

## Early Access to Counsel in Police Precincts Data Collection Practices & Recommendations

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### Description about project

In 2018 and 2021, California passed Senate Bills 395 and 203 which provide youth under the age of 18 access to legal counsel upon arrest and prior to police interrogation. In 2021, NORC at the University of Chicago and Fair Trials received funding to study how the Senate Bills have been implemented across California, challenges to implementation, successes, and recommendations for the field. As a part of this study, and to help establish a foundation for more rigorous research on the outcomes associated with early access to counsel for youth, we sought to understand not only how these laws have been implemented but also the data collected by publicly appointed defense attorney offices, prosecutors, and law enforcement on the provision of early access to legal counsel, as well as the data collection gaps, and training and technical assistance needs.

This brief describes the value of collecting data on reforms like SB 395 and SB 203. In doing so, it offers practical data considerations for publicly appointed defense attorney offices, such as deciding what data to collect and how to collect it. It is our hope that this document can provide a foundation for data collection for states and jurisdictions who have or will enact early access to counsel legislation to support both internal and external knowledge building around the impacts of the reforms.

## Introduction

Over the past decade, states and jurisdictions have begun to pass legislation that provides access to legal counsel for justice-involved individuals at earlier points in the criminal justice process.<sup>1</sup> Across the U.S., counsel at first appearance (CAFA) in criminal court is being provided to adults on a more routine basis based on the rationale that having an attorney present at the first court appearance can impact the amount of bail, time spent in pretrial detention, and the severity of charges and sentences, among other things.<sup>2</sup> For youth, access to legal counsel has begun to be provided at an even earlier point in time in some states and jurisdictions—at the time when a youth comes in contact with law enforcement and faces interrogation. Providing access to legal counsel at this crucial moment in time can impact whether youth waive their right to silence, are arrested and detained, and the severity of charges and dispositions.<sup>3</sup>

Notably, in 2018 and 2021, California passed Senate Bills 395 and 203 (SB 395 and SB 203), respectively, which provide youth under the age of 18 access to legal counsel upon arrest and prior to police interrogation.<sup>4</sup> This brief describes the value of collecting data on reforms like SB 395 and SB 203. In doing so it offers practical data considerations for publicly appointed defense attorney offices, such as deciding what data to collect and how to collect it. It also provides an outline of key variables for data collection for publicly appointed defense attorney offices who provide early access to counsel services.

## ADVANCING THE CASE FOR EARLY ACCESS TO COUNSEL IN POLICE PRECINCTS

With funding from Arnold Ventures, NORC at the University of Chicago and Fair Trials partnered on a three-year project to study the implementation of California Senate Bills 395 and 203 which went into effect in 2018 and 2021, respectively. Semi-structured interviews were conducted with publicly appointed defense attorney offices across thirteen counties in California to answer four primary research questions:

1. How has SB 395 and SB 203 been implemented across California?
  - a. How is access to legal counsel prior to arrest provided to youth in California?
  - b. How does the provision of legal counsel prior to arrest for youth vary across counties?
2. What barriers or challenges have impeded the implementation of SB 395 and SB 203?
3. What are the perceived benefits associated with the implementation of SB 395 and SB 203?
4. What best practices are emerging from the implementation of SB 395 and SB 203?

In addition to qualitative data collection, the project convened a national learning community to facilitate the application and study of arrest and stationhouse counsel in sites beyond California. The learning community included public defenders, academics, and community organizations to facilitate the sharing of information, data, policies, and best practices related to the provision of early access to legal counsel.

## The Value of Data Collection

Data collection is the systematic gathering of information about clients, services provided, and outcomes. Collecting public defense-related data provides a platform for rigorous data analysis, which can offer researchers, practitioners, and policymakers evidence on how attorney services impact client and court outcomes, the costs associated with services provided, performance, and the needs of defense systems, among other things.

### CLIENT OUTCOMES

Outcome studies are an important part of justice research inasmuch as they provide data on how policies, involvement in the justice system, and services and programs offered along the way, can impact people's pretrial and sentencing outcomes, rehabilitation and safety outcomes, and personal outcomes, such as family, school, education, and employment outcomes. In the case of early access to counsel programs, data collection can support studies focused on how the provision of legal counsel prior to interrogation affects the short- and long-term legal outcomes of youth, including whether the youth chose to speak with law enforcement, was arrested, and case outcomes.

Notably, outcome studies enable stakeholders, such as attorneys, the opportunity to understand whether their programs or interventions are achieving their intended goals by comparing individuals who received specific services with those who did not receive services.

Randomized control studies, which are often considered the gold standard for assessing programs and services, measure impacts of a program by randomly assigning people to receive the program or service (i.e., a treatment group) or to not receive the program or service (i.e., a control group).<sup>5</sup> In many cases, such a study is not feasible to implement, or it may be unethical to not provide services to everyone eligible for a service. In these conditions, quasi-experimental studies can be conducted to compare outcomes among similar groups of people who did not receive the program or services. Comparison groups may include people who simply opted out of the services being studied or people in other cities, counties, or states in which similar programs do not exist. Quasi-experimental comparison studies can also compare the outcomes of people who participated in a program or received services with those people before the program existed or services were implemented. For example, a quasi-experimental outcome study of the implementation of SB 395 and SB 203 could study the outcomes of youth who received early access to counsel to the outcomes of youth prior to the passage of the legislation who did not receive early access to counsel prior to police interrogation.

### COSTS

In a typical business framework, cost studies are an important process for determining the potential earnings from a project. Data on the projected gains of a project are compared to project costs to estimate the financial benefits for an organization. In criminal justice, cost studies are often paired with outcome studies to understand whether a service or program leads to some type of cost savings for

**Figure 1. Data Collection Methods****Surveys**

Ideal for documenting perceptions and attitudes or collecting data across a predetermined sample.

**Interviews**

Ideal for gathering richer information including stories, attitudes, and perceptions.

**Focus Groups**

Ideal for gathering information on experiences, and attitudes across groups of people.

**Forms**

Ideal for collecting standardized information on services, incidents, or events.

**Textual or Content Analysis**

Ideal for documenting practices, policies, or views on a specific topic across written texts.

**Observations**

Ideal for gathering information on practices and behavior.

stakeholders. For example, a common cost-benefit analysis (CBA) is whether an intervention impacts the number of days a person spends in jail. In this analysis, if an intervention, such as early access to counsel, is found to decrease the number of days that a person spends in jail, the costs associated with the days spent in jail are compared to the costs of the service to determine the financial benefits to the county, state, or other investor.

**PROGRAM PERFORMANCE**

Collecting data on interactions with clients and the services allows researchers and practitioners to assess whether services are being offered consistently and with fidelity to a model or standard of practice. For publicly appointed defense attorney offices, collecting data on attorney-client interactions, case events, the use of experts, investigators and social workers or mitigation specialists, in addition to other key standards and principles of defense can help leaders evaluate office performance and help improve engagement with clients and legal representation. In the case of reforms such as SB 395 and SB 203, data collection can help determine whether the new procedures of providing legal counsel to youth prior to arrest are being implemented consistently and how implementation may vary across counties or jurisdiction (for example, if counsel is provided in-person or via phone).

**NEEDS AND CHALLENGES**

In the same way that data collection and analysis can help publicly appointed defense offices understand how their offices are performing, data can also be critical to understanding where their offices, staff, and clients are struggling or need more support. Data on workloads, including the number of cases per attorney, the number of hours spent per case, case activities and supports provided, in addition to client needs, can help leaders apply for local and federal grants and advocate for additional funding to local and state leaders, as well as for policy reform.

## Data Collection Considerations

The type of data that is collected and the methods of data collection should always be guided by the purpose of the data collection. For example, if the goal of collecting data is to gain an understanding of how satisfied clients are with the legal representation of their attorneys, a survey could be shared directly with clients to collect data on their perspectives. Also, interviews could be conducted with clients to collect rich qualitative information about their interactions and experiences. Figure 1 outlines the types of data that can be collected in response to different types of questions that programs may have over time. Because the

goal of this project was to increase understanding of the implementation of early access to counsel programs, the following pages outline considerations for data collection for publicly appointed defense attorney offices who are providing access to counsel prior to interrogation services across the U.S.

### WHO IS GOING TO COLLECT THE DATA

Reforms such as SB 395 and SB 203 require that law enforcement contact an attorney prior to interrogating a youth. In most counties that have implemented reforms such as SB 395 and SB 203, publicly appointed defender offices have developed procedures to ensure that an attorney is available to receive and respond to calls from law enforcement. To ensure that essential information is gathered during and about the initial call, the legal consult that is provided, and the outcome of the call, the attorney who receives the call should be prepared to collect data, or information about the call. During the research we conducted in California, for example, we found that many counties had developed forms that attorneys kept with them to use as a guide for conducting the call and to collect data on the call and the legal consultation that was provided.

### HOW OFTEN SHOULD DATA BE COLLECTED

Data is always going to be most useful when it is collected on a consistent basis. In many cases, if an office is not going to commit to consistently collecting data, there is not a good reason to collect it at all. A rigorous analysis and understanding of program data requires that most data is present. When a good amount of data is missing it may not be considered reliable. Thus, as much as possible, attorneys should be collecting information for each call they receive and each consult they provide related to early access to counsel.

### IN WHAT FORMAT SHOULD THE DATA BE COLLECTED

In the best-case scenario, data collected on the provision of early access to legal counsel should be entered into a case management system or other electronic system to ensure that records are maintained in a consistent and secure location where they can be accessed and easily extracted as needed. The extraction component is necessary for reliable data analysis. As noted previously, many defender offices rely on forms to collect information on the calls that attorneys receive, and the actions taken in response to the calls. As possible, the information captured on the forms should be entered into an electronic case management system. For offices that do not have a case management system, an excel form can also work well.

### WHAT DATA SHOULD BE COLLECTED

The type and amount of data that needs to be collected to understand key components and outcomes of a program does not need to be burdensome. Rather, the data that is collected should be meaningful. The way that data is collected and measured should also make sense to the individuals who are the data collectors – in this case, the attorneys. Therefore, when new forms or ways of collecting information about early access to counsel programs are developed, attorneys should be informed and trained on the procedures.

Table 1 in the Appendix highlights four categories of data collection that defender programs should consider collecting when implementing an early access to counsel program. These categories include:

- **Call information** Includes basic information about the call that attorneys received from law enforcement when they first engage with a youth. Information includes the date and time of the call, information about the law enforcement agent who made the call and the attorney who responded, and the outcome of the call.
- **Legal consultation information** Includes information about method and type of legal consultation provided to the youth, including where the consultation was provided and the outcome of the consultation.
- **Youth information** Includes basic background information about each youth that legal consultation was provided to, including parent/guardian information.
- **Incident information** Includes basic information about the nature of the incident, as relevant.
- **Outcome information** Includes information about what happens after the initial legal consultation is provided. This information is primarily relevant to cases in which a formal charge is filed. This data may also be collected from courts.

## Conclusion

Researchers, practitioners, and policymakers are increasingly highlighting the need for rigorous research to better understand the outcomes and cost benefits associated with criminal justice practices. In response, the past few decades have seen a marked increase in calls for consistent and meaningful data collection across youth and criminal justice agencies and stakeholders.

This brief focuses specific attention to the need for publicly appointed defense attorney offices to collect data to support analysis of early access to counsel services provided to youth. As states like California implement new reforms to provide legal support to youth prior to police interrogation, it is important to understand the implications of these practices, including the benefits, costs, and recommendations for the field to advance and advocate for additional reforms in states throughout the U.S. Data is also needed to understand how early access to counsel programs impact defender offices, practices, and workloads. The data elements highlighted in this brief shed light on how defender offices can begin to develop a data collection infrastructure to build understanding of new interventions like the provision of legal counsel at arrest.

## References

1. The U.S. Constitution's 6th Amendment ensures the right counsel in criminal prosecutions; however, it does not state when an attorney should be provided. Thus, at what point in the criminal process the right to an attorney attaches varies both across and within states.
2. Worden, A. P., Shteynberg, R. V., Morgan, K. A., & Davies, A. L. (2020). The impact of counsel at first appearance on pretrial release in felony arraignments: The case of rural jurisdictions. *Criminal Justice Policy Review*, 31(6), 833-856; Worden, A. P., Morgan, K. A., Shteynberg, R. V., & Davies, A. L. (2018). What difference does a lawyer make? Impacts of early counsel on misdemeanor bail decisions and outcomes in rural and small-town courts. *Criminal Justice Policy Review*, 29(6-7), 710-735.
3. *Closing the Gap: Advances in Youth Access to Counsel at Arrest*. (2022) Fair Trials: <https://www.fairtrials.org/articles/publications/closing-the-gap/>
4. Cook, T. D., Campbell, D. T., & Shadish, W. (2002). *Experimental and quasi-experimental designs for generalized causal inference* (Vol. 1195). Boston, MA: Houghton Mifflin.

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### ABOUT NORC

NORC at the University of Chicago conducts research and analysis that decision-makers trust. As a nonpartisan research organization and a pioneer in measuring and understanding the world, we have studied almost every aspect of the human experience and every major news event for more than eight decades. Today, we partner with government, corporate, and nonprofit clients around the world to provide the objectivity and expertise necessary to inform the critical decisions facing society.

## Appendix

Table 1. Early Access to Counsel Data Collection Recommendations	
Category	Variables
<b>Call information</b>	<ul style="list-style-type: none"> <li>a. Date and time of the call</li> <li>b. Calling agency and officer</li> <li>c. Location call came from</li> <li>d. Length of call</li> <li>e. Attorney name</li> <li>f. Number of youth involved</li> <li>g. Other attorneys contacted</li> <li>h. Outcome of call</li> </ul>
<b>Legal consultation</b> (per youth involved in incident/provided legal consultation)	<ul style="list-style-type: none"> <li>a. Method (in-person/phone)</li> <li>b. Location of consultation</li> <li>c. Length of consultation</li> <li>d. Outcome of consult (invoked/waived)</li> </ul>
<b>Youth information</b> (per youth involved in incident/provided legal consultation)	<ul style="list-style-type: none"> <li>a. Name</li> <li>b. Age</li> <li>c. Race/ethnicity</li> <li>d. Gender</li> <li>e. Prior justice involvement</li> <li>f. Address</li> <li>g. Parent/guardian information               <ul style="list-style-type: none"> <li>1. Parent/guardian contacted (y/n)</li> </ul> </li> <li>h. School</li> <li>i. Special education</li> <li>j. Intoxication (drug or alcohol)</li> <li>k. Immigration status</li> <li>l. Language</li> </ul>
<b>Incident information</b> (per youth involved in the incident/provided legal consultation)	<ul style="list-style-type: none"> <li>a. Time and location of the incident</li> <li>b. Location of the incident</li> <li>c. People involved in the incident</li> <li>d. Description of the incident</li> <li>e. Potential charges</li> </ul>
<b>Outcomes</b>	<ul style="list-style-type: none"> <li>a. No further action</li> <li>b. Youth arrested</li> <li>c. Charges filed</li> <li>d. Youth held in detention               <ul style="list-style-type: none"> <li>1. Bail type/amount</li> </ul> </li> <li>e. Case diverted</li> <li>f. Case waived/transferred</li> <li>g. Case disposition               <ul style="list-style-type: none"> <li>1. Dismissed</li> <li>2. Plead/Trial                   <ul style="list-style-type: none"> <li>i. Sentencing charges</li> <li>ii. Sentencing terms</li> </ul> </li> </ul> </li> <li>h. Attorney name</li> </ul>