EARLY INTERVENTION BY COUNSEL: A MULTI-SITE EVALUATION OF THE PRESENCE OF COUNSEL AT DEFENDANTS' FIRST APPEARANCES IN COURT
FINAL SUMMARY REPORT

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Abstract

The U.S. Constitution's 6th Amendment ensures the right to counsel in criminal prosecutions, but state laws and local court customs vary on exactly when that right attaches. Over the past decade, some states have moved toward ensuring that defendants are provided counsel at first appearance in court (CAFA), based on the reasoning that having a lawyer present at the first court hearing, often arraignment, will result in judges releasing more low-risk defendants on recognizance, or on lower bails, resulting in lower rates and durations of pretrial detention. Early access to legal counsel might also result in better prospects for diversion from prosecution, charge reductions before conviction, and less punitive sentences.

This report summarizes the objectives, methodologies, and findings of an evaluation of six upstate New York counties' attempts to ensure that defendants were provided legal counsel at arraignment. These initiatives, funded by state grants to indigent defense providers, addressed the need for counsel outside urban areas, in jurisidictions that presented programs with practical, administrative, political, and geographic challenges to implementing CAFA. The evaluation addressed three research questions.

First, how effectively did administrators implement CAFA programs? Despite resistance in some counties from judges, prosecutors, and law enforcement, all six programs were operational by the time the research project was underway, and all were serving the targeted clientele. We attributed this success to indigent defense administrators' commitment to the new policy and, in most sites, to their capacity to leverage other practitioners' cooperation and collaboration to minimize extra burdens on their agencies.

Second, did the adoption of CAFA produce the predicted impacts on judges' pretrial decisions and case outcomes? We compared the outcomes of cases in samples of approximately 200 cases (per site) arraigned in the year preceding adoption of CAFA, and outcomes for similar samples of cases arraigned at least one year after adoption. We analyzed the data by county, and by charge type (misdemeanor and felony). There was considerable variability in findings across the sites. In misdemeanor cases, we observed that post-CAFA cases, compared with pre-CAFA cases, were rather consistently more likely to result in *release on recognizance* rather than have bail set; and consequently less likely to result in *jail booking* on charges, and likely to result in *lower average bail amounts* when bail was set. A similar pattern resulted for *duration of pretrial detention*. In most sites, CAFA was also associated with a higher probability of *charge reduction* (from a misdemeanor to a non-criminal violation offense). We observed similar patterns across felony caseloads. We also note that of the 43 associations tested (based on available data), 84% were in the hypothesized direction (and 50% of those reached the .10 level of statistical significance); of the 5 that did not line up with predictions, none reached conventional levels of statistical significance. The association between CAFA and disposition outcomes (guilty pleas, diversion, and dismissals) and sentence severity were, taken altogether, weaker and less consistent. We cautiously conclude that the adoption of CAFA programs moved courts in the predicted direction, although with considerable variability across sites.

Third, what if any effects did CAFA have on features of the criminal process itself: the duration of cases to disposition, and aggregate impact on pretrial detention costs costs of providing lawyers to defendants? Not surprisingly, in misdemeanors as well as felonies, CAFA cases resulted in most sites in more court appearances. However, there is no consistent significant pattern in the duration of cases (time from arraignment to disposition). In an exploratory foray into the fiscal implications of providing CAFA, we estimated the possible cost savings (in terms of marginal costs) to local jails in each county, based on the declines in pretrial detention. In three of the four counties for which we had adequate data to examine this question, we projected a decline in jail costs; in the fourth county, there was no difference between the two samples' projected pretrial detention costs. Finally, in the two counties that relied on assigned counsel programs, we compared average costs per case (as reflected in vouchers for defense services) before and after CAFA was adopted. In both counties average vouchers for misdemeanors were slightly lower post-CAFA.

The findings of this study are subject to the usual cautions and caveats, but the analyses offer reasonably consistent support for the expectation that providing counsel at first appearance changes, in subtle and variant ways, the early decisions and outcomes of criminal adjudication. But how, and why? Interviews and courtroom observations conducted during the project offered some insights about these dynamics. The presence of attorneys was seldom associated with challenges to accusatory instruments or arguments for immediate dismissal. But when attorneys stood by defendants, they channeled their statements, coaxed information about family members and community ties, deflected premature denials or apologies about the arrest incident, and often established a quick connection to screening for indigent defense eligibility, pretrial services, and the beginnings of a paper trail for the attorney representing the case.

The study illustrates the benefits of combining qualitative, field-based research with quantitative analysis of original data. Project sites were selected to represent variation in economic, demographic, and geographic characteristics, but future research should replicate and build on these findings to further investigate the impacts of court structure, fiscal capacity, and administrative leadership on the feasibility and effectiveness of CAFA initiatives. Studies would also do well to systematically investigate this project's observations about the interpersonal and interactive mechanisms that may lead to less restrictive pretrial conditions, and fewer collateral consequences, for defendants who pose little threat to public safety.

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We are indebted to the people who worked in or with the six counties' indigent defense programs, including the program directors, attorneys and staff who taught us how to extract data from their files, and who shared their knowledge of local courts and politics. Because at the time of this writing the names of the counties are confidential we cannot identify these good people here. But without exception they welcomed our research team into their offices, introduced us to judges and clerks, invited us to meetings, filled us in on local politics and history, and made sure we found the best lunch and dinner spots in their communities. We made multiple visits to each site, and spent weeks in some of their offices.

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Introduction: The Sixth Amendment and Counsel at First Appearance

The right to counsel in criminal court is a signature element in the U.S. legal system's definition of justice, but the question of *when* this right becomes effective in court proceedings remains ambiguous. A defendant's right to appointment of counsel at a first appearance (CAFA) – at arraignment, or when charges are formally made – was established in *Rothgery v. Gillespie County, TX* (2008), wherein Justice Souter wrote that by the time an accusation against a defendant is filed with a judicial officer, "it is too late to wonder whether he is 'accused' within the meaning of the Sixth Amendment, and it makes no practical sense to deny it." But *Rothgery's* guarantee was limited in that it assured defendants only that counsel would be assigned, and not that attorneys would be physically present (Sixth Amendment Center and Pretrial Justice Institute, 2014). As a result, it remains the case that state laws addressing counsel at first appearance vary widely. In 2008, just ten states and the District of Columbia guaranteed counsel at the first appearance (Colbert, 2011; and see De Silva-de Alwis, 2002), ten made no provision for counsel, and thirty states provided it only in specific localities (see Wallace and Carroll, 2003).

Many legal experts and practitioners believe that CAFA is vital to effective representation and efficient adjudication (Levin, 2008; Smith and Madden, 2011). Key decisions are made or set in motion at the first court appearance – bail, conditions of release, on-record statements, and sometimes pleas, convictions, and sentencing. Many defendants do not understand legal proceedings, nor the consequences of their statements in court. As a result, the absence of counsel may be associated with unnecessarily restrictive bail conditions and pretrial detention, with downstream consequences for not only defendants and their families, but also for fiscally strained local criminal justice systems (Berman & Adler, 2018; Heaton, Mayson, & Stevenson, 2017; Ho, 2013).

The few published evaluations of CAFA programs suggest that early access to counsel is associated with higher rates of pretrial release, less restrictive release conditions, and reduced duration of pretrial detention (Colbert, Paternoster, & Bushway, 2002; Fazio, Wexler, Foster, Lowy, Sheppard, & Musso, 1985). Those studies reported on variously designed experiments that provided representation at bail hearings, primarily in felony cases, and in centralized urban courts. They found that counsel reached defendants earlier in urban areas where courts and holding facilities were centralized and proximate; when defenders had better communication systems with courts, police and local jails; and in public defender offices with independent oversight boards.

These evaluations, while promising, offer limited guidance to practitioners in decentralized jurisdictions, and in courts that are funded by local rather than state taxes. It is not surprising that courts in rural and small-town communities are much less likely to regularly provide CAFA than are those in high-volume urban courts, and that defendants, particularly those charged with misdemeanors, are seldom provided counsel at initial appearances (Singer, Lynch & Smith, 1976; Smith and Madden, 2011; Smith, Madden, Price & Tvedt, 2016). Furthermore, because most – at least 80% – of arrestees are indigent, the challenges of providing CAFA have fallen largely on indigent defense providers, many already underfunded and overburdened with caseloads (Bureau of Justice Statistics (BJS), 2000; Jaffe, 2018).

This study reports on six upstate New York public defense programs' experiences in implementing CAFA, and assesses the effects of these programs on defendants' pretrial detention, case processing, and dispositions, as well as the impacts of these programs adoption on resource needs in local criminal justice systems. The project had three analytic objectives:

1) to conduct a process evaluation to investigate the six counties' program designs; the social, economic, political, and geographic settings in which they launched their programs; and the challenges and successes they encountered in implementing these programs;
2) to conduct an impact evaluation, assessing changes, before and after implementation of CAFA programs in each site, in key outcome variables such as bail and pretrial release decisions, pretrial detention, charge reductions, dispositions, and sentences;
3) to investigate, in an exploratory fashion, associations between the adoption of CAFA and demands on local criminal justice systems, by examining numbers of court appearances and times to dispositions; shifts in costs of pretrial detention; and any changes in indigent defense costs (in two sites where cost data were available).

Below we summarize the groundwork that preceded the study, the research strategies that informed choices and hypotheses and data, and the empirical findings from each of the three project objectives, after which we turn to questions about the strengths and limitations of the study design, the generalizability of the findings, and the implications of the findings for policy and practice.

Overview: Research Methodology and Data

In 2014, the New York State Office of Indigent Legal Services (ILS) awarded contracts to 25 county indigent defense programs, to fund locally developed initiatives aimed at ensuring counsel at first appearance in some or all arraignments. Faculty and staff at the University at Albany and ILS capitalized on this grant program to propose a collaborative evaluation of a sample of six strategically selected programs. In this section we briefly summarize our research methodology and design, the research setting, site selections, data and information sources, and our analytic plans.

Research Design

We adopted a *cross-case methodology* (Lee & Chavis, 2011): a quasi-experimental design based on careful investigation of community change efforts, targeting a common objective, across multiple settings. This allowed us to compare the patterns of case processing before, and one year after, the CAFA programs were adopted. This methodology explicitly acknowledges the importance of mapping the complexity, variability, and unpredictability of communities' social problems and resources in relationship to the reform or effort being studied. It also recognizes that truly experimental designs present practical and ethical challenges, and that practitioners will adapt seemingly similar innovations in disparate and sometimes unpredictable ways (Brown, 2010; Kubisch et al., 2010; Yin, 2003). Instead of defining these realities as obstacles to good science, this approach values the knowledge that can come from these adaptations, and their implications for program effectiveness.

We recognize that there are several validity threats that might confront this design: specifically, the potential for confounding variables, the need to ensure appropriately matched samples, possible self-selection bias in site identification, and the potential for history or period effects. Below we review these challenges and the safeguards we adopted.

Potential Confounding Variables

As noted above, research on court decision-making has reported that extralegal variables such as race, sex, and socioeconomic status are associated with criminal court case outcomes (and prior record and seriousness of the offense are also correlated with those outcomes) (Kautt & Spohn, 2007). All sites produced reliable data on case characteristics, though not all had similarly consistent data on defendant characteristics. We report our main findings, based on comparisons of case decisions and outcomes across the samples and across sites.

Identifying Non-equivalent Comparison Groups

The primary challenge in evaluation research of this type is to identify an appropriate nonequivalent comparison group. This required matching a sample of 'treated' cases (those to which counsel is assigned) with a sample of similar cases (unrepresented at first appearance) to maximize comparability. We matched on the two most obvious criteria: jurisdiction, and eligibility for representation at first appearance under the new program. For example, if a program provided counsel only to felony cases (but not misdemeanor), we applied that restriction to our selection of both pre- and post-CAFA cases. Furthermore, the comparison and treatment samples were drawn from the same court jurisdictions.

Sites and Selection Effect

We recognize that sites that agree to participate in a study such as ours may be somewhat different from those that do not. Those who opted into the study may have been more committed to implementation than those who did not. Hence our findings may reflect court cultures that are more receptive to the CAFA initiative. We acknowledge here, and in more detail below, that the counties willing to participate may be in a position to have more buy-in from stakeholders at the local county level regarding the importance of understanding the effects of CAFA, and that our promise of confidentiality and anonymity through the use of pseudonyms adds an additional layer of security to these sites.

The History Threat to Internal Validity

Sampling before and after the implementation of a policy is common in evaluation research, but this strategy faces the risk of a *period* or *history effect* to internal validity – an occurrence or event that systematically altered the mix of cases characteristics or case disposition patterns at about the same time programs went into operation (or after). For example, had the adoption of CAFA coincided with the election of a new District Attorney who held more liberal and less restrictive perspectives on adjudication and sentencing than had her predecessor, that change, and not CAFA, might explain observed decreases in pretrial detention. (Conversely, the election of a more conservative District Attorney might cancel out some of the benefits of CAFA programs.) To detect such events, as we discuss below, we created "histories of the present" for each county, documenting both historical, recent, and contemporaneous events in each county.

The Research Setting: Upstate New York

Despite the state's popular image as urban and politically blue, most of New York is rural, many of its communities are economically depressed, and it relies, as do states across the nation, on local revenues and administration to provide public services. In New York,[1] as in many states, public defense historically has been largely funded by county revenues, and counties have considerable latitude in determining and administering the type of program or programs that they support (County Law Article 18-B, Section 722, 2018). Furthermore, like many other states, New York's judicial apparatus includes not only trial courts with specific geographic and legal jurisdictions (City Courts, County Courts and, in Nassau and Suffolk Counties on Long Island, District Courts), but also local magistrates' courts, called Town and Village Justice Courts, presided over by justices who adjudicate misdemeanors and initial appearances in felony matters. These 1200 courts, located in unincorporated rural and suburban areas outside of upstate New York's 61 cities, present special challenges for providing counsel at first appearance: many are in session only once or twice per week, often in evenings, and many are far from holding facilities and defenders' offices (Glaberson, 2006). Their judges are elected, and the eligibility requirements for the position include only local residency and adulthood. Only a minority of these judges have been formally trained in law, earned a law degree, or are members of the bar. Once elected, judges must attend a three day long training workshop that reviews the general and specific duties of their position before they can officially take office.

In 2011, the New York State Office of Indigent Legal Services (ILS) was created "to monitor, study, and make efforts to improve the quality" of public defense (New York Executive Law Article 30, Section 832(1), 2011). Two years later, the office invited proposals from upstate counties to fund programs for the provision of CAFA; all 25 counties that applied were funded and, from those, six were selected for this study.[2]

Site Selection

The six programs were selected to represent two dimensions of variation. (We shall refer to the counties by pseudonyms, honoring an agreement with participating officials to de-identify their counties.) First, we included counties that represented the two dominant forms of indigent defense services in New York State: *institutionalized providers* such as public defender offices with salaried staffs of attorneys, and *assigned counsel systems* whereby attorneys with private practices are appointed to cases and paid hourly rates.[3] We selected four counties – Hudson, Williams, Lake, and Moose – that relied primarily on public defender offices (noting that all of

[1] Throughout this report we shall refer to "New York" as the 57 counties outside the five boroughs that comprise New York City. The City has its own complex court system and a complex patchwork of indigent defense organizations; our interest here is on CAFA policy reform in smaller cities, and in suburban and rural courts.
[2] In New York, the provision of counsel at arraignment is a statutory requirement (NYCPL §170.10 and 180.10), reinforced in 2010 by New York's highest court, ruling that the failure to provide counsel at arraignment was a 'basic denial of the right to counsel under *Gideon'* (*Hurrell-Harring v. State of New York*, 15 NY3d 8, 2010).
[3] As is the case in many states, upstate New York counties are obliged to provide the majority of funding for indigent defense programs; and furthermore, expenditures vary significantly across counties, at both aggregate and case levels. In New York, the most generous county spends six times as much, per indigent defense case, as the most penurious (Davies and Worden, 2017). In New York, the assigned counsel payrate is standardized and determined by the level of the original charge(s); attorneys are paid $60 per hour for misdemeanor cases and $75 per hour for cases that involve one or more felonies.

those counties also relied on conflict defender offices, and/or assigned counsel panels to ensure representation in cases that presented conflicts of interest). We also included two counties with primary assigned counsel programs. The first, Bleek County, relied exclusively on a panel of private practice attorneys who were vetted by the local bar association and the program administrator. The second, much more populated, county, Williams, funded a public defender office to represent cases that were opened in the large central city court, and an assigned counsel program for the courts in the many outlying suburban towns and villages (and for this study we focused on the latter program exclusively).

Second, we selected sites to represent the diversity of counties' demography. Polar and Williams Counties were homes to cities with populations over 150,000, surrounded by largely suburban and exurban towns and villages (and in Williams, two small cities with populations under 20,000). Bleek and Lake Counties represented the rural center of the state: largely agricultural and dotted with small, long-established communities. Hudson, located south of the Capital District, is home to a economically declining central city, along with historic and tourist sites that attract affluent New York City residents along the Amtrak line. Finally, Moose County is partly agricultural but also remotely rural; overlapping with the vast Adirondack State Park, much of it consists of sparsely populated mountains, forests, and lakes.

Beyond these selection criteria, the counties' programs differed in scope and strategy. In four counties, CAFA programs were extensions of existing practices. In Hudson, Williams, Polar, and Lake Counties, defender programs had already experimented with providing CAFA in the busiest courts, which were located in the largest city in each county. Those programs aimed to expand the practice to outlying courts, by hiring additional lawyers to be deployed to arraignment sessions in the town and village courts. The other two county programs were new initiatives. In Bleek County, the indigent defense program administrator initiated CAFA by securing the City Court judge's assent to holding arraignments with counsel present, as needed, during the court's regular weekday hours. Counsel was provided by a pool of about eight panel attorneys, who were paid a day-rate stipend to be one of the rotating on-call attorneys attending those sessions and representing any and all defendants who were brought in, or who appeared, for arraignment. Finally, the most remote and sparsely populated site, Moose County, initiated its CAFA program by planning to deploy public defenders to any and all town and village court sessions where defendants were to be arraigned on felony charges.

Hence these counties' programs identified specific targets, for jurisdictions and case types, in provision of CAFA, specific budgets for remedies (e.g., paying for more attorney hours, hiring more defenders or staff, or covering neglected and hard-to-serve geographic areas), and they specified the mechanisms by which they hope to implement their plans. The ILS grant program allowed for three years of support. All six programs were initiated between 2012 and 2014.

Table 1. Site Descriptions					
	Primary County program type	Courts covered by ILS CAFA program*	CAFA targeted caseload	CAFA targeted jurisdictions	Pre-CAFA and post-CAFA sample sizes
Bleek	assigned counsel (100%)	1 city Pop: 30,000	misdemeanor & felony	City Court cases only	pre: 182 (5 months) post: 148 (3 months)
Hudson	public defender (89%), conflict defender	15 towns and villages Pop: 200,000	misdemeanor & felony	Town and Village Court cases only	pre: 695 (12 months) post: 283 (6 months)
Williams	assigned counsel (70%), public defender	2 cities, 30 towns and villages Pop: 700,000	misdemeanor & felony	2 Town Courts, 1 City Court	pre: 217 (two months) post: 332 (three months)
Polar	public defender & conflict defender & assigned counsel	15 towns and villages Pop: 500,000	misdemeanor & felony	Town and Village Court cases	pre: 307 (two months) post: 559 (two months)
Lake	public defender (50%), conflict defender,& assigned counsel	20 towns and villages Pop: 75,000	misdemeanor & felony	Town and Village Court cases	pre: 250 (varied) post: 226 (varied)
Moose	public defender (73%), conflict defender, assigned counsel	1 city, 35 towns and villages Pop: 100,000	felony	City Court, Town and Village Court cases	pre: 68 (5 months) post: 138 (8 months)

* estimated population in jurisdictions included in county CAFA program, not total county population.

Data and Information Sources

Process Evaluation:

The evaluation required information from each site on the processes of initiating, adopting, implementing, and routinizing the new programs. This was a continuing process that began with a historical look at each county and continued with real-time collection of information about CAFA specifically, and more generally about the operations of these local courts and the courtroom workgroups within. These data sources included local news outlets, transcripts of interviews by ILS staff with local stakeholders prior to the CAFA programs' adoption, and the proposals submitted by the indigent defense programs. These resources were supplemented by informal interviews with practitioners and feedback from more formal presentations to practitioner groups, as well as focus groups and court observations.

Outcome Evaluation:

The outcome evaluation required data on defendant characteristics, case characteristics, court processing events, and court processing outcomes.[4] We faced (predictably) challenges in compiling accurate and complete data that were comparable across the sites. The NY Office of

[4] Prior to beginning data collection, we secured approval from the University's Institutional Research Board, and consulted with our consultative group on any potential barriers to coding data directly from defense lawyers' files. We also secured a Privacy Certificate to ensure continued data confidentiality.

Court Administration compiles data from City and County Courts' criminal cases, as reported by those courts; but they do not receive records from most town and village courts, which are not courts of record. These local courts' jurisdictions were the primary target of CAFA programs in five of our six counties. In Bleek county the primary focus of the evaluation was the single City Court, since that was the site for the CAFA initiative.

Therefore, we devised data collection strategies, tailored to each site, that relied on access to indigent defense programs' case files. Hudson, Polar, Lake and Moose Counties relied, to various degrees, on a widely used software program, the Public Defender Case Management System (PDCMS). Produced and maintained by the nonprofit New York State Defenders Association (NYSDA), the software contains a large set of fixed-choice and open fields to record events and facts about each case. We observed that in some cases the data were entered by attorneys themselves, but more commonly by paralegals and office staff in real time, as the case developed. Like many such systems, practitioners adapted it to suit the needs and customs of their offices and local courts. In Moose, the most rural county, we supplemented the data we found in the PDCMS with data coded from lawyers' paper case files. As we were beginning the project, Williams County's program had recently brought on a new director and staff, who had worked to update an old computerized data system, so we combined that information with paper files, to create a sample with more comprehensive information. In Bleek County, the assigned counsel program administrator required meticulous (usually hand-written) vouchers from panel attorneys, recording the date and outcome of every court appearance, client meeting, phone call, and conference with other court actors; we manually transcribed those into a data file that was comparable to the PDCMS.

These strategies yielded data of differing levels of completeness across the sites on the critical matters of defendants' experiences with jail booking, bail posting, and pretrial release. For that information we turned to the county jails. While not all New York jails use the same data management system, five of the six counties' jails had adopted proprietary software named Sallyport (produced and maintained by a private entity, Black Creek Integrated Systems Corporation). Adapting different strategies for coding data to match levels of access, [5] we gathered jail data in five of the six counties.[6] This resulted in reasonably comparable and complete data on key outcomes across the six sites.[7]

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[5] In Hudson County we were permitted to download data directly from the jail's system (from inside a county office building); in Bleek County, we had access to almost all fields and coded that information manually from an office in the jail. In Lake and Moose Counties, we had access to almost all fields and coded that information manually from the public defenders' office computers that had remote access to Sallyport. In Polar County, we could view a discrete number of Sallyport data elements from the public defenders' office computers, and we manually coded data from those screenshots.

[6] In Williams County, despite repeated efforts, the jail's chief IT staffer was unable to download data on the indigent defense cases we had pulled, and also could not devise a means for us to identify specific cases on which to code data. In that county, we rely exclusively on the indigent defense office files for all data.

[7] The last source of quantifiable data was the New York State Division of Criminal Justice Services (DCJS), a state agency tasked with archiving case-level data that, among other things, permits compiling of prior criminal history variables. Because co-PI Davies was, at the time of the project's initiation, a state employee, he was allowed to make an inter-agency transfer request; after several months, we were granted that request and, after all defender office and jail data had been completely coded, we requested matching data on all defendants in our sample. Access to those data could not be undertaken until all samples had been coded (so that names and birthdates could be sent to

Cost Reduction Investigation:

The third project objective was an exploratory assessment of the potential cost savings that CAFA might generate. A complete cost-benefit analysis of CAFA was beyond the scope of this study. We limited our attention to factors that could be reliably quantified, and that had been employed in previous research as measures of adjudication costs. Comparing samples of cases before and after CAFA programs were adopted, we analyzed differences in duration of pretrial detention, court time (estimated from counts of case court appearances, times to disposition), and, in the two counties that relied primarily on assigned counsel systems, outlays for attorney reimbursement.

Findings from the Process Evaluation: Adoption and Implementation of CAFA Programs

The study's first objective was to undertake a process evaluation of the six sites' efforts to initiate and routinize new CAFA programs, in order to address three key questions. First, what conditions contributed to the adoption of CAFA initiatives, and shaped programs' characteristics? Second, how was the adoption of CAFA programs shaped by political environment, resource needs and supplies, and interagency relationships? Third, once initiated, what conditions favored (and challenged) sustained implementation, fidelity to initial plans, and adaptive changes? This work began during the design of the ILS grant program, and was ongoing throughout the four-year duration of funding.

We were both systematic and opportunistic in gathering information for this evaluation, which involved both planned and spontaneous activities to create accurate and objective pictures of these sites and their indigent defense programs. Our first effort was to create *histories of the present* – descriptions of demographic, economic, political, and geographic characteristics of each county, its courts, and the organization and leadership of indigent defense programs. This entailed review of archived ILS notes on meetings and interviews with key actors; media searches on indigent defense programs' work, judicial and prosecutorial elections, and high profile criminal cases over the preceding ten years; compiling information on counties' economic condition, population dispersion, and infrastructure; and of course, on-site interviews and observations, as well as participation in organized discussions of CAFA programs.

Second, we documented the processes leading to, and resulting in, the adoption of each CAFA program. This entailed gathering information about the various courts involved in the CAFA programs, the arrest rates and caseloads in these courts, and background information on recent high-profile politically-charged criminal prosecutions. We also monitored the reactions to CAFA from court and non-court criminal justice actors in the six sites, through site visits, courtroom observation of CAFA hearings (when possible), and discussions with program staff, administrators, defense attorneys and other courthouse actors about CAFA programs.

DCJS for matching), and the process for getting approval to use the matched data required a multiparty data use agreement that could not be finalized by the agency until this report was nearly due. Consequently, we will be adding variables from those data to our analyses, and archiving those data (as a restricted data set) within a year of this writing.

Third, on many occasions we presented preliminary findings to, and solicited feedback from, criminal justice officials in settings such as county council meetings, local bar association meetings, and magistrates' monthly meetings; as well as presentation of preliminary findings at conferences (sponsored by the American Society of Criminology, National Legal Aid and Defender Association, Rochester Institute of Technology, and the Laura and John Arnold Foundation's Misdemeanor Justice Project); and the NY Governor's Symposium on Bail Reform. In three counties we had close access to court actors. In Hudson, the public defender made his staff available for informal focus group-style conversation and invited us to participate in a meeting of all key criminal justice administrators in the county; we also toured some of the town and village courts with pretrial services staff. In Bleek and Moose Counties, the labor-intensive nature of data coding, coupled with hospitable program administrators and staff, offered many unstructured hours of conversation, court observation, and unfiltered opinions about local customs and characters. On two occasions, project staff were invited to meetings of a multi-county association of indigent defense providers, where we shared information from defenders from three of our sites (Bleek, Polar, and Lake) as well as others from the central New York region. While these were welcome opportunities to show practitioners what we are learning, they were also invaluable opportunities for the project staff to get feedback, alternative interpretations of patterns in the data, and insights about how the programs were developing. We report these experiences in more detail in Worden, Davies, Shteynberg, Morgan, 2017.

We framed the process evaluation around Malcolm Feeley's thesis that court reforms more often fail than succeed (2013). Feeley described the stages of reform as a five-step process of problem identification, solution initiation, implementation, routinization, and evaluation, and he cautioned that reforms face hazards at each of these steps. In a legal system characterized by both federalism and separation of powers, it is often the case that the most urgent political priorities of state legislators or executives are far down the list of local practitioners' concerns. The parties who initiate well-intended ideas are seldom the same parties who are charged with designing, implementing, and funding programs. Once a program has been sketched on paper (or formalized as a grant proposal), the tasks of coordinating agencies' work, overcoming practical obstacles, finding slack staff time, and creating oversight mechanisms may fall, in part, on actors who were not part of the planning process (and who may resist those obligations). And consensus on the value of the reforms can be difficult to achieve and sustain.

Adoption and Initiation of CAFA Programs

Concerns about early appointment of counsel had simmered in New York for years before our sites initiated their CAFA programs. A multi-county class-action lawsuit, *Hurrell-Harring vs. State of New York*, was filed by the New York Civil Liberties Union in 2008, on behalf of twenty criminal defendants who had been represented in criminal proceedings by indigent defense providers. The lawsuit faulted the state's patchwork of indigent defense programs on multiple fronts, among the most significant of which was the failure to consistently provide counsel at critical stages, including first appearances. The case came before the New York Court of Appeals (the state's highest court), and was settled, shortly before trial was to begin, in autumn of 2014. While the terms of the settlement specifically required reforms in the five targeted counties, the state's Indigent Legal Services Program, along with the state's Office of Court Administration, have assumed responsibility for gradually extending these reforms elsewhere in upstate New York.

The mission of ILS, created in 2011, was to improve the quality of indigent defense programs throughout the state, in part through general grants of funds to supplement county budgets for indigent defense, and in part through competitive grants targeting specific reforms. Among the first competitive grant programs was an invitation to counties to initiate or expand their capacity for providing counsel at first appearances in criminal courts. Like many local court reforms, the New York CAFA programs were the product of a state agency's Request for Proposals (RFP), in this instance reflecting ILS leadership's view that providing counsel at first appearance was a high priority for the state's criminal courts. The grant proposals were largely written by indigent defense provider staff, though the proposals and the funding requests had to be approved by county authorities. The P.I. and co-P.I. for this evaluation read all of the proposals submitted throughout the state (from 25 of the 57 upstate counties). Of those funded, we selected six, on the sampling criteria described above.

The six county programs that we selected shared advantages that may have made their initiatives more likely to succeed. First, all had expertise and capacity for writing coherent and financially sound grant proposals. All of the program administrators who wrote the proposals had significant administrative experience and defined their roles in those terms; they were accustomed to strategic planning and resource cultivation.[8] Second, they secured and maintained support from county leadership for their plans.[9] In most of the counties we could readily identify their allies – judges, county administrators, sheriffs, probation staff – who were aware of the program planning and supportive of it. Third, it appeared to us that they had established some level of agreement within their offices that CAFA was a priority. By contrast, our review of communications between ILS staff and defense providers across the state, prior to the CAFA RFP, revealed many competing local problems, including staffing and resource shortages, inability to provide vertical representation, inability to communicate with non-English speaking clients, and inefficient use of attorney time on administrative tasks. Unlike the programs we selected, in many counties, providing CAFA was not high on the list of pressing issues.

In addition, the structure of the RFP itself increased, in the words of one program administrator, "the odds of chaos, or the odds of success." Feeley (2013) cautioned that many court reform efforts, particularly those that are imposed and funded by state or federal authorities, attempt to impose a one-size-fits-all approach on diverse jurisdictions. ILS took a different approach, expecting each defense provider to propose a *county-specific* plan to provide CAFA. The proposals were therefore tailored to the specific capacities, needs, resources, and obstacles of each county. As a result, their plans varied in scope and strategy. Some were extensions of existing CAFA programs, stretched to outlying town and village courts; others were brand new programs. Some called for attorneys to travel to arraignments in courts scattered across the county; another called for centralizing arraignments in a county's small population

[8] In two counties, Moose and Williams, the authors of the original proposals had left their positions and been replaced by new administrators by the time the funding was awarded, but in both counties these new administrators were fully aware of the CAFA initiatives and enthusiastic about implementing them.

[9] This is not to be taken for granted; during the study period we heard of several public defense programs that produced successful proposals (presumably with county support) in response to other ILS RFPs, and then had to decline the funding when a subsequent county body voted against accepting it.

center. One rural and remote county's public defender proposed beginning CAFA only in felony arraignments. Thus, each defense provider designed a program that addressed the unique challenges posed by geography, infrastructure, and personnel in their county – that is, each provider assessed what they felt could reasonably be accomplished in the three years of funding available. By design, allowing providers to design their own programs provided a level of buy-in and feasibility that a one-size-fits-all approach could not.

Lastly, our on-site conversations and observations suggest that program administrators were pragmatic about justifying their proposals to local constituents. All the programs' leaders, we concluded, were sincerely committed to providing counsel at first appearance in the interests of justice. They believed that "it was the right thing to do," and it appeared that most of them expected to see benefits for defendants, in terms of not only better due process protections but also more fair adjudications and outcomes. All felt that when counsel was present at arraignment, defendants were more likely to be released, either on recognizance or under supervision, or have a reasonable bail set. Attorneys also felt that CAFA provided the opportunity to make bail arguments and contact family members early on, all of which would increase the odds defendants would keep their jobs and stay out of, or minimize, pretrial detention. They also expected CAFA to provide the benefits of early attorney-client contact in terms of completing eligibility paperwork, establishing a file for the attorney who eventually took the case, and creating opportunities to advise clients early on about process and potential outcomes of the case.

That said, some practitioners were quick to point out, particularly in public settings, that their CAFA programs would likely benefit the criminal justice system and the taxpayers as well. CAFA was touted as an efficiency measure that would allow for quicker case processing, a move towards transparency and guaranteeing defendant rights, a possible way to save the county money by reducing jail costs, and sometimes, more subtly, simply as a way to get the state to pay for additional defense attorneys.

Politics, Resources, and Interagency Relationships

Feeley's theoretical perspective points to structural characteristics of American criminal courts that stymie even the best reform intentions. Courts are fragmented and adversarial; they are not ministries of justice, but rather collections of independent and oppositional organizations that are accountable, for legitimacy and resources, to disparate constituencies. New York's court system, and the experiences of program administrators in implementing CAFA, well illustrate Feeley's observations. These circumstances created jurisdictional, geographic, infrastructural, legal, temporal, and practical challenges for programs to overcome.

Perhaps the most obdurate challenge faced by all six sites was the structure of the trial courts in upstate New York. In all but one county (Bleek) a primary purpose of the proposed CAFA programs was supplying representation in the town and village courts, in suburban and rural jurisdictions. As Table 1 indicates, those five programs had between 15 and 35 such courts to staff. While a few larger suburban courts held regular hours, most were in session for only a few sessions each week (or other week or even once per month), often in the evenings. Almost all of their judges were part-time, and are by law obliged to appear for necessary arraignments any time, day or night.

This dispersion of venues creates practical transportation problems in the larger and more sparsely populated counties, which are exacerbated by upstate New York winters. A court clerk illustrated this when she described her county as "a piece of spaghetti" – a long narrow area with no major north-south highway. Another county covered over 2500 square miles, partially overlapping with protected forest parklands, dotted with villages and hamlets connected by winding two-lane roads. Attorneys who worked for the public defender (or who were on assigned counsel panels) tended to live near the larger town seats, so dispatching them to courts miles away cost time and money (via mileage reimbursements).

In addition, as well-designed as the ILS RFP was, the project's co-P.I. identified a key limitation when he observed that, given the constraint that ILS funds could only be expended on public defender services, the plan may have underestimated the costs that CAFA would likely impose on other local criminal justice agencies. Infrastructure limitations temporarily constrained implementation of CAFA in several counties as law enforcement agencies (most often sheriff's departments) figured out how to keep arrestees secure until a judge could be located, and a defense lawyer summoned, for the first appearance, given the lack of holding cells in small communities and a general legal constraint on sheriffs detaining arrestees before they were arraigned before a judge.[10] From the outset of the CAFA programs, judges and law enforcement officers expressed concerns about the need to wait for defense attorneys to appear before initiating arraignments. For example, when confronted by judges who did not want to wait for counsel to arrive before beginning arraignments, Dutchess County's public defender took it upon himself to track how long it took their on-call attorneys to arrive at arraignments and were able to establish that it rarely took them more than forty-five minutes from the time at which they received a call.

New York law further complicated these efforts. For example, until very recently (and for the duration of the time periods we studied) the law required arresting officers to transport any arrestee to the court in the same jurisdiction as the arrest, or an immediately adjacent jurisdiction, for arraignment (NY Crim. Proc. Section 140.20). Special arrangements had to be made to authorize officers to schedule arraignments three or four towns over, in the more populated part of the county or when local judges were not accessible.[11]

These practical obstacles were the target of much inventive planning. At the outset of the CAFA projects' implementation, however, the more challenging obstacles may have been the strongly held views of other criminal justice actors. In two counties, the District Attorneys undertook informal public relations campaigns to protest the CAFA programs, largely on the

[10] New York Consolidated Laws, Correction Law - COR § 500 - a governs the use of jails for detaining arrestees pretrial. The law generally appears to prohibit such use, *except* for 25 amendments that specifically authorize counties (or communities therein) to use their jails for those purposes. Among our sample, three counties -- Lake, Williams, and Polar -- have such authorization, although in Polar County it only applies to arrestees within the central city, so hence, not our CAFA population.

[11] We observed that a commonly used technology outside New York, live video arraignments conducted with arrestees in custodial settings and judges in their courtrooms, were expressly not permitted under the terms of the ILS CAFA grants. This principled standard was sometimes criticized in local courts, but it is not clear that arraignment in a lockup would have offered the expected benefits of CAFA, and it also is not clear that having defense attorneys travel to jails would have been more convenient than the other alternatives.

argument that equivalent funds were not provided to their offices. In most of our jurisdictions, it was rare for prosecutors to attend sessions where arraignments were scheduled, or even to participate in unscheduled arraignments when they happened to be in court. It was not uncommon, however, for judges to call their offices for bail recommendations, based on the limited information available after arrest. Some prosecutors felt that the presence of defense counsel necessitated the presence of prosecutors, but that they did not have adequate resources to ensure their attendance in court. Many local judges (and their clerks) expressed skepticism about the need for CAFA, averring that judges already took steps to protect defendants' due process rights at arraignment. We soon concluded that while some practitioners (primarily prosecutors) thought that these initiatives reset the balance (in favor of defense counsel) in the adversarial process, many others (primarily judges) were simply skeptical that CAFA would make any difference in outcomes, or thought the funds could be put to more productive use.

Conditions Favoring Successful Implementation and Adaptation

Despite these challenges, it appears that, in all six counties, the CAFA program objectives were, after a year of implementation and routinization, achieved. In our review of case files, we found little evidence that CAFA was not available for the targeted defendants. The programs appeared to meet their goals within the limits of the resources that they were provided. As a follow-up note, given an opportunity to apply for (and receive) a second round of CAFA support, all six counties successfully procured continued funding, and in most cases extended or modified their original programs based on their early experiences. So it is worth asking why they succeeded in establishing these programs, when the overall history of court reform is checkered. We offer four general explanations, based on this evaluation.

First, defense providers were given flexibility in designing their programs, particularly their scope. For example, Bleek County, which aimed to ensure counsel at first appearance in the county's only City Court, planned and budgeted for that experiment. (That county has since received additional funding to create a centralized arraignment protocol that serves the entire county.) Hudson County, experienced with providing CAFA in its primary City Court, could confidently estimate what it needed to build out its program to town and village courts. This speaks well of the ILS RFP, which encouraged incremental and experimental projects.

Second, in large part these programs were successfully implemented because they built in time for skeptics to come around to seeing CAFA as a benefit for the courts. For example, in Lake County, which adopted a centralized arraignment model, town and village court judges were initially doubtful about the value of CAFA, and particularly concerned that if cases from their jurisdictions were arraigned elsewhere, they might not return for local adjudication and disposition. When they realized that not only would such cases be returned to the local courts, but also that they, as judges, would be subject to far fewer requests for ad hoc arraignments at odd hours, they came to accept the program.

Third, particularly in the more suburban Williams and Polar Counties, extending CAFA protocols seemed like a logical and fair extension of what was already a city court practice; so it is possible that there was less opposition in those jurisdictions given a county culture that had long accepted the need for CAFA in the major urban courts.

Finally, it is possible that these counties adopted their initial plans, with relatively few setbacks, for reasons that have to do with the intangibles of leadership and pre-existing cultures of cross-agency coordination. For example, in Bleek County, the program administrator had a long history of taking on important but underfunded efforts, such as a drunk driving program, and securing support for them. He taught in the local community college and was a regular at community fund-raising events. In Hudson County, the chief public defender was a leading contributor in a collaborative multi-agency criminal justice council, where representatives from every corner of the county regularly met to discuss problems and opportunities. In Lake County, the young chief public defender nailed some quick successes in expanding office capacity, establishing caseload limits for her attorneys and investigative staff. Polar County's chief public defender was an outspoken advocate for defendants at the state level, and organized regional meetings across many counties. In short, the counties in which these CAFA programs seemed to succeed had effective leadership. We are not able to assess the leadership capacity of the counties we did not study, but suffice to say that effective leadership, in various guises, may be a key indicator of successful adoption of seemingly difficult reforms.

Findings from the Outcome Evaluation: The Impact of CAFA Programs on Court Decisions and Outcomes

Hypotheses

Congruent with previous research and experts' expectations, we hypothesized that provision of CAFA would lead, in the aggregate, to changes in judges' decisions about bail, pretrial release and detention, and consequentially, changes in aggregate outcomes for defendants such as verdicts and sentences. These predictions are expressed in Hypotheses 1 through 7.

H1: CAFA is associated with higher probability of release on recognizance, or release under supervision, rather than having bail set.

H2: CAFA is associated with lower likelihood of being booked pending disposition.

H3: CAFA is associated with lower levels of bail (including no bails set, where defendants are released on recognizance or under supervision).

H4: CAFA is associated with fewer days in jail prior to case disposition.

H5: CAFA may be associated with reduction of original arraignment charges, from felony to misdemeanor, or from misdemeanor (or felony) to violation.[12]

H6: CAFA is associated with greater likelihood of diversion via a disposition of*adjournment in contemplation of dismissal* (ACOD) on CAFA defendants. This disposition, which may be accompanied by conditions, allows for the dismissal of charges after 6 to 12 months if the defendant is not rearrested and if he or she complies with the courts' conditions.

H7: CAFA is associated with less restrictive post-conviction sentences: fewer defendants are sentenced to jail, and to prison, as compared with probation or fines.[13]

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[12] New York designates *violations* as offenses that cannot result in a sentence of greater than 15 days in jail; these charges are not criminal offenses, and conviction on a violation does not constitute a criminal conviction.

[13] We note that CAFA might also be associated with an increase in sentences to time served in pretrial detention.

These hypotheses replicate previously published predictions of CAFA's effects, but they also emerged in our conversations with practitioners in site visits. They suggested that when an attorney can access a client before he approaches the bench for the first time, that attorney has a window of opportunity in which to extract information relevant to the pretrial release decision, particularly information on ties to the community, including residence, employment, income, education, and family ties and obligations, as well as any treatment or medical conditions that have implications for the client's need to remain outside jail.[14] While in theory judges can make inquiries about all of these matters, in fact many do not routinely do so, and most would prefer that a lawyer make the case for release or reasonable bail, particularly when the prosecutor must make a bail recommendation.[15] Moreover, defense attorneys are better positioned than are judges to preempt defendants' premature, inappropriate, irrelevant, and possibly legally compromising statements of guilt, innocence, anger, or excuse. In essence, attorneys can better extract and articulate to the court a concise narrative of pertinent details.

Researchers are accumulating evidence that courts detain more defendants pretrial than is warranted by legitimate concerns about flight and offending insofar as judges are risk-averse, but CAFA may contribute to more informed release decisions and hence less unnecessary detention. Research also suggests that low rates of release on recognizance and under supervision, and high levels of bail, contribute to high rates of pretrial detention and lengthier detention stays. When bail is set beyond the attainable limit for defendants, most will be booked and jailed until (and if) they can tap resources to post bail, and they consequently will spend at least a few days in pretrial detention, and possibly much more. As we shall observe below, even in misdemeanor charges judges often set bail in excess of $1000. The attorneys we interviewed tended to estimate that the highest attainable bail for most defendants is $500.

During the planning stages of the project, some advocates, including members of the project's consultative group, predicted that provision of counsel would facilitate more aggressive defense of clients, through more extensive and timely collection of information about offenses, evidence, and witnesses, and more thorough investigations. This expectation seemed premised on a truly adversarial system, in which CAFA serves to equal the playing field with prosecutors, and may thereby generate higher rates of dismissals. In practice, however, this sort of pretrial activity is not common, particularly in the large majority of cases that are originally charged as misdemeanors.

However, in most counties the data did not clearly identify when judges ordered time served to suffice, versus decisions to impose other sanctions after conviction. We allow for the possibility that post-CAFA cases were more likely to be sentenced to time served (among those defendants who spent time in pretrial detention), due to their attorneys' earlier opportunity to advocate for their liberty, and that is a hypothesis that we will explore in future research.

[14] These are generally the same types of flight risk questions contained in more formal pretrial risk assessment instruments used by many states to make pretrial release decisions as a substitute for or as an additional element of bail setting.

[15] We observed in many courts that prosecutors were not regularly present at arraignments, particularly those that were held after hours in town and village courts; it was not uncommon, however, for the District Attorney's office to respond to a clerk's or judge's phone call requesting a bail recommendation.

However, a related possibility is this: When a defendant has counsel at first appearance, his attorney is positioned to start the paper trail earlier for the case, which is of value regardless of whether that attorney continues on the case or is replaced by another defender. That attorney may also be optimally positioned to detect defects in arrest reports or arresting officers' statements at arraignments, which may justify dismissal or reduction of charges.[16]

In addition, some researchers and policymakers suggest pretrial incarceration is linked to clients accepting less favorable charge and sentence outcomes because of a desire to get out of jail as quickly as possible. As such, if CAFA does result in more clients being out (released on their own recognizance, released under supervision, or bail set at an amount they can afford), this may result in fewer clients feeling pressure to accept less favorable charge and/or sentence outcomes.

Data and Sampling

In order to test these hypotheses, we analyzed case-level data from each of the six counties, using the protocols described above. We coded three samples of data. The Time 1 (pre-CAFA) sample included cases initiated within one year prior to the implementation of the CAFA programs in the targeted courts. The Time 2 (CAFA) cases were drawn from time periods immediately after the start of CAFA programs, in order to acquire snapshots of the implementation phase for the CAFA programs. Importantly, as we originally proposed, the Time 2 sample permitted us to address a frequent limitation of evaluation studies, the failure to account for 'growing pains' (incomplete or imperfect implementation in the early stages) as well as for what Malcolm Feeley refers to as 'routinization' – the settling into patterns after the first blush of enthusiasm and energy, which typically occurs well after the first steps of implementation. At least equally important, we used the Time 2 sample data as part of a feedback-loop with defender program staff, who could in turn share those preliminary findings with colleagues and funding authorities.[17] The final Time 3 (post-CAFA) sample included cases that had been initiated in the indigent defenders' offices beginning one year after implementation.[18]

Analyses presented in this report compare pre-CAFA (Time 1) and post-CAFA (Time 3) samples. We aimed for samples of 200 cases, per sample, per site. Overall we reached those targets, though samples were smaller in two counties (Bleek, whose program served only the City Court, and Moose, whose program applied only to felonies), and larger in Hudson and Polar, where data could be downloaded efficiently from the case management system. Sample

[16] In addition, in counties where eligibility screening is not conducted immediately at the bench, lawyers can explain the paperwork and the process, and the importance of completing both as quickly as possible, which of course facilitates, for those found eligible, much more timely attorney-client contact. Timelier attorney assignments may, in turn, result in faster case disposition timelines than would be possible without this additional and more immediate guidance from an attorney.

[17] See Worden, Morgan, Shteynberg, Davies, 2018 for a preliminary analysis of misdemeanor cases comparing the pre-CAFA and implementation period data in three counties.

[18] Data collection time periods varied because the volume of caseloads varied (smaller targeted caseloads required somewhat longer time periods), and also due to the level of time and effort needed to completely code samples of cases. For example, where data were coded from original paper files, far more effort was required to complete a case's coding than when data could be downloaded. When presented with the opportunity to capture larger rather than smaller samples, we did so.

sizes were also constrained by the effort needed to match information from jail data where key variables (such as bail amount) were not consistently present in the defense providers' files. Where we could access data from jail records, we coded it by hand from the jail databases and reports.

Because these data were culled from defender program files and documents, they contain information that is not in the public domain. We took steps to ensure that confidentiality of subjects was maintained throughout the data collection process. Original data coding forms and digitized data were kept on password-protected computers, and only research staff who had completed human subjects protection training were permitted to access the data. Once the data were collected, we took steps toward anonymizing the data. This included (1) removing all specific event dates and birthdates; (2) combining specific charges into broader categories; and (3) creating final variables that were categories rather than specific values on constructs such as bail amounts, pretrial detention duration, and time from initiation to disposition of cases.

Finally, we analyzed only cases that were initiated in the specific courts, for the specific charge levels, targeted by the ILS-funded CAFA programs: for example, in Bleek County we examined only cases in the City Court subject to the CAFA program, and in Moose County we examined only cases that were initially charged as felonies.

Variables and Measurement

Defendant and Case Characteristics

Using this sampling strategy, we adopted a non-equivalent groups design that compares cohorts of defendants selected from samples immediately before (pre-CAFA) and one year after adoption (post-CAFA) of CAFA programs. Regarding this type of cohort study, Maxfield and Babbie (2014: 187) observe that "… if the assumption of comparability can be met, cohorts may be used to construct nonequivalent comparison and experimental groups by taking advantage of the natural flow of cases through the institutional process." In order to assess the comparability of the groups, we compared the samples, within counties, across the defendant and charge characteristics that were available in the defender office and jail records. Appendix 2 presents these comparisons of pre-CAFA and post-CAFA samples.

Overall, there are few differences in the highest arrest charge across the pre-CAFA and post-CAFA samples within each county.[19] We measured arrest offense across three dimensions: as level of seriousness, as substantive offense type, and as number of charges associated with the arrest. We initially classified cases as (1) misdemeanors, (2) E and D felonies, and (3) C, B, and A felonies. In this report we report only on the first two categories, since the most serious felonies were rare (less than 10% of the samples in all counties but Moose, which provided CAFA only for felonies). Across the two samples, the only statistically significant difference between pre-CAFA and post-CAFA initial charge samples materialized in Lake County, where the latter sample included a more serious mix of charges than the former.

[19] Although defendants may be charged with more than one offense at arrest and their final disposition may contain more than one offense, analyses include the top arrest offense (original top charge) and the top disposition offense (final top charge/disposition) in each case.

Categorizing offenses substantively was challenging, because New York's criminal code is complex. New York Penal Law encompasses approximately fifty substantive categories, which are further subdivided into dozens of subcategories of offenses of various magnitudes. The criminal laws designated in the Penal Law are supplemented by crimes defined in other parts of state law, including Social Services, Corrections, Agriculture and Markets, and Alcoholic Beverage Control. We initially created classifications for each substantive category, and then further reduced those categories to six sets of criminal offenses that are thematically cohesive: (1) *vehicle and traffic law (VTL)* (e.g., driving under the influence); (2) *controlled substances* (e.g., possession, sale, and manufacture of drugs); (3) *personal offenses* (e.g., assault, robbery, rape); (4) *property and fraud offenses* (e.g., larceny, identity theft); (5) *offenses involving breaches of public safety and civility* (e.g., solicitation, disorderly conduct); and (6) *offenses involving noncompliance with authority* (e.g., contempt of court, violation of protective orders). Given that each of these categories includes offenses ranging from trivial to quite serious, we make no attempt to impose a thematic order on the categories. A complete list of these categories can be found in Appendix 1. Across the sites, half of these categories are fairly consistently distributed across pre- and post-CAFA periods (controlled substances, property and fraud, and public safety and civility).[20]

Three of the counties' defender program files (Williams, Lake, and Polar) did not have data on secondary charges. Bleek data indicate no meaningful differences between the number of additional charges in the pre- and post-CAFA samples. On the other hand, Hudson County evidences significantly more cases with added charges in the post-CAFA sample, while Moose County indicates the opposite.

A review of the data on defendant characteristics suggests that the pre- and post-CAFA samples were statistically comparable, with some noteworthy exceptions. In Lake and Moose Counties, approximately the same number of defendants had previously been booked in the county jail across samples, but in Bleek and Hudson significantly fewer defendants in the post-CAFA samples had local records.[21]

In comparing sociodemographic characteristics across the sample, we note that in some defender offices case files did not routinely record defendant characteristics that are commonly available in other data sources, such as state criminal history records. We attribute this to two factors. First, defense attorneys primarily use the PDCMS as an electronic file cabinet, not a scientific data collection protocol (though administrators use some elements for record keeping and reporting purposes). Having met their clients, they may have felt no need to record their sex or race. In fact, one county's assigned counsel panel members had a lively discussion in our presence about the wisdom and propriety of recording race on an intake form in the client's presence, since it might send the message to the client that somehow race mattered to them. Defense lawyers in some jurisdictions were attuned to the significance of immigration status in cases involving criminal prosecution, but expressed reservations about recording that

[20] We did not include data on VTL arrests from Hudson and Lake Counties. We also note that the high level of VTL offenses in Polar County may be due to the fact that a significant stretch of the NYS Thruway runs through it.
[21] Previous booking is used here as a rough proxy for prior record; our original proposal allowed for matching the New York State Division of Criminal Justice Services (DCJS) criminal history data to our site data.

information even in a secure data base. Furthermore, in some counties, key variables such employment, family status, and income were recorded not in the PDCMS, but in separate eligibility screening instruments, to which we did not have complete access.[22] Hence these comparability estimates are unavoidably incomplete on some variables. That said, we observe that in the counties where defendant sex reliably appeared (Hudson, Lake and Moose), there were no meaningful difference in the ratio of male to female defendants across pre- and post-CAFA samples. Likewise, where race data were available (Hudson, Williams and Lake) no differences emerged. In Hudson, pre-CAFA defendants were, overall, slightly younger than post-CAFA defendants, though no significant differences emerged in any of the other counties. Lastly, but significantly for the judges' considerations of flight risk, the pre- and post-CAFA samples did not, with one exception, differ by defendants' residency – either as a county resident, an out-of-county New York resident, or a resident of another state. In Hudson, the post-CAFA defendants were slightly less like to be local county residents.

Counsel at First Appearance (CAFA)

The key independent variable (treatment condition) in this study is the presence of counsel at first appearance in criminal court. In some counties (discussed above), we had consistent and detailed data on which cases began with CAFA being provided. Interviews with office administrators and staff provided confirmation that prior to the programs' adoptions, counsel were seldom if ever present in misdemeanor and low-level felony arraignments in the jurisdictions covered by the new programs. As noted previously, Bleek and Moose were starting from scratch, while Hudson and Polar were extending established City Court protocols to outlying town and villages, and Williams and Lake were building up capacity for providing CAFA from an existing base. Once these programs were established, program administrators and their staff believed that there were few clients who fell through the cracks and were arraigned without an attorney present; this was particularly true where judges arranged their court schedules to align with defender assignments to their courtrooms. We were able to check the presence of counsel in those defender offices that required CAFA-session attorneys to keep real-time lists of the defendants whom they represented at those appearances. However, we allow for the possibility that some post-CAFA defendants first met their public defense attorneys after their first court appearance, though we judge that to be rare.

Dependent Variables: Decisions and Outcomes

The dependent variables include both decisions and outcomes. We present our tests of hypotheses in two steps. First, we present comparisons of pre-CAFA and post-CAFA samples, aggregated across all counties. Second, we present breakdowns of distributions for each of the ten dependent variables, by county and by charge level – misdemeanor and felony.[23]

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[22] Indigent defense program administrators differed in their philosophies about assessing eligibility (and counties differed in their systems for doing so). While formally judges make assignments to indigent defense counsel, those decisions are structured by these systems. One chief public defender candidly acknowledged that almost everyone who passed through the program's door would be found eligible, and the effort of screening out the ineligible might not be worth the time spent on it. Another administrator observed that a high-profile case of an affluent local man, who initially secured indigent defense counsel, had made the local papers and instilled caution among court officials in providing counsel without careful screening.

[23] For the purposes of this report, we excluded from analyses cases that were initially charged as C, B, and A felonies. These represented between 1.6% and 8.5% of cases in subsamples (and between 6 and 20 cases in those

Table 2 presents bivariate comparisons of pre-CAFA and post-CAFA decisions and outcomes, broken out by misdemeanor and felony highest initial charge, including all relevant sites' samples. (Note that not every site had data on every outcome variable, and Moose County, because it provided CAFA only for felony cases, does not include data on misdemeanors.) For bail decisions, bail amounts, and pretrial detention, we excluded cases in which judges remanded the defendant to jail; in those cases judges have little or no discretion to make bail decisions, and it appeared, during data collection, that a substantial number of these cases involved defendants who were on parole detainers, and defendants who were already detained at the time of arrest, due to a previous incarcerative sentence. Fewer than 5% of cases for which we had bail decision data were remands.

The results suggest that, overall, CAFA is associated with the pretrial outcomes that advocates predicted. Entries for each outcome include the gamma statistic, and its level of statistical significance across the specific samples included in each analysis. For example, we predicted (Hypothesis 1) that judges would be more likely to release defendants on recognizance or under supervision when counsel was present, and this prediction was supported by the bivariate analyses for both misdemeanors and felonies. Likewise, we hypothesized that with CAFA (Hypothesis 2) defendants would be less likely to be booked in the county jail, and for both misdemeanor and felony cases the data support that hypothesis. In addition, we expected to find that bail amounts would be distributed at lower levels for CAFA cases (Hypothesis 3), which is supported by the data, again, for both misdemeanors and felonies. Hypothesis 4 predicts that CAFA will be associated with fewer days in pretrial detention; again, this hypothesis is supported by the data for both types of charges.

Table 2 also reports the associations between CAFA and decisions made during the pendency of cases. The pattern among these findings suggests that CAFA has these downstream effects, in the aggregate, in misdemeanor charges, but not necessarily in felony cases. We predicted that charge reductions would be more likely when clients had the benefit of counsel at first appearance (Hypothesis 5); that association holds at a statistically significant level for misdemeanors, but not for felonies. We observe the same pattern for dispositions (Hypothesis 6): misdemeanor outcomes are more likely to shift toward dismissal, adjournment in contemplation of dismissal, or conviction on lesser charges in CAFA cases; but this pattern does not hold for felony charges. Finally, misdemeanor CAFA cases result in less restrictive penalties, as predicted (Hypothesis 7), but CAFA cases are associated with slightly more punitive outcomes for felonies (although this association is not statistically significant).

However, we recommend caution in interpreting these findings, since these aggregate results mask considerable variation across the county samples. We turn now to site-specific findings to assess the variability in the impact of CAFA on outcomes. Figures 1a through 1g, and Figures 2a through 2g, provide comparative cross-tabular data, in stacked bar charts, on pre-CAFA and post-CAFA samples for these decisions and outcomes described, by county. We first summarize data on cases initially charged at the misdemeanor level, then turn to cases initially

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subsamples). Unlike large and urban courts, having few high-level felonies is fairly standard in small and rural courts.

charged as felonies. (Appendix 3 provides more detailed information about the strength of associations and statistical significance of these associations. We note, however, that it may be more informative (and cautious) to focus on absolute changes, particularly in multi-category variables, than on conventional standards for statistical significance.)

Table 2. Summary (all counties): Comparing pre-CAFA and post-CAFA Outcomes

Decisions/Outcomes	misdemeanors	felonies	sites included**
Bail decision: 1=release, 2=bail set	-.191 (.001)*	-.315 (.001)	Bleek, Hudson, Williams, Lake, Moose
Booked on instant case: 0=not booked, 1=booked	-.233 (.001)	-.268 (.003)	Bleek, Hudson, Lake, Moose
Bail amount: 0= no bail 1= $1-500 2= $501-1000 3= $1001-2500 4= $2501-5000 5= $5001-10000 6= $10001-20000 7= $20001-25000 8= $25001-50000 9= $50001 and up	-.149 (.001)	-.259 (.001)	Bleek, Hudson, Williams, Lake Moose
Pretrial detention days: 0= no days 0.5= 1-3 days 1= 4 to 7 days 2= 8 to 28 days 3= 29 to 56 days 4= 57 to 84 days 5= 85 to 140 days 6= 141 to 196 days 7=197 days and up	-.203 (.001)	-.307 (.001)	Bleek, Hudson, Lake, Moose
Reduction in highest charge (from felony to misdemeanor, from misdemeanor to violation) 0=no reduction 1=reduction	.191 (.001)	.053 (.488)	Bleek, Hudson, Williams, Polar, Lake
Disposition: 1= dismissed 2= ACOD 3= guilty to reduced charge 4= guilty to original level charge	-.082 (.013)	-.053 (.432)	Bleek, Hudson, Williams, Polar, Lake, Moose
Most restrictive sentence: 1= discharged; guilty but no sentence 2= financial penalty 3= probation 4= jail 5= prison	-.079 (.041)	.088 (.131)	Bleek, Hudson, Williams, Polar, Lake, Moose

* Entries represent gamma values; values in parentheses represent statistical significance level.
** Moose County cases include only felonies, so were not represented in misdemeanor analyses.

Analyses: CAFA and Outcomes in Misdemeanor and Felony Cases

Bail, Pretrial Release, and Detention in Misdemeanor Cases

Although the limited number of evaluations of CAFA programs have focused primarily on felony cases, contemporary arguments for such initiatives have identified misdemeanor adjudication as the arena in which CAFA is most likely to provide benefits to defendants, courts, and communities. Stakes are higher in felony cases; decisions on pretrial release and the terms of

guilty pleas are freighted with higher concerns about public safety and offender accountability. Misdemeanors, on the other hand, may be more affected by interventions such as CAFA. With that caveat in mind, we report here the results of our analyses of bail and release decisions, pretrial detention outcomes, charge reductions and dispositions, and sentencing, for those two broad categories of charges.

For misdemeanor charges, we were missing data from Williams County on booking information and pretrial detention duration; we were also missing data from Polar County on those two variables as well as bail decision and bail amount. This lack of data is attributable to the difficulty of getting adequate access to jail records. In Polar County the public defender's office had only partial access to the Sallyport system, and in Williams County the public defender had no access, and the jail's information technology technician was unable to extract the cases we needed from the very large county data base. Figures 1a through 1d present the findings from these data, at the county level.

Figure 1a contrasts the percentage of misdemeanor cases that resulted in ROR or RUS with the percentage for which bail or bond was set. Three sites present increases in release without bail during the post-CAFA period; Hudson's difference reaches conventional levels of statistical significance. Figure 1b indicates that for jail bookings on the instant case dropped in Bleek, Hudson, and Lake; in the first two the differences were statistically significant, and the significance level for Lake is .175. In Figure 1c, bail amounts were categorized to capture what appeared to be natural break points (only 8% of bails did not fall directly on these cut-points). Overall, bails were lower post-CAFA; these associations are statistically significant in Hudson and Lake. Finally, Figure 1d summarizes the distribution of pretrial detention days, again indicating that post-CAFA patterns were less restrictive than pre-CAFA patterns. In Bleek and Hudson these associations are statistically significant; the significance level for Lake is .165.

We next briefly summarize the results on the early pretrial decisions and their consequences in misdemeanor cases. In Bleek County, adoption of CAFA is associated with no change in release on recognizance or under supervision, but the percentage of cases in which judges imposed bail of no more than $500 increased by 9% (more than doubling from 8.8% to 18% of the samples). This was accompanied by a significant reduction in the percentage of defendants who were booked at the jail, and therefore, not surprisingly, by a significant reduction in any duration of pretrial detention. About 25% of defendants served some time in pretrial detention on misdemeanor charges pre-CAFA; only 10% did after CAFA was instituted.

Hudson presents a different picture. Pre-CAFA, judges released defendants on recognizance or under supervision (ROR or RUS) in 38% of cases, a figure that climbed to 50% post-CAFA. Bail amounts changed little at the higher end of the scale, so we infer that the presence of attorneys influenced judges to make less restrictive initial decisions in what they might otherwise have considered borderline risk cases. Not surprisingly, fewer defendants were booked into the jail, and fewer spent time detained pretrial. It is worth noting that the distributions of bail amounts, and durations of pretrial detention, did not seem to be affected by CAFA.

Figure 1a: Pretrial Release vs. Bail Decisions at Arraignment: Misdemeanors (exclude remand)

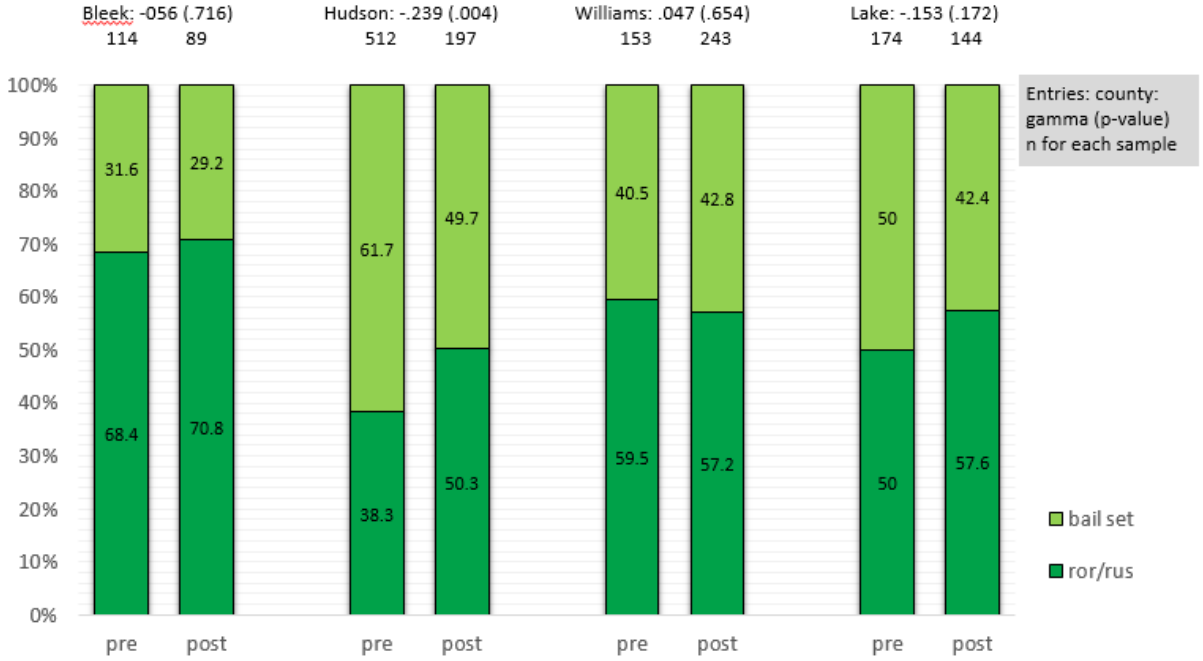

Figure 1b: Booked on Instant Offense: Misdemeanors (exclude remand)

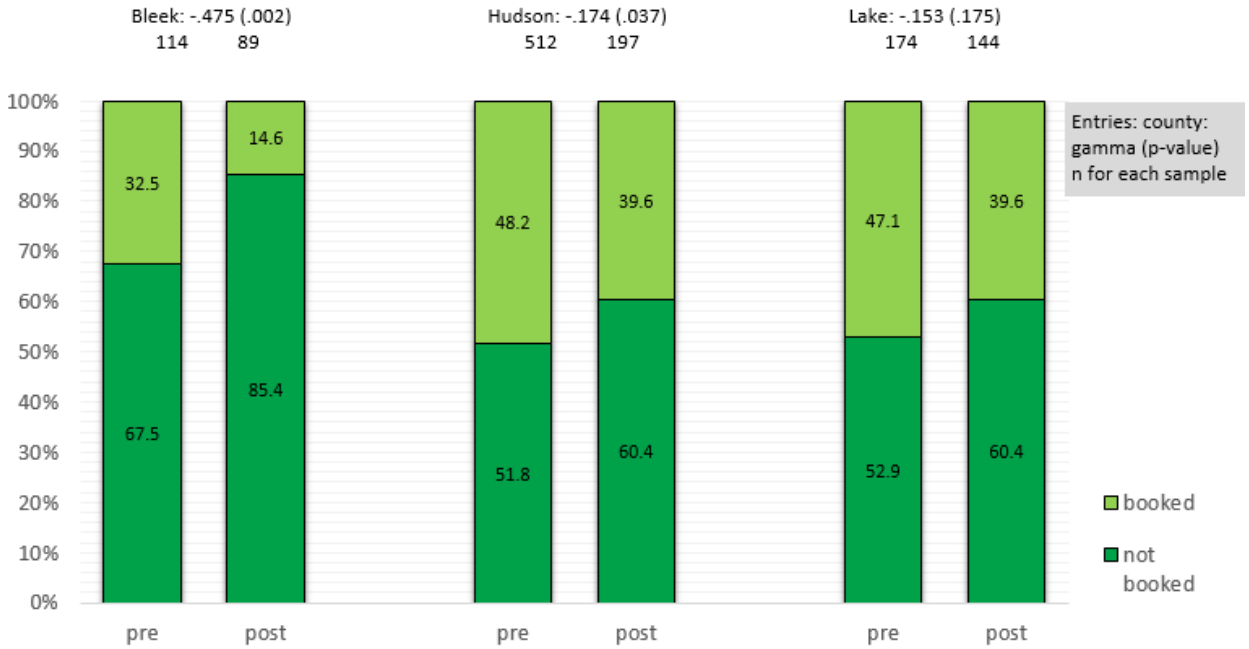

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Figure 1c: Bail Amount Categories: Misdemeanors (exclude remand)

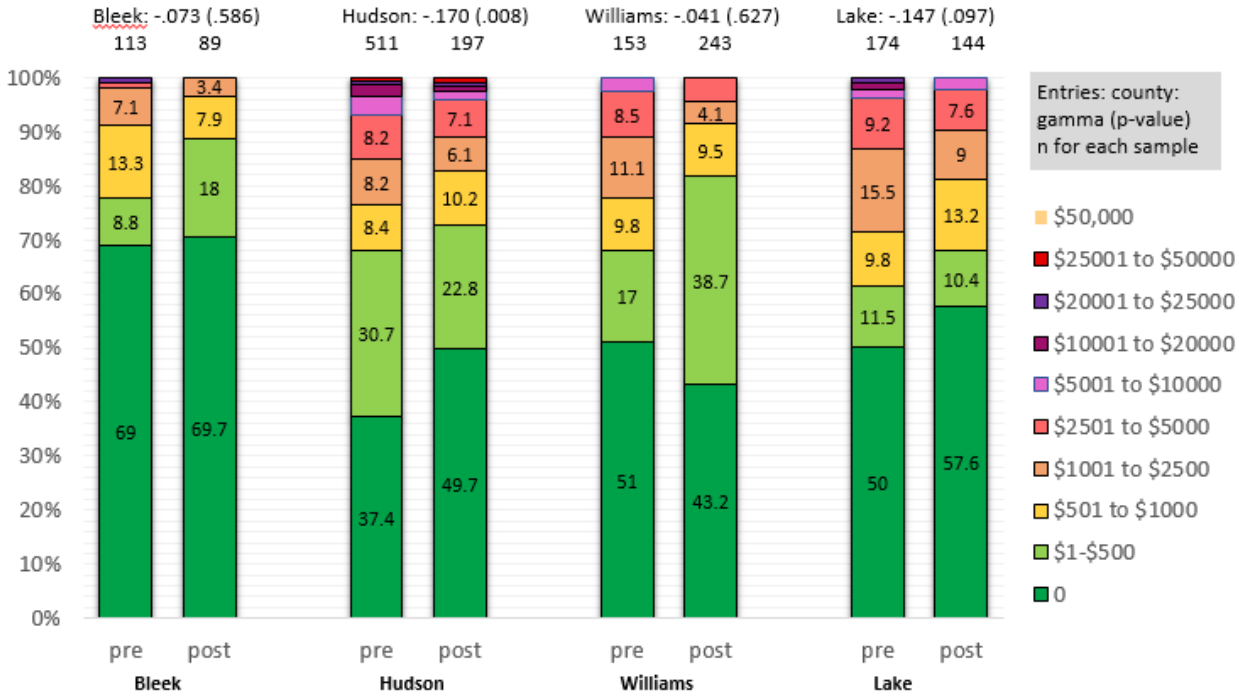
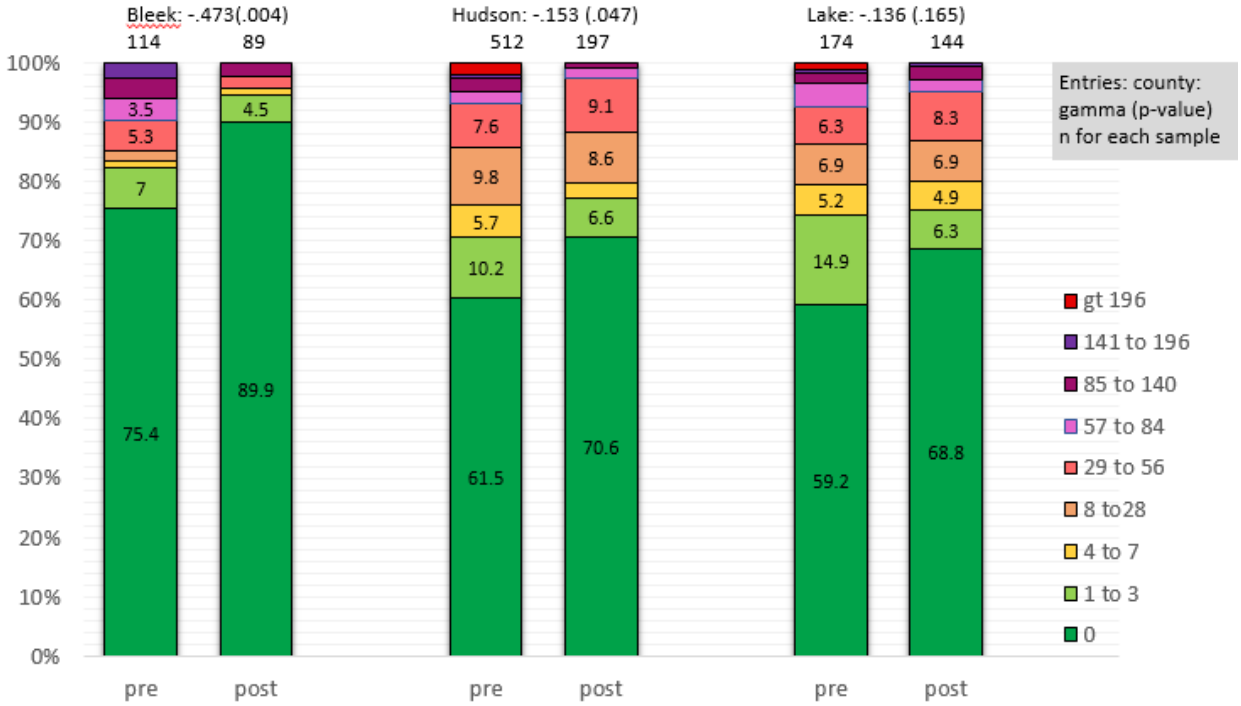


Figure 1d: Pretrial Detention Duration in Days: Misdemeanor Charges (exclude remand)



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In Lake County, post-CAFA, judges modestly increased their use of ROR and RUS, but, as in Hudson, otherwise did not significantly adjust bail amounts. As a consequence, we infer, fewer defendants were booked into the jail, and fewer were detained. We note that the proportion of defendants who were detained for more than 3 days remained the same after CAFA. Lake could fairly be characterized as a site that witnessed small, but steady and cumulative, shifts in the direction of less restrictive pretrial policies.

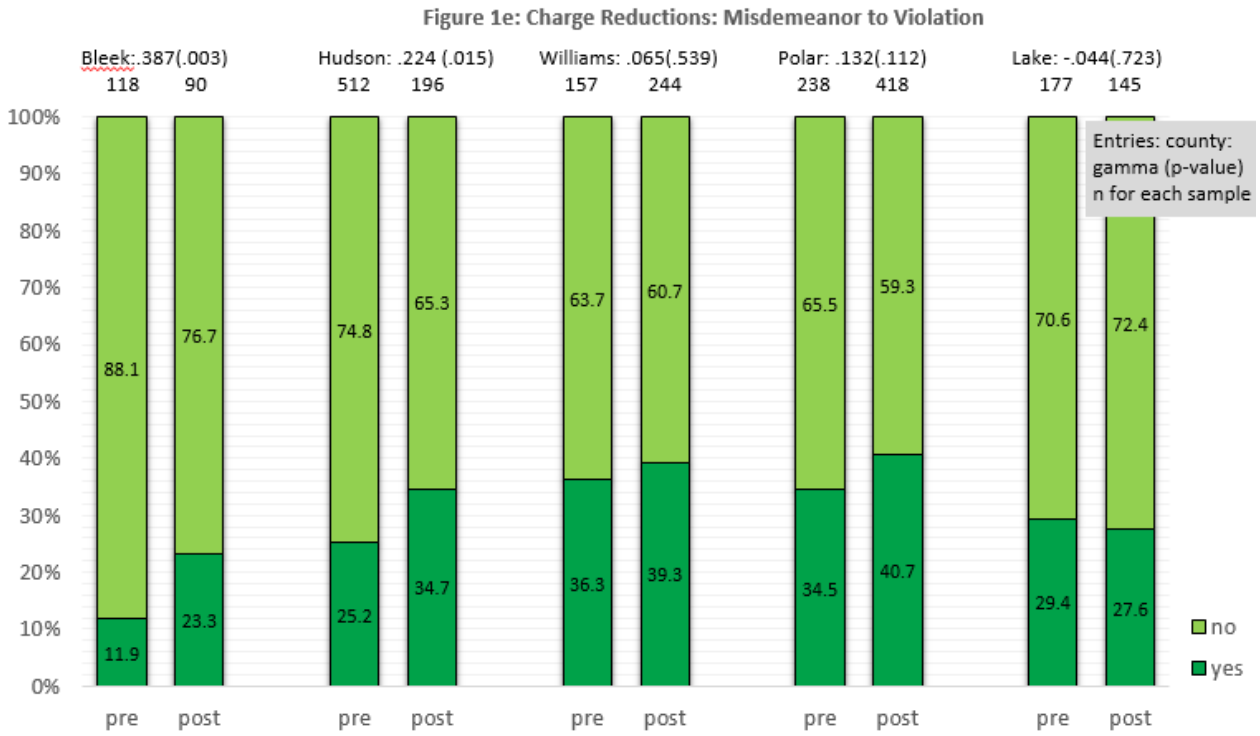
In Williams County, we observe no significant difference in ROR and RUS decisions after CAFA was adopted: approximately 60% of defendants were released at arraignment. However, the percentage of cases that did not have bail set is, for both pre- and post-CAFA samples, lower than the percentage who were ROR'd or RUS'd. Noting the significant increase in bails of $1 to $500 (from 17% to 39% of misdemeanor cases), we infer that some of these defendants had posted station house bail (desk bail) at the time of arrest, and judges left that bail amount in place (rather than increasing it). In the absence of data on jail booking and pretrial detention in this site, however, we cannot confirm this speculation.

Charge Reduction, Dispositions, and Sentencing in Misdemeanor Cases

We were able to code data on charges, final dispositions, and sentencing in all five counties that adopted CAFA for misdemeanor cases: Bleek, Hudson, Williams, Polar, and Lake. Figure 1e summarizes results for charge reductions (from misdemeanors to non-criminal violations). In four of the five counties, after CAFA was adopted, prosecutors more frequently agreed to reductions to violation level offenses (the exception was Lake County). In Bleek and Hudson, these reached conventional levels of statistical significance. The percentage of top charges reduced nearly doubled in Bleek County (12% to 23%), and increased by 40% in Hudson (25% to 35%).

Charge reduction is a prosecutor's tool in negotiating guilty pleas, so we hypothesized that the presence of CAFA might increase prosecutors' willingness to reduce charges in order to secure a plea. Hence, at the risk of presenting redundant findings, we included in Figure 1f charge reduction as a category in calculating dispositions: dismissals, ACODs, guilty verdicts based on reduced charges (to violations), and guilty verdicts to misdemeanor charges (no charge reduction).[24] Bleek County produced a near-doubling (from 12% to 23.3%) of guilty verdicts to violation-only charges, and a corresponding decrease in guilty pleas to misdemeanor charges, although these shifts do not register as conventionally statistically significant. Polar County witnessed a similar, though less pronounced, pattern. Hudson saw an increase in guilty pleas to reduced charges, offset by a slight decrease in outright dismissals. Lake appears not to have significantly altered its disposition patterns.

[24] Guilty verdicts to misdemeanor charges include guilty pleas to the original charge level (e.g., B misdemeanor at arrest that was disposed of as a B misdemeanor) as well as reductions between misdemeanor levels (e.g., A misdemeanor at arrest that was disposed of as a B misdemeanor)



Our last look at misdemeanor outcomes is Figure 1g, which reports sentence outcomes for the five misdemeanor sites for cases that resulted in a guilty plea. We measured sentencing as an ordinal variable based on the most restrictive sentence imposed in the case, since some cases resulted in multiple types of sanctions: prison, jail, probation, financial penalties, and discharges. In New York, a *conditional discharge* is a conviction based on a plea, for which the judge withholds sentences that restrict liberty (probation, jail, and prison), but for which fines, restitution, and various forms of treatment might be imposed. Hudson is the only site where the difference between sentencing pre-CAFA and post-CAFA reached statistical significance, based largely on a near-doubling of the number of discharges. Elsewhere, overall the shifts across sentencing categories were slight, with the notable exception of Polar County's marked increase in the imposition of fines as the most severe penalty. Hence, we can make no general conclusions about the impact of CAFA programs on the use of probation, jail, or prison terms in these cases.

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Figure 1f: Dispositions: Misdemeanors

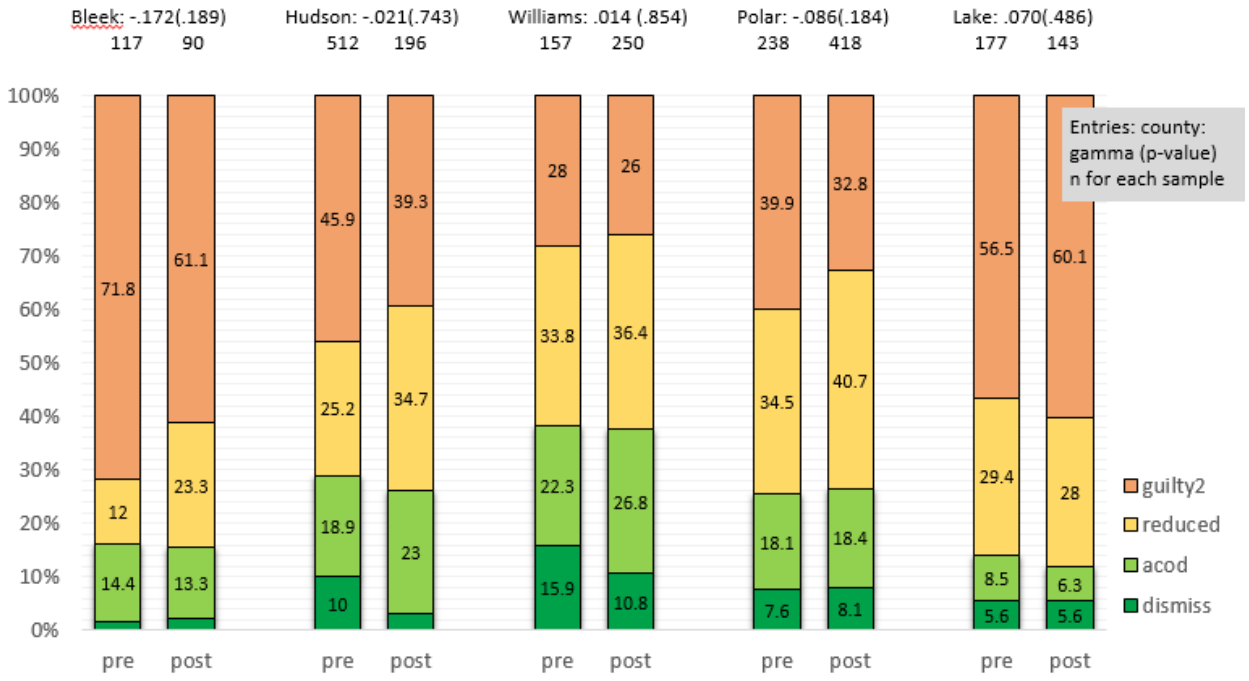
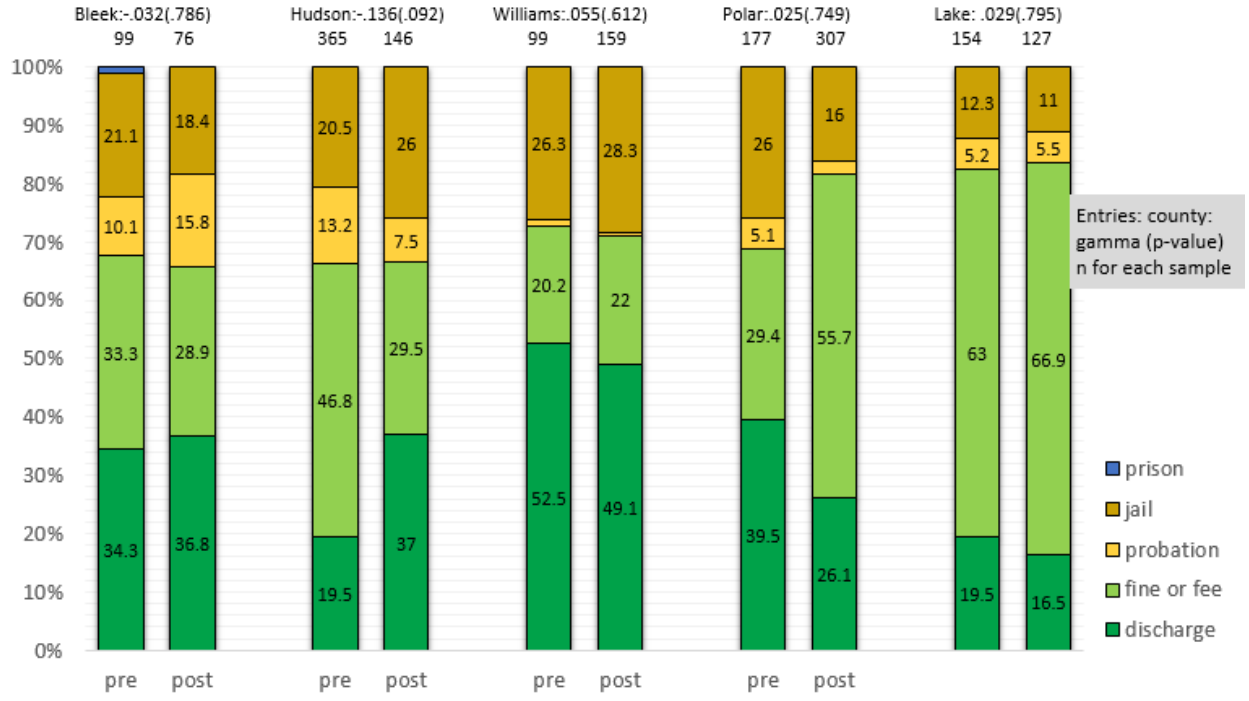


Figure 1g: Sentences: Misdemeanors – Guilty Cases Only



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Bail, Pretrial Release, and Detention in Felony Cases

As noted above, the aggregate analysis of felony cases indicates that CAFA is associated with less restrictive bail decisions, lower rates of pretrial jail bookings, lower bail amounts, and less pretrial detention. But are these associations constant across sites? We repeat our turn-by-turn comparative site analysis here, with felony cases (and including Moose County).

Figure 2a reveals significant shifts, among cases charged as felonies, in release and bail decisions in Bleek (where ROR/RUS nearly doubled) and in Williams (where ROR/RUS more than tripled). Moose County also saw an uptick in ROR/RUS of 15% (an association that is statistically significant at the .11 level).

However, Figure 2b suggests significant change in booking rates only in Bleek County, though that is an even more marked shift than what occurred for bail/release decisions. Figure 2c suggests statistically significant downshifts in bail amounts that are not altogether attributable to the change in the numbers of defendants who got no bail: In Bleek, fewer defendants faced bails of $1000 or more; in Williams, and Moose Counties, fewer defendants faced bails of $2500 or more. Last, these lower bails appear to have translated, in Bleek and Moose Counties at least, into lesser durations of pretrial detention (Figure 2d).

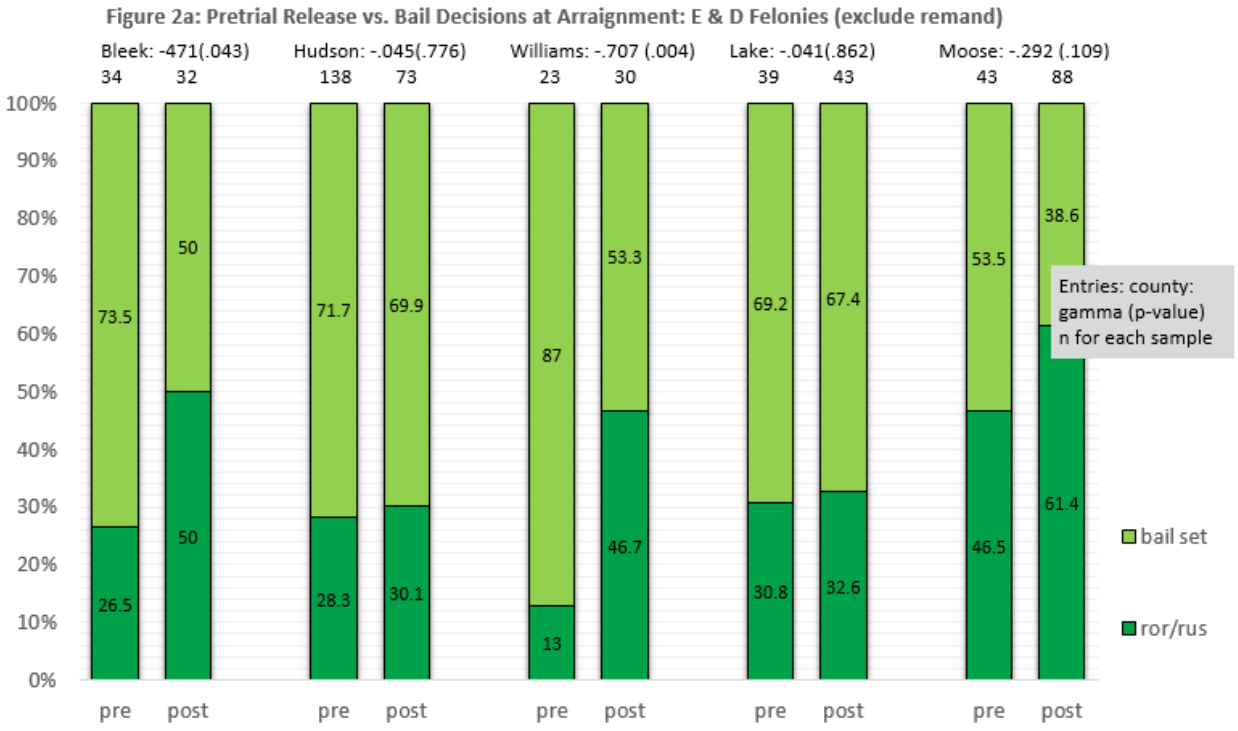


Figure 2b: Booked on Instant Offense: E & D Felonies (exclude remand)

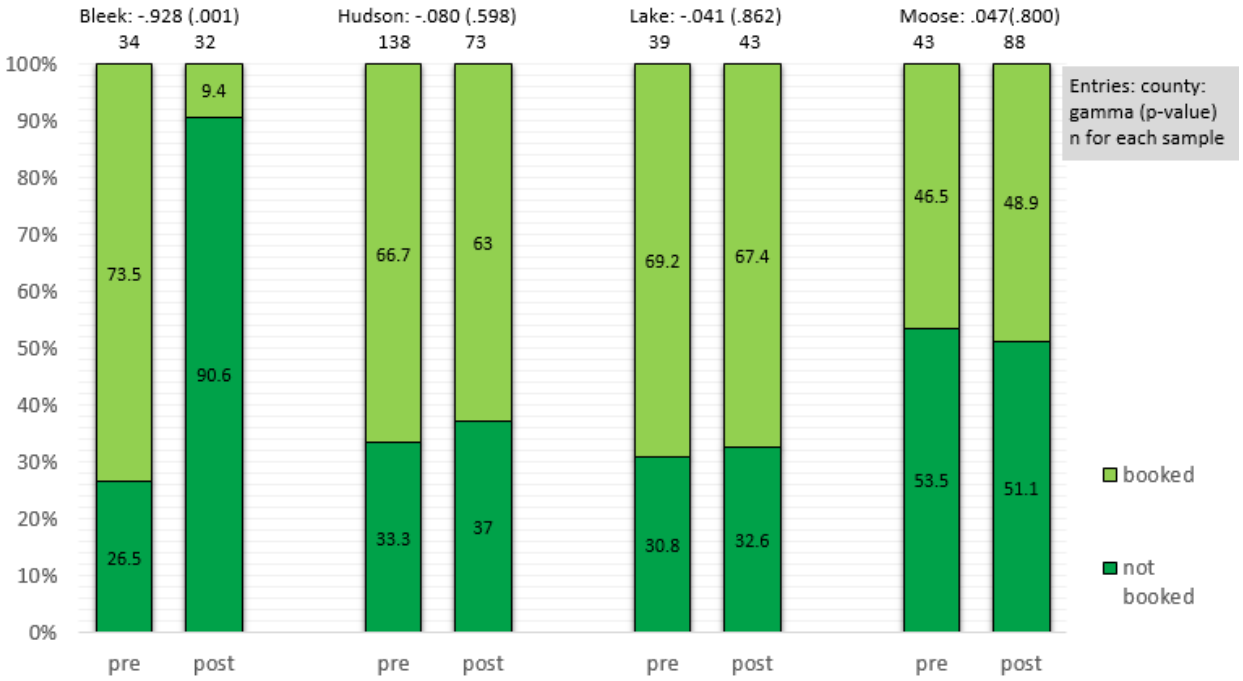
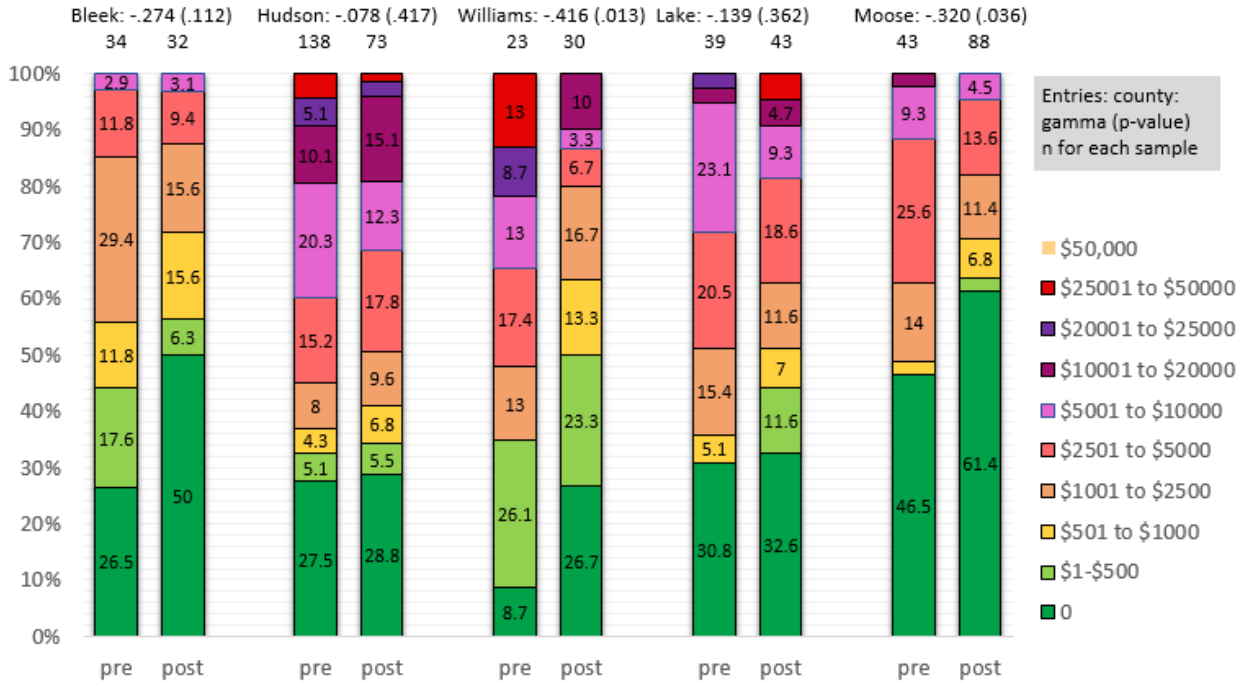


Figure 2c: Bail Amount Categories: E & D Felonies (exclude remand)



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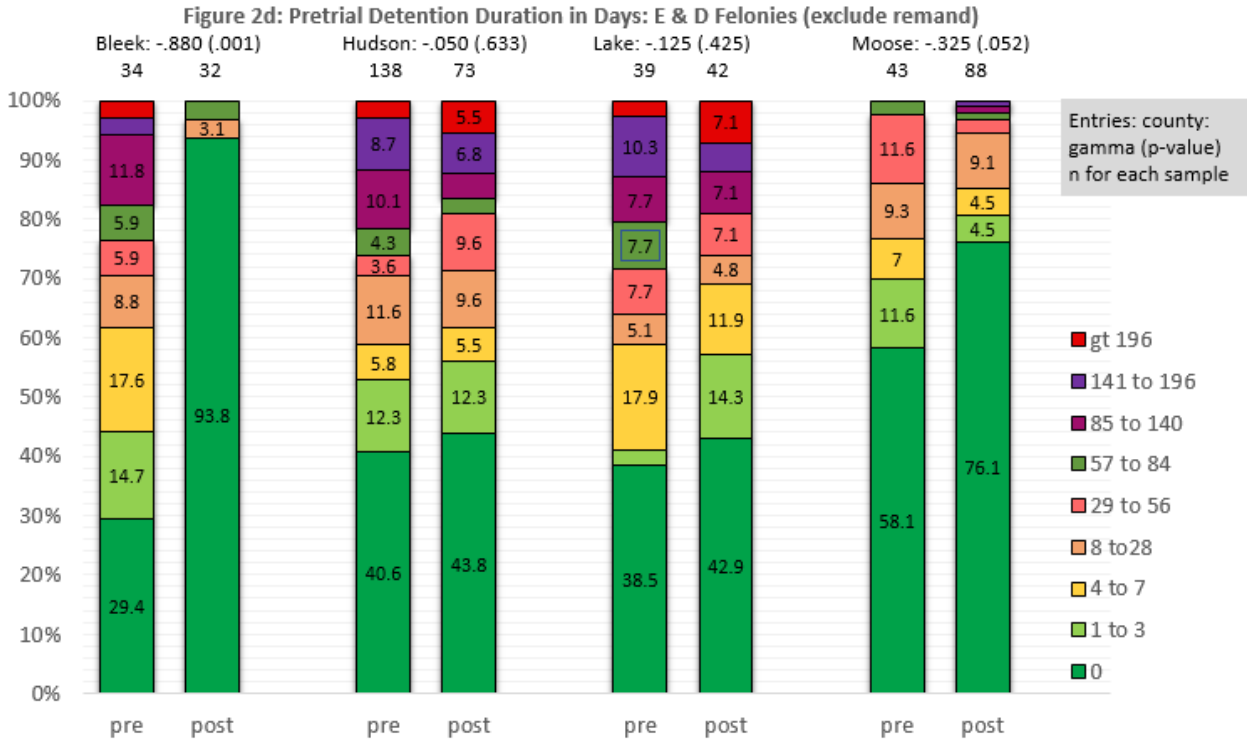

Charge Reduction, Dispositions, and Sentencing in Felony Cases

Our analysis of case outcomes suggests that post-CAFA cases were not characterized by more lenient decisions. In Bleek and Hudson, reductions of initial felony charges to misdemeanor charges increased by 20% and 10% respectively; Polar also saw a 10% increase though unlike the first two counties' associations, this was not statistically significant. The remaining counties experienced slight decreases in reductions, though none of those approached statistical significance.

Likewise, dispositions remained consistent across the two time periods (Figure 2f). Only Polar County experienced a shift away from felony convictions, and that association was not statistically significant. Finally, sentencing outcomes are inconsistent across the sites (Figure 2g); Bleek, Hudson, and Moose County results on this question reach or approach statistical significance, and they are quite different. Bleek County's court shows an increase in conditional discharges, balancing out a decrease in financial penalties; and an increase in probation and a decrease in prison sentences. Hudson's courts resulted in more discharges, but also the substitution of probation for fines and fees. Polar County experienced an increase in incarcerative sentences and, like Bleek and Hudson, and increase in the use of probation, displacing fines and fees.

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Figure 2e: Charge Reductions: Felony to Misdemeanor/Violation

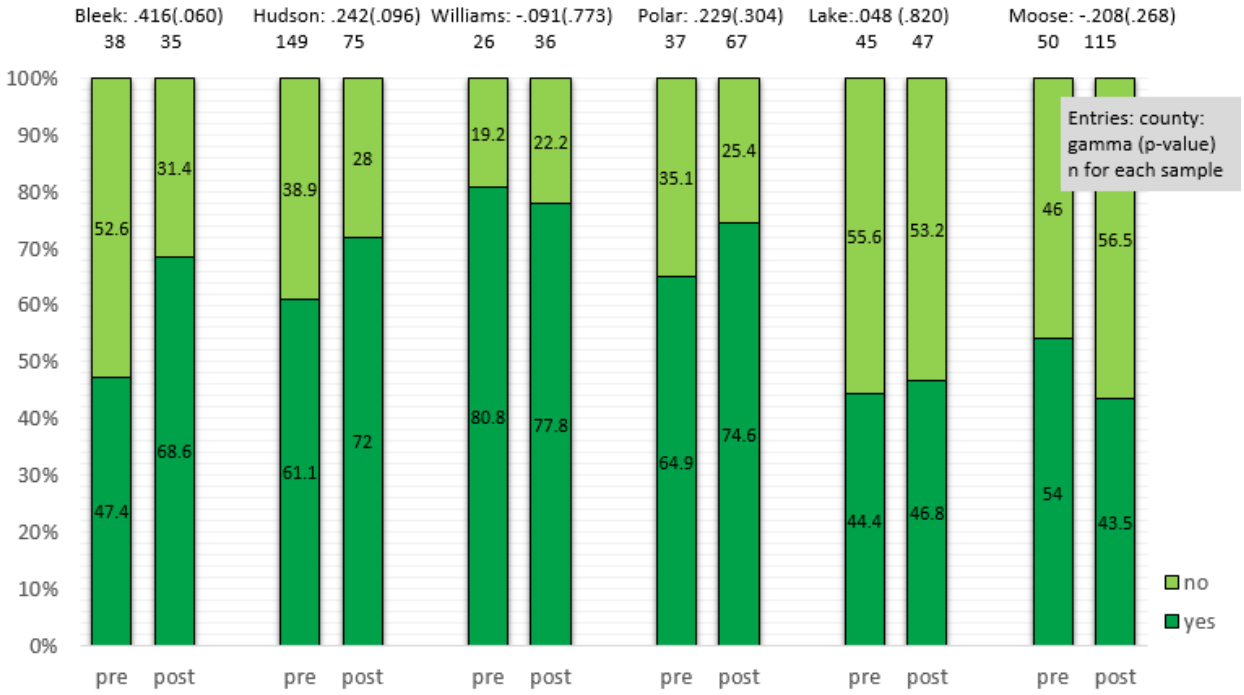
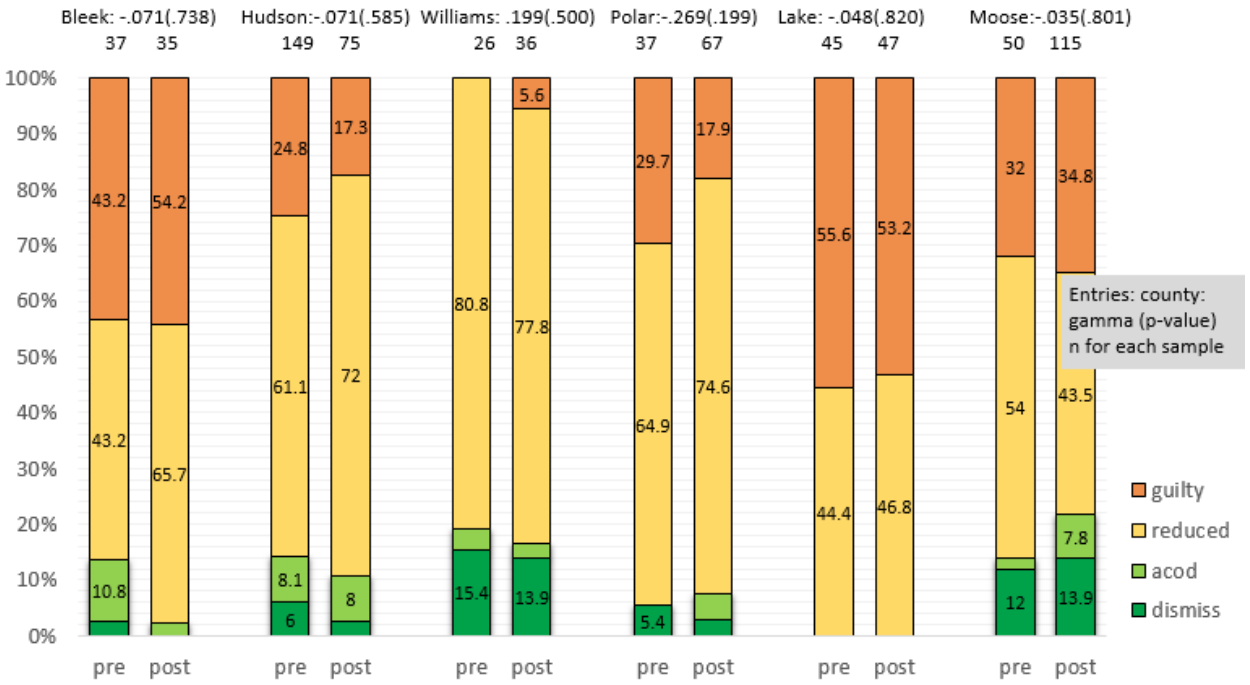


Figure 2f: Dispositions: E & D Felonies



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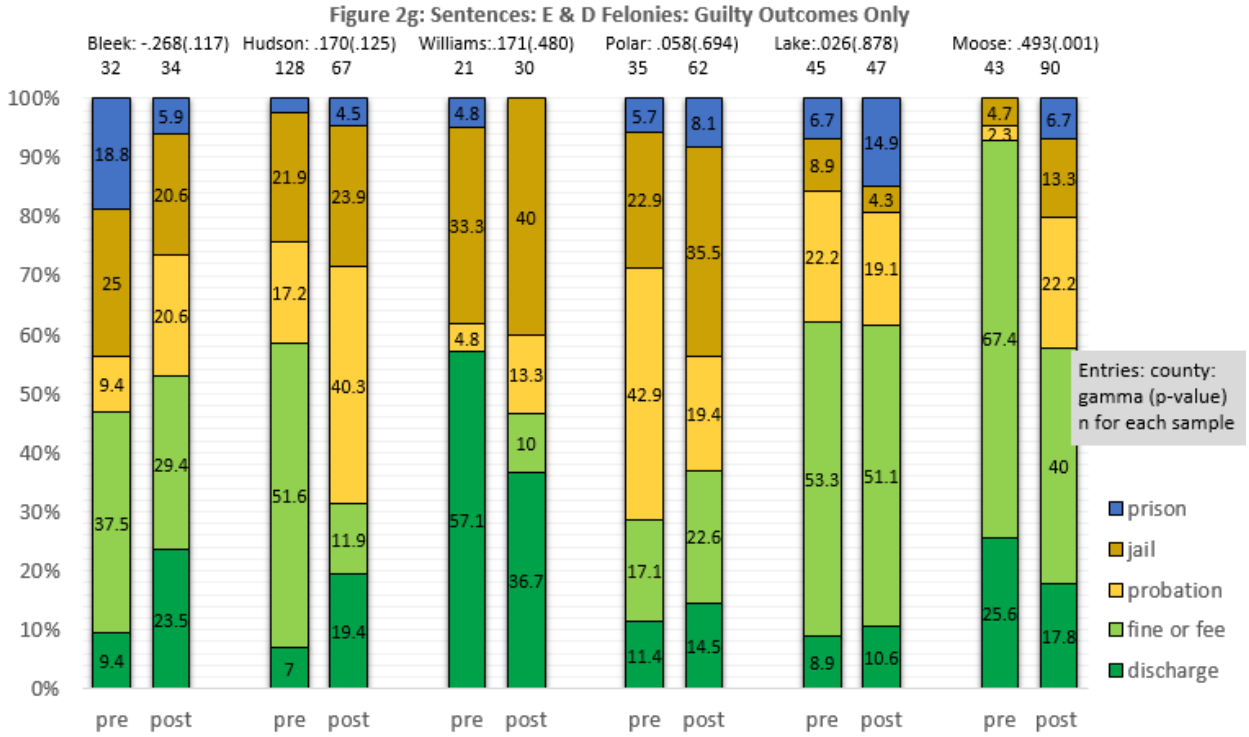

Discussion and Summary: The Effect of CAFA on Pretrial and Disposition Outcomes

One of the dilemmas of the cross-case methodology that we undertook is the challenge of making sense of many snapshots of data, as illustrated by the 14 figures presented above. Should the results be interpreted in terms of their apparent support for, or contradiction of, original hypotheses, in order to address the policy question at hand? Or should they be interpreted in the context of the inferences to be made about the diversity of local court practices and patterns? We begin with a few observations on the latter, before considering the former.

First, we note that the programs and courts that we studied produced disparate patterns of decisions and outcomes, which becomes apparent if one turns attention away from the pre-/post-CAFA comparisons and instead scrutinizes the pre-CAFA data, as baseline information, across the sites. At the misdemeanor level, for example, Lake has far more releases on recognizance than Hudson (68% vs. 38%), and very rarely imposes bails over $2500. Bleek defendants and Lake Counties are less likely than others to have misdemeanor charges reduced to violations, and over half of misdemeanor defendants are found guilty of misdemeanor charges; in Williams courts, the proportion is slightly more than one in four. Compared with the other sites, Lake County seldom sentenced defendants to jail. A perusal of felony findings would produce some similar conclusions. This offers one interpretation for the apparent difference in CAFA's impact: Lake County already had more liberal pretrial release practices, and hence had less capacity for change. We offer these observations not in an attempt to account for them, but simply to illustrate the variability in local customs. We also speculate, with no criticism intended, that lawyers and judges would have little appreciation for how distinctive their own courthouses' cumulative decision patterns might be; they might be surprised to find that just a few counties over, norms about case processing might be quite different from their own.

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Second, and relatedly, we note that our inferences about how CAFA programs might adjust those practices are not uniform across sites. In keeping with both previous evaluations of such programs and the expectations of court reform advocates, we hypothesized that, in the aggregate, compared with pre-CAFA cases, post-CAFA cases would be characterized by fewer restrictions on liberty at the pretrial stage, and – more guardedly – by more clemency as cases were disposed.

Third, we acknowledge that these decision and outcome variables are somewhat redundant; for example, a decision to ROR a defendant will almost always be associated with a bail amount of $0.[25] This seems a bit like "cheating," insofar as the second variable captures the variation in the first. But from the perspectives of CAFA advocates, that is exactly how we should conceptualize its effect: if the objective is to reduce unnecessary restrictions on pretrial restrictions then it makes sense to measure the added increments of liberty at each stage. Indeed, the opposite might be misleading. For example, if judges were providing ROR to more defendants when counsel is present (and those decisions are better informed about risk), the bails they set for the remaining defendants, who are presumably higher risks, would logically be, overall, higher.

Table 3 is a very simplified summary of the direction and significance of the associations represented in the bar charts above: a positive evidence for a hypothesis is represented by a plus sign, and negative evidence by a minus sign. (For example, a negative sign on the pretrial ROR/RUS vs. bail set column indicates that the post-CAFA sample had lower rates of bail set, and higher rates of release, than the pre-CAFA sample.) Associations that were statistically significant at the .10 level or below are bolded; associations that did not reach the .10 level are presented in parentheses.

This table confirms that there is variability, across sites and charge levels, in the associations between CAFA and pretrial decisions and consequences (decisions on bail or release, bail amounts, jail booking, and duration of pretrial detention). In misdemeanor cases, Bleek, which already provided the highest levels of ROR and RUS, demonstrated little change in their release and bail amount decisions, but subsequent to CAFA, fewer defendants were booked and detained, probably because more of them could meet the more modest ($500) bails that were more frequently set. In Hudson and Lake Counties, CAFA was associated with less restrictive pretrial decisions and outcomes across the board. Williams, for which we have data on the bail decision and bail amount variables, seems puzzling, until we take a closer look at Figure 1b, which shows that a reduction in the number of defendants getting zero bail, but a large increase in those whose bail was set at $500 or less. We do not have sufficient data to assess Polar County's pretrial patterns.

[25] We note again the anomalies that are produced when an arrestee has bail set by law enforcement, typically for no more than $500, and is arraigned days or weeks later; judges may sustain those bails or suspend them, and we could not always confirm when this had occurred.

Table 3. Summary of Pre-CAFA and Post-CAFA Comparisons: Decisions and Outcomes

		pretrial decisions and outcomes				dispositional decisions and outcomes		
		ror/rus (0) vs. bail set (1)	not booked (0) vs. booked in jail (1)	bail amount (category)	pretrial detention duration (weeks)	no charge reduction (0) vs. reduction (1)	less serious disposition (0) vs. more serious (1)	less severe sentence (0) vs. more severe (1)
Bleek	misdem	(-)	---	(-)	---	+	(-)	(-)
	felony	---	---	(-)	---	+	(-)	(-)
Hudson	misdem	---	---	---	---	+	(-)	---
	felony	(-)	(-)	(-)	(-)	+	(-)	(+)
Williams	misdem	(+)	no data	(-)	no data	(+)	(+)	(+)
	felony	---	no data	---	no data	(-)	(+)	(+)
Polar	misdem	no data	no data	no data	no data	+	(-)	(+)
	felony	no data	no data	no data	no data	(+)	(-)	(+)
Lake	misdem	(-)	(-)	---	(-)	(-)	(+)	(+)
	felony	(-)	(-)	(-)	(-)	(+)	(-)	(+)
Moose	felony	(-)	(+)	---	---	(-)	(-)	+

Entries represent the direction of associations, presented for both felony and misdemeanor case comparisons: + = positive association and --- = negative association. Entries in parentheses do not reach the .10 level of statistical significance.

Discussions early in the development of this project led us to expect, as some practitioners and reform advocates did, that the presence of counsel would be of greatest benefit to people charged with lesser offenses, where a lawyer's case for release or lower bail would be easier to make. We note that Bleek, Moose, and (based on limited data) Williams Counties generate support for the thesis that CAFA leads to some patterns of less restrictive pretrial decisions and outcomes for *felony* charges. Hudson and Lake show no such shifts.

Finally, we turn to disposition decisions: decisions to reduce charges, assign guilt, and sentence. In Bleek and Hudson, CAFA is associated with charge reduction in both misdemeanor and felony cases. CAFA's association, overall, with disposition type – ranging from dismissal to a guilty verdict on charges – is suggested in Polar County data. Otherwise, we see little evidence that CAFA significantly reshapes the adjudication and disposition process. And indeed, there may be little reason to have expected that, for at least two reasons. First, the key decisions (aside from their consequences for defendants) are made by different actors. Judges make release and bail decisions, and those decisions, at least initially, are made shortly after arrests, when little information is available about the case. As we noted earlier, in many courts, prosecutors are not present for arraignments, though they may phone in recommendations. It is this potentially one-sided dynamic that CAFA is intended to rebalance, and the evidence suggests that, at least in some courts, it did. But prosecutors are largely responsible for charge reductions, and decisions about pleading guilty (and under what conditions, and to what terms) are frequently the domain of prosecutors, presented as *faits accompli* to judges.

Findings from the Investigation of Cost Reductions: The Impact of CAFA Programs on Expenditures

The final series of analyses provide some suggestive information on the impact of CAFA programs on demands for public resources. Specifically, we ask whether the introduction of CAFA increased the number of court appearances that were scheduled, the time that elapsed between the initiation and disposition of cases, the estimated cost differences in pretrial detention before and after CAFA, and, in the two assigned counsel counties that we studied, whether expenditures on attorney vouchers increased, decreased, or remained the same after CAFA was institutionalized. We know of very few studies that examine the direct or indirect costs of implementing CAFA (e.g, Sykes, Solowiej, & Patterson, 2015); and some such studies focus not only on the costs of providing counsel, but on the costs to state governments, of settlements for lawsuits claiming lack of adequate counsel (e.g., Jweied & Jolicoeur, 2011). We offer these assessments with an important caveat:

> "Efficiency may be adopted as an agency's goal but its limits should be recognized. A real danger of pursuing efficiency as an agency goal is that it may jeopardize the quality of case dispositions" (Jacoby, 1983: 276).

And we are mindful that in New York, as in many states, the costs of providing indigent defense falls largely upon local, not state governments. That said, in our study, CAFA programs were funded initially by grants from New York State, and hence their costs to indigent defense programs are forecasted in their program budgets. From the perspective of local governments, however, tasked with funding jail, court and defense systems, our original hypothesis was that counsel at first appearance might actually reduce system costs. We proposed these hypotheses:

H8: CAFA is associated with fewer court appearances between arraignment and disposition.
H9: CAFA is associated with briefer times to disposition (measured in days from arraignment to disposition).
H10: In assigned counsel programs, CAFA is associated with a reduction in attorney time expenditures per case.
H11: CAFA is associated with reductions in net pretrial detention, providing a marginal cost savings to county taxpayers.

The first three hypotheses are based on the premise that when attorneys are present at arraignment, they (or their office mates) may get a faster start on the processes of assessing evidence, interviewing witnesses, developing alibis, and the like. Perhaps they may more quickly find themselves discussing plea deals with prosecutors. We might even speculate that the sooner an attorney (and her staff) are engaged in the case, the more likely it is that defendants will comply with court dates, preventing rescheduling and delays. Hence the first two of these hypotheses predict that CAFA may reduce the duration and intensity of adjudicative time, both in terms of the number of court appearances per case, and the time that elapses before disposition. In assigned counsel programs (Bleek and Williams Counties), we might expect that attorneys would bill the county for fewer hours when cases are provided CAFA.

However, we qualify these hypotheses with an alternative prediction, based on conversations with defense attorneys. If indeed CAFA facilitates a prompt initiation of defense lawyers' work, it may enable them to invest more thoroughly in the case, which might produce the opposite effect – more court hearings and longer times to disposition. From many defense lawyers' perspective, a more expeditious process is not necessarily a better process (unless, of course, the client is languishing in jail). In addition, with an increase in ROR and RUS dispositions, and more affordable bail set, more defendants may be able to avoid pretrial detention pressures to plead guilty to get out of jail and thus may be willing (and able) to invest in a longer period of adjudication so that their attorneys could try to secure a more favorable plea deal.

Appendix 5 contains bar charts that break down each county's pre-CAFA and post-CAFA distributions on numbers of court appearances and weeks to disposition, in misdemeanor and felony courts. (Detailed measures of association and significance are reported in Appendix 4.) Table 4 summarizes those results. We observe that in Hudson and Lake Counties there is an overall increase in the number of appearances prior to misdemeanor dispositions. Polar County experienced a sharp increase in the number of cases taking 3 or 4 weeks, rather than 1 or 2, to reach disposition. Bleek and Williams courts experienced no significant differences. In cases involving felony charges (Figure 2h), we again observe no differences in Bleek, but increases in court hearings in Hudson, Williams, Lake, and Moose, and a reduction in appearances in in Polar County. As Table 4 indicates, times to disposition tracks with number of appearances: In Hudson, Williams, and Lake misdemeanor cases took longer to dispose; and in the latter two counties the same was true for felonies. Polar appears to have reduced time to disposition across charge levels.

Table 4. Summary of Pre-CAFA and Post-CAFA Court Appearances and Time to Disposition

		# number of appearances	# weeks to disposition
Bleek	misdem	(+)	(-)
	felony	(+)	(-)
Hudson	misdem	+	(-)
	felony	+	(+)
Williams	misdem	(-)	+
	felony	+	+
Polar	misdem	+	--
	felony	--	--
Lake	misdem	+	(+)
	felony	+	+
Moose	felony	+	(+)

A plus sign indicates more court appearances or a longer time to disposition; a minus sign indicates fewer appearances or briefer times to disposition. Entries that do not meet the .10 level of statistical significance are in parentheses.

We candidly question whether we can draw conclusions, or not, from these patterns. Particularly in the majority of counties where these cases were heard in town and village courts, which often meet only one or twice a week, or even less often, we cannot confidently gauge how well the pace and incidence of court appearances matches any measure of practitioners' efforts or court capacity; and in felony matters, in particular, we recognize that at some point most of these cases were transferred to county courts, whose scheduling is more regular than in local courts. That said, the weight of evidence, such as it is, suggests that CAFA was associated with more, not fewer, court appearances.

These analyses leave us with little purchase for conclusions about the impact of CAFA on court and community resources. For more concrete information, we turn to our last county outcome variables: shifts in the burden of pretrial detention, and payments for attorneys' work, as catalogued hourly in the two assigned counsel county programs (Bleek and Williams).

Pretrial detention is costly: the state of New York estimates the *marginal cost* of incarceration, in a county jail, at $69 per inmate per day (Schabses, 2013). Note that the these authors make a careful distinction between average cost, and marginal cost: the former involves a simple cost assessment of expenditure per population, but the latter takes into account the cost of detentions that result from the addition or elimination of programs or initiatives that affect populations beyond an expected baseline. Specifically, the NY Division of Criminal Justice Services defines the marginal cost as the actual cost of adding inmates (temporary or otherwise) to the general administrative costs of running a jail. In short: the marginal cost is a conservative estimate of what it costs taxpayers to add inmates to a jail with some unused capacity (Schabses, 2013). We estimated, for pre- and post-CAFA samples, the levels of pretrial detention for misdemeanor and felony arrestees, by taking the average level (measured at the weekly level) of detention, and then assessing the consequences of pre- and post-detention figures for a hypothetical sample of 100 arrestees. Based on averages across samples in our data, as well as corroborative estimates in other studies, we assume a case mix, among our 100 arrestees, of 75 misdemeanor arrests and 25 felony arrests.

Table 5 summarizes the results of these analyses for the four counties for which we had reliable pretrial detention data (Appendix 5 provides details on our calculations). We caution the reader to interpret these findings with care. They reflect the predicted savings, in terms of marginal incarceration costs, for a hypothetical sample of 100 defendants, but of course the actual savings, were they to be generalized, would (1) depend on the stability of these estimates, and (2) vary greatly by how many "samples" of 100 defendants would materialize in any given fiscal year. Furthermore, jail funding is a complex and multi-level matter – some jails accept "boarders" from overcrowded neighboring counties, for example, and would welcome additional detainees. Still, it appears that for these counties, at least, counties stand to save the money that appears to be associated with CAFA experiences with judges' pretrial decisions.

Finally, we address the most empirically accessible question about the effect of CAFA: do expenditures per case vary, in counties that rely on assigned counsel (private attorneys working at state-established rates, of $75 per hour for in-court time, and $60 per hour for out-of-court time), across pre- and post-CAFA outlays for representation? Somewhat to our surprise, given our findings above about case duration and appearances, we observe that in the limited

realm of attorney work that we could observe, under CAFA conditions attorneys logged fewer hours than they did with similar cases before CAFA. So even though cases may be taking longer to reach disposition, and may involve additional court appearances, it does not mean that this is increasing overall attorney workload or taxpayer costs per case; indeed, it may mean that the workload is being spread out over a longer period of time and that it is shifting to a slight increase in in-court rather than out-of-court expenditures.

Table 5. Projected Expenditure Differences per 100 Arrestees		
Projected expenditures	pre-CAFA expenditures	post-CAFA expenditures
Bleek County	$159,390	$ 26,082
Hudson County	$145,383	$116,886
Lake County	$154,077	$131,859
Moose County	$ 63,273	$ 63,756

In Bleek County, the mean voucher charge for representing indigent defendants in misdemeanor cases was $367 before the CAFA program was introduced; after CAFA, it was $312. For E and D felonies, the pre-CAFA average charge was $648; that compares with $604 post-CAFA. In Williams County, the average for misdemeanor representation dropped from $197 to $173, but were slightly higher for felonies ($342 pre-CAFA, compared with $367 post-CAFA).

To summarize: we find that comparing pre-CAFA and post-CAFA samples, across these six jurisdictions, the findings are inconclusive about cost savings. The estimates of time spent on case processing (numbers of court appearances and weeks to disposition) suggest that CAFA is associated with more court time. However, we cannot discern a way to translate that directly into calculable effort, on the part of public employees. We find that, among the four jurisdictions for which we had reliable pretrial detention data, three sites had significantly fewer pretrial detention costs (measured as marginal costs) after CAFA was implemented. And we found that, in the assigned counsel jurisdictions where we had specific data on attorney effort pre- and post-CAFA, differences in costs were small and concentrated in misdemeanor cases.

We offer these findings with the usual caveat: More research is needed before policy makers or advocates argue that the institutionalization of CAFA will decrease or increase public expenditures. Faster resolution may not be better resolution, and cheaper processing may not be more accurate or more fair processing. Hence, we share these findings primarily to stimulate further discussion about how we could, and should, analyze the costs and benefits of reforms.

Discussion and Conclusions

We undertook this project with the intention of assessing how, if at all, programs providing counsel at first appearance might reshape the arraignment process, and whether any adjustments might have downstream consequences for adjudication and sentencing. As the project unfolded, we encountered many of the challenges that face those who aim to collect data from multiple sites, and who hope to interpret their findings in ways that are appropriately

cautious, but optimally useful. We conclude this report with a description of some of the limitations of the project, some reflections on what our findings might contribute to theoretical understandings of court behavior, and some thoughts on directions for criminal justice policy.

Limitations of the Study

This CAFA Project was based on the premise that data coded from original records would be of greater value than administrative data that had been processed through state agencies, using standardizing protocols to aggregate information. We believe this premise was correct, because state administrative data does not include adequate information about the proceedings in the town and village courts that process a majority of misdemeanors, and initial appearances in felonies, outside New York City and other City Courts. However, the process of gathering the data made us acutely aware of the inconsistencies and anomalies that one encounters when one is staring at a casefile that has blank spaces where dates should be, or that is filled with penmanship of which only a physician might be proud. Archived administrative data sets present the user with cleaned, standardized information; creating data from original documents obliges the creator to try to ferret out the missing bits and pieces, or reconcile two different accounts of charges and dispositions attached to the same person and date. We did our best to ensure that we coded all that was available, and double-checked that about which we were uncertain. We had not expected to find, however, that defendants' race and gender might be only spottily recorded, or that the terms of a disposition are sometimes most reliably found in emails between prosecutors and defense lawyers. We also found that defendants' criminal histories were not routinely included in digitized records in most sites, although printed copies were sometimes included in paper records, which led us to rely on previous local jail booking data as a proxy for prior record. Since the data collection phase ended, we have secured permission from the state's Division of Criminal Justice Services to incorporate arrest and conviction histories for our samples into future analyses of these data. We note, however, that we have no a priori reasons to assume that the distributions of prior records, within sites, varied across the pre- and post-CAFA periods.

Our sample sizes are not uniform, even across time periods. We were opportunistic in drawing samples – for instance, where large samples could be quickly downloaded (at least in raw form) we took whatever we could get. In small sites, sample sizes were constrained by smaller caseloads. Because our first effort in most counties was to code the implementation sample (beginning at the initiation of a county's CAFA program, and not analyzed in this report), we developed coding protocols as we moved through the data; we suspect that sample may be less complete and consistent than the pre-CAFA and post-CAFA samples that we analyzed here.

Our decision to code data from defender agencies' files presented tradeoffs, though we concluded that it was our best option. Those files included information on case development (such as number of court appearances), charge reductions, and dispositions that might otherwise be missing. For example, New York's primary statewide criminal justice data source, housed at the Division for Criminal Justice Services, does not permit users to see any case files that were sealed as a result of an ACOD disposition – a reasonable protection of privacy, but a problematic lacuna if one hopes to analyze the full distribution of outcomes in criminal charges.

In our descriptive reports on defendant and case characteristics we noted that our pre-CAFA and post-CAFA samples, within counties, were largely similar. Those data do not provide much purchase for multivariate analyses that models CAFA as one of many possible influences on decisions and outcomes (and such analyses were not our primary objective). That said, there could be differences within the counties that might have muted, or inflated, the association between the presence of CAFA and outcomes. Our process evaluation was intended, in part, to address that possibility. We did not identify significant shifts in courthouse staffing, local politics, or crime and justice concerns in these counties, save for one. Moose County witnessed the aftermath of a child homicide, a contentious district attorney election, and allegations of misconduct involving local criminal justice officials – but those events began before our data collection period started, and continued through 2018.

In the original proposal submitted to the National Institute of Justice (NIJ) we had proposed to test the hypotheses that CAFA is associated with fewer guilty pleas at first appearance or arraignment; a lower likelihood of failure to appear in subsequent court appearances (conditioned on a higher likelihood of pretrial release); and with a higher likelihood of diversion to therapeutic or rehabilitative programs. Unfortunately for these analyses, we could not measure these outcomes consistently across the research sites. Very few misdemeanor and felony charges were disposed at first appearance; but had they been, we would have been unable to capture those in the pre-CAFA sample (since they would seldom have entered the public defender's data system), and in cases other than minor violations, attorneys did not feel that immediate guilty pleas were in defendants' best interests, so did not encourage them. Interviews and observation suggest that failures to appear were often attributed not to flight but to defendants' difficulties in meeting court dates in court jurisdictions with little public transportation; often judges simply rescheduled appearances when informed of defendants' absences. We observed consistent use of pretrial services in two counties, but could only identify such engagement as a diversion from prosecution when evaluating sentencing. We do not feel confident that these outcomes were recorded with sufficient reliability to present statistical findings for them

Finally, because we drew our cases from indigent defense providers' offices, we do not, of course, have data on people who went unrepresented in our sites, or who retained private counsel. For purposes of analyzing CAFA's effects, the latter is not very problematic. The former is harder to gauge. Courtroom observation and a cursory review of CAFA intake sheets in one county suggested that while a few defendants appeared at arraignment with private counsel beside them, the overwhelming majority did not, and most of those went on to receive counsel for the duration of their cases from indigent defense providers, leading us to conclude that our samples represent, at a minimum, the populations of people who are in most need of legal counsel.

Theoretical Insights on Local Legal Culture

The landmark studies of courthouses published from the 1960s through the 1980s were based on field work – often, the gathering of quantifiable data concurrent with court observations, interviews, and investigation of local practices. We hoped to replicate that methodology, and while we did not spend equal time in all sites, we feel confident that our

insights on the dynamics of courthouses, and their receptivity to reforms, are well informed by what we learned through reading, listening, and watching.

This study was originally informed by Malcolm Feeley's thoughtful skepticism on court reform. He cautioned that local courthouse practitioners often did not share the ideology, policy preferences, and priorities of statehouse politicians, and that those politicians did not understand the knowledge, experiences, resource constraints, and relationships of local practitioners. The fact that over half of the counties invited to apply for ILS's CAFA grants chose to not even apply for those grants might be considered evidence that Feeley is right. But our process evaluation suggests that Feeley's thesis does not apply in all cases (an observation with which, we are sure, he would agree). We cautiously conclude that where local leadership (in this case, indigent defense administrators) is strong and established, reform may be successfully implemented. For one of the major conclusions of this study is that, in all six counties, CAFA programs were not only instituted but also routinized; after one year, they were running predictably, covering the intended courtrooms and arraignment dates, and earning the (if sometimes grudging) cooperation of most judges, prosecutors, and law enforcement agencies.

This study supports the longstanding notion that courthouse cultures are distinctive, and that attempts to explain "how courts make decisions" by aggregating data from many of them risks drawing conclusions that might not very accurately describe any of the constituent court jurisdictions. A quick glance at the bar charts in the preceding pages offers evidence: The differences *across* the counties in patterns of bail setting, charge reduction, dispositions and sentencing usually overshadow the differences between pre-CAFA and post-CAFA samples. We conclude that improving our theoretical understanding of court behavior generally, and reform adoption specifically, would be well served by careful study not just of outcomes, but of the courthouse practices and norms that produce those outcomes.

Implications for Criminal Justice Policy and Practice

The standards by which a program's success are best judged are, first, whether its hypotheses about improved outcomes are borne out; second, whether the effects are of sufficient magnitude, from a practical and policy perspective, to make a meaningful difference to clients and stakeholders; and third, whether the program helps to defray or reduce system costs – both tangible and intangible. Many of the theorized benefits of counsel at first appearance may be difficult and even impossible to measure at the individual and jurisdictional level. They include, at the courthouse level, a heightened level of appreciation for the value of early intervention by counsel. They might produce 'spillover' (or, one might argue, 'contamination') effects, such that judges, prosecutors, and lawyers who practice across courthouses will internalize the normative and practical value of this reform. At the case or defendant level, they might produce enhanced system legitimacy among clients and their families and acquaintances, as well as more positive outcomes in terms of employment, family stability, housing, and access to rehabilitative programs. It would be premature to try to enumerate all those factors at this point, because site participants may vary in their perceptions of what is important and what is not, and some costs and benefits may be unanticipated at this time. However, throughout the course of the study, we took care to note practitioners' observations about these important outcomes.

This study offers some pointers for policy makers and administrators who might advance CAFA, or similar efforts aimed at increasing defendants' access to counsel. First, most studies of such reforms are undertaken in urban courts. In the course of our research, on the several occasions when one of us was presenting preliminary findings to colleagues in New York City, we encountered confusion and bewilderment when we described our research sites; it turns out that some criminal justice experts in Manhattan are unaware of the diversity of upstate jurisdictions, and occasionally even of the existence of the town and village courts that comprised most of our sites. Reforms designed for large city courts often do not scale well onto smaller city, suburban, and village courts, where resources for diversion and treatment, access to pretrial supervision, and transportation and geography pose challenges to putting new ideas into place.

Second, we found that the social capital and leadership of defense provider administrators proved critical keeping criticism at bay and institutionalizing the CAFA programs. This also impacted the office culture of each site – social solidarity and support, consensus on values, and a dominant work ethic were all cultivated under these leaders. All of this suggests that reform efforts that require resources and staffing from local courts (and most do) should require that funding agencies pay close attention to how those successful local leaders describe their needs and priorities.

Third, the CAFA Project's findings have implications for criminal justice policy and practice at local, state, and national levels. The results should inform policy discussion with a set of realistic practitioners' perspectives on the barriers to, and opportunities for improving practice. Public defense has long been not only an underfunded but also an uncertain mandate. Our research findings are consistent from those of previous studies, in very different settings, that suggest that *how soon* a defendant first confers with her attorney can have ripple effects on the integrity, as well as the efficiency, of the adjudication process. While as a society we have gone to great lengths to assure that all defendants have rights protected in the middling and final stages of adjudicative process (during trials and appeals), we have paid far less attention to ensuring equal justice on the front end; yet the decisions made in the earliest, least visible, and least informed stages of adjudication can have important consequences for outcomes, both for individual defendants and others associated with charges, and for the criminal justice agencies that process them.

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Appendix 1. Measuring Offense Charge Variables (Initial and Final Highest Charges)

Highest initial offense charge and highest final (dispositional) charge codes were coded using the 3-digit numeric categories in the New York Penal Code and, where appropriate, the multidigit numeric categories for criminal offenses in the Vehicle and Traffic Code, Alcoholic Beverage Control Laws, and Agriculture and Marketplace Laws. These classifications form the basis for variables highcodeinit and highcodefinal.

1 = vehicle and traffic:
- 112 following too closely
- 1120 failure to keep right
- 117 failure stop sign
- 119 driving under influence
- 122 violating misc rules
- 212 log book violation
- 509 license violation
- 511 aggravated unlicensed operation
- 512 driving on suspended license
- 600 leaving scene of accident
- 900 miscellaneous traffic violations

2 = controlled substances
- 220 controlled substance
- 221 marijuana
- 338 imitation controlled substance

3 = personal / violent behavior
- 120 assault
- 121 strangulation
- 130 sex offenses
- 135 kidnapping
- 160 robbery
- 205 escape and custody
- 250 right to privacy
- 260 endangering vulnerable party
- 263 child sexual abuse
- 353 animal cruelty
- 490 terrorism

4 = property offenses, taking, fraud
- 181 cigarette tax viol
- 140 trespass & burglary
- 145 mischief
- 147 misuse food stamps
- 150 arson
- 155 larceny
- 156 computer crime
- 158 welfare fraud
- 165 offenses re theft
- 170 forgery
- 175 false written statement
- 190 other fraud
- 219 franchise tax violation
- 366 medicaid fraud

5 = public safety and civility violations
- 65 alcoholic beverage law
- 182 open burning
- 230 prostitution
- 235 obscenity
- 240 disrupting public order
- 245 offending public sensibilities
- 265 firearms & weapons
- 270 public safety risks
- 410 seizure of porn equip

6 = noncompliance with authority
- 105 conspiracy
- 110 attempt to commit
- 115 facilitation
- 195 official misconduct
- 210 perjury
- 215 violations of court judicial rules

This resource was prepared by the author(s) using Federal funds provided by the U.S. Department of Justice. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Appendix 2. Comparisons of Samples[26]

CASE CHARACTERISTICS	Bleek		Hudson		Williams		Polar		Lake		Moose	
	pre n=168	post n=132	pre n=695	post n=283	pre n=192	post n=295	pre n=290	post n=493	pre n=234	post n=211	pre n=62	post n=197
highest charge level	n.s.		n.s.		n.s.		n.s.		g=.188(.060)		n.s.	
misdemeanor	119	90	513	197	159	253	238	418	179	146	0	0
	70.8%	68.2%	73.8%	69.6%	82.8%	85.8%	82.1%	84.8%	76.5%	69.2%	0%	0%
E, D felony	38	35	149	75	26	36	37	67	45	47	50	115
	22.6%	26.5%	21.4%	26.5%	13.5%	12.2%	12.8%	13.6%	19.2%	22.3%	80.6%	85.2%
C, B, A felony	11	7	33	11	7	6	15	8	10	18	12	20
	6.5%	5.3%	4.7%	3.9%	3.6%	2.0%	5.2%	1.6%	4.3%	8.5%	19.4%	14.8%
offense type	n.s.		n.s.		n.s.		g=-.154(.010)		n.s.		n.s.	
vehicle/traffic	16	10	0	0	10	30	78	178	0	0	8	20
	9.5%	7.6%	0%	0%	5.2%	10.2%	26.9%	36.1%	0%	0%	12.9%	14.8%
controlled substances	13	10	85	37	30	47	8	10	8	21	10	21
	7.7%	7.6%	12.2%	13.1%	15.6%	15.9%	2.8%	2.0%	3.4%	10.0%	16.1%	15.6%
violent/personal	33	33	131	47	27	29	31	41	66	54	6	42
	19.6%	25.0%	18.8%	16.6%	14.1%	9.8%	10.7%	8.3%	28.2%	25.6%	9.7%	31.1%
property/fraud	69	59	383	157	105	164	142	233	116	100	29	38
	41.1%	44.7%	55.1%	55.5%	54.7%	55.6%	49.0%	47.3%	49.6%	47.4%	46.8%	28.1%
public safety/civility	12	7	31	17	8	13	10	9	11	18	4	5
	7.1%	5.3%	4.5%	6.0%	4.2%	4.4%	3.4%	1.8%	4.7%	8.5%	6.5%	3.7%
noncompliance authority	23	13	65	25	12	12	21	22	33	18	5	9
	13.7%	9.8%	9.4%	8.8%	6.3%	4.1%	7.2%	4.5%	14.1%	8.5%	8.1%	6.7%
missing	2	0	0	0	0	0	0	0	0	0	0	0

[26] Entries reflect the samples used in the analyses, which exclude violation-level offenses, correctional law offenses, defendants under the age of 18 at arrest, and the interim sample (immediately post-adoption of CAFA). Gamma values are reported in the shaded rows, with significance levels in parentheses for those that reach conventional levels of .10 or below. Blanks cells indicate that data were missing for the variable in that site.

Appendix 2. Comparisons of Samples[26]												
	Bleek		Hudson		Williams		Polar		Lake		Moose	
CASE CHARACTERISTICS	pre n=168	post n=132	pre n=695	post n=283	pre n=192	post n=295	pre n=290	post n=493	pre n=234	post n=211	pre n=62	post n=197
	1.2%	0.0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
additional charges	n.s.		g=.145(.049)								g=-.445 (.001)	
0	66	55	518	194							23	89
	39.3	41.7	74.5	68.6							37.1	65.9
1	37	19	137	63							25	30
	22.0	14.4	19.7	22.3							40.3	22.2
2	32	20	25	20							10	11
	19.0	15.2	3.6	7.1							16.1	8.1
3	22	11	7	3							2	3
	13.1	8.3	1.0	1.1							3.2	2.2
4	9	13	4	1							1	1
	5.4	9.8	0.6	0.4							1.6	0.7
5	2	3	3	2							1	0
	1.2	2.3	0.4	0.7							1.6	0.0
6	0	7	0.0	0.0							0	1
	0.0	5.3	0	0							0.0	0.7
7	0	0	1	0							0	0
	0.0	0.0	0.1	0.0							0.0	0.0
8	0	2	0	0							0	0
	0.0	1.5	0.0	0.0							0.0	0.0
9	0	2	0	0							0	0
	0.0	1.5	0.0	0.0							0.0	0.0
10	0	0	0	0							0	0
	0	2	0.0	0.0							0	0

Appendix 2. Comparisons of Samples[26]

	Bleek		Hudson		Williams		Polar		Lake		Moose	
CASE CHARACTERISTICS	pre n=168	post n=132	pre n=695	post n=283	pre n=192	post n=295	pre n=290	post n=493	pre n=234	post n=211	pre n=62	post n=197
11	0.0	1.5	0	0							0.0	0.0
DEFENDANT CHARACTERISTICS												
local resident	n.s.		g= .224 (.016)		n.s.		n.s.		n.s.		n.s.	
county resident	145	117	597	224	176	267	232	415	159	145	54	114
	86.3%	88.6%	85.9%	79.2%	91.7%	90.5%	80.0%	84.2%	67.9%	68.7%	87.1%	84.4%
NY state resident	19	15	86	54	10	24	54	78	70	63	7	19
	11.3%	11.4%	12.4%	19.1%	5.2%	8.1%	18.6%	15.8%	29.9%	29.9%	11.3%	14.1%
out-of-state resident	1	0	12	5	3	2	4	0	1	2	1	2
	0.6%	0.0%	1.7%	1.8%	1.6%	0.7%	1.4%	0.0%	0.4%	0.9%	1.6%	1.5%
missing	3	0	0	0	3	2	0	0	4	1	0	0
	1.8%	0.0%	0%	0%	1.6%	0.7%	0%	0%	1.7%	0.5%	0%	0%
sex												
male	0	0	469	196	0	0	0	0	156	157	49	103
	0%	0%	67.5%	69.3%	0%	0%	0.0%	0.0%	66.7%	74.4%	79.0%	76.3%
female	0	0	226	87	0	0	0	0	78	54	13	32
	0%	0%	32.5%	30.7%	0%	0%	0.0%	0.0%	33.3%	25.6%	21.0%	23.7%
missing	168	132	0	0	192	295	290	493	0	0	0	0
	100%	100%	0%	0%	100%	100%	100%	100%	0%	0%	0%	0%
race	n/a		n.s.		n.s.		n.s.		n.s.			
white	0	0	419	159	78	118	82	115	136	139	0	0
	0%	0%	60.3%	56.2%	40.6%	40.0%	28.3%	23.3%	58.1%	65.9%	0%	0%
black	0	0	204	85	84	133	76	100	37	31	0	0
	0%	0%	29.4%	30.0%	43.8%	45.1%	26.2%	20.3%	15.8%	14.7%	0%	0%
other	0	0	72	39	0	0	0	0	0	0	0	0

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Appendix 2. Comparisons of Samples[26]

	Bleek		Hudson		Williams		Polar		Lake		Moose	
CASE CHARACTERISTICS	pre n=168	post n=132	pre n=695	post n=283	pre n=192	post n=295	pre n=290	post n=493	pre n=234	post n=211	pre n=62	post n=197
	0%	0%	10.4%	13.8%	0%	0%	0%	0%	0%	0%	0%	0%
missing	168	132	0	0	30	44	132	278	61	41	62	135
	100%	100%	0%	0%	15.6%	14.9%	45.5%	56.4%	26.1%	19.4%	100%	100%
age category	n.s.		g-.126 (.011)		n.s.		n.s.		n.s.		n.s.	
18-21	12	7	91	32	47	53	34	38	40	31	7	7
	7.1%	5.3%	13.1%	11.3%	24.5%	18.0%	11.7%	7.7%	17.1%	14.7%	11.3%	5.2%
22-24	37	24	146	54	34	71	64	109	48	52	10	33
	22.0%	18.2%	21.0%	19.1%	17.7%	24.1%	22.1%	22.1%	20.5%	24.6%	16.1%	24.4%
25-29	34	27	120	31	35	49	52	99	41	40	21	24
	20.2%	20.5%	17.3%	11.0%	18.2%	16.6%	17.9%	20.1%	17.5%	19.0%	33.9%	17.8%
30-39	41	40	167	69	37	61	58	110	44	35	12	44
	24.4%	30.3%	24.0%	24.4%	19.3%	20.7%	20.0%	22.3%	18.8%	16.6%	19.4%	32.6%
40-49	24	14	102	64	31	30	55	77	41	32	7	17
	14.3%	10.6%	14.7%	22.6%	16.1%	10.2%	19.0%	15.6%	17.5%	15.2%	11.3%	12.6%
50 and above	20	20	69	33	8	31	27	60	20	21	5	10
	11.9%	15.2%	9.9%	11.7%	4.2%	10.5%	9.3%	12.2%	8.5%	10.0%	8.1%	7.4%
missing	0	0	0	0	0	0	0	0	0	0	0	0
	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
previously booked in county	g =-.615 (.001)		g =-.219 (.006)						n.s.		n.s.	
no	77	103	479	194	0	0	0	0	125	113	40	75
	45.8%	78.0%	68.9%	68.6%	0%	0%	0%	0%	53.4%	53.6%	64.5%	55.6%
yes	91	29	216	56	0	0	0	0	109	98	22	60
	54.2%	22.0%	31.1%	19.8%	0%	0%	0%	0%	46.6%	46.4%	35.5%	44.4%
missing	0	0	0	33	192	295	290	493	0	0	0	0
	0%	0%	0.0%	11.7%	100%	100%	100%	100%	0%	0%	0%	0%

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Appendix 3. Dependent Variables

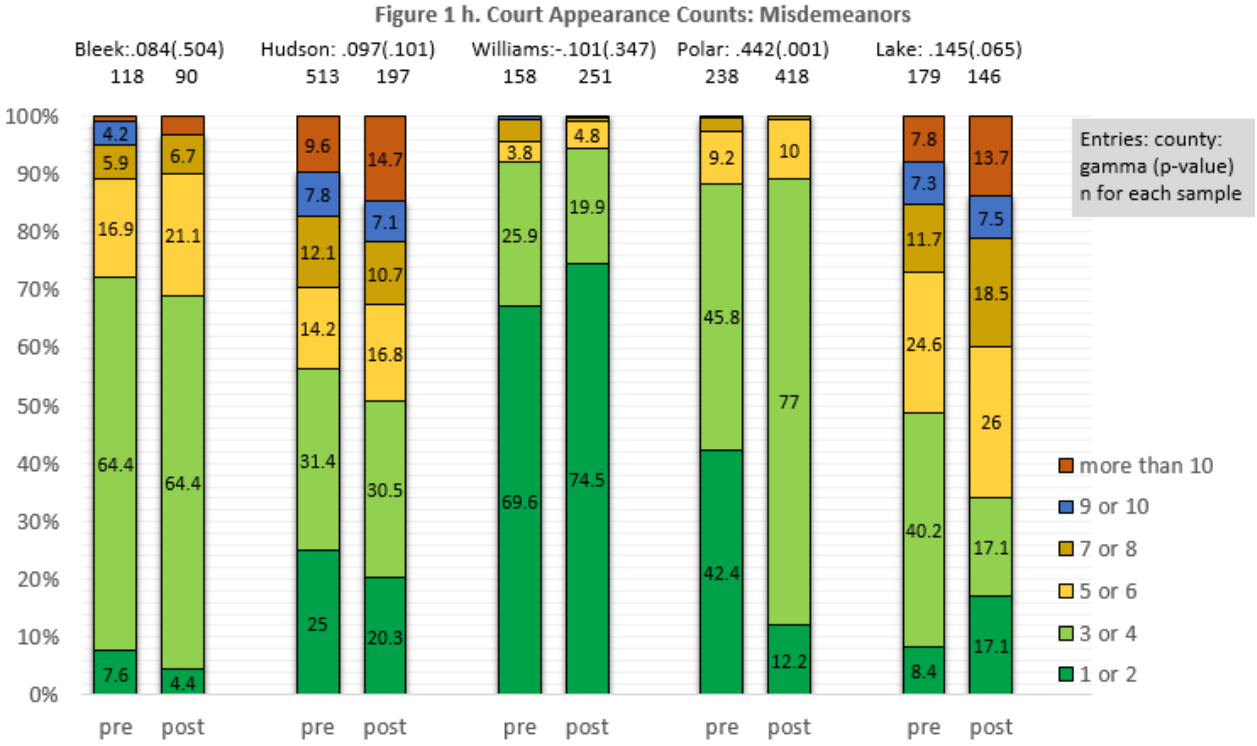
Short description	Variable name	Description	Values	Source
Bail-release decision	**baildecision**	Judge's decision on pretrial release (on recognizance, under supervision, or under conditions) vs. setting bail vs. remand	1: release 2: bail set 3: remand	programs, jail
	Notes: This variable could not be reliably reconstructed for the pre-CAFA sample in Polar County. We could not reliably distinguish between different forms of no-bail release in all sites. In some cases, station house bail had been set at arrest; if the arraigning judge did not release that bail, we counted it as arraignment bail. Remand cases are those in which the defendant is jailed with no bail opportunity, due to statutory constraints on judges' discretion due to defendant prior record, or to detainers attached to parole violations, warrants, holds from other jurisdictions, or the defendant's current status as a detainee.			
Booked on instant offense	**bookinstant**	Defendant booked in county jail on current arrest charges	0: not booked 1: booked	jails
	Notes: The county jails were the primary pretrial detention facilities in the jurisdictions. By state law, county jails differ in their authority to detain arrestees who have not been arraigned by a judge. Defendants who could immediately post bail at arraignment (to the court clerks) generally avoided the jail booking process.			
Bail amount: category	**bailamtcat2**	10-category ordinal measure of bail amount	0: no bail 1: $1-500 2: $501-1000 3: $1001-2500 4: $2501-5000 5: $5001-10000 6: $10001-20000 7: $20001-25000 8: $25001-50000 9: $50001 and up	programs, jails
	Notes: Exact bail amounts were coded, and based on distributions (and practitioner opinion about appropriate categories), were recoded into *bailamtcat2*. Where there were two different bail amounts recorded at the time of arraignment, we were advised to rely on larger one, since it likely represented the judge's decision to impose a bail larger than had been set by police at the time off arrest (station house bail). In New York, judges have considerable discretion in setting bail, although some counties have optional access to local bail schedules. Note that judges' bail decisions may be influenced by many factors that this study did not capture.			
Pretrial detention: category	**predetncat9**	9-category ordinal measure of duration of pretrial detention	0: no days 0.5: 1-3 days 1: 4 to 7 days 2: 8 to 28 days 3: 29 to 56 days 4: 57 to 84 days 5: 85 to 140 days 6: 141 to 196 days 7: gt 197 days	jails
	Notes: Exact number of days, from booking to case disposition, were coded from jail data bases, and then collapsed into categories that reflect no detention, brief detention (1-3 days), up to a week, between one week and one month, one month and two months, and so on. In many cases defendants made bail; in some judges adjusted their decision to release on recognizance during the case; and, in others, defendants remained detained for the duration of their case.			

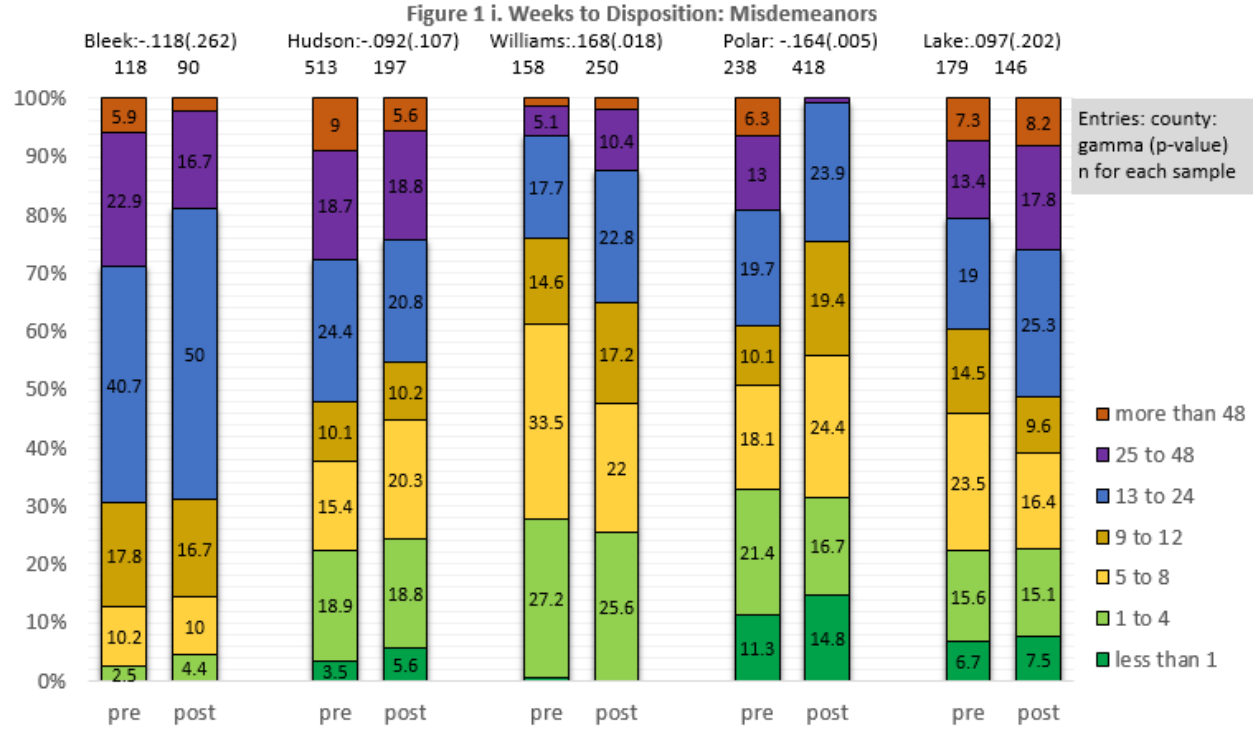
Appendix 3. Dependent Variables				
Short description	**Variable name**	**Description**	**Values**	**Source**
Charge reduction: misdemeanor to violation	**misdemtoviol**	Highest charge is a reduction from a misdemeanor to a violation by disposition	0: no reduction 1: reduction	programs
	Notes: Reduction to violation is advantageous to defendants, since a violation conviction does not "count" as a crime under New York penal law. Violations are typically sanctioned with fines, not jail time or probation.			
Charge reduction: felony to misdemeanor or violation	**feltomisdem**	Highest charge is a reduction from a felony to either a misdemeanor or a violation	0: no reduction 1: reduction	programs
	Notes: Reduction to a misdemeanor is advantageous to defendants, since misdemeanor convictions carry lesser penalties and fewer collateral consequences in terms of employment barriers, eligibility for public services, and access to educational and job-training opportunities.			
Disposition of case	**verdict**	Final disposition of the arrest charges	1: dismissal 2: acod 3: plea to lower charge 3: guilty plea to original charge level	programs
	Notes: Far too few cases were resolved by trial to permit separate analysis of that category. We classified the dispositions for those that went to trial as "dismissal" for not guilty verdicts and "guilty plea" for convictions. Our court observations suggested that even when trials occurred, they were very brief, and often served only to justify having an arresting officer testify. Adjournment in contemplation of dismissal (ACOD) is a form of deferred disposition: If a defendant accepts this disposition, case processing is suspended, typically for six months (though 12 months for domestic violence charges); if the defendant avoids arrest for that time, the charges are dismissed by the court and the case records are sealed. Because the outcome is not a conviction, defendants do not face formal sentencing, but judges may impose conditions such as counseling, treatment, or restitution.			
Sentence severity: category	**sentsevere**	Most severe sentencing option imposed at conviction	0: discharge 1: financial 2: probation 3: jail 4: prison	programs
	Notes: In New York, judges have the option of "conditionally discharging" a defendant who is found guilty: they can suspend any sentencing, while letting the conviction stand. (In some states, the same or similar term would be more akin to NY's ACOD – a suspension of the verdict itself.) Financial penalties include fines, fees, and surcharges, very often imposed in combinations. Probation is a term under supervision from county authorities. Jail is a term of local incarceration. Note that some judges imposed "weekend" detention, often for periods of several two-day stints. Prison is a sentence to one of NY's many state prisons. While some defendants			

Appendix 3. Dependent Variables

Short description	Variable name	Description	Values	Source
	got combinations of these sanction types, we made a normative judgement to order them in terms of greater restriction. We did not have sufficiently consistent data on restitution and community service to include them in these analyses.			
Number court appearances: category	**ctappcountcat6**	6-category ordinal measure of court appearances from arraignment to disposition	1: 1 or 2 2: 3 or 4 3: 5 or 6 4: 7 or 8 5: 9 or 10 6: 10 or more	programs
	Notes: Programs recorded court appearances in different ways, depending on their file and case management systems. In the assigned counsel jurisdictions, the number of court appearances were recorded on attorney vouchers (in-court hours are reimbursed at a higher rate than out-of-court hours). In Bleek County this was a detailed chronological list of activities performed by the attorney; we identified all that involved in-court time for the count. In Williams County the attorney simply entered a number in a field for court appearances on the voucher. In the other four counties, court appearances were noted in the PDCMS open fields for "events;" we flagged all that identified various times of court events for the count.			
Time from initiation to disposition: category	**tarrndispcat6** (Hudson) **tletdispcat6** (Bleek, Williams) **topendispcat6** (Polar, Lake, Moose	7-category ordinal measures of the duration in weeks from initiation of a case to final disposition	1: less than 1 week 2: 1 to 4 weeks 3: 5 to 8 weeks 4: 9 to 12 weeks 5: 13 to 24 weeks 6: 25 to 48 weeks 7: 48 or more	programs
	Notes: Among all options, we selected the most reliably present event that indicated the initiation of a case in defense program files, and constructed a variable that measured the number of weeks from that date to disposition. The best option for initiation event, arraignment date, was available in Hudson. In Bleek and Williams, arraignment dates were not always available in the pre-CAFA sample, so we used the date of the judge's letter to the indigent defense office instructing them to assign an attorney to an eligible defendant; in Bleek we confirmed through court and office observations that the judge made these assignments almost immediately after arraignment. In the three remaining counties, all of which used the CMS, we used the data that the public defender's office opened the case. While arrest date was available in several counties, it became apparent that an arrest (especially one made with issuance of an appearance ticket) could precede arraignment by two to four weeks.			
Filter for SPSS runs	**filternij**	utility variable	0: filter off 1: filter on	internal
	Notes: The analyses reported here were conducted after filtering the data to exclude (1) the interim data collection effort, (2) non-criminal offenses (violations), (3) cases in which the primary offense was a parole or probation, or other sort of correctional law, offense (e.g., not reporting an address change to the state sex offender registry), and (4). We also excluded from analyses cases that were initially charged at the higher felony levels (C, B, and A).			

Appendix 4. Misdemeanors: Court Appearances and Weeks to Disposition





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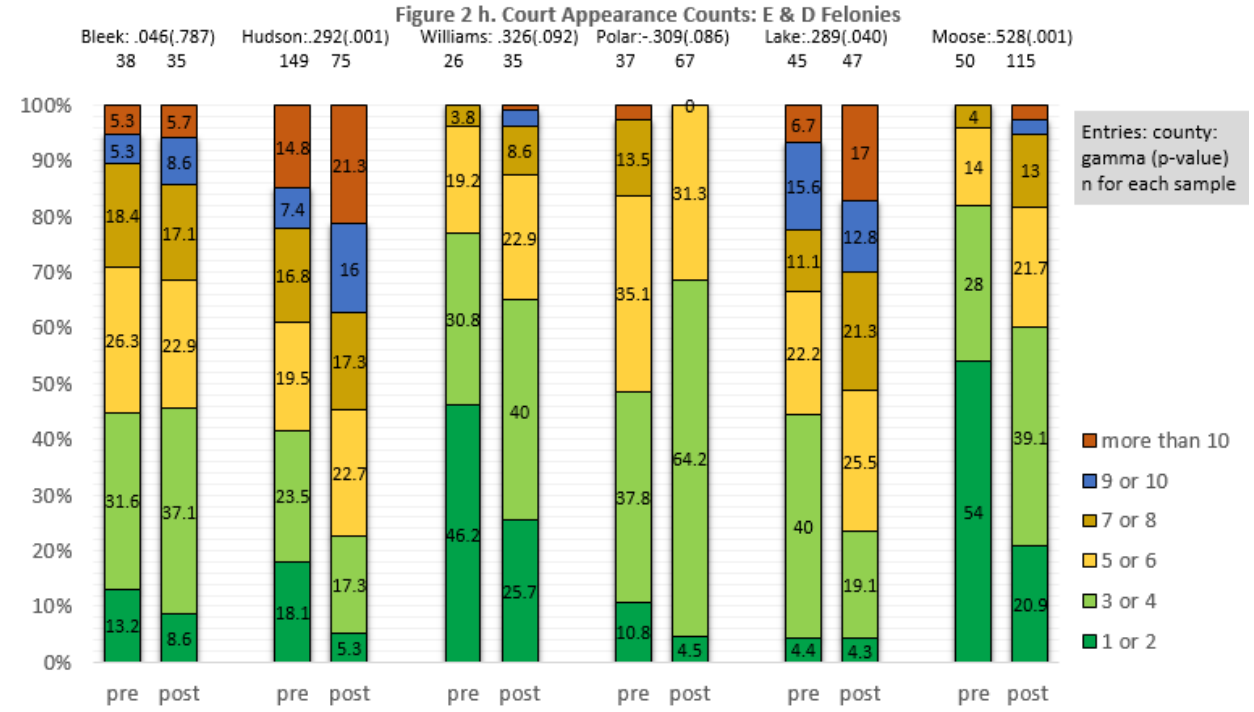
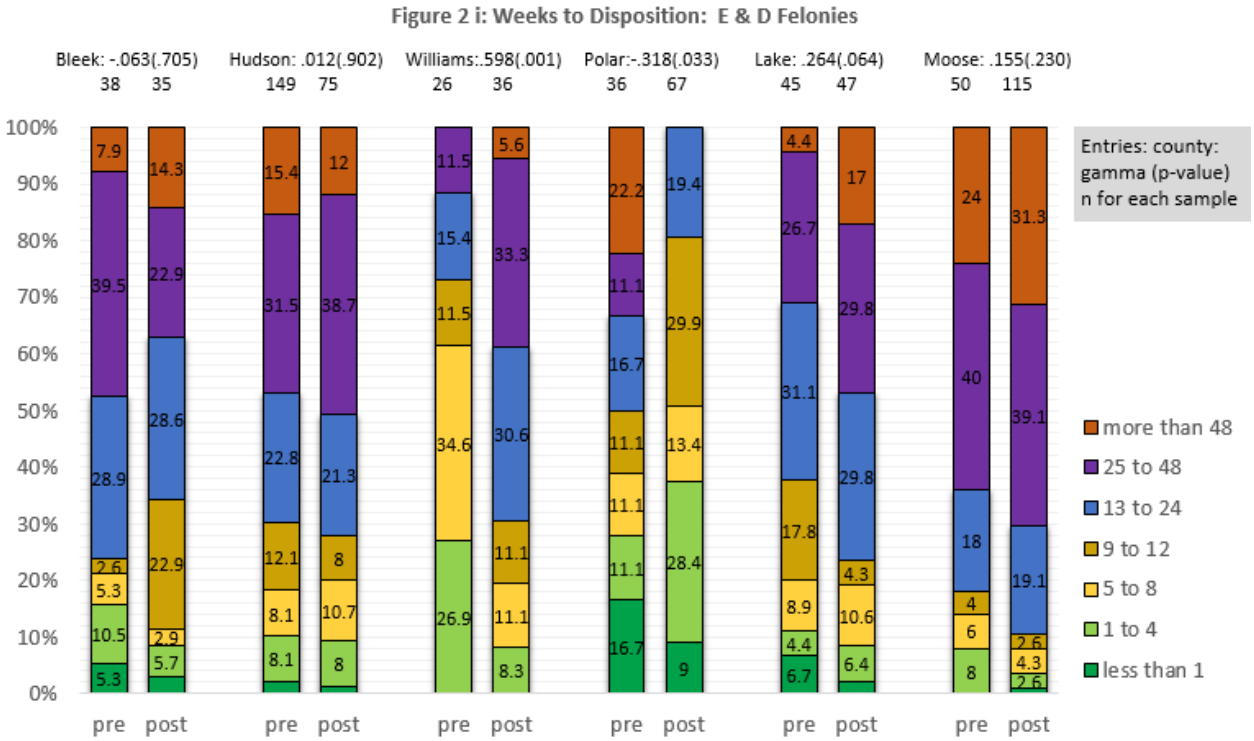
Appendix 5. Felonies: Court Appearances and Weeks to Disposition





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Appendix 6. Potential for Cost Savings for Pretrial Detention

Each column represents the average number of weeks that defendants spend in pretrial detention. Misdemeanors are approximately three times as common as felonies. For a hypothetical sample of 100 arrestees, we estimate the number of weeks of pretrial detention spent by misdemeanor and felony detainees, across the pre- and post-CAFA periods. We then multiply those numbers by 7 (days in a week) and $69 (the NYS DCJS estimate of the marginal daily cost of county jail detention).

Bleek County			
Misdemeanor cases		Felony cases	
mean pretrial detention weeks		mean pretrial detention weeks	
pre-CAFA	post-CAFA	pre-CAFA	post-CAFA
2.32	.59	6.24	.41
x 75	x 75	x 25	x 25
174	44	156	10
Total pre-CAFA weeks: 174 + 156 = 330			
Total post-CAFA weeks: 44 + 10 = 54			
(Total pre-CAFA weeks) 330 x 7 x $69 =$159,390			
(Total post-CAFA weeks) 54 x 7 x $69 = $26,082			

Hudson County			
pre-CAFA	post-CAFA	pre-CAFA	post-CAFA
1.75	1.14	6.78	6.22
x 75	x 75	x 25	x 25
131	86	170	156
Total pre-CAFA weeks: 131 + 170 = 301			
Total post-CAFA weeks: 86 + 156 = 242			
(Total pre-CAFA weeks) 301 x 7 x $69=$145,383			
(Total post-CAFA weeks) 242 x 7 x $6=$116,886			

Lake County			
Misdemeanor cases		Felony cases	
pre-CAFA	post-CAFA	pre-CAFA	post-CAFA
2.05	1.55	6.61	6.26
x 75	x 75	x 25	x 25
154	116	165	157
Total pre-CAFA weeks: 154 + 165 = 319			
Total post-CAFA weeks: 116 + 157 = 273			
(Total pre-CAFA weeks) 319 x 7 x $69 =$154,077			
(Total post-CAFA weeks) 273 x 7 x $69 = $131,859			

Moose County*			
pre-CAFA	post-CAFA	pre-CAFA	post-CAFA
n/a	n/a	5.24	5.27
		x 25	x 25
n/a	n/a	131	132
Total pre-CAFA weeks: 131			
Total post-CAFA weeks: 132			
(Total pre-CAFA weeks) 131 x 7 x $69 =$63,273			
(Total post-CAFA weeks) 132 x 7 x $69 = $63,756			
* estimate for 50 arrestees			

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