



Universität St.Gallen

The impact of hearings on prosecutorial decision-making

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Background I

- Increasing use of penal orders in Switzerland under the 2011 Code of Criminal Procedure
- Penal orders are **convictions issued by prosecutors or legal clerks, not by a judge**
- Penal orders are an option only for minor cases:
 - *Fines*
 - *Day-fine penalty (max. 180 days)*
 - *Custodial sentence (max. 180 days)*
 - *Sanction can be conditional or unconditional*

Background II

- Advantages:
 - Quick procedure and fast verdict
 - Cheap (short procedure)
- Criticism:
 - Frequently no hearing of defendant or victim by prosecutor
 - No further evidence collected, often based only on police report
 - Lack of fundamental procedural rights (right to be heard etc.)
 - Prosecutor issues verdict → lack of judicial control
 - Defendant might not understand the penal order
 - Penal orders with higher risk of wrongful convictions
- Around 95% of criminal proceedings in Switzerland end up with a penal order

Research Aims I

- What effects do personal hearings have during the procedure?
- Positive effect of hearings on the defendant?
 - Procedural fairness (having a voice) effects, legitimacy of verdict and acceptance of punishment
 - Punishment perceived more intensively
 - Better understanding of the procedure
- Negative effect of hearings on the defendant?
 - Time consuming for the defendant
 - Procedure resp. prosecutor could be perceived as unfair
 - Criminal identity (labelling) could be strengthened

Research Aims II

- Effect of hearings on verdicts?
 - Empathy of prosecutors might mitigate sentences
 - Defendants might bring up mitigating circumstances
- Effects of penal orders and hearings are simply not known yet

Research Method

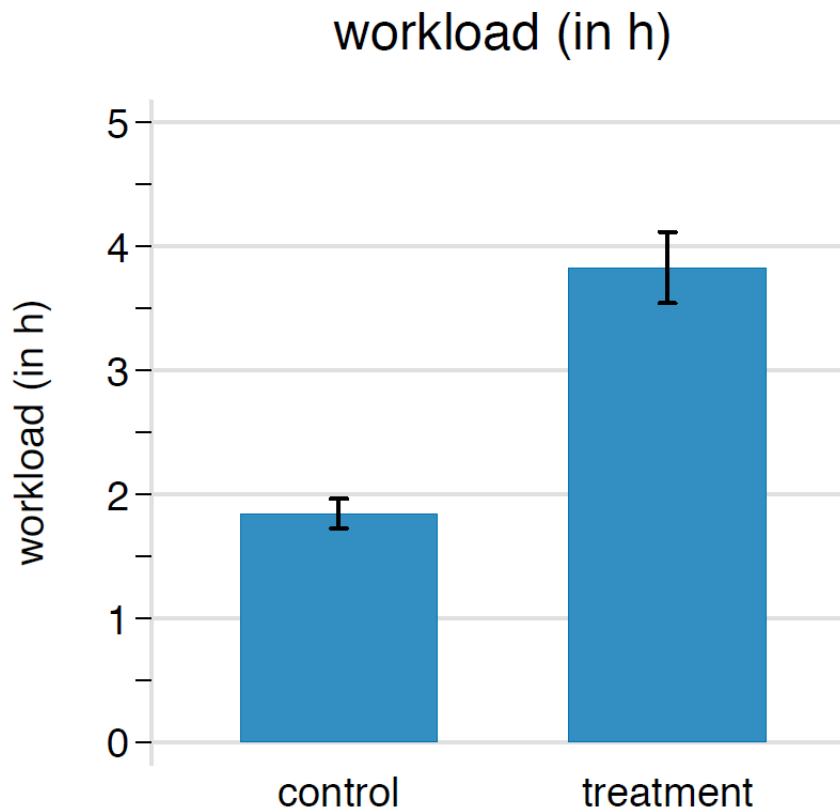
- Randomized Controlled Trial (RCT)
- Surveys among defendants (after trial): Independent variables will be
 - Defendant's knowledge about the procedure
 - Defendants' perceived procedural fairness
 - Criminal identity / techniques of neutralization
 - Perceived fairness of punishment
- Survey among prosecutors/clerks
 - Information about the procedure
 - Measure of emotions / empathy towards defendant
- After 24 months: Assessment of reoffending

Sample size (in %)

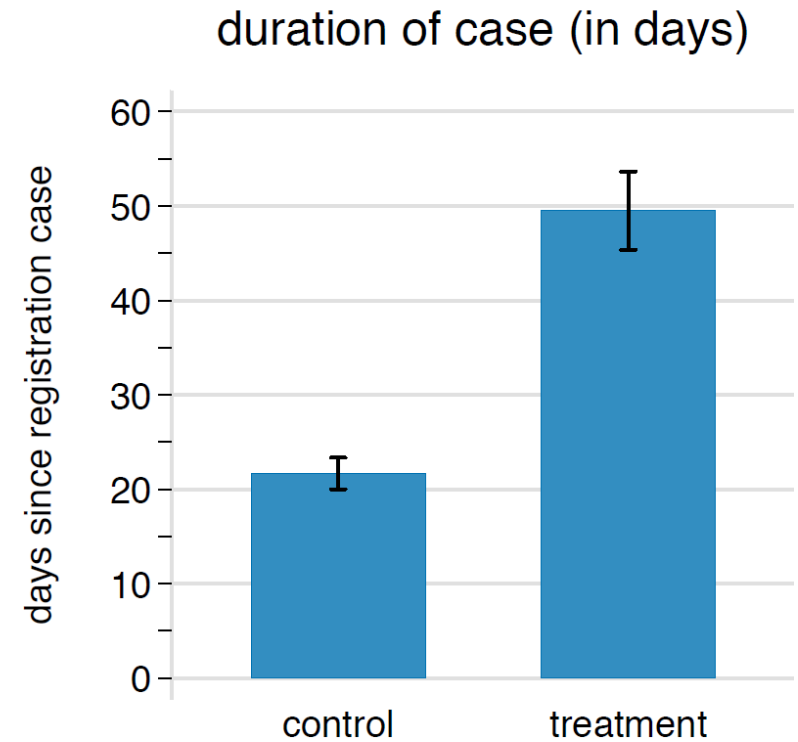
	N	%
Treatment Group	524	48.5
Control Group	185	17.1
Mandatory hearing	53	4.9
Decision to not to bring proceedings	240	22.2
Rest	79	7.3
Total	1081	100

«Costs» of hearings

Workload of prosecutors and duration of the case

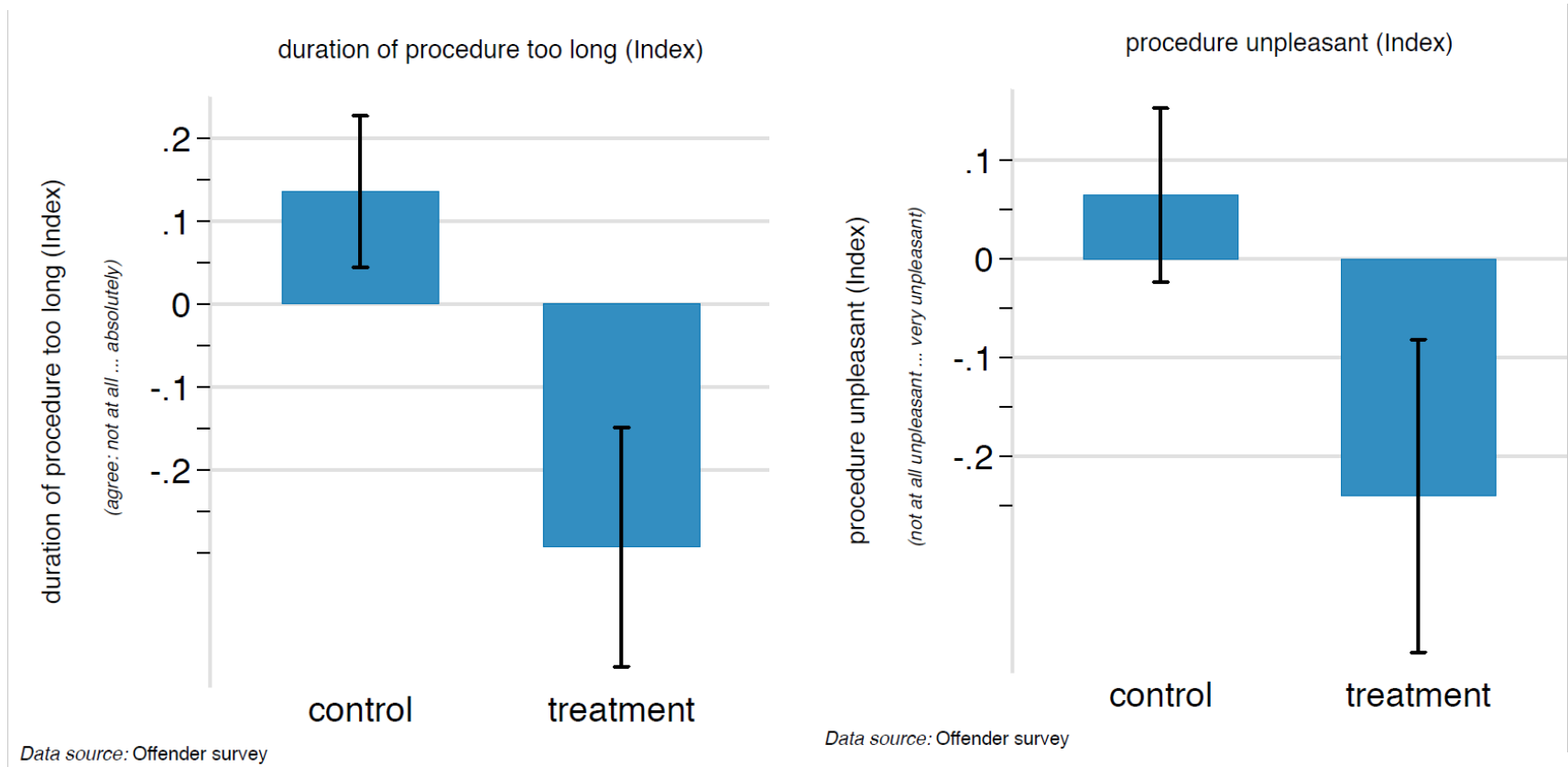


Data source: Case survey



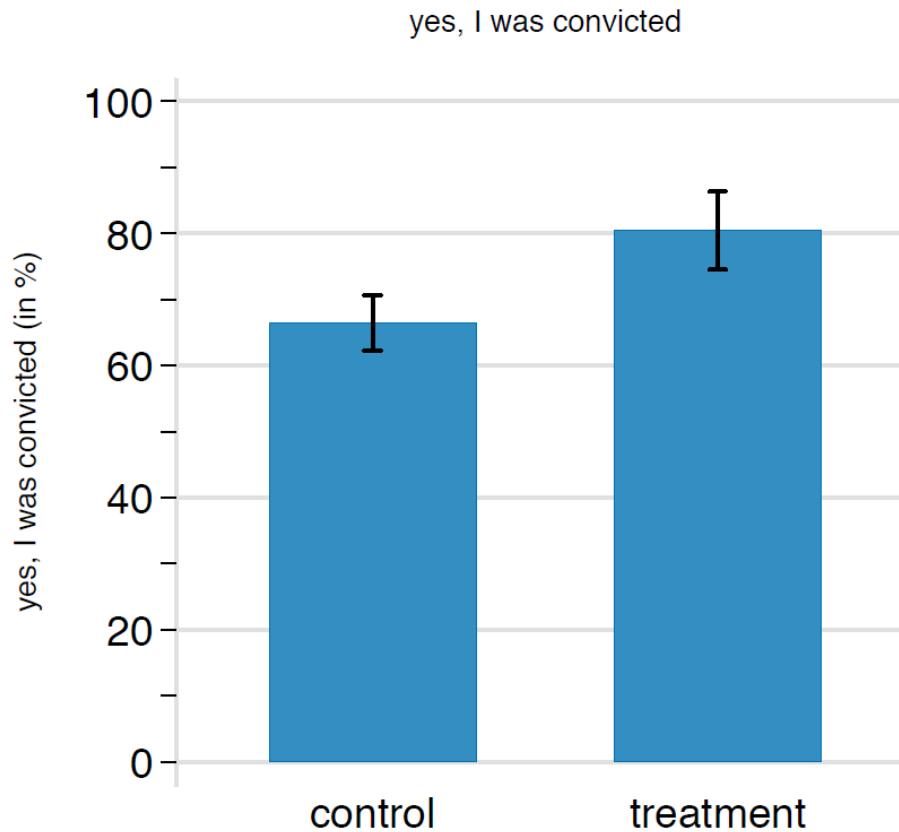
Data source: Juris

Point of view of the convicted person

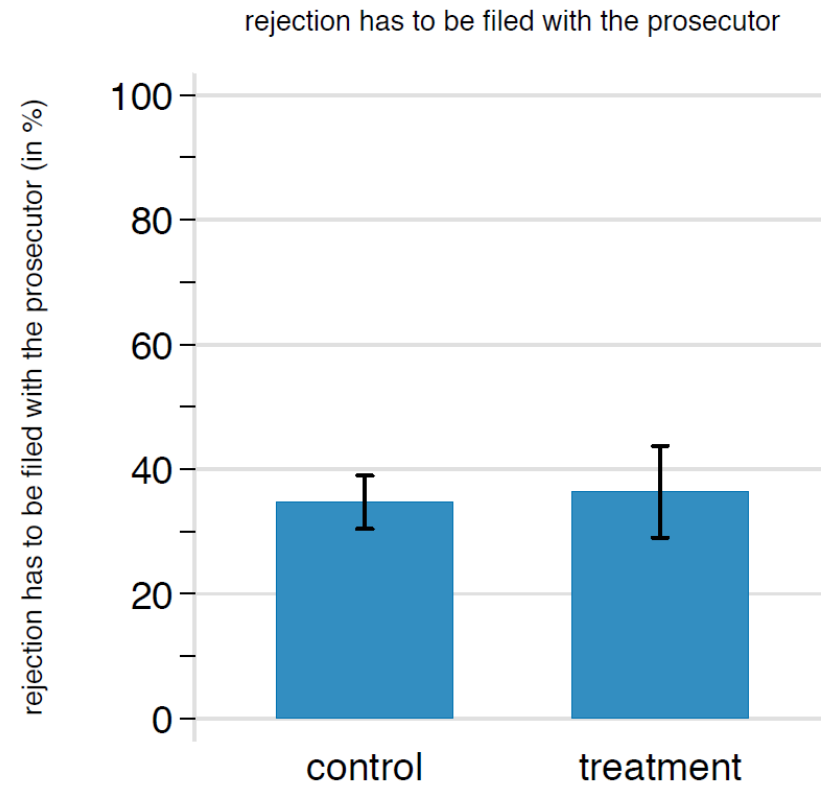


Benefits of the hearings

Convicted Person: Knowledge about the procedure

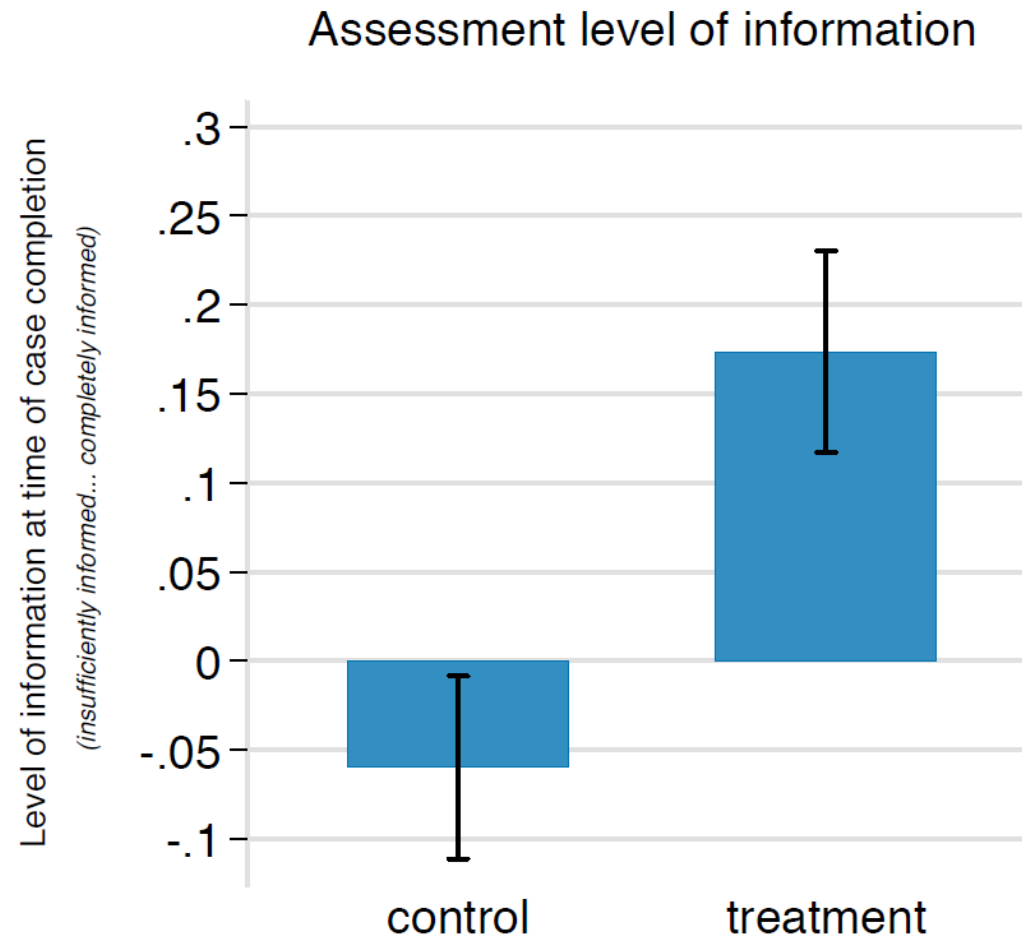


Data source: Offender survey



Data source: Offender survey

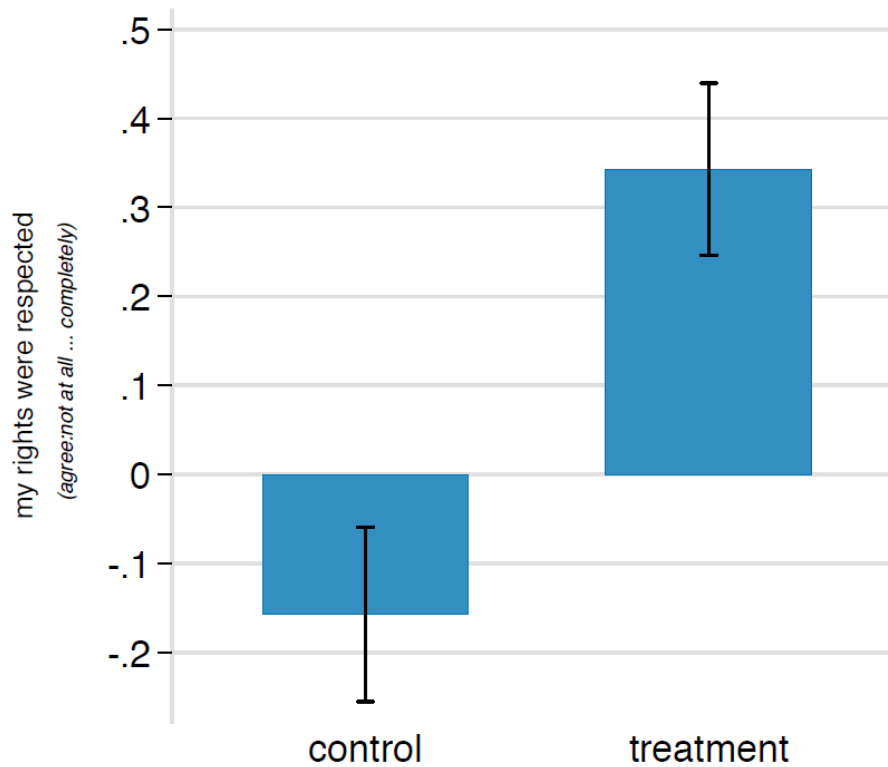
Prosecutors: Level of information about the case



Data source: Case survey

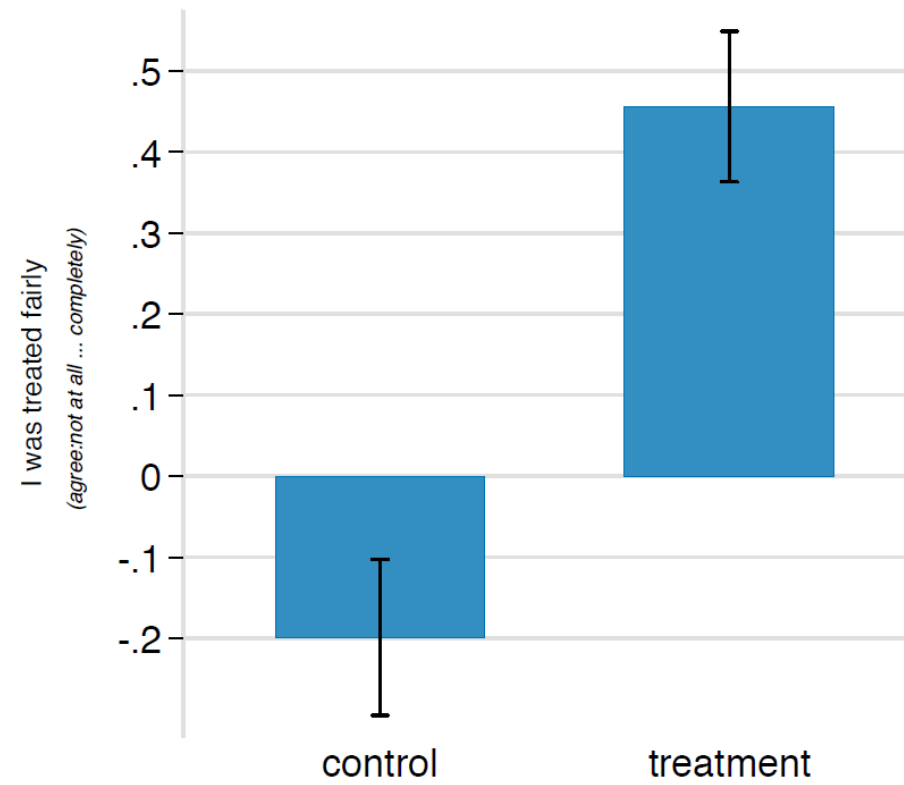
Convicted person: Procedural justice perceptions

my rights were respected



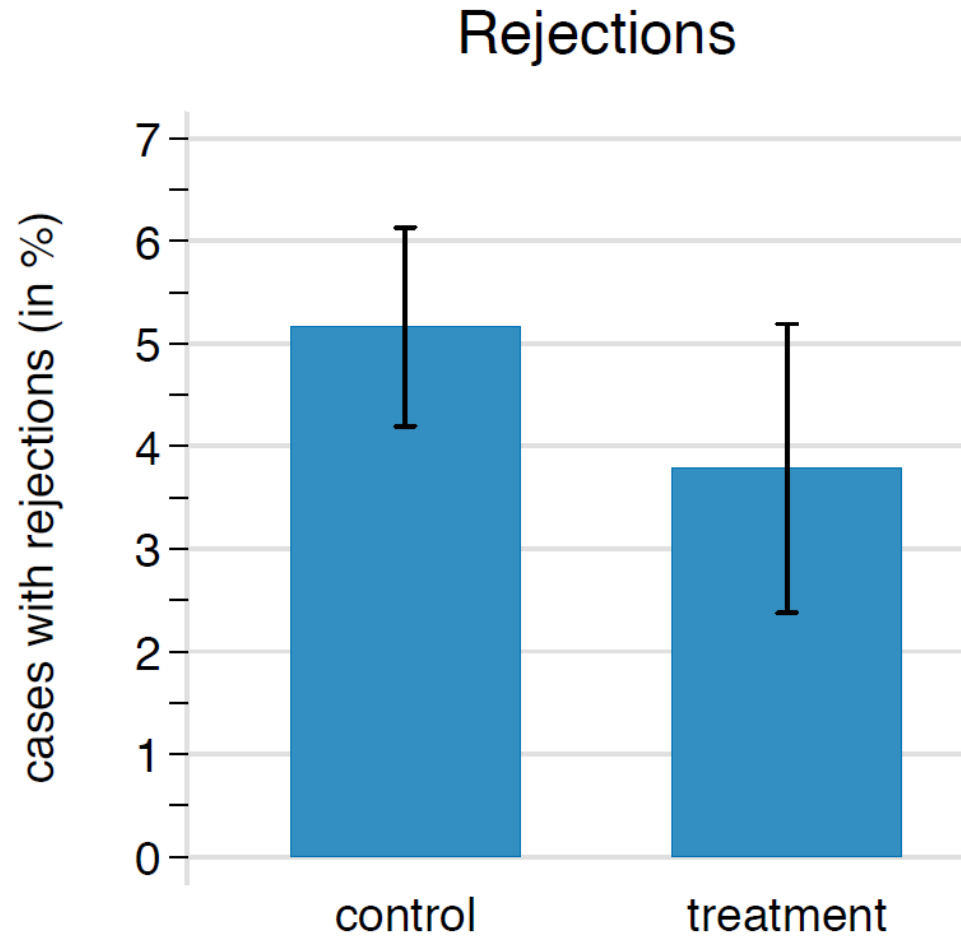
Data source: Offender survey

I was treated fairly



Data source: Offender survey

Number of rejections



Data source: Juris

Conclusions

- Cases with hearings require more time and lead to a longer case duration
 - Better understanding of the procedure if hearing has taken place
 - Procedure is considered to be fairer if a hearing has taken place
 - Less rejections if a hearing has taken place (however not statistically significant)
- Hearings have a highly positive impact, however at the cost of additional resources

Thank you for your attention!

For comments and questions feel free to contact us:

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