Cost savings to Cook County when arrested persons access their right to legal defense within 24 hours

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"The total fiscal savings for Cook County would be between $12.7 and $43.9 million annually if arrestees had access to a defense attorney within 24 hours after arrest."

I. The Fiscal and Social Impacts of Incarceration

The rapid rise in incarceration throughout the United States since 1980 has increased the fiscal cost to cities, counties, and states. Between 1985 and 2009, state expenditures on corrections rose by 700% to more than $47 billion (James et al. 2012). Illinois, for example, spent 5.2% of its general fund on state corrections in 2007 (PEW 2008). The rise in the penal population is due to a host of changes in the criminal justice system – longer sentences, increasing inequality in surveillance, and growth in punishment for non-violent offenses (Pettit 2012; Alexander 2010; Western 2006). These policy shifts have converged to increase the fiscal cost of incarceration for municipalities as well.

The recent economic downturn, however, has caused legislators to reexamine expenditures and to devise methods that will reduce expenses, thereby filling budget deficits associated with increased unemployment, lower tax revenue, and growth in government spending. In 2011, Chicago was projected to have a 2014 budget deficit of $790 million, which has subsequently been reduced to $339 million through various “governmental reforms” (City of Chicago 2014, p. 1). The cost of corrections is an additional area of reform where local and state governments can rein in spending. This report outlines one method Cook County can use to reduce expenditures and conserve resources. If all Cook County inmates had access to legal representation within the first 24 hours after arrest in police stations, their jail stays would be significantly shorter, and the County would save between $12.7 and $43.9 million annually.
II. The Right to Counsel in Police Stations

The right to counsel is triggered the moment a person is under arrest or not free to leave a police interaction.\(^2\) Anyone restrained of their liberty has the right to consult an attorney in Illinois. Chicago police, however, do not have to read an arrestee the Miranda warnings as soon as they are arrested. Nevertheless, a judge can appoint counsel for an accused who they deem indigent or unable to pay. Since there is no judge on the street or in the police station, it is not until Bond Court, and the Preliminary Hearing, when free attorneys are potentially available. This counsel is typically an Assistant Cook County Public Defender who works in the courtroom full time.

Figure 1: Illustration of the Gap in Access to the Right to Counsel and Progressive Stages of Incarceration

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\(^2\) Illinois Criminal Statute 725 ILCS 5/103-4 Right to consult with attorney states that "Any person committed, imprisoned or restrained of his liberty for any cause whatever and whether or not such person is charged with an offense shall, except in cases of imminent danger of escape, be allowed to consult with any licensed attorney at law of this State whom such person may desire to see or consult, alone, and in private at the place of custody, as many times and for such period as is reasonable."
Figure 1 displays the overall flow chart of police-civilian interaction and the processing of arrestees through the life of a criminal case if the arrestee or accused is not released at a given stage. During the first 48 hours, after one is arrested or not free to leave custody, police and prosecutors work to build a case against the arrestee by accumulating evidence sufficient to charge them of a crime (Welter 2012), which is at the discretion of the prosecutor and has been shown to produce racial disparities in the criminal justice system (Davis 2013). The arrestee has the right to an attorney at this time. However, the Public Defender is not available to represent anyone at this stage, nor are arrestees given immediate access to a phone to call someone for assistance in retaining counsel. Arrestees in Chicago cannot use the phone to call an attorney until they are processed at conclusion of the investigation.

"Arrestees almost always waive their right to counsel while under arrest, because there seems to be no possibility of retaining an attorney."

While some inmates are charged and sent to bond court within 24 hours where the Cook County Public Defender is available, other investigations last 48-72 hours inside police stations before charges are filed. The Public Defender, however, is never available to suspects at this time, even though Cook County prosecutors are on call 24 hours every day for case review (Welter 2012). This raises questions about access to legal representation for individuals in police custody.

If a civilian suspect detained at a police station invokes his right to counsel by declining to answer questions and requesting legal representation, police must stop their interrogation unless or until the suspect reinitiates conversation. However, the arrestee continues to lack representation by an attorney and is not given access to a telephone, while he is held, sometimes held for days, without contact with anyone but police and prosecutors. Consequently, arrestees almost always waive their right to counsel because there seems to be no possibility of retaining an attorney without access to a telephone. These custodial statements made to police are used to charge, find probable cause, and convict.

III. This Study Identifies the Expected Reduction in the Cook County Jail Population and Related Costs if Individuals Held at the Jail Had Accessed Their Right to Counsel within 24 hours

The first 24 hours after arrest is a period when everyone has the right to counsel, yet relatively few are currently able to exercise this right. Research shows that legal representation, particularly at the bail stage, can make a significant difference in legal outcomes, jail costs, and perceptions of fairness.
in the system. Colbert, Paternoster and Bushway (2002) find that the objective benefits of legal representation at bail review include providing necessary facts to the court – the suspect's case circumstances, community ties, financial hardships, and prior criminal justice experiences – which clarifies and verifies the accuracy of information presented by prosecutors. Although public defenders are at bond court, they have little time to gather or verify information that could help their client.

Having access to defense counsel before bond court would be fair and would significantly reduce the number of pre-trial days an arrestee spends behind bars (Gross and Cox 2013), thereby lowering the cost of incarceration. Early case assessments by prosecutors further reduces these costs by redistributing vital resources from weak or less significant cases – that may result in dropped charges, acquittals or sentence expiration (henceforth referred to as non-convictions or dismissals) – to more serious crimes that require greater scrutiny (Welter 2012). For instance, Philadelphia observed a 12 percent reduction in bed-days behind bars due to changes in their pre-trial jail population, resulting in a fiscal savings of $10 million dollars for the 2012 correctional budget and lower overtime payouts (around $7.4 million within two years) for police (PEW 2011). This finding is consistent with other pre-trial programs that include both diversion and access to defense counsel, with the latter increasing perceptions of fairness about the criminal justice and legal systems (Colbert, Paternoster and Bushway 2002).

"The mean length of stay in jail is significantly reduced when arrestees access legal representation."

This report quantifies one aspect of pre-trial savings to Cook County: providing access to defense attorneys within 24 hours. To understand how the implementation of this policy would affect Cook County, this report begins by placing contemporary estimates and demographics of Cook County inmates within a historical context. In the sections that follow, the mean length of stay in jail is significantly reduced by providing arrestees with immediate legal representation within 24 hours. Access to the already-existing right to counsel for arrestees is a viable solution in the interest of fiscal savings and perceptions justice.

IV. Data Sources and Description

Statistics for this report are drawn from multiple data sources. Jail counts and bookings for Cook County during 2009 (the latest year available) were obtained from the Illinois Criminal Justice Information Authority (ICJIA). The ICJIA's Statistical Analysis Center hosts a searchable criminal justice and risk factors database that provides aggregate counts of inmates and social indicators, by county and year, as reported by government agencies in Illinois. Current jail counts for 2014 are

3 http://www.icjia.org/public/
At a Police Station, Defense Counsel can:

- Even the playing field as a counterpart to prosecutors.
- Watchdog the investigation to document or prevent any procedural injustice or accusations thereof.
- Help the arrestee understand & utilize their rights.
- Document any signs of cognitive, health or developmental issues with the arrestee understanding their rights.
- Ensure that a waiver of rights is voluntary, knowing, & intelligent.
- Document injury or illness & obtain medical treatment.
- Advocate for juveniles, the mentally ill, & others to be diverted to services, versus charged with a crime due to related behavior.
- Update the family on their loved one’s whereabouts, status and health, and provide information if the arrestee is in fact charged, so they can best support.
- Support culture change to end the 'code of silence' in the police department regarding police misconduct and crime.
- Safeguard against rights violations for increased trustworthiness of, and participation in, crime investigations toward a reduction in violent crime.
- Protect the arrestee from being held beyond the time permitted (typically 48 hours or less), and if held longer than this period, file a petition for habeas corpus to end the holding.
- Provide bond court, preliminary hearing & trial counsel with evidence relevant to the person’s defense if a case does move forward.
- Collect data on problems & improvements in accountability, equity & fairness.
"Legal representation can make a significant difference in legal outcomes, jail costs, and perceptions of fairness in the system."

The Survey of Inmates in Local Jail 2002 (the latest year available) was collected by the U.S. Census Bureau on behalf of the Bureau of Justice Statistics (BJS). The Survey of Inmates includes detailed demographic, legal, and offense information; however, the Survey does not include questions on evidence or criminal justice discretion. These data are publicly available for download through the Inter-university Consortium for Political and Social Research (ICPSR) at the University of Michigan. To distinguish Cook County inmates from other jails, the author identified the weighting adjustment for Cook County (variable V2266) and flagged inmates who had weights less than 1, under the assumption that as the largest jail system in the country, the Bureau of Justice Statistics and Census Bureau would down-weight the distribution for national representation. This assumption seems reasonable because the 2002 Survey of Inmates weights were derived from the total number inmates in local jails on June 30, 2001, even though the interviews were conducted between January and April 2002 (SILJ 2002, p. 6). According to the ICJIA data (as shown in Figure 2), the average number of inmates in Cook County Jail on any given day in 2001 was 11,031, whereas the weighted average daily inmate count for Cook County in 2002 was 11,268 using the Survey of Inmate in Local Jails. Thus, identifying Cook County inmates based on this assumption seems valid given the approximate equivalence between the administrative totals and the survey weighted inmate counts for the six-month period prior to data collection. If the controlling offense occurred in the inmate’s city of residence (variable V1046), s/he was flagged as from the city. The combination of city of residence and Cook County jail is used to indicate Chicago residents/offenders.

An alternative estimation strategy uses published aggregate counts and the mean length of stay for 2012, as reported by Olson (2013). In his report of admissions, discharges, and the population of the Cook County Jail, Olson shows the socio-demographic distribution of detainees and the offense type associated with their admission to the County Jail. Consequently, the report, and the data that they are based on, does not indicate when detainees accessed counsel, which is an advantage of the Survey of Inmates data. However, the Olson report disaggregates jail exits by discharge type, percentage of discharges, and the mean number of days in jail. The author benchmarked socio-economic estimates (race, gender, age, etc.) from the Survey of Inmates to administrative estimates presented in Olson (2013).

4 http://www.cookcountysheriff.com
5 http://www.icpsr.umich.edu/icpsrweb/landing.jsp
The cost of jailing a person per day is derived from two data sources. First, the Cook County Sheriff's website lists the costs of jailing an inmate per day at $143. However, it is unlikely that this figure represents marginal cost. Marginal costs in criminal justice studies represent “the amount of change in an agency's total operating costs when output (such as arrests, court filings, or jail days) changes because of changes to policies or programs” (Henrichson and Galgano 2013: 5), which allow for more effective cost-benefit assessments in public policy analyses. Because the $143 listed on the Cook County Sheriff's website is not the true marginal cost (i.e., it is the average cost), a secondary estimate is derived from the Illinois Sentencing Policy Advisory Council (ISPAC) report on cost and outcomes for 2010-2012. ISPAC finds that the marginal cost for spending one year in jail is $15,256, or $42 per day (ISPAC 2013: 1). Thus, the Cook County Sheriff's estimate may represent the average cost under a massive policy change that significantly reduces the jail population, while the ISPAC estimate represents the marginal cost per inmate-day in jail.

V. Methodology

Sections VI, VII, and VIII of this report rely on the Survey of Inmates in Local Jails to estimate the racial, educational, legal, and criminal justice interactions of inmates. Although these data were last collected in 2002, previous studies have linearly interpolated survey-weighted measures of socio-economic status to produce population-weighted estimates of the racial and educational distribution of prison and jail inmates nationally for a variety of socio-economic outcomes (Sykes and Pettit forthcoming; Ewert, Sykes, and Pettit 2014; Pettit 2012; Wildeman 2009; Pettit, Sykes, and Western 2009; Western 2006; Pettit and Western 2004). The methods and procedures of previous studies are used in this report, but the analysis is restricted to Cook County. Any survey observations that are not recorded are assumed to be missing at random (MAR) and are imputed using the imputation by chained equations (ICE) procedure in Stata 13.

Section VIII of this report assumes that obtaining a conviction is the primary motivation for criminal charging. To quantify the effect of legal representation within the first 24 hours after charging, the author fitted a binary response model (probit) to estimate the conditional probability that speaking to a lawyer immediately upon detainment results in a lower likelihood of conviction or, alternatively, a higher likelihood of release through any means of discharge (bonding, sentence expiration, charge dismissal, or acquittal), after accounting for socio-economic factors, alleged offense, and type of counsel. Failure to secure a conviction may happen by any of the aforementioned processes.

The marginal effects from the conditional probability of being convicted are displayed in Table 1. Marginal effects represent changes in predicted probabilities for socio-economic factors included in the probit model (Long 1997; Powers and Xie 2000). Estimates for this report focus on the difference in the probability of conviction if the inmate accessed the right to counsel within 24 hours (compared to more than a week later), holding all other socio-economic factors at their mean value.

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6 The marginal cost is the amount the total cost changes when a unit of output changes (Henderson and Galano 2013).
Cost Savings when People Access the Right To Counsel Within 24 Hours of Arrest

Table 1: Marginal Effects Estimates from a Probit Model Predicting the Likelihood of Conviction

<table>
<thead>
<tr>
<th></th>
<th>Unit Change in Conviction Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer w/in 24 Hours</td>
<td>-0.267 *</td>
</tr>
<tr>
<td>Lawyer w/in 168 Hours</td>
<td>-0.190 *</td>
</tr>
<tr>
<td>Public Defender</td>
<td>-0.206 *</td>
</tr>
<tr>
<td>Felony</td>
<td>0.181 *</td>
</tr>
<tr>
<td>Violent</td>
<td>-0.044 *</td>
</tr>
<tr>
<td>Property</td>
<td>-0.167 *</td>
</tr>
<tr>
<td>Drug</td>
<td>-0.308 *</td>
</tr>
<tr>
<td>Force</td>
<td>-0.025 *</td>
</tr>
<tr>
<td>Age</td>
<td>-0.002 *</td>
</tr>
<tr>
<td>Male</td>
<td>-0.200 *</td>
</tr>
<tr>
<td>NH-Black</td>
<td>0.173 *</td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.016</td>
</tr>
<tr>
<td>HS</td>
<td>-0.092 *</td>
</tr>
<tr>
<td>College</td>
<td>0.198 *</td>
</tr>
</tbody>
</table>

* p < .05

Source: Author’s Calculations the Survey of Inmates in Local Jails.

Note: Obtaining legal access after one week, having a non-public defender, misdemeanors, public order and other offenses, women, whites, and less than a high school diploma are the reference groups for this model.

The following equations display two alternative methods for estimating the annual fiscal savings. Equation 1 uses information derived from the Survey of Inmates to show how the lower likelihood of conviction due to having counsel within 24 hour reduces the cost of jailing detainees through a reduction in the number of person-days behind bars.

1. Jail Savings = (probability of conviction given early legal counsel) * (daily cost per inmate) * (daily count of inmates from Chicago) * (avg. difference in number of days jailed)

The probability reduces the total number of arrestees. Receiving an acquittal, dismissal or having charges dropped also reduces the mean difference in the number of days jailed (compared to those who are convicted). The probability of conviction given legal representation (from Table 1) is used to calculate cost savings in Table 4A of Section VIII. This report assumes that the aggregate, fiscal
savings to Chicago is dependent on the joint effect of conviction probability when legal counsel is accessed early, the cost of jailing each inmate per day, the number of inmates in jail on any day, and the average difference in the number of days an inmate is in jail when released earlier compared to when held longer. The number of inmates in jail from Chicago on any given day is the weighted count of the proportion of city respondents in the 2002 Survey of Inmates and the average daily number of inmates in Cook County jails in 2014 (taken from the Cook County Sheriff’s website).

Equation 2 uses a different methodological strategy to empirically derive the annual fiscal savings. Drawing on information from Olson (2013), if a detainee posts bond, the sentence expires, charges are dropped or the prosecutor fails to secure a conviction, then the aggregate time behind bars for the relative distribution of each discharge, weighted by the marginal or average cost, constitutes the savings to Cook County.

\[
\text{(2) Jail Savings} = (\text{number detainees by discharge type}) \times \text{(Percentage by discharge type)} \times \\
\times \text{(daily cost per inmate)} \times \text{(number of days jailed by discharge type)}
\]

VI. Historical Trends and Demographic Characteristics of Cook County Inmates

Figure 2 displays trends in jail counts for Cook County since the early 1980s. Cook County jail is the largest in the country. In 1981 there were almost 3,900 inmates in Cook County jail. By 2002, the number of men, women, and juveniles behind bars more than tripled to approximately 13,600.

At the same time, the number of admissions into Cook County jail increased. In 1981, there were over 65,000 admissions. The number of bookings declined in subsequent years but began a steep rise by the mid 1980s, reaching a zenith of over 123,000 admissions in 2001. Recent years show a marked decline in admissions, with the number decreasing to roughly 85,000 in 2009.

To estimate the fiscal savings for the county that are attributable to Chicago inmates, Table 2 displays the number and demographic characteristics of inmates in Cook County jail, disaggregated by residential location.

While the Cook County Sheriff website shows

Source: Author's calculations from the Illinois Criminal Justice Information Authority (ICJIA) data.
Note: Estimates for bookings in 1981-84 and 2000-2001 are linearly interpolated based on the rates of jail admissions within that calendar year.
that there are approximately 9,351 inmates in Cook County jail on any given day in 2014, almost 7,600 are from the City of Chicago. On average, inmates are approximately 32 years of age, 90% male, disproportionately African-American and most have less than a high school education. One in twenty-five inmates is a juvenile. Again, these demographic figures are approximately equal to estimates derived using administrative data, as reported in Table 1 of Olson (2013: 4). The reduced jail time for inmates who accessed counsel within 24 hour of arrest is adjusted for inequity due to disproportionate minority confinement and level of education.

VII. Length of Stay in Jail Decreases When Arrestees Access Their Right to Counsel within 24 Hours

Table 2: Descriptive Statistics of Inmates in Local Jails, by Residential Location

<table>
<thead>
<tr>
<th>Definition</th>
<th>Chicago</th>
<th>Cook County</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Inmates</strong></td>
<td>Number of inmates</td>
<td>7,555</td>
</tr>
<tr>
<td><strong>Age</strong></td>
<td>Mean age of Inmate (in continuous years)</td>
<td>32.7</td>
</tr>
<tr>
<td><strong>Juveniles</strong></td>
<td>Percent of inmates under the age of 18</td>
<td>3.8%</td>
</tr>
<tr>
<td><strong>Male</strong></td>
<td>Percent of male inmates</td>
<td>90.4%</td>
</tr>
<tr>
<td><strong>NH-White</strong></td>
<td>Percent of inmates who are Non-Hispanic White</td>
<td>13.4%</td>
</tr>
<tr>
<td><strong>NH-Black</strong></td>
<td>Percent of inmates who are Non-Hispanic Black</td>
<td>73.3%</td>
</tr>
<tr>
<td><strong>Hispanic</strong></td>
<td>Percent of inmates who are Hispanic</td>
<td>11.0%</td>
</tr>
<tr>
<td><strong>NH-Other</strong></td>
<td>Percent of Inmates that are Non-Hispanic Other</td>
<td>2.3%</td>
</tr>
<tr>
<td><strong>LT HS</strong></td>
<td>Percent with less than a high school education</td>
<td>54.7%</td>
</tr>
<tr>
<td><strong>HS</strong></td>
<td>Percent with a high school diploma</td>
<td>36.0%</td>
</tr>
<tr>
<td><strong>College</strong></td>
<td>Percent with some college attendance or more</td>
<td>9.3%</td>
</tr>
</tbody>
</table>

Source: Author’s calculations from the Survey of Inmates in Local Jails and the Cook County Sheriff’s website.
Table 3 reports statistics on the mean length of stay, conviction status, access to legal representation and frequency, and the controlling offenses with which inmates have been charged.

Table 3: Mean Length of Stay, Legal Characteristics, and Criminal Offenses

<table>
<thead>
<tr>
<th>Definition</th>
<th>Chicago</th>
<th>Cook County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Days in Jail</td>
<td>126.6</td>
<td>143.8</td>
</tr>
<tr>
<td>Convicted: Whether the inmate was convicted (1=Yes, 0=No)</td>
<td>18.1%</td>
<td>19.6%</td>
</tr>
<tr>
<td>Felony: Whether the controlling offense is a felony (1=Yes, 0=No)</td>
<td>78.5%</td>
<td>80.4%</td>
</tr>
<tr>
<td>Misdemeanor: Whether the controlling offense is a misdemeanor (1=Yes, 0=No)</td>
<td>17.0%</td>
<td>17.9%</td>
</tr>
<tr>
<td>Both: Whether the controlling offense is a both a misdemeanor and a felony (1=Yes, 0=No)</td>
<td>1.7%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Violent: Controlling offense for arrest is violent crime (1=Yes, 0=No)</td>
<td>31.1%</td>
<td>30.6%</td>
</tr>
<tr>
<td>Property: Controlling offense for arrest is property crime (1=Yes, 0=No)</td>
<td>21.7%</td>
<td>25.0%</td>
</tr>
<tr>
<td>Drug: Controlling offense for arrest is drug crime (1=Yes, 0=No)</td>
<td>37.9%</td>
<td>34.3%</td>
</tr>
<tr>
<td>Other: Controlling offense for arrest is public order or other crime (1=Yes, 0=No)</td>
<td>9.3%</td>
<td>10.1%</td>
</tr>
<tr>
<td>Lawyer: Did inmate have a lawyer (1=Yes, 0=No)</td>
<td>97.3%</td>
<td>97.0%</td>
</tr>
<tr>
<td>Public Defender: Inmate’s lawyer was assigned by court (1=Yes, 0=No)</td>
<td>74.4%</td>
<td>69.9%</td>
</tr>
<tr>
<td>Lawyer w/in 24 Hours: Inmate talked to lawyer about charges within 24 hours of arrest (1=Yes, 0=No)</td>
<td>26.1%</td>
<td>28.9%</td>
</tr>
<tr>
<td>Lawyer w/in 168 Hours: Inmate talked to lawyer about charges between 24 and 168 hours (a week) of arrest (1=Yes, 0=No)</td>
<td>21.1%</td>
<td>18.8%</td>
</tr>
<tr>
<td>Lawyer after 168 Hours: Inmate talked to lawyer about charges more than a week after arrest (1=Yes, 0=No)</td>
<td>52.8%</td>
<td>52.2%</td>
</tr>
<tr>
<td>No. Legal Conferences: Number of times inmate talked to lawyer about charges before plea/trial</td>
<td>3.76</td>
<td>3.87</td>
</tr>
</tbody>
</table>

Source: Author's calculations from the 2002 Survey of Inmates in Local Jails.
At the time of the survey, Chicago residents spent, on average, 127 days in Cook County jail, while residents from other areas spent over two additional weeks behind bars (i.e., 144 days). Roughly 18% of inmates have been convicted, and almost 4-in-5 inmates are awaiting trial for a felony. Consistent with previous scholarship (Pettit 2012; Western 2006), almost all are charged with non-violent offenses, with the largest share (38%) of inmates behind bars for drug offenses.

Table 3 shows that while 97% of inmates report having a lawyer at some point in the life of their case, significant variation exists in both the type and timing of legal representation. Almost 3 out of 4 Chicago residents in Cook County jails report having a court appointed lawyer. However, only 26% access their right to an attorney about their charges within 24 hours of arrest, and a little over one-fifth discuss the charges with an attorney within a week of arrest. The vast majority (53%) of inmates talk to a lawyer for the first time more than a week after arrest. On average, respondents talked with their attorneys almost four times before pleading guilty or heading to trial. The frequency of attorney-client communication about criminal charges is important for providing particular details necessary for an adequate defense and for understanding how cases advance through the legal process, particularly for plea deals and judicial proceedings.

Figure 3 shows how access to early legal representation affects the mean length of time behind bars in cases that yield a conviction relative to cases that are dismissed, acquitted or have charges dropped (i.e., not convicted). For arrestees who access legal counsel in less than 24 hours, those who are not convicted spend, on average, 10 days in jail compared to 114 days for those who are convicted. Among arrestees who obtain representation greater than 24 hours after charging, those not convicted spend about 151 days, on average, behind bars while those with convictions spend almost 132 days in jail.

To estimate the average number of days saved due to defense within 24 hours, the author estimated the difference in days behind bars among those who have and have not been convicted for arrestees who access counsel early versus those who obtained representation late, as displayed in Equation 3. The estimate is calculated as:

\[
(3) \text{Jail Days Diff} = (\text{Not ConvictedLT24} - \text{Convicted LT24}) - (\text{Not ConvictedGT24} - \text{ConvictedGT24})
\]

\[
= (10 - 114) - (151 - 132)
\]

\[
= (-104 - 19)
\]

\[
= -123 \text{ days}
\]

The mean number of days in jail for Cook County inmates is 144 (as reported in Table 3). On average, an inmate who accessed counsel in the first 24 hours after arrest spends approximately 21 days

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7 This estimate is consistent with the average length of stay reported in the 2012 Illinois Department of Correction report (IL-Doc). For instance, the IL-DoC report shows that, accounting for time in jails, there is a 0.4 year (or 146 day) increase in the 2012 length of stay for Illinois inmates (IL-DOC 2012, p. 50).
behind bars (\(= 144 - 123\)). This implies that the overall jail days saved due to early legal representation is about 123 days after accounting for differences in judicial outcomes.

Figure 3: The Mean Number of Days in Jail, by Conviction Status and Hours to Access Legal Counsel

Source: Author's calculations from the Survey of Inmates in Local Jails and the Cook County Sheriff's website. LT_24 represents arrestees who accessed counsel less than 24 hours after arrest, while GT_24 is for arrestees who spoke with a lawyer greater than 24 hours after charging.

VIII. The Total Fiscal Savings of Early Legal Representation
Cost Savings when People Access the Right To Counsel Within 24 Hours of Arrest

To quantify the total fiscal savings for the City, this report begins by estimating savings if inmates accessed their legal right to counsel within the first twenty-four hours of being detained. Table 4A presents savings from corrections utilizing both marginal and average daily costs. The probability of a conviction, if the inmate has a lawyer within twenty-four hours, declines by 26.7 percentage-points (see Table 1 for the multiple regression). The cost of a jail stay in Cook County is between the marginal cost ($42 per inmate-day) and the average costs ($143 per inmate-day, Cook County Sheriff 2014). As reported in Table 2, there are 9,351 inmates in Cook County Jail on any given day (on average), with a mean difference in length of stay of 123 days for inmates and arrestees who have

Table 4A: The Total Fiscal Savings of Early Legal Representation Using Inmate Counts, Cook County

<table>
<thead>
<tr>
<th>Change in Probability (Lawyer w/in 24 hours)</th>
<th>Marginal Costs for 1 year in Jail</th>
<th>Daily Cost (Marginal)</th>
<th>Daily Cost (Average)</th>
<th>Avg. Daily Inmate Count</th>
<th>Average Difference in the Number of Days Jailed w/Early Legal Access</th>
<th>Total (Low) (Marginal Cost)</th>
<th>Total (High) (Average Cost)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A)</td>
<td>(B)</td>
<td>(C) = (B)/365</td>
<td>(D)</td>
<td>(E)</td>
<td>(F) = (A*C)</td>
<td>(G) = (A*D)</td>
<td>(H) = (A*D)</td>
</tr>
<tr>
<td>-0.267</td>
<td>$15,256</td>
<td>$42</td>
<td>$143</td>
<td>9351</td>
<td>123</td>
<td>$12,827,695</td>
<td>$43,914,755</td>
</tr>
</tbody>
</table>

Source: Author’s calculations the Survey of Inmates in Local Jails, the Cook County Sheriff’s website, and the Illinois Sentencing Advisory Council (ISPAC) report.

Table 4B: Alternative Estimation Method of the Total Fiscal Savings of Early Legal Representation Using Discharges, Cook County

<table>
<thead>
<tr>
<th>Percent Discharged</th>
<th>Mean Days in Jail</th>
<th>Redistributed Percent Discharged</th>
<th>Reweighted Mean Days in Jail</th>
<th>Number of Detainees Discharged * Percentage</th>
<th>Total (Low) (Marginal Cost)</th>
<th>Total (High) (Average Cost)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A)</td>
<td>(B)</td>
<td>(C)</td>
<td>(D) = (B) * (C)</td>
<td>(E) = 76,080 * (A)</td>
<td>(F) = $42 * (D) * (E)</td>
<td>(H) = $143 * (D) * (E)</td>
</tr>
<tr>
<td>Posted Bond</td>
<td>32.0%</td>
<td>13.4</td>
<td>56.7%</td>
<td>7.6</td>
<td>24346</td>
<td>$7,774,816</td>
</tr>
<tr>
<td>Sentence Expired</td>
<td>8.0%</td>
<td>33.2</td>
<td>14.2%</td>
<td>4.7</td>
<td>6086</td>
<td>$1,203,812</td>
</tr>
<tr>
<td>Charges Dropped</td>
<td>15.9%</td>
<td>25.6</td>
<td>28.2%</td>
<td>7.2</td>
<td>12097</td>
<td>$3,666,696</td>
</tr>
<tr>
<td>Not Convicted</td>
<td>0.5%</td>
<td>279.8</td>
<td>0.9%</td>
<td>2.5</td>
<td>380</td>
<td>$39,630</td>
</tr>
<tr>
<td>Total</td>
<td>56.4%</td>
<td>12.4</td>
<td>100.0%</td>
<td>22.0</td>
<td>42909</td>
<td>$12,684,155</td>
</tr>
</tbody>
</table>

Source: Author’s calculations of published aggregate statistics on time served in the Cook County Jail during 2012 from Table 3 of Olson (2013: 7). Row totals for columns F and H are summed across rows to allow for differential weighting in the mean length of stay for each discharge.
Cost Savings when People Access the Right To Counsel Within 24 Hours of Arrest

and have not been convicted of a crime (as discussed in Equation 3 of Section VII). Following the methods outlined in Section V, the total savings to Cook County associated with having access to an attorney in jail within the first 24 hours is between $12.8 million (using marginal costs) and $43.9 million (using average costs). This does not factor in anyone who did not access counsel within 24 hours of arrest and were not charged with an offense.

An alternative approach to estimating the fiscal cost can be calculated using administrative data from Olson (2013). Because the administrative data do not include information on when arrestees accessed legal counsel, this alternative approach uses data on discharges that did not result in a prison or parole sentence. These data were taken from Table 3 of Olson’s 2013 report that examined admissions, discharges, and the population of Cook County Jail in 2012. The additional methodology presented in Table 4B shows discharge categories (column A) and the mean days in jail (column B) that are associated with the unnecessary and increased cost of incarceration for arrestees who posted bond, had expired sentences, charges dropped, or were not convicted. The percent discharged ranges from 0.5% among those not convicted to 32% who posted bond. Because the total percentage of these categories is based on all arrestees, including those who were sentenced to prison or probation, the relative percentages need to be redistributed to constitute (or represent) the full population of discharges. Thus, column C represents the relative fraction of a discharge type (column A) to the overall proportion of non-adjudicated discharges (i.e., the 56.4%).

For instance, while 32% posted bond, the denominator for that figure includes arrestees sentenced to prison or parole. To estimate the fraction that posted bond relative to those who were not sentenced to prison or parole requires the redistribution (or reweighting) of each category (as displayed in column C). As a result, the mean days in jail for each category is adjusted to reflect the average time spent behind bars for the population of arrestees who were not convicted or sentenced (as reported in column D). On average, those who had their charges dismissed spent approximately 22 days behind bars, which is close to the mean length of time (21 days) estimated using the Survey of Inmates and was presented in Equation 3 of Section VII. Moreover both of these estimates are consistent with the length of time “between arrest and preliminary hearing, with a large number of defendants detained in jail before being processed and released” (Welter 2012: 1).

Column E displays the number of arrestees discharged by category. Olson (2013) shows that 76,080 inmates were discharged in 2012 (p. 7). Ultimately, following Equation 2 in Section V, the total marginal savings for discharges that do not result in prison or parole sentences saves Cook County almost $12.7 million. Using average costs ($143 per inmate day) from the Cook County Sheriff’s website would result in a savings of $43.2 million to the county. However, these estimates do not differentiate between those arrestees who did and did not access early legal representation within 24 hours of arrest.

Nevertheless, the fiscal savings ranges in Tables 4A and 4B overlap considerably despite the methodology and data sources used to quantify Cook County reductions in incarceration costs. The reason these different methodologies and data show similar ranges is because the probability of
having an attorney within 24 hours and the average difference in the number of days behind bars (Table 4A) produce a mathematical equivalence to releasing detainees who are not convicted, have their charges dropped, post bond or have their sentence expire (Table 4B), which are the same measures included in the failure to convict outcome used in Table 4A. Thus, the savings can be viewed as releasing detainees sooner (as in Table 4B) or as a reduction in the likelihood of conviction if given access to legal counsel early (Table 4A), net of social background factors and alleged offenses (Table 1).

The benefit of using Table 4A is that the probability associated with early legal representation can be used to estimate other measures of cost savings. While the reduced marginal and average fiscal costs are one method for estimating the savings to Cook County, some policymakers and researchers contend that real decreases in operational costs are the result of spatial unit closures within divisions of the jail system. Put simply, some believe that fiscal savings are only realized when wings, blocks, stories, or PODS are closed, thereby reducing the electric, employment, and other operational costs associated with keeping those unit-spaces open.

Table 5 details how the 26.7 percentage point reduction in the likelihood of conviction -- if given access to an attorney within 24 hours (from Table 1) -- affects the average number of daily bed-stays (or jail-days) for each division.

Table 5: Number of Spatial Unit Closures in Cook County Jail, by Division

<table>
<thead>
<tr>
<th>Division</th>
<th>Maximum Number of Inmates w/in Division (A)</th>
<th>Spatial Units (Wings, Blocks, Stories, or Core/PODS) (B)</th>
<th>Inmates Per Unit of Space (C) = (A/B)</th>
<th>Number of Units to Close due to Reduction in Inmates (D) = (-.267*A)/(C)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division I (Blocks)</td>
<td>1250</td>
<td>8</td>
<td>156</td>
<td>-2.1</td>
</tr>
<tr>
<td>Division II + III Annex</td>
<td>870</td>
<td>4</td>
<td>218</td>
<td>-1.1</td>
</tr>
<tr>
<td>Division III^</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Division IV</td>
<td>704</td>
<td>16</td>
<td>44</td>
<td>-4.3</td>
</tr>
<tr>
<td>Division V</td>
<td>992</td>
<td>24</td>
<td>41</td>
<td>-6.4</td>
</tr>
<tr>
<td>Division VI</td>
<td>992</td>
<td>24</td>
<td>41</td>
<td>-6.4</td>
</tr>
<tr>
<td>Division IX (3-story)</td>
<td>1056</td>
<td>3</td>
<td>352</td>
<td>-0.8</td>
</tr>
<tr>
<td>Division XI (Core + 4 PODS)</td>
<td>1536</td>
<td>5</td>
<td>307</td>
<td>-1.3</td>
</tr>
</tbody>
</table>

Source: Author’s calculations of Cook County Jails taken from the Cook County Sheriff website.

Note: ^ Division III is an overflow building that house minimum and medium male detainees during population spikes at the jail.
On average, Cook County could close between 1 to 6 units of space, depending on the division and its overall population. It is important to note, however, that it is unclear whether such units of space would ever close given that the inmate population could theoretically be redistributed to ensure that all wings, blocks, stories or PODS remain open as a way to lessen congestion and to prevent future overcrowding in any particular division.

IX. Conclusions

Assuming there is only a shift in the timing and not the quality or type of representation, at a minimum, the total fiscal savings for Cook County would be between $12.7 and $43.9 million annually if arrestees had access to a defense attorney within twenty-four hours of arrest.\(^8\) When placed in a broader social context, the marginal fiscal savings to Cook County would fund the Veterans Assistance Commission General Fund and the Special Purpose Funds of the Health and Hospital System; the Assessor’s Office; the County Clerk; and the Sheriff’s Office (Cook County Fiscal Budget 2014a, p. 5). Alternatively, the marginal savings would account for 51.2% of the $24.8 million projected fiscal revenue the Sheriff’s Office is estimated to receive from fines and citations within the next year (Cook County Fiscal Budget 2014b, p. 19).

X. Potential Additional Savings

In addition to the fiscal savings, access to counsel in the first 24 hours after arrest is in the interest of justice. There is a growing public awareness and concern for the human rights and moral implications of mass incarceration, wrongful convictions, false confessions, use of force, police interrogation tactics and various methods that overreach or extend beyond conventional investigative techniques. Hagedorn et al. (2013) find that there is a legacy of corruption and a code of silence within the Chicago Police Department (CPD) that serves to undermine public trust in law enforcement. Chicago, for instance, has gained national notoriety as “The False Confession Capital” due to police interrogation methods (CBS 2012), and recent research indicates that the City of Chicago has spent more than half a billion dollars on police misconduct (BGA 2014). An analysis of wrongful convictions since 1989 cost taxpayers $214 million in 85 Illinois cases (Conroy and Warden 2011). In a supplemental report, the author finds that the City of Chicago could save between $41.6 and $51.7 million annually in settlement and legal fees associated with police misconduct and wrongful conviction cases. Indeed, a recent lawsuit alleges that violence by officers persist while behind bars (Meisner and Schmadeke 2014), and a state appeals court has ruled that the Illinois Freedom of Information Act precludes the Chicago Police Department from concealing officer misconduct complaints (CBS Local 2014). Access to early legal counsel may serve as a deterrent to future misconduct if officers know that defense attorneys can meet with their clients, gather evidence and statements, and assess claims of brutality with 24 hours of arrest.

\(^8\) This does not include savings from where persons would be released from the police stations without charges and therefore never be transferred to Cook County custody or spend a day in jail if they accessed their right to counsel in the first 24 hours after arrest.
Moreover, immediate access to counsel would increase the tax base associated with employment. Arrestees who are jailed while awaiting a bond hearing are at increased risk of losing their jobs due to worker absence (Colbert et al. 2002; Gross and Cox 2013), with the mark of a criminal record reducing the housing options, wages, employment rates, and yearly earnings of former inmates (Pager 2003; Western and Pettit 2005; Western 2006; Pettit et al. 2009; Alexander 2010; Pettit 2012). Each of these domains produce income taxes that increase fiscal budgets, and the loss of wages further reduces sales tax revenue for goods and harms communities in immeasurable and incalculable ways (Henrichson and Delaney 2012). Thus, access to early legal representation affords arrestees and the criminal justice system better outcomes, like reduced incarceration costs, increased efficiency, greater perceptions of fairness, and a higher precision rate in the charging process. Ultimately, “defendants benefit, society benefits, and even the victims of crime benefit by having their complaints resolved quickly and accurately” (Gross and Cox 2013: 24).
Bibliography


Recommendations

Policy or other recommendations will be created through participatory meetings amongst stakeholders to discuss and apply this report’s findings.

Disclaimer

This report has been prepared at the request of First Defense Legal Aid of Chicago, Illinois. All findings contained herein are the expressed opinions of the author, supporting organizations, and endorsers. DePaul University bears no responsibility for the content or accuracy of this report.

About the Author

Bryan L. Sykes is an Assistant Professor of Sociology at DePaul University, a Research Affiliate in the Center for Demography and Ecology (CDE) at the University of Wisconsin-Madison, and a Member of the Racial Democracy, Crime and Justice Network (RDCJN) at Ohio State University. He holds a Joint Ph.D., and Masters of Arts degrees, in Sociology and Demography from the University of California-Berkeley, and a Bachelor of Science in Sociology (with Honors), with a Concentration in Analysis and Research (CAR), from the University of Wisconsin-Madison. He has been a National Science Foundation Post-Doctoral Research Fellow at the University of Washington and a Visiting Scholar in the Institute for Research on Poverty (IRP) at UW-Madison. Professor Sykes has published research about, and teaches courses on, social inequality, research methods, demography, health, criminology and mass incarceration. His research has been presented at, and published by, The Lancet; The ANNALS of the American Academy of Political and Social Science; the Annual Meetings of the Population Association of America (PAA), the American Sociological Association (ASA), and the American Society of Criminology (ASC); the National Academy of Sciences; and social science departments and institutes at numerous universities. He has received awards from the Department of Demography at the University of California-Berkeley, the National Board of Medical Examiners, and the Population Association of America. Beginning July 2014, Dr. Sykes will be an Assistant Professor in the Department of Criminology, Law and Society (and, by courtesy, the Department of Sociology) at the University of California-Irvine.

About First Defense Legal Aid

First Defense alone provides free emergency legal defense to those in Chicago police custody around the clock. Since 1995, we have leveled the playing field for the indigent accused in police custody with a 24 hour-a-day, 7 day-a-week hotline deploying volunteer attorneys to the police stations.
Cost Savings when People Access the Right To Counsel Within 24 Hours of Arrest

About the Research Advisors Supporting this Report

Adler Institute on Public Safety and Social Justice
Adler Institute on Public Safety and Social Justice meets public safety challenges with social justice solutions.

Black on Both Sides
Black on Both Sides is a new generation of Black organizers amplifying the voices and experiences of foster youth to heal from, illuminate and intervene in the child welfare-to-prison pipeline.

Chicago Appleseed Fund for Justice
Chicago Appleseed promotes social justice and government effectiveness by identifying injustice in our community, investigating its causes and proposing effective solutions.

Center on Wrongful Convictions of Youth of the Bluhm Legal Clinic at the Northwestern University School of Law
Through a combination of litigation and policy strategies, the Center on Wrongful Convictions of Youth strives to improve the ways in which children are questioned by police – and remains committed to helping wrongfully convicted children across the country.

Edwin F. Mandel Legal Aid Clinic at the University of Chicago Law School
Clinic projects include those that enhance police accountability and improve police services in Chicago providing quality legal representation to juveniles accused of crime, working to improve the system of justice in the juvenile and adult criminal court, and developing policies and implementing strategies for effective crime prevention.

The Mansfield Institute for Social Justice and Transformation at Roosevelt University
The Mansfield Institute for Social Justice and Transformation’s (MISJT) broad mission is to raise awareness of social injustice while engaging in action-oriented projects that lead to progressive social change. Our specific focus is on dismantling the cradle to prison pipeline. This pipeline is a result of long standing racial, social, economic and political inequalities in America and works to funnel poor children of color toward nihilism and incarceration instead of hope and productive adulthood. Within our current neoliberal economic order in which funding is shifting away from programs that address human need toward private industry, we see a growing list of risk factors that undermine the youths’ life chances. MISJT at Roosevelt University is committed to programming that will raise awareness of the prison pipeline, the larger political, economic, and racial context and the social change needed in order to help our youth – ALL youth – get on a path toward hope, not incarceration. To this end, the Mansfield Institute is committed to supporting the action-based work of our community partners through research, activism and advocacy.
Project Nia
Project NIA works to dramatically decrease the number of children and youth in Chicago who are arrested, detained, and incarcerated.

Dr. Barbara Ransby
Dr. Ransby is Professor of African American Studies, Gender and Women's Studies and History and Director of the Social Justice Initiative at University of Illinois at Chicago.

Dr. Dick W. Simpson
Dr. Simpson is Professor of Political Science at the University of Illinois-Chicago.

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