

The impact of pre-trial detention on plea bargaining

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In Canada, most criminal cases are settled by a guilty plea from the defendant, as a result of a plea bargaining negotiation between the defendant lawyer and the prosecutor. This practice of negotiation is controversial, because it could pressure the defendants, in particular those in pre-trial detention, to plead guilty to quickly settle the case and in some instances, be released faster. Yet, pre-trial detention has become more pervasive, and the conditions of detention have deteriorated over the past decade. Consequently, defendants in pre-trial detention could be coerced into giving up their right to a fair trial as they lose some of their bargaining power. This conference shows how pre-trial detention impacts the plea bargaining process. Based on semi-structured interviews with criminal lawyers (n=12) and defendants (n=15), we analyse their experiences and opinions of plea bargaining. Our goal is to understand how pre-trial detention can influence the decision of defendants to plead guilty, and how it can influence their lawyers' bargaining power.