



Bail Reform in San Francisco: Pretrial release and intensive supervision increased after *Humphrey*

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California is in the midst of a tidal shift in pretrial detention practices. The California Supreme Court's March 2021 decision in *In re Humphrey* mandated that judges consider a person's ability to pay when setting bail amounts and that detention only be used when no other less restrictive option will ensure follow-up appearance at court and guarantee the public's safety. The ruling, however, does not provide guidance about how courts should implement the decision.

In San Francisco County, which began adhering to *Humphrey's* ability-to-pay requirements in January 2018, we found:

- The overall likelihood of detention for filed cases declined from 25% to 22%.
- Among filed cases that were released, the share released on cash bail declined from 22% to 15%.
- The share of filed cases released to intensive supervision (without financial conditions) doubled, from 14% to 28% of all releases.
- Despite a small reduction in detention, the jail population remained relatively stable.

In addition, we found that Black and White individuals experienced the largest decrease in the likelihood of detention, with the share of Hispanic individuals detained remaining the lowest overall but staying constant after *Humphrey*.

THE *IN RE HUMPHREY* DECISION

Judges in California have historically relied on a bail schedule (which affixes a specified bail amount to each crime) when setting the terms of pretrial releases. This system of cash bail has resulted in people being detained before their trial solely because they can't afford their bail, raising concerns that wealth has become a determinative factor in release decisions. Research has also found the consequences of this pretrial detention can last well beyond the period of incarceration for individuals and their families.¹ Specifically, pretrial detention increases the probability of conviction and decreases subsequent employment and receipt of public benefits.²

In 2021, the Supreme Court of California upheld a state District Court of Appeal 2018 decision in *In re Humphrey* that a court must consider a person's ability to pay and non-monetary alternatives when setting conditions of release (see Appendix A). The Court laid out a general framework to assist courts with implementing the new rule. Absent a substantial threat to public safety, all courts in California must now consider a person's ability to pay when setting bail rather than relying solely on the bail schedule. Judges are also

now required to consider non-monetary release alternatives, such as case management or electronic monitoring.

The *Humphrey* decision does not eliminate cash bail in California: the pre-arraignment bail schedule remains intact and the Court openly clarified in the opinion that bail can constitutionally be denied when there is clear and convincing evidence of a public- or victim-safety risk. The decision also leaves several important questions unanswered, including how courts will calculate ability to pay, how quickly ability to pay must be determined, and the least restrictive conditions of release counties must make available.³

Understanding how *Humphrey* may affect pretrial detention is critical as all jurisdictions are now required to adhere to the decision. Theoretically, lowering bail amounts would allow more people to post bail and be released pretrial, all else held equal. If counties expand the menu of release options, as encouraged under the decision, one might also expect an increase in releases without monetary conditions. Combined, these changes have the potential to dramatically alter pretrial detention and release practices across California.

SAN FRANCISCO CASE STUDY

In January 2018, San Francisco's Superior Court began adhering to the appellate court's ruling on *Humphrey*, providing an opportunity to examine how this change altered pretrial release. Though we seek lessons from San Francisco in how *Humphrey* might impact the rest of the state, there are reasons to believe that *Humphrey*'s effect in San Francisco may differ. San Francisco's commitment to pretrial reform predates this ruling and likely differs from other counties in terms of both policy and practice. For example, the nonprofit San Francisco Pretrial Diversion Project (SF Pretrial) has provided pretrial services in the county since 1976, reflecting an early commitment to reforms. More recently, in May 2016, the county adopted the Pretrial Safety Assessment (PSA) to inform pretrial release decisions, as part of a broader effort to expand and accelerate safe release to pretrial supervision.⁴

Following the 2018 *Humphrey* decision, San Francisco increased its investment in pretrial supervision programs by approximately \$4 million between FY 16/17 and FY 19/20. In November 2018, the county allocated funds to expand SF Pretrial's Assertive Case Management (ACM) program. As a result, judges could assign additional higher-needs clients to

this intensive and structured case management program. The Sheriff Office's budget for electronic monitoring (EM) also increased nearly fivefold and the pretrial EM caseload grew dramatically, from several cases to several hundred per year.⁵

In this brief, we compare pretrial detentions and releases in the pre-*Humphrey* period (May 1, 2016–December 31, 2017) to the post-*Humphrey* period (February 1, 2018–February 28, 2019). The analysis sample is restricted to all bookings on a new offense that resulted in a charge filed by the San Francisco District Attorney. Individuals who are released to other jurisdictions or who are cited with a ticket and released are excluded. This sample comprises approximately 25% of all jail bookings (see Appendix B).

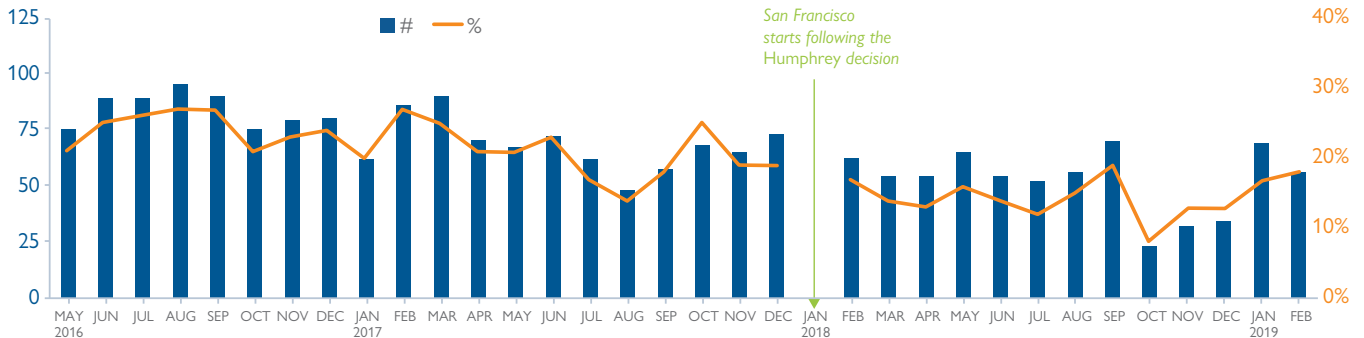
This analysis finds that, following the appellate court's *Humphrey* decision, the ways in which people were released pretrial shifted in San Francisco, though the overall jail population remained stable. We report changes after *Humphrey* was adopted in San Francisco. While suggestive, this analysis does not causally link these changes to the ruling's bail reforms.

Releases on cash bail declined

Releases on cash bail declined by seven percentage points (22 percent compared to 15 percent of filed cases). The average number of filed cases released on cash bail each month decreased from 75 in the pre-period to 52 after the

Humphrey decision (Figure 1). Contrary to expectations, effectively lowering bail amounts did not increase the number of individuals released on bail.

FIGURE 1. Releases to bail in San Francisco pre- and post-*Humphrey*



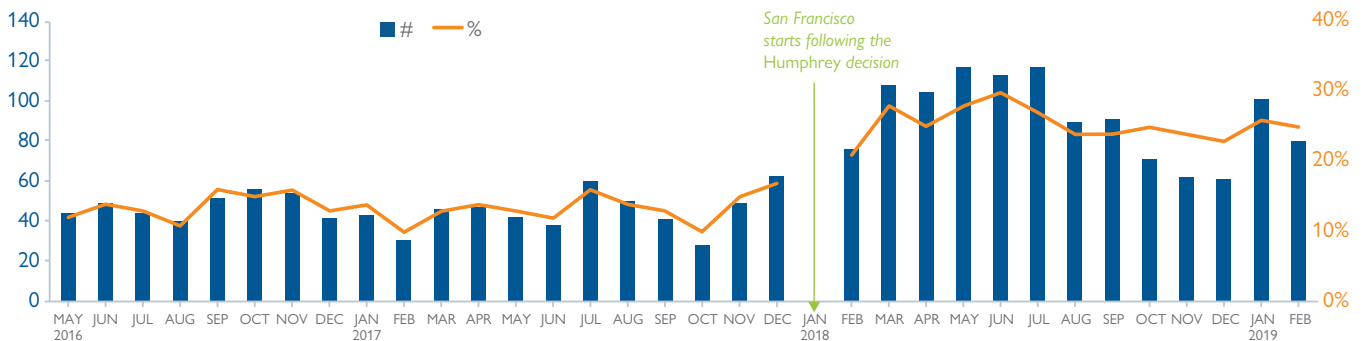
Source: CPL analysis of data from the San Francisco District Attorney, San Francisco Sheriff's Office, and San Francisco Pretrial Diversion Project.

Releases to intensive supervision increased

At the same time, releases to the most intensive forms of supervision — ACM and EM — doubled following *Humphrey*, from 14 percent to 28 percent of filed cases (Figure 2).

Releases to ACM (without EM as a condition) comprised the largest share of the intensive-supervision cases (83 percent).

FIGURE 2. Releases to intensive supervision in San Francisco pre- and post-*Humphrey*



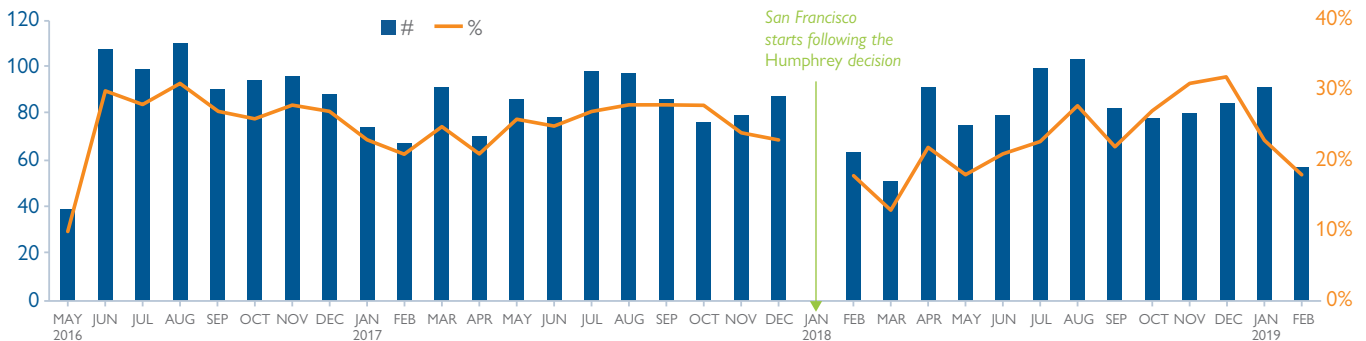
Source: CPL analysis of data from the San Francisco District Attorney, San Francisco Sheriff's Office, and San Francisco Pretrial Diversion Project.

Fewer people were detained for the full pretrial period following *Humphrey*, but the overall jail population remained stable

The share of filed cases detained for the full pretrial period declined by three-percentage points (25 percent to 22 percent) following *Humphrey* (Figure 3). Overall, the median

length of stay decreased for the sample by approximately four hours (from 4.8 to 4.6 days) and the average length of stay decreased by approximately one week (44.9 to 37.3 days).⁶

FIGURE 3. Pretrial Detention in San Francisco pre- and post-*Humphrey*



Source: CPL analysis of data from the San Francisco District Attorney, San Francisco Sheriff's Office, and San Francisco Pretrial Diversion Project.

While the share of filed cases that were detained for the full pretrial period declined, as did the length of stays, the overall impact of *Humphrey* on the jail population is less clear. The average daily population is affected by both length of stay and new admissions. Our sample (those with a filed charge who are detained or released on supervision or on bail) is only one quarter of the overall population booked into the jail. Overall jail population in- and out-flows are fairly stable across the pre- and post-*Humphrey* period.

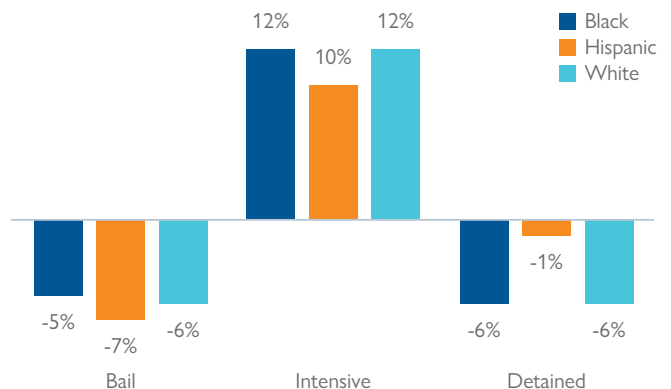
In the pre-*Humphrey* period, an average of 1,441 new cases were booked into the county jail each month and 1,444 were released each month. In the post-period, both bookings and releases increased slightly to an average of 1,460 bookings and 1,463 releases per month.⁷ The median length of stay is fairly stable across the pre- and post-*Humphrey* periods for all bookings (2.31 days in the pre-period compared to 2.38 days in the post-period).⁸

Pretrial detention decreased for Black and White individuals, with little change for Hispanic individuals

There were statistically significant decreases in the likelihood of detention for the full pretrial period for Black and White individuals when controlling for risk level and case factors (Figure 4). We find no change, however, in the likelihood of detention for Hispanic individuals. The share of Hispanic individuals who were detained in the pre-period was the lowest of all groups (19 percent compared to 29 percent of Black and 26 percent of White individuals).

The share released on bail decreased for all racial and ethnic groups. Similarly, we see increases in releases to intensive supervision for all groups, with Black and White individuals recording the greatest increase at 12 percent.

FIGURE 4: Changes in Pretrial Status by Race/Ethnicity



Note: Point estimates control for booked offense type, risk assessment, criminal history and month fixed effects. All differences between pre- and post-*Humphrey* periods are statistically significant except the coefficient on detained for Hispanic individuals. See Appendix C for full results.

IMPLICATIONS FOR CALIFORNIA COUNTIES

The *Humphrey* decision has the potential to dramatically change pretrial justice in California. In San Francisco, the decision shifted how people charged with a new crime were released during the pretrial period, with bail being used less frequently and releases to the most intensive forms of supervision being used more often. There was little effect on the overall jail population in San Francisco.

San Francisco is different from the 57 other counties that are now required to adhere to the *Humphrey* ruling. The county already had robust pretrial services in place and a multi-agency commitment to decrease pretrial detention. This was matched with additional investment to expand the most intensive supervision options after the 2018 *Humphrey* decision took effect. Despite these possible differences, the San Francisco experience is instructive as other counties grapple with how they will adhere to the decision. Below, we present key questions for counties to consider in implementing *Humphrey*.

How will our jurisdiction assess ability to pay?

Humphrey is vague on this point and the burden will fall on individual courts to determine protocols. In San Francisco, the approach has been informal, and the Public Defender has argued on behalf of their clients for an appropriate and tailored bail amount. Since January 2020, money bail is no longer requested by the DA's Office and, instead, the office either requests release with certain non-monetary conditions or preventative detention. Courts will need more guidance on how to quickly assess a person's ability to pay to avoid prolonging the pretrial detention period.

What alternatives will replace bail release and how much will they cost?

The hypothesis that *Humphrey* would increase bail releases (albeit at more affordable amounts) was not supported in San Francisco. Instead, there was a shift away from bail release and an increase in releases to intensive supervision. One potential explanation could be that judges prefer to release people assessed as high risk of pretrial failure to supervision as opposed to setting affordable bail that results in release without supervision. Counties will likely need a range of pretrial release options to meet increased demand from courts. These can range from low-touch interventions, such as court appearance reminders, to higher-touch interventions like electronic monitoring.⁹ *Humphrey* requires counties to use the "less restrictive" supervision level available, and that

non-specific language is intended to provide some discretion. It will be critical to match the supervision and programming level to the risk level of the person released. This will require many jurisdictions to invest front-end resources to accurately assess the risk and needs of the person and better inform the court's decision-making. The changes at the front- and back-end will have budgetary implications, as intensive supervision and treatment programs are costlier than releases to minimal supervision. Despite having expansive services already in place, San Francisco increased its budget for pretrial services by approximately \$2 million in 2018 when it began following the *Humphrey* appellate decision.

How does intensive pretrial supervision affect individual outcomes?

There is a need for more evidence of what interventions have the greatest impact on the likelihood that a person will appear at all hearings and complete the pretrial period without a new arrest, particularly for individuals with the highest needs. There is limited research on the effectiveness of intensive supervision programs, the potential unintended consequences, or the benefits and costs of these programs to clients.

Will these changes reduce our jail population?

The San Francisco case study demonstrates that while pretrial reforms may alter the process and type of release, it may have limited effects on the overall jail population. If jurisdictions want to reduce the number of people in pretrial detention, they will likely need to implement additional policies to reduce the number of cases that are booked into jail or reduce the average length of stay. Effects on the jail population will depend on whether a jurisdiction has already undertaken efforts to reduce the number of people detained pretrial, prior to the implementation of *Humphrey*.

County responses to the *Humphrey* decision will undoubtedly be varied. We encourage counties to collaborate with researchers to generate evidence to guide the design of pretrial supervision programs to help a larger number of individuals, perhaps with more serious criminal charges, successfully complete the pretrial period. In forthcoming research, the California Policy Lab leverages the *Humphrey* decision in San Francisco to estimate the impact of release on pretrial outcomes. This research finds that pretrial release leads to a decreased likelihood of conviction and does not affect subsequent arrest or conviction rates.

ACKNOWLEDGEMENTS

We would like to thank the San Francisco Sheriff's Office, San Francisco Pretrial Diversion Project, San Francisco District Attorney's Office, and California Department of Justice for providing the data used in this analysis. Any errors should be attributed to the authors. We would also like to thank the entire PSA Working Group in San Francisco, which includes representatives from the Superior Court of San Francisco, San Francisco Adult Probation, San Francisco Police Department and the San Francisco Public Defender's Office. Lastly, we would like to thank Emily Kohlheim for her excellent legal analysis. We also thank Arnold Ventures, The James Irvine Foundation, the University of California Office of the President Multicampus Research Programs and Initiatives, and the Bylo Chacon Foundation for their generous support.

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This research publication reflects the views of the authors and not necessarily the views of our funders, our staff, our advisory board, the Regents of the University of California, the San Francisco Sheriff's Office, San Francisco District Attorney's Office, or the San Francisco Pretrial Diversion Project.

Endnotes

- 1 Comfort, M. (2016). "A twenty-hour-a-day job": The impact of frequent low-level criminal justice involvement on family life. *The Annals of the American Academy of Political and Social Science*, 665(1), 63–79.
- 2 Dobbie, Will, Jacob Goldin, and Crystal S. Yang. 2018. "The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges." *American Economic Review*, 108(2): 201–40.
- 3 *In re Humphrey*, 2021 WL 1134487, at 1 (Cal. March 25, 2021)
- 4 For more information about the Public Safety Assessment see <https://advancingpretrial.org/psa/factors/>.
- 5 San Francisco County does not charge fees to individuals on EM. Breakdown of the Sheriff's Community Based Programs by fiscal year in Exhibit 3: https://sfbos.org/sites/default/files/BLA_Policy_Report_Sheriff_%20Contracts_121420.pdf.
- 6 There are approximately double the number of cases in the pre-period that are in-custody for more than one year (186 in the pre-period, 3 percent of cases, compared to 94 in the post-period, 2 percent of cases).
- 7 Individuals in-custody for more than five years are excluded (n=253). Individuals that are still in-custody are included in the booked sample, but are excluded from length-of-stay estimates.
- 8 There is a slight decrease in the average length of stay in the post-period (20.3 days compared to 22.6 days). Public data from the Sheriff's Office shows no change in the monthly average daily population (ADP) during the study period. ADP dropped in 2020 following efforts to reduce the jail population and limit transmission of COVID-19. <https://sfgov.org/scorecards/public-safety/county-jail-population>.
- 9 There is evidence to show that minor interventions, such as text-message reminders, can increase a person's likelihood of appearing at their court appearance. A randomized controlled trial in New York City found clients who receive text-message reminders were 25 percent more likely to appear at their hearing than those who did not. <https://www.ideas42.org/wp-content/uploads/2018/03/Using-Behavioral-Science-to-Improve-Criminal-Justice-Outcomes.pdf>.
- 10 <https://www.latimes.com/opinion/op-ed/la-oe-adachi-boudin-money-bail-20180205-story.html>

APPENDIX

A. Background on *Humphrey*

The *Humphrey* case began in San Francisco in May 2017 when Kenneth Humphrey was detained in jail (pretrial) because he was unable to pay the \$700,000 bail (later reduced to \$300,000) set after he was arrested for stealing a \$5 bottle of cologne from and threatening his neighbor.¹⁰ His attorney appealed the bail determination, arguing that it was unconstitutional for a court to set a bail amount without considering a person's financial situation or whether there are non-monetary releases that could guarantee appearance in court. In January of 2018, the First District Court of Appeal ruled in favor of Mr. Humphrey, holding that judges must consider ability to pay and non-monetary release options when setting the conditions of release. The San Francisco Superior Court, the jurisdiction where the case emanated, immediately began adhering to this ruling.

Shortly after the appellate court ruling, the Supreme Court of California agreed to hear the case at the request of several entities, including then-San Francisco District Attorney George Gascón. The Appeals Court granted review to address the constitutionality of money bail as currently used in California as well as the proper role of public and victim safety in making bail determinations. On March 25, 2021, the Supreme Court of California upheld the lower-court ruling, holding that it is unconstitutional to continue to incarcerate someone because they cannot afford to pay the bail amount set by a court. The Court held that continuing to incarcerate someone based on their lack of ability to pay bail violates “federal equal protection rights against wealth-based detention” and people’s “rights to pretrial liberty.” All courts in California are now required to “consider the arrestee’s ability to pay the stated amount of bail” to ensure that people are not continuing to be incarcerated solely because they cannot afford bail. When someone cannot afford bail, a court may only continue to incarcerate them when the court “find[s] by clear and convincing evidence” that incarceration is the only method through which the state’s interests in making sure that people appear for their trial and in protecting victims and the public can be met. California courts must now consider whether “less restrictive conditions of release” can meet the state’s interests before they can continue to detain someone who cannot afford bail.

B. Data sources and sample

This brief utilizes a linked longitudinal dataset of contacts with the criminal justice system from booking to case disposition from three data sources. We use records from local data sources for cases booked into custody between May 1, 2016 and February 28, 2019 to determine our analysis sample.

First, information from the San Francisco District Attorney Case Management System covers all adult criminal cases in San Francisco since 2008. This dataset provides information on whether the charge was filed and the case disposition date.

Second, data from the San Francisco Sheriff’s Office provides information from all bookings and releases from the county jail since 2010. The dataset also indicates if the person was released on bail. This data is used to measure releases on bail, unsupervised releases, releases to EM, and pretrial detention. We also rely on the Sheriff’s data for information on race and ethnicity. Race and ethnicity are either self-reported or determined by an officer at the point of booking into San Francisco County Jail. CPL combines the race and ethnicity variables to create a single measure.

Third, beginning in April 2016, the San Francisco Pretrial Diversion Project (SF Pretrial) Case Management System dataset includes the PSA’s weighted score for each pretrial risk factor and the release recommendation. We use this data to determine the level of pretrial supervision for each individual released to SF Pretrial’s supervision.

The main sample is restricted to cases in which the District Attorney’s Office filed a charge in the case. We focus on these cases because cases without a charge filed will be released at or before arraignment. Each case is counted once; therefore, if a person is returned on a warrant, the original booking would be included in our sample, assuming it occurred within our analysis period, only. We also exclude cases in which the release reason is local citation or delivery to another jurisdiction.

C. Additional Models

The tables below provide the results of the analysis by race/ethnicity summarized in [Figure 4](#). Results are only reported for three racial/ethnic categories due to the limited information available in the data. The columns present models of the likelihood of each pretrial release or detention status: bail release, intensive supervision, or detention for the full pretrial period. The coefficient on the *Post-Humphrey* indicator shows the change in the likelihood of release after the implementation of *Humphrey*.

TABLE A-1. **Changes in Pretrial Status (Black)**

	BAIL RELEASE	INTENSIVE SUPERVISION	DETAINED
<i>Post-Humphrey</i>	-0.0526*** (0.0103)	0.121*** (0.123)	-0.0622*** (0.0129)
Violent Offense	-0.0358* (0.0177)	0.0254 (0.0177)	0.0855*** (0.0232)
Felony Person	0.0540 (0.0307)	0.0532 (0.0304)	0.130 (0.0345)
PSA: Release (no conditions)	-0.0377* (0.0180)	-0.115*** (0.0193)	0.0170 (0.0194)
PSA: Assertive case management	0.0243 (0.0168)	0.206*** (0.0223)	0.0181 (0.0213)
PSA: Release Not Recommended	0.0841*** (0.0198)	0.0157 (0.0247)	0.0725*** (0.0212)

Standard errors in parentheses
* p<0.05 ** p<0.01 *** p<0.001

Note: Selected controls presented above; additional controls for booked offense, PSA risk score, decision making framework recommendation, criminal history, and month fixed effects are included in the models and available upon request. N= 4,736.

TABLE A-2. **Changes in Pretrial Status (Hispanic)**

	BAIL RELEASE	INTENSIVE SUPERVISION	DETAINED
<i>Post-Humphrey</i>	-0.0707** (0.0135)	0.0960*** (0.0161)	-0.0105 (0.0153)
Violent Offense	-0.0580 (0.0305)	0.0274 (0.0277)	0.0424 (0.0355)
Felony Person	0.0849** (0.0256)	0.0196 (0.0291)	0.0623* (0.0297)
PSA: Release (no conditions)	-0.0812*** (0.0213)	-0.0590** (0.0225)	-0.00317 (0.0209)
PSA: Assertive case management	0.0105 (0.0257)	0.254*** (0.0319)	0.00685 (0.0287)
PSA: Release Not Recommended	0.0352 (0.0262)	0.0107 (0.0264)	0.0150*** (0.0277)

Standard errors in parentheses
* p<0.05 ** p<0.01 *** p<0.001

Note: Selected controls presented above; additional controls for booked offense, PSA risk score, decision making framework recommendation, criminal history, and month fixed effects are included in the models and available upon request. N= 2,533.

TABLE A-3. Changes in Pretrial Status (White)

	BAIL RELEASE	INTENSIVE SUPERVISION	DETAINED
Post-Humphrey	-0.0578** (0.0109)	0.0118*** (0.0143)	-0.0554*** (0.0153)
Violent Offense	-0.0757*** (0.0202)	0.0315 (0.0278)	0.0676* (0.0319)
Felony Person	0.0880** (0.0267)	0.0342 (0.0340)	0.0652 (0.0378)
PSA: Release (no conditions)	-0.00417 (0.0181)	-0.0746*** (0.0217)	-0.0670* (0.0263)
PSA: Assertive case management	0.0379* (0.0188)	0.236*** (0.0275)	-0.0248 (0.0264)
PSA: Release Not Recommended	0.0929*** (0.0201)	0.0165 (0.0247)	0.0670 (0.0263)

Standard errors in parentheses
 * p<0.05 ** p<0.01 *** p<0.001

Note: Selected controls presented above; additional controls for booked offense, PSA risk score, decision making framework recommendation, criminal history, and month fixed effects are included in the models and available upon request. N= 3,182.