control cases—in one the median test case was resolved six months sooner and in the other the median test case was resolved two months sooner.").

altogether dismissing charges.¹⁰⁴ One of the observational studies reported similar results with respect to dismissals.¹⁰⁵

The literature suggests that the presence of CAFA could lead to cost savings

If the presence of counsel leads to pretrial release or promotes early case resolution, that effect may in turn translate into cost savings for the adjudication system due to decreased jail housing and support costs.¹⁰⁶ Fewer detainees in jail may help prevent jail overcrowding.¹⁰⁷ Some costs—building maintenance, custodial salaries, utilities, etc.—are fixed operational costs that would not change unless the prison population decreased enough to close a unit of the facility.¹⁰⁸ However, about 20% of total costs—food, clothing, medical care, etc.—are variable costs.¹⁰⁹ Increasing rates of pretrial release may result in cost savings at all levels of government.¹¹⁰

There are also those who believe that the economy as a whole benefits when detainees are released.¹¹¹ Many incarcerated individuals face eviction and job loss as a result of incarceration and their families lose an economic provider and caretaker.¹¹² Studies suggest that children

¹⁰⁴ See *id.* at 362 (finding that for all three counties, experimental cases were more likely to be reduced and handled as misdemeanors or dismissed outright).

¹⁰⁵ Worden et al., *supra* note 27, at 539 (noting that in one of the five participating counties, the program administrator and panel attorneys believed CAFA obtained more adjournments in contemplation of dismissal).

¹⁰⁶ See Fazio et al., *supra* note 8, at 364.

¹⁰⁷ See Colbert et al., *supra* note 18, at 1722-23 (“During the first nine months of the project, the detention population plummeted from 50 percent over capacity to 20 percent below capacity, resulting in substantial cost savings.”).

¹⁰⁸ Daniel J. Freed & Patricia M. Wald, *Bail in the United States: 1964* 42 (1964).

¹⁰⁹ See *id.*

¹¹⁰ One author suggests that by utilizing a cost-benefit analysis to guide pretrial detention decisions, courts could detain up to 28% fewer arrestees prior to trial and achieve economic savings of \$78 billion dollars. Shima Baradaran Baughman, *Costs of Pretrial Detention*, 97 Bos. U. L. Rev. 1, 30 (2017). The Justice Reinvestment model increases the availability of pretrial release and applies cost savings toward indigent defense services; seventeen participating states anticipated savings of \$3.3 billion over ten years. Const. Project Nat’l Right to Couns. Comm., *supra* note 5, at 40. Proposed legislation guaranteeing statewide CAFA could achieve projected savings of \$4.5 million in Baltimore City. Colbert et al., *supra* note 18, at 1757 n.122. The D.C. Bail Project estimated that substantially limiting pretrial detention in D.C. could achieve \$100,000 in savings per year. Freed & Wald, *supra* note 90, at 42. Another study in Cook County, Illinois, suggests providing arrestees with a defense attorney within twenty-four hours of arrest could result in savings between \$12.7 and \$43.9 million annually. Bryan L. Sykes et al., *The Fiscal Savings of Accessing the Right to Counsel within Twenty-four Hours of Arrest: Chicago and Cook County*, 5 UC Irvine L. Rev. 813, 832 (2015). These cost savings could be used to offset the costs of implementing early representation. See Fazio et al., *supra* note 8, at 364 (“[T]he costs of implementing the early representation services (excluding the costs involved in grant administration, data collection and reporting, project management, and travel) were all but offset by other system-wide cost savings.”).

¹¹¹ See Colbert et al., *supra* note 18, at 1720; Const. Project Nat’l Right to Couns. Comm., *supra* note 5, at 40.

¹¹² *Id.*, Colbert et al. at 1720.

are more likely to drop out of school and engage in criminal activity themselves when they are deprived of a parent's financial and emotional support, creating further costs to society.¹¹³

The literature suggests that the presence of CAFA did not affect the percentage of arrestees who make confessions without the advice of counsel.

The 1984 National Institute of Justice study indicated that assigning legal representation to an arrestee within twenty-four hours of arrest does not appear to make a difference in the percentage of arrestees who make confessions without the advice of counsel.¹¹⁴ It seems that to reduce the percentage of arrestees who make confessions without the advice of counsel, an attorney would have to be provided as early as client interactions at the station house, because many confessions occur there.¹¹⁵ One study conducted in upstate New York did indicate that public defenders believed the presence of counsel may prevent clients from making incriminating statements later in the criminal justice process, i.e., in the courtroom.¹¹⁶

The literature suggests that the presence of CAFA did not affect the preference of clients for privately retained counsel.

Although having a public defender present at first appearance positively impacts the attorney-client relationship, as of about forty years ago, clients still indicate a preference for privately retained counsel over a public defender according to the 1984 National Institute of Justice study.¹¹⁷

¹¹³ Baughman, *supra* note 92, at 7. “[A] single high school dropout costs the nation approximately \$260,000 in lost earnings, taxes, and productivity.” *Id.* at 7 n.34 (citing Jason Amos, Dropouts, Diplomas, and Dollars: U.S. High Schools and the Nation’s Economy 2 (2008)).

¹¹⁴ Fazio et al., *supra* note 8, at 365 (“Test attorneys at each [of the three sites] agreed that only on rare occasions were they able to contact clients early enough to have any impact on the decision of the defendant to make an incriminating admission to police.”).

¹¹⁵ See *id.* at 157 (“All participating attorneys, regardless of site, agreed that the design of the test would have had to mandate much earlier client contact (i.e., at the station house) for any real effects to occur in these areas.”).

¹¹⁶ Worden et al., *supra* note 27, at 538 (noting that in two of the five participating counties, public defenders reported believing that they were able to “‘get the client to shut up’ and not utter incriminating statements in open court”).

¹¹⁷ Fazio et al., *supra* note 8, at 364.

Hays County

Hays County was one of the two sites for this study. Hays County is located in central Texas between Austin and San Antonio (*Figure 1*). The population during the study period was about 250,000. Hays is one of the fastest growing counties increasing in population by 61.6% from 2010.¹¹⁸ During the study period, Hays County's magistration was centralized and occurred once a day every day including weekends and holidays. Also, Hays County did not have a public defender office and instead used a system of court appointed counsel.

FIGURE 1: HAYS COUNTY



Pre-Launch

The research team worked with multiple stakeholders in Hays County to prepare for the launch of the RCT. Preparation included several in-person and virtual meetings, and countless email and phone communications to gather county wide stakeholder support, finalize the research design, identify a process, recruit, and train attorneys, create a randomization schedule, and

¹¹⁸ For more details see <https://usafacts.org/data/topics/people-society/population-and-demographics/our-changing-population/state/texas/county/hays-county/?endDate=2021-01-01&startDate=2010-01-01>

launch the study. The below subsections summarize the preparation process before the RCT was launched.

Attorney recruitment

The research team worked with the local bar association and with county stakeholders (including judges, commissioners, etc.) to reach private attorneys in the area who serve the county as part of the court-appointed counsel system. A recruitment email was circulated among these groups to spread the word about the study and the request for attorneys to provide representation at magistrature hearings. The recruitment effort led to the identification of an initial pool of 20 attorneys who expressed interest in being part of the study. The attorneys would represent defendants only at magistrature so there was no opportunity for vertical representation. The actual number of attorneys involved in the study by the time it launched was 13 as some attorneys dropped out. A total of 10 attorneys completed the study.

The attorney pool was diverse with an average of 17.5 years of experience (defined as years since licensure) and ranging from 2 to 44 years. Six out of 13 attorneys had less than 10 years of experience while the remaining seven had more than 25 years of experience. Four attorneys were females. Attorneys came from different employment backgrounds and law schools. Nine different law schools were represented with three of them located out of state.

Attorney training

Once the research team identified the list of attorneys, the research team contracted with the NACDL to provide training for attorneys on issues related to bail hearings with a focus on Texas. Public defenders from Harris and Bexar Counties participated in the training as subject matter experts. These offices have established programs providing counsel at first appearance.

The training was to take place as an in-person conference in March of 2020 but, due to the COVID-19 pandemic, the research team and NACDL pivoted to online webinar sessions both synchronous and asynchronous. NACDL created a Texas pretrial resources page and provided all attorneys with an account to access created materials and webinar recordings.¹¹⁹ The content included generalized materials and resources to provide attorneys with information about bail hearings. Some of the content was created exclusively for the study such as the Texas bail hearing manual. The manual includes an overview of the bail process in Texas, information about the relevant laws, and practical pointers for representation in bail proceedings. The manual builds off other bail manuals from Harris County in Texas and work NACDL conducted in other states (Colorado, New Jersey, and Wisconsin). The initial training webinars offered CLE credit hours for attorneys. Part of the attorney training is to stress that magistrature is not to be used as a marketing ground for future clients and that vertical representation was not an option. All training activities were completed before the launch of the RCT. While the training

¹¹⁹ The webpage can be found here <https://www.nacdl.org/Content/Pretrial-Practices-in-Texas> but access to content needs an account to login.

was highly recommended, it was not mandatory. In Hays County, all attorneys completed training before their participation in the study.

Randomization schedule

The research team created a randomization schedule for a full year with a few days added to serve as pilot days. The study started on July 6, 2020 and ended on July 11, 2021. The schedule was created using the command `randomize` in the statistical software Stata balancing for day of the week and month to account for seasonality in criminal activity maintaining a 50% randomization rate. Magistration in Hays County during the time of the study occurred once a day, seven days a week, and 365 days a year. The randomization schedule was set up at the day level allowing for attorneys to be present at magistration on the treatment days for the full duration of magistration (See *Table 1* for an example of a hypothetical week). A prosecutor was present on all treatment days. On the control days, magistration occurred without attorneys, including the prosecutor, which reflected the status quo process in Hays County. The research team shared the randomization schedule with the magistrate judges, court clerk, arraignment officers, and the district attorney's office. The team asked those with access to the schedule not to share it to minimize any manipulation.

TABLE 1: HAYS COUNTY RANDOMIZATION SCHEDULE

Day	Day of Week	Week	Treatment	Attorney 1	Attorney 2	Judge
1	Monday	Week 1	Treatment	Name	Name	Name
2	Tuesday	Week 1	Control			Name
3	Wednesday	Week 1	Control			Name
4	Thursday	Week 1	Treatment	Name	Name	Name
5	Friday	Week 1	Treatment	Name	Name	Name
6	Saturday	Week 1	Control			Name
7	Sunday	Week 1	Treatment	Name	Name	Name

Scheduling attorneys

Scheduling attorneys for magistration hearings was the responsibility of Hays County. The research team shared the randomization treatment schedule with the county marking the treatment days in which at least one attorney needs to be present. The schedule was shared through Google Sheets.

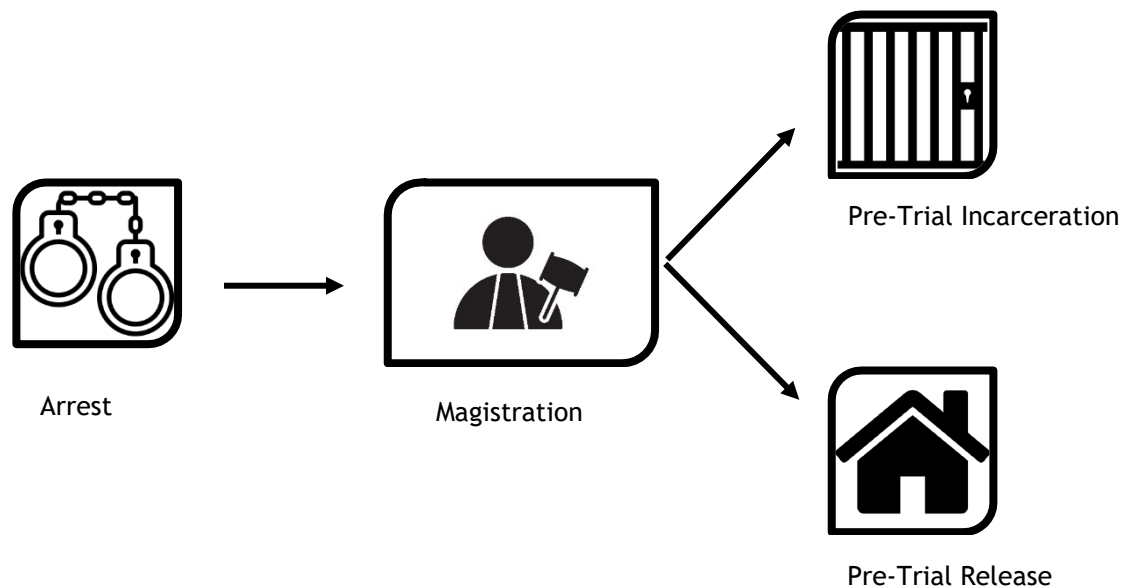
A clerk from the magistrate court reached out to all participating attorneys inquiring about conflicting schedules and preferences (weekdays vs. weekends) and then filled out the schedule for the first two months of the study. Initially, the clerk amended the schedule to solve any last-minute scheduling conflict. This, however quickly became a burden on the clerk. The clerk requested attorneys to communicate directly among each other to solve any scheduling conflicts. This shift significantly minimized the time commitment of the clerk to schedule attorneys for treatment days. The magistrate clerk attended all magistration hearings updating the Google sheet with attending attorneys and presiding magistrate judge.

Magistration Process

Before the study, magistration hearings in Hays County were centralized and occurred once a day in the morning, seven days a week, and 365 days a year including holidays. The usual start time was between 9 and 10 in the morning. Magistration hearings occurred virtually via Zoom. The magistrate judge did not have access to criminal history and only examined probable cause affidavit and any available warrant information before making their decision. The prosecutor did not participate in the hearing.

The magistration process on the days without defense counsel is summarized in *Figure 2*.

FIGURE 2: HAYS COUNTY MAGISTRATION PROCESS (PRE-STUDY)



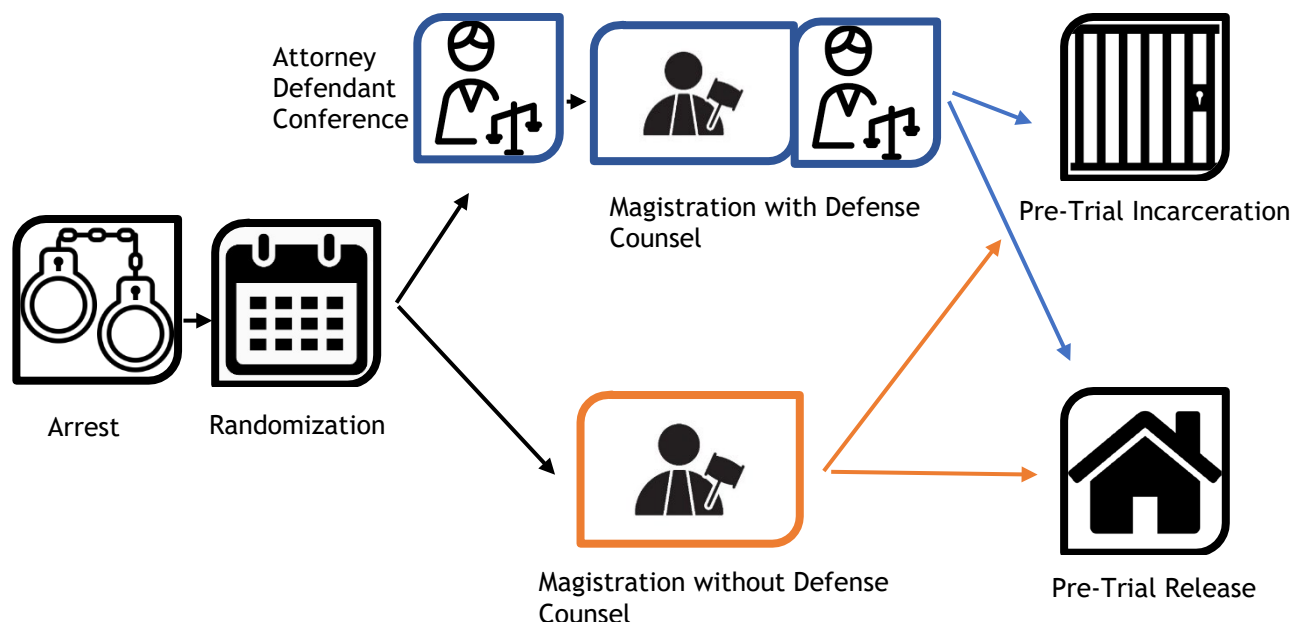
During the duration of the study (July 6, 2020, to July 11, 2021) on control days the process followed pre-study magistration. On the days defense counsel was present, arraignment officers shared a magistration packet with the attorneys about two hours prior to the start of the magistration hearing. This packet included the probable cause affidavit and warrant information but did not include criminal history. During the two hours prior to the hearing, defense attorneys virtually met with defendants using the application Zoom. Arraignment officers shared Zoom links with the attorneys for the attorney-client meetings. Hays County jail staff set up two laptops in private rooms to facilitate those meetings and preserve attorney client privilege. Arraignment officers brought defendants to these rooms to meet with the attorneys. Concurrently, the prosecutor responsible for representing the state at magistration reviewed probable cause affidavit and criminal history to present bail recommendations and bond supervision conditions during magistration hearings.

Defense counsel and defendants met before the magistration hearing. Start times of magistration hearings varied from day to day depending on the number of defendants to be

magistrated but in general started between 9 a.m. and noon. It is important to note that while the intervention randomized days in which defense counsel was available at magistration, Hays County decided to also have the district attorney present during days when defense counsel was present.

The magistration process on the days with defense counsel is summarized in *Figure 3* :

FIGURE 3: HAYS COUNTY MAGISTRATION PROCESS (DURING THE STUDY)



Attorney defendant conference

Attorneys met virtually with defendants before the magistration hearing. The first task for the attorney was to get verbal consent from the defendant for representation and then upon consent inquire about whether they currently had a retained or been appointed an attorney on any pending charges. Study defense counsel attempted to reach the attorney of record (if any) to inform them that study defense counsel represented their client at magistration solely for the purposes of magistration.

Study defense counsel asked the defendant questions to solicit information to assist them in advocating on defendant's behalf during magistration. This information came from a standard set of questions used to inquire about current and historical employment, marital status, and the family situation of the defendant. Examples of the questions can be summarized in *Table 2*. Attorneys also answered any of defendant's questions defendants, which were frequently focused on the court process.

TABLE 2: ATTORNEY DEFENDANT CONFERENCE QUESTIONS - HAYS COUNTY

Financial ability	Family
1. Are you currently employed?	1. Do you have a family?
2. Where? How long?	2. Are you married?
3. When did you last work?	3. Do you have children?
4. Any cash/savings on hand?	4. Do you have any dependents?
5. Bond amount can be raised by family/friends?	5. How often do you see your family?
Housing	Health
1. Where are you from?	1. Any health conditions to report?
2. How long have you been in this area?	2. Any prescriptions medicine?
3. Do you have a place to stay?	
Criminal history	Other
1. Any probation/parole?	1. Highest level of education?
2. Any other arrests/convictions?	2. Veteran status?
3. Will you confirm to bond conditions?	3. Any memberships in organizations?

Attorneys also collected information for the research team. The information included the start and end time of the attorney-defendant conference, name/local county identification number of the defendant, whether a defendant refused counsel, and whether the attorney perceived any mental health or intellectual disability after interacting with the defendant.

Figure 4 presents the distribution of the length of meeting time between attorneys and defendants in minutes. The average attorney-defendant conference time was 8.6 minutes (ranging from 0 minutes, when a defendant refused to be represented or if the defendant was not eligible for bond, and a high of 43 minutes). The distribution is mainly centered around 8-9 minutes.

FIGURE 4: DISTRIBUTION OF LENGTH OF MEETING TIME BETWEEN ATTORNEYS AND DEFENDANTS (IN MINUTES) - HAYS COUNTY

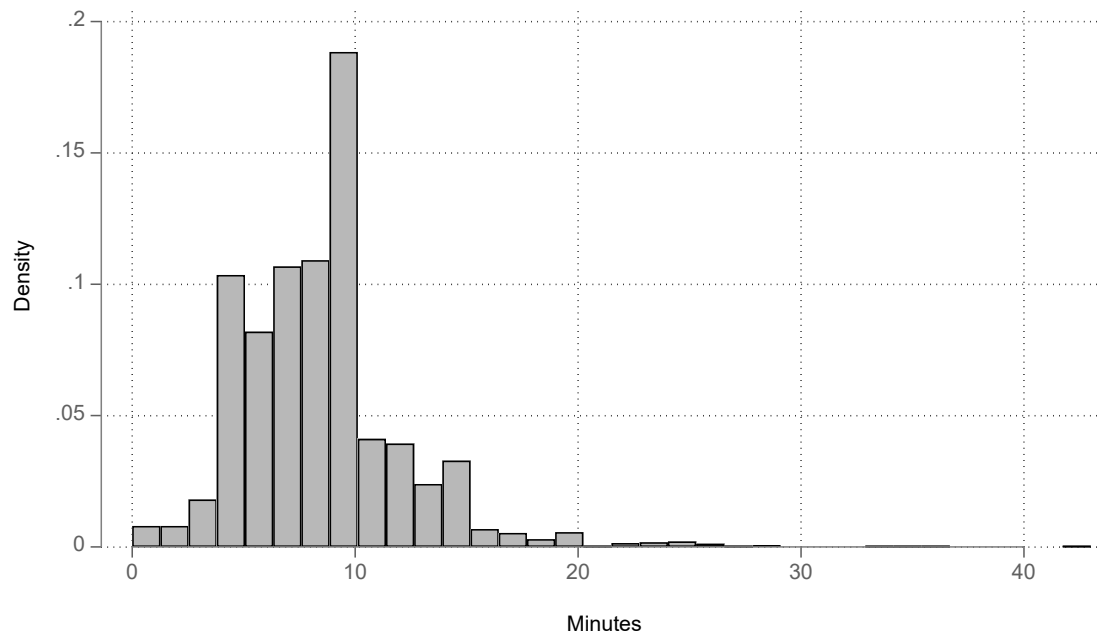
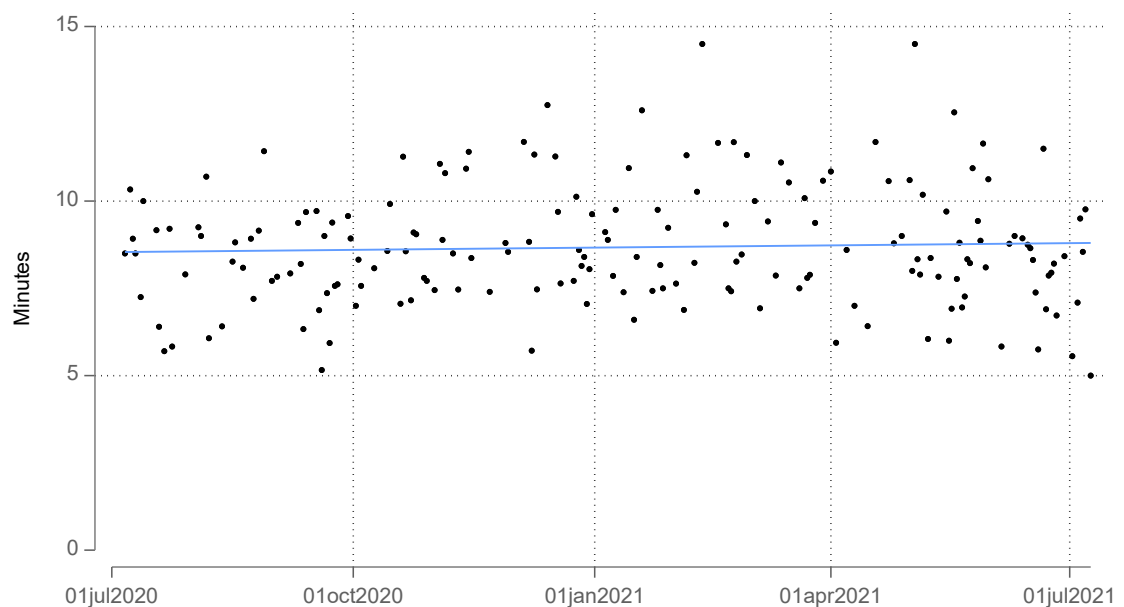


Figure 5 shows the average length of the attorney-defendant conference in minutes to identify any changes to the length of the meeting over the period of the study. The average time remained relatively stable throughout the duration of the study.

FIGURE 5: AVERAGE LENGTH OF ATTORNEY DEFENDANT CONFERENCE (IN MINUTES) - HAYS COUNTY



Attorney data also included information such as whether defendant refused counsel and whether the attorney suspected the defendant suffered from a mental health issue or had a possible intellectual disability. Both mental health and intellectual disability data elements reflect attorneys' observations and are not official diagnoses. *Table 3* displays this data. About 8% of defendants refused counsel at magistration.¹²⁰ Study attorneys perceived 18% of defendants and almost 6% of defendants had a mental health issue or an intellectual disability respectively.

TABLE 3: ATTORNEY-DEFENDANT CONFERENCE OBSERVATIONS - HAYS COUNTY

	Share	Sample
Refuse Counsel	8.1%	2,858
Mental Health Issue	18.4%	2,768
Intellectual Disability Possibility	5.6%	2,762

Magistration hearing

Arraignment officers informed the magistrate judge when all attorney-defendant interviews concluded. This triggered the start of the magistration hearing. The magistrate judge started the hearing by introducing themselves, stating their name, the day and time, and what their role is during magistration (mainly discussing information relevant to setting a bond). The magistrate judge also informed defendants of their rights summarized below:

- The right to hire an attorney to represent you.
- The right to have an attorney present prior to and during any interview and questioning by peace officers or attorneys representing the State.
- The right to remain silent.
- The right to remain silent, and any statement made can and may be used against you in court.
- The right to stop any interview or questioning at any time.
- The right to have an examining trial (felonies only).
- The right to request appointment of counsel.

On the days defense counsel was present, the magistrate judge also asked each defendant if they are ok with being represented and upon confirmation, the judge asked the prosecutor to discuss the charges, criminal history, and recommend bond type, amount, and supervision conditions if any. Defense counsel then advocated on behalf of the defendant making their own recommendations for bond type, amount, and supervision conditions. Often the prosecutor would respond to the recommendations of the defense counsel and a discussion between all

¹²⁰ Refusal estimates should be interpreted with caution as attorney reporting was not consistent.

three parties (magistrate judge, prosecutor, and defense counsel) ensued. The magistrate judge often asked clarifying questions to either parties or the defendant themselves. The judge then made their decision about bond type, amount, and any conditions.

Randomized Control Trial

The RCT study started on July 6, 2020 and ended on July 11, 2021. On treatment days two attorneys were present to represent defendants during magistration hearings. During that period, the randomization created 183 treatment days and 188 control days (see *Table 4*).

TABLE 4: TREATMENT AND CONTROL DAYS - HAYS COUNTY

Hays County	# of Days	% Completed
Treatment	183	49.3%
Control	188	50.7%
Total	371	100.0%

Hays County mostly adhered to the randomization schedule. There were three days on which attorneys, per randomization schedule, were supposed to be present but they were not. Those days and the associated reason for canceling treatment are summarized in *Table 5*. On the other hand, and due to a communication error, attorneys were present on a control day (November 22, 2020). In the analysis, the observations on those days were analyzed as intended by the randomization schedule.

TABLE 5: COMPLIANCE WITH THE RANDOMIZATION SCHEDULE - HAYS COUNTY

September 27, 2020	Attorneys were not able to be present (schedule conflict)
February 15, 2021	No one was arrested due to ice storm; magistration did not occur
February 16, 2021	Technical issues did not allow attorneys to be present

Magistrations documents were collected for all but 44 days during our study period.¹²¹ To supplement the sample for these missing 44 days (and any other missing magistrations documents), bond data provided by the county was utilized. Once out of county charges were dropped, the final sample comprised 5,246 individual defendants' magistrations, with 2,577 defendants assigned to the treatment group (receiving defense counsel at magistrations) and 2,669 defendants assigned to the control group.¹²²

¹²¹ The 44 days consisted of 915 charges (587 individual defendants' magistrations). Missing defendant magistrations documents consisted of 78 charges (71 individual defendants' magistrations). The missing documents were due to computer failure at the jail.

¹²² 880 out of county charges dropped.

In *Table 6* the mean values of the covariates between the treatment and control groups were examined to assess the balance between the two groups. The treatment group consisted of defendants who received defense counsel at magistration, while the control group comprised defendants who did not receive defense counsel at magistration. Across various covariates, there were no significant differences observed between the treatment and control groups. The mean age in the treatment group was 31.5 years, slightly higher than the control group mean of 31.2 years ($p = 0.350$). Gender distribution was also similar, with 76.2% males in the treatment group compared to 77.3% in the control group ($p = 0.346$). Regarding race and ethnicity, 86.6% of the treatment group and 85.9% of the control group were White ($p = 0.458$), while 51.6% of the treatment group and 50.1% of the control group were Hispanic ($p = 0.295$).

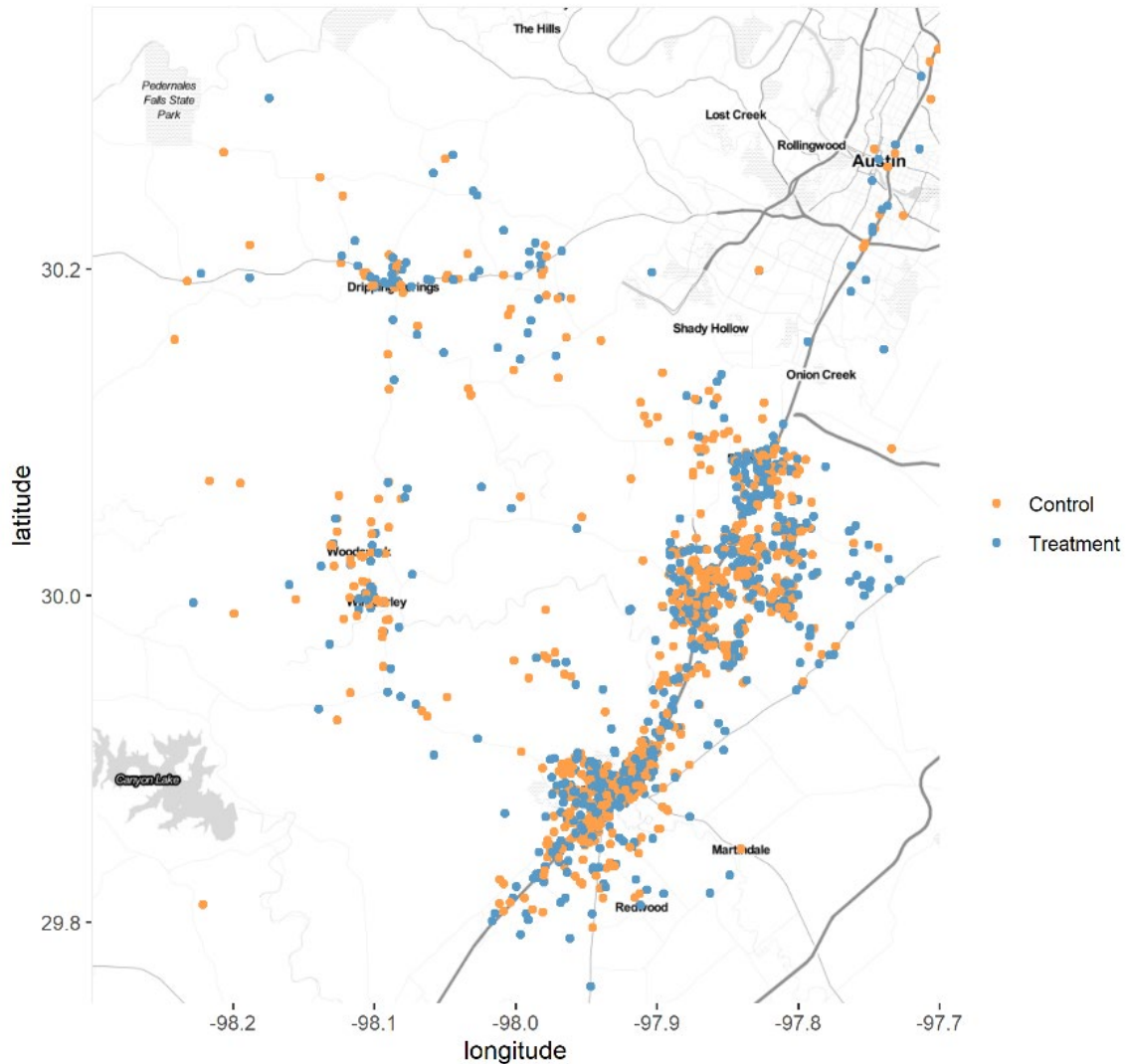
TABLE 6: COVARIATE BALANCE BETWEEN CONTROL AND TREATMENT GROUPS - HAYS COUNTY

	Control Mean	Treatment Mean	P-Value	Control <i>n</i>	Treatment <i>n</i>
Age	31.2	31.5	0.350	2669	2577
Male	77.3%	76.2%	0.346	2659	2561
White	85.9%	86.6%	0.458	2643	2544
Hispanic	50.1%	51.6%	0.295	2659	2559
Highest Charge (Felony)	49.9%	49.5%	0.756	2669	2577
Charge Count	1.7	1.7	0.655	2669	2577
Misdemeanor Count	0.9	0.9	0.751	2669	2577
Felony Count	0.8	0.8	0.482	2669	2577
All New Charges	86.4%	85.9%	0.610	2669	2577
Already In Custody	4.8%	5.7%	0.141	2669	2577

The average number of charges at magistration for both the treatment and control groups was 1.7, indicating a similar level of criminal involvement at the time of arrest. Similarly, the mean number of misdemeanors was approximately 0.9 for both groups, and the mean number of felonies was around 0.8, with no statistically significant differences observed between the treatment and control groups. The proportion of all new charges at magistration was comparable between the treatment group (85.9%) and the control group (86.4%), indicating similar patterns of criminal behavior leading to arrest. In terms of custody status at magistration, approximately 5.7% of defendants in the treatment group and 4.8% of defendants in the control group were already in custody at the time of magistration. However, these differences were not statistically significant.

Another balance test comes from comparing arrest addresses for defendants in the treatment and control groups. *Figure 6* shows no visual difference between arrest addresses of defendants by groups reflecting a concentration of arrest locations around Interstate-35.

FIGURE 6: ARREST ADDRESSES BY GROUP - HAYS COUNTY



Overall, the balance tests indicate that the treatment and control groups are relatively balanced across key variables, suggesting that the assignment of defense counsel at magistration was not systematically associated with differences in the measured covariates.

For this study, we examine two sets of outcomes: primary and secondary. Primary outcomes include bond amount, bond type, whether there was a court-appointed counsel request, and whether a \$16.22 evaluation was ordered. Secondary outcomes consist of number of days

incarcerated from magistration until release, recidivism¹²³, whether defendant failed to appear¹²⁴, time to disposition, and disposition type. Despite observing no significant differences in characteristics between defendants who received counsel at magistration and those who did not, we include all covariates listed in *Table 6*, as well as judge fixed effects, as controls in our analysis. By incorporating these covariates as controls, we aim to improve the efficiency of our analysis and account for any potential confounding factors. All multilinear regression results are summarized in tables in the appendix (Appendix I). These tables display the marginal effects derived from Probit regressions while figures in the text present the average values of the outcome variables, with the treatment averages representing OLS adjusted coefficient and the control averages representing the mean values for the control group. This visual representation allows for a clearer comparison between the treatment and control groups in terms of their respective average outcomes.

Primary outcomes

We first focus on outcomes that are immediately determined at magistration - bond amount, bond type, whether defendant requests court-appointed counsel, and whether the court orders a \$16.22 evaluation.

Figure 7 displays the average bond amount between defendants magistrated on days with defense counsel and defendants magistrated on days without defense counsel across various bond amount thresholds: less than \$500, less than \$1,000, less than \$2,000, less than \$5,000, and less than \$10,000, where each ascending category includes observations in the prior categories.¹²⁵ These thresholds represent different levels of bond amounts for defendants. Among the defendants magistrated on days with defense counsel, 41.3% received a bond amount less than \$1,000, whereas among the defendants magistrated on days without defense counsel, 37.4% received a bond amount less than \$1,000. The difference between the treatment and control groups is statistically significant at the 1% level, indicating that defendants who received defense counsel at magistration are more likely to have a bond amount less than \$1,000 compared to the control group. Likewise, for the remaining bond amount thresholds of less than \$2,000, less than \$5,000, and less than \$10,000, the treatment group consistently exhibits a statistically significant likelihood of having a bond amount below the specified threshold when compared to the control group. Overall, the results indicate that receiving defense counsel at magistration is associated with a higher probability of having a bond amount below various thresholds. This suggests that defendants who had access to defense counsel at

¹²³ Recidivism refers to the total number of times an individual was booked subsequent to the magistration date.

¹²⁴ Failure to Appear is measured in two ways. The first measure is a binary variable that takes the value of one if the defendant failed to appear at a hearing for at least one of the cases after their magistration date. The second measure is also a binary variable that takes the value of one if the defendant failed to appear at a hearing, except in cases where the defendant was magistrated again at a later date and their failure to appear occurred before that magistration.

¹²⁵ The categories follow Anwar et al. (2023).

magistrations were more likely to receive lower bond amounts compared to those who did not have such access.

FIGURE 7: BOND AMOUNT BY COMPARISON GROUP - HAYS COUNTY (TREATMENT-CONTROL COMPARISONS ARE OLS REGRESSION-ADJUSTED)¹²⁶

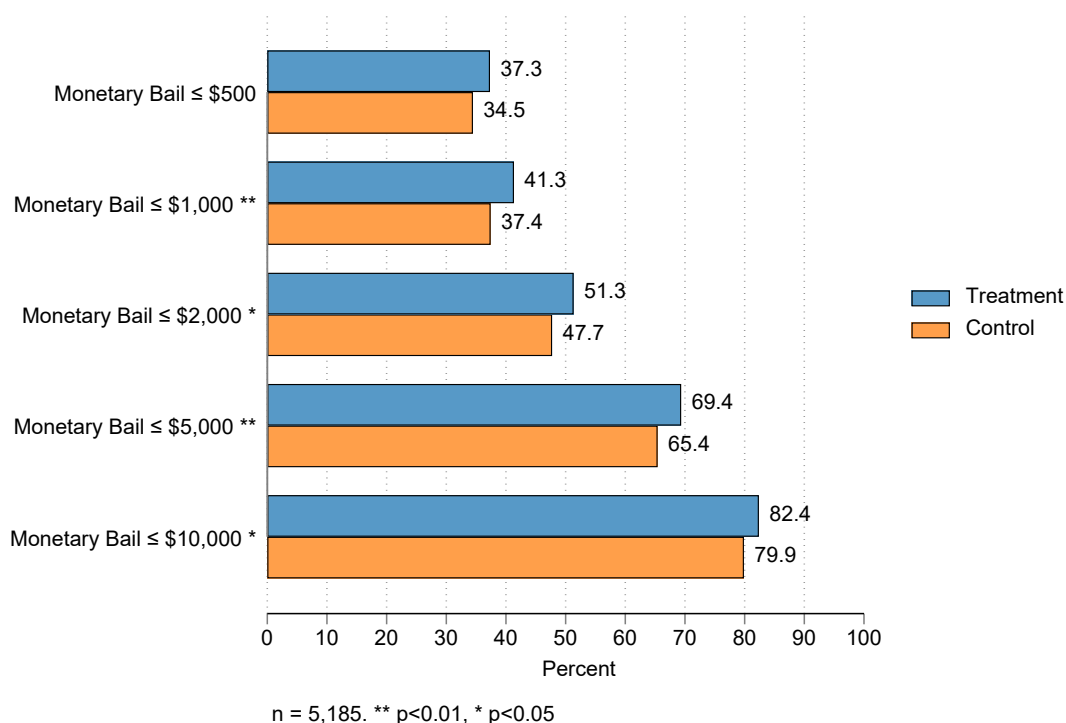


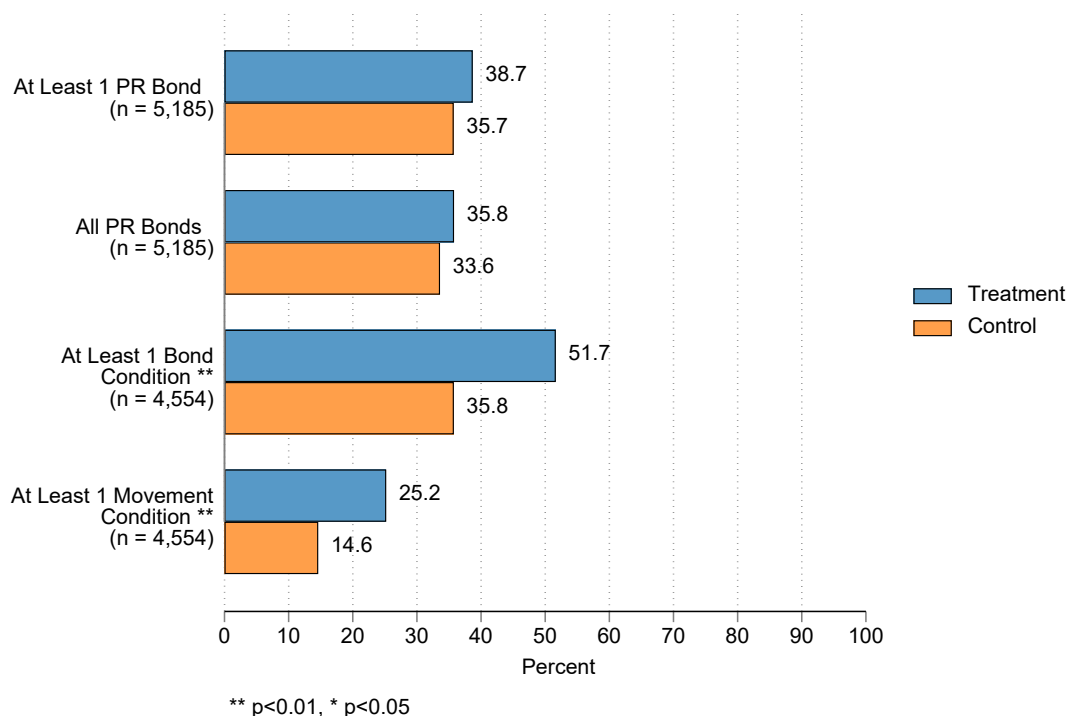
Figure 8 provides evidence that defendants who received defense counsel at magistrations are more likely to have bond conditions imposed compared to the control group. Among defendants at magistrations on days with defense counsel present, 51.7% received at least one bond condition, whereas only 35.8% of defendants on days without defense counsel received bond conditions. This indicates a notable increase of 44.4% in the likelihood of receiving bond conditions when defense counsel is present. Moreover, the analysis reveals a substantial impact of defense counsel at magistrations on the likelihood of receiving stricter bond conditions.¹²⁷ Defendants on treatment days exhibited a significantly higher likelihood of receiving stricter conditions, with 25.2% compared to the control group's 14.6%, representing a 72.5% increase.

¹²⁶ Results here are at the level of individual defendants' magistrations. Personal recognizance bond amounts are set to zero. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistrations, if the defendant had no prior arrests for any of the offenses at the time of magistrations, and judge fixed effects. Standard errors are clustered at the magistrations date level.

¹²⁷ We define stricter bond conditions as those prohibiting movement or communication. These bond conditions include restrictions from locations/people, direct/indirect communication with person/people, protective orders, GPS monitoring, and home confinement.

However, there were no statistically significant differences between defendants with defense counsel and defendants without defense counsel in the likelihood of receiving at least one personal recognizance (PR) bond or all PR bonds.

FIGURE 8: BOND TYPE AND CONDITIONS BY COMPARISON GROUP - HAYS COUNTY (TREATMENT-CONTROL COMPARISONS ARE OLS REGRESSION-ADJUSTED)¹²⁸



Although the statistical analysis did not reveal a significant impact of defense counsel on overall PR bond outcomes, an interesting finding emerged when examining the likelihood of a single offense receiving a PR bond. The presence of defense counsel significantly influenced the likelihood of a single offense receiving a PR bond, suggesting that the influence of defense counsel may be more pronounced at the individual offense level.¹²⁹ This finding may provide insight into the reasons behind the increase in bond conditions, particularly stricter ones, when

¹²⁸ Results here are at the level of individual defendants' magistrations. Movement condition = 1 if the individual had one or more movement restricting bond conditions. Bond conditions were not reported for individuals with incomplete or missing magistration documents. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration, and judge fixed effects. Standard errors are clustered at the magistration date level.

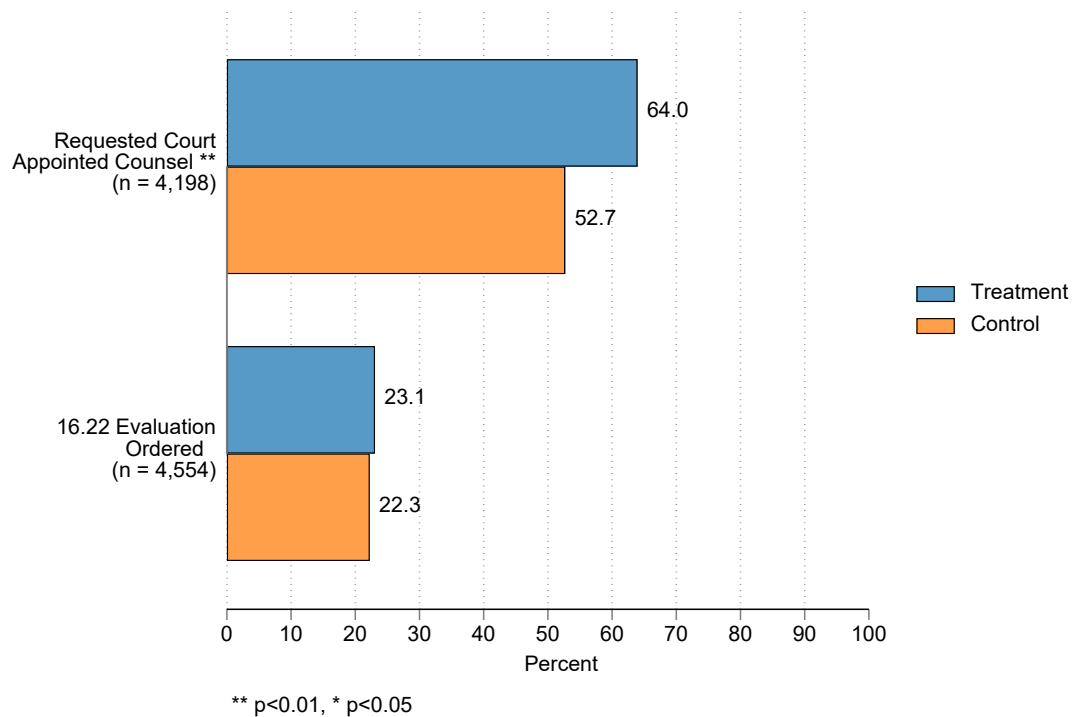
¹²⁹ While we do not show the results here, defense counsel increases the likelihood of receiving a PR bond on a single offense by 19%.

defense counsel is present. Further investigation may shed light on the potential nuances and factors influencing these outcomes.

Two additional primary outcomes investigated in this study are court-appointed attorney requests and §16.22 evaluation orders. These outcomes are particularly significant as they not only impact pre-trial proceedings but also have implications for long-term outcomes. Results presented in *Figure 9* indicate a significant difference in the likelihood of defendants requesting court-appointed counsel between those who received defense counsel at magistration and those who did not. Specifically, 64.0% of defendants on days with defense counsel requested court-appointed attorneys, whereas only 52.7% of defendants without defense counsel made the same request. This represents a statistically significant increase of 21.4% in the likelihood of requesting court-appointed counsel for defendants who had access to defense counsel at magistration. This finding suggests that the presence of defense counsel at magistration plays a crucial role in facilitating and advocating for the request of counsel for defendants who may require legal representation but lack the financial means to hire an attorney.¹³⁰ In contrast, the presence of defense counsel at magistration did not exhibit a significant impact on the likelihood of §16.22 evaluation orders at magistration. This indicates that the provision of defense counsel at magistration may not substantially influence the decision-making process surrounding the ordering of §16.22 evaluations, suggesting that other factors or considerations may come into play when determining the need for such evaluations.

¹³⁰ While our study identifies a significant impact of defense counsel at magistration on the likelihood of defendants requesting court-appointed counsel, it is important to note that the actual appointment of counsel falls outside the scope of this study.

FIGURE 9: ATTORNEY REQUEST AND §16.22 EVALUATION BY COMPARISON GROUP - HAYS COUNTY
(TREATMENT-CONTROL COMPARISONS ARE OLS REGRESSION-ADJUSTED)¹³¹



Secondary outcomes

Next, we analyze the impact of defense counsel at magistration on outcomes that extend beyond the immediate decision at magistration including, days to release, recidivism, failure to appear, time to disposition, and disposition type.

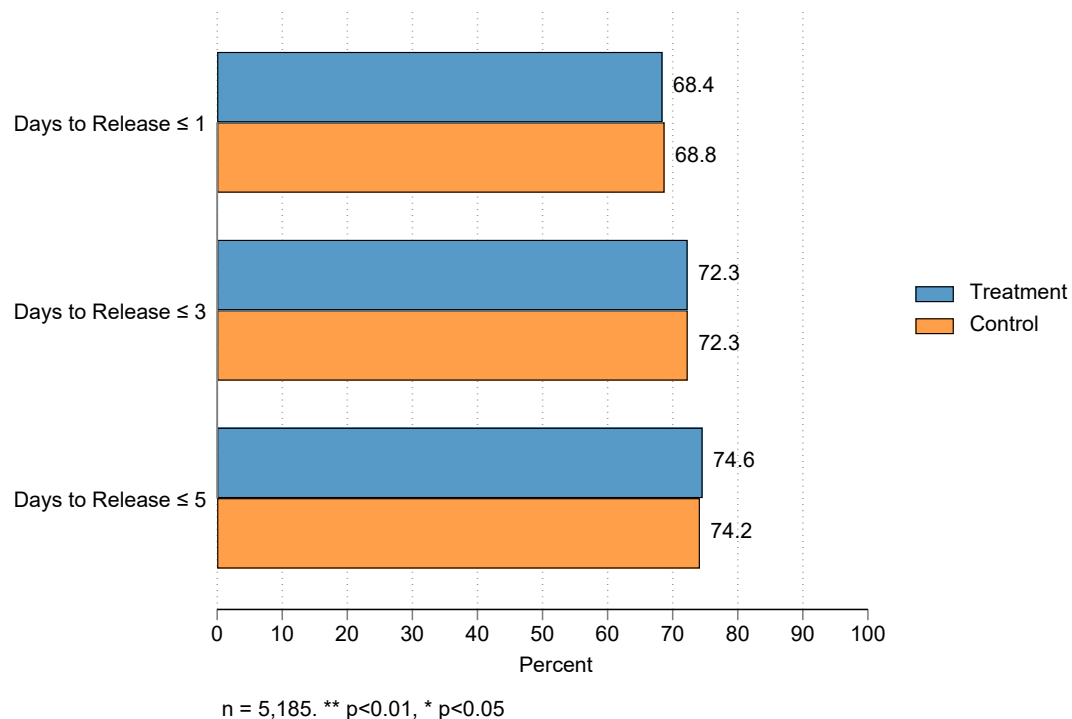
Figure 10 examines the likelihood of defendants being released from jail within specific timeframes: less than or equal to one day, less than or equal to three days, and less than or equal to five days.¹³² The findings show that there were no statistically significant differences between defendants magistrated on a day with defense counsel and those who were magistrated on days without defense counsel across the different timeframes. Across all three categories, the percentage of defendants released are relatively the same between treatment and control, with approximate values of 68%, 72%, and 74%, for days to release less than one,

¹³¹ Results here are at the level of individual defendants' magistrations. Court appointed counsel requests and §16.22 evaluation orders were not reported for individuals with incomplete or missing magistration documents. The magistration documents for 356 individuals did not indicate a request for court-appointed counsel. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration, and judge fixed effects. Standard errors are clustered at the magistration date level.

¹³² Each category includes observations in the prior categories.

less than three, and less than five, respectively. The differences in release rates between the groups were negligible, resulting in percentage changes of less than one. Overall, these results suggest that the presence of defense counsel at magistration did not have a substantial impact on the likelihood of defendants being released from jail within these timeframes.

FIGURE 10: DAYS TO RELEASE BY COMPARISON GROUP - HAYS COUNTY (TREATMENT-CONTROL COMPARISONS ARE OLS REGRESSION-ADJUSTED)¹³³

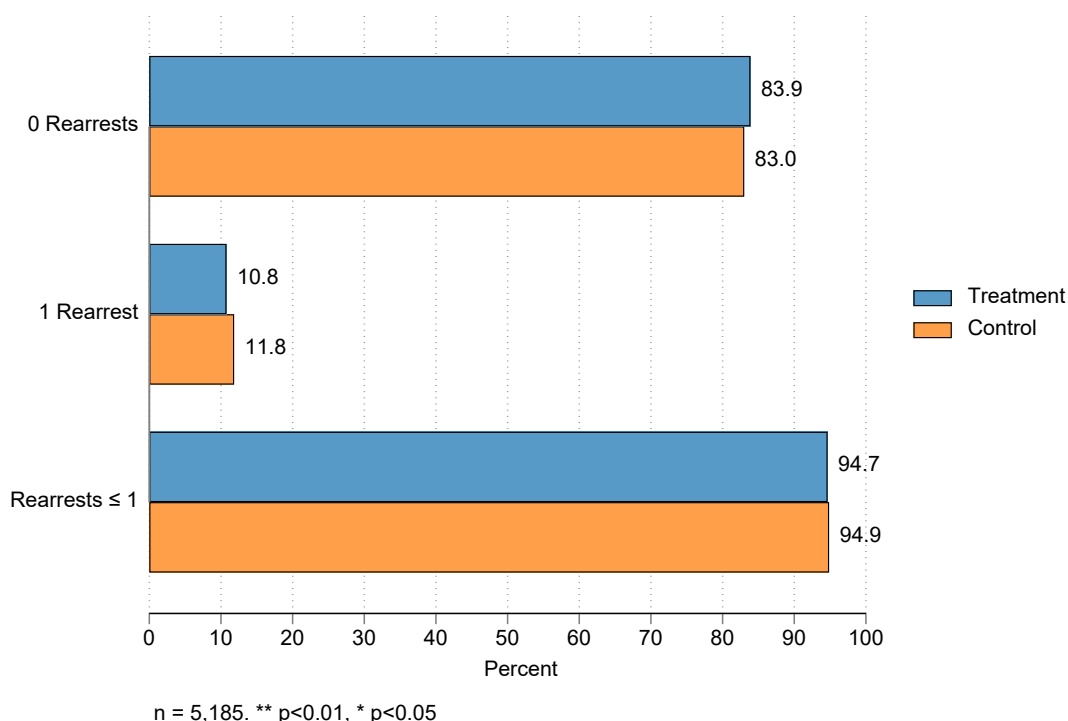


We next investigate the impact of being represented by defense counsel at magistration relative to rearrest. *Figure 11* illustrates the comparison of rearrest rates between defendants who underwent magistration on a day with defense counsel and defendants who did not undergo magistration on a day with defense counsel. Defendants on days with counsel had a slightly higher percentage of defendants with no rearrests (83.9%) compared to defendants on days without counsel (83.0%), resulting in a small and insignificant percent change. Among defendants magistrated on treatment days, 10.8% experienced one rearrest, whereas 11.8% of defendants magistrated on control days had one rearrest. This statistic implies a marginal decrease of 9.1% in the likelihood of a single rearrest for the treatment group compared to the control group. However, this difference is not statistically significant. Similarly, 94.7% of

¹³³ Results here are at the level of individual defendants' magistrations. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration, and judge fixed effects. Standard errors are clustered at the magistration date level.

defendants with defense counsel present and 94.9% of defendants without defense counsel present experienced at most one rearrest, resulting in a negligible and statistically insignificant percent change. In summary, the analysis suggests that the presence or absence of defense counsel at magistration does not have a substantial impact on the likelihood of rearrests.

FIGURE 11: REARRESTS BY COMPARISON GROUP - HAYS COUNTY (TREATMENT-CONTROL COMPARISONS ARE OLS REGRESSION-ADJUSTED)¹³⁴

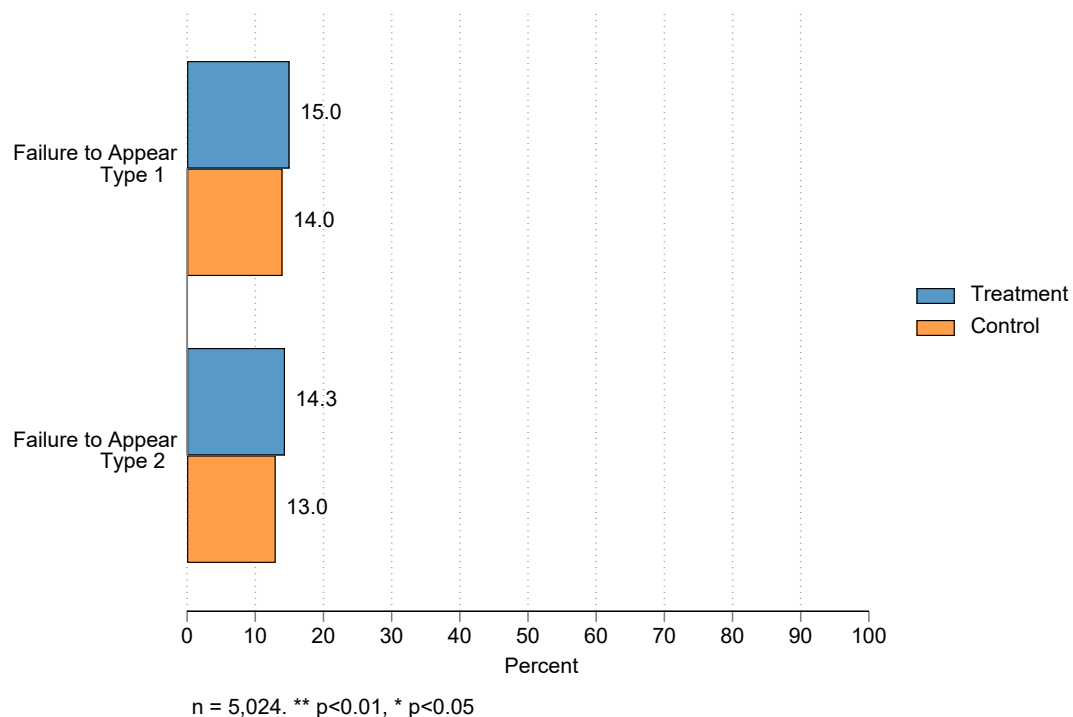


An additional crucial factor that can influence both the duration of a defendant's case resolution and potentially the case outcome is the defendant's presence at subsequent court dates following magistration. We analyze failure to appear using two different measures. Failure-to-Appear Type 1 is a binary variable that takes the value of one if the defendant failed to appear at a hearing for at least one of the cases after their magistration date. Failure-to-Appear Type 2 is also a binary variable that takes the value of one if the defendant failed to appear at a hearing for at least one of the cases, except in instances where the defendant was magistrated again at a later date and their failure to appear occurred prior to that subsequent magistration. *Figure 12* examines the likelihood of defendants failing to appear at subsequent hearings

¹³⁴ Results here are at the level of individual defendants' magistrations. The number of rearrests corresponds to the total number of times an individual was booked subsequent to the magistration date within the study period. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration and judge fixed effects. Standard errors are clustered at the magistration date level.

between defendants magistrated on days with counsel and those magistrated on days without counsel. Both failures to appear measures yield similar results in terms of the comparison between defendants on days with counsel and defendants on days without counsel, with a mean between 13% and 15% for treatment and control groups across both failure-to-appear types. Since the differences are relatively small and not statistically significant these results suggest that the presence of defense counsel at magistration does not have a substantial impact on the likelihood of failure to appear for subsequent court hearings.

FIGURE 12: FAILURE TO APPEAR BY COMPARISON GROUP - HAYS COUNTY (TREATMENT-CONTROL COMPARISONS ARE OLS REGRESSION-ADJUSTED)¹³⁵

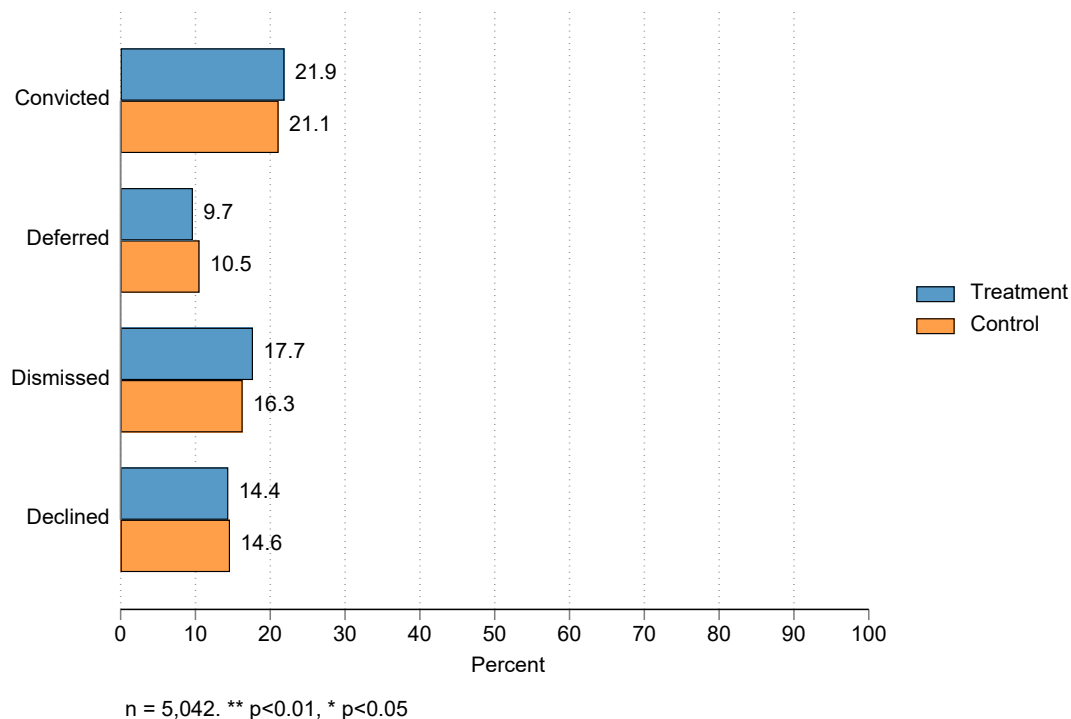


The analysis presented in *Figure 13* and *Figure 14* examines the distribution of different disposition types and time to disposition, respectively, between defendants magistrated on days with defense counsel and defendants magistrated on days without defense counsel. The findings reveal that there are slight variations in the distribution of disposition types between

¹³⁵ Results here are at the level of individual defendants' magistrations. Failure to Appear Type 1 is a binary variable that takes the value of one if the defendant failed to appear at a hearing for at least one of the cases after their magistration date. Failure to Appear Type 2 is also a binary variable that takes the value of one if the defendant failed to appear at a hearing, except in cases where the defendant was magistrated again at a later date and their failure to appear occurred before that magistration. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration, and judge fixed effects. Standard errors are clustered at the magistration date level.

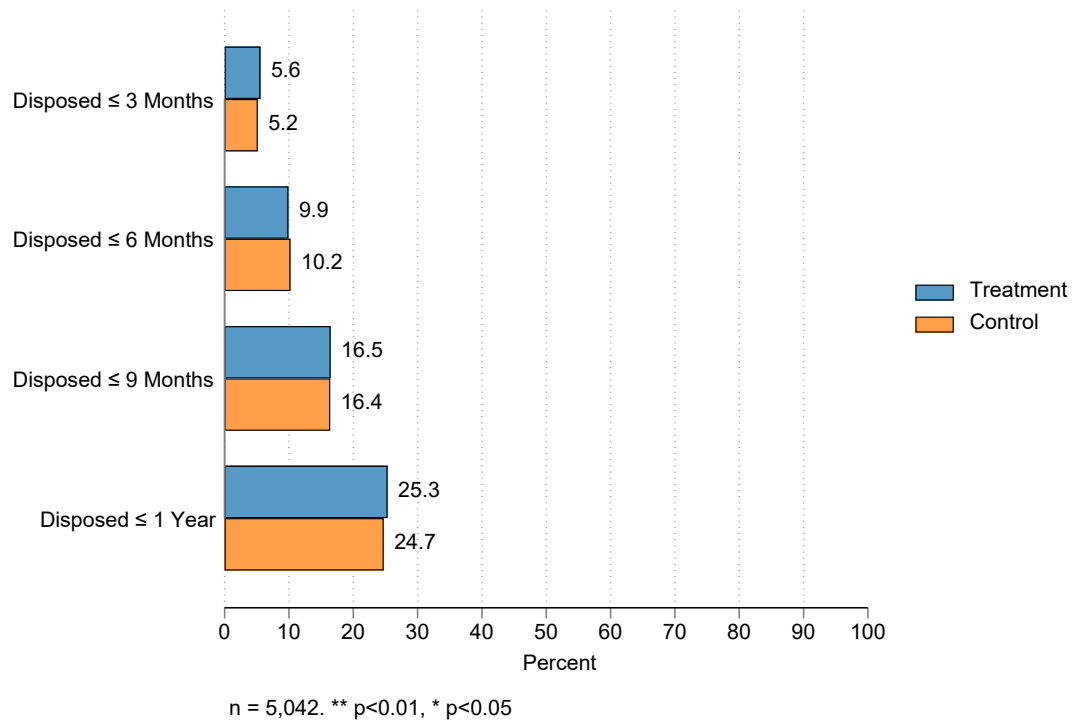
the two groups. Specifically, the treatment group has a higher percentage of convictions (21.9% vs. 21.1%), deferred dispositions (9.7% vs. 10.5%), and dismissals (17.7% vs. 16.3%) compared to the control group. However, for declined dispositions, the percentages are similar between the treatment and control groups (14.4% vs. 14.6%). For time to disposition, the findings show that there are minimal differences in the time it takes for cases to reach disposition between the two groups. The treatment group has slightly higher percentages of cases reaching disposition within 3 months (5.6% vs. 5.2%), 6 months (9.9% vs. 10.2%), and 9 months (16.5% vs. 16.4%) compared to the control group. Similarly, for cases reaching disposition within 1 year, the defendants magistrates on days with defense counsel had a slightly higher percentage (25.3% vs. 24.7%). Differences in disposition types and time to dispositions are relatively small and are not statistically significant, indicating that receiving defense counsel at magistration does not have an impact on disposition outcomes.

FIGURE 13: CHARGE DISPOSITION BY COMPARISON GROUP - HAYS COUNTY (TREATMENT-CONTROL COMPARISONS ARE OLS REGRESSION-ADJUSTED)¹³⁶



¹³⁶ Results here are at the level of individual defendants' magistrations. For each magistration date, a disposition type variable is assigned a value of one if at least one of the defendant's charges on that date received that disposition type. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration, and judge fixed effects. Standard errors are clustered at the magistration date level.

FIGURE 14: TIME TO FIRST DISPOSITION BY COMPARISON GROUP - HAYS COUNTY (TREATMENT-CONTROL COMPARISONS ARE OLS REGRESSION-ADJUSTED)¹³⁷



Cost Study Findings

The evaluation also included a cost study on the impact of defense counsel at magistration. The cost to have attorneys represent defendants at magistration include attorney fees, two additional laptops to facilitate the virtual attorney-defendant conference, a Zoom 1-year subscription, and any overtime cost for arraignment officers or court clerks. In Hays County, we also added the cost of having a prosecutor present during the treatment days. All the costs are summarized in *Table 7*.

TABLE 7: CAFA COSTS ESTIMATES - HAYS COUNTY

Attorney fees	\$127,534.24
Overtime cost for arraignment officer	\$433.74
Overtime cost for court clerk	\$0.00
Prosecutor cost	\$78,262.40
Two laptops + docking stations	\$4,000.00
Zoom 1-year subscription	\$200.00
Total costs	\$210,430.38

¹³⁷ Results here are at the level of individual defendants' magistrations. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration, and judge fixed effects. Standard errors are clustered at the magistration date level.

Attorney fees were covered by a grant from TIDC. Attorneys were paid \$75 per hour after submitting time vouchers to Hays County. Attorneys were on the clock whenever they received the information packet from the jail. On treatment days, arraignment officers had to prepare information packets for attorneys and then move defendants to allow them to meet with attorneys. This often necessitated some overtime work by an officer that specifically handled most of CAFA treatment days logistics. The magistrate court clerk was responsible for scheduling attorneys to be present on treatment days. There were no recorded overtime costs by the court clerk. Prosecutor costs included the salary and fringe benefits of one prosecutor who was hired to cover treatment days for the study. We did not receive actual costs from the county for laptops, docking stations, and the Zoom subscription so we present estimates here.

Potential cost changes from having counsel at first appearance include savings from less jail days, less court bond hearings (since the County hypothesized that bond type and amount would be set more efficiently), and cost differences from changes to failure to appear and recidivism if any. In Hays County we could not study the impact of CAFA on bond hearings due to data limitations, and we found no statistically significant impact on failure to appear, recidivism, and number of jail days. However, we did not document a statistical significance difference in the jail days between treatment and control groups, and hence we cannot assume any cost savings from CAFA in Hays County.

Qualitative Research Findings

The utility of the CAFA program is also illustrated in data collected through interviews (see questions in Appendix III) with stakeholders including magistrate judges, prosecutors, defense counsel, arraignment officers, and court clerks, and also through observations of magistration hearings. The following sections synthesize our findings on process, attorney advocacy during magistration, prosecutor during magistration, impact of defense counsel, virtual setting, and lessons to other jurisdictions from the stakeholders' perspective.

Process

Interviews with stakeholders reveal areas in the process that are notable to them. First is the accessibility of the defendant's criminal history by those involved in the magistration process. Prosecutors have access to the defendant's criminal history. Defense attorneys do not have access and the client typically does not provide all criminal history. With the passing of SB 6 (Damon Allen Act) in 2021, judges now have access to defendants' criminal history.

At the start of the study, the defense counsel argued their recommendations first to the judge during magistration and then the prosecutor followed. However, as mentioned above, defense counsel does not have access to criminal history and defendants' description of their history turned out not to be reliable. The defendant's criminal history became less of a surprise when the order changed from the prosecutor presenting last at the magistration hearing to presenting first:

The defense goes much smoother if the prosecutor goes first; being unaware of criminal record, going first often makes the defense look ridiculous.

Arrestment officers discussed their activities when interviewed. They must complete the daily magistration roster which may take an hour to complete if there are a lot of defendants. They must also determine whether an interpreter is needed, for defendants where English is not their primary language, and arrange for the interpreter. Officers expressed frustration that the process added administrative work, and the program interfered with other duties. One officer stated:

For bonds that are already set, like Class C's or charges from other counties, no outcome can change and only consumes time. If these inmates are not included in participating in the process, a lot of time and resources will be saved.

Defense attorney advocacy during magistration

Attorneys observe that simply having a defense attorney present for the defendant makes a difference. Defendants that have been through the process before were surprised to have an attorney represent them. Attorneys view their advocacy in two ways – advocating for the defendant through the case and guiding the defendant through the magistration process. Defense attorneys also feel as though they help the defendant by serving as a “middleman” which “creates neutral grounds for the judge to accept information”.

When preparing a case, attorneys describe gathering as much information as possible by using a rubric (for more details see *Table 2*) that covers areas significant to decision making by the judge. Important areas for judges to consider include where the defendant lives, if they own a home, have family and friends, make contributions to the community, their employment status, and criminal history. If the defendant does have a criminal history, attorneys looked for ways to mitigate it.

There is no single advocacy strategy because of the varying circumstances of each case. For instance, there is a difference in approach for cases involving more serious charges. As one attorney describes:

You don't handle a child pornography case like you would a DWI . . . because you need to make sure that judge understands this guy's life or this woman's life very clearly. Because, as you probably know, the criminal justice system here in Texas is very, very harsh and any accusations against you, when they're very serious that person is likely going to sit in jail. Unfortunately, we still have a very difficult time making judges understand the importance of release when they're setting up a defense.

Attorneys also described providing the defendant an opportunity to demonstrate they will not commit more crimes and avoid jail time by giving them conditions such as ankle monitoring or house arrest: “This allows the defendant to earn a living and support their defense”. Another attorney echoes this sentiment by stating they try to “make sensible recommendations”.

Additionally, defense counsel focused on factors that determine bonds while trying to make a personal approach. Interviews reveal that this entails mentioning details about the defendant and personalizing their case. Such as showing ways the defendant is a part of the community. Defense counsel also focused on what helps the defendant such as their ability to pay the bond, their realistic living situation and whether or not they have family. The personalization aspect also comes as part of the case to convey the specific situation of the defendant. One attorney stated, *“depending on how bad the circumstances are, harp on the indigency aspect”*.

When arguing a case, defense counsel considered the defendant’s circumstances and highlighted certain aspects by providing details that a judge usually does not have access to. Over time, defense counsel learned what matters to each magistrate judge. For instance, most judges consider criminal history, medical conditions that the jail is unable to handle, if the defendant supports dependents, mental health issues, veteran status, and if the defendant is an upstanding member of the community.

Attorneys reveal it is important to make a rapport during the meeting with the defendant and assure them that there will be a better outcome. An attorney describes the magistration process as intimidating for defendants, including standing in front of a judge and prosecutor. Similarly, a magistrate judge states that having defense counsel present helps to comfort their client.

According to judges, the attorneys involved in the CAFA study are competent and, for the most part, they are performing well for their clients. One judge points out that defense attorneys each have different styles, and some are more persuasive than others. Most of the judges report the study has been a helpful and enjoyable experience with 90% or more of the defense attorneys mainly discussing details related to the charge and setting bond. Judges also stressed the benefits of the presence of defense counsel because they were able to acquire information that is difficult to obtain without them.

The research team also observed seven magistration hearings, six of which included defense counsel and one without defense counsel present. There were several instances of discussions and back and forth between the prosecutor, defense counsel, and magistrate judge. Below is an actual example of a bond being set.

A female defendant was being magistrated for aggravated assault with a deadly weapon (a 2nd degree felony). The prosecutor mentioned that the defendant has no criminal history but that there are concerns about the victim and hence asked for a \$15,000 cash/surety bond with no victim contact condition. The defense counsel argued that the defendant is a lifelong resident of the county, has a child, has a job interview set for tomorrow, and is working on their GED. The defense counsel asked for a personal recognizance bond but if that is not possible, then a cash/surety bond of \$5,000 would be better since the defendant can only afford to pay \$500. The magistrate judge set a cash/surety bond at \$7,500 with bond conditions.

Prosecutor during magistration

The county hired a specific prosecutor who handled most of the study except for a few days (all in all three prosecutors were involved in the study). Like the defense counsel's preparation, the prosecutor also prepared for the magistration hearing. First, there is the creation of a searchable PDF file for investigators to expedite the process. The prosecutor also read through affidavits taking note of the victim's names, and any other important details of the case. Further, the prosecutor had access to the defendant's criminal history.

There is disagreement regarding whether having the prosecutor at the magistration hearing is beneficial. One of the prosecutors believes that the DA's office is in favor of the program becoming permanent. The DA's office also appreciates there are additional people looking out for the process. Although this did not occur during this study, prosecutors worried that the presence of a defense attorney may disrupt, or influence bond settings already worked out.

One of the judges interviewed prefers the district attorney to be present. Typically, the judge only receives an abbreviated record of arrests and prosecution (RAP) sheet, but the prosecutor provides access to the full criminal history. Not only is the information the prosecutor provides useful, but one judge feels more comfortable when there is an agreement between the prosecutor and the defense counsel. If the prosecutor and the defense counsel disagree, the judge feels better hearing from both sides. The same judge also points towards the CAFA study introducing *an adversarial system into magistration and both sides need to be present*. Another judge interviewed has no preference but thinks if one side is present, then both the prosecutor and the defense should be at the magistrate hearing.

The defense attorneys also provided their perspective on having the prosecutor present and were split. Some attorneys believe prosecutors' presence should be standard practice since it is helpful because of their recommendations and to have them there for cross examination. Another attorney states, *a prosecutor being present should have no problem legally, the state should have a voice*. One attorney described their viewpoint changing during the study regarding the prosecutor going first during the hearing. There are benefits to the district attorney presenting first including the defense tailoring their defense argument and having access to the defendant's criminal history, thus enabling a smoother process. Another attorney views establishing a rapport helpful in coming to an agreement on bond outcomes.

Other defense attorneys did not see the benefit of having the prosecutor present during magistration. One attorney describes the prosecutor as only presenting criminal history and then making a recommendation that was almost always predictable. Costs could be saved if a clerk were to present the same information. Another attorney stated, *from a defense standpoint, it's always better if the DA is not present. If only the defense attorney is advocating, and no one is going against us; judge is only going to hear one request*. There would be no negotiation for bond by suggesting alternatives. Having the prosecutor there was described as *definitely not beneficial for defendants*. This is especially true for defendants that were not forthcoming about their criminal history because new information unknown by the defense is thrown out by the prosecutor and the judge often takes that into account.

Impact of defense counsel

Defense attorneys provide either emotional support or inform defendants of the process of magistration. Attorneys interviewed described that support is offered by *getting advised*. Attorneys also felt that defendants were satisfied in terms of being treated more fairly during the process. Particularly, *defendants can ask questions of the defense attorney to understand the process better since it is hard to ask the judge*. This support and information help the defendants be more comfortable. All stakeholders, judges, DAs, defense attorneys, and arraignment officers noticed that defendants seemed to find it beneficial to have the chance to ask questions and to be guided through the magistration process. As one defense attorney stated, defendants get a roadmap of the process and can ask questions where much of what was provided was explaining the process rather than giving legal advice.

Defense attorneys proclaimed they were sometimes able to lower the bond amount but did encounter that at times judges already had their mind made up. Attorneys were also able to provide indigent representation information. Additionally, defense attorneys became aware of defendants' preference. A defense attorney described a scenario:

Sometimes for drug use or possession allegations, I always ask clients whether they think they will be able to maintain sobriety during the duration of their supervision. If they answer no, it would be more beneficial for them in the long-term if they could find someone to help them pay the financial bond, rather than get an extra charge. I brought this issue to the judge's attention, and for some cases he gave the defendant a chance to choose between a financial bond and a PR bond.

Although the defendant can make the defense counsel aware of their preferences, it may depend on the judge presiding over their case. An arraignment officer observed *some judges always accept the prosecutor's recommendations, so having defense counsel will make no difference*.

A Judge's overall view is that attorneys are efficient and know what they are doing. One judge describes their experience, *when talking with other judges, it seems the attorneys try to give each judge the information that they think would be important. Even individuals that sometimes go off topic and have opposing opinions with myself, they are thorough and professional*. Another judge describes the impact of defense counsel depending on the specific attorney. *Some attorneys are very good at guiding me towards setting an appropriate bond through informing me about important relevant details . . . [and] some attorneys try to attack probable cause, which is not helpful at all because it is a decision which has already been made*. The prosecutors noted a similar observation, some defense counsels do not advocate for the defendant as well as others and provide too many facts upfront, making it difficult to change position later in the hearing.

The judge's objective at magistration, as explained by a judge, is to set a reasonable bond that protects the victim/community while making sure the defendant shows up to court in the future. However, judges lack information on defendants to inform them of this decision when the defense counsel is not present. Thus, defense counsel provides an opportunity for judges

to gain a fuller picture of the defendant's situation through more information. Contributing to this is defendants being more comfortable and willing to speak with attorneys about private details. Defense attorneys also advise defendants when to speak or not and help guide them through the overall process of magistration. The prosecutor concurs but also adds that magistration is set up in a way that is disadvantageous if the defendant does not share information and when the defense counsel assists the defendant in what details to include, it is helpful. When the prosecutor and the defense agree, one judge states, *it makes me feel better to sentence lower, more lenient bonds.*

Responses from stakeholders varied regarding the impact of including defense counsel in the magistration process has on time. One judge expresses that it *seems to make the process take longer but not to a problematic state.* The judge explains *the most time-consuming situations are those when an interpreter is needed.* While the time element is not generally seen as a big issue, there is a concern because the defendant must be seen by a magistrate judge within 48-hour from arrest.

The prosecutor also noted that meeting with defense counsel may prolong the process. However, *defense counsel helps facilitate communication regarding confirmation of the victim's situation during the cooling down period, set for the safety of everyone.* The prosecutor felt that more communication is better, and occurred more between the judge, prosecutor, and defense counsel as the defense attorney got more comfortable with representing defendants.

Virtual setting

Hays County's magistration occurred virtually including the attorney-defendant conferences. The perspectives of stakeholders on a virtual setup for magistration range from favorable to a challenge. One stakeholder claims that virtual meetings feel superior and that there is not anything more to gain from in-person meetings. They further explain that the same questions are asked and that it is not negatively affecting interaction although there may be a different rapport between the defense counsel and attorney.

Stakeholders describe the virtual setup as more efficient. Reducing costs in a few areas was pointed out:

1. A reduction in cost due to transporting defendants to and from the courthouse.
2. Less cost and time to attorney for traveling to and from jail for meetings.

For instance, defense attorneys described not having to visit the jail in-person helpful because the jail was not organized. Virtual meetings provide a more consistent setup and permit more flexibility. Virtual meetings made it easier to participate from different locations or areas, it was easier to schedule meetings, and account for last-minute personal situations. Some attorneys felt that virtual meetings and hearings improve their workflow describing it as convenient and smooth. For example, one described being able to log in from their personal office, use multiple screens, and take notes during the meeting.

Challenges with the virtual setup for meetings and hearing were also discussed during interviews with stakeholders. Some of the challenges listed were innate to the virtual medium. Technical issues delayed the process such as audio glitches, and outages. Other challenges were logistical. It was mentioned that if done in-person, one defense attorney would be talking to the prosecutor about a client, while the other would be interviewing a client. However, the current resources at the jail and at the magistrate court only allowed for one spot at a time remotely where defense counsel must wait until the other attorney is done interviewing the client.

Defense attorneys found it difficult to have conversations and engage with clients over Zoom which made it difficult to build trust and have a good rapport. Similarly, it can be difficult to build a rapport with the prosecutor when discussing agreements. Further, negotiating a deal did not happen online. All these challenges can sometimes leave the defendant at a disadvantage. Stakeholders also mentioned trust was a factor. Since all interactions were being recorded there is *always the possibility that recordings can be used for investigative purposes*.

Other challenges with the virtual setup were also mentioned by stakeholders. Time was listed as tough because the process may take more time to get through. Being in a different place physically makes defense attorneys *rely a lot on the work ethic of the jailor or guard for the day*. For instance, getting defendants to the virtual setting takes up more time. Echoing this, arraignment officers made note of the difficulty in managing time and taking control over the process. Further, a judge stated that magistrations takes more time and people are in custody longer. Contributing to the time challenges, judges noticed attorneys are less respectful of time when the hearings are virtual since *people tend to forget that there are a lot of other people in line*. Both judges and arraignment officers noted that virtual hearings can be less formal compared to in-person hearings.

Lessons for other jurisdictions

Stakeholders interviewed offer suggestions for the county and for those interested in participating in the magistrations process. The topic most discussed by stakeholders was the pay rate for defense counsel. For the study, attorneys were paid \$75 an hour through a grant from TIDC. Most stakeholders suggested using an hourly rate that aligns with the county's hourly rate, rather than a daily rate or a case rate. The hourly rate is described as fairer than a flat rate since time requirements differ each day (depending on the number of people to be magistrated and complexity of the representation). Although some argue for higher hourly rates, for most, the hourly rate of \$75 during the CAFA study was reasonable and *knowing responsibilities end at magistrations make participation preferable*. The hourly rate is *"affordable from a county's perspective while still getting experienced attorneys."* Additionally, there is monetary motivation for the county. Stakeholders stated further that this could be a selling point for smaller counties with less facilities and jail budgets. An attorney explained:

A client costs an attorney about \$50-\$100 a day. If defense counsel could help change about two decisions a day, it pays for itself if looked at from the perspective the number of people who go to jail.

Another factor to consider was vertical representation and how this impacts the relationship with the local bar. Before implementing CAFA, the defense bar was concerned about an unfair advantage for attorneys who were representing defendants at magistration. As one stakeholder noted, *other defense attorneys are not trying to “steal” clients through early contact with them.* By notifying all members of the defense bar, potential inner conflict among attorneys can be mitigated. Similarly, prosecutors encouraged reaching out to other prosecutors at different offices of jurisdiction to get a sense of the current bond amounts and common practices.

For jurisdictions considering including the prosecutor in the hearings, a prosecutor claimed they are needed and would advise other DAs to be aware of statutory requirements. Defense attorneys did not agree:

As a defense attorney, would not prefer the DA present. However, considering the whole process, since only the DA has access to criminal history, DA presence is somewhat needed.

Another stated “if there is a way defense attorneys could look at criminal history beforehand, no reason for DA to be present.

Defense attorneys gave advice for other counties starting in the magistration process. One attorney suggests practicing in multiple counties.

Some smaller counties that may not have enough attorneys to work as defense attorneys, might be able to pull from other neighboring counties or use remote setup to connect attorneys.

Further, another attorney stated that if having a virtual setup is the goal, then setting up the Zoom hearing, how to contact defense attorneys privately, and how to facilitate meetings in jail are important things to know ahead of the hearing.

Defense attorneys also offered practical information before the magistration hearing. Helpful practices include having a roster in advance showing the reason a client is in jail and who needs language assistance or having a Spanish translator. Other beneficial practices would be to compile information, such as police reports and PC affidavits, in addition to having every defendant to fill out a questionnaire regarding background information that could be provided to attorneys before interviews and access to criminal history.

Resources needed for implementing CAFA in other jurisdictions were mentioned by many stakeholders. Some of the resources included setting up a physical location while keeping in mind whether the jail has enough rooms and resources, a Spanish translator, technological equipment, and dedicated staff. In addition to resources needed for the program, participants spoke about training. It was advised that the jail train magistration officers on new duties and everyone should read bail manuals. A couple of stakeholders brought up training for defense attorneys. However, attorneys received training during the study, which was described by a judge as being effective. The judge elaborated that *“many attorneys are not familiar with the*

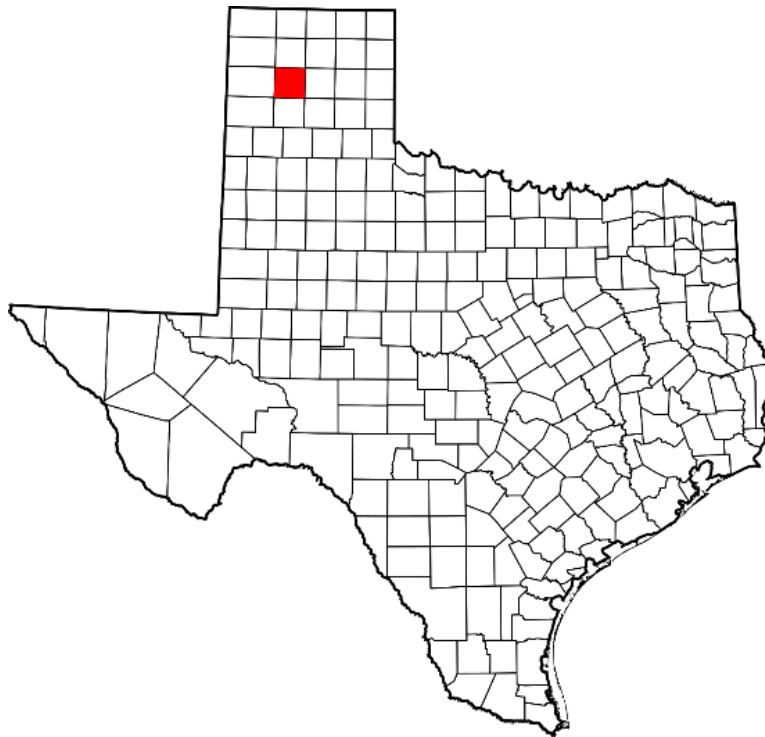
purpose of magistrature hearings, but the majority of defense counsel were efficient, understood their purpose and obtained and conveyed the right information needed.”

The importance of relationships was described by many of the stakeholders. These include understanding what is expected, keeping a close working relationship with the jail, and sustaining good relationships between the parties involved in the process. One participant asserted that *“maintaining a good relationship between the judge, prosecutor and defense counsel helped because after something did not work out, we were able to take a step back together and think about ways to improve the process.”*

Potter County

Potter County is one of the two field partners for this study. Potter County is located in the Northwest of the state (*Figure 15*). The population around the study period was about 120,000. The population of Potter County has been slowly declining (down almost 4% from 2010).¹³⁸ During the study period, Potter County's magistration was centralized and occurred once a day every day including weekends and holidays. Potter County did not have a public defender office during the study period and instead used an appointed counsel system.

FIGURE 15: POTTER COUNTY



Pre-Launch

The research team worked with multiple stakeholders in Potter County to prepare for the launch of the RCT. Preparation included several in-person and virtual meetings, and countless email and phone communications to gather county wide stakeholder support, finalize the research design, identify a process, recruit, and train attorneys, create a randomization schedule, and launch the study. The below subsections summarize the preparation process before the RCT was launched.

¹³⁸ For more details see <https://usafacts.org/data/topics/people-society/population-and-demographics/our-changing-population/state/texas/county/potter-county/?endDate=2021-01-01&startDate=2010-01-01>

Attorney recruitment

The research team worked with the local bar association in Potter County and with county stakeholders to reach private attorneys in the area who serve the county as part of the local appointed counsel system. At the time of the study the county did not have a public defender office. A recruitment email was circulated among members of the association and several county stakeholders (sheriff's office, magistrate judge, etc.) spread the word about the study and the need for attorneys. The recruitment effort led to the identification of an initial 14 attorneys who expressed interest in being part of the study and 10 attorneys did participate in the study. The attorneys would represent defendants only at magistration so there was no opportunity for vertical representation. The actual number of attorneys who regularly represented defendants during the study period was eight.

The average years of experience of attorneys (defined as years since licensure) is 14.9 years. Approximately half of the attorneys have less than 10 years of experience and only two attorneys were females. In terms of law degrees, seven different law schools were represented with only one of them located in the state.

Attorney training

The RCT study in Potter County was launched two months after the launch in Hays County so the attorneys in Potter County used already recorded webinars and created materials by NACDL to complete their training. All the training hence occurred asynchronously using the NACDL web portal that was set up for the study. NACDL created a Texas pretrial resources page and provided all attorneys with an account to access created materials and webinar recordings.¹³⁹ The content included generalized materials and resources to provide attorneys with information about bail hearings. Some of the content was created exclusively for the study such as the Texas bail hearing manual. The manual includes an overview of the bail process in Texas, relevant statutory and constitutional law information, and practical pointers for representation in bail proceedings. The manual builds off other bail manuals from Harris County in Texas and work NACDL conducted in other states (Colorado, New Jersey, and Wisconsin). Also, part of the attorney training is to stress that magistration is not to be used as a marketing ground for future clients and that vertical representation was not an option. All training activities were completed before the launch of the RCT. While the training was highly recommended, it was not mandatory. In Potter County, out of the 10 attorneys who participated in the study two attorneys never completed the training despite the best efforts of the research team. Due to the timing issue and other logistics factors, Potter County attorneys were not offered CLE hours for completing study training contrary to the Hays County attorneys.

¹³⁹ The webpage can be found here <https://www.nacdl.org/Content/Pretrial-Practices-in-Texas> but access to content needs an account to login.

Randomization schedule

The research team created a randomization schedule for a full year with a few days added to serve as pilot days. The study started on September 16, 2020 and ended on September 21, 2021. The schedule was created using the command `randomize` in the statistical software Stata balancing for day of the week and month to account for seasonality in criminal activity maintaining a 50% randomization rate. Magistration in Potter County during the time of the study occurred once a day, seven days a week, and 365 days a year. The randomization schedule was set up at the day level allowing for attorneys to be present at magistration on the treatment days for the full duration of magistration (See *Table 8* for an example of hypothetical week).

The district attorney shared their bond and condition recommendations by email with the magistrate judge early in the morning before the start of the hearing. On the control days, magistration occurred without attorneys which reflected the regular process in Hays County. The research team shared the randomization schedule with the magistrate judges, court clerk, and arraignment officers. The team asked those with access to the schedule not to share it to minimize any manipulation.

TABLE 8: POTTER COUNTY RANDOMIZATION SCHEDULE

Day	Day of Week	Week	Treatment	Attorney 1	Attorney 2	Judge
1	Wednesday	Week 1	Control			Judge
2	Thursday	Week 1	Control			Judge
3	Friday	Week 1	Treatment	Name	Name	Name
4	Saturday	Week 1	Control			Judge
5	Sunday	Week 1	Treatment	Name	Name	Name
6	Monday	Week 1	Treatment	Name	Name	Name
7	Tuesday	Week 1	Control			Judge

Scheduling attorneys

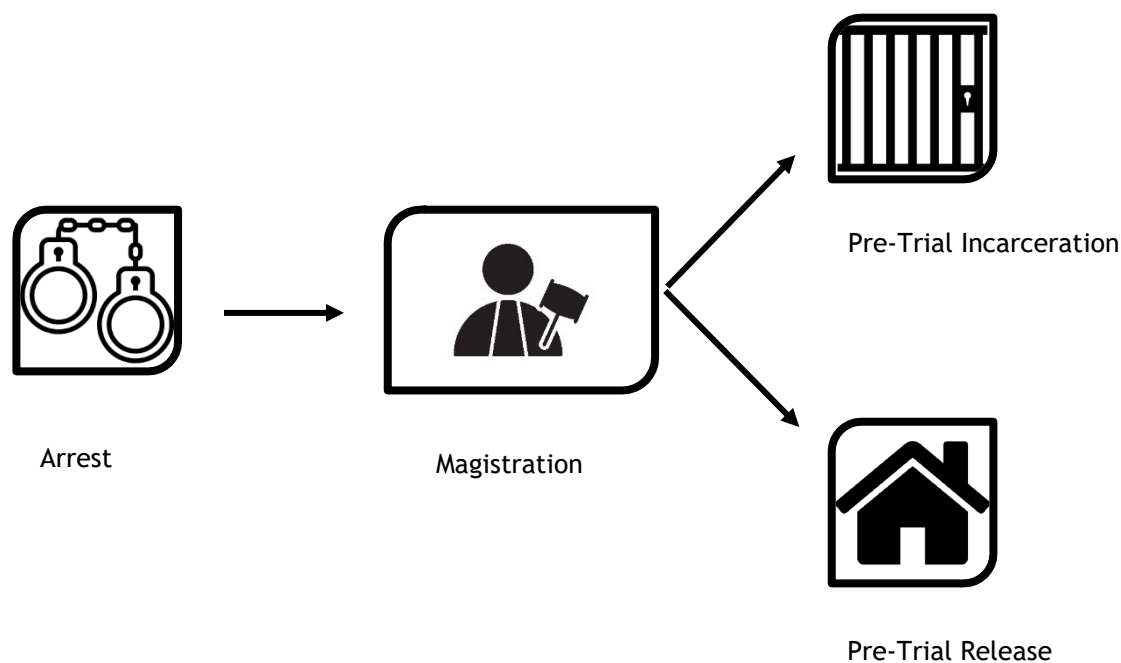
Just as in Hays County, a clerk from the magistrate court took on the responsibility of scheduling attorneys for the study. The research team shared a list of attorney contact information with the clerk. The clerk emailed all attorneys individually to inquire about their availability and scheduled attorneys for a full month at a time. A few attorneys did not respond to the email and ended up dropping out of the study.

Magistration Process

Before the study, magistration hearings in Potter County was centralized and occurred once a day in the morning, seven days a week, and 365 days a year including holidays. The usual start time was around 11 am. The district attorney shares their bond recommendations with the magistrate judge by email before the hearing. Magistration hearings occurred virtually via Zoom. The magistrate judge did not have access to full criminal history but did have access to an abbreviated summary of arrests and prosecutions and examined probable cause affidavits

and any available warrant information before making their decision. The magistration process on the days without defense counsel is summarized in *Figure 16*.

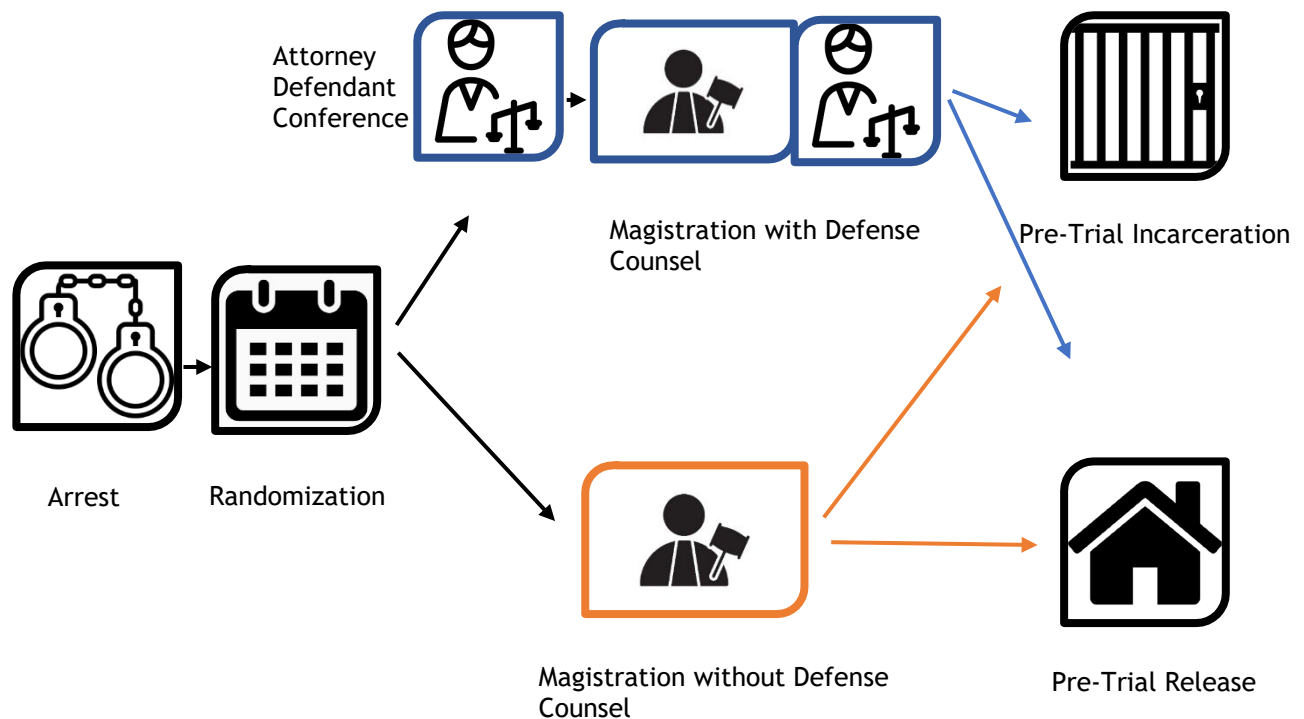
FIGURE 16: POTTER COUNTY MAGISTRATION PROCESS (PRE-STUDY)



During the duration of the study (September 16, 2020, to September 21, 2021) on control days the process followed pre-study magistration. On the days that defense counsel was present, arraignment officers shared a magistration packet with the attorneys about two hours prior to the start of the magistration hearing. This packet mainly included the probable cause affidavit and warrant information (it did not include criminal history). During the two hours prior to the hearing, defense attorneys virtually met with defendants using the Zoom application. Arraignment officers shared the Zoom links with the attorneys for the attorney-client meetings. Potter County jail staff set up two laptops in two separate rooms to facilitate those meetings and preserve attorney client privilege. Arraignment officers brought defendants to these rooms to meet with the attorneys present.

Defense counsel and defendants met before the magistration hearing. Upon completion of all interviews, arraignment officers would inform the magistrate judge and magistration hearings would start (around 11 am) with the judge and defense counsel in attendance. Potter County prosecutors did not attend magistrations but sent bail recommendations to the magistrate judge prior to magistration via email. The magistration process on the days with defense counsel is summarized in *Figure 17*.

FIGURE 17: POTTER COUNTY MAGISTRATION PROCESS (DURING THE STUDY)



Attorney defendant conference

Attorneys met virtually with defendants before magistration hearing. The first task for the attorney was to get verbal consent from the defendant and then upon consent inquire about whether they had retained or been appointed an attorney. If that was the case, the attorney attempted to reach the retained/appointed attorney to inform them of their representation of their client at magistration and only at magistration.

Attorneys asked defendant questions to solicit information to assist them in advocating on their behalf during magistration. This information came from a list of questions that attorneys often used to inquire about current and historical employment, marital status, and family situation of the defendant. Examples of the questions are summarized in *Table 2*. Attorneys also answered any questions defendants had which were frequently focused on the process of getting magistrated (what to expect next).

Attorneys collected information for the research team. The information included the start and end time of the attorney-defendant conference, name/local county identification number of the defendant, whether a defendant refused counsel, and whether the attorney perceived any mental health or intellectual disability after interacting with the defendant.

Figure 18 presents the distribution of the length of meeting time between attorneys and defendants in minutes. The average attorney-defendant conference time was 9.5 minutes (ranging from 1 minute when a defendant refused to be represented, and a high of 33 minutes). The distribution is mainly centered around 8-11 minutes.

FIGURE 18: DISTRIBUTION OF LENGTH OF MEETING TIME BETWEEN ATTORNEYS AND DEFENDANTS (IN MINUTES) - POTTER COUNTY

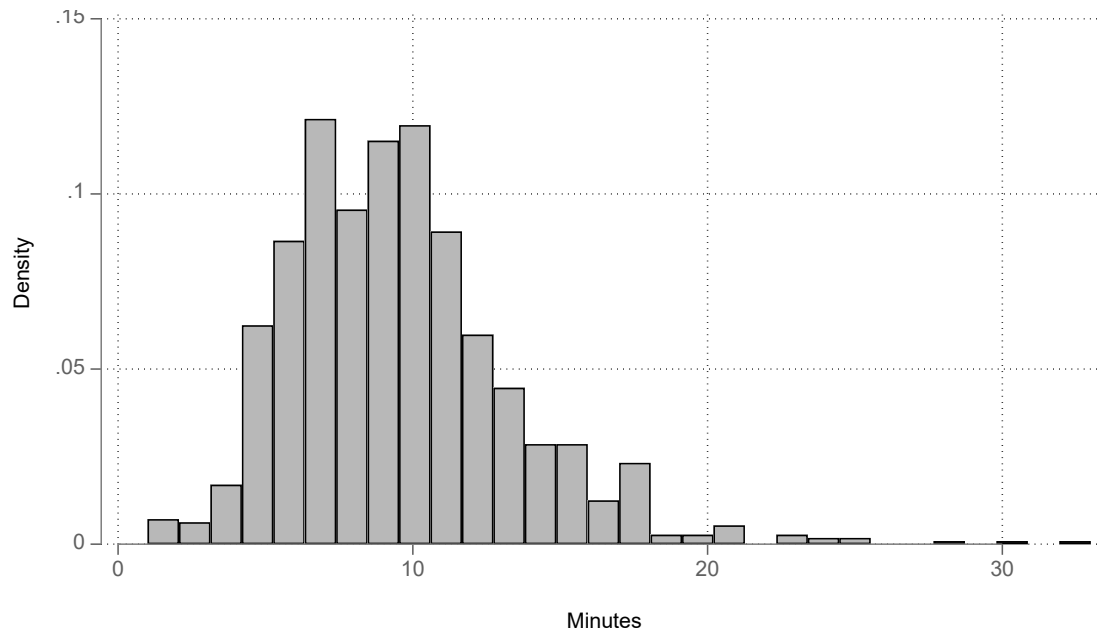
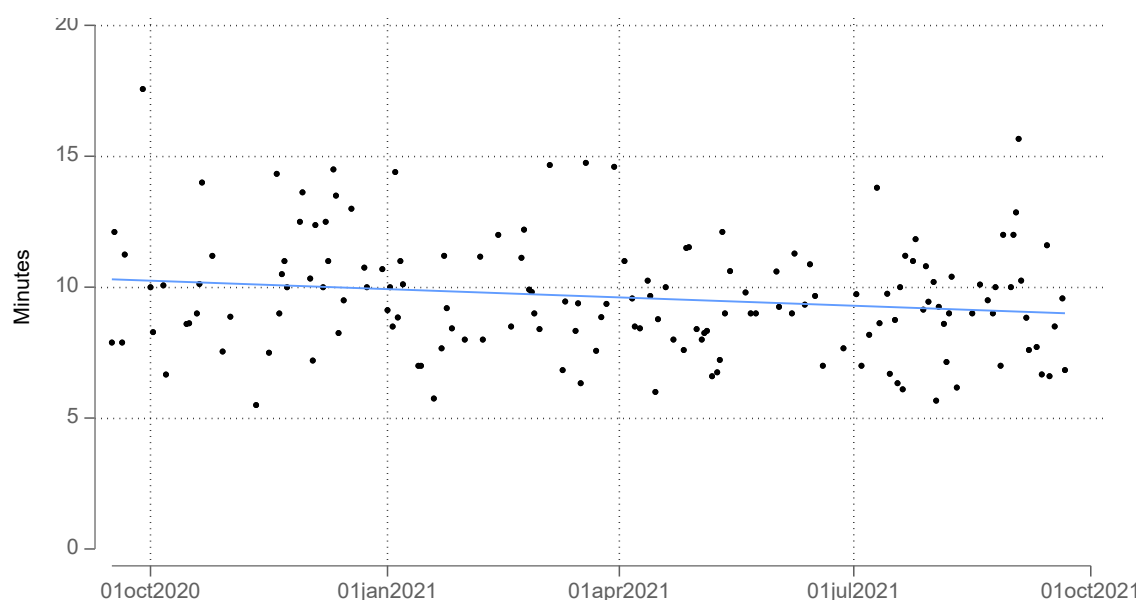


Figure 19 shows the average length of the attorney-defendant conference (minutes) to see if there are any changes to the length of the meeting over the period of the study. The average time was relatively stable throughout the duration of the study.

FIGURE 19: AVERAGE LENGTH OF ATTORNEY DEFENDANT CONFERENCE (IN MINUTES) - POTTER COUNTY



Attorney data also included information such as refusal of counsel and whether the attorney suspected the defendant suffers from a mental health issue or has a possible intellectual disability. Both mental health and intellectual disability data elements reflect attorneys' observations and hence are not official diagnoses. From *Table 9* about 10% of defendants refused counsel at magistration.¹⁴⁰ Study attorneys perceived almost 24% of defendants and 11% of defendants to have a mental health issue or an intellectual disability respectively.

TABLE 9: ATTORNEY-DEFENDANT CONFERENCE OBSERVATIONS - POTTER COUNTY

	Share	Sample
Refuse Counsel	10.2%	1,173
Mental Health Issue	23.8%	1,087
Intellectual Disability Possibility	11.3%	1,075

Magistration hearing

Upon completion of all attorney-defendant interviews, arraignment officers informed the magistrate judge which triggered the start of the magistration hearing. The magistrate judge started the hearing by introducing themselves, stating their name, the day and time, and what

¹⁴⁰ Refusal estimates should be interpreted with caution as attorney reporting was not consistent.

their role is during magistration (mainly discussing information relevant to setting a bond). The magistrate judge also informed defendants of their rights summarized below:

- The right to hire an attorney to represent you.
- The right to have an attorney present prior to and during any interview and questioning by peace officers or attorneys representing the State.
- The right to remain silent.
- The right not required to make a statement, and any statement made can and may be used against you in court.
- The right to stop any interview or questioning at any time.
- The right to have an examining trial (felonies only).
- The right to request an appointment of counsel.

On the days defense counsel was present, the magistrate judge asked defense counsel to present their observations on behalf of the defendant making recommendations for bond type, amount, and supervision conditions. The magistrate judge also occasionally asked clarifying questions to the defendant before making their decision about bond type, amount, and any conditions.

Randomized Control Trial

The RCT study in Potter County launched on September 16, 2020, and ended on September 21, 2021 for a total of 371 days of which 184 treatment days and 187 control days were completed (see *Table 10*).

TABLE 10: TREATMENT AND CONTROL DAYS - POTTER COUNTY

Potter County	# of Days	% Completed
Treatment	184	49.6%
Control	187	50.4%
Total	371	100.0%

Potter County mostly adhered to the randomization schedule. During that timeframe, there were nine days on which attorneys, per randomization schedule, were supposed to be present but they were not. Those days and the associated reason for canceling treatment are summarized in *Table 11*. In the analysis, the observations on those days were analyzed as intended by the randomization schedule.

TABLE 11: COMPLIANCE WITH THE RANDOMIZATION SCHEDULE - POTTER COUNTY

September 18, 2020	Large number of inmates; officers decided not to include counsel
November 26, 2020	Attorneys were not able to be present (schedule conflict)
November 27, 2020	Technical issues did not allow attorneys to be present
February 17, 2021	Ice storm forced the county to conduct magistrations by phone
March 6, 2021	Technical issues did not allow attorneys to be present
March 7, 2021	Technical issues did not allow attorneys to be present
May 2, 2021	Attorneys were not able to be present (schedule conflict)
July 31, 2021	Large number of inmates; officers decided not to include counsel
August 14, 2021	Technical issues did not allow attorneys to be present

Magistrate warning documents were collected for all felonies and six months of misdemeanors.¹⁴¹ To supplement the sample for the missing misdemeanors (and any other missing magistration documents), jail rosters were utilized. Once out of county charges were dropped, the final sample comprised 2,988 individual defendants' magistrations, with 1,479 defendants assigned to the treatment group (magistrated on days with defense counsel present) and 1,509 defendants assigned to the control group (magistrated on days without defense counsel present).

In *Table 12* the mean values of the covariates between defendants magistrated on days with defense counsel and defendants magistrated on days without defense counsel were examined to assess the balance between the two groups. The treatment group and control group showed comparable characteristics in terms of age, gender, race, and ethnicity. The average age of individuals in the treatment group was 34.4 years, slightly lower than the average age of 35.1 years in the control group, although this difference was not statistically significant ($p = 0.158$). The proportions of males, Whites, and Hispanics were similar between the two groups, with no significant differences observed ($p > 0.05$). Regarding the nature of the charges, 58.3% of individuals magistrated on days with counsel had a felony charge at magistration, compared to 55.1% in the control group, with a. Although this difference approached statistical significance ($p = 0.083$), further investigation is required to ascertain its true impact.

TABLE 12: COVARIATE BALANCE BETWEEN CONTROL AND TREATMENT GROUPS - POTTER COUNTY

	Control Mean	Treatment Mean	P-Value	Control n	Treatment n
Age	35.1	34.4	0.158	1509	1479
Male	78.7%	78.4%	0.878	1509	1479
White	80.2%	80.2%	0.998	1509	1479

¹⁴¹ Magistrate warning documents include information about defendants' rights, date/time of arrest, charges, and bond amount, type, and conditions. Since misdemeanor magistrate warning documents are destroyed after a six-month period, we were only able to collect April 2021 - September 2021.

Hispanic	38.0%	38.8%	0.638	1509	1479
Highest Charge (Felony)	55.1%	58.3%	0.083	1509	1479
Charge Count	1.3	1.4	0.126	1509	1479
Misdemeanor Count	0.6	0.6	0.106	1509	1479
Felony Count	0.7	0.8	0.005	1509	1479
In Custody	5.6%	5.9%	0.711	1509	1479

The average number of charges, misdemeanors, and felonies at magistration was slightly higher in the treatment group compared to the control group, but these differences did not reach statistical significance ($p > 0.05$). Similarly, there were no significant differences in the percentage of individuals in custody at the time of magistration between the treatment group (5.9%) and the control group (5.6%) with a p-value of 0.711.

Another balance test comes from comparing residence addresses for defendants in the treatment and control groups. *Figure 20* and *Figure 21* show no visual difference between home addresses of defendants by groups reflecting a concentration of home addresses of defendants within the State Loop 335 (mainly in the North-West quadrant within the loop).

FIGURE 20: HOME ADDRESSES POTTER COUNTY BY GROUP (ZOOMED OUT)

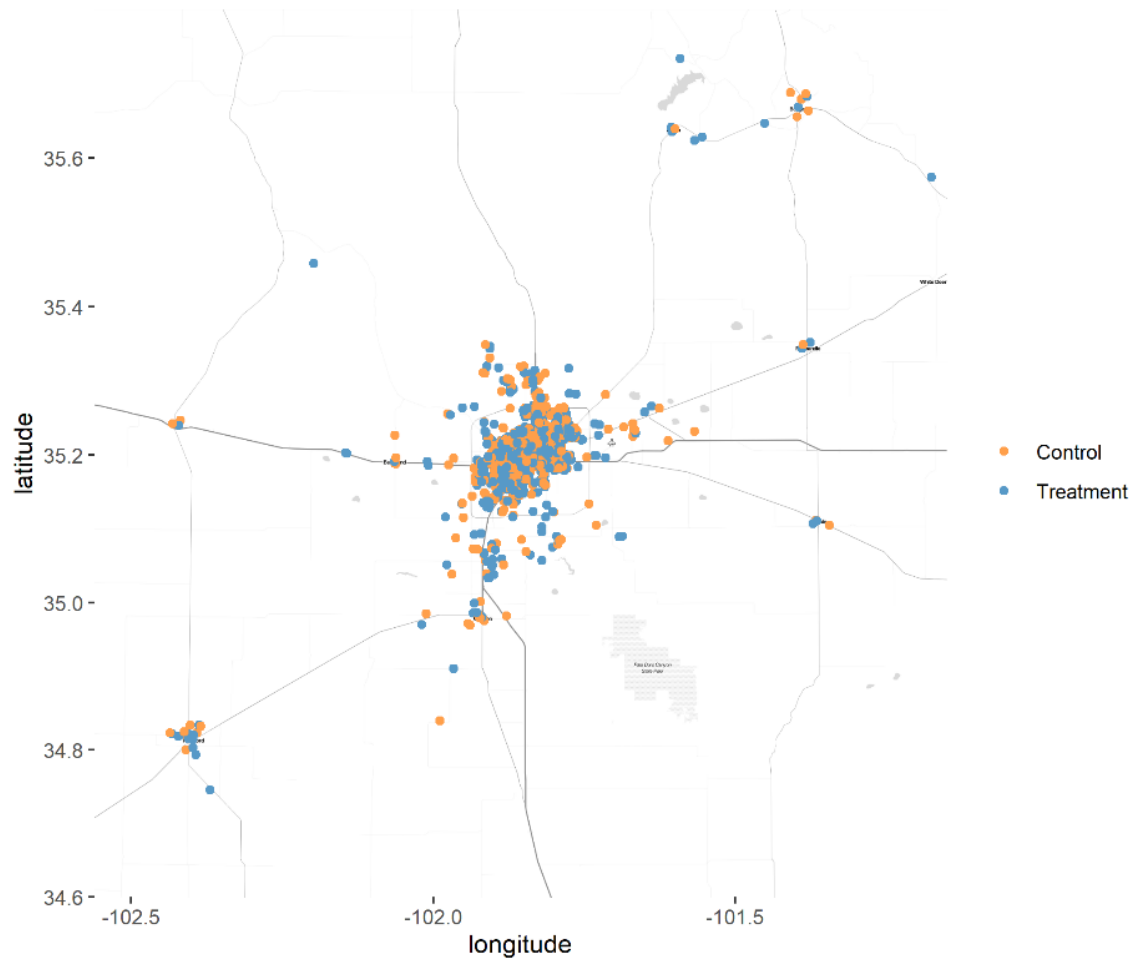
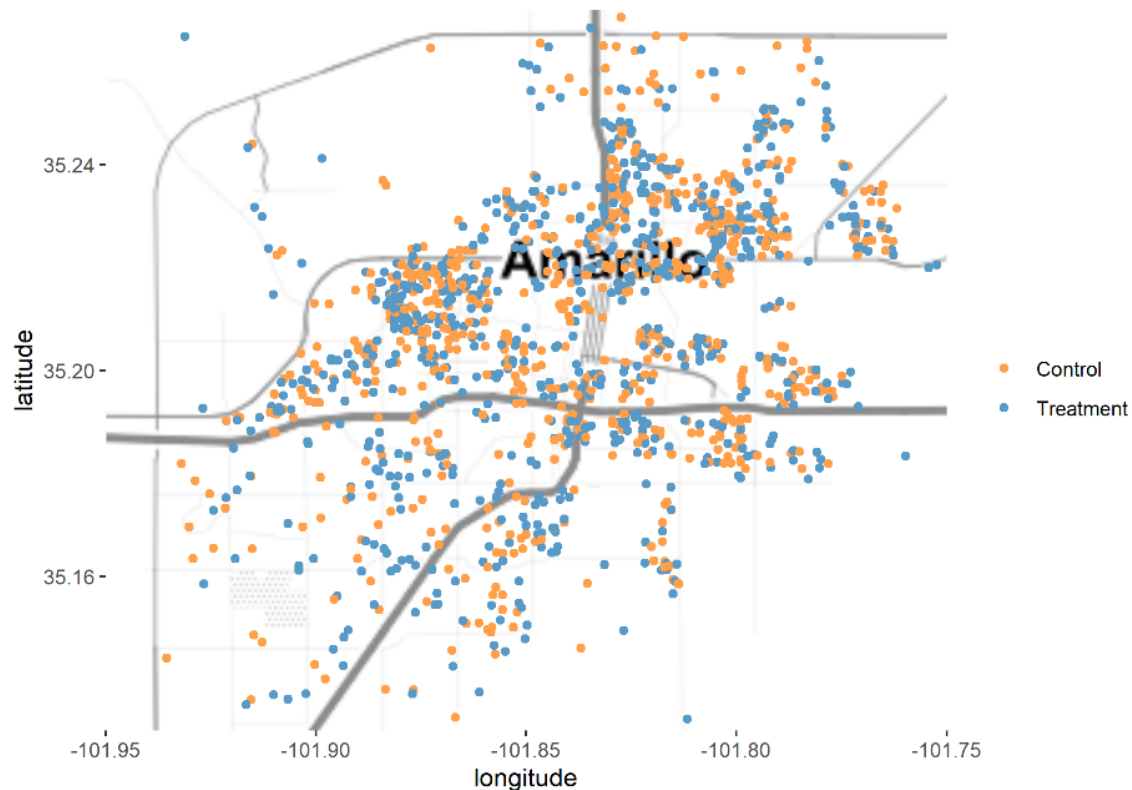


FIGURE 21: HOME ADDRESS POTTER COUNTY BY GROUP (ZOOMED IN)



Overall, the tests for covariate balance indicate that the treatment and control groups exhibit relative balance across important variables. These findings suggest that the assignment of defense counsel at magistration did not result in systematic differences in the measured covariates.

Our analysis considers two distinct sets of outcomes: primary and secondary. Primary outcomes encompass bond amount, bond type, court-appointed counsel request, and §16.22 evaluations. Secondary outcomes include days to release¹⁴² and recidivism¹⁴³. Despite the absence of

¹⁴² Days to release refer to days incarcerated from magistration until release.

¹⁴³ 'Recidivism' refers to the total number of times an individual was booked subsequent to the magistration date.

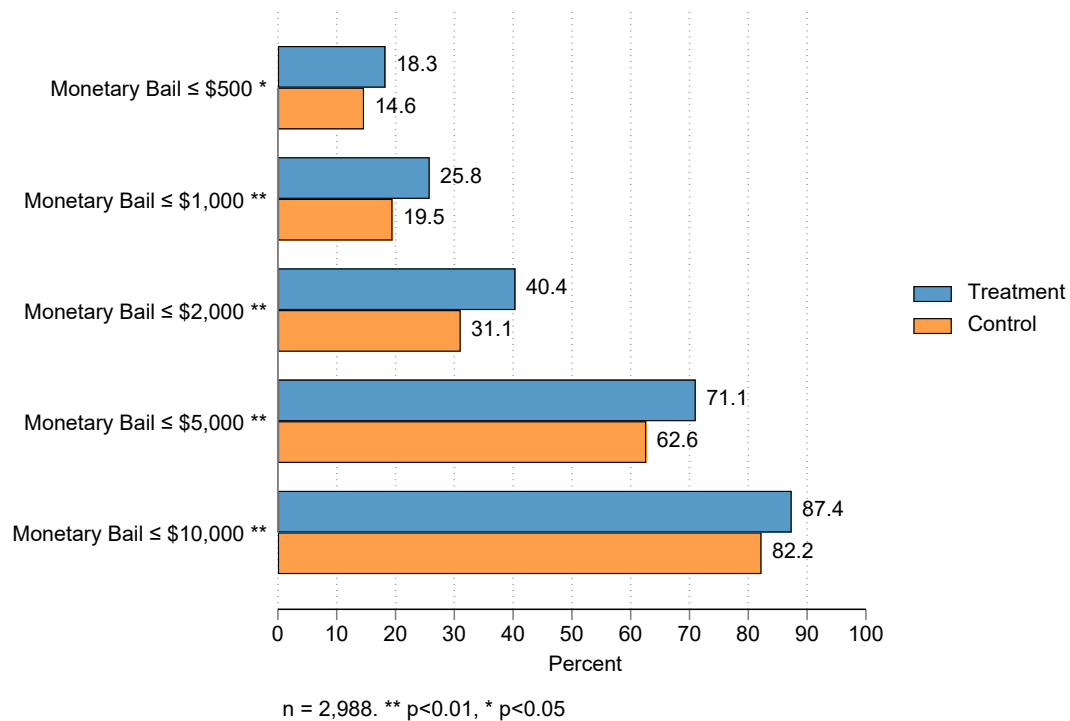
significant differences in characteristics between defendants who received counsel at magistration and those who did not, we include all covariates listed in *Table 12* along with judge fixed effects as control variables in our analysis. By including these covariates as control variables, our aim is to enhance the efficiency of our analysis and address any potential confounding factors. All multilinear regression results are summarized in tables in the appendix (Appendix II). These tables display the marginal effects obtained from Probit regressions while figures in the text illustrate the average values of the outcome variables. In the figures, the treatment averages represent the adjusted coefficients from OLS analysis, while the control averages represent the mean values for the control group. This visual representation facilitates a more straightforward comparison between the treatment and control groups regarding their average outcomes.

Primary outcomes

Figure 22 examines the impact of defense counsel on average bond amount. The outcome variable of interest is the monetary bail amount, categorized into different thresholds: less than \$500, less than \$1,000, less than \$2,000, less than \$5,000, and less than \$10,000 where each ascending category includes observations in the prior categories.¹⁴⁴ The findings reveal notable differences between those magistrated on days with defense counsel and those magistrated on days without defense counsel across the different monetary bail thresholds. For instance, the treatment group has a significantly higher proportion of defendants with a monetary bond below \$500 (18.3% in the treatment group compared to 14.6% in the control group), indicating a percent change of 24.8%, which is statistically significant at the 5% level. Similar patterns emerge for higher monetary bail thresholds, such as \$1,000, \$2,000, \$5,000, and \$10,000. In each case, defendants on treatment days exhibit a higher likelihood of having a monetary bond below the specified threshold compared to defendants on control days. The percentage changes range from 13.5% to 32.5%, all of which are statistically significant at the 1% level. These findings suggest that defendants magistrated on days with defense counsel are more likely to receive lower monetary bail amounts across various thresholds compared to defendants magistrated on days without defense counsel. The table highlights the importance of considering the role of defense counsel at magistration in shaping the outcomes of defendants within the criminal justice system, particularly in relation to monetary bail decisions.

¹⁴⁴ The categories follow Anwar et al. (2023).

FIGURE 22: BOND AMOUNT BY COMPARISON GROUP- POTTER COUNTY (TREATMENT-CONTROL COMPARISONS ARE OLS REGRESSION-ADJUSTED)¹⁴⁵

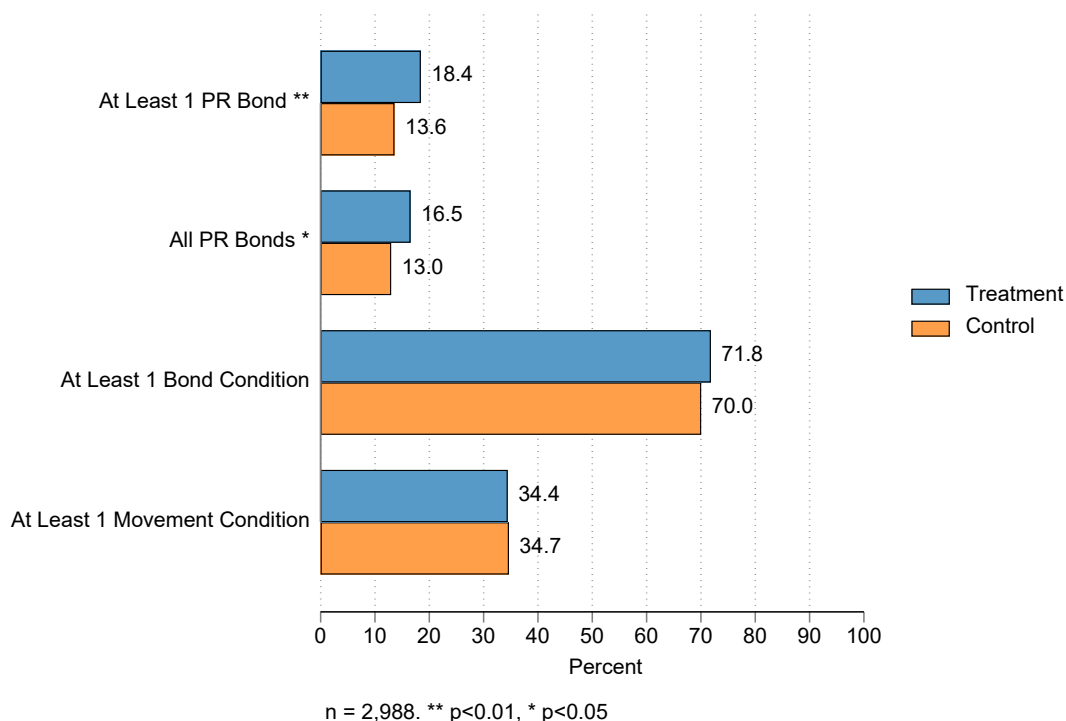


We next turn our attention to the examination of outcomes related to bond type and bond conditions. *Figure 23* reveals that 18.4% of defendants on days with defense counsel received at least one PR bond, compared to 13.6% of defendants on days without defense counsel, representing a statistically significant percent change of 35.8%. Similarly, in the treatment group, 16.5% of defendants received all PR bonds, while in the control group the percentage was 13.0%. This difference translates to a statistically significant percent change of 27.4%. Regarding bond conditions, we find that 71.8% of defendants in the treatment group received bond conditions, slightly higher than the 70.0% in the control group, resulting in a percent change of 2.6%. Although the difference is relatively small, it indicates a slightly higher likelihood of defendants in the treatment group being subject to bond conditions. Lastly, the analysis examines whether defendants in the treatment group received stricter bond conditions compared to the control group. Both the treatment and control groups had similar percentages, with 34.4% and 34.7% respectively. The percent change of -0.6% suggests no significant difference between the two groups in terms of receiving stricter bond conditions. Overall, the findings suggest that defendants on days with defense counsel were more likely to be granted

¹⁴⁵ Results here are at the level of individual defendants' magistrations. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, and judge fixed effects. Personal recognizance bond amounts are set to zero. Standard errors are clustered at the magistration date level.

PR bonds and to receive all PR bonds. However, the impact on bond conditions was relatively minimal and not statistically significant.

FIGURE 23: BOND TYPE AND CONDITIONS BY COMPARISON GROUP - POTTER COUNTY (TREATMENT-CONTROL COMPARISONS ARE OLS REGRESSION-ADJUSTED)¹⁴⁶

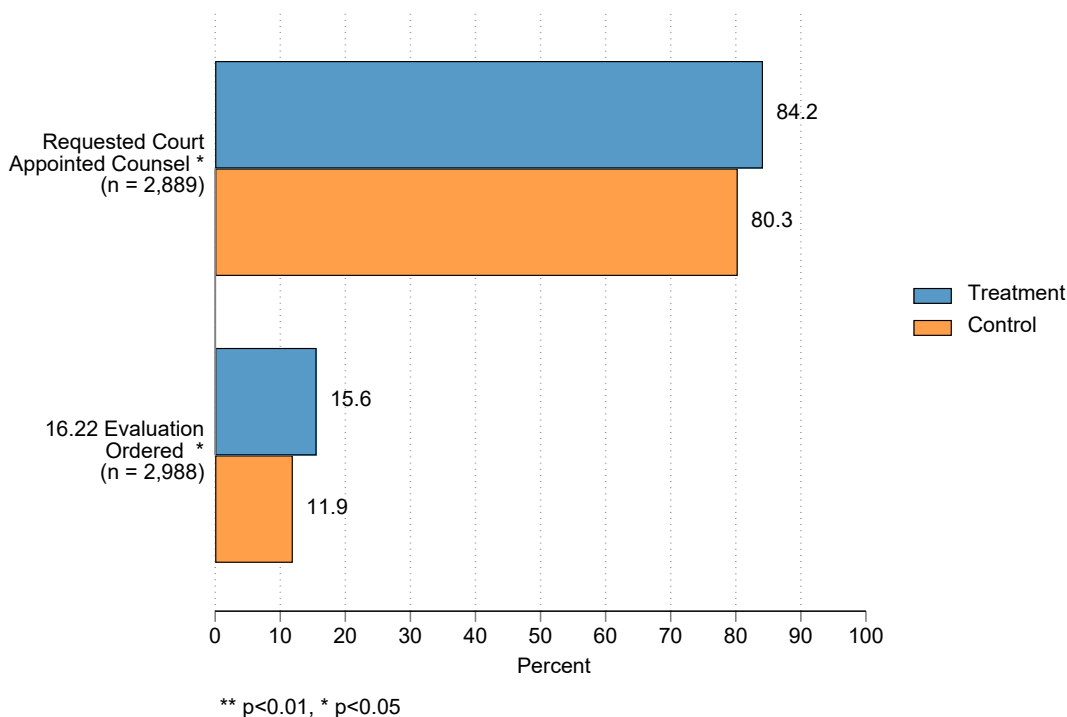


We next discuss the impact of defense counsel at magistration on court-appointed attorney requests and §16.22 evaluation orders. These outcomes hold significant importance as they can influence the duration of a defendant's case and potentially affect the final outcome. Referring to *Figure 24*, we see that defendants magistrated on days with defense counsel had a higher likelihood of requesting court-appointed counsel. Approximately 84.2% of defendants requested court-appointed counsel, compared to 80.3% of defendants magistrated on control days. This indicates a statistically significant increase of 4.8% in the likelihood of requesting court-appointed counsel for defendants in the treatment group compared to the control group. The results show a similar pattern for §16.22 evaluation orders. We see a substantial increase of 30.6% in the likelihood of a §16.22 evaluation being ordered for defendants on treatment days compared to the defendants on control days. Specifically, 15.6% of defendants magistrated on days with defense counsel received §16.22 evaluation orders, whereas only 11.9% of defendants

¹⁴⁶ Results here are at the individual magistration level. Movement condition = 1 if the individual had one or more movement restricting bond conditions. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, and judge fixed effects. Standard errors are clustered at the magistration date level.

magistrated on days without counsel had such evaluations ordered for them. Both court-appointed counsel requests and \$16.22 evaluation orders were significant at the 5% level. These results underscore the importance of early legal representation in shaping defendants' access to legal resources and assessments within the criminal justice system.

FIGURE 24: ATTORNEY REQUEST AND \$16.22 EVALUATION BY COMPARISON GROUP - POTTER COUNTY (TREATMENT-CONTROL COMPARISONS ARE OLS REGRESSION-ADJUSTED)¹⁴⁷



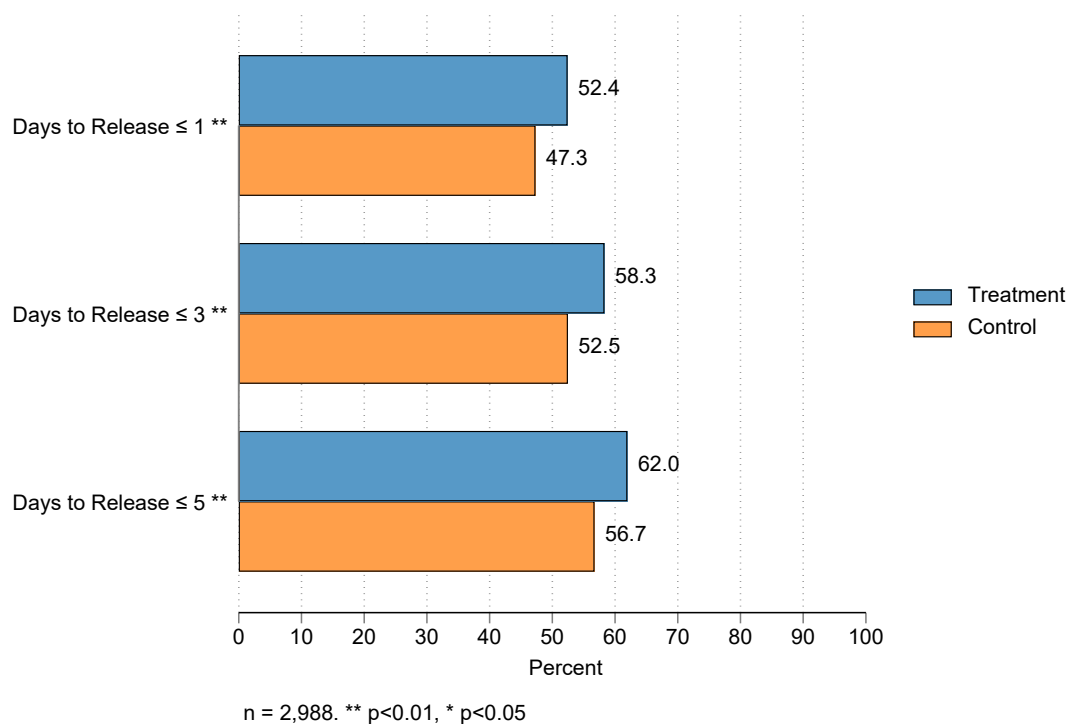
Secondary outcomes

Next, we turn our attention to examining the broader effects of defense counsel at magistration on outcomes that extend beyond the immediate decision-making process. Specifically, we analyze the impact on two important outcomes: days to release and recidivism. By investigating these measures, we aim to gain a comprehensive understanding of the long-term implications of defense counsel presence during the magistration stage.

¹⁴⁷ Results here are at the individual magistration level. The magistration documents for 99 individuals did not indicate a request for court-appointed counsel. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, and judge fixed effects. Standard errors are clustered at the magistration date level.

Figure 25 illustrates the percentage of defendants who were released from jail within specific time periods. The results indicate that defendants who received defense counsel at magistration experienced faster releases from jail compared to those without counsel. Specifically, the treatment group exhibited a higher percentage of defendants released within each specified time frame, ranging from a 9.2% increase for release within five days to a 11.1% increase for release being within three days. These differences are all statistically significant at the 1% level, indicating strong evidence of the impact of defense counsel on expediting the release process. The findings emphasize the importance of early legal representation in facilitating prompt release from jail. By providing guidance and advocating for defendants' rights, defense counsel can effectively navigate the legal process, potentially reducing unnecessary detention periods.

FIGURE 25: DAYS TO RELEASE BY COMPARISON GROUP - POTTER COUNTY (TREATMENT-CONTROL COMPARISONS ARE OLS REGRESSION-ADJUSTED)¹⁴⁸

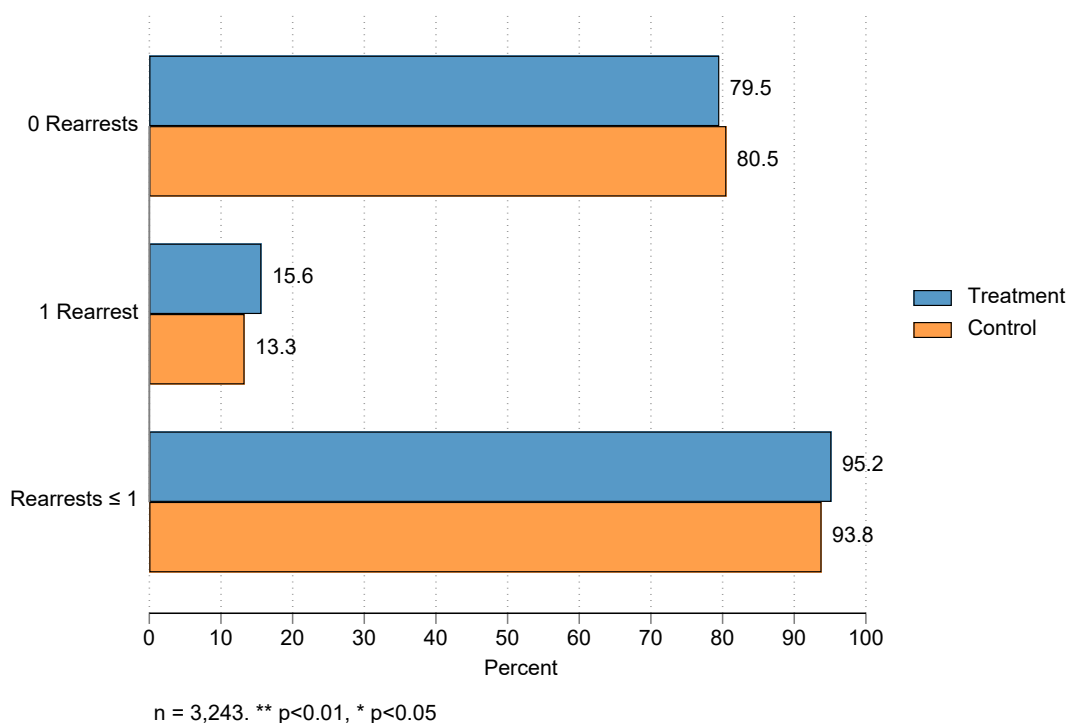


In addition to analyzing the impact of defense counsel at magistration on days to release, we also examine its influence on rearrests, which is an important indicator of recidivism. The results in Figure 26 indicate that there are no statistically significant differences in rearrest rates between defendants magistrated on days with defense counsel and defendants

¹⁴⁸ Results here are at the individual magistration level. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, and judge fixed effects. Standard errors are clustered at the magistration date level.

magistrated on days without counsel. We find no statistical differences in rearrests for defendants on days with defense counsel relative to those on days without a defense counsel. Overall, based on the available data, there is no evidence to suggest that defense counsel at magistration significantly influences rearrest rates. Other factors, such as post-release support, community resources, and individual circumstances, may play a more substantial role in determining recidivism outcomes. Further investigation is warranted to better understand the complex dynamics involved in the relationship between defense counsel and rearrest rates.

FIGURE 26: REARRESTS BY COMPARISON GROUP - POTTER COUNTY (TREATMENT-CONTROL COMPARISONS ARE OLS REGRESSION-ADJUSTED)¹⁴⁹



Cost Study Findings

The evaluation also included a cost study on the impact of defense counsel at magistration. The cost to have attorneys represent defendants magistration include attorney fees, two additional laptops to facilitate the virtual attorney-defendant conference, a Zoom one-year subscription, and any overtime cost for arraignment officers or court clerks. All of the costs are summarized in *Table 13*.

¹⁴⁹ The number of rearrests corresponds to the total number of times an individual was booked subsequent to the magistration date. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, and judge fixed effects. Standard errors are clustered at the magistration date level.

TABLE 13: CAFA COST ESTIMATES - POTTER COUNTY

Attorney fees	\$43,397.24
Overtime cost for arraignment officer	\$0.00
Overtime cost for court clerk	\$0.00
Two laptops + docking stations	\$4,000.00
Zoom 1-year subscription	\$200.00
Total costs	\$47,597.24

Attorney fees were covered by a grant from TIDC. Attorneys were paid \$75 per hour, and they had to submit vouchers to Potter County to get paid. Attorneys were on the clock whenever they received the information packet from the jail. On treatment days, arraignment officers had to prepare information packets for attorneys and then move defendants to allow them to meet with attorneys. The magistrate court clerk was responsible for scheduling attorneys to be present on treatment days. There were no recorded overtime costs for arraignment officers and magistrate court clerk. We did not receive actual estimates from the county for laptops, docking stations, and Zoom subscription so we present estimates here.

Potential cost changes from having counsel at first appearance include savings from less jail days, less court bond hearings (since supposedly bond type and amount were set more efficiently), and cost difference from changes to failure to appear and recidivism if any. In Potter County we could not study the impact of CAFA on failure to appear and bond hearings due to data limitations, and we found no statistically significant impact on recidivism. However, we did document a statistically significant difference between pretrial jail days by group. The average pretrial jail days for the control was 42.57 while it was 36.99 for the treatment group.¹⁵⁰ We compute the actual cost savings from this difference. Table 14 presents costs savings from CAFA in Potter County. The average cost per jail day stay during the study period in Potter County was \$69.99; hence the average savings per represented defendant is \$390.54 (calculated as the difference in pretrial jail days multiplied by the cost of per day jail stay) which is much higher than the average cost per represented defendant at \$32.18.¹⁵¹ If Potter County decides to implement CAFA for all magistration hearings, we would expect about 3,000 defendants to be magistrated per year. To calculate the cost for that we double attorney fees (in Table 13) to provide representation for all hearings. Under those assumptions, the county's

¹⁵⁰ We calculate the same difference for jail days (not just pretrial jail days which calculates days of incarceration from magistration to release as long as the release date is prior to disposition date, otherwise to disposition date) and results are the same.

¹⁵¹ Cost estimates are based on the following numbers: 1,509 in the control group and 1,479 in the treatment group. These numbers may not match the analysis sample because of data cleaning.

projected savings are \$1,089,038.12 per year. Using the 2020 fiscal year estimates for the jail budget of \$13,294,210 the savings would be about 8.2% of the detention center's budget.¹⁵²

TABLE 14: COST SAVINGS - POTTER COUNTY

Average pretrial jail days (control)	42.57
Average pretrial jail days (treatment)	36.99
Difference	-5.58
Cost of per day jail stay	\$69.99
Average costs per represented defendant	\$32.18
Average savings per represented defendant	\$390.54

Qualitative Research Findings

The utility of the CAFA program is also illustrated in data collected through interviews (see questions in Appendix III) with stakeholders including magistrate judges, defense counsel, arraignment officers, court clerks, and also through observations of magistrations hearings. The below sections synthesize our findings on process, attorney advocacy during magistrations, prosecutor during magistrations, impact of defense council, virtual setting, and lessons to other jurisdictions from the stakeholders' perspective.

Process

Stakeholders described the magistrations process. Many find pay per hour (which was \$75) and the amount the defense attorneys receive as fair for the workload. One reason for preferring hourly pay is the number of defendants in the magistrations process fluctuates. A defense attorney describes not feeling overwhelmed by the workload and having enough time to meet with defendants. Most of the time during the study there were two attorneys working, but sometimes the other assigned attorney would not be able to make it. Another attorney describes their experience of only talking with two to three defendants on a day and during those times having two defense attorneys present was too much. However, many of the stakeholders stated that on days with a larger number of defendants it would be helpful to have two defense attorneys.

The workflow was also described by arraignment officers. There are two rooms available and both attorneys can speak to a client in each room. The officers bring two inmates at a time to speak with the attorneys. The attorney-defendant conference is done virtually. The officers sent the link to the attorneys for the initial client meeting in the morning, and then sent another link for the actual magistrations hearing.

¹⁵² The detention center budget for Potter County for the fiscal year of 2020-2021 can be found here: <https://www.co.potter.tx.us/upload/page/7386/docs/Financials/Budgets/FY21/FY21%20Potter%20County%20budget%20-%20web.pdf>

Stakeholders described challenges with the process and the first involves technical challenges. For example, the quality of the courtroom microphone and translation issues. There were also other communication problems between the sheriff's department and the defense attorneys. It was hard for defense attorneys to discern which attorney was scheduled to show up for magistration. Arraignment officers described the issue of attorneys not showing up (which occurred only three times out of 184 days).

Attorneys also described how defendants contribute to the process. One attorney stated *when defendants are willing and able to speak to attorneys, the process goes much smoother.*

Defense attorney advocacy during magistration

Judges stated defense counsel helped by providing more information about the defendant during the magistration hearing. Further, they stated *without defense counsel, usually get a four-to-five-line synopsis of the arrest or case, and the defendant's summary criminal history (RAP sheet).*

Defense attorneys felt that their presence helped to lower bonds. Defense attorneys described their strategy which includes obtaining effective information from defendants, presenting *issues that relate to the bond* during the hearing, and then tailoring the defense depending on the magistrate judge. Another attorney described that mental health aspects are often neglected in Texas and advocating on behalf of their client to be released in order to receive needed medical care is crucial.

Stakeholders commented on the time extension of magistration hearings due to the presence of defense counsel. However, a judge stated *they like to get their input even though I do not always agree because it usually helps me make a better-informed decision.* Although time is viewed as a drawback, stakeholders accept it since they view it as helping the process and outcome.

The research team also observed eight magistration hearings, seven of which included defense counsel and one without defense counsel. The observations overall matched the findings from interviews. In general, the prosecutor would have shared their recommendations with the magistrate judge via email early in the morning. The defense attorney advocated on behalf of the defendant with information about living situation, employment, family status, and other defendant specific circumstance and provided their own bond recommendations. The magistration judge sometimes asked clarifying questions to the defendant before setting bond. Below are two actual examples of a bond being set.

A male defendant was being magistrated for a 3rd degree felony of burglary of a habitat. The defense counsel argued that the defendant is 17 years old and has been living in the county for a long time, first offense, has no children, lives with his mother, and has other relatives in the area, works at McDonald's, his mother will help bail him out, but the attorney is not sure about much money is available for that purpose, and the attorney asked for a low bond. The magistrate judge set the bond at \$3,000 cash/surety with bond conditions.

A female defendant was being magistrated for a DWI. The defendant has a pending charge DWI (from an arrest about 7 months ago). The magistrate judge mentioned since the previous charge is still pending, this current charge would be seen as an original DWI. The defense counsel argued that the defendant is a realtor and a broker, has substantial ties to the city, and has lost her husband a few years ago. The attorney mentioned that they discussed dealing with this in a healthier way. The attorney mentioned that their defendant has never been arrested and that she is struggling with the loss of her husband so setting a high bond would not be helpful because the defendant will be able to make bond, but the attorney would rather see the financial resources spent towards taking care of her struggles. The attorney recommended a personal recognizance bond with conditions. After a few minute of deliberations, the magistrate judge set a personal recognizance bond of \$1,500 with conditions. The judges also recommended that the defendant seeks counseling to deal with alcohol abuse and other struggles.

Prosecutor during magistration

Judges are accustomed to the prosecutor sending their recommendations before magistration. The defense counsel during the study were not privy to this information. When asked whether a prosecutor being present during magistration hearing would make a difference, most defense attorneys stated magistrate hearings are better without the prosecutor. For example, *the prosecutor present would not serve a significant purpose because they are not providing evidence, and the magistrate is making decision based on probable cause provided by police report.* Another attorney mentioned that there is no difference because the prosecutor has already made their bond recommendations to the judge for the defendant before the hearing. One defense attorney found an advantage for the prosecutor being present which is to know the recommended bail amount so that it is possible to recommend a lower bond amount.

Impact of defense counsel

Stakeholders stated defense counsel impacted the process in a few ways. The first is time. Arraignment officers have noticed that defense counsel adds time to the magistration process, and this is especially true when the judge is not used to defense counsel presenting information during the hearing. Although time is added to the magistration process, attorneys have also helped the process. A stakeholder claims the presence of a defense attorney *streamlines the whole process.* Finally, as one attorney stated: *the court is saving time and money while getting the information during the trial rather than going through extra processes after the trial . . . [and the county] is already considering keeping this program permanent.*

Attorneys stated having defense counsel is better than no representation for defendants. Defense attorneys can inform their clients about the magistration process and provide details such as *reporting to bondsman and not to discuss the case with others.* In addition to informing defendants of the magistration process, defense attorneys are able to gain information from their client for the hearing. One judge viewed defense counsel as an asset because they help

defendants feel more comfortable and less intimidated, thus they provide more information related to setting the bond. Attorneys noticed a difference between defendants that refuse representation and those that did not refuse representation during magistration regarding the setting of bail bond amounts. One attorney was unsure of the impact of refusals on bond outcomes. The judge receiving less information could impact their decision. Another attorney observed the *judge reduced the original bond amount for 80% of defendants with defense attorney*.

Additionally, defense attorneys have made a difference for specific cases and discovered needed information. Arraignment officers described incidents when probable cause was found because of the meetings with defense attorneys. With defense counsel present, many believe judges are granting bond amounts that are lower than ever. A defense attorney states they are *not successful all the time, but for half of the hearings was able to make a difference* in reducing bonds. While judges felt as though sometimes defense counsel recommended bonds that were too low, they agree with attorneys that overall, *the bond amounts are lower, which helps overpopulated jail situations*.

Virtual setup

Stakeholders reflected on their experiences with the virtual setup in the magistration process. Most participants felt the virtual setup worked fine and that there are not any big differences between virtual and in-person meetings. They shared some of the successes and challenges of these meetings during the interviews. Some of the successes of virtual setup include time, convenience, and availability. Stakeholders found virtual hearings are a *more efficient use of time* and many defense attorneys mentioned not having to drive to meetings as advantageous. As a defense attorney states, the *virtual setup is better because time is not wasted on transportation* which adds convenience. Another participant views *going into the office as inconvenient and takes a lot of time*. The virtual setup also enabled more participation since access to the meetings or hearings is easier and increases availability. A judge also mentioned that during the height of the pandemic the virtual setup was safer.

Interviews with stakeholders also revealed the challenges of the magistration process when done virtually which involve technical issues, equipment, and personal interactions. Defense attorneys mentioned both technical and audio issues occurred frequently when talking with a defendant.

Communication challenges encountered can be broken down into two components. The first component concerns communication about or around the virtual meetings. One defense attorney describes there being *issues with jail officers not sending Zoom meeting invites to both attorneys, so only one attorney would end up working*. The second component involves communication that occurs during the meeting. A few defense attorneys described personal interactions in virtual meetings as a disadvantage. One attorney stated that *any process might be better in-person than virtually (considering personal interaction, body language), but the virtual setup is not taking away from the services attorneys have to offer*.

Lessons for other jurisdictions

A suggestion made by a stakeholder for jurisdictions considering implementing a program of this type is to observe how *Hays or Potter Counties proceeded with the program and take good notes of what can be applied to their counties*. A judge stated that having defense counsel present helps during magistration and *sometimes it is good to go with gut feeling and take or reject recommendations, but it is better to get more information input*. All agree that the study was beneficial. This study *has a good purpose and will help set a healthier process regarding bond-setting*.

Participants are split regarding the hourly pay rate of \$75. Many attorneys stated the hourly rate is fair with one claiming it is on the *lower end of fair, \$100 seems fair*. Another attorney stated \$125 per hour would be a fairer compensation rate when considering a *certain number of hours is scheduled and only have several defendants who agree to talk to defense attorneys for magistration that day...[and] the majority of defendants did not want to talk to defense attorney*. Defense attorneys also pointed out that they are not able to work on other cases during the time they are working on magistration.

Attorneys talked about the number of attorneys that participated in the program. One attorney suggested accounting for the workload when considering the number of defense attorneys. It can be overwhelming if there is only one attorney present on days when there are a lot of defendants. Another attorney stated that *every jurisdiction is different, make sure you have enough attorneys who want to do it [because] back-to-back trials can be exhausting*. Further, having two attorneys helps expedite the process.

The issue mentioned the most by stakeholders was scheduling. One stakeholder recommended setting up a system that allows attorneys to schedule and reschedule for efficiency. Further, it would be helpful *if attorneys were notified beforehand that they would be contacted in order to increase responsiveness*. Additionally, attorneys suggested more notice regarding what days to be present and the amount of time they are given to speak with defendants. Attorneys have been able to get the information they needed but one attorney recommended longer meeting times (than 10 minutes) between defense attorney and defendants; specifically, *if defendants are first-time offenders and have a lot of questions regarding the overall process*. The need for time management is an important consideration from the arraignment officer's perspective, *to make sure the process is not delayed too much*. Good contact information for attorneys would be beneficial so they can be reached when they do not show up.

Conclusions and Opportunities for Further Research

The study adds to the existing literature on the impact of defense counsel at first appearance. The study is the first to provide multifaceted evidence which included a quantitative section (the RCT), a qualitative analysis (through interviews and observations of hearings), and a cost component.

The study partnered with two field partners in Texas (Hays and Potter Counties) to test the impact of defense counsel at first appearance on primary and secondary outcomes. The processes across both counties differed. The findings are summarized in *Table 15*.

TABLE 15: IMPACT OF DEFENSE COUNSEL AT MAGISTRATION

	<i>Outcome</i>	<i>Hays County</i>	<i>Potter County</i>
<i>Primary</i>	Bond amount	Lowers bond amount	Lowers bond amount
	Bond type	No impact	Increases nonfinancial bond
	Bond conditions	Increases numbers and severity	No impact
	Indigency application	No impact	Increases requests
	\$16.22 assessment	No impact	Increases assessments
<i>Secondary</i>	Jail days	No impact	Lowers jail days
	Failure to appear	No impact	Could not study
	Recidivism	No impact	No impact
	Bond hearings	Could not study	Could not study
	Disposition time/type	No impact	Could not study
	Sentencing	Could not study	Could not study

The findings presented here raise more questions that should be the basis for further research on the impact of CAFA. First, the study was conducted during the COVID-19 pandemic. While we do not anticipate these affected primary outcomes, the pandemic and its impact on the criminal justice system was present during all our conversations with stakeholders and could potentially impact secondary outcomes. The pandemic delayed the disposition of cases as courts were shut down for an extended period and when they opened, they were operating in a limited capacity. Another potential area of concern is the influence of the executive order No. GA-13 issued on March 29, 2020 by the Governor of Texas. The executive order effectively introduced changes to release on personal bond in Texas as a reaction to the pandemic.¹⁵³ Texas also adopted further changes to bond release through the Damon Allen Act which went into effect on September 13, 2021. Empirical evidence on the effect of defense counsel after the adoption of the act is needed to see if the results still hold.

¹⁵³ For more information see https://gov.texas.gov/uploads/files/press/EO-GA-13_jails_and_bail_for_COVID-19_IMAGE_03-29-2020.pdf

Second, there are conflicting views on whether a prosecutor should be present at magistration hearings. Hays County opted to have a prosecutor present when defense counsel was present. The current study cannot disentangle the impact of having a prosecutor present.

Thirdly, the conferences between attorneys and the defense, as well as the magistration hearings, were all conducted in a virtual manner. It raises a question about whether there would be any changes in the outcomes if attorneys were to meet defendants in person, or if magistration hearings were held in person.

Fourth, the present of defense counsel at first appearance impacts both the pre-magistration hearing preparation and the magistration hearing itself. There were distinct differences between Hays and Potter Counties. Further research into the most efficient processes to allow defense counsel to represent defendants at magistration is needed.

Fifth, the current study does not allow for vertical representation. Both field partners did not have public defender offices during the period of the study and hence attorneys only represented defendants at magistration.

Sixth, magistration hearings in Hays and Potter Counties were centralized occurring at the detention center. Jurisdictions often have multiple locations for magistration hearings such as those occurring at the city, the jail, and other locations. Different magistrate judges could also be involved including justice of the peace among others.

Finally, this study did not incorporate direct feedback from defendants. We were able to get some information by interviewing defense attorneys about their perceptions of what defendants felt like being represented at magistration. However, this falls short in integrating defendants' views on having CAFA at magistration.

Appendix I - Probit Marginal Effects Regression Models for Hays County

PROBIT MARGINAL EFFECTS REGRESSIONS (PRIMARY OUTCOMES)

Monetary Bail Amount Probit Marginal Effects

	(1) Less than \$500	(2) Less than \$1,000	(3) Less than \$2,000	(4) Less than \$5,000	(5) Less than \$10,000
Treatment	0.03 (0.017)	0.05** (0.017)	0.05** (0.019)	0.05** (0.017)	0.02* (0.009)
Observations	5,185	5,185	5,185	5,185	5,185
Controls	Yes	Yes	Yes	Yes	Yes
Judge FE	Yes	Yes	Yes	Yes	Yes

Notes: Results here are at the level of individual defendants' magistrations. Personal recognizance bond amounts are set to zero. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration and judge fixed effects. Standard errors are shown in parentheses and are clustered at the magistration date level. ** p<0.01, * p<0.05.

Bond Type and Conditions Probit Marginal Effects

	(1) At Least 1 PR Bond	(2) All PR Bonds	(3) Received Bond Conditions	(4) Movement Condition
Treatment	0.03 (0.017)	0.02 (0.017)	0.18** (0.019)	0.10** (0.013)
Observations	5,185	5,185	4,554	4,554
Controls	Yes	Yes	Yes	Yes
Judge FE	Yes	Yes	Yes	Yes

Notes: Results here are at the level of individual defendants' magistrations. Movement condition = 1 if the individual had one or more movement restricting bond conditions. Bond conditions were not reported for individuals with incomplete or missing magistration documents. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration and judge fixed effects. Standard errors are shown in parentheses and are clustered at the magistration date level. ** p<0.01, * p<0.05.

Attorney Request and §16.22 Evaluation Probit Marginal Effects

	(1) Requested Court-Appointed Counsel	(2) §16.22 Evaluation Ordered
Treatment	0.12** (0.019)	0.01 (0.014)
Observations	4,198	4,554
Controls	Yes	Yes
Judge FE	Yes	Yes

Notes: Results here are at the level of individual defendants' magistrations. Court appointed counsel requests and §16.22 evaluation orders were not reported for individuals with incomplete or missing magistration documents. The magistration documents for 356 individuals did not indicate a request for court-appointed counsel. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration, and judge fixed effects. Standard errors are shown in parentheses and are clustered at the magistration date level. ** p<0.01, * p<0.05.

PROBIT MARGINAL EFFECTS REGRESSIONS (SECONDARY OUTCOMES)**Days to Release Probit Marginal Effects**

	(1) Days to Release ≤ 1	(2) Days to Release ≤ 3	(3) Days to Release ≤ 5
Treatment	-0.01 (0.015)	-0.00 (0.015)	0.00 (0.014)
Observations	5,185	5,185	5,185
Controls	Yes	Yes	Yes
Judge FE	Yes	Yes	Yes

Notes: Results here are at the level of individual defendants' magistrations. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration and judge fixed effects. Standard errors are shown in parentheses and are clustered at the magistration date level. ** p<0.01, * p<0.05.

Rearrests Probit Marginal Effects

	(1) 0 Rearrests	(2) 1 Rearrest	(3) Rearrests \leq 1
Treatment	0.01 (0.013)	-0.01 (0.010)	-0.00 (0.007)
Observations	5,185	5,185	5,185
Controls	Yes	Yes	Yes
Judge FE	Yes	Yes	Yes

Notes: Results here are at the level of individual defendants' magistrations. The number of rearrests corresponds to the total number of times an individual was booked subsequent to the magistration date. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration, and judge fixed effects. Standard errors are shown in parentheses and are clustered at the magistration date level. ** $p < 0.01$, * $p < 0.05$.

Failure to Appear Probit Marginal Effects

	(1) Failure to Appear Type 1	(2) Failure to Appear Type 2
Treatment	0.01 (0.010)	0.01 (0.009)
Observations	5,024	5,024
Controls	Yes	Yes
Judge FE	Yes	Yes

Notes: Results here are at the level of individual defendants' magistrations. Failure to Appear Type 1 is a binary variable that takes the value of one if the defendant failed to appear at a hearing for at least one of the cases after their magistration date. Failure to Appear Type 2 is also a binary variable that takes the value of one if the defendant failed to appear at a hearing, except in cases where the defendant was magistrated again at a later date and their failure to appear occurred before that magistration. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration, and judge fixed effects. Standard errors are shown in parentheses and are clustered at the magistration date level. ** $p < 0.01$, * $p < 0.05$.

Charge Disposition Probit Marginal Effects

	(1) Convicted	(2) Deferred	(3) Dismissed	(4) Declined
Treatment	0.01 (0.012)	-0.01 (0.008)	0.01 (0.011)	-0.00 (0.011)
Observations	5,042	5,042	5,042	5,042
Controls	Yes	Yes	Yes	Yes
Judge FE	Yes	Yes	Yes	Yes

Notes: Results here are at the level of individual defendants' magistrations. For each magistration date, a disposition type variable is assigned a value of one if at least one of the defendant's charges on that date received that disposition type. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration, and judge fixed effects. Standard errors are shown in parentheses and are clustered at the magistration date level. ** p<0.01, * p<0.05.

Time to First Disposition Probit Marginal Effects

	(1) ≤ 3 Months	(2) ≤ 6 Months	(3) ≤ 9 Months	(4) ≤ 1 Year
Treatment	0.00 (0.006)	-0.00 (0.008)	0.00 (0.011)	0.01 (0.013)
Observations	5,042	5,042	5,042	5,042
Controls	Yes	Yes	Yes	Yes
Judge FE	Yes	Yes	Yes	Yes

Notes: Results here are at the level of individual defendants' magistrations. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, if the defendant had no prior arrests for any of the offenses at the time of magistration, and judge fixed effects. Standard errors are shown in parentheses and are clustered at the magistration date level. ** p<0.01, * p<0.0

Appendix II - Probit Marginal Effects Regression Models for Potter County

Monetary Bail Amount Probit Marginal Effects

	(1) Less than \$500	(2) Less than \$1,000	(3) Less than \$2,000	(4) Less than \$5,000	(5) Less than \$10,000
Treatment	0.03** (0.012)	0.07** (0.016)	0.13** (0.023)	0.12** (0.022)	0.04** (0.009)
Observations	2,988	2,988	2,988	2,988	2,988
Controls	Yes	Yes	Yes	Yes	Yes
Judge FE	Yes	Yes	Yes	Yes	Yes

Notes: Results here are at the level of individual defendants' magistrations. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, and judge fixed effects. Personal recognizance bond amounts are set to zero. Standard errors are shown in parentheses and are clustered at the magistration date level. ** p<0.01, * p<0.05.

Bond Type and Conditions Probit Marginal Effects

	(1) At Least 1 PR Bond	(2) All PR Bonds	(3) Received Bond Conditions	(4) Movement Condition
Treatment	0.05** (0.013)	0.03** (0.011)	0.02 (0.027)	-0.00 (0.022)
Observations	2,988	2,988	2,889	2,988
Controls	Yes	Yes	Yes	Yes
Judge FE	Yes	Yes	Yes	Yes

Notes: Results here are at the individual magistration level. Movement condition = 1 if the individual had one or more movement restricting bond conditions. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, and judge fixed effects. Standard errors are shown in parentheses and are clustered at the magistration date level. ** p<0.01, * p<0.05.

Attorney Request and §16.22 Evaluation Probit Marginal Effects

	(1) Requested Court-Appointed Counsel	(2) §16.22 Evaluation Ordered
Treatment	0.04* (0.017)	0.04* (0.015)
Observations	2,889	2,988
Controls	Yes	Yes
Judge FE	Yes	Yes

Notes: Results here are at the individual magistration level. The magistration documents for 99 individuals did not indicate a request for court-appointed counsel. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, and judge fixed effects. Standard errors are shown in parentheses and are clustered at the magistration date level. ** p<0.01, * p<0.05.

Days to Release Probit Marginal Effects

	(1) Days to Release ≤ 1	(2) Days to Release ≤ 3	(3) Days to Release ≤ 5
Treatment	0.06** (0.022)	0.07** (0.021)	0.06** (0.020)
Observations	2,988	2,988	2,988
Controls	Yes	Yes	Yes
Judge FE	Yes	Yes	Yes

Notes: Results here are at the individual magistration level. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, and judge fixed effects. Standard errors are shown in parentheses and are clustered at the magistration date level. ** p<0.01, * p<0.05.

Rearrests Probit Marginal Effects

	(1) 0 Rearrests	(2) 1 Rearrest	(3) Rearrests ≤ 1
Treatment	-0.01 (0.017)	0.02 (0.014)	0.01 (0.008)
Observations	3,243	3,243	3,243
Controls	Yes	Yes	Yes
Judge FE	Yes	Yes	Yes

Notes: The number of rearrests corresponds to the total number of times an individual was booked subsequent to the magistration date. The control variables consist of age, gender, race, ethnicity, offense severity (felony or misdemeanor), number of felonies, number of misdemeanors, custody status at magistration, and judge fixed effects. Standard errors are shown in parentheses and are clustered at the magistration date level. ** p<0.01, * p<0.05.

Appendix III - Stakeholder Interview Questions

Attorneys

1. Tell us about your background and experience
2. What do you typically advocate for on behalf of the defendants?
3. Can you describe a typical meeting with the defendant? (How did defendants feel about having you represent them during their first hearing? Did defendants ask questions? How long does the meeting take on average? Etc.)
4. Do you have any thoughts or comments on the hearings? What is working well? What is not working well?
5. What are your thoughts on the virtual setup? (Meeting with the defendants, and virtual hearing) What is working well? What is not working well? How would you change it? Do you think if the meeting was done in person, the interaction would be different? How?
6. Can you comment on the presence of the DA in the hearing?
7. In terms of payment, what are your thoughts on the rate (\$75 per hour) and mechanism (per hour)?
8. Do you have any advice or suggestions for jurisdictions that are interested in setting up CAFA?
9. Is there anything else that you would like to share with us?
10. Do you have any questions for us?

Magistrate Judges

1. Tell us about your background and experience.
2. Can you describe what difference does having defense counsel at first hearing make? What are the benefits and drawbacks for having defense counsel present?
3. Are you in favor of having the DA being present during first hearing when defense counsel is also present? Why or why not?
4. Can you comment on the performance of the defense counsel?
5. What are your thoughts on the virtual setup? Do you think the interaction would be different if the first hearing was done in person?
6. In terms of payment, what are your thoughts on the rate (\$75 per hour) and mechanism (per hour)?
7. Do you have any advice or suggestions for jurisdictions that are interested in setting up CAFA?
8. Is there anything else that you would like to share with us?
9. Do you have any questions for us?

District Attorney

1. Tell us about your background and experience
2. Can you describe your thoughts about having defense counsel present at first hearing?
3. Do you have any thoughts or comments on the hearings?

4. What are your thoughts on the virtual setup? Do you think if the meeting was done in person, the interaction would be different?
5. Can you comment on the performance of the defense counsel?
6. What are the costs incurred by your office to be present at first hearing?
7. Do you have any advice or suggestions for jurisdictions that are interested in setting up CAFA?
8. Is there anything else that you would like to share with us?
9. Do you have any questions for us?

Arraignment and Jail Officers

1. Can you describe the process of the first hearing? How are you involved in this process?
2. What are the challenges that you have encountered during this study?
3. What are your impressions of how the defendants reacted to having counsel at this hearing?
4. What are your thoughts on the virtual setup? Do you think if the first hearing was done in person, logistics would be different?
5. Do you have any advice or suggestions for jurisdictions that are interested in setting up CAFA?
6. Is there anything else that you would like to share with us?
7. Do you have any questions for us?

Schedulers

1. Tell us about your background and experience.
2. Can you describe the process of scheduling defense counsel for first hearing?
3. What are the challenges that you have encountered during this study? How would you change the process to overcome those challenges?
4. What are your thoughts on the virtual setup? Do you think if the first hearing was done in person, logistics of scheduling would be different?
5. Do you have any advice or suggestions for jurisdictions that are interested in setting up CAFA?
6. Is there anything else that you would like to share with us?
7. Do you have any questions for us?