

# Wichita County Public Defender Office

*An Evaluation of Case Processing, Client Outcomes, and Costs*



**Public Policy Research Institute  
Texas A&M University**

**Prepared for:  
Texas Indigent Defense Commission  
Office of Court Administration**



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## *An Evaluation of Case Processing, Client Outcomes, and Costs*

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Points of view or opinions in this document are those of the authors and do not represent the official position or policies of the Texas Indigent Defense Commission.

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# Executive Summary



# Executive Summary

Each of Texas' 254 counties is responsible for providing legal defense services for indigent defendants facing criminal charges. Traditionally, most cases are assigned to members of the private bar, though more than thirty counties also have a trial-level public defender office. Relatively little information is currently available regarding which of these models yields the greatest benefits in terms of services to defendants, efficiency of case processing, and cost efficiency for the county. This report seeks to answer these questions using data from Wichita County, Texas.

## OVERVIEW OF THE WICHITA COUNTY INDIGENT DEFENSE SYSTEM

Wichita County maintains a generally well-functioning indigent defense system. The chief public defender oversees a staff of five attorneys, two investigators, and five legal and administrative support staff. The office maintains a close working relationship with the private bar, an important resource for managing case volume in the office. The office is highly professionalized as evidenced by merit-based employment, policies specifying policies, procedures and expectations, regular performance evaluation, and high-quality training, supervision, and professional support for attorneys.

## DEFENDANT CHARACTERISTICS INFLUENCE ATTORNEY TYPE

Defendants' personal characteristics impact the type of attorney they are most likely to have. Though public defenders represent all types of cases, clients that are in trouble more frequently, usually for lesser violations, have a higher chance of being assigned to the office. People who have had public defender counsel in the past can request the same attorney in future arrests increasing the number of repeat violators assigned to the office.

On the other hand, where the consequences of a conviction are high, people are more likely to retain a private attorney. When facing felony charges, the chance people will hire a private attorney increases by more than 50%, while the chance of having court-appointed counsel declines. With serious charges, it appears people are more willing to ask friends or family members to contribute to their defense. This finding shows factors other than ability to pay may influence defendants' use of court-appointed counsel.

Vulnerable populations are also more likely to have court-appointed counsel in Wichita County. Defendants with mental illness are about 30% more likely to have an assigned attorney, indicating counsel is more readily available for people with special needs. People using drugs or alcohol at arrest are most likely to have a public defender attorney in particular. This could be because substance-users are arrested more frequently and tend to request a public defender attorney if they have had one in the past. Non-citizens are more likely to have an assigned private attorney who is fluent in their home language.

## **TYPE OF ATTORNEY INFLUENCES BOND-RELATED OUTCOMES**

Obtaining pretrial release is an important aspect of the defense function. People who make bond have better outcomes by many measures including fewer pretrial jail days, more dismissals, fewer guilty findings, and lower jail sentences. There is no difference in access to bond between indigent defendants with private assigned counsel and those with a public defender attorney, but both have lower bonding rates than retained attorneys. This finding is expected because people who cannot afford an attorney are also commonly unable to afford to post bond.

What is striking, however, is that defendants' indigent status is a stronger predictor of release from pretrial detention than more objective measures of risk to society. People charged with a first-degree felony or people with up to four prior felony arrests have a better chance of making bond than indigent defendants. Validated assessments of defendants' risk of flight or harm are a better means of determining eligibility for release. Objective assessments not only promote fairness, but they also help counties save money by reducing unnecessary detention.

Because of lower bonding rates, indigent defendants are more likely to remain in detention past the prosecutors' 15-, 30-, or 90-day filing deadline. More than 10% of indigent defendants spend time in detention that could be avoided. Because of this increased risk, extra vigilance is required for court-appointed attorneys monitoring release dates. A better detainee tracking system in the jail could also help Wichita County release defendants as soon as they become eligible. Such a system could also help the county meet another unmet need for better identification of detainees who have not requested assigned counsel and may need a lawyer.

For defendants who are unable to make bond, a fast charging determination and speedy case disposition offer the only means for release. The data shows the prosecutor files charges more quickly for public defenders' clients, and all court-appointed cases are disposed more quickly than those with privately retained counsel. Expedited case processing saves costs to counties by reducing the number of pretrial jail days. Faster case processing can also help jailed defendants avoid losing their jobs or possessions because they have remained in jail too long. On the other hand, some detainees may enter pleas too quickly in order to avoid these adverse outcomes. Prosecutors and courts can help reduce these pressures by moving cases as quickly as possible.

## **TYPE OF ATTORNEY INFLUENCES DISPOSITION-RELATED OUTCOMES**

The most important standard of success for a defense attorney is whether their clients are absolved of guilt. Public defender attorneys are more successful than private assigned counsel at avoiding conviction because of their higher dismissal rates. Twenty-two percent of public defender clients are dismissed before charges are even filed, compared to just 13% of people represented by private assigned counsel. After filing, public defender clients are 23% more likely than other indigent defendants to have all charges dismissed. These

impressive results are largely attributable to the public defender's two licensed staff investigators who gather evidence needed to strengthen the defense.

Among individuals found guilty, however, those with public defender counsel receive the least favorable sentencing outcomes. They are slightly more likely than people with a private assigned attorney to be punished by jail time instead of probation. Once convicted, public defender clients can expect a 29% longer jail sentence than other indigent defendants. This translates to a sentence that is 11.8 days longer for a "typical" indigent defendant.

Several factors may contribute to these poorer sentencing results. Public defenders represent some of the most challenging defendants by two measures. In conflicts, the office is intentionally assigned the most culpable co-defendant in order to both save the county money and to bring their greater resources to bear on the defense. In addition, they accept nearly all cases in which an assigned private attorney petitions for withdrawal. Private assigned attorneys may also have a greater advantage when negotiating sentences as a result of more than three times as many years of experience as public defender counsel.

## **PUBLIC DEFENDER COUNSEL IS COST-EFFECTIVE**

Cost and quality of counsel are perhaps the two most important considerations for counties contemplating a system for indigent defense service delivery. This study finds evidence that the public defender supports both of these objectives. The public defender's office spends nearly \$656,000 per year on the provision of attorney services in about 1,900 cases. If these same defendants were instead represented by assigned private attorneys, the county would spend an additional \$14.23 per case.

Not only are public defender attorneys more efficient in terms of service delivery, they also provide more services. According to survey findings, public defenders meet with clients more promptly, spend 21% more time on each misdemeanor and 42% more time on each felony case, and engage in more assertive use of pretrial motions. If private assigned attorneys applied the same level effort to their caseload at their current hourly rate the overall costs to the county would rise by \$141,699.

Two full-time investigators are also on the public defender's staff at a cost of about \$122,000 per year. While auditor's records show private assigned counsel rarely use investigators, this service is central to the public defender's defense strategy. Investigators routinely gather evidence needed to argue for charge dismissals or case reductions. To measure the cost impacts of investigation, a multivariate model was constructed to compare case outcomes for 100 statistically identical defendants with public defender and assigned private counsel. Results show that for every 100 typical indigent defendants, public defender attorneys will have 11 more dismissals and two more felony charges reduced to a misdemeanor. The criminal case processing costs avoided as a result of these dismissals and charge reductions produce a net benefit of \$210 per case to the county and \$179 in additional income earned by defendants experiencing fewer pretrial jail days.

In the area of post-disposition jail days, however, private assigned attorneys have better cost outcomes. A second model comparing sentencing outcomes for 100 statistically identical defendants finds public defender clients are expected to serve 0.45 more post-disposition days in jail than people represented by a private assigned attorney. At a jail cost of \$45 per day, this translates to an additional \$20 in cost to the county and an additional \$19 in defendant costs for each case represented by the public defender.

After accounting for higher sentencing costs, as well as benefits from attorney and investigation services, the public defender is found to be cost-effective. In total the office generates a net benefit of \$204 to the county and \$160 in personal benefits for each client, yielding a total benefit of \$364 per case.

## **CONCLUSIONS**

To be sure, this study finds the public defender model as it operates in Wichita County does have some limitations. Public defenders offer no advantages over private assigned counsel in bond-related outcomes, and public defender clients who are found guilty have worse sentencing outcomes than other defendants. However, other results offset these drawbacks and largely validate the public defender model.

Survey data shows public defender attorneys provide a higher level of service, and their work is supported by investigators in the majority of cases. Consequently, people represented by a public defender are more likely to have all charges against them dismissed, and are less likely to be found guilty overall. By the highest standard of defense – client acquittals – the public defender provides a better service than other court-appointed counsel. In addition, lower attorney and criminal case processing costs produce a net benefit of \$204 for the county and \$160 for each defendant represented by the public defender instead of a private assigned attorney. These findings should give Texas local jurisdictions the confidence to explore whether a public defender office might be a good fit in their community.

# Wichita County Public Defender Office

*An Evaluation of Case Processing, Client Outcomes, and Costs*



# INTRODUCTION

Each of Texas' 254 counties establishes and runs its own system for providing legal counsel to the poor. In 2001, Texas lawmakers enacted the Fair Defense Act setting new standards for counties and establishing the Texas Indigent Defense Commission (Commission) to provide policy guidance for the improvement of indigent defense.

The public defender model of defense delivery is among the leading innovations being advanced by the Commission. Efforts to disseminate the public defender model are meeting with success. When the Commission was established in 2002, only seven of Texas' 254 counties utilized public defender offices. Today 19 public defender offices are in operation serving 140 counties. Most of these new offices target specialized caseloads such as mentally ill defendants, juvenile defendants, appeals cases, capital cases, and rural regions.

Although more than 90% of Texas counties still use assigned counsel systems as the primary trial appointment method, in 2008 the Commission updated its original *2004 Blueprint for Creating a Public Defender Office in Texas*,<sup>1</sup> providing specific guidance to counties wishing to consider the public defender approach. The *Blueprint* promulgated by the Commission asserts that public defender offices offer advantages over other forms of counsel in terms of cost, quality, and institutional structure.

To impact costs, the *Blueprint* observes that public defenders can share expensive resources such as support staff, technology, and reference materials that are purchased independently by attorneys in solo practice. The offices are more likely to attract grants or other sources of external assistance that are less readily available to private practice attorneys. Public defenders also require fewer transactions by judges, court personnel, and auditors for paperwork such as fee vouchers, resulting in reduced administrative burden and cost savings for the county. Importantly, public defenders also help counties stabilize indigent defense costs over time, even when caseloads fluctuate.

The *Blueprint* expects public defenders can impact quality of counsel as well. Attorneys' work quality and caseloads are supervised by the chief public defender. In addition, office policies specifying procedures, standards, and in-house training offer tools to ensure the work of indigent defense is properly implemented.

Public defenders can add value to the entire criminal defense community. They often provide opportunities for new attorneys to gain mentoring and experience early in their careers. Many offices act as a resource to members of the private bar by providing continuing legal education or consulting on

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<sup>1</sup> Texas Indigent Defense Commission and The Spangenberg Group, *Blueprint for Creating a Public Defender Office in Texas* (Austin, TX: Author, 2008).

special issues or in complex cases. In addition, they educate and advise other county departments to advance procedural improvements.

Many of these expected benefits of public defender offices seem intuitive. It is reasonable to expect that closely supervised public defenders sharing a full-time focus on criminal law and working together in a supported professional environment should deliver higher quality indigent counsel compared to their peers in solo private practice. Likewise, one would expect cost advantages as a result of increased economies of scale. However, very little empirical research has been conducted to test these claims. In order to enhance the base of evidence regarding the public defender model, the Commission sponsored a comparative evaluation of the most commonly used indigent defense models in Texas.

The Public Policy Research Institute at Texas A&M University conducted a study in Wichita County, Texas comparing the relative effects of four types of counsel on defendant case processing and outcomes. The attorney types tested include privately retained attorneys, private appointed counsel, public defenders, and litigants with unspecified counsel. The research used three major methods including a site visit, a survey of defense attorneys, and a quantitative analysis of criminal case records.

## **THE STUDY SITE: WICHITA COUNTY, TEXAS**

Wichita County has one of the most experienced and long-standing public defender offices in the state. Established in 1987, it replaced a system in which all practicing attorneys took appointed cases irrespective of their area of specialization. The office was therefore a significant advancement in quality of defense, providing the first consistent access to dedicated indigent defense attorneys.

Over the past ten years, Wichita County has sought out research-driven strategies for ongoing indigent defense policy improvement. In 2002, county officials asked the Commission to support a study to help the public defender office effectively respond to the requirements of the Fair Defense Act. A nationally recognized indigent defense consulting firm, The Spangenberg Group, conducted an in-depth analysis of the office and made recommendations for improvements.<sup>2</sup>

Now, a decade later, Wichita County Commissioners have again invited researchers to evaluate the public defender office, this time to learn what positive effects the model brings to defendants and to the county criminal justice system. Because of its maturity, the Wichita County public defender system offers an exceptional venue for testing the relative efficacy of different defense delivery approaches, and the

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<sup>2</sup> Robert Spangenberg, *A Review of Wichita County's Indigent Defense System: Findings and Recommendations; Final Report* (West Newton, MA: The Spangenberg Group, 2004), available on September 17, 2012 at <http://www.txcourts.gov/tidc/pdf/Spangenberg%20Report%20on%20Wichita%20Co.%20Public%20Defenders%20Office.pdf>.

county's commitment to improving the overall quality of counsel is helping to advance better practices statewide.

## Site Visits

During the week of November 15, 2010, the research team met with Wichita County stakeholders in the court and criminal justice systems. Over a two-day period, fourteen elected and unelected respondents were interviewed representing the following sectors:

- Statutory County Judge
- District Court Judge
- County Court at Law Judge
- Court Administrator
- Justice of the Peace
- Auditor
- County Clerk
- District Clerk
- Criminal District Attorney
- Public Defender
- Private Defense Bar
- Wichita Falls Police Department

These interviews, along with publicly available data and supplemental materials, provided information related to the recent history of indigent defense in Wichita County, the structure and operation of both the public defender office and the private defense bar, and conformance of the Wichita County indigent defense system with the American Bar Association's "Ten Key Principles of a Public Defense Delivery System."<sup>3</sup> These qualitative findings are presented in Chapters One through Three.

## Defense Attorney Survey

During August and September, 2011 Wichita County attorneys that accept assigned counsel cases were contacted by telephone to invite their participation in a survey. Survey results, presented in Chapter Four assess issues related to:

- Attorney caseloads
- Communication with clients
- Amount of time spent on misdemeanor and felony cases
- Use of pretrial motions, investigators, and experts
- Training and experience

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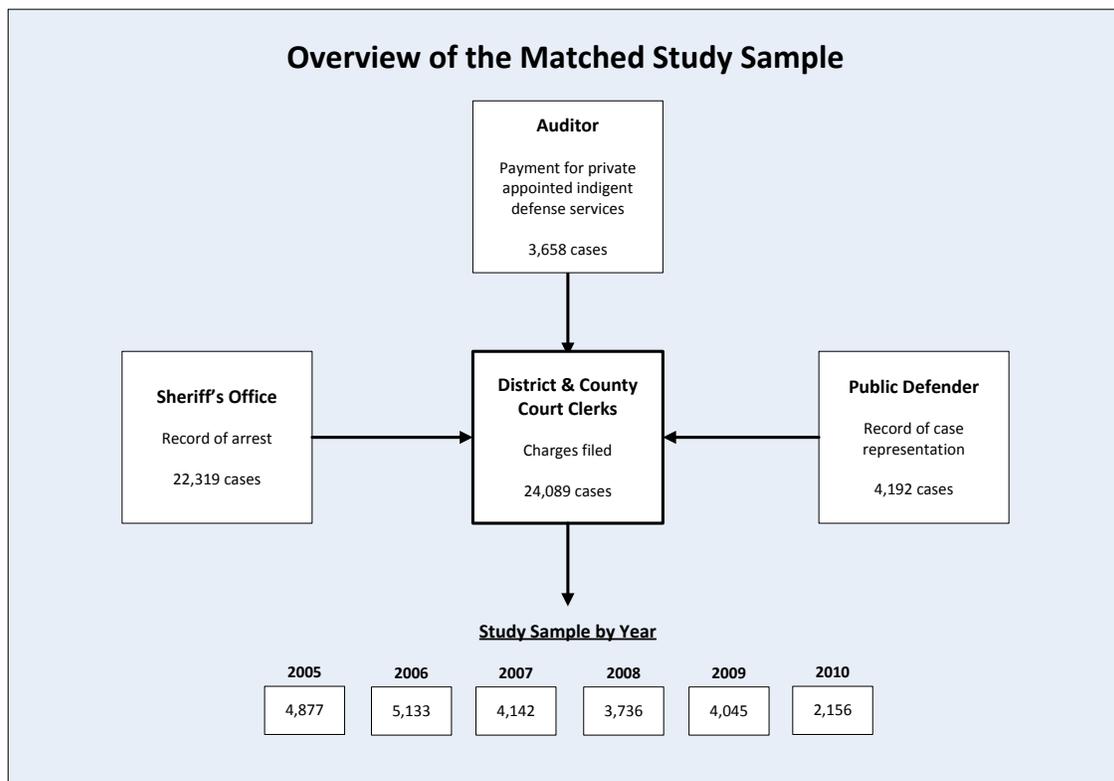
<sup>3</sup> American Bar Association, *Ten Principles of a Public Defense Delivery System* (Chicago, IL: ABA Standing Committee on Legal Aid and Indigent Defendants, 2002), available on September 17, 2012 at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_tenprinciplesbooklet.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf).

## Analysis of Criminal Case Records

From January through August of 2011, the research team worked with Local Government Solutions (LGS), Wichita County's data systems vendor, to extract data needed to measure differences in case processing and outcomes for individuals with different types of attorneys. Other records were taken directly from data systems maintained by the auditor and the public defender. After cleaning, the analysis sample included all criminal cases disposed over a five-year period from 2005 through 2010. Figure I-2 illustrates how the four major record sets were assembled. Data sources included:

- Wichita County Sheriff's Data – Provided information such as the date of arrest and release, charges at arrest, arresting agency, defendant demographics, and medical or mental health risk conditions.
- District and County Clerks' Records – Provided information regarding the number and type of charges filed, and how the case was disposed.
- Auditors' Records – Provided information regarding whether a payment was made for private assigned counsel, investigators, or expert witnesses.
- Public Defender Office's Records – Provided information regarding whether a case was represented by a public defender.

**FIGURE I-2**



Between September of 2011 and May of 2012, analyses were conducted to answer three primary research questions with results presented in separate chapters. Research methods are described in Appendix A.

Chapter Five: What factors aside from indigence influence the type of legal representation an individual will have?

- Prior arrests
- Current charges
- Number of charges filed
- Whether charges are drug-related
- Citizenship
- Mental health status
- Substance use at arrest
- Race/Ethnicity
- Sex

Chapter Six: Does attorney-type influence aspects of case processing such as...

- Chance of bond?
- Number of days until bond is made?
- Probability that an uncharged defendant will remain in jail past the prosecutor's filing deadline?
- Total number of pretrial jail days?
- Number of days until the charging determination for people in detention?
- Days to case disposition for people in detention?

Chapter Seven: Does the type of attorney influence aspects of case disposition such as...

- Dismissals?
- Pleas or trials?
- Findings of guilt or innocence?
- Sentencing?

## **Cost Analyses**

To assess issues of quality vs. cost-effectiveness, county budgeting records were integrated with criminal processing data. Analyses were conducted to quantify differences in the cost of legal counsel provided by public defenders as compared to private appointed attorneys. Findings, presented in Chapter Eight,

evaluate the relative cost of the two indigent defense delivery systems, then consider the value added by investigator services routinely available to public defender clients.

### **Summary of Findings**

Chapter Nine provides a summary of all major findings and considers broader implications for indigent defense. In general, results suggest the Wichita County Public Defender succeeds at providing a higher quality of defense services at a cost comparable to that for privately retained counsel.

# CHAPTER 1

## OVERVIEW OF THE WICHITA COUNTY INDIGENT DEFENSE SYSTEM

For over 20 years, the majority of Wichita County's indigent criminal cases have been represented by attorneys in the public defender office. In addition, a field of approximately 20 private attorneys also provides counsel to indigent defendants. Together these attorneys represent approximately 2,500 clients in three district courts and two county courts at law each year. The paragraphs that follow provide a brief review of the recent history of indigent defense in Wichita County.

### IMPACTS OF THE FAIR DEFENSE ACT

From the late 1980's through 2004, the Wichita County Public Defender's Office was the only public defender office in Texas with original responsibility for representation in all indigent defense cases except where there was a conflict of interest. For many years the public defender caseloads were manageable because they focused almost entirely on felony cases.<sup>4</sup> However, the 2002 implementation of Senate Bill 7, also known as the Fair Defense Act, significantly increased the number of individuals appointed counsel. In conformance with the requirements of the law, the county expanded eligibility and provided reasonable assistance to individuals wishing to request an attorney.

As a result of these efforts to expand access to counsel, felony assigned cases in Wichita County increased 20% while misdemeanors rose 150%.<sup>5</sup> Not only were the vast majority of these clients represented by the public defender office, but at the same time, the office had a series of staff departures that left three of its six attorney positions unfilled. The sudden escalation in cases combined with staffing instability created a shock to the office. Through a Commission grant, the county requested and received guidance from national indigent defense expert Robert Spangenberg.

### 2004 Spangenberg Review

To bring public defender caseloads down to manageable levels, the Spangenberg study suggested major administrative changes in the public defender office's structure, goals, and operating procedures. Consistent with American Bar Association recommendations,<sup>6</sup> when volume became excessive, more indigent defense cases were assigned to private practice attorneys. From 2003 to 2004, the public

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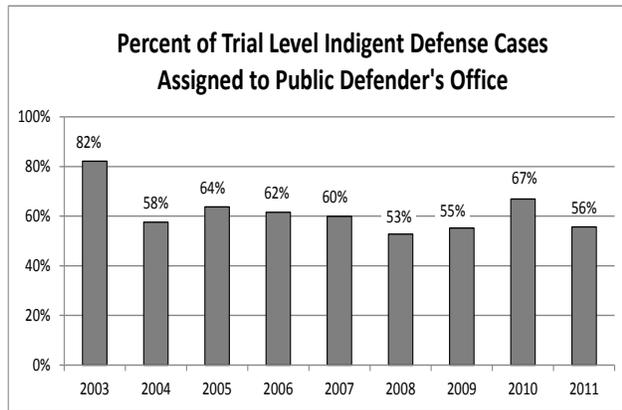
<sup>4</sup> Robert Spangenberg, *supra* note 2, at 1.

<sup>5</sup> *Id.* at 13. The Spangenberg study reports criminal cases represented by the public defender office increased from 1,337 felonies and 338 misdemeanors in 2001 to 1,611 felonies and 849 misdemeanors in 2002. Counties were not required to report a count of indigent defense cases to the Texas Indigent Defense Commission until 2003.

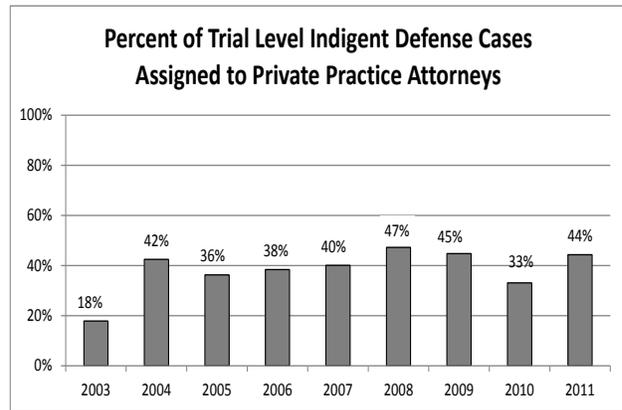
<sup>6</sup> American Bar Association, *supra* note 3, at 2.

defender office reduced their overall proportion of cases from 82% to 58% (Figure 1.1) while assignments to private counsel more than doubled from 18% to 42% (Figure 1.2). Despite a spike in public defender cases in 2010, in most of the subsequent years the public defender has received 60% of assigned cases on average while the remaining 40% have been handled by private attorneys.

**FIGURE 1.1**<sup>7</sup>



**FIGURE 1.2**<sup>8</sup>



Other improvements were also implemented as a result of the research. The public defender office:

- Adopted written standards including a policy to ensure cases are assigned to attorneys with appropriate experience,
- Set maximum caseload standards,
- Established a process for formal performance review, and
- Began actively networking with other public defender offices to make the office an example for the state.

Likewise, the county:

- Significantly improved workspace for the public defender office,
- Instituted a policy to recover attorney fees from clients whose ability to pay changes,
- Reduced delays resulting from insufficient information on applications for counsel, and
- Increased the speed of the prosecutor's charging decision in order to reduce defendants' jail time.

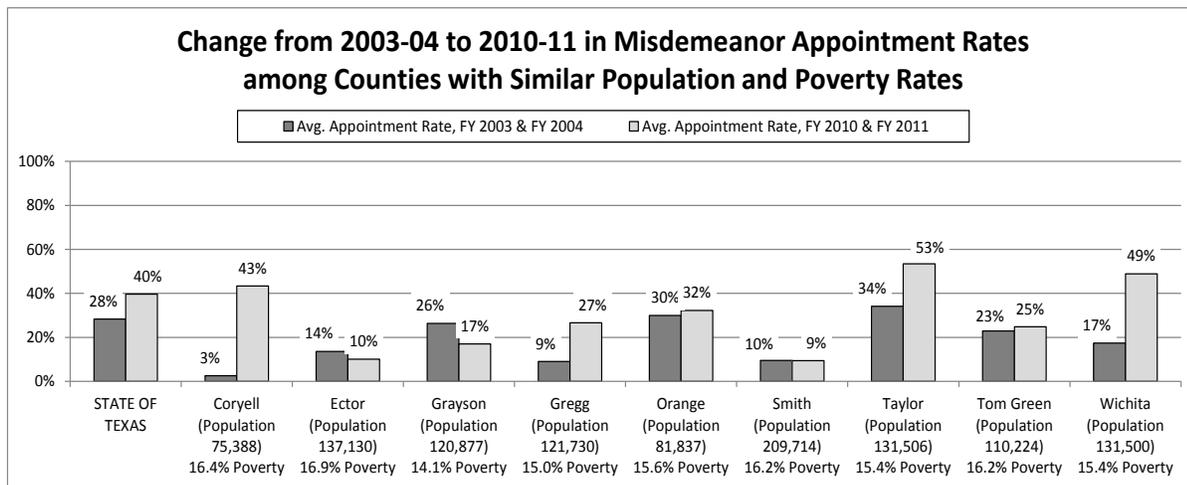
<sup>7</sup> Texas Indigent Defense Commission Public Information Website, available August 21, 2012 at <http://tidc.tamu.edu/Public.Net>.

<sup>8</sup> *Id.*

## RECENT CHANGES IN INDIGENT APPOINTMENT RATES

Figures 1.3 and 1.4 examine changes in appointment rates since 2003-04 in Wichita County relative to counties with similar population size and poverty rate.<sup>9</sup> The graphics reflect the number of individual’s assigned counsel as a percentage of all adult criminal charges added to the courts in a year.<sup>10</sup> Over the past six years, appointment rates for misdemeanor charges have increased by 32 percentage points, placing Wichita County near the top in misdemeanor appointments among similar counties. On the other hand, since 2003-04 the county has reduced the proportion of felony charges defended by assigned counsel by 12 percentage points. At present, Wichita’s 59% felony appointment rate per charge is low relative to peer counties.

**FIGURE 1.3**<sup>11</sup>

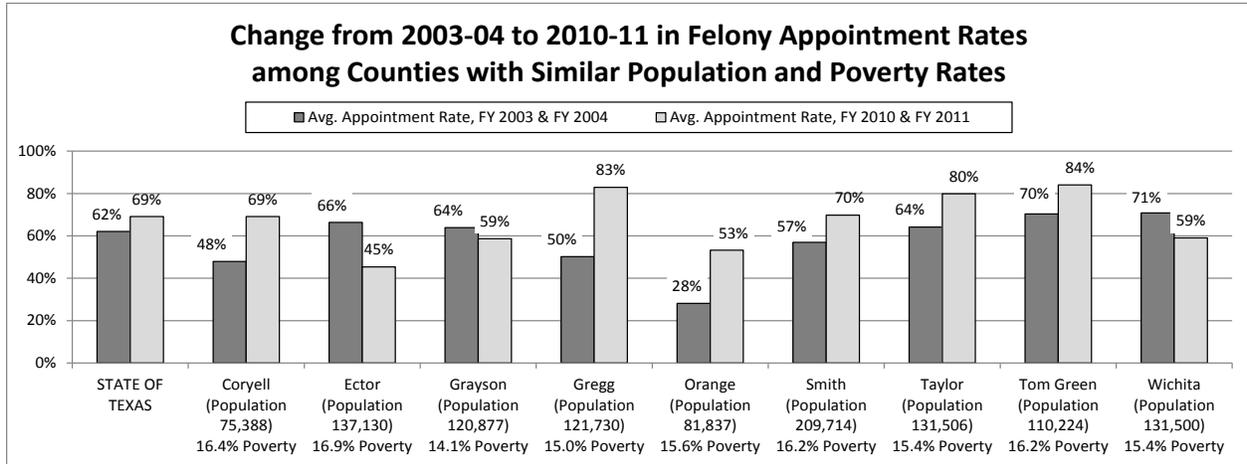


<sup>9</sup> The US Bureau of the Census, *Quick Facts* (2010), available on September 17, 2012 at <http://quickfacts.census.gov/qfd/states/48/48485.html>. Sixty-eight counties were identified with 2010 poverty rates within 1.5 percentage points above or below Wichita County’s 15.3% poverty rate. Within this set of counties, those within plus or minus 60% of Wichita County’s 2010 population (131,500) were selected for comparison. These county population sizes ranged from 75,388 in Coryell County to 209,714 in Smith County.

<sup>10</sup> “Cases added” is the number of new charges filed in a year regardless of whether they were disposed in the same year, available on September 17, 2011 from the Texas Office of Court Administration’s Trial Court Activity Database (see <http://www.courts.state.tx.us/pubs/AR2010/toc.htm>). Cases added are reported on a state fiscal year basis (September through August), while the number of individuals receiving appointed counsel is reported from October through September, the most common county fiscal year.

<sup>11</sup> US Bureau of the Census, *supra* note 9; available as of August 21, 2012 at <http://quickfacts.census.gov/qfd/states/48/48485.html>.

**FIGURE 1.4**<sup>12</sup>



## CONCLUSION

In 2002, the passage of the Fair Defense Act introduced new challenges to Wichita County’s indigent defense system. County leadership proactively addressed these concerns by seeking out the guidance and expertise of a national expert. The resulting research report produced recommendations that strengthened the overall delivery of indigent defense services. In the years since the Fair Defense Act, Wichita County’s misdemeanor appointment rates in particular have risen dramatically (Figure 1.3). This change reflects the county’s positive and meaningful response to the requirements in the Fair Defense Act to extend the right to counsel to defendants charged with lower-level offenses. Facing a large influx of new cases eligible for appointed counsel, the public defender office has forged a stronger collaboration with the private bar to manage case volume and guard against excessive caseloads. That partnership remains active today as two of every five indigent clients are assigned to a member of the private defense bar.

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<sup>12</sup> US Bureau of the Census, *supra* note 9; available as of August 21, 2012 at <http://quickfacts.census.gov/qfd/states/48/48485.html>.

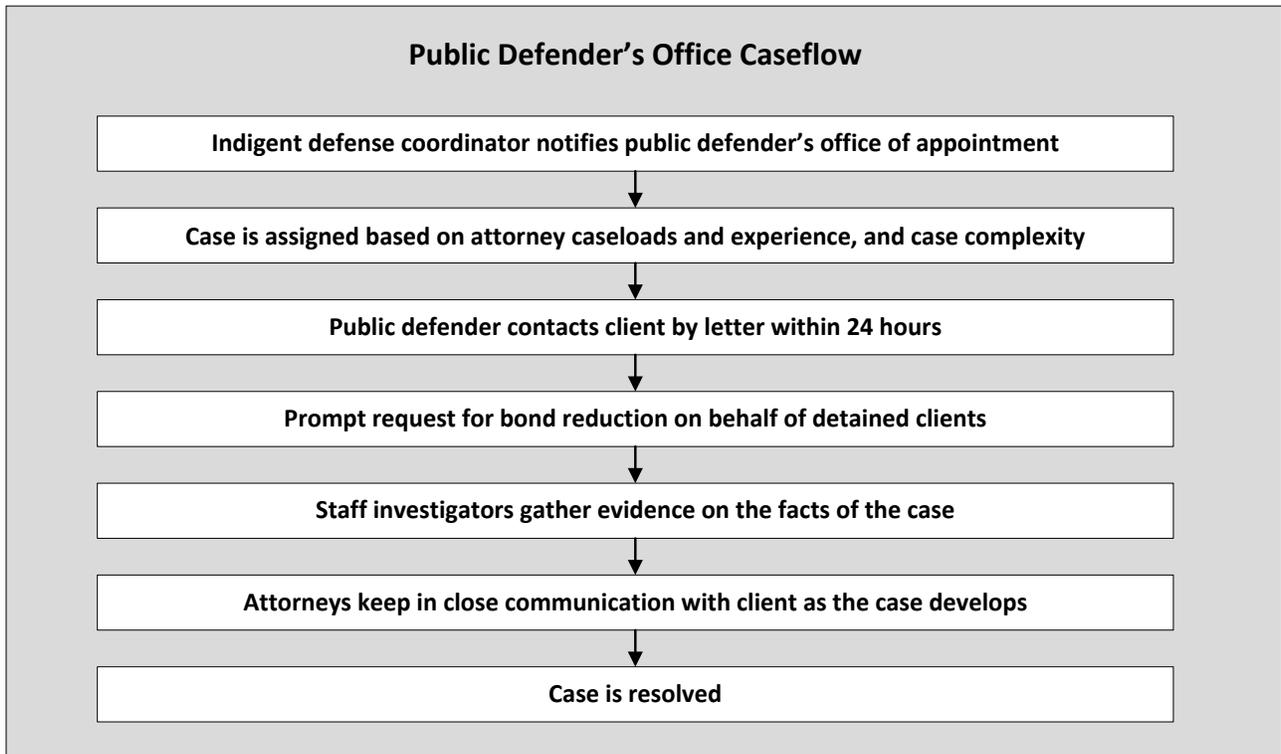
## **CHAPTER 2**

### **CURRENT OPERATION OF WICHITA COUNTY'S PUBLIC DEFENDER OFFICE**

Currently, the Wichita County chief public defender oversees a staff of five defense attorneys, two investigators, a case administrator, a records director, two legal secretaries, and a receptionist. While the procedures for indigent case representation followed by private assigned counsel vary from office to office, individuals receiving legal representation from the public defender office are served according to a highly institutionalized protocol for caseflow. The standardized procedures and timelines help ensure reliable and consistent service quality for clients.

#### **PUBLIC DEFENDER OFFICE CASEFLOW**

1. Notification of Appointment. Cases are assigned to either the public defender or to a private attorney by the indigent defense coordinator using a randomized appointment “wheel.” A designated staff person in the public defender office receives the notification and initiates assignment.
2. Case Assignment. The case is assigned within the office based on the attorneys’ caseloads and qualifications. In instances of high-level or complex cases, the chief public defender will also participate in decision-making regarding case assignment.
3. Initial Client Contact. Both public defender and assigned private attorneys are required to contact the client within 24 hours of the appointment. The public defender typically meets this obligation by letter with information about how to reach the office. Although clients represented by private counsel must pay to use the jail telephone, calls to the public defender are free. As a result, clients are able to get in touch with their attorney as soon as they learn how to make contact.
4. Request for Bond Reduction. For detained individuals, the matter of bond is discussed in the initial attorney-client contact. The public defender’s first order of business is to initiate a request for bond reduction. Many private assigned counselors also likely to pursue prompt requests for bond reduction, though conformance with this practice is less closely supervised than in the public defender’s office.
5. Request Personal Recognizance Bonds. In instances where a client is unable to make bond, the public defender monitors the case for a charging determination. If an information or indictment is not issued within 15 days for Class B misdemeanors, 30 days for Class A misdemeanors, or 90 days for felonies, the public defender pursues a personal recognizance bond for which the client is automatically eligible under the law. A similar expectation exists for members of the private bar.



6. Investigation. The Wichita County Public Defender's Office has two licensed investigators on staff to gather evidence on the facts of the case through background checks, visits to locations, and witness interviews. They assist with the majority of cases including all misdemeanors that go to trial and all felonies. Furthermore, because the public defender's investigators are already on staff, they can start work promptly helping to preserve time-sensitive evidence such as security videotapes or 911 audio tapes that may not be stored for lengthy periods. Early investigation can also often yield information useful in negotiating a case resolution prior to indictment.

By contrast, assigned private attorneys must ask the court to fund investigation, so this service is ordinarily requested only in the most serious cases. Individuals with mid-level charges (i.e., 3rd degree murder or lower) are unlikely to have their case investigated if a private attorney is assigned. Additionally, in Texas private attorneys are required by law to hire only licensed investigators, yet few licensed investigators are available locally. Most often, private attorneys do their own investigative work, but they are not typically able to provide the breadth of investigation across all cases, or the depth of effort into individual cases that is evidenced in cases represented by the public defender office.

7. Sustained Client Contact until Case Resolution. Throughout the client's jail stay, the public defender maintains communication through regular phone calls and face-to-face or video conferencing. Public defenders have available in the office a videoconferencing terminal linked to each of the county's two

jails. The terminal is accessible by private attorneys, as well, but is most convenient to and frequently used by public defenders. Regular communication is also maintained with individuals out on bond.

By contrast, private attorneys who are also managing a civil or federal caseload may find it difficult to spend time with individuals in jail. Because the public defender's entire focus is on criminal cases, they are more readily available to clients. Because public defenders represent nearly ten times as many criminal cases as any individual assigned private attorney, the office also has a sustained working relationship with the prosecutor's office. This type of relationship can reduce uncertainty and increase effectiveness in negotiating a resolution to the charges.

The public defender office has logistical advantages, as well. As a unit of the county, attorneys have access to view and print all scanned documents maintained by both the district and county courts. This information, that includes indictments, motions, pleadings, and other court records, are not electronically accessible to assigned private attorneys.

8. Continuity of Representation in Future Arrest Events. People with a history of representation by the public defender are eligible to receive the same attorney if they face criminal charges again in the future. Those who have been previously appointed private practice attorneys, by contrast, will be assigned a new lawyer with each arrest encounter. Public defender clients therefore have the option to sustain an attorney–client relationship over time, should they choose to do so.

## **CONCLUSION**

The public defender office's protocols allow for continuous close contact with the client in developing the case. A number of supports available exclusively through the public defender office, such as staff investigators and access to county and district court documents, help increase the chance of a positive case outcome. Every attorney has access to a pool of professional colleagues, all specializing in criminal law, available for consultation as needed. Together, these attributes enhance the public defender's capabilities to represent client interests.

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## CHAPTER 3

### WICHITA COUNTY'S INDIGENT DEFENSE SYSTEM

#### ASSESSED IN TERMS OF THE ABA'S TEN KEY PRINCIPLES

A decade ago, the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants published "Ten Principles of a Public Defense Delivery System." These "Ten Principles" offer a framework to assess the quality of an indigent defense system. In the sections that follow, the legal services available to impoverished individuals accused of a crime in Wichita County are considered in light of these principles.<sup>13</sup>

#### **1. The public defense function, including the selection, funding and payment of defense counsel, is independent.**

The ABA established independence from political influence as the first principal of public defense.<sup>14</sup> The Fair Defense Act mandates that "fair and neutral" methods be used to assign cases.<sup>15</sup> In Wichita County, several strategies are used to insulate the defense function from undue political influence.

#### Indigent Defense Coordinator (IDC) Determines Indigence and Identifies Counsel for Judicial Appointment.

Wichita County employs a full-time indigent defense coordinator (IDC) to centralize and professionalize appointment procedures.<sup>16</sup> The Wichita County IDC accepts all requests for counsel including those submitted during the probable cause hearing, those submitted by jailed inmates, and those submitted in court. First, the IDC promotes fairness in public defense by standardizing the determination of indigence

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<sup>13</sup> American Bar Association, *supra* note 3.

<sup>14</sup> American Bar Association, *Standards for Criminal Justice, Defense Function* (Chicago, IL, 1993), available at [http://www.americanbar.org/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_dfunc\\_toc.html](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_dfunc_toc.html). See Standard 5-1.3(a).

<sup>15</sup> Attorneys working in courts where appointments are made by judges have stated they felt pressure to contribute to judges' re-election campaigns, or to avoid defense strategies that may delay the judge's docket. Judges, as well, have acknowledged the appearance of favoritism or cronyism in such a system. See Texas Appleseed, *The Fair Defense Report: Findings and Recommendations on Indigent Defense Practices in Texas*, (Austin, TX: Author); Allan K. Butcher and Michael K. Moore, *Muting Gideon's Trumpet: The Crisis in Indigent Defense in Texas* (Austin, TX: State Bar of Texas, Committee on Legal Services to the Poor in Criminal Matters, 2000); Texas Defender Service, "The Right to Counsel in Texas: You Get What You Pay For," in *A State of Denial: Texas Justice and the Death Penalty* (Austin, TX: Author, 2000); Fort Worth Star-Telegram, "Judges' Resolution Seeks Upgrade of Legal Defense for the Poor in Texas," (September 27, 2000); Dallas Morning News, "Texas Needs to Provide More Competent Lawyers," (September 12, 2000).

<sup>16</sup> Wichita County's indigent defense coordinator position was initially established through a 2003 grant from the Texas Indigent Defense Commission.

### **Wichita County Standards of Indigence**

- Eligible for public assistance
- Income at or below federal poverty guidelines
- Currently in a correctional or mental health institution or in a proceeding seeking such commitment
- Unable to retain counsel without substantial hardship to the accused or the accused dependents as determined by the nature of the criminal charges, the anticipated complexity of the defense, the estimated cost of private representation, and the financial status of the accused.

underlying eligibility for counsel. As the centralized appointing authority, the IDC ensures the same objective politically neutral criteria are applied to all applicants.<sup>17</sup>

The IDC also helps address the Fair Defense Act standard of neutral appointment by choosing attorneys recommended for judicial appointment using a standardized selection procedure. Lawyers are therefore not selected by the judiciary or elected officials, but are arranged by an impartial administrator. Insulation from political influence would be further enhanced if the IDC were removed from the direct oversight of the elected county commissioner and was instead supervised by an independent board. Still, as it is currently implemented in Wichita County, virtually all attorney appointments are made by the IDC from an objective rotation list with no external intervention. Judges

consistently route all requests for counsel through the IDC's office for a recommendation or contact the IDC during court if an appointment is required from the bench. In rare instances where a judge needs to make a direct appointment in the absence of the IDC, cases are assigned to the public defender office so that concerns about quid pro quos are minimized.

Merit-Based Selection of Assigned Attorneys. The Fair Defense Act's neutral appointment standard and the independence of the defense function are also influenced by the methods used to qualify attorneys to accept appointed cases. The attorney qualification process in Wichita County, as in most Texas counties, blends objective requirements with discretionary judgments. A majority vote by a panel of district and county court judges is required for appointment to and removal from the approved counsel list.

Some performance criteria specified in the county's Indigent Defense Plan – for example, those related to continuing legal education, criminal case experience, findings of ineffective counsel, and legal certifications – can be affirmed by any observer. Other criteria such as judicial assessments of attorneys' performance in

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<sup>17</sup> Texas Appleseed, supra note 15, at 25-27. Prior to the Fair Defense Act, judges were observed to consider varied, often unspecified criteria in determining indigence and eligibility for assigned counsel. Some based the determination on factors such as the nature of the offense (i.e., felony vs. misdemeanor), whether the defendant was able to afford a bond, and whether the defendant could produce evidence they had tried to hire counsel at an affordable rate.

court are a more discretionary and arguably more subjective standard for determining who can represent indigent clients.<sup>18</sup>

Merit-Based Selection of the Chief Public Defender. In August of 2008 James Rasmussen assumed the position of Wichita County’s chief public defender. There is strong evidence that the chief public defender’s hiring process was open and competitive, and the hiring decision was based on merit. Applications were reviewed by a committee comprised primarily of elected officials including the county judge, a county commissioner, a district court judge, the county human resource director, and the president of the local criminal defense association.<sup>19</sup> Once employed, the public defender’s performance is evaluated by the county judge in an annual review based on objective criteria. With criteria for success or removal agreed upon in advance, it is more difficult for the chief public defender to be removed from office on frivolous grounds.

Still, the independence of the defense function would be significantly enhanced if responsibility for hiring and oversight of the chief public defender was assigned to a non-partisan board instead of elected officials. By placing these decisions under the authority of a diverse and objective board, the office would be less vulnerable to the appearance of influence by politics. Indeed, a key recommendation of the Spangenberg report is the creation of such a board comprised diverse members with a demonstrated concern and interest in the area of indigent defense. Spangenberg specifically recommends that, “The board should consist primarily of practicing attorneys, but should not include judges, prosecutors, or law enforcement officials. The members should represent a diversity of interests in order to ensure insulation from partisan politics.”<sup>20</sup>

**ABA Standards for Criminal  
Justice: Providing Defense  
Services  
Third Edition (1992)  
Standard 5-1.3(a)  
Professional Independence**

The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The selection of lawyers for specific cases should not be made by the judiciary or elected officials, but should be arranged by the administrators of the defender, assigned-counsel and contract-for-service programs.

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<sup>18</sup> Approval to represent cases above the level of misdemeanor requires that a majority of the reviewing judges determine the attorney has exhibited “proficiency” (for state jail or third degree felonies) or “superior quality” (for first and second degree felonies) in providing representation. Criteria for making these judgments are not specified.

<sup>19</sup> The chief public defender hiring committee interviewed four applicants and made a recommendation to the commissioners court which was responsible for the final hiring decision. Mr. Rasmussen met the requirements and qualifications for the position and was distinguished by over 30 years of legal experience, including capital-qualified expertise.

<sup>20</sup> Robert Spangenberg, supra note 2, at 4.

### **Wichita County Minimum Attorney Qualifications**

Attorneys qualified at each level must meet all requirements for representing lower level cases.

#### **Misdemeanor Cases**

- 6 hours of continuing legal education in criminal law each year or certification as a specialist in criminal law.
- Experience in criminal law as a prosecutor or defense counsel.
- Not found to be ineffective counsel by an appellate or trial court.

#### **State Jail and Third Degree Felony Cases**

- At least one year's experience in criminal misdemeanor or felony representation.
- Demonstrated proficiency in providing quality representation in criminal cases.

#### **First and Second Degree Felony Cases**

- Tried to jury verdict two or more criminal trials.
- Demonstrated representation of equal or greater quality than attorneys currently on the First and Second Degree Felony list.

#### **Capital Cases**

- Approved by the Administrative Judicial Region's local selection committee.

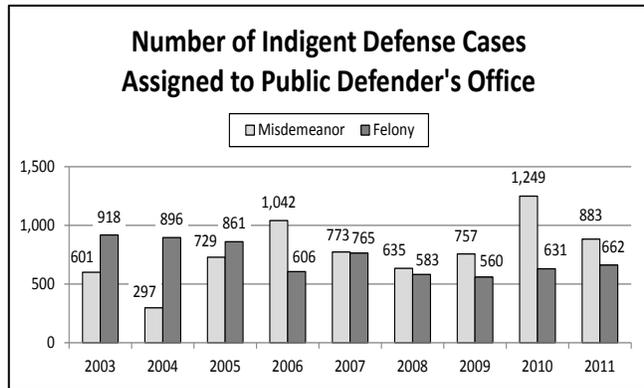
#### **Appeals Cases**

- Criminal case certified by the Texas Board of Legal Specialization.
- Authored and filed at least three criminal appellate briefs or post-conviction writs.
- Demonstrated representation of equal or greater quality than attorneys currently on the Appellate list.

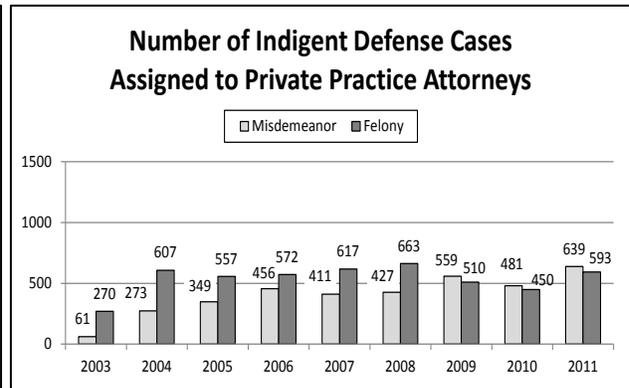
## **2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.**

In Wichita County, there are enough indigent defendants to support a full-time public defender with sufficient remaining cases to allow for meaningful involvement from the private bar. The presence of two vital defense delivery mechanisms results in a broader constituency of stakeholders with a significant interest in the local indigent defense system. Alternatives to the public defender are also needed in instances of conflict, for instance where multiple defendants participated in the same crime.

**FIGURE 3.1**<sup>21</sup>



**FIGURE 3.2**<sup>22</sup>



The private bar has served a particularly important function in helping control Wichita County’s public defender caseloads. When the number of indigent defendants requiring representation spiked in 2002 following the implementation of the Fair Defense Act, private practice attorneys assumed a greater role than ever before in managing the new volume. Figure 3.2 shows that in 2004, private attorneys managed an increase of 125% more felony appointments (from 270 to 607) and 348% (from 61 to 273) more misdemeanor cases compared to the year before. As the private bar absorbed much of the increased case volume resulting from the Fair Defense Act, the public defenders’ caseload remained roughly stable. Since that time, about 40% of all indigent appointments have been assigned to private practice lawyers. This ratio is intentionally sustained through the indigent defense coordinator’s appointment process.

**3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.**

The third public defense principle specified by the ABA is timely appointment. A significant accomplishment of the Fair Defense Act has been to establish a clear timeframe for attorney notification and client contact. Figure 3.3 depicts the timeline for the appointment of counsel. Individuals requesting an attorney complete an affidavit of indigence at magistration within 48 hours of arrest. The request is transmitted to the appointing authority within 24 hours. In a community the size of Wichita County, an attorney will be assigned by the appointing authority within three working days of receiving the request. The attorney makes contact within one working day after notification.

Procedures for appointment are depicted in Figure 3.4.

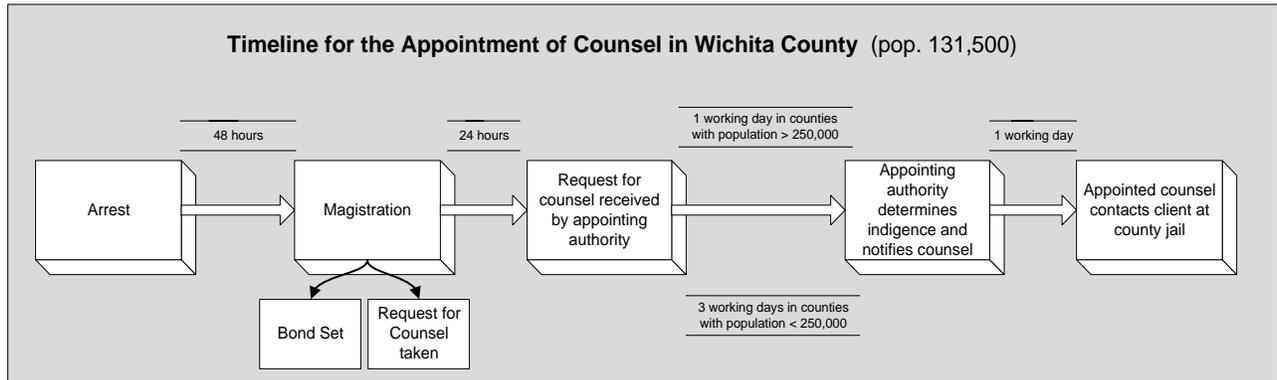
- In Wichita County, every willing defendant is screened for eligibility at the time of magistration. The affidavit of indigence is then passed to the IDC for a determination of indigence. The county’s

<sup>21</sup> Texas Indigent Defense Commission, *supra* note 7.

<sup>22</sup> *Id.*

scrupulous use of screening protocols has increased access to counsel for a large proportion of defendants. Indeed, misdemeanor appointment rates have risen by 188%, from 17% in 2003 and 2004 to 49% in 2010 and 2011. The data suggests Wichita County screening protocols conform to both the spirit and the letter of the Fair Defense Act.

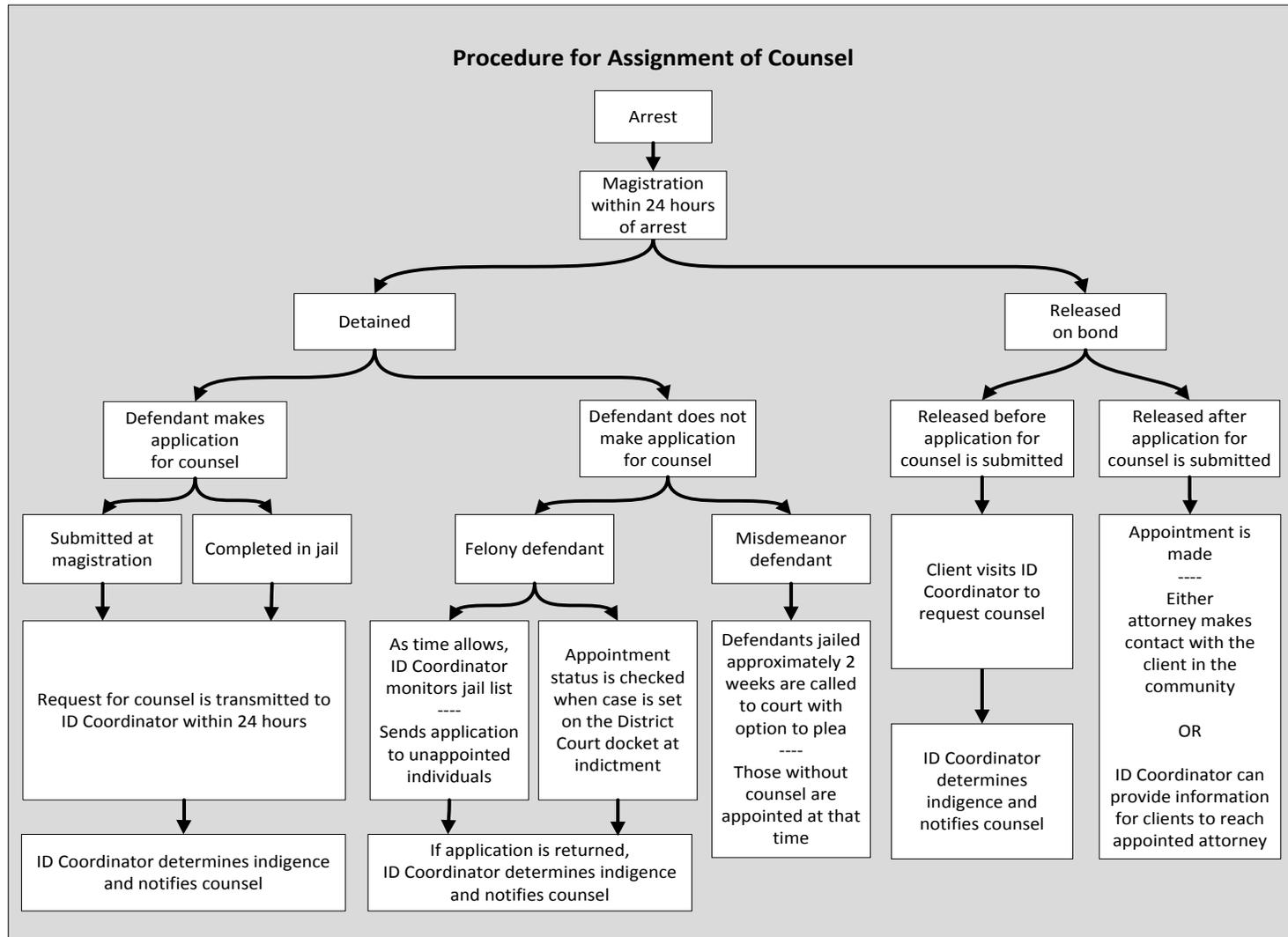
**FIGURE 3.3**



### Detained Defendants

- Individuals who are detained have the option to request an attorney at the probable cause hearing or at a later time after they return to their cell. In either event, the request is transmitted to the IDC within 24 hours where an attorney is assigned.
- People who do not request counsel at magistration or soon after may find themselves detained for a potentially lengthy period of time without an attorney. The IDC contacts unappointed felony defendants in jail “as time allows.” However, there is no reliable procedure for identifying uncounseled individuals until the time of indictment – potentially up to 90 days following arrest. There also remains a serious risk that jailed inmates who are still unindicted after 90-days may not have a representative to ensure their release in accordance with the law.
- For people accused of misdemeanors, those remaining in jail without representation are typically identified within a few weeks through the practice of “jail runs.” During these events, individuals with misdemeanor-only charges are called from jail to appear before a judge where they are given the opportunity to request an attorney and potentially submit a plea.
- Wichita County indigent defense practices could be strengthened through more intentional efforts to identify and monitor the status of inmates who remain in jail without representation. An obvious strategy is to use the computerized information system to mark people on the jail list when an attorney is assigned. Those without an attorney could then easily be identified and reminded of their right to apply.

FIGURE 3.4



## Bonded Defendants

- People who make bond may request counsel either before or after their release from detention. In either instance, the IDC assigns counsel when the request is received, with the attorney and client making independent arrangements to meet in the community regarding the case.

On the whole, Wichita County's procedures are designed to meet the objectives stated by both the ABA and the Fair Defense Act for timely eligibility screening and appointment of counsel. Still, challenges remain with the identification of people who did not request counsel at magistration and who remain in jail at county expense. More avenues are needed for the submission of attorney requests by detained individuals in the weeks and months following the initial eligibility determination.

### **4. Defense counsel is provided sufficient time and a confidential space within which to meet the client.**

When Wichita County attorneys were asked an open ended question about ways to improve the delivery of indigent defense services, the most frequently named response was to improve the conditions under which attorneys are able to consult with clients in custody.<sup>23</sup> All Wichita County defense attorneys, including public defenders and those in the private bar, face significant challenges arranging confidential meeting space for detained clients.

The smaller of the county's two jails located in the courthouse building holds about 200 inmates. Since it was remodeled in the 1980's this facility has held two rooms and two booths specifically for attorney-client conferences, with two of these spaces also accessible for videoconferencing. Attorney-client meeting space at this site could be described as adequate.

The greater problem has been with the larger jail annex where about 400 inmates are housed. The annex was set up more than a decade ago in an old industrial building as a temporary solution to overcrowding. While the building remains in use today, the physical space is in need of renovation to accommodate confidential legal consultations. The same area shared by six public defenders and over 20 local attorneys for both face-to-face and videoconference meetings is also used by sheriff's personnel, judges, and mental health clinicians for magistrating, promotion testing, and mental health competency evaluations, among other things.

As a result of these competing demands for the space, attorneys have been asked to schedule meetings with clients in advance. Those unable to find an open time slot are left to speak with clients through one of 11 phones where conversations are recorded, or through a single unrecorded direct line phone reserved for attorney-client conversations. Another option is to consult with clients by video after regular business

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<sup>23</sup> See Chapter 4 for survey results.

hours. One additional private booth was recently constructed but has done little to alleviate the demand for meeting space. Adaptations are clearly needed to create an environment where clients can meet attorneys in private and share the information necessary for a fully informed defense.

## 5. Defense counsel’s workload is controlled to permit the rendering of quality representation.

The ABA, in their Standards for the Defense Function,<sup>24</sup> specify that defense attorneys should not carry a caseload so large that it interferes with the provision of quality representation, speedy disposition of charges, or the completion of other ethical obligations. Workload is certainly influenced by factors such as the complexity of cases, support services provided to clients, and duties outside direct client representation. With this caveat, in 1973 the US Department of Justice’s National Advisory Commission on Criminal Justice Standards and Goals (NAC) developed recommended caseload standards for public defenders.<sup>25</sup>

Within Wichita County’s public defender office, there are two available metrics for assessing caseloads. First, an automated

information system is able to generate data describing the total number of pending charges being represented at any one point in time. The system does not differentiate misdemeanor and felony case assignments. Figure 3.5 shows the average number of pending charges based on snapshots taken the last day of January and June each year.<sup>26</sup> The active case volume per attorney has increased gradually over time. Sharp increases in 2009 and 2010 have stabilized at a lower level in more recent years. Because the evidence in Figure 3.1, above, suggests that most of these new cases are misdemeanors, this measure suggests the overall amount of work has been and still remains in line with NAC guidelines.

**National Advisory Commission on  
Criminal Justice Standards and Goals  
Recommended Workload of Public Defenders**

The caseload of a public defender office should not exceed:

- 150 felonies per attorney per year;
- 400 misdemeanors (excluding traffic) per attorney per year;
- 200 juvenile court cases per attorney per year;
- 200 Mental Health Act cases per attorney per year; and
- 25 appeals per attorney per year.

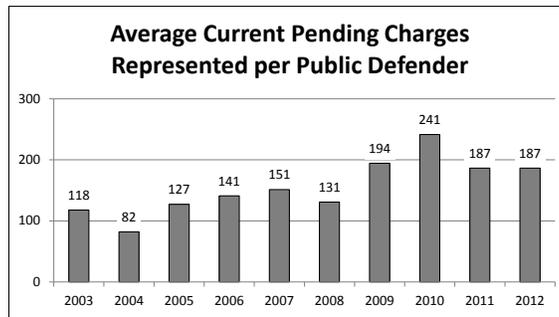
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<sup>24</sup> American Bar Association, *supra* note 14. See Standard 4-1.3e.

<sup>25</sup> National Advisory Commission on Criminal Justice Standards and Goals, *Courts Report* (Washington, DC: US Department of Justice, 1973).

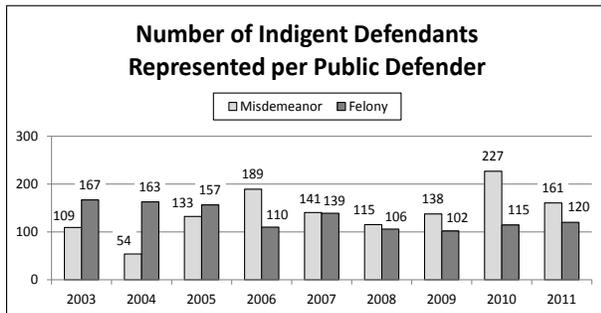
<sup>26</sup> All pending charges on January 31 and June 30 of each year were summed then divided by 2 months and 5.5 attorneys. The public defender office has six active attorneys. However, because the chief public defender carries a reduced caseload to accommodate administrative duties his effort toward representing cases was only counted at 50%.

**FIGURE 3.5**

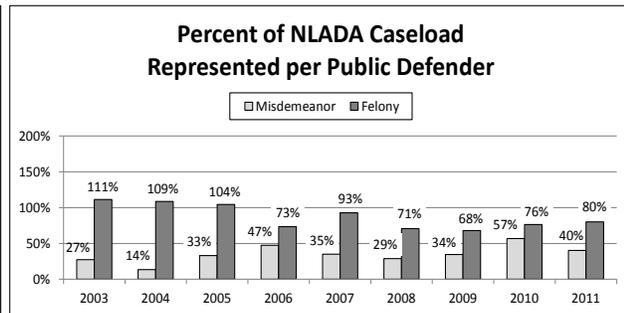


A different indicator of workload is the number of new clients assigned to each attorney in a year. Figure 3.6 shows the total number of defendants represented by the public defender office from 2003 through 2011 divided among a staff of 5.5 attorneys. This measure suggests caseloads may be near the NAC-recommended limit. Overall since 2003 these attorneys have carried 35% of the recommended misdemeanor caseload and 87% of the recommended felony caseload for a total of 122% of the NAC-endorsed case volume (Figure 3.7). Though caseloads were almost exactly 100% of the recommended amount in 2008 and 2009, in 2010 and 2011 the public defender office carried about 120% of the suggested number of cases.

**FIGURE 3.6**



**FIGURE 3.7**



Importantly, the chief public defender and attorneys in the office perceive caseloads to be manageable. The chief public defender can control the flow of cases by asking the IDC to temporarily assign more defendants to the private bar. In addition, counts reported in Figure 3.6 may be inflated by inactive cases. According to public defender staff, a substantial number of charges, often years old, have been neither disposed nor dismissed. They include violations such as hot check or property crimes that victims would not like to have written off, but which cannot be effectively prosecuted. This does not explain the higher appointment rates observed using Commission data, however. Based on this information the Wichita County public defender should monitor office workloads to ensure attorneys can provide meaningful representation.

## **6. Defense counsel’s ability, training, and experience match the complexity of the case.**

Wichita County has established criteria to ensure that all attorneys who represent indigent defendants possess the minimum experience and training to meet the demands of the case.<sup>27</sup> Furthermore, there is a process for the removal of attorneys who are determined by a panel of judges to have failed to deliver high quality representation at any level (see ABA Principal #1, above). These procedures help ensure clients that their counselor has the skills needed to mount a proper defense against the charges being faced.

Public defenders have additional processes for matching attorney skill to the demands of the case. Cases are matched with specific expertise not by luck of the draw, but rather by a well- informed assessment of each defender’s capabilities. The chief public defender personally assigns attorneys in first degree felonies or complex cases involving risk of significant punishment (e.g., due to prior convictions), extraordinary investigation, or high publicity. Other cases are assigned by knowledgeable staff considering attorneys’ workload, qualifications, and experience

Wichita County public defenders work to become general practitioners within the realm of criminal law. They develop varied experience including misdemeanors, felonies, major felonies, appeals, and eventually supervisory, training, and mentoring expertise. To cultivate new areas of proficiency, an intentional effort is made to expose counselors to incrementally diverse cases even including opportunities to interact with the commissioners court or the media. Because public defenders work with a team of professional colleagues, they have ready access to the advice and experience of the chief or their peers. These attributes of the office help ensure the legal representation provided consistently meets or exceeds the demands of the case while offering stimulating professional opportunities needed to engage and retain top quality attorneys in the office.

## **7. The same attorney continuously represents the client until completion of the case.**

In Wichita County, once a defendant is assigned representation, except in instances of conflict or client request, the same attorney remains with the case from initial assignment through trial and sentencing, all the way to appeal. This is true irrespective of whether the case has been assigned to a public defender or to private counsel. Only the public defender office, however, provides continuity of counsel over multiple arrest events.

Once an individual has been a client of the public defender office, they can have the same attorney in any future legal encounters creating the opportunity for a sustained professional relationship for people who desire that level of service. At the same time, in instances where clients are dissatisfied with their counsel, the public defender has the flexibility to assign a different attorney in the office without requiring a judicial “change of attorney” order. This capability reduces administrative burden on the courts. Relative to

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<sup>27</sup> See discussion of minimum attorney qualifications under Principle 1, above.

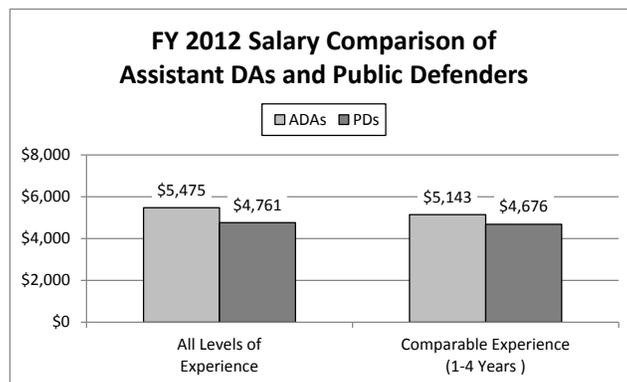
assigned private attorneys, the public defender office has greater flexibility for ensuring long-term case continuity and client satisfaction.

**8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.**

The ABA guidelines are clear that public defense, including both the public defender office and assigned private attorneys, should participate as an equal partner in the local justice system. Resource parity between prosecution and defense functions is essential to achieve this goal. Ideally, this implies comparable workloads, salaries, and other resources such as benefits, technology, facilities, legal research, support staff, investigators, and experts.

Parity in Salary. Over the past decade, few strides have been made in elevating the status of defense. The Spangenberg study found that in 2004 assistant district attorneys (ADA) earned 13% more than public defenders on average.<sup>28</sup> Today there is a 15% salary differential when all ADAs and public defenders are included in the analysis.<sup>29</sup> Looking only at comparably experienced attorneys (i.e., with four years of experience or less), ADAs were paid 10% more than public defenders in FY 2012.<sup>30</sup> (See Figure 3.8).

**FIGURE 3.8**



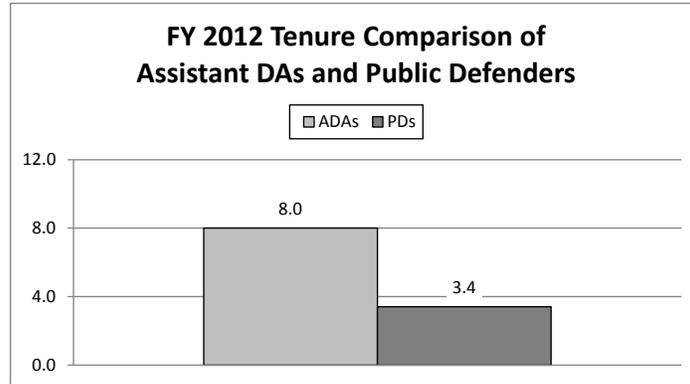
This inequity presents a serious problem for the county. The pay differential may at least partly explain the high turnover rate experienced by the public defender. In the past year alone, the office has had to replace two of its five staff attorneys. On average attorneys remain in the prosecutor’s office more than twice as long as in the public defender’s office (Figure 3.9). Any savings to the county associated with the reduced salary is more than offset by the loss of productivity due to turnover. In addition, less experienced attorneys can limit the capacity of the office to represent more complex cases.

<sup>28</sup> Robert Spangenberg, *supra* note 2, at 5-6.

<sup>29</sup> This comparison excludes the chief public defender and the district attorney.

<sup>30</sup> Wichita County FY 2012 Budget, available as of August 11, 2012 at <http://www.co.wichita.tx.us/postings.htm>. The information is also available from the Wichita County Treasurer.

**FIGURE 3.9**



The differential for investigators is even greater. Investigators in the district attorney’s office average \$4,654/month (16.5 years’ experience) compared to \$2,946.76/mo. (8.5 years’ experience) for their colleagues in the public defender’s office. This represents an earnings differential of 58%.

Parity in Work Accommodations. In contrast to concerns about pay equity, the public defenders’ workspace has been significantly improved in recent years to achieve a professional image and allow significantly greater functionality. In 2008, the previously cramped and under-equipped workspace was upgraded to include a suite of large, professionally furnished offices for attorneys and staff, as well as adequate reception, library, filing, and meeting accommodations. Whereas several rooms with half-walls or missing doors had lacked privacy for attorney-client consultations, every defender now has an office suitable for confidential meetings. Office technology and legal research capabilities are also at the level needed to support a high quality of legal service. Although improvements in the area of pay equity are still needed, Wichita County has made significant strides toward increasing the professional capacity of the public defender through creating a more professional work environment.

**9. Defense counsel is provided with and required to attend continuing legal education.**

The ABA stipulates that defense counsel should have systematic and comprehensive training appropriate to the practice of criminal law. In Wichita County, at least six hours of continuing legal education is required by the Board of Judges for all attorneys representing indigent defendants. However, public defenders far exceed this minimum. An early priority of the chief public defender was to create a challenging and supportive work environment that would encourage high-quality attorneys to remain with the public defender office as their qualifications and experience increased.

The county provides funding for every attorney to attend at least one two-to-three day seminar each year, and many get additional video training from the Texas Criminal Defense Lawyer’s Association (TCDLA). Through these channels, public defenders receive 20 to 24 hours of formal training annually.

Less formal in-house trainings are offered at least quarterly and frequently occur monthly. They cover a variety of topics such as changes in the law, how parole status impacts the defense, representing mentally

incompetent clients, or strategies for jury selection, as examples. The chief public defender also posts pop quizzes on the board from time to time to stimulate thought and discussion among attorneys.

Attorneys gain considerable expertise from each other. Within the office, all trial cases are done in pairs. The chief public defender frequently sits as second chair in order to mentor less experienced counselors. Attorneys who have represented complex cases such as sexual assault of a child or driving while intoxicated also advise colleagues who are learning about a new content area.

Outside the office, public defenders new to the job commonly take advantage of opportunities to sit as second chair to a private attorney who is the lead on an interesting or instructive case. In addition, the public defender office serves as an information hub and a community resource to attorneys in the community who contact the office for advice about cases or to access resource materials. Because the public defender specializes in criminal law this is a valuable service for attorneys with a more general practice.

In short, the public defender office offers an array of both formal and informal opportunities for attorneys to develop expertise in criminal law. Stimulating new challenges offered in a supportive environment is key to developing in-house capacity, while the office also works to maintain a close collaboration and strengthen proficiency among private attorneys representing criminal cases.

#### **10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.**

The ABA advises that all attorneys, whether they are private assigned attorneys, contract counsel, or public defenders should be periodically evaluated for competence and efficiency. Although it has been noted that assigned private attorneys are not currently subject to a standardized performance evaluation in Wichita County, all personnel in the public defender office receive a yearly review conducted by the chief and based on performance-related criteria. The evaluation form for attorneys rates client service, legal skills, productivity, teamwork, work habits, training, and overall performance.

The performance of the chief public defender is evaluated separately by the county judge. The office as a whole is then evaluated through the commissioners' budget process. The chief public defender reports to the commissioners court regarding major events, concerns, and successes of the past year. The information is used by the commissioners to provide oversight of the office, and to respond to salary and other resource needs.

Through these processes, the public defender office is held accountable for performance in administration, quality of service, efficiency, and fiscal accountability. Nonetheless, the Spangenberg study recommends replacing current review procedures implemented by local elected officials with a more objective

procedure led by a non-partisan review panel.<sup>31</sup> A review board consisting primarily of practicing attorneys would help ensure counselors' performance is assessed against the standards of the defense profession and would promote insulation from partisan politics. Consideration could also be given to applying the same external performance criteria to appointed attorneys in the private defense bar. At present, private indigent defense attorneys only receive performance feedback in an instance where the Board of Judges determines there has been a failure or impropriety.

In addition to external review processes, the public defender utilizes internal information systems to self-monitor their own performance. Though sophisticated automated time-tracking or caseload management functionality is not available, basic information such as caseloads and case disposal rates, both overall and by individual attorney, offer a way to monitor some aspects of achievement. Regular monitoring of the list of active cases also helps ensure quality of representation, as no client is overlooked or ignored. This type of assessment is helpful for communicating and achieving high expectations for indigent defense service delivery.

## **CONCLUSION**

When evaluated vis a vis the defense standards of the legal profession articulated by the American Bar Association, both strengths and weaknesses have been identified in Wichita County's indigent defense system. The system receives high marks for:

- Procedures to standardize the determination of indigence and for independent selection of counsel are well-established.
- Both the private bar and the public defender are actively engaged in the county's indigent defense system.
- The public defender effectively monitors caseloads, utilizing a process to shift work to the private bar if staff attorneys' case volume becomes excessive.
- The public defender office is highly professionalized as evidenced by merit-based employment, policies specifying policies, procedures and expectations, regular performance evaluation, and high-quality training, supervision, and professional support for attorneys.

Opportunities for improvement also exist. For instance:

- The creation of a non-partisan board to oversee the IDC, the public defender office, and the private defense bar would help assure the independence of the defense function against political influence.
- Annual performance evaluations would provide objective evidence of the basis for judges' approval decisions and help insulate the attorney qualification procedure from politics or bias.

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<sup>31</sup> Robert Spangenberg, *supra* note 2, at 4.

- A process should be put in place to identify people who did not request an attorney at magistration, but who remain in jail at county expense.
- Improved confidential meeting space is needed at the jail where attorneys and clients have privacy to share information needed for a fully informed defense.
- Parity in salary between attorneys in the public defender's office and the prosecutor's office remains a goal to be achieved.

Certainly great improvements have been seen in the Wichita County indigent defense system since The Spangenberg Group provided technical assistance seven years ago. Based on the progress made in recent years, there is reason to be optimistic that positive strides will continue to be made into the future.

## CHAPTER 4

### PUBLIC AND PRIVATE ATTORNEY PRACTICE CHARACTERISTICS

As part of the study, researchers conducted a survey of criminal defense attorneys to ascertain details about their practices. The questions this survey attempted to answer included:

- Are legal services delivered in the same way by public defenders and private practice attorneys?
- Do paying and indigent clients receive the same types and amount of assistance from counsel?

These important questions relate to the quality and fairness of the indigent defense system.<sup>32</sup>

#### ATTORNEY SURVEY METHODS

During August and September, 2011, attorneys that accept court appointments in Wichita County were contacted by telephone to invite their participation in a survey. Attorneys agreeing to take part were sent an email containing written instructions and a link to an online survey. Those who failed to respond within a week were contacted at least one more time by telephone, and were sent an email reminder once each week for up to three weeks. After these efforts, non-respondents were dropped from the sample.<sup>33</sup>

Response rates are illustrated in Figure 4.1. Overall, 17 of 33 attorneys completed a survey, resulting in a 51% response rate. Response rates among private attorneys (44%) were about half those of public defenders (83%). Six attorneys refused the opportunity to participate, and ten attorneys failed to follow through after receiving the email survey link.

**FIGURE 4.1**  
**Attorney Survey Response Rate**

<b>Private Attorneys on Appointment List</b>		
Responded	12	(36%)
Refused	6	(18%)
Non-Response	9	(27%)
<b>Public Defenders</b>		
Responded	5	(15%)
Non-Response	1	(3%)
<b>Total</b>	<b>33</b>	<b>(100%)</b>

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<sup>32</sup> The complete instrument is presented in Appendix B.

<sup>33</sup> Attorneys were initially offered a \$30 gift card as an incentive to complete the survey. Due to low response rates, the amount of the gift card incentive was increased to \$50. Attorneys who had initially refused were re-contacted and given the opportunity to accept the higher incentive for their participation.

## SURVEY FINDINGS

The survey gathered information on practice characteristics and methods of legal service delivery. Attention was focused on differences between retained and appointed cases, and between public defender and appointed private counsel. Six major findings emerged regarding case volume, time spent per case, types of services provided to clients, and professional experience and training.

### 1. Public defenders report representing a caseload nearly twice as large as private attorneys.

Public defenders report accepting a considerably larger volume of cases compared to their peers in private practice.<sup>34, 35</sup> Private practice attorneys say they take 21 total new cases of all types each month, while public defenders are assigned 37 new cases in the same timeframe – a 72% higher case acceptance rate (Figure 4.2). Predictably, public defenders also report having many more cases active at any one time (212 cases) than do their private practice colleagues (109 cases, Figure 4.3). Data presented in Chapter 3 suggests that public defender caseloads are narrowly within the guidelines recommended by professional defense organizations. Still, office members appear relatively burdened compared to their private practice colleagues.

FIGURE 4.2

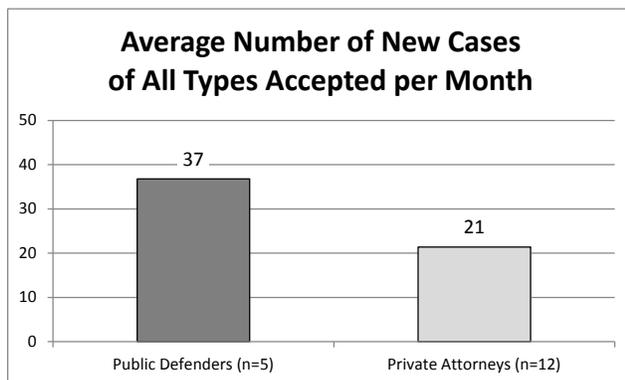
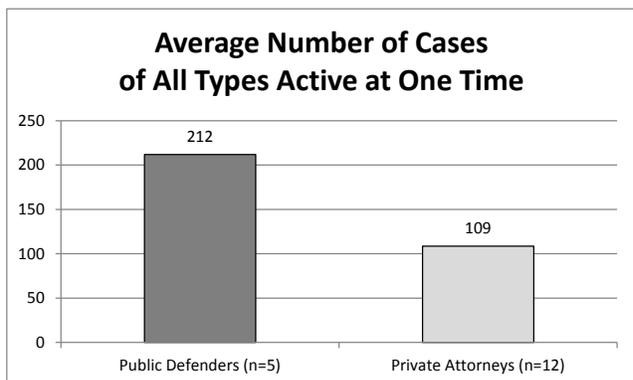


FIGURE 4.3



Some impacts of this discrepancy in case volume may be partially offset by the institutional benefits of the public defender office. These include specialized support staff, in-house professional investigators, and ready support from colleagues, all of whom specialize in criminal law. These advantages may make it easier

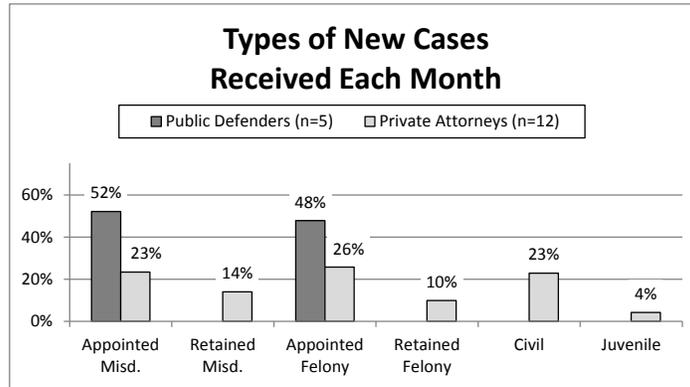
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<sup>34</sup> In Wichita County, a criminal “case” is defined as a charge rather than as a defendant. For instance, a defendant with three charges under a single indictment would count as three cases. The same method of case counting is used in the public defender office and for payment of private assigned attorneys. This is different from the definition of a “case” specified by the Texas Indigent Defense Commission: “...the number of criminal cases reported... should be based on the number of defendants named in an indictment or information. (See Texas Indigent Defense Commission, *Procedure Manual for the indigent Defense Expenditure Report, Fiscal Year 2012* (Austin, TX: Author): 4).

<sup>35</sup> Additional information regarding public defender caseloads is presented in Chapter 3.

to manage a larger number of cases than would be feasible for attorneys in a solo (75%) or office-share practice (16%).

**FIGURE 4.4**



Private attorneys report that about half of their total caseload is comprised of appointed criminal cases, and about a quarter is retained criminal cases (Figure 4.4). The remainder involves civil (23%) and juvenile (4%) law. Private attorneys’ appointed cases are about equally divided between misdemeanors (23%) and felonies (26%). This finding is generally consistent with recent years’ data reported to the Commission in the annual Indigent Defense Expenditure Report (Figure 3.2).

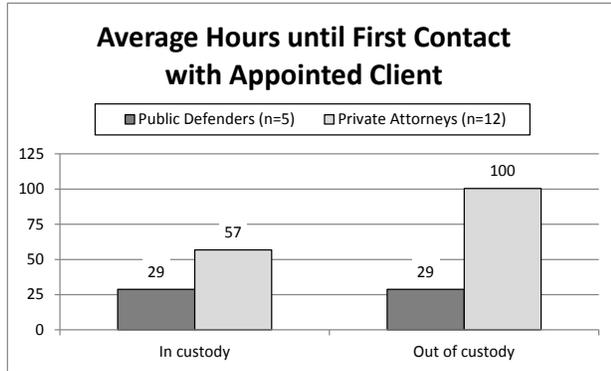
Public defenders, who exclusively represent indigent criminal cases, also report an approximately equal distribution of misdemeanors (52%) and felonies (48%) in their caseload (Figure 4.4). This self-report roughly conforms to evidence from Wichita County’s 2011 Indigent Defense Expenditure Report (Figure 3.6).

**2. Public defender clients are contacted by their attorney one to three days earlier than individuals represented by assigned private counsel.**

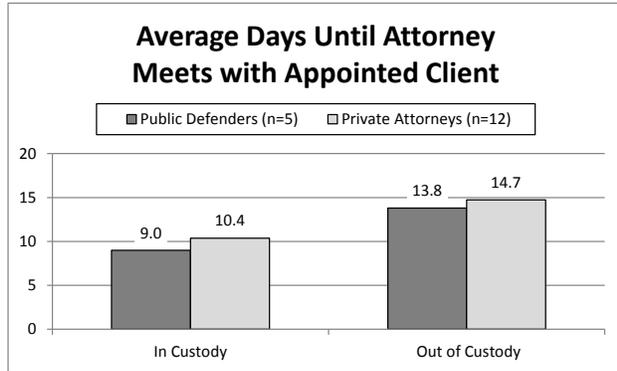
During the uncertain hours after arrest, indigent defendants represented by a public defender receive faster assurance that an attorney is working on their case. Once they are notified of an appointment, public defenders report making contact with the client by mail and/or telephone within about a day (29 hours). Private assigned attorneys say they wait longer, making contact in 2 days (57 hours) if clients are detained and in 4 days (100 hours) if they have been released on bond (Figure 4.5).

The first actual meeting comes several days later for clients of both public defenders and private assigned attorneys (Figure 4.6). Still, public defenders are more immediately responsive. Defendants have a personal visit from a public defender within 9 to 14 days on average, depending on whether they are in custody, and about a day later if they are represented by a private assigned attorney.

**FIGURE 4.5**



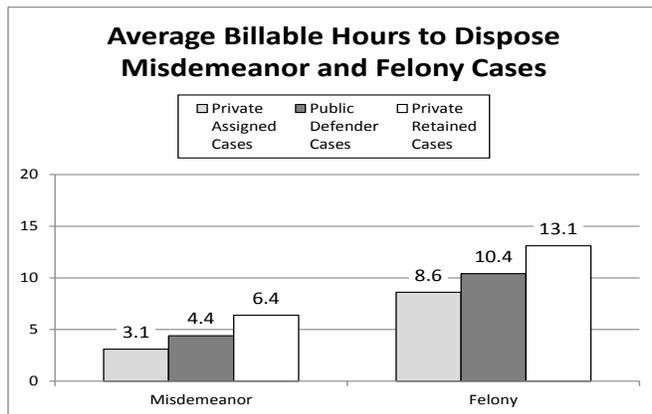
**FIGURE 4.6**



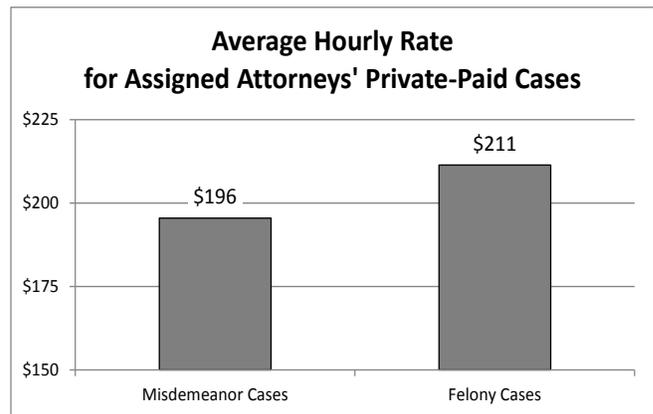
**3. Indigent defendants can expect at least 40% more attorney time devoted to their case if they are represented by a public defender.**

When asked how long it takes to dispose a case on average, differences were observed based on type of counsel and defendants’ ability to pay. Private attorneys devote the greatest amount of time to retained clients while assigned cases receive one-half to two-thirds of the same level of attention (Figure 4.7).

**FIGURE 4.7**



**FIGURE 4.8**



Public defenders say they dedicate more time to both felony and misdemeanor clients than do private appointed attorneys, but not as much as the time made available to paying clients. Each misdemeanor case reportedly requires 4.4 hours, and each felony case takes 10.4 hours of public defender time on average, a commitment of 41% and 45% more time respectively than clients receive from private appointed counsel.

**TABLE 4.1**

**Market Value of Attorney Services by Type of Counsel  
(Average hours x Hourly billable rate)**

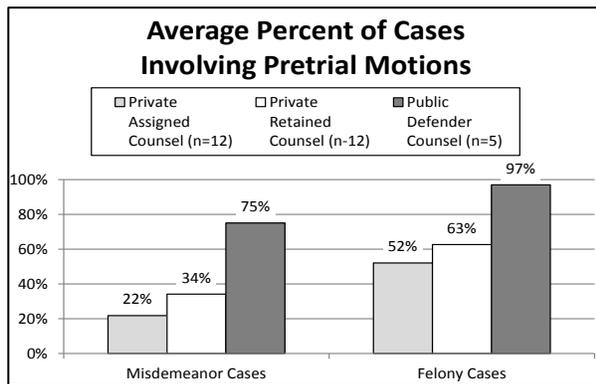
	Misdemeanor Cases	Felony Cases
<b>Private Assigned Counsel</b>	\$608	\$1,815
<b>Public Defender</b>	\$862	\$2,194
<b>Private Retained Counsel</b>	\$1,254	\$2,764

Attorneys accepting retained cases report a current billable rate of \$196 for misdemeanors and \$211 for felony cases (Figure 4.8). Based on these figures, the “market value” of legal services per case provided by different types of counsel is illustrated in Table 4.1. For misdemeanors, public defenders deliver a defense valued at \$254 more than that provided by private assigned counsel. The differential for felonies is \$379.<sup>36</sup>

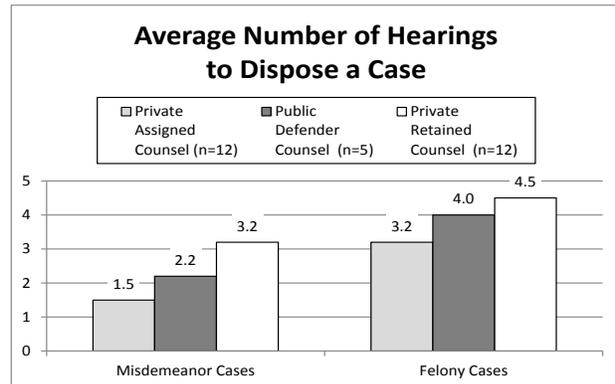
**4. Public defenders use pretrial motions and hearings more frequently than private assigned attorneys.**

Public defenders are by far the most assertive users of pretrial motions (Figure 4.9). Compared to private appointed counsel, motions are used by public defenders twice as often in felony cases and more than three times as often in misdemeanor cases. In fact, only public defenders report the majority of their clients have at least one pretrial motion filed.

**FIGURE 4.9**



**FIGURE 4.10**



Public defenders also report using hearings more frequently than their colleagues in private practice (Figure 4.10). The largest number of hearings is pursued by private attorneys on behalf of paying clients. Private attorneys have over twice as many hearings in misdemeanor cases when they are retained than when they

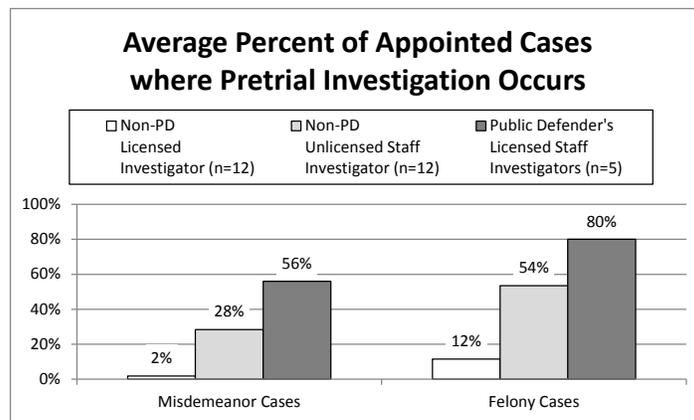
<sup>36</sup> Further analysis of costs of counsel is presented in Chapter 8.

are appointed. Looking only at indigent defendants, those represented by public defenders typically receive at 0.7 more misdemeanor hearings and 0.8 more felony hearings than their peers with private counsel.

**5. Indigent defendants assigned to the public defender are much more likely to have access to pretrial investigation services and experts.**

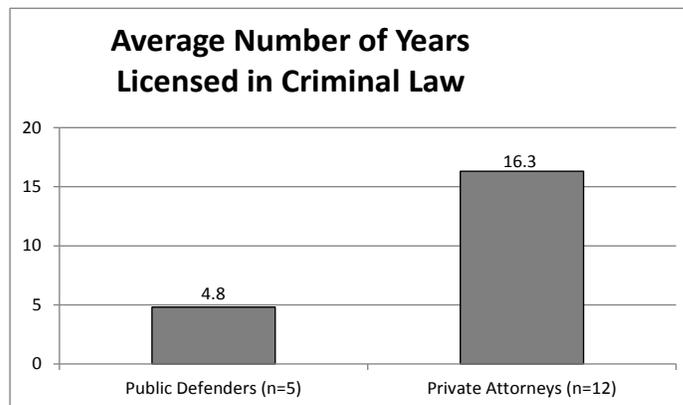
Having licensed professional investigators in the public defender office confers a significant advantage to clients. The majority of felony and misdemeanor cases represented by public defenders have some degree of investigation by skilled individuals who perform those duties as their full-time job.

**FIGURE 4.11**



Clients assigned to private practice attorneys have much more limited access to investigative support. Survey respondents say that only about 30% of misdemeanor cases and 66% of felony cases are investigated and only rarely is the work performed by a licensed professional (Figure 4.11). More often, private practice attorneys rely on themselves or an assistant to speak to witnesses, visit the crime scene, or gather other information about the facts of the case.

**FIGURE 4.12**

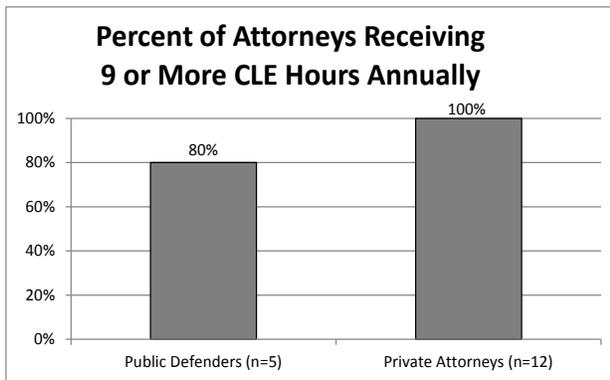


## 6. Private attorneys are considerably more experienced than public defenders.

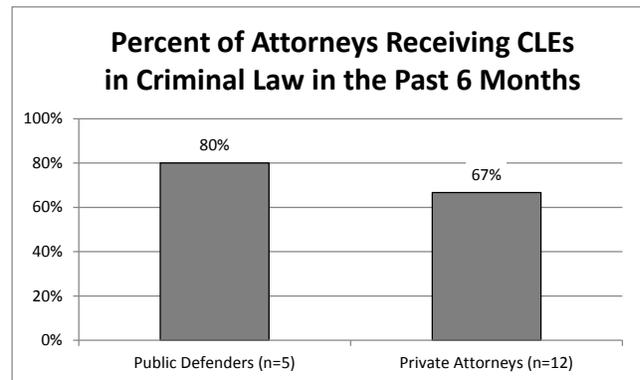
There are significant differences between attorneys with regard to experience (Figure 4.12). Public defenders have been licensed 4.8 years on average compared to 16.3 years of experience among the private practice lawyers surveyed. This experience differential may reflect lower pay in the public defender office relative to the private sector which impacts staff longevity.

Public defenders and private attorneys are both current in their continuing legal education, particularly in the area of criminal law. Nearly all attorneys participate in at least nine hours of qualified training each year with just one public defender falling short of this standard (Figure 4.13), and the majority of all attorneys have had such training within the past six months (Figure 4.14).

**FIGURE 4.13**



**FIGURE 4.14**



## CONCLUSION

A survey of attorneys representing indigent defendants in Wichita County found important differences in the practice characteristics of private practice lawyers and public defenders. Overall, the private bar provides a consistently higher level of service to paying clients than to indigent defendants. Among indigent defendants, however, those represented by the public defender appear to have an advantage. Despite less experienced staff and a larger caseload than their private practice colleagues, public defenders offer a higher level of service by several measures. They contact clients more promptly after appointment and spend more time on each case than do private practice attorneys. They are also more likely to provide a broad array of legal services including pretrial motions, hearings, and professional investigation. The extent to which these differences result in corresponding improvements in case outcomes is explored in upcoming chapters.

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## CHAPTER 5

### FACTORS PREDICTING THE TYPE OF COUNSEL CLIENTS RECEIVE

All criminal defense cases are not equal. Defendants' demographics, mental health, substance use, criminal history, and the severity and number of current charges are just a few of the factors that can potentially impact defense options and influence case outcomes in court. To the extent that some types of attorneys receive more difficult cases, they may face greater challenges as measured by clients' access to bond, case dispositions, or sentencing outcomes.

The purpose of this chapter is to test the ways in which the characteristics of cases represented by different types of attorneys vary. Results are useful for understanding the attributes of defendants choosing different types of counsel, and the nature of the challenges posed to court-appointed compared to retained attorneys.<sup>37</sup> Nine different factors were examined in three categories for their influence in determining the type of legal representation people have. These include:

#### Case characteristics

- Prior arrests
- Number of current charges
- Severity of current charges
- Whether charges are drug-related

#### Defendant characteristics

- Citizenship
- Mental health status
- Substance use at arrest
- Race/Ethnicity
- Sex

During the study period from 2005 through 2010, nearly half (47.6%) of all defendants in Wichita County had an unspecified form of attorney (Table 5.1). Among the remainder, a slightly larger percentage hired a retained attorney (19.0%) than were appointed a public defender (16.8%) or a private attorney (16.6%). The analyses that follow explore the extent to which the probability of having each attorney type changes based on factors such as defendants' offense history, current charges, or mental health status.

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<sup>37</sup> See Morris B. Hoffman, Paul H. Rubin, and Joanna M. Shepherd, "An Empirical Study of Public Defender Effectiveness: Self-Selection by the 'Marginally Indigent,'" *Ohio State Journal of Criminal Law* 3 (2005): 223-255. It was not possible to directly measure defendants' financial status in this study. It is ordinarily presumed that people with few resources will have appointed counsel. However, Hoffman and colleagues found evidence suggesting a large segment of "marginally indigent" defendants have the ability to acquire resources to retain a private attorney if the charges against them are sufficiently serious. If the potential penalties are less severe, these same individuals will choose court-appointed representation. Conversely, some people who are eligible for appointed counsel may choose to face the charges without an attorney. To the extent that defendant finances interact with attorney type or other variables, an effect could not be assessed in the present study.

### Attorney Types and Definitions

Defendants in Wichita County can potentially receive one of four types of counsel. These were identified in the Wichita County criminal database based on the following criteria:

#### Retained Counsel

- Cases for which an attorney was named in the database with no record of the case in the public defender’s files and no record of an attorney fee payment by the auditor.

#### Private Appointed Counsel

- Cases for which an attorney was named in the database with a record of an attorney fee payment by the auditor.

#### Public Defender Counsel

- Cases for which an attorney was named in the database with a record of the case in the public defender’s files.

#### Unspecified Counsel

- Cases for which no attorney was named in the county database. While some of these defendants were self-represented, it is not known what proportion of these defendants had another form of counsel that was not properly recorded in the data.

In the discussion that follows, descriptive results (presented in tables) show the number or proportion of people in the study sample in each category being considered. Multivariate analyses (presented in figures) quantify the extent to which each variable being tested (e.g., criminal history, current charges, defendant demographics) increases or decreases the chance of having a particular attorney type.<sup>38</sup> All multivariate

**TABLE 5.1**

#### Type of Counsel Used by Defendants in Wichita County

Retained Counsel	Private Appointed	Public Defender	Unspecified Counsel
19.0%	16.6%	16.8%	47.6%
(n=4,129)	(n=3,610)	(n=3,649)	(n=10,327)

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<sup>38</sup> See Appendix A. Multivariate models simultaneously control for many different defendants and case attributes making it possible to eliminate competing explanations for results. In this chapter, multivariate analyses quantify the extent to which case and defendant characteristics increase or decrease the chance of having a particular type of attorney among people who are alike in terms of other potentially influential factors (e.g., number and level of current charges, mental health or substance abuse status, demographics, and so on).

findings displayed are significantly different from the comparison category indicated by the labeled line in the middle of each graphic. If a difference could have occurred by chance more than five times out of one hundred, it is assigned a value of zero.

## CASE CHARACTERISTICS

The first tests assessed whether defendants’ charges and offense history influence the type of attorney representing the case. Where charges are more serious and potential penalties more severe, individuals with the resources to do so have incentives to hire the best attorney they can afford. People facing low-level charges that can likely be resolved quickly might be more inclined to face the charges without counsel.<sup>39</sup> The following paragraphs quantify the impact of case characteristics on attorney type.

### Number and Severity of Prior Arrests<sup>40</sup>

- People with a history of prior misdemeanors are more likely to be represented by public defenders. This may be because repeat offenders have the option to request the public defender if they have been a client in the past.
- People with a history of prior felonies are more likely to have some form of known counsel – either appointed or retained – than to have an unspecified attorney type.

**TABLE 5.2**

**Number of Prior Arrests**

		<b>Retained Counsel</b> (n=4,129)	<b>Private Appointed</b> (n=3,610)	<b>Public Defender</b> (n=3,649)	<b>Unspecified Counsel</b> (n=10,327)
<b>Misdemeanor</b>	Average	0.36	0.51	0.47	0.29
	Median	0.00	0.00	0.00	0.00
<b>Felony</b>	Average	0.24	0.31	0.25	0.13
	Median	0.00	0.00	0.00	0.00

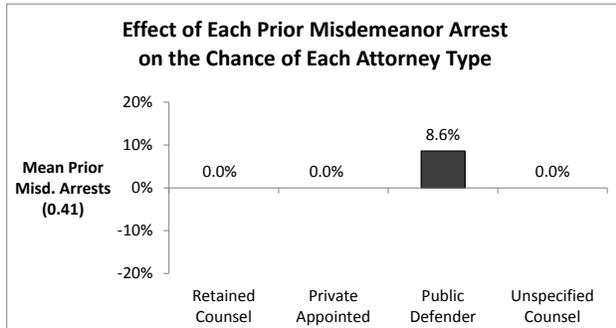
Table 5.2 shows that, descriptively, people with the least serious criminal history tend to have an unspecified attorney type, while those with higher rates of past criminal involvement more commonly receive an appointed attorney.

<sup>39</sup> Morris B. Hoffman and colleagues, supra note 37.

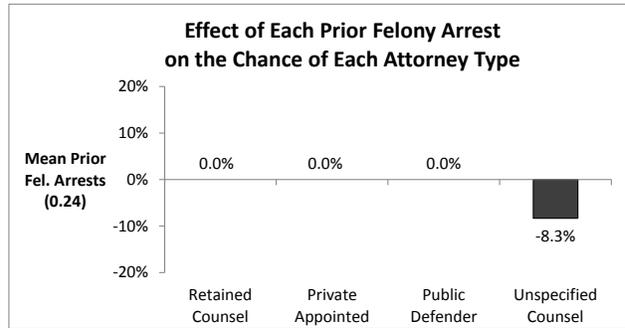
<sup>40</sup> “Number and severity of prior arrests” counts the number of arrests in the four years preceding the current arrest in each category of severity. For instance, a criminal history reflecting one prior Class A misdemeanor arrest, one first-degree felony arrest, and another Class A misdemeanor arrest would be shown in the data as two prior Class A misdemeanor arrests and one first-degree felony arrest.

Multivariate analyses confirm these findings. As the number of prior misdemeanors increases, otherwise identical people are, in fact, significantly more likely to have a public defender (Figure 5.1). This may be at least partly because people who have been public defender clients in the past can request the office again if they require counsel in the future (assuming they are still financially eligible). Each additional misdemeanor arrest above the average (0.41 misdemeanors) increases the chance of having a public defender by 8.6%, and three prior misdemeanors elevates the chance of public defender counsel by 25.8% (i.e., 8.6% probability x 3) compared to similar peers with the average number of priors.

**FIGURE 5.1**



**FIGURE 5.2**



As criminal history grows more severe, increasing from a misdemeanor to a felony, odds are greater that defendants will get some specified form of attorney; either appointed or retained (Figure 5.2). Every prior felony arrest reduces the chance of an undeclared attorney type by 8.3%. There is, however, no difference in the type of counsel prior felony defendants are most likely to choose, other things being equal.

**Number of Current Charges**

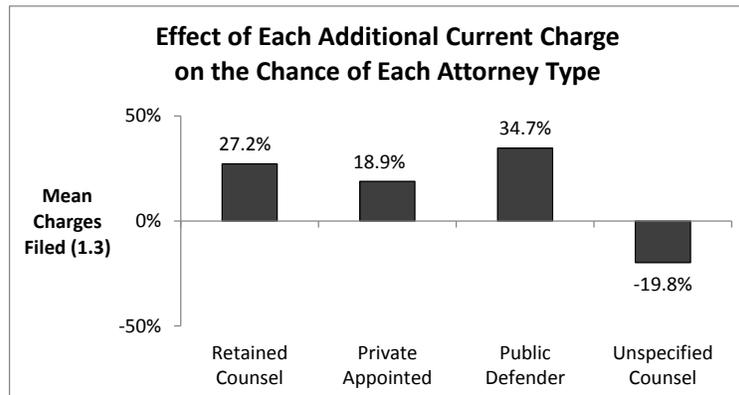
- Each additional charge in the current offense increases the chance of a public defender appointment by nearly 35 percent. The chance of having a private retained attorney or being assigned private appointed counsel also rises with more charges.
- Individuals facing a large number of current charges are less likely to have an unspecified attorney type.

Descriptively, public defender clients have the most charges per case on average, while people with an unspecified attorney type have the fewest (Table 5.3).

**TABLE 5.3****Number of Charges Filed**

	<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Average</b>	1.29	1.26	1.31	1.11
<b>Median</b>	1.00	1.00	1.00	1.00
(n)	4,129	3,610	3,649	10,327

Multivariate findings also show that as otherwise identical people accrue a larger number of charges they are also increasingly likely to have an attorney – most likely a public defender. Each extra charge above the mean (1.3 charges) increases defendants’ chance of a public defender assignment by 34.7%. The chance of retained counsel (27.2% increase) or a private appointed attorney (18.9% increase) also goes up with each additional charge. Conversely, more current charges make defendants less likely to have unspecified counsel.

**FIGURE 5.3****Current Offense Severity**

- Felony charges substantially increase the likelihood that defendants will hire an attorney, given otherwise identical case and defendant characteristics.

The nature of the arrest offense impacts the type of counsel an individual will have. Table 5.4 shows the majority of people with low-level Class B misdemeanor violations have an unspecified form of counsel. As the most serious charge increases, so does the percentage of defendants with a known form of attorney. Most people charged with a felony have a private appointed attorney.

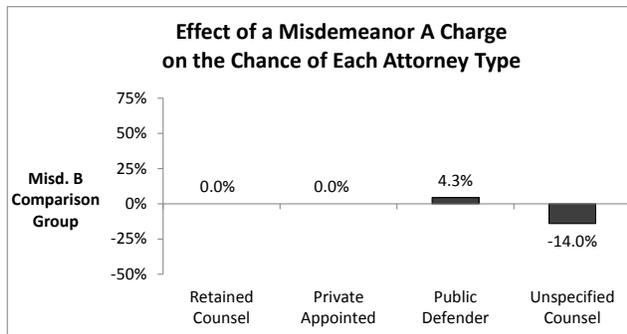
**TABLE 5.4**

**Most Serious Offense Charged**

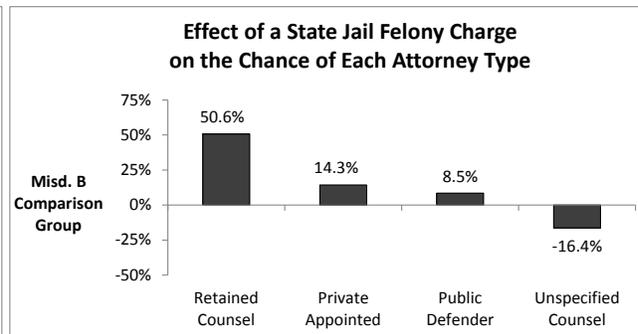
	<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Misdemeanor B</b> (n=12,041)	15.7%	9.3%	13.7%	61.2%
<b>Misdemeanor A</b> (n=4,716)	19.2%	18.3%	19.8%	42.7%
<b>State Jail Felony</b> (n=2,552)	29.0%	32.4%	21.2%	17.4%
<b>Felony 3-Capital</b> (n=2,253)	25.1%	34.4%	21.6%	18.9%

Figures 5.4 through 5.6 show the effect of charge severity on attorney type for otherwise identical defendants. The extent to which each charge level impacts counsel is depicted relative to a common standard – Class B misdemeanors.

**FIGURE 5.4**

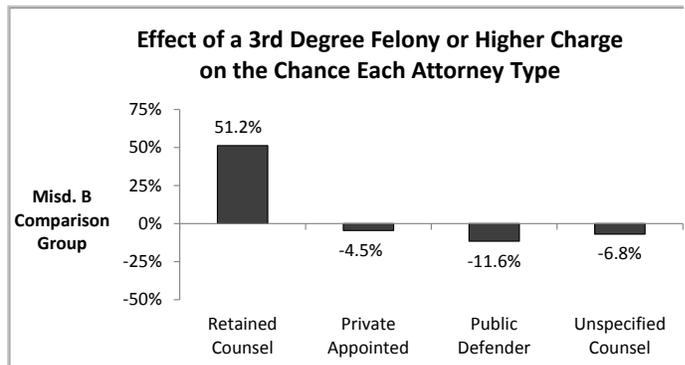


**FIGURE 5.5**



Results show that people facing felony charges are much more likely to arrange for an attorney. The probability of hiring an attorney rises 50.6% when the charge goes from a Class B misdemeanor to a state jail felony, and increases by 51.2% for 3<sup>rd</sup> degree or higher felonies.

**FIGURE 5.6**



**FIGURE 5.7**

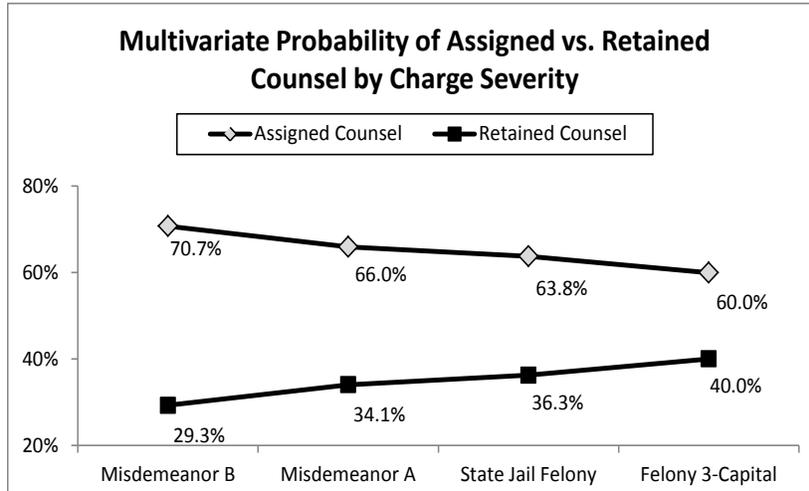


Figure 5.7 summarizes the effect of offense severity more concisely.<sup>41</sup> The probability that people will hire an attorney grows from 29.3% for a Class B misdemeanor to 40.0% for third degree or higher felonies, while the likelihood of having an appointed attorney declines accordingly. Together with other evidence in this section, these data confirm that as charge severity increases, people are more likely to retain a private attorney and less likely to use assigned counsel.

### Drug Charge Status

- Drug-related charges increase the chance that a defendant will hire an attorney, and reduce the probability of court-appointed counsel.

Drug charges are a special type of offense. Attorneys representing drug cases can often expect delays in case processing, more pre-trial jail days while substances are lab-tested, and worse sentencing outcomes due to mandated penalties. In evaluating the performance of counsel, consideration should be given to whether some types of attorneys carry a larger proportion of these more challenging drug-related cases.

Descriptively (Table 5.5), people charged with minor drug offenses more frequently have an unspecified attorney type. However, when a drug charge escalates to a felony, the number of people with some form of identified attorney type more than doubles.

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<sup>41</sup> Defendants with unspecified attorney types were excluded from the model.

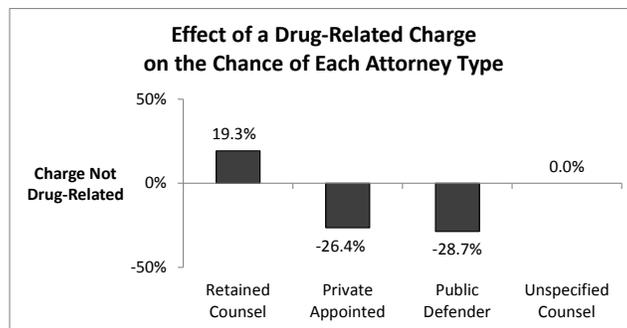
**TABLE 5.5**

**Percent of Cases Involving Drug Charges**

		<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Misdemeanor</b>	Drug Offense (n=2,537)	13.8%	8.8%	13.4%	64.0%
	Other Offense (n=14,220)	17.2%	12.4%	15.8%	54.6%
<b>Felony</b>	Drug Offense (n=1,958)	30.0%	32.3%	18.4%	19.2%
	Other Offense (n=2,847)	25.2%	34.1%	23.5%	17.3%

Multivariate analyses show drug charges increase the chance that people will hire a private attorney by 19.3% over people with other types of charges. Conversely, drug charges reduce the chance of appointed counsel by more than 26% and have no effect on the chance of unspecified representation (Figure 5.8).

**FIGURE 5.8**



**DEFENDANT CHARACTERISTICS**

Data was available to examine the impact of five different personal attributes on the type of counsel received. The characteristics tested include sex, race/ethnicity, citizenship status, mental health status, and substance abuse status at arrest. Of these, sex was the only variable found to have no statistically significant effect on attorney type.

**Race/Ethnicity**

- Being African American increases the likelihood an individual will have a public defender and decreases the chance of retained counsel.
- Being Hispanic has no effect on the chance of attorney type.

The strongest finding with regard to race/ethnicity is that African Americans have a much lower likelihood than other people of hiring a privately paid attorney.<sup>42</sup> Descriptively, roughly half as many African Americans retain private counsel compared to whites (Table 5.7). This finding is also sustained in more robust multivariate analyses. After controlling for defendant and case characteristics, African Americans are 28.1% less likely to hire an attorney than their white peers (Figure 5.11).

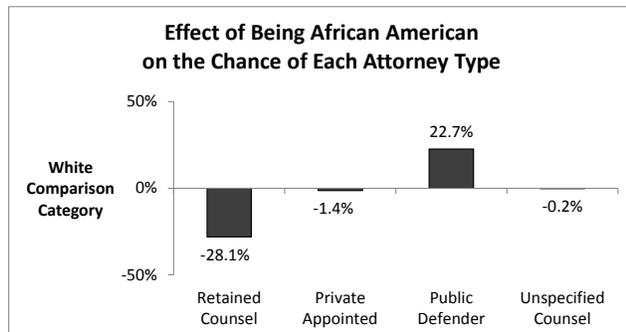
**TABLE 5.7**

**Defendants' Race/Ethnicity**

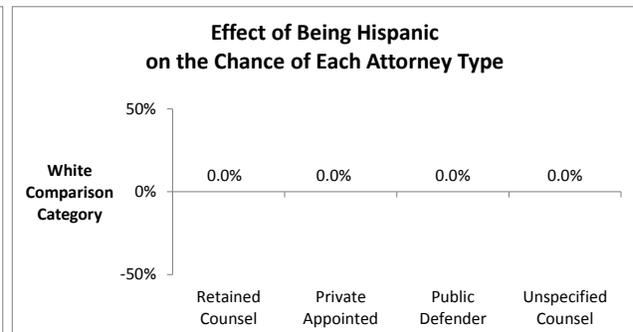
	<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>White</b> (n=12,810)	21.9%	16.1%	16.0%	46.0%
<b>African- American</b> (n=5,153)	12.4%	17.9%	21.2%	48.5%
<b>Hispanic</b> (n=3,022)	18.6%	17.3%	13.2%	51.0%

On the other hand, African Americans are the racial/ethnic group most likely to have public defender counsel. The public defender represents about one in five African American defendants, a larger percentage than any other race/ethnicity (Table 5.7). African Americans are 22.7% more likely to be assigned a public defender compared to otherwise identical whites (Figure 5.11). Because information about defendants' race/ethnicity is not available to the indigent defense coordinator at the time of attorney assignment, it cannot possibly be a factor in determining appointments. Other unknown and unmeasured attributes that correspond with African American racial identity most likely account for the increased chance of public defender appointments in this group.

**FIGURE 5.11**



**FIGURE 5.12**



Being Hispanic has no effect on type of counsel. Other things being equal, Hispanics are as likely as individuals in the white comparison group to have each type of attorney (Figure 5.12).

<sup>42</sup> Because only 3% of the total sample was of "other" race/ethnicities this category was omitted from the graphics.

## Citizenship Status

- Non-citizens are unlikely to be appointed a public defender because the office has a limited capacity to serve people who do not speak English.

Only a small proportion of criminal cases – about 5% of the study sample – involve individuals known to be citizens of a country other than the US. Descriptively non-citizens have an unspecified type of counsel more often than do citizens (Table 5.8). Non-citizens are also assigned to the public defender at much lower rates than their peers who are citizens.

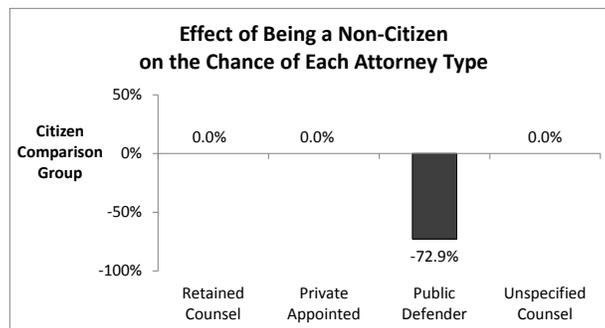
**TABLE 5.8**

**Defendants’ Citizenship Status**

	<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Citizen</b> (n=20,709)	19.1%	16.5%	17.3%	47.1%
<b>Non-Citizen</b> (n=1,006)	16.4%	18.4%	7.7%	57.6%

After all other defendant and case attributes are taken into consideration, citizenship is a significant predictor of the type of counsel individuals receive. Non-citizens are 72.9% less likely to have public defender counsel than are statistically identical citizens (Figure 5.13). Cases involving non-citizens are more frequently assigned to members of the private bar who are fluent in the defendant’s home language. Though a measure of language spoken is not available in the county database, knowledgeable stakeholders in the public defender’s office and the indigent defense coordinator affirm this as a likely explanation for the finding.

**FIGURE 5.13**



## Mental Health Status

- People with mental illness are about 30% more likely to be represented by assigned counsel and 20% less likely to hire an attorney than other defendants.

Thirteen percent of people in the study demonstrated evidence of mental illness at the time of arrest.<sup>43</sup> Mentally ill individuals have higher than average rates of contact with the criminal justice system,<sup>44</sup> and their cases often pose special challenges to the defense. People with mental illness are appointed attorneys at much higher rates than their peers without impairments. Still, 41.3% of people with mental health concerns face charges without having a clearly specified attorney type (Table 5.9).

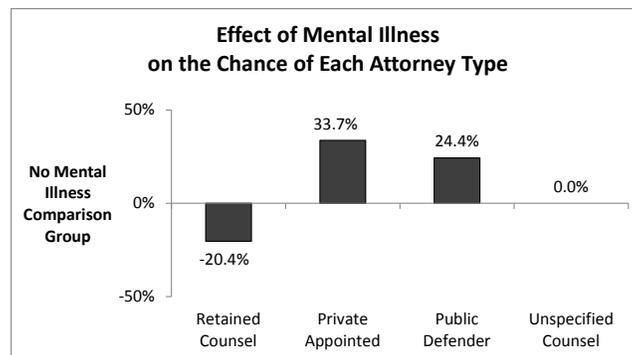
**TABLE 5.9**

**Defendants' Mental Health Status at Arrest**

	<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Evidence of Mental Illness</b> (n=2,679)	15.3%	21.9%	21.6%	41.3%
<b>No Evidence of Mental Illness</b> (n=17,696)	19.8%	15.7%	16.4%	48.1%

Multivariate analyses verify that having a mental illness substantially increases the chance a person will be assigned counsel rather than hiring an attorney (Figure 5.14). Among otherwise identical defendants, a mental impairment raises the chance of a private appointed attorney by 33.7% and the chance of a public defender attorney by 24.4% while reducing the chance of a retained attorney by 20.4%.

**FIGURE 5.14**



<sup>43</sup> Mental health status was measured based on data collected at the time people are booked into jail. Intake officers ask inmates about prior contact with social services agencies for reasons of mental health and about current mental health symptoms. Officers also document observed indications of mental illness and rate each inmate on their risk of mental illness or mental retardation. A flag in the database is selected if jail personnel formally notify the magistrate of suspicion of mental illness. If any of these indicators were positive for mental illness, the case record was assigned a mental health code in the analysis dataset.

<sup>44</sup> Anasseril E. Daniel, M.D., "Care of the Mentally Ill in Prisons: Challenges and Solutions," *Journal of the American Academy of Psychiatry Law* 35 (2007): 406-410; National Association of Mental Illness, *Spending Money in All the Wrong Places: Jails and Prisons* (Arlington, VA: Author), available on September 17, 2012 at [http://www.nami.org/Template.cfm?Section=Fact\\_Sheets&Template=/ContentManagement/ContentDisplay.cfm&ContentID=14593](http://www.nami.org/Template.cfm?Section=Fact_Sheets&Template=/ContentManagement/ContentDisplay.cfm&ContentID=14593).

It is somewhat concerning that as many as four in ten people with mental impairments do not have a specified attorney type on record (i.e., appointed or retained). Data limitations make it difficult to tell how many of these individuals are uncounseled. Nonetheless, the number is large enough to suggest the Wichita County courts may wish to review measures in place to assist mentally impaired defendants. Care is needed to ensure that uncounseled members of vulnerable populations are receiving special assistance to learn about and arrange for their legal defense.

### Substance Abuse Status

- People showing signs of drug or alcohol impairment at arrest are much more likely to be assigned public defender representation compared to others who were not using drugs at arrest.

People who abuse drugs or alcohol represent another special class of defendants. Substance addiction may be associated with more frequent justice system contact. Impairment at the time of arrest may limit the client’s ability to participate in their defense until they are stabilized. If drug-related charges are involved, the attorney may face additional challenges defending the case.

**TABLE 5.10**

**Defendants’ Substance Abuse Status at Arrest**

	<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Evidence of Substance Abuse</b> (n=1,299)	24.6%	12.9%	19.7%	42.8%
<b>No Evidence of Substance Abuse</b> (n=19,075)	18.8%	16.8%	16.9%	47.5%

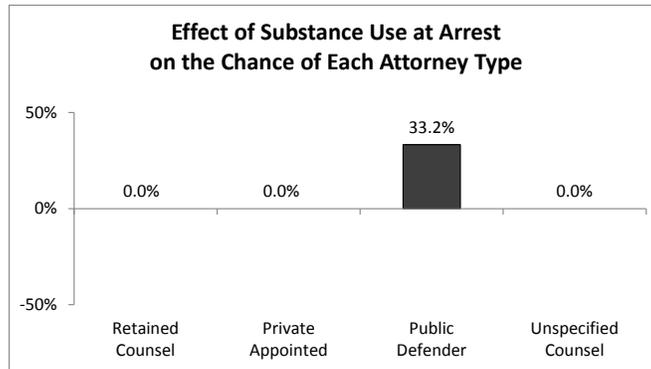
Only about 6% of the study sample was observed to have drug or alcohol disorders at the time of the arrest.<sup>45</sup> Descriptively drug or alcohol users retain attorneys or are appointed a public defender more often than people who are not using substances at arrest (Table 5.10).

After controlling for other potentially influential factors, multivariate analyses find that being high on drugs or alcohol at arrest increases the chance a defendant will be assigned a public defender (Figure 5.15). Drug or alcohol users are 23.2% more likely than their sober peers to be assigned to the office. If substance-addicted individuals have more frequent contact with the justice system, they may take advantage of the option to be re-assigned to the public defender over time. This could explain why active substance users are disproportionately more likely to have a public defender attorney.

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<sup>45</sup> Drug abuse status was measured based on data collected at the time people are booked into jail. Intake officers evaluate arrestees for seven symptoms of current use including observed drug or alcohol use, observed substance withdrawal, or speech that is rapid, hesitant, child-like, or hard to understand. If any of these indicators were positive for substance use, the case record was assigned a substance use code in the analysis dataset.

**FIGURE 5.15**



## CONCLUSION

This chapter has asked what factors influence a defendant’s type of counsel. Findings, summarized in Table 5.11, show there are a number of offense and defendant attributes that affect this outcome. In general, higher risk characteristics such as more prior arrests or a larger number of current charges make it likely a defendant will have a known type of attorney, with the greatest impact on the chance of a public defender in particular.

If the defendant faces serious felony or drug charges, however, there is a much greater chance that a retained attorney will be employed. Consistent with Hoffman and colleagues,<sup>46</sup> it appears that individuals with a strong incentive to fight charges can frequently acquire the needed resources from family members or others with no obligation to put up money for an attorney.

Defendants’ personal attributes were also found to effect attorney type. Being African American, having a mental illness, or being a substance user are all strong predictors that increase the probability of public defender counsel by 20% or more. At the same time, the chance of public defender counsel is substantially lower for those facing drug-related charges and for non-citizens.

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<sup>46</sup> Morris B. Hoffman and colleagues, *supra* note 37.

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## CHAPTER 6

### EFFECTS OF ATTORNEY TYPE ON CASE PROCESSING

Different types of attorneys use different defense strategies and tactics. For example, public defenders say they contact clients more quickly following arrest (Figures 4.5 and 4.6), use more pretrial investigation (Figure 4.11), and spend more time on each case compared to private attorneys (Figure 4.7). On the other hand, public defenders in Wichita County are somewhat less experienced (Figure 4.12) and have larger active caseloads than the private bar (Figures 4.2 and 4.3). Public defenders also differ from private attorneys in organizational structure, oversight, and administrative practices (see Chapters 2 and 3). Attorneys likely vary in other ways, as well, that are not measured in this study.

This chapter will consider whether these systematic differences in the provision of defense services impact outcomes for defendants. The effect of attorney type was assessed for six different case processing indicators divided into two broad groupings. These include:

#### Attorney Impacts on Pretrial Detention

- Chance of bond
- Days required for bond to be made
- Probability that an uncharged defendant will remain in jail past the prosecutor's filing deadline
- Total number of pretrial jail days

#### Timeliness of Case Processing

- Days to the charging determination for people in detention
- Days to case disposition for people in detention

In the discussion that follows, results are presented in two ways. Descriptive results (presented in tables) simply show differences in the number or proportion of people in various analysis categories with different types of attorneys. Multivariate analyses (presented in figures), offer more complex but insightful information quantifying how much each attorney type increases or decreases defendants' chance of each outcome being assessed.<sup>47</sup> Only statistically significant multivariate findings are displayed.<sup>48</sup> Additional information about research methods is available in Appendix A.

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<sup>47</sup> Multivariate statistical models quantify how much having a particular type of attorney increases or decreases the defendants' chance of each outcome (e.g., bond, jail days, dismissal, guilt) while holding constant many other defendant and case attributes that might offer competing explanations for findings (e.g., offense level, criminal history, mental health or substance use status, and demographic characteristics). As a result, it is possible to measure the pure effect of attorney type on each outcome with all other potentially influencing factors being equal. Multivariate results are not reported separately for felonies and misdemeanors, for example, because these and other case factors are controlled (i.e., compared equally) in the model.

<sup>48</sup> In the multivariate graphics presented in this chapter, "retained counsel" is the comparison category and the effect of other attorney types is reported as a percentage increase or decrease from this standard. All findings displayed are

## ATTORNEY IMPACTS ON PRETRIAL DETENTION

One of the most important functions of the defense is to obtain clients' release from detention. People in jail are at greater risk of negative consequences including loss of a job, additional legal difficulties due to unmet obligations (e.g., child support), and personal costs to family members. Because an individual out on bond is relieved of these pressures, they are better positioned to develop an effective defense and negotiate favorably with the prosecutor.

The benefits of pre-trial release are apparent in the data. In Wichita County, statistically identical defendants who make bond experience:

- 86% fewer pretrial jail days
- 333% better chance of getting deferred adjudication
- 30% better chance of having all charges dismissed
- 24% less chance of being found guilty, and
- 54% fewer jail days sentenced.

### Chance of Making Bond

- Indigent defendants are less likely to make bond than other people. In fact, ability to pay (measured by indigent status) is a more powerful influence on pretrial release than objective risk indicators such as a current felony charge or up to four prior felony arrests.
- There is no difference in the chance of bond for public defender clients and those with private assigned counsel.

The majority of people make bond (Table 6.1). Not surprisingly, bond is more readily available to lower-level misdemeanor defendants than to those charged with serious felony violations. For all levels of offenses, however, people with court-appointed counsel have the lowest rates of bonding.

**TABLE 6.1**

**Percent of Defendants Who Make Bond**

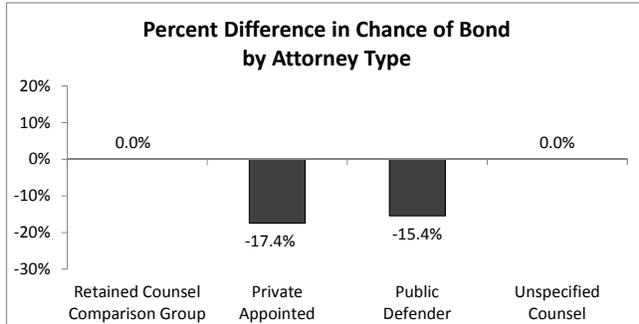
	<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Misdemeanor</b>	88.1%	73.0%	77.1%	84.9%
(n)	2,796	1,987	2,589	9,385
<b>Felony</b>	73.3%	51.2%	50.6%	64.2%
(n)	1,305	1,603	1,029	868

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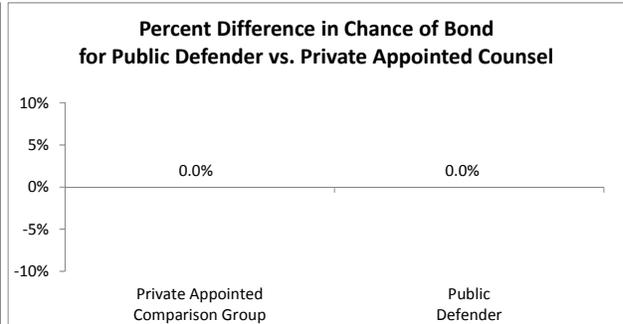
significantly different than the retained counsel comparison group. If a difference was not statistically significant (i.e., if it could have occurred by chance more than five times out of one hundred) it is assigned a value of zero.

Multivariate statistics (Figure 6.1) confirm that, other things being equal, being indigent reduces a defendant’s chance of bond by about 16%. However, there is no significant difference in the chance of bond for clients with either public defender or private appointed counsel (Figure 6.2).

**FIGURE 6.1**



**FIGURE 6.2**



It may be expected that the same individuals who are unable to afford an attorney also find it more difficult to pay bond. What is striking, however, is that ability to pay is a more powerful influence on pretrial release than a current felony charge or up to four prior felony arrests. Defendants’ access to wealth has a disproportionate influence on the bonding determination over these more relevant considerations. One strategy to address is inequity is through a pretrial services division where people can be assessed for meaningful indicators of risk such as pending charges, prior criminal record, family and community ties, employment status, and education status.<sup>49</sup> Although Wichita County does not currently have such a division, ultimately reserving pretrial detention for those most likely to pose a real threat not only promotes fairness but also helps contain costs to counties.

### Number of Days Until Bond Is Made

- Having court-appointed counsel nearly doubles the time required to bond out of jail, other things being equal – about four additional jail days for a “typical” defendant.<sup>50</sup> Contributing factors are:
- Indigent defendants, by definition, have fewer resources with which to pay bond.
- Court-appointed attorneys are often assigned after people have been jailed for several weeks or months.<sup>51</sup> Until such time as counsel is assigned, defendants are without an advocate to arrange for bond reduction.

<sup>49</sup> See Vera Institute of Justice, *Evidence-Based Practices in Pretrial Screening and Supervision* (New York, NY: Author, January, 2010); Barry Mahoney, Bruce D. Beaudin, John A. Carver III, Daniel B. Ryan, and Richard B. Hoffman, *Pretrial Services Programs: Responsibilities and Potential* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, March, 2001).

<sup>50</sup> A “typical” defendant is a hypothetical person modeled to possess the modal or mean value of each variable in the dataset. Because the mode and mean are the most commonly occurring values, the probabilities generated by a model set to these constants can be said to represent a “typical” defendant. This is a useful construct for conveying multivariate findings. See Appendix A for additional methodological detail.

- There is no difference in the time to bond for public defender clients and those with private assigned counsel.

Not only does being indigent reduce the chance of making bond (Figure 6.1), but those defendants who are released from jail take longer to do so. People who either hire an attorney or have an undetermined attorney type post bond in less than half the time required for court-appointed defendants on average (Table 6.2).

**TABLE 6.2**

**Days from Arrest until Bond is Made**

		<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Misdemeanor</b>	Average	5.6	12.4	12.1	3.3
	Median	1	1	1	1
	(n)	2,463	1,450	1,996	7,965
<b>Felony</b>	Average	16.9	31.6	29.2	13.1
	Median	1	5	4	1
	(n)	956	820	521	557

Multivariate results (Figure 6.3) show that among like individuals, those who are indigent take nearly two times longer for pretrial release. This equates to about four extra days in detention for a “typical” defendant.<sup>52</sup> This finding, however, is likely due to factors unrelated to the attorney. As noted above, more indigent people are simply without resources to post bail until the amount is substantially reduced, adding days to their wait for release. In addition, some individuals spend weeks in detention before they request counsel, increasing the time to bond even if their attorney acted promptly after being appointed.<sup>53</sup> There is no difference in the time required for public defender clients to post bond compared to their peers with private assigned counsel.

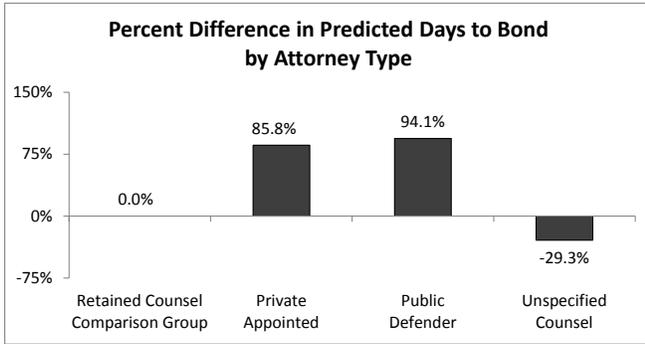
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<sup>51</sup> See Chapter 3, Section 3. In Wichita County, the indigent defense coordinator does not have a reliable procedure for identifying detainees who have not been assigned counsel until the indictment or first appearance in court.

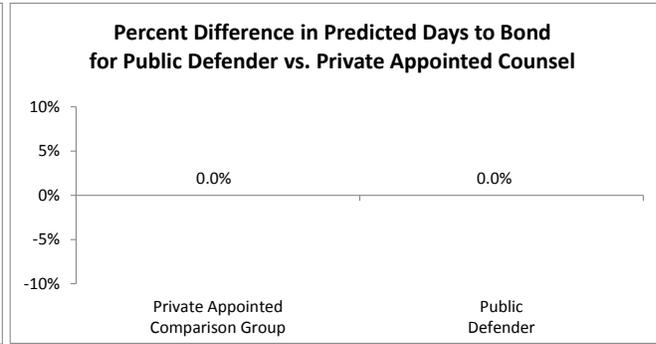
<sup>52</sup> Supra note 50.

<sup>53</sup> Supra note 51.

**FIGURE 6.3**



**FIGURE 6.4**



**Chance of Detention Past the Prosecutor’s Filing Deadline**

- Indigent defendants are at greater risk of being detained without charges past the prosecutor’s filing deadline, due in part to their lower bonding rates.
- Public defender clients and those with private assigned counsel are equally likely to be detained past their eligible date of release.

For people who are unable to post a cash bond soon after arrest, a delayed charging determination offers another route to pretrial release. In Texas, people must be released on a personal recognizance bond if charges have not been filed after 15 days for Class B misdemeanors, 30 days for Class A misdemeanors, and 90 days for felony arrests.<sup>54</sup> The defense attorney can notify the court that the county has no statutory right to detain the individual. However, descriptive data presented in Table 6.3 shows that unnecessary detention does in fact occur.

**TABLE 6.3**

**Percent of Defendants Detained Uncharged Past the Prosecutor’s Filing Deadline**

	Retained Counsel	Private Appointed	Public Defender	Unspecified Counsel
<b>Misdemeanor</b>	3.2%	10.9%	9.9%	2.3%
(n)	2,705	1,933	2,539	8,832
<b>Felony</b>	7.0%	14.5%	13.9%	6.4%
(n)	1,191	1,418	908	720

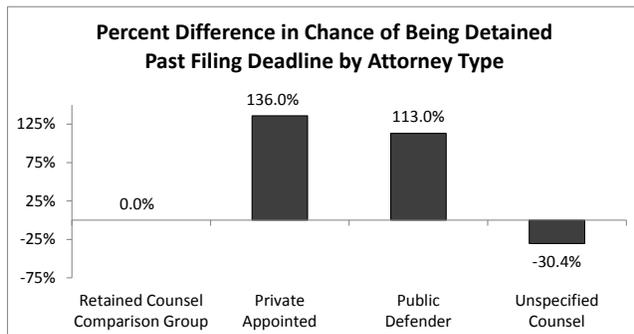
<sup>54</sup> See Tex. Code Crim. Proc. Art. 17.151, Release Because of Delay. This provision does not apply to defendants who are serving a sentence for another offense, detained pending trial of another accusation for which the applicable period has not yet elapsed, incompetent to stand trial, or detained for a violation of the conditions of a previous release related to the safety of a victim or the community.

People with retained or unspecified attorneys have the lowest rates of unnecessary detention, primarily because they are also the most likely to make bond. To the extent that an attorney’s clients are out of jail quickly (Table 6.2; Figure 6.3), risk of detention past the filing deadline is substantially reduced. With larger caseloads of un-bonded clients, indigent defense attorneys face a greater challenge and responsibility for monitoring release dates.

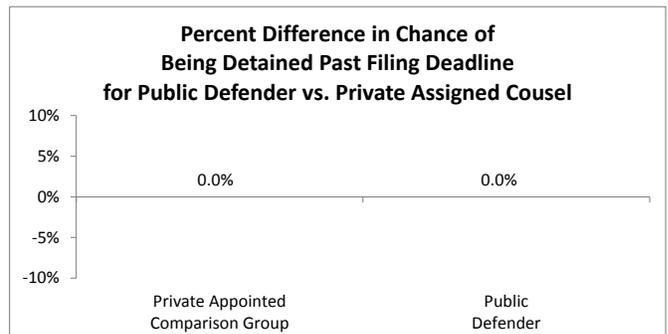
Figure 6.5 shows the effect of attorney type on timely release of eligible clients. Among otherwise identical individuals, being indigent more than doubles the risk of remaining in detention past the filing deadline. Though there is no difference in the chance public defender clients and those with assigned private counsel will miss the release date, between 10% and 14% defendants in each of these groups spend unnecessary time in jail (Table 6.3). This finding suggests a need for improved monitoring systems among all attorney types, but for public defender and private assigned counsel in particular.

In addition, the county may find it cost-effective to develop better centralized monitoring systems to identify people who are eligible for release due to unfiled charges. Such a system could also flag individuals being detained without an attorney so they could be regularly reminded of their right to apply for court-appointed counsel. These measures would benefit both the county and defendants by reducing the number of pretrial jail days served.

**FIGURE 6.5**



**FIGURE 6.6**



**Pretrial Jail Days**

- Indigent defendants spend the most pretrial days in jail. This is not surprising since they are also less likely than other people to make bond.
- There is no difference in the number of pretrial jail days for public defender clients and those with private assigned counsel.

The number of pretrial days defendants spend in jail are influenced by both bond status and attorney type (Table 6.5). While bonded defendants average less than two weeks in jail, those who do not make bond are detained about four months on average for misdemeanors and seven months for felonies. Among misdemeanor defendants, clients of court-appointed attorneys spend the most pretrial days in jail, while among felony defendants, people with retained attorneys hold this distinction.

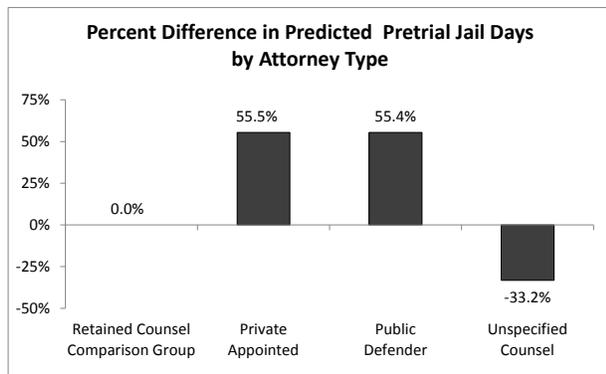
**TABLE 6.5**

**Pretrial Jail Days**

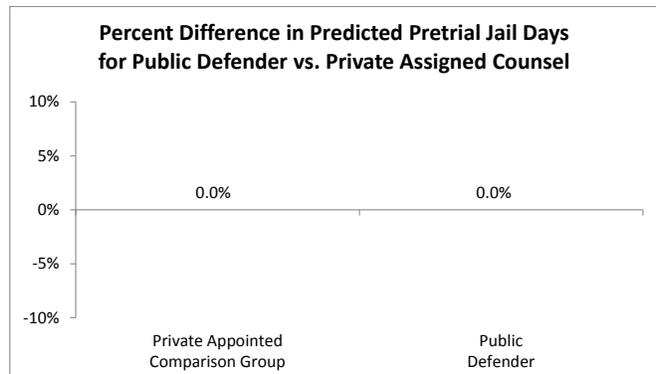
			<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Misdemeanor</b>	Average	Bonded	5.6	12.4	11.7	3.3
		Detained	174.3	110.9	114.8	108.8
	Median	Bonded	1	1	2	1
		Detained	113.5	76	69	53
	(n)	Bonded	2,454	1,448	1,987	7,921
		Detained	312	531	586	1,289
<b>Felony</b>	Average	Bonded	16.9	31.3	27.9	13.1
		Detained	227.3	211.1	206.1	226.4
	Median	Bonded	1	5	4	1
		Detained	220	162	159	177
	(n)	Bonded	956	820	518	557
		Detained	348	778	503	308

Multivariate findings presented in Figure 6.7 show people with assigned counsel can expect to spend at least 55% more pretrial days in jail as statistically identical people with other types of counsel. This translates to about three additional jail days for a “typical” defendant.<sup>55</sup> There is no difference in expected pretrial jail days for public defenders and appointed private counsel (Figure 6.8).

**FIGURE 6.7**



**FIGURE 6.8**



<sup>55</sup> Supra note 50.

## TIMELINESS OF CASE PROCESSING FOR DETAINED DEFENDANTS

County governments including jails and courts have cost-related incentives to move cases swiftly toward disposition. For defendants, however, delay may sometimes be beneficial. People who are out on bond can use valuable time in the community to plan a more rigorous defense. However, for people who are still in jail, case disposition may offer their only avenue for release.<sup>56</sup> Because the need to get out of pretrial detention may compel these individuals to take a guilty plea, attorneys must help their clients carefully balance speed against a rigorous defense. The paragraphs that follow consider the effect of attorney type on timeliness of case processing.

### Days to a Charging Determination for People in Detention

- Detained individuals with public defender counsel have prosecutors' charges filed about 25% more quickly than statistically identical individuals with a retained attorney.
- There is no statistically meaningful difference in the time to prosecutors' filing determination for public defenders and private assigned counsel.

A charging determination is required before a case can advance toward disposition. Misdemeanor charges for detained Wichita County defendants are filed about two months after arrest, and felony charges are ready in three to four months on average (Table 6.4). Delayed filing is problematic for detained defendants in particular. Defense counsel have only limited ability to prepare until the charges are known. In addition, expedited filing determinations have been shown to decrease pretrial jail days and reduce time to case disposition. These outcomes not only benefit defendants but generate measurable cost savings to county criminal justice systems.<sup>57</sup>

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<sup>56</sup> See American Bar Association, *Standards for Criminal Justice: Pretrial Release, 3<sup>rd</sup> Edition* (Chicago, IL: ABA Criminal Justice Standing Committee, 2007); Laura Sullivan, *Inmates Who Can't Make Bail Face Stark Options* (Washington, DC: National Public Radio, November 5, 2007).

<sup>57</sup> Dottie Carmichael, Melissa Gibson, and Michael Voloudakis, *Evaluating the Impact of Direct Electronic Filing in Criminal Cases: Closing the Paper Trap* (College Station, TX: Public Policy Research Institute, 2006), available on September 17, 2012 at <http://www.courts.state.tx.us/tidc/pdf/FinalReport7-12-06wackn.pdf>.

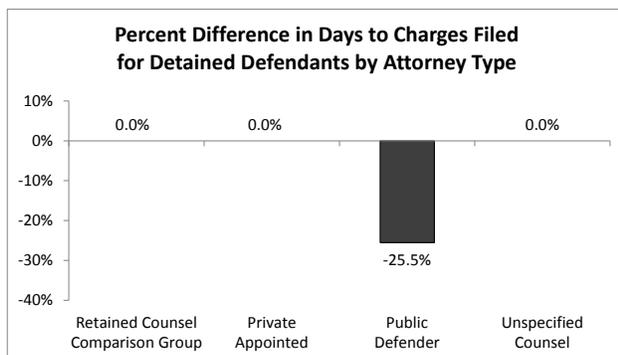
**TABLE 6.4**

**Days from Arrest until Charges Filed**

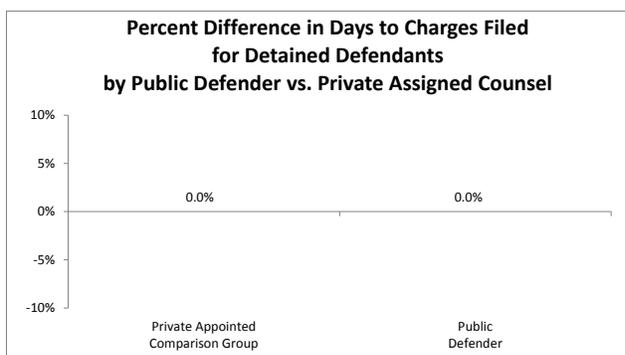
			Retained Counsel	Private Appointed	Public Defender	Unspecified Counsel
<b>Misdemeanor</b>	Average	Bonded	82.8	62.1	64.2	61.8
		Detained	71.3	55.7	55.6	78.7
	Median	Bonded	39	32	32	30
		Detained	48	36	32	40
	(n)	Bonded	2,338	1,381	1,899	7,627
		Detained	267	475	482	1,220
<b>Felony</b>	Average	Bonded	122.1	122.3	116.0	103.6
		Detained	111.1	87.6	84.4	97.4
	Median	Bonded	83.5	87	80	67
		Detained	71	62	62	69
	(n)	Bonded	946	812	513	547
		Detained	341	759	490	304

Attorneys’ effect on filing time for people in detention is depicted in Figure 6.9. Jailed individuals with a public defender can expect to have the prosecutors’ charges in 25% less time than otherwise identical people in the retained counsel comparison group. This equates to having charges filed 11 days sooner for a “typical” detained defendant.<sup>58</sup>

**FIGURE 6.9**



**FIGURE 6.10**



It is possible that public defenders’ higher rates of dismissal (Figure 7.3) contribute to this finding. That is, since many cases with a questionable basis for charges are cleared early, prosecutors can reach a certain determination more quickly in the cases that remain. With less thorough early vetting of cases represented by other types of attorneys, prosecutors require a longer time to make the filing determination.

<sup>58</sup> Supra note 50.

## Days to Case Disposition

- Detained individuals with court-appointed counsel dispose cases at least 35% more quickly than statistically identical individuals with a retained attorney.
- There is no statistically meaningful difference in time to case disposition between public defenders and private assigned counsel.

Table 6.6 shows the relative speed of case disposition for individuals with different types of attorneys. Detained defendants are generally disposed about two to three months more quickly than those out on bond. For clients in detention, retained counselors take about two to three months longer than court-appointed attorneys to dispose both misdemeanor cases and felony cases. Defendants with unspecified counsel stand apart. They dispose all cases more quickly than any other attorney type, and bonded and detained cases are disposed with about similar haste.

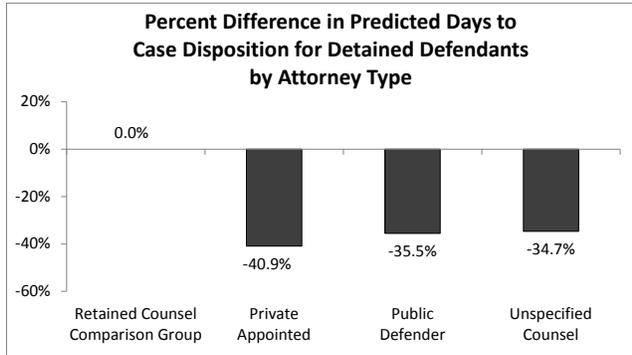
**TABLE 6.6**

### Days from Arrest until Case Disposition

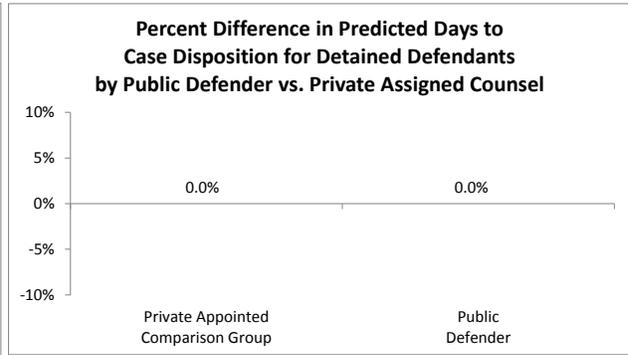
			Retained Counsel	Private Appointed	Public Defender	Unspecified Counsel
<b>Misdemeanor</b>	Average	Bonded	395.5	306.1	321.7	201.4
		Detained	332.9	158.2	234.3	188.6
	Median	Bonded	291	215	206	87
		Detained	200.5	108	113.5	84
	(n)	Bonded	2,455	1,450	1,992	7,934
		Detained	326	537	592	1,330
<b>Felony</b>	Average	Bonded	373.8	333.2	325.7	276.9
		Detained	326.2	232.5	241.5	249.9
	Median	Bonded	314	275.5	274	220
		Detained	250	170	176.5	193
	(n)	Bonded	954	820	521	554
		Detained	349	783	508	311

Because speed of case disposition is most important for individuals who are detained in jail without access to bond, multivariate analyses focus on the effect of attorney type for this group in particular. Results show that having a retained attorney significantly increases the number of days to disposition, even after controlling for number and severity of charges. Consistent with the descriptive findings above, people in jail who are represented by hired counsel will wait 35% to 40% longer to have their case disposed than otherwise identical people with other types of attorneys.

**FIGURE 6.11**



**FIGURE 6.12**



People with the financial wherewithal to hire an attorney may be better able to sustain an extended period of time in jail. Furthermore, if these same individuals face charges great enough to preclude bond, they may have both the means and the incentive to delay disposition in order to mount the strongest defense possible. People with court-appointed or other representation, by contrast, may press their attorneys to act more promptly as they face greater urgency to gain release on economic grounds.

## CONCLUSION

The analyses in this chapter explore the extent to which differences among different types of attorneys impact case processing for the defendants they represent. One of the earliest and most important functions of the defense is to obtain pretrial release for clients who do not pose a threat of harm or flight. Differences in bond matter. People who are out of detention during the pretrial period can plan their defense more effectively resulting in better outcomes by a number of measures including charge dismissal, findings of guilt, and jail days sentenced.

Nonetheless, indigent defendants who are least able to afford an attorney, are also the least likely to be able to post bond. The data also show that ability to pay is a greater influence on pretrial release than objective indicators of defendants' criminal risk. People with a current felony charge or up to four prior felony arrests stand a better chance of getting out of jail than a person who has neither of these attributes but is indigent.

Since they have less access to bond, indigent defendants are disadvantaged in other ways. They are more likely than otherwise identical individuals to remain in jail past the prosecutors' filing deadline. At least 10% of indigent defendants are detained past the date they become eligible for release, highlighting the need for court-appointed attorneys in particular to monitor cases more closely. As a result of their limited access to bond, people with court-appointed attorneys also spend more total days in pretrial detention than statistically identical individuals with other forms of counsel.

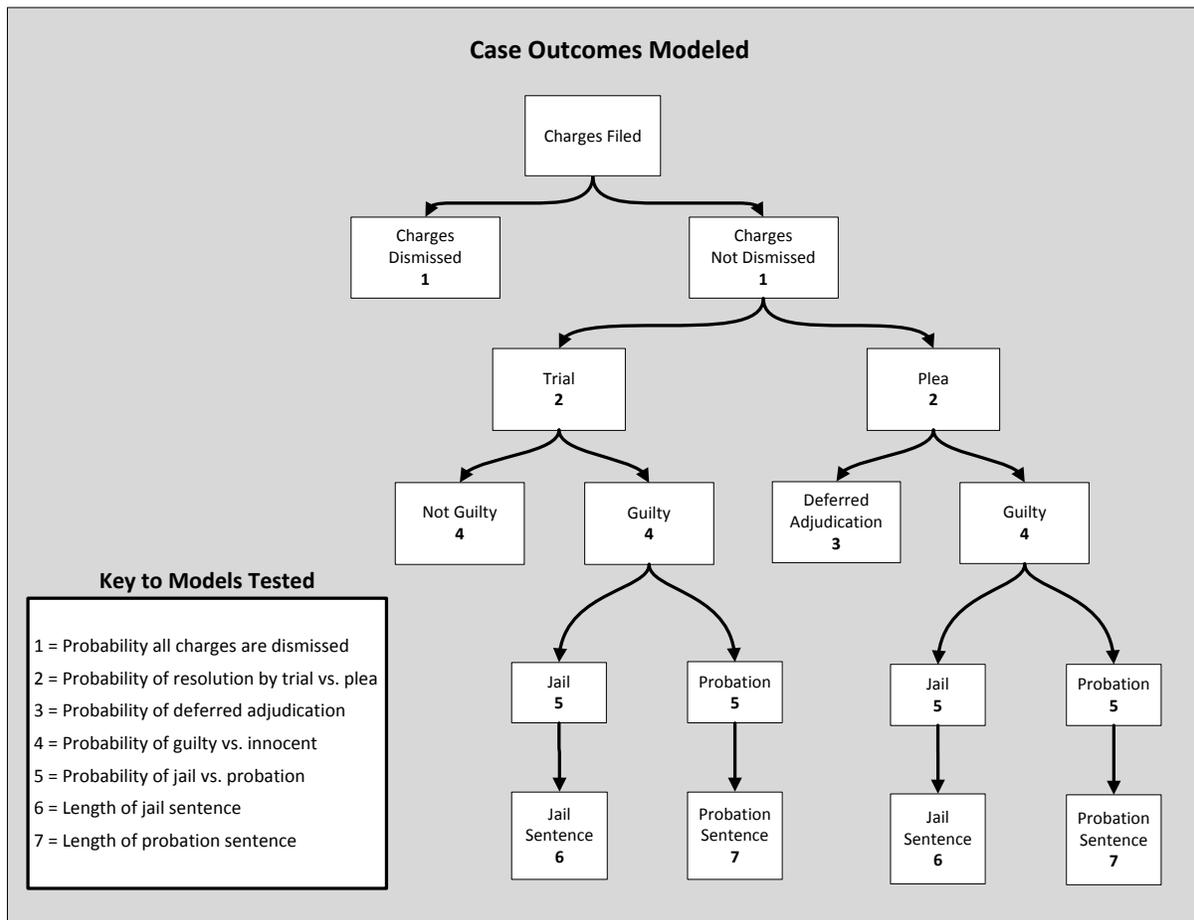
It should be noted that there are no statistically meaningful differences in case processing outcomes between private assigned counsel and public defenders. They serve clients equally well in terms of both access to bond and timeliness of case processing.

# CHAPTER 7

## EFFECTS OF ATTORNEY TYPE ON CASE OUTCOMES

Previous chapters have shown the type of attorney available to a person accused of a crime can influence pre-trial events. This chapter explores the influence of attorney on final case outcomes. Seven models illustrated in Figure 7.1 were used to isolate the effect of the attorney on each stage of disposition-related processing.<sup>59</sup>

**FIGURE 7.1**



<sup>59</sup> Except where otherwise noted, each stage of disposition is modeled without consideration of cumulative probabilities from preceding stages. For instance, the probability of receiving a jail sentence (Model 5) is based only on cases where defendants were found guilty. The probability of a jail sentence would be different if it were computed based on all defendants with charges filed. The only exception to this approach is with the key outcome of guilt. For this variable, the effect of counsel was reported both for defendants with adjudicated charges, and for all charged defendants, both adjudicated and dismissed.

They specifically assessed the effect of counsel on:

Model 1: Probability that all charges will be dismissed

Model 2: If charges are not dismissed, probability of resolution by plea or trial

Model 3: If charges are resolved by plea, probability of deferred adjudication

Model 4: If charges are resolved by plea or trial, probability of being found guilty vs. innocent

Model 5: If defendant is found guilty, probability of jail or probation

Model 6: If defendant receives a jail sentence, projected sentence length

Model 7: If defendant receives a probation sentence, projected sentence length

In the findings that follow, results are presented in two ways. Descriptive findings (presented in tables) depict the actual numbers or proportions of people with the characteristics being considered. Multivariate findings (presented in figures) show how much having a particular type of attorney increases or decreases the chance of these same outcomes. The pure effect of attorney type on disposition outcomes is measured while controlling statistically for all other potentially influential variables in the model.<sup>60</sup> All findings displayed are statistically significant.<sup>61</sup> See Appendix A for additional information about research methods.

## **MEANS OF CASE RESOLUTION: DISMISSAL, PLEA, OR TRIAL**

The following paragraphs examine the effect of attorney type on milestones that precede the determination of guilt. These include whether the charges against the defendant are filed or dismissed, and whether filed charges were resolved by plea or trial. Defendants offered a plea to deferred adjudication can have charges dismissed upon successful completion of conditions specified by the court. Each of these outcomes is examined.

### **Chance of Case Dismissal (*Figure 7.1, Model #1*)**

- Public defender clients are 23% more likely than otherwise identical private assigned counsel to have all charges against them dismissed.
- Higher dismissal rates mean public defender clients have a lower overall chance of being found guilty than indigent defendants with appointed private counsel.

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<sup>60</sup> Supra note 47.

<sup>61</sup> Supra note 48.

- Dismissal of weak cases reduces burden on other components of the county criminal justice system including court dockets, the public defense system, prosecutors' caseloads, courts, jails, and probation departments.

The best possible outcome for defendants in a criminal case is to have all charges dismissed. In a dismissal, the court determines there is no cause of action against the defendant under the law. The defense can play a key part in the dismissal decision, often by presenting the district attorney with strong evidence that the case cannot be successfully prosecuted.

Among filed cases, private retained attorneys have the highest misdemeanor dismissal rate, while people with unspecified counsel have the highest felony dismissal rate (Table 7.1). The large proportion of dismissals among people with no declared attorney suggests this group may include cases where the prosecutor determined to drop the charges before counsel was obtained. Among court-appointed attorneys, public defenders dismiss about 7% more misdemeanors and felonies than their peers in the private bar.

**TABLE 7.1**

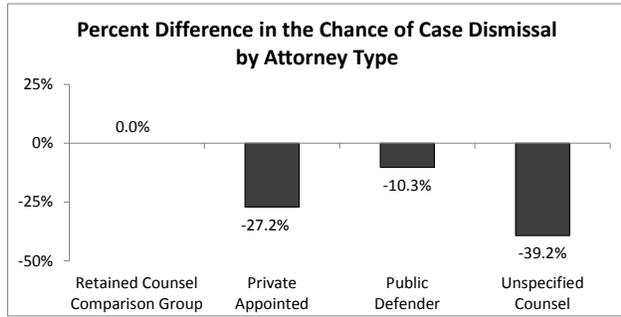
**Percent of Cases Filed with All Charges Dismissed**

	<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Misdemeanor</b>	50.1%	34.6%	41.5%	29.1%
(n)	2,796	1,987	2,589	9,385
<b>Felony</b>	19.0%	15.4%	21.9%	39.9%
(n)	1,305	1,603	1,029	867

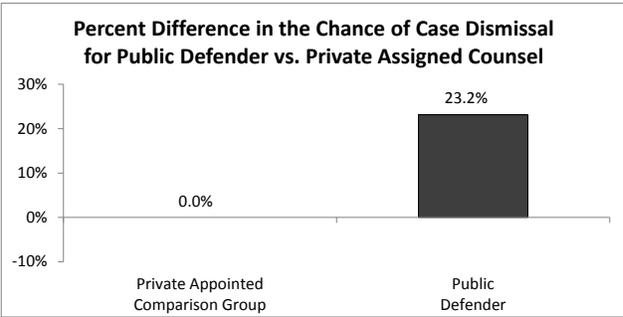
Multivariate findings show that, all other things being equal (i.e., comparing felonies to felonies and misdemeanors to misdemeanors), defendants with a retained attorney have a better chance of having all charges dismissed than peers with other types of counsel (Figure 7.2). Among indigent defendants alone, however, people represented by a public defender are 23.2% more likely to have their charges dismissed than are those with private assigned counsel (Figure 7.3).

The public defender's powerful impact on resolving charges by dismissal is extremely important. As shown below, the higher probability of dismissal means fewer public defender clients are found guilty relative to other indigent defendants (see Figures 7.10 and 7.11). In addition, more dismissals reduce the burden on county systems for subsequent case processing, alleviating pressure on court dockets, the public defense system, prosecutors' caseloads, jails, and probation departments.

**FIGURE 7.2**



**FIGURE 7.3**



While these analyses describe public defender outcomes in cases that have been filed, other evidence outside the primary dataset shows that the public defender also excels at achieving dismissals before charges are set. Wichita County’s Indigent Defense Expenditure Report for the 2011 fiscal year<sup>62</sup> shows that of all adult trial-level cases assigned to the public defender, more than one in five (22%) result in no charges ever being filed (Table 7.2). By contrast, only 13% of adult trial-level cases assigned to private appointed counsel achieve this same “best case” outcome.

**TABLE 7.2**

**FY 2011 Adult Trial-Level Indigent Defense Cases with “No Charges Filed”**

	Number of Cases Assigned Counsel	Number of Cases with “No Charges Filed”	Percent of Cases with “No Charges Filed”
<b>Public Defender</b>	1,545	333	22%
<b>Private Assigned Counsel</b>	1,232	157	13%

**Resolution by Plea or Trial (Figure 7.1, Model #2)**

- Statistically identical people with retained or court-appointed counsel are all equally likely to have their cases resolved by trial.
- People with an unspecified attorney type are by far the most likely to resolve the charges by plea, other things being equal.

The overwhelming majority of cases in the criminal justice system are resolved through the filing of pleas. In Wichita County, more than 99% of defendants with charges filed end up with a negotiated settlement.

<sup>62</sup> Texas Indigent Defense Commission, *supra* note 7. The Indigent Defense Expenditure Report, submitted annually to the Texas Indigent Defense Commission, describes the number of cases assigned by attorney type including the number of cases in which an attorney was assigned but no charges were filed. The FY 2011 report is available as of September 17, 2012 at: <http://tidc.tamu.edu/public.net/Reports/CountyFinancialReport.aspx?cid=243&fy=2011>.

While the use of pleas increases the efficiency of the justice system, a good attorney will advise clients to refuse a plea and take the case to trial whenever that is the most appropriate course of action.

**TABLE 7.3**

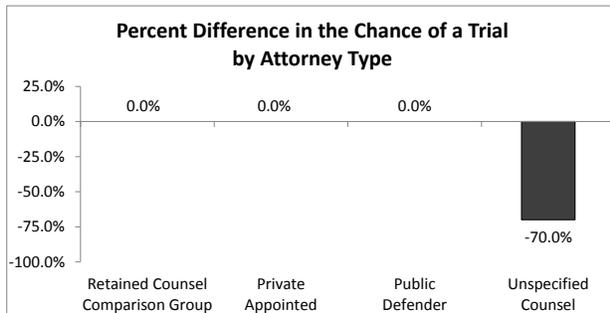
**Percent of Un-Dismissed Cases Resolved by Trial**

	<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Misdemeanor</b>	0.72%	0.15%	0.13%	0.09%
(n)	1,383	1,295	1,511	6,642
<b>Felony</b>	0.85%	1.25%	1.37%	0.77%
(n)	1054	1,357	801	520

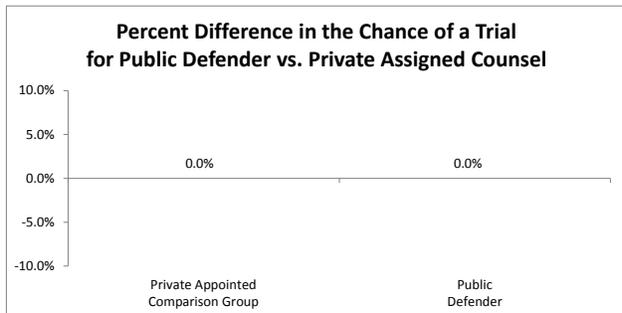
Among cases that are not dismissed, the percentage resolved by trial is illustrated in Table 7.3. Overall, people facing felonies are more willing to contest the charges by trial. While retained attorneys try the largest proportion of misdemeanors, court appointed attorneys try the most felony cases.

After controlling for case and defendant attributes, however, multivariate results show the likelihood of a trial is statistically equal for indigent defendants and those with privately retained counsel (Figure 7.4). People with no documented attorney type are by far the most likely to take a plea than the retained counsel comparison group. Comparing private appointed and public defender attorneys, there are no significant differences in the chance of a plea or trial (Figure 7.5).

**FIGURE 7.4**



**FIGURE 7.5**



**Probability of Deferred Adjudication (Figure 7.1, Model #3)**

- All indigent defendants have a statistically equal chance of deferred adjudication regardless of whether they have been assigned a public defender or private appointed attorney.

If a case is not dismissed, then deferred adjudication is the next most desirable outcome. With a deferral, eligible defendants are asked to submit a guilty plea, but the prosecutor suspends adjudication pending the completion of agreed-upon terms. If the conditions are met the case is dismissed, while failure activates the antecedent plea, the case is adjudicated, and a sentence is imposed.

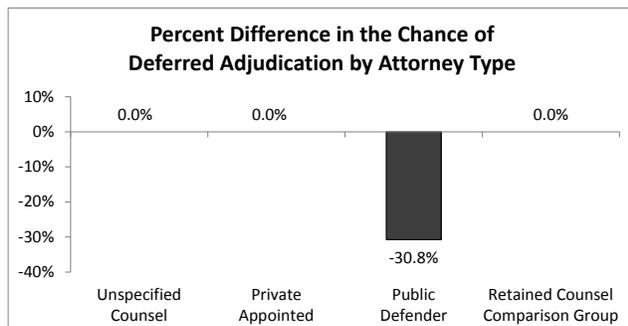
**TABLE 7.4**

**Percent of Cases Resolved by Deferred Adjudication**

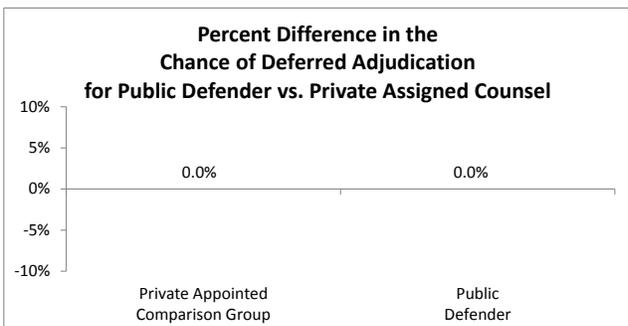
	<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Misdemeanor</b>	2.9%	4.6%	1.9%	0.4%
(n)	1,373	1,291	1,507	6,632
<b>Felony</b>	29.2%	19.7%	15.8%	13.9%
(n)	1,043	1,336	786	512

Deferred adjudication is rarely used in misdemeanor cases. Fewer than 5% of people facing misdemeanor charges have this outcome. Deferrals are far more prevalent in felony cases and are most often available to people represented by a privately retained attorney (Table 7.4).

**FIGURE 7.6**



**FIGURE 7.7**



Multivariate analyses show that public defender clients are the only group with a different chance of deferred adjudication than the retained counsel comparison group (Figure 7.6). After controlling for defendant and case characteristics, public defender clients are 30.8% less likely to receive a deferral. The public defender’s higher dismissal rate may partially explain this finding as weaker cases more likely to receive a deferral are excluded from consideration. When comparing indigent defendants directly, however, there is no statistically meaningful difference in chance of deferred adjudication between people represented by a public defender or private assigned counsel (Figure 7.7).

**FINAL CASE DISPOSITION**

The overwhelming majority of individuals facing prosecution are found guilty. Those who are guilty then face a sentence of either jail or probation. The next sections consider the effect of attorney type on determinations of guilt and sentencing.

**Chance of Guilt (Figure 7.1, Model #4)**

- Because public defender clients are significantly more likely to have their charges dismissed prior to adjudication, they have a 10% lower overall chance of being found guilty than people with private appointed counsel.
- Looking only at adjudicated cases, however, people represented by public defenders and private appointed counsel are equally likely to face conviction.

The effect of attorney type on findings of guilt was measured in two ways. The first analysis focuses only on guilt determined by plea or trial (see Figure 7.1, Model 4). This measure is useful because it tests whether some attorneys are more effective than others in reducing convictions in court. However, to the extent that an attorney has been able to achieve more dismissals outside of court, they will also be successful in reducing the number of adjudicated cases and subsequent convictions. Thus, a second analysis assesses the effect of attorney on guilt for all filed cases including those both adjudicated and dismissed (i.e., cases depicted in Figure 7.1, “Charges Filed”). The following paragraphs present results from both analytic approaches.

**TABLE 7.5**

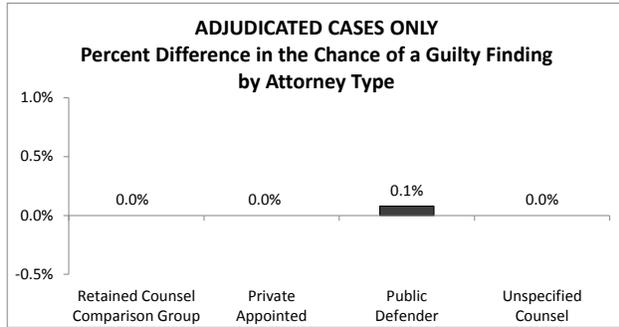
**Percent of Adjudicated Cases Resulting in a Guilty Finding**

	<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Misdemeanor</b>	97.0%	95.6%	98.2%	99.6%
(n)	1,395	1,299	1,514	6,659
<b>Felony</b>	70.8%	80.3%	84.5%	85.6%
(n)	1,057	1,357	804	521

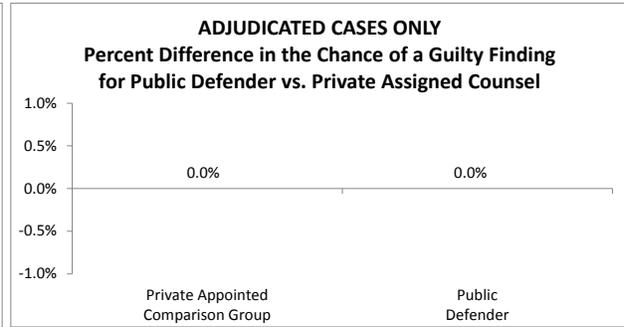
Chance of Guilt in Adjudicated Cases (Figure 7.1, Model #4). The majority of prosecuted cases result in a guilty finding (Table 7.5), typically by plea. Felony defendants have fewer guilty findings in part because felony charges are more often resolved by deferred adjudication (Table 7.4) or by trial where a finding of not guilty is possible (Table 7.3).

Multivariate analyses show that among statistically identical defendants whose charges were not dismissed, public defender clients are the only group more likely to be found guilty than the retained counsel comparison group (Figure 7.8). However, the effect is extremely small (0.1% greater probability of guilt). In practical terms, then, type of counsel has very little influence on guilt or innocence in adjudicated cases.

**FIGURE 7.8**



**FIGURE 7.9**



Chance of Guilt in All Cases (Figure 7.1, “Charges Filed”). A second way to assess the effect of attorney type on findings of guilt is to expand the scope of analysis to include all filed cases, both adjudicated and dismissed. When this is done, the proportion of individuals found guilty declines from 93.7% to 63.5% overall (Table 7.6). Nearly one in three misdemeanors (33.2%) and one in five felonies (22.2%) is dismissed prior to adjudication. Thus, avoiding prosecution is a key strategy by which attorneys may reduce convictions.

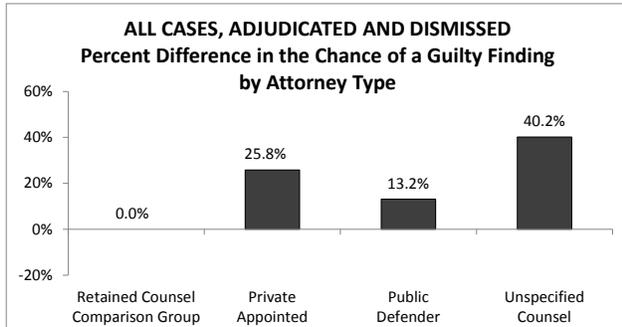
**TABLE 7.6**

**Percent of All Cases Filed (Adjudicated and Dismissed) Resulting in a Guilty Finding**

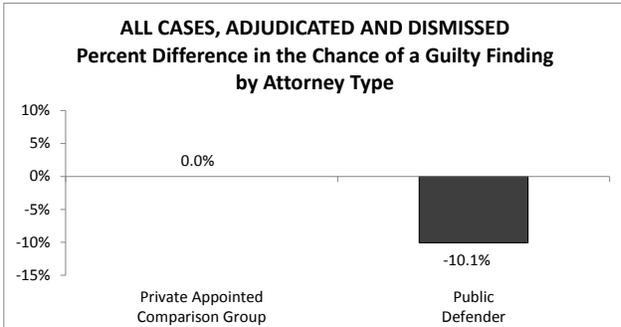
	<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Misdemeanor</b>	48.4%	62.5%	57.4%	70.7%
(n)	2,796	1,987	2,589	9,385
<b>Felony</b>	57.3%	67.9%	66.0%	51.4%
(n)	1,305	1,603	1,029	868

Multivariate models including all cases filed demonstrate the total effect of counsel (Figure 7.10). People with privately retained attorneys have the lowest overall chance of a conviction, while those with unspecified counsel are at greatest risk of a guilty finding. Among indigent defendants, people represented by a public defender are 10.1% less likely overall to be found guilty than their peers with private appointed counsel (Figure 7.11).

**FIGURE 7.10**



**FIGURE 7.11**



This finding is not explained by the public defender’s prowess in court. The public defender offers no advantage over other types of attorneys in reducing findings of guilt for adjudicated defendants. Rather, the impact results from the public defender’s higher rates of dismissal prior to adjudication. The public defender’s access to investigators seems to be key to achieving this outcome. Two licensed staff investigators are able to promptly assemble the facts of the case for the majority of cases. Their work helps the prosecutor recognize and eliminate weak charges before they advance further in the county criminal justice system. Aside from reducing findings of guilt, investigation services also pay off in terms of reduced staffing and financial burden on the county criminal justice system and a lessening of personal costs to defendants against whom there is no strong evidence.<sup>63</sup>

**Sentencing Outcomes (Figure 7.1, Model #5)**

Once a person is found guilty, they face one of two possible sentences: jail time or probation. The defendant’s attorney type has an important effect on each of these outcomes.

**TABLE 7.7**

**Percent of Convictions with a Jail Sentence (Instead of Probation)**

	Retained Counsel	Private Appointed	Public Defender	Unspecified Counsel
<b>Misdemeanor</b>	94.6%	97.8%	99.2%	99.7%
(n)	1,348	1,240	1,484	6,622
<b>Felony</b>	77.8%	79.8%	87.4%	65.5%
(n)	735	1,080	673	435

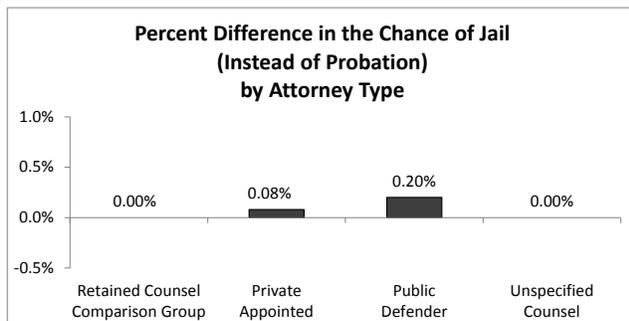
<sup>63</sup> These benefits of investigation are explored more fully in cost analyses presented in Chapter 8.

- Among people who have been convicted, public defender clients are slightly more likely to be sentenced to jail than people with other types of counsel. However, the effect is very small (less than 1%).

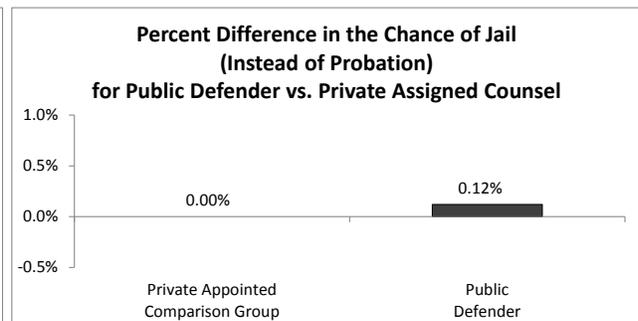
In Wichita County, virtually all convicted misdemeanor defendants (98.8%) complete a jail sentence (Table 7.7). Probation is used sparingly and is reserved almost entirely for felony defendants. About one in five people charged with a felony (21.1%) serves a probation sentence.

Multivariate analyses were used to determine the effect of attorney type on the chance of serving jail time instead of probation. Indigent defendants found guilty are more likely to receive a jail sentence than statistically identical people in the retained counsel comparison group (Figure 7.12). Though the difference is statistically significant, the actual effect is negligible. The chance of jail is a maximum 0.2% higher for indigent defendants.

**FIGURE 7.12**



**FIGURE 7.13**



Comparing indigent defendants directly (Figure 7.13), public defender clients are just 0.12% more likely to receive a jail sentence after being found guilty than are statistically identical individuals represented by a private assigned attorney. In practical terms, then, there is very little difference in chance of jail for defendants with court-appointed counsel. It is also important to recall that because of higher dismissal rates, a smaller proportion of people represented by a public defender face a conviction and punishment in the first place compared to their peers with private assigned counsel.

**Predicted Sentence Length (Figure 7.1, Models #6 and #7)**

- Among people who have been convicted, public defender clients receive longer jail terms than similar individuals with a private assigned attorney.
- The length of probation sentences for convicted individuals is not affected by attorney type.

Expected Number of Jail Days Sentenced (Figure 7.1, Model 6). Table 7.8 illustrates the average and median number of jail days served by people who have been found guilty. Among people facing misdemeanor charges, those with private appointed counsel have the longest sentences. Among those charged with felonies, by contrast, public defender clients and those with private retained attorneys receive

the longest sentences -- nearly five months longer on average than people with private assigned attorneys.

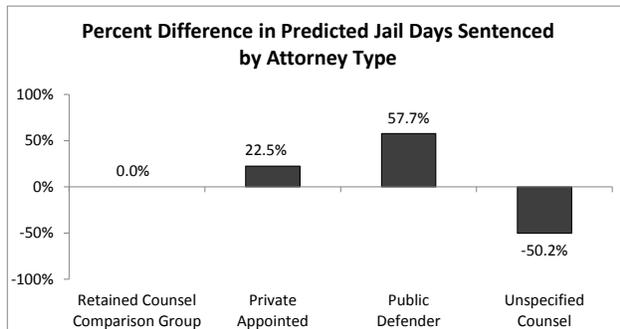
**TABLE 7.8**

**Jail Days Sentenced**

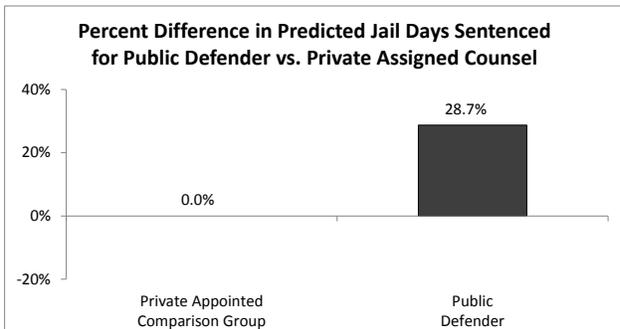
		<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Misdemeanor</b>	Average	106	188	172	28
	Median	6	75	72	6
	(n)	931	944	1,121	3,850
<b>Felony</b>	Average	1,291	1,135	1,291	660
	Median	312.5	240	300	62
	(n)	572	862	588	285

Multivariate analyses controlling for defendant and case characteristics show indigent defendants face projected jail terms from 22.5% to 57.7% longer than statistically identical individuals in the retained counsel comparison group (Figure 7.14). Among court-appointed attorneys alone (Figure 7.15), convicted public defender clients are projected to face 28.7% more post-disposition jail days than their peers with private assigned counsel. A “typical” defendant<sup>64</sup> represented by a public defender can therefore expect a sentence 11.8 days longer than those with private appointed counsel.

**FIGURE 7.14**



**FIGURE 7.15**



There are several possible explanations for this finding. For instance, it is known that the public defender clears a larger proportion of cases by dismissal. Public defender clients may therefore get longer sentences because only the most unambiguous cases reach the punishment phase. Likewise, evidence presented in Chapter 8 suggests the public defender has greater success getting charges reduced. A felony reduced to a

<sup>64</sup> Supra note 50.

misdemeanor may be sentenced at the high end of the punishment range making the penalty appear more severe in comparison to misdemeanors that were not reduced from a higher charge.

According to knowledgeable sources,<sup>65</sup> the public defender also receives more difficult cases than private assigned attorneys by two metrics. First, where a private assigned attorney files a motion to withdraw, those cases are ordinarily re-assigned by the judge to the public defender. Not surprisingly, the court-appointed cases from which attorneys request relief are usually the most challenging, leaving the public defender to take on some of the most resource-intensive cases.

Second, in serious crimes involving multiple defendants, even though all those involved may be charged with the same level of offense, the public defender will ordinarily be assigned the most culpable defendant. This is an intentional decision on the part of the IDC in order to both provide the defendant access to the more robust resources of the public defender office (e.g., research tools, diverse expertise, and investigation), and to save the county money by using an existing resource for the most time-consuming and potentially difficult cases.

In all of these instances public defender cases appear identical to others with the same charge even though they are actually qualitatively more challenging. As a result, it appears that the public defender may represent a disproportionate number of cases most likely to produce poor sentencing outcomes.

Finally, attorney experience may also be a factor. With three times more years of experience negotiating punishments on average, private practice attorneys, may be simply be more effective at negotiating shorter sentences for their clients than public defenders.<sup>66</sup> In fact, many of these private assigned lawyers may have experience in the same district attorney's office with which they now negotiate pleas.

Expected Number of Probation Days Sentenced (Figure 1, Model 7). Although jail sentences vary widely, probation sentences are much more standardized in Wichita County (Table 7.9). Terms are commonly set for a duration of one, four, or five years. For felonies and misdemeanors combined, people with undetermined counsel experience the shortest terms of probation (average=1,440 days; median=1,096 days), while people with retained counsel have the longest probationary sentences (average=1,694 days; median=1,826 days).

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<sup>65</sup> Personal conversation with Wichita County Indigent Defense Coordinator, Anayel Aviles and Public Defender James Rasmussen, September 5, 2012.

<sup>66</sup> Public defenders surveyed report just 4.8 years in criminal law while their peers in the private bar claimed an average 16.3 years of experience (see Figure 4.12).

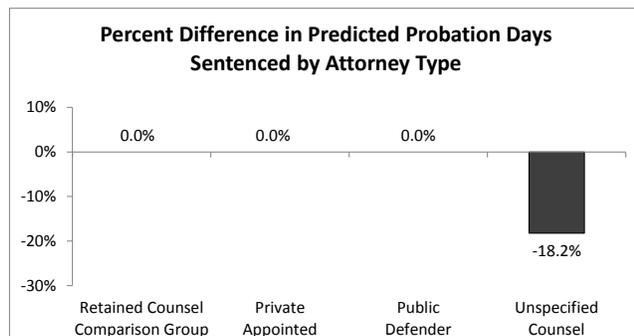
**TABLE 7.9**

**Probation Days Sentenced**

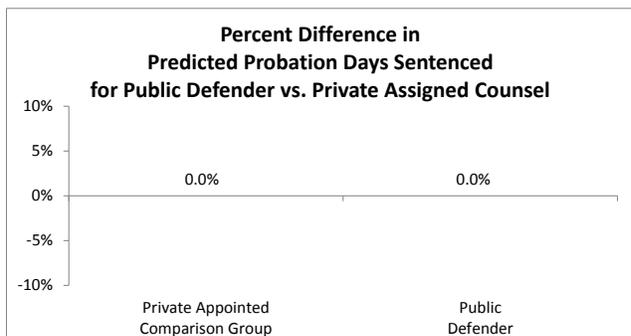
		<b>Retained Counsel</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Misdemeanor</b>	Average	1,558	1,422	1,278	1,074
	Median	1,461	1,461	1,279	730
	(n)	73	27	12	21
<b>Felony</b>	Average	1,790	1,574	1,521	1,680
	Median	1,826	1,644	1,279	1,461
	(n)	104	92	42	32

However, after controlling for defendant and case characteristics the only differences large enough to be statistically meaningful are for people with no documented form of counsel (Figure 7.16). These individuals experience 18.2% fewer days on probation than the retained counsel comparison group. There is no difference in length of probation sentences for indigent defendants with private assigned and public defender attorneys. The multivariate model predicts that “typical” defendants<sup>67</sup> with court-assigned counsel can expect to be supervised for about a year (356 days).

**FIGURE 7.16**



**FIGURE 7.17**



**CONCLUSION**

This chapter has examined the extent to which defendants’ legal counsel impacts case outcomes. The data show that people with public defender counsel are 10.1% less likely to be found guilty than peers represented by a private assigned attorney. This impressive performance results from the public defender’s high rate of case dismissals. Because investigators are on staff to present the prosecutor with

<sup>67</sup> Supra note 50.

the facts of the case, people with public defender counsel are 23.2% more likely to have all their charges dismissed before the case is adjudicated.

On the other hand, those public defender clients that are adjudicated and found guilty are more likely to be sentenced to jail (0.12% more likely), and their sentences are expected to be nearly 30% longer than statistically identical people with private assigned counsel. These tougher sentencing outcomes may be explained by several contributing factors. Public defender's higher rate of dismissals could mean only the most certain cases are ultimately sentenced. More charge reductions (demonstrated in Chapter 8) may also leave public defender clients at the higher end of the punishment range compared to defendants with the same charges that were not reduced.

Public defender clients may also receive worse sentencing outcomes because they are more difficult cases. As evidence, the public defender is ordinarily assigned the most culpable defendant in conflict cases, and they take most cases where private assigned attorneys file a motion to withdraw. The greater level of experience among private assigned attorneys may also contribute to this finding.

## CHAPTER 8

### EFFECT OF ATTORNEY TYPE ON INDIGENT DEFENSE COSTS

In recent years, Wichita County’s public defender office has expended about \$778,000 per year in the provision of indigent defense services (Table 8.1). About 85% of those expenditures support legal services, while the remaining 15% support in-house investigators.<sup>68</sup>

**TABLE 8.1**

**Wichita County Public Defender’s Office Expenditures**

	Legal Services	Investigators	Total
<b>County FY 2010</b>	\$649,731	\$128,425	\$778,156
<b>County FY 2011</b>	\$655,982	\$121,732	\$777,714

Cases represented by private indigent defense attorneys, on the other hand, are paid in one of two ways. In trials or appeals, attorneys can bill at an hourly rate ranging from \$65 to \$120 per hour. More typically in Wichita County appointed attorneys are paid a flat fee. According to the county’s publicly posted attorney fee schedule, misdemeanor case resulting in a plea or dismissal is reimbursed at \$200 and a felony is \$300.<sup>69, 70</sup> Since, 99.8% of misdemeanors and 99.0% of felonies result in a plea or dismissal, these rates apply in the overwhelming majority of assigned indigent defense cases.

To assess the value of the public defender office, analyses were conducted to document the relative cost of defense in an identical set of cases represented by a public defender and privately assigned counsel. This type of analysis requires attorney costs be compared for like services. Unlike private appointed

**Public Defender Value Added**

2011 cost increment per case...

- \$14.23

Produces...

- 1.3 extra hours of misdemeanor service
- 1.8 extra hours of felony service

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<sup>68</sup> Indirect and administrative costs are distributed between legal and investigative services in proportion to attorney and investigators’ salaries.

<sup>69</sup> Indigent defense attorney fees increased in 2011. In the preceding years, both felony and misdemeanor pleas or dismissals were reimbursed at \$200. On September 17, 2012, current attorney fee schedules are available on the Texas Indigent Defense Commission Public Information Website at <http://tidc.tamu.edu/public.net/Reports/FeeDocuments.aspx>.

<sup>70</sup> Private assigned attorney costs per case calculated from the 2011 Wichita County Indigent Defense Expenditure Report (available at <http://tidc.tamu.edu/public.net/Reports/CountyFinancialReport.aspx?cid=243&fy=2011>) are \$231 per misdemeanor and \$597 per felony. This rate is greater than the posted reimbursement rate of \$200 and \$300 for misdemeanors and felonies respectively because in Wichita County each charge under a single indictment is paid as a separate case.

attorneys, the Wichita County public defender office includes investigation services in the majority of cases. By contrast, auditors' records indicate that private attorneys bill for investigators' costs in less than 1% of all felony cases, and virtually never formally investigate misdemeanors.

In order to compare like services, the analyses that follow first consider costs of indigent defense counsel based on attorney costs alone, excluding investigators. Subsequent analyses consider the additional cost and value added by the public defender's investigator services. Finally, consideration is given to the cost effects of longer jail sentences received by public defender clients relative to people with private appointed attorneys.

**TABLE 8.2**

**Incremental Cost for Private Assigned Counsel to Represent the Public Defender's 2011 Caseload  
(Excludes Investigator Costs) <sup>71</sup>**

	Public Defender Cases	Public Defender Actual Costs	Private Assigned Counsel Projected Costs	To represent the public defender 's caseload, private assigned attorneys would cost:
<b>Misdemeanor</b>	883	\$150,876	\$204,119	\$60.30 more/case
<b>Felony</b>	662	\$452,628	\$395,419	\$86.42 less/case
<b>Appeals</b>	4	\$52,479	\$10,798	\$10,420.04 less/case
<b>Uncharged</b>	333	\$0	\$72,422	\$217.48 more/case
<b>Total</b>	<b>1,882</b>	<b>\$655,982</b>	<b>\$682,759</b>	<b>\$14.23 more/case</b>

## **COSTS OF COUNSEL**

### **Cost of Public Defender vs. Assigned Private Counsel**

According to the Commission's public information website, the Wichita County public defender office represented 1,882 cases between October of 2010 and September of 2011. At the same time, county expenditure records shows the actual cost of public defender legal defense services (excluding investigators) over a similar timeframe (January 1 through December 31, 2011) was \$655,982.

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<sup>71</sup> Public defender costs were taken from Wichita County's FY 2011 actual expenditure records (available from the Wichita County Treasurer) covering the period January through December 2011. Costs for private assigned counsel, as well as case counts for both public defenders and private assigned counsel, were extracted from the 2011 Wichita County Indigent Defense Expenditure Report covering the period October 2010 through September 2011, available on September 17, 2012 at <http://tidc.tamu.edu/public.net/Reports/CountyFinancialReport.aspx?cid=243&fy=2011>). See Appendix A for detailed information about cost calculations.

To estimate the cost effectiveness of the public defender, an initial analysis asks what it would have cost the county if these same cases had been represented by private assigned counsel. Results presented in Table 8.2 show that overall public defender attorney costs are lower than those for assigned counsel by \$14.23 per case on average. Put another way, every public defender case represented by the private bar would cost the county an additional \$14.23.

Not only are public defender services 4% less costly, but the office also delivers more services. Public defender attorneys make initial contact and meet face-to-face with indigent clients 1 to 3 days earlier than attorneys in private practice, spend 21% more time on each misdemeanor and 42% more time on each felony case, and engage in more assertive pre-trial advocacy as indicated by self-reported motion practice (Table 8.3). In short, public defenders return substantially more legal services to their clients by a number of important measures while still costing less than assigned private attorneys.

**TABLE 8.3**

**Differences in Services Provided to Indigent Defendants with Public Defenders and Private Assigned Counsel<sup>72</sup>**

	<b>Public Defender</b>	<b>Private Appointed Counsel</b>
Average days from notification to first contact with clients in custody	1.2 days	2.4 days
Average days from notification to first contact with clients out of custody	1.2 days	4.2 days
Average days from notification to first meeting with clients in custody	9.0 days	10.4 days
Average days from notification to first meeting with clients out of custody	13.8 days	14.7 days
Average hours spent per misdemeanor case	4.4 hours	3.1 hours
Average hours spent per felony case	10.4 hours	8.6 hours
Average percent of misdemeanor cases involving pretrial motions	75%	22%
Average percent of felony cases involving pretrial motions	97%	52%
Average number of hearings to dispose a misdemeanor case	2.2	1.5
Average number of hearings to dispose a felony case	4.0	3.2

### **Attorney Service Level**

A useful corollary question is: What would be the cost to the county if private assigned attorneys delivered the same level of service to their clients as the public defender? To determine the answer, hourly rates were computed for private lawyers representing appointed cases (see Appendix C). Costs were then recalculated assuming private assigned counsel worked as many hours on each case as public defender attorneys. Results are presented in Table 8.4.

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<sup>72</sup> Information about attorney service provision is taken from attorney survey findings presented in Chapter 4.

**TABLE 8.4**

**Projected Cost for Private Assigned Counsel  
to Meet the Public Defender’s 2011 Service Level<sup>73</sup>**

2011 Private Assigned Cases		Costs at Actual Time/Case for Private Assigned Counsel			Costs at Time/Case Spent by Public Defenders		
		Assigned Counsel Hourly Rate	Actual Avg. Hours/ Case	Actual Cost	Assigned Counsel Hourly Rate	Public Defender’s Hours/ Case	Projected Cost
Misd.	639	\$74.57	3.1	\$150,876	\$74.57	4.4	\$289,717
Felony	593	\$69.45	8.6	\$452,628	\$69.45	10.4	\$478,182
Appeals	10	\$81.49	33.1	\$52,479	\$81.49	40.0	\$13,038
Uncharged	157	\$217.48	1.0	\$0	\$217.48	1.0	\$72,422
<b>Cost of Counsel:</b>		<b>\$655,982</b>			<b>\$853,359</b>		
<b>Difference = \$141,699</b>							

If private assigned attorneys were paid their current hourly rate to provide the same amount of service to each client on their caseload that public defenders routinely deliver, costs to the county would be \$141,699 higher per year (Table 8.4). Indeed, if private attorneys were asked to match the level of service provided by public defenders at their current hourly rate, compensation per case would increase from \$200 to \$328 for a misdemeanor case (i.e., 4.4 hours/case x \$74.57/hour) and from \$300 to \$722 for a felony (i.e., 10.4 hours/case x \$69.45/hour).

Could, however, higher rates of compensation for private assigned attorneys be expected to generate a higher level of performance? There is evidence to suggest that attorneys do respond to monetary incentives. Table 8.5 shows that private practice attorneys deliver considerably more service to their paying clients than to their indigent caseload. Differences in compensation rates seem to be a factor. While private assigned attorneys are paid \$74.57/hour for indigent misdemeanor cases, fees increase to \$196/hour for comparable retained cases. Similarly, felony indigent defense services are reimbursed at \$69.45/hour on average, but privately retained felonies are billed at \$211/hour.<sup>74</sup> It is not surprising, then, that the same attorney will spend half as much time on each misdemeanor case and one-third less time on felonies when paid at the Wichita County plea rate compared to the time spent on cases paid at the retained counsel rate.

<sup>73</sup> *Id.* The method used to compute hourly rates is provided in Appendix C.

<sup>74</sup> Hourly rates for privately retained cases are taken from attorney survey findings. See Figure 4.8.

**TABLE 8.5****Differences in Services Provided to Indigent Defendants with Private Assigned Counsel vs. Private Retained Counsel<sup>75</sup>**

	<b>Private Appointed Counsel</b>	<b>Private Retained Counsel</b>
Average hours spent per misdemeanor case	3.1 hours	6.4 hours
Average hours spent per felony case	8.6 hours	13.1 hours
Average percent of misdemeanor cases involving pretrial motions	22%	34%
Average percent of felony cases involving pretrial motions	52%	63%
Average number of hearings to dispose a misdemeanor case	1.5	3.2
Average number of hearings to dispose a felony case	3.2	4.5

The recommendation is not that Wichita County should pay the retained counsel rate if adequate representation can be achieved with a lower-cost fee structure. However, the analysis does raise questions regarding whether the current standard plea rates are high enough to incentivize the level of service routinely delivered by the public defender. It is worth asking whether fees for private assigned attorneys may be too low to induce a level of client service consistent with the public defender’s standards of defense.

**CASE PROCESSING COSTS**

The second major cost component of the public defender office is investigation. According to the auditor’s records, licensed investigation, a routine service available to public defender clients, is used in less than 1% of cases represented by private appointed attorneys.<sup>76</sup> Two licensed investigators plus related administrative supports account for about 15% of the total public defender’s budget each year, equating to a \$121,732 annual investment by the county in calendar year 2011 (Table 8.6). Investigators average about 1.3 hours/misdemeanor at a cost of \$39.80 and 2.5 hours/felony at a cost of \$76.54. Appeals are rare and seldom require investigation beyond that done at the trial phase.<sup>77</sup>

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<sup>75</sup> Supra note 72.

<sup>76</sup> Investigation is used by assigned private counsel in 15% of so called “3G” violations (see Tex. Code Crim. Proc. Art. 42.12). These include the most serious felony violations such as murder, aggravated kidnapping, sexual assault, aggravated robbery, or injury to a child. “Three G” violations are not eligible for probation or deferred adjudication.

<sup>77</sup> The public defender estimates investigator time per case as follows. Two investigators work 2,000 hours per year (4,000 work hours total). Of that time, 1,245 hours are spent on misdemeanors (1,245 hours/970 misdemeanor cases = 1.3 hours/case) and 2,755 hours are spent on felonies (2,755 hours/1,086 felony cases = 2.5 hours per case).

**TABLE 8.6****2011 Cost per Case for Investigators**

	<b>CY 2011 PD Cases</b>	<b>Average Hours/Case</b>	<b>Total Hours</b>	<b>Total Cost</b>	<b>Cost/Case</b>
<b>Misdemeanor</b>	970	1.3	1,245	\$37,889	\$39.80
<b>Felony</b>	1,086	2.5	2,755	\$83,843	\$76.54
<b>Appeals</b>	5	0	0	\$0.00	\$0.00
<b>Total</b>	2,061		4,000	\$121,732	\$59.06

**Role of Investigators**

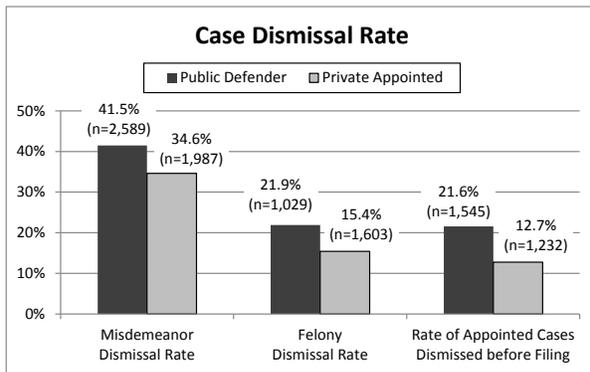
One of the most important functions of investigators is to assemble evidence in support of the defense while it is still fresh. Key documentation of the facts can be lost over time as, for example, witnesses are lost or their memory fades, or hard evidence such as surveillance video or 911 audio is destroyed. Although private attorneys involve fact investigators in a small proportion of cases, the public defender office has this expertise on staff, available to start building the defense on the day the arrest occurs in many instances.

By promptly and thoroughly documenting key facts, public defender attorneys are prepared to present the prosecutor with information favorable to the client early in case processing. When timely evidence is available, the prosecutor is able to recognize and dismiss cases that are not likely to stand up in court. One of the most powerful impacts of the public defender office, then, is in their investigators' ability to help clear criminal cases based on the evidence before significant public resources have been invested in case processing.

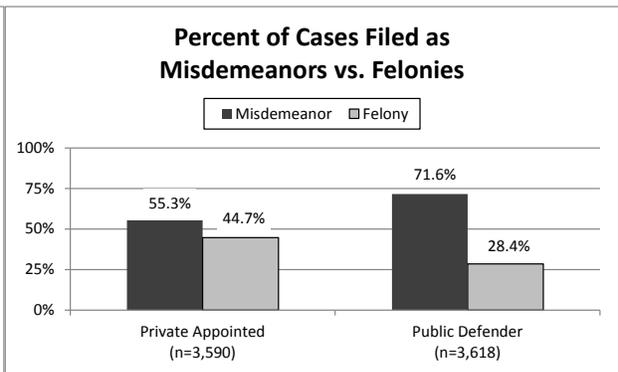
The effect of investigation is evident in the data. Public defenders achieve higher dismissal rates than private assigned attorneys for both filed and unfiled cases (Figure 8.1). In addition to increasing dismissals, investigation may also provide leverage for many charges to be reduced from felonies to misdemeanors. Though the dataset does not allow for measuring specific instances where charges were reduced, the data clearly show the public defender disposes a larger proportion of misdemeanor cases than private assigned counsel even though according to the IDC assignment is random (Figure 8.2).

In addition to the potential impact of investigators, it is likely that other factors such as the faster speed of first contact with clients and the greater amount of time attorneys spend on each case (Table 8.3) may also impact public defender attorneys' rate of dismissals and charge reductions. A three-stage approach was used to determine the cost effects of these public defender outcomes on case processing. The first analysis quantifies differences in charge reductions and case dismissals for public defender and private assigned attorneys. Next, the cost of processing an adjudicated case through the Wichita County criminal justice system is determined. Finally these costs are applied to demonstrate costs avoided largely due to the apparent impact of investigation on reducing the number of cases processed.

**FIGURE 8.1**<sup>78</sup>



**FIGURE 8.2**



**Effect of the Public Defender on Charge Reductions and Case Dismissals**

To demonstrate the impacts of the public defender’s higher case dismissal rates, a multivariate model was constructed in which a hypothetical group of 100 statistically identical defendants was assumed to be represented by either the public defender or a private assigned attorney. The people compared in the model were assigned the most common values in the dataset, making them “typical” of most defendants.<sup>79</sup> The two sets of like cases were then tracked to assess differences in case processing. Dismissals before charges were filed were included in the multivariate model because this information was taken from a source outside the analysis dataset.<sup>80</sup> Results depicted in Figure 8.3 show the following.

Dismissals before Filing. Case dismissals prior to the filing of charges occurs about 69% more often for people with public defender counsel. As a result, only 78 of 100 public defender clients go on to have charges filed, compared to 87 of those with private assigned attorneys.<sup>81</sup>

Reduced Charges Filed. Among statistically identical defendants who receive a filing determination, only 23.0% of public defender clients (18 of 78) will face a felony compared to nearly twice as many people with private assigned counsel (37.9% or 33 of 87).

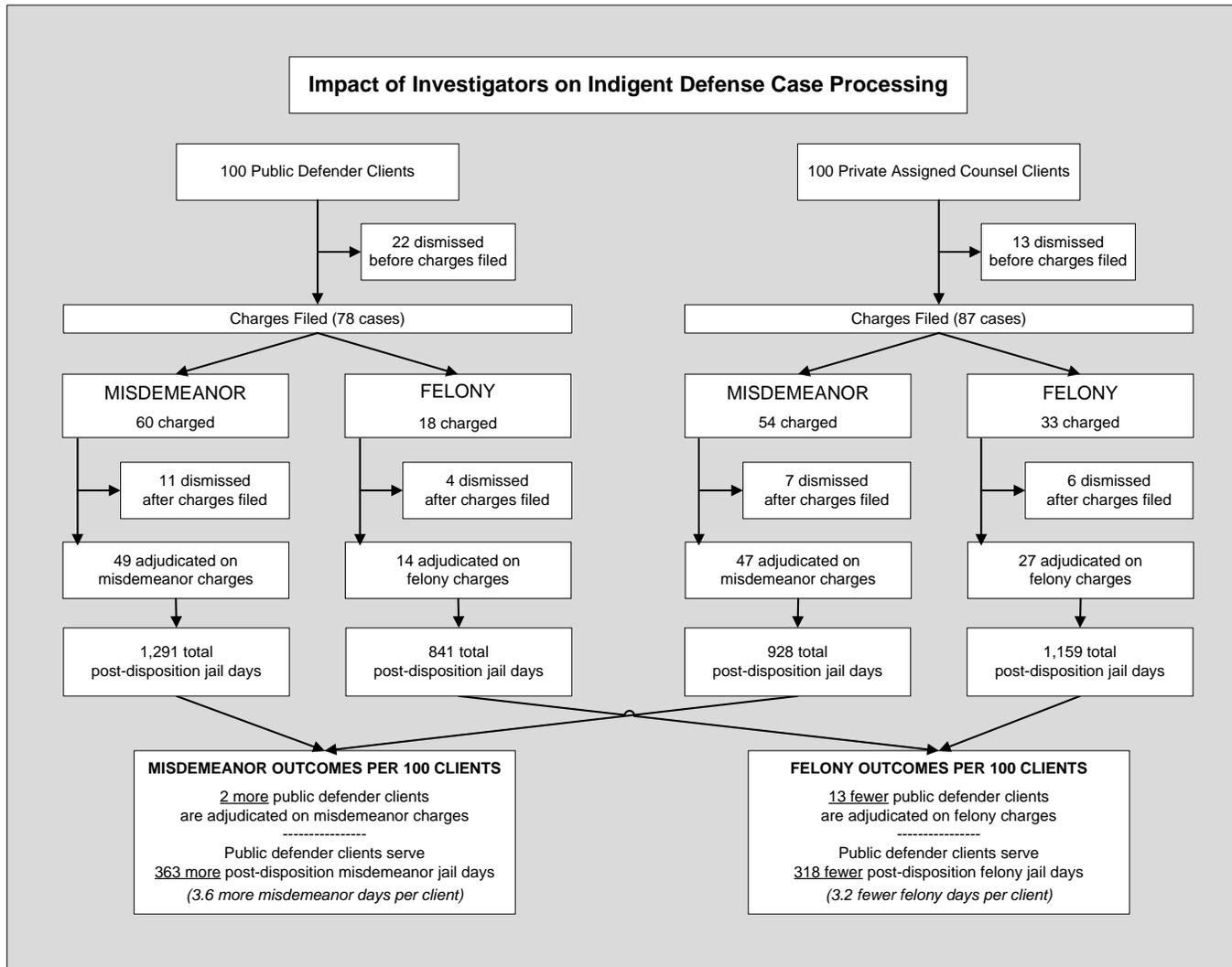
<sup>78</sup> Misdemeanor and felony dismissal rates were taken from the analysis dataset. Information about the proportion of all appointed cases dismissed before filing was taken from the 2011 Indigent Defense Expenditure Report available on the Texas Indigent Defense Commission website available on September 12, 2012 at <http://tidc.tamu.edu/public.net/Reports/CountyFinancialReport.aspx?cid=243&fy=2011>.

<sup>79</sup> Supra note 50.

<sup>80</sup> Dismissals before charges were filed were taken from Wichita County’s 2011 Indigent Defense Expenditure Report posted on the Commission’s public information website and available on September 12, 2012 at <http://tidc.tamu.edu/public.net/Reports/CountyFinancialReport.aspx?cid=243&fy=2011>.

<sup>81</sup> Supra notes 62 and 80.

**FIGURE 8.3**



Dismissals after Filing. Of the people who are charged, 18.0% (11 of 60) of public defenders' misdemeanors are dismissed and 22.2% (4 of 18) of felonies are dismissed. Among private assigned attorneys, dismissal rates are 12.9% (7 of 54) and 18.2% (6 of 33), respectively.

Number of Adjudicated Cases. After accounting for dismissed and reduced charges, among 100 statistically identical public defender and assigned private counsel clients:

- 13 fewer public defender clients will be adjudicated on felony charges.
- Of these, 11 will be dismissed and 2 will be adjudicated on reduced charges, accounting for the greater number of misdemeanors represented by public defenders.

Number of Post-Disposition Jail Days. The same model was run again to predict the number of days defendants can expect to spend in jail, measured as the number of jail days sentenced minus the days credited for pretrial time served. Of the 100 statistically identical people considered in each group, those with a public defender will serve a total of 2,132 post-disposition jail days (1,291 for misdemeanors and 841 for felonies), while those with a private assigned attorney will serve 2,087 days (928 for misdemeanors and 1,159 for felonies). If a set of 100 public defender clients is expected to spend 45 more total days in post-disposition detention, then each individual public defender client will spend 0.45 more days in jail.

Conclusion. Under ordinary circumstances, outcomes between public defender and assigned private counsel would be expected to be equal. Instead, these data show that given a statistically identical client pool, public defender attorneys have greater success than private assigned attorneys both diverting people directly through dismissals as well as getting charges reduced from felonies to misdemeanors. On the other hand, longer sentences result in about one day more jail time served per public defender client, other things being equal.

## **Case Processing Costs Avoided by the Public Defender Office**

Whenever the public defender office is successful at reducing charges or diverting cases from the criminal justice system, case processing savings are realized in at least four major areas: court costs, costs of prosecution, pretrial detention, and personal costs to defendants. Table 8.7 applies actual county cost data to measure the amount saved when these costs are avoided on a per case basis. Of course, even when a case is dismissed it still requires some involvement of the courts and prosecutor. This amount is estimated at 25% of the effort required for a fully prosecuted case.<sup>82</sup> Pretrial jail costs and defendants' personal costs were also adjusted to account for the days in detention experienced by dismissed defendants.

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<sup>82</sup> The adjustment is based on the fact that dismissed felony defendants spend 25% as many median days in pretrial detention as people whose charges are adjudicated. The proportional difference in jail costs is used as a basis for determining cost differences in other areas of expense.

**TABLE 8.7**

**2011 County and Defendant Costs Avoided by Charge Reductions or Dismissals<sup>83</sup>**

	<b>Felony Costs Avoided by Dismissals</b>	<b>Misdemeanor Costs</b>	<b>Costs Avoided by Charge Reductions (net of 25% for time as a felony)</b>
<b>2011 Criminal Cases Disposed</b>	<b>2,145</b>	<b>3,761</b>	
<b>Court Costs</b>			
District Court Budget for Criminal Cases	\$162,032	---	
County Court Budget for Criminal Cases	---	\$428,670	
Court Administration Budget for Criminal Cases	\$33,279	\$58,351	
Other Criminal Court Costs (supplies, operations, jurors)	\$100,313	\$118,417	
Criminal Court Cost/Case	\$138	\$161	<b>-\$17</b>
Court Cost/Case Avoided in Dismissed Felony Cases (net of 25% for time spent on dismissals)	<b>\$103</b>		
<b>Prosecutors' Costs</b>			
Criminal Defense Attorney Budget	\$1,553,550	\$1,021,487	
Prosecutors' Cost/Case	\$724	\$272	<b>\$339</b>
Prosecutors' Cost/Case Avoided in Dismissed Felony Cases (net of 25% for time spent on dismissals)	<b>\$543</b>		
<b>Pretrial Detention Costs</b>			
Median Pretrial Jail Days	44	1	
Pretrial Detention Cost/Case@ \$45/day <sup>84</sup>	\$1,980	\$45	<b>\$1,451</b>
Median Pretrial Jail Days Net of Dismissals	33	0	
Pretrial Detention Cost/Case Avoided in Dismissed Felony Cases (net of jail costs for dismissed defendants)	<b>\$1,485</b>		
<b>Defendant's Personal Costs</b>			
Median Pretrial Jail Days	44	1	
Work Days Missed (5-day work week)	31	1	
Unearned Income Lost/Case @ \$58/day	\$1,798	\$58	<b>\$1,305</b>
Median Pretrial Jail Days Net of Dismissals	33	0	
Work Days Missed Net of Dismissals (5-day work week)	24	0	
Estimated Income/Case Saved in Dismissed Felony Cases (net of lost income for dismissed defendants)	<b>\$1,392</b>		
<b>Avoided County Costs/Case</b>	<b>\$2,131</b>		<b>\$1,773</b>
<b>Avoided Defendant Costs/Case</b>	<b>\$1,392</b>		<b>\$1,305</b>
<b>Total Avoided Costs/Case</b>	<b>\$3,523</b>		<b>\$3,078</b>

<sup>83</sup> Information about sources and use of data in this table are available in Appendix C.

<sup>84</sup> See Ana Yanez-Correa and Molly Totman, *Costly Confinement and Sensible Solutions: Jail Overcrowding in Texas* (Austin, TX: Texas Criminal Justice Coalition, 2010, pg. 6). According to these authors, the Texas Commission on Jail Standards estimates the average cost of detaining an inmate in a county jail at \$45 per day.

Savings from reduced charges are based on the difference between felony and misdemeanor case processing costs. However, actual cost savings depends on how soon after arrest the charge reduction occurs. If the charge reduction occurs at disposition there is no cost savings. If the charge reduction occurs soon after arrest, cost savings can be substantial. For this analysis, costs avoided are computed as 75% of the difference in cost between a fully adjudicated felony and a fully adjudicated misdemeanor. This approach allows for some cases that were predominantly handled as a felony before finally being reduced.<sup>85</sup>

After these adjustments, Table 8.7 shows costs avoided by reduced or dismissed charges in each major domain. Each felony dismissal saves Wichita County \$2,131, while each felony that is reduced to a misdemeanor saves \$1,773. Applying these costs to the 11 additional cases per 100 where the public defender has charges dismissed, as well as to the 2 cases in 100 where charges are reduced (Figure 8.3), yields the results shown in Table 8.8. Wichita County avoids an average of \$269 for each statistically identical indigent defendant represented by the public defender instead of a private appointed attorney. Public defender clients benefit as well, retaining an average \$179 more in personal earnings due to less time in pretrial detention. Altogether, the public defender’s investigators generate \$449 per defendant in public and private savings through costs avoided.

**TABLE 8.8**

**Costs Avoided by Public Defender Services**

	Wichita County Costs Avoided		Defendant Costs Avoided		Total Costs Avoided	
	per 100 Cases	per Case	per 100 Cases	per Case	per 100 Cases	per Case
<b>Felonies Dismissed</b>	<b>\$23,441</b> <i>(11 dismissals @ \$2,131/case)</i>	\$234	<b>\$15,312</b> <i>(11 dismissals @ \$1,392/case)</i>	\$153	\$38,753	\$387
<b>Felonies Reduced to Misdemeanors</b>	<b>\$3,546</b> <i>(2 reductions @ \$1,773/case)</i>	\$35	<b>\$2,610</b> <i>(2 reductions @ \$1,305/case)</i>	\$26	\$6,156	\$62
<b>Total Savings</b>	<b>\$26,987</b>	<b>\$269</b>	<b>\$17,922</b>	<b>\$179</b>	<b>\$44,909</b>	<b>\$449</b>

Table 8.9 summarizes the total benefit and cost of investigators. Although it costs the county \$59 per case on average for the public defender to provide investigation (Table 8.6), in return they realize savings of \$269 (Table 8.8) for a net benefit of \$210 per case. These cost advantages do not accrue to clients of

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<sup>85</sup> This adjustment is based on the fact that defendants whose charges are reduced from a felony at arrest to a misdemeanor at filing spend 75% fewer median days in pretrial detention as people whose charges are not reduced. The proportional difference in jail costs is used as the basis for estimating cost differences in other areas of expense.

assigned private attorneys because they do not have the service infrastructure of the public defender including routine assistance of investigators.

**TABLE 8.9**

**Cost Savings to the County Attributable to Public Defender Services  
(Excludes Defendant Cost Savings)**

<b>BENEFIT:</b> Pretrial Case Processing Costs Saved per Case Due to Investigation <i>(see Table 8.8)</i>	\$269
<b>COST:</b> County Costs per Case for Investigation Services <i>(see Table 8.6)</i>	\$59
<b>Net Benefit per Case of Public Defender Services</b>	<b>\$210</b>

**COSTS POST-DISPOSITION JAIL TIME**

To this point, analyses have shown that public defender attorneys save Wichita County \$14.23 per case compared to private assigned counsel. An additional \$210 per case is also avoided in criminal processing costs due to investigation and other defense services. One of the important remaining differences between public defender and private assigned counsel concerns jail sentences.<sup>86</sup>

Chapter 7 (Figure 7.15) established that, among defendants found guilty, those represented by the public defender office receive jail sentences nearly 30% longer than those with private assigned attorneys. However, when analyses count all types of defendants – including those found not guilty or with charges dismissed – the difference in jail days sentenced is much lower. In addition, sentences are commonly reduced by credit for pretrial time served. For determining costs, then, post-disposition jail days are measured as the difference between jail days sentenced and jail days credited.

Figure 8.3 shows that 100 statistically identical defendants represented by public defender or private assigned attorneys will serve different amounts of post-disposition time in jail for felony and misdemeanor violations. Table 8.10 summarizes these differences. In total, 100 like public defender clients are projected to serve 363 more jail days for misdemeanor charges, and 318 fewer jail days for felony charges than 100 identical peers with assigned private attorneys. Altogether, public defender clients will spend 45 more post-disposition days in jail per 100 clients, or 0.45 more days per individual defendant.

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<sup>86</sup> Pre-trial detention costs were accounted for in Table 8.7.

**TABLE 8.10**

**Expected Post-Disposition Jail Days Served  
for Statistically Identical Defendants with Different Types of Counsel**

	<b>Misdemeanor Jail Days per 100 Clients</b>	<b>Felony Jail Days per 100 Clients</b>	<b>Total Jail Days per 100 Clients</b>	<b>Expected Jail Days per Client</b>
<b>Public Defender Clients</b>	1,291	841	2,132	21.32
<b>Assigned Private Counsel</b>	928	1,159	2,087	20.87
<b>Additional post-disposition jail days served per public defender client</b>				0.45

The cost of this differential between public defender and private assigned counsel is easy to quantify.

- 0.45 additional jail days for public defender clients @ \$45/day<sup>87</sup> costs the county \$20/case
- 0.32 lost work days<sup>88</sup> for public defender clients @ \$58/day costs individuals \$19/case

Additional detention for public defender clients therefore costs \$20 per case on average for the county and \$19 per case for the defendants themselves.

## **CONCLUSION**

Considering legal services alone, Wichita County's public defender costs \$14.23 less per case than other court-appointed attorneys. Beyond these cost savings public defender clients also receive a higher level of service as indicated by attorneys' speed of initial client contact, time spent on the case, and use of motions. If private assigned attorneys delivered the same level of service as public defenders, indigent defense costs to the county would be \$141,699 higher per year.

Further savings occur with criminal case processing costs. Public defender clients have charges reduced or dismissed at higher rates than statistically identical people with private assigned attorneys. The county saves \$269 per case in case processing costs avoided, while defendants save \$179 each due to jail time avoided. After allowing \$59 per case for cost investigation services, the county realizes a net benefit of \$210 per public defender client in case processing costs compared to private assigned attorneys.

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<sup>87</sup> Supra note 85.

<sup>88</sup> Assuming people work 5 of 7 days (i.e., 71% of days), then 71% of 0.45 additional post-disposition jail days served by public defender clients translates to 0.32 days of employment lost due to detention.

**TABLE 8.11****Summary of Public Defender and Private Assigned Counsel Cost Differences**

	<b>Wichita County Cost Impacts per Case</b>	<b>Defendant Cost Impacts per Case</b>
<b>Legal Defense Services</b>	\$14 benefit per public defender client for legal counsel	No effect
<b>Pretrial Case Processing Cost</b>	\$210 benefit per public defender client due to more dismissals and charge reductions	\$179 benefit per public defender client due to fewer jail days resulting from dismissals and charge reductions
<b>Post-Disposition Time Served</b>	\$20 cost per public defender client due to more post-disposition jail time.	\$19 cost per public defender client due to more post-disposition jail time.
<b>Net Cost Impact of Public Defender Counsel</b>	<b>\$204 benefit per case</b>	<b>\$160 benefit per case</b>

Finally, public defender clients spend 0.45 more days in jail after their case is disposed than statistically identical people with private assigned counsel. This difference raises the cost increment for public defender counsel by \$20 per case.

The overall costs and benefits of the public defender office summarized in Table 8.11 make a strong case that the public defender is a cost effective investment. After accounting for differences in attorney, case processing, and post-disposition detention costs, the public defender office saves Wichita County an impressive \$204 per indigent defendant compared to other court-appointed attorneys. Importantly, this is achieved while also delivering a higher level of service than assigned private counsel. Public defender clients benefit, as well, through an extra \$169 per person in earnings made possible by more working days spent out of detention.

## CHAPTER 9

### THE EFFICACY OF THE WICHITA COUNTY PUBLIC DEFENDER

Each of Texas' 254 counties is responsible for providing legal defense services for indigent individuals facing criminal charges. In delivering these services, counties face the challenge of providing a quality defense while also meeting the budget constraints of each community. Traditionally, most indigent defense cases are assigned to members of the private bar, though more than 30 counties also have a trial-level public defender office.<sup>89</sup> Relatively little information is currently available regarding which of these models yields the greatest benefits in terms of services to defendants, efficiency of case processing, and cost efficiency for the county. This report seeks to answer these questions using data from Wichita County, Texas.

Wichita County maintains a well-functioning indigent defense system. Procedures for the determination of indigence and the appointment of counsel are well-established, though they could possibly be strengthened by the creation of a non-partisan oversight board. Other areas for improvement noted in the study include eliminating salary discrepancies between the public defender's office and the prosecutor's office, adopting reliable systems to identify individuals who remained in jail with no attorney, and providing improved meeting space in the jail for confidential attorney-client meetings.

The chief public defender oversees a staff of five attorneys, two investigators, and five legal and administrative support staff. The office maintains a close working relationship with the private bar, which serves as an important resource for managing case volume in the office. The public defender office is highly professionalized as evidenced by merit-based employment, policies specifying policies, procedures and expectations, regular performance evaluation, and high-quality training, supervision, and professional support for attorneys.

Established in 1987, the Wichita County public defender office is one of the most long-standing in the state, and a fitting location to test the relative efficacy of public defender and private assigned counsel systems. The lessons learned have implications for other counties contemplating the adoption of the public defender model.

#### DEFENDANT CHARACTERISTICS INFLUENCE ATTORNEY TYPE

Privately retained lawyers, private assigned attorneys, and public defenders do not all represent the same types of cases. The first series of analyses considered factors that influence the type of counsel defendants are most likely to have.

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<sup>89</sup> Commission's website, <http://www.txcourts.gov/tidc/pdf/webpagepdomac.pdf>

## Criminal Risk Attributes

Although the public defender office represents all levels of cases, people with a more extensive history of prior misdemeanor violations or a larger number of current charges are most likely to be clients (Table 9.1). Individuals represented by the office have the option to request the same counsel in future criminal justice encounters. Hence, the clientele is disproportionately comprised of people who are in trouble more frequently, usually for lesser violations.

**TABLE 9.1**

<i>More prior arrests or a larger number of current charges increases the chance a defendant will have an attorney – most likely a public defender.</i>				
	<b>Percent Change in Probability of Each Attorney Type</b>			
	<b>Retained Counsel</b>	<b>Private Appointed Counsel</b>	<b>Public Defender Counsel</b>	<b>Unspecified Counsel</b>
<b>Each Prior Misdemeanor Arrest</b>	---	---	+8.6%	---
<b>Each Prior Felony Arrest</b>	---	---	---	-8.3%
<b>Number of Current Charges</b>	+27.2%	+18.9%	+34.7%	-19.8%

As the charges grow more serious, however, people are more likely to hire a retained attorney (Table 9.2). For instance, if the charge is greater than a state jail felony, the chance of having a private lawyer increases by 51.2% while the chance of court-appointed counsel declines by as much as 11.6%. Drug-related charges have a similar effect, raising the probability of a retained attorney by 19.3% and reducing the likelihood of court-appointed counsel by an even larger margin.

**TABLE 9.2**

<i>When the charges are serious the probability of hiring a retained attorney increases substantially.</i>				
	<b>Percent Change in Probability of Each Attorney Type</b>			
	<b>Retained Counsel</b>	<b>Private Appointed Counsel</b>	<b>Public Defender Counsel</b>	<b>Unspecified Counsel</b>
<b>Current Misdemeanor A Charge</b>	---	---	+ 4.3%	-14.0%
<b>Current State Jail Felony Charge</b>	+50.6%	+14.3%	+8.5%	-16.4%
<b>Current Third Degree 3+ Felony Charge</b>	+51.2%	-4.5%	-11.6%	-6.8%
<b>Drug-Related Charge</b>	+19.3%	-26.4%	-28.7%	---

This finding raises interesting questions about factors that may interact with indigence in determining attorney type. While financial status is ordinarily expected to be a stable predictor of having court-appointed counsel, when the consequences of a conviction are most serious, defendants appear to be more successful at securing resources to hire an attorney, most likely from friends or family members with

no legal obligation to pay.<sup>90</sup> At the other extreme there may be instances in which defendants facing charges with very low consequences choose pro se representation even though they could qualify for an assigned attorney. Exploration of factors other than indigence that influence defendants' use of court-appointed counsel may be an area for consideration in future research.

### Personal Risk Attributes

Defendants' personal characteristics also influence type of counsel (Table 9.3). A person with a mental impairment is 30% more likely to have a court-appointed attorney, other things being equal. This finding affirms that many people with mental illness are taking proper advantage of the court appointment process. Still, because 41.3% of people with symptoms of mental illness at intake do not have an attorney of record, the courts should be vigilant that all members of this vulnerable population are being carefully screened for eligibility for counsel.

**TABLE 9.3**

<i>Personal challenges such as mental illness or substance use increase the chance of having a court-appointed attorney. Though it is not known why, being African American also increases the likelihood of having a public defender and reduces the chance of retained counsel.</i>				
	<b>Percent Change in Probability of Each Attorney Type</b>			
	<b>Retained Counsel</b>	<b>Private Appointed Counsel</b>	<b>Public Defender Counsel</b>	<b>Unspecified Counsel</b>
<b>Being African American</b>	-28.1%	-1.4%	+22.7%	-0.2%
<b>Being Hispanic</b>	---	---	---	---
<b>Having a Mentally Illness</b>	-20.4%	+33.7%	+24.4%	---
<b>Being a Substance User</b>	---	---	+33.2%	---

People who were using drugs or alcohol at the time of arrest are another population of concern. Substance users are 33.2% more likely to be appointed a public defender attorney than other defendants. Substance-involved individuals may be among the public defender clients who are arrested most frequently. The linkage between intoxication and public defender appointment would be explained if they generally request counsel from the office with each re-arrest.

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<sup>90</sup> Morris B. Hoffman and colleagues, supra note 37. A similar result was obtained by Morris B. Hoffman and colleagues in their evaluation of public defender effectiveness. These authors found that, among people facing serious charges with high penalties, court-appointed attorneys are disproportionately more likely to represent clients who are indisputably guilty because people who believe they have a chance of acquittal are more highly motivated to find resources needed to hire private counsel. This bias in case severity against the public defender is posited as an explanation for poorer sentencing and other outcomes for public defender relative to private assigned cases.

**TABLE 9.4**

<i>Language barriers reduce the chance of public defender counsel for non-citizens.</i>				
	<b>Percent Change in Probability of Each Attorney Type</b>			
	<b>Retained Counsel</b>	<b>Private Appointed Counsel</b>	<b>Public Defender Counsel</b>	<b>Unspecified Counsel</b>
<b>Being a Non-Citizen</b>	---	---	-72.9%	---

Because of their limited foreign-language capacity, on the other hand, public defenders are 72.9% less likely to represent people who are not US citizens (Table 9.4). These defendants are much more likely to have either a retained or private assigned attorney who is fluent in their native language.

### **TYPE OF ATTORNEY INFLUENCES BOND-RELATED OUTCOMES**

Helping clients obtain pretrial release from detention is one of the most important functions of an attorney. People who are out on bond have the benefit of time to prepare a more rigorous defense. Wichita County defendants who make bond experience 86% fewer pretrial jail days, a 30% higher chance of having all charges dismissed, a 24% lower chance of being found guilty, and a 54% shorter jail sentence.

People with private assigned or public defender counsel have the same chance of making bond. However, bonding rates are considerably lower for indigent defendants compared to those who are able to hire an attorney. As a result, defendants with court-appointed counsel spend 55% more pretrial days in jail than statistically identical people with a retained lawyer (Table 9.5).

**TABLE 9.5**

<i>Indigent defendants are less likely to make bond, or take longer if bond is made, than statistically identical people with other types of attorneys. They also spend more total days in pretrial detention.</i>				
	<b>Percent Change in Chance of Key Outcomes by Attorney Type</b>			
	<b>Retained Counsel</b>	<b>Private Appointed Counsel (Relative to Retained Counsel)</b>	<b>Public Defender Counsel (Relative to Retained Counsel)</b>	<b>Unspecified Counsel (Relative to Retained Counsel)</b>
<b>% Difference in Chance of Bond</b>	Comparison Category	-17.4%	-15.4%	---
<b>% Difference in Predicted Days to Bond</b>	Comparison Category	85.8%	94.1%	-29.3%
<b>% Difference in Predicted Pretrial Jail Days</b>	Comparison Category	55.5%	55.4%	-33.2%

## Access to Bond

The same defendants who cannot afford an attorney are also about 16% less likely to post bond than peers with retained counsel (Table 9.5). Indigent defendants, by definition, have fewer resources with which to pay for release. In addition, those indigent defendants who do make bond take nearly twice as long to do so as statistically identical people who can hire a lawyer. People with few resources may be unable to post bond until the amount is substantially reduced, usually with the help of an attorney. If counsel was not requested at magistration, some people spend weeks or months in detention before an application is made. The time to bond is therefore delayed even further in these cases, even if the attorney acted promptly after appointment.

These findings highlight the close connection between personal assets and pretrial release. Importantly, this study finds defendants' ability to pay is a stronger predictor of whether they will make bond than more objective measures of risk to society. For instance, people charged with a first-degree felony or people with up to four prior felony arrests have a better chance of making bond than indigent defendants. Validated assessments based on more meaningful risk indicators than financial status are available.<sup>91</sup> Objective assessments of defendants' likelihood of recidivism or flight not only promote fairness and justice, but also help counties conserve costs by reducing unnecessary detention.

## Delayed Filing of Charges

Lower bonding rates extend pretrial detention in another way, as well. Texas law requires that people in detention be released if charges have not been filed within 15-, 30-, or 90-days of arrest depending on the charges.<sup>92</sup> Because people with retained lawyers are more likely to be out on bond when the deadline arrives, they are less exposed to the risk of unnecessary detention. Since a larger proportion of indigent defendants are still in detention when they become eligible for release, they are more than twice as likely to be held past the prosecutor's required filing date (Table 9.6).

This is a problem that confronts public defenders and private appointed attorneys equally. More than 10% of all indigent defendants spend time in jail that could be avoided. Certainly, defense counsel should be vigilant of the date by which charges must be filed. However, since the county also stands to reduce jail outlays when defendants are released on time, it may be cost-effective to develop a better centralized monitoring capability. In addition to identifying people with unfiled charges, such a system could also alert

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<sup>91</sup> Vera Institute, *supra* note 49. Information and resources for informed pretrial decision-making is available from the Pretrial Justice Institute (<http://www.pretrial.org/Pages/Resources.aspx>). Indicators of risk commonly include things like pending charges, prior criminal record, family and community ties, employment status, and education status. These assessments are typically administered by pretrial services divisions, though Wichita County does not have this type of office.

<sup>92</sup> In Texas, people must be released on a personal recognizance bond if charges have not been filed after 15 days for Class B misdemeanors, 30 days for Class A misdemeanors, and 90 days for felony arrests.

the courts of individuals jailed without counsel so they could be regularly reminded of their right to apply for an attorney.

**TABLE 9.6**

*Indigent defendants are more likely to be unnecessarily detained past the prosecutor’s filing deadline than statistically identical people with other types of attorneys. Lower bonding rates contribute to this finding.*

	<b>Percent Change in Chance of Key Outcomes by Attorney Type</b>			
	<b>Retained Counsel</b>	<b>Private Appointed Counsel</b> <i>(Relative to Retained Counsel)</i>	<b>Public Defender Counsel</b> <i>(Relative to Retained Counsel)</i>	<b>Unspecified Counsel</b> <i>(Relative to Retained Counsel)</i>
<b>% Difference in Chance of Being Detained Past Filing Deadline</b>	Comparison Category	136.9%	113.0%	-30.4%

**People Unable to Post Bond**

For defendants who are unable to get out on bond, a fast charging determination and speedy case disposition offer the only means for release. Indigent defendants often face concerns about losing their jobs and possessions if they remain in jail too long. As long as cases are not being resolved through pressured pleas, faster case processing can help defendants mitigate these outcomes.

Court-appointed attorneys resolve cases more efficiently than privately retained lawyers by two measures. Prosecutors’ charges are filed 25.5% more quickly for public defenders than for retained attorneys. In addition, court-appointed cases are disposed up to 40.9% more quickly than cases represented by hired attorneys (Table 9.7).

**TABLE 9.7**

*Among statistically identical defendants unable to make bond, court-appointed attorneys get charges filed (PD only) and cases disposed more quickly than retained counsel.*

	<b>Percent Change in Chance of Key Outcomes by Attorney Type</b>			
	<b>Retained Counsel</b>	<b>Private Appointed Counsel</b> <i>(Relative to Retained Counsel)</i>	<b>Public Defender Counsel</b> <i>(Relative to Retained Counsel)</i>	<b>Unspecified Counsel</b> <i>(Relative to Retained Counsel)</i>
<b>% Difference in Predicted Days to Charges Filed (Detained Defendants)</b>	Comparison Category	---	-25.5%	---
<b>% Difference in Predicted Days to Case Disposition (Detained Defendants)</b>	Comparison Category	-40.9%	-35.5%	-34.7%

Counties also benefit from faster case processing. Prior research in Texas has shown an earlier charging determination allows for prompt dismissal of cases that cannot be successfully prosecuted, and for faster disposition of those that can.<sup>93</sup> The result is lower costs due to reductions in pretrial jail days.

## TYPE OF ATTORNEY INFLUENCES CASE DISPOSITION

The ultimate criterion of success for a defense attorney is whether their clients are absolved of guilt. Among indigent defendants, public defenders are considerably more successful at avoiding conviction than private appointed counsel.

### Disposition

People who hire a private attorney are the most likely to avoid conviction, but those assigned a public defender have the next best chance of exoneration. Public defender clients are 10.1% less likely to be found guilty than statistically identical people with private assigned counsel. Public defender and private assigned attorneys have identical conviction rates in adjudicated cases. Where they differ, however, is in their rates of dismissal.

**TABLE 9.8**

<i>People with retained attorneys have the best overall chance of dismissal, other things being equal. However, among indigent defendants alone, public defender clients are much more likely to have charges dismissed.</i>				
	<b>Percent Change in Chance of Key Outcomes by Attorney Type</b>			
	<b>Retained Counsel</b>	<b>Private Appointed Counsel</b> <i>(Relative to Retained Counsel)</i>	<b>Public Defender Counsel</b> <i>(Relative to Retained Counsel)</i>	<b>Unspecified Counsel</b> <i>(Relative to Retained Counsel)</i>
<b>% Difference in Chance of Dismissal</b>	Comparison Category	-27.2%	-10.3%	-39.2%
	---	Comparison Category	23.3%	---
<b>% Difference in Chance of a Trial</b>	Comparison Category	---	---	-70.0%
<b>% Difference in Chance of Deferred Adjudication</b>	Comparison Category	---	-30.8%	---

Twenty-two percent of public defender clients have their case dismissed before charges are even filed, compared to just 13% of people represented by private assigned counsel. After filing, public defender

<sup>93</sup> Dottie Carmichael, Melissa Gibson, and Michael Voloudakis, supra note 57.

clients are 23.2% more likely than other indigent defendants to have all charges dismissed (Table 9.8). These impressive odds are largely attributable to the impact of the public defender’s two licensed staff investigators. By locating witnesses, preserving videotape, or assembling other evidence before it is destroyed, these professionals help attorneys successfully challenge the prosecutor in cases of all levels. As a result, public defender clients have a better chance of concluding their encounter with the criminal justice system cleared of a criminal record (Table 9.9).

**TABLE 9.9**

*Because of their better chance of case dismissal, public defender clients are about 10% less likely to be found guilty than other indigent defendants, all things being equal.*

	Percent Change in Chance of Key Outcomes by Attorney Type			
	Retained Counsel	Private Appointed Counsel <i>(Relative to Retained Counsel)</i>	Public Defender Counsel <i>(Relative to Retained Counsel)</i>	Unspecified Counsel <i>(Relative to Retained Counsel)</i>
<b>% Difference in Chance of a Guilty Finding in Adjudicated Cases Only</b>	Comparison Category	---	0.1%	---
<b>% Difference in Chance of a Guilty Finding in Adjudicated &amp; Dismissed Cases</b>	Comparison Category	25.8%	13.2%	40.2%
	---	Comparison Category	-10.1%	---

## Sentencing

While the public defender offers clear advantages over private assigned counsel for exonerations, among individuals who are found guilty, those with public defender counsel receive the least favorable sentencing outcomes (Table 9.10). Though the effect is quite small, people assigned a public defender are 0.20% more likely than people with retained counsel and a 0.12% more likely than other indigent defendants to be punished by jail time instead of probation. In addition, public defender clients can expect a 28.7% longer jail sentence than peers with a private appointed attorney, other things being equal. This translates to a sentence that is 11.8 days longer for a “typical” defendant.<sup>94</sup>

While there is no explanation for the public defender’s longer sentences in the data, there are a number of anecdotal factors that appear to be influential. First, the public defender office generally receives the more challenging cases, particularly in the higher-level offense categories. For example, in cases involving multiple defendants all charged with the same level felony, the public defender will ordinarily be assigned the person considered most culpable. Similarly, in instances where assigned private attorneys file a motion

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<sup>94</sup> Supra note 50.

to withdraw from a difficult case, these defendants are consistently re-assigned to the public defender. Because the office has a stronger infrastructure including investigators, they are better equipped to handle these more complex cases that might test the capacity of small practice or solo attorneys.<sup>95</sup>

**TABLE 9.10**

<i>Convicted people represented by a public defender are only slightly more likely than other court-appointed defendants to receive a jail sentence, all things being equal. However, punishments for public defender clients are considerably longer than statistically identical peers with private appointed counsel (11.8 days longer for a “typical” defendant).</i>				
	<b>Percent Change in Chance of Key Outcomes by Attorney Type</b>			
	<b>Retained Counsel</b>	<b>Private Appointed Counsel</b> <i>(Relative to Retained Counsel)</i>	<b>Public Defender Counsel</b> <i>(Relative to Retained Counsel)</i>	<b>Unspecified Counsel</b> <i>(Relative to Retained Counsel)</i>
<b>% Difference in Chance of a Jail Sentence (Instead of Probation)</b>	Comparison Category	0.08%	0.20%	---
	---	Comparison Category	.012%	---
<b>% Difference in Predicted Jail Days Sentenced</b>	Comparison Category	22.5%	57.7%	-50.2%
	---	Comparison Category	28.7%	---
<b>% Difference in Predicted Probation Days Sentenced</b>	Comparison Category	---	---	-18.2%

The public defender’s high case dismissal rate may also contribute to longer sentencing by excluding weaker cases that would produce smaller penalties. If, after dismissals, only manifestly guilty people remain on the public defender’s caseload, sentencing outcomes may be severe relative to other attorneys with a more general mix of cases. Finally, it is possible that private assigned attorneys are simply more proficient at negotiating sentences with the prosecutor as a result of their greater experience. Court-appointed private practice attorneys surveyed say they have more than three times as many years of experience as public defender counsel (16.3 years and 4.8 years on average, respectively).

**PUBLIC DEFENDER INDIGENT DEFENSE COUNSEL IS COST-EFFECTIVE**

Cost and quality of counsel are among the most important considerations for counties contemplating the public defender model. Public defenders provide an institutional infrastructure to supervise attorney performance, monitor caseloads, and support professional development – all tools to promote quality of

<sup>95</sup> Supra note 65.

counsel. At the same time, public defender offices offer economies of scale that can help contain costs. This study suggests that the public defender does indeed provide more service than private assigned attorneys while also producing a cost advantage for both the county and defendants.

## **Costs of Counsel**

According to the Commission's public information website, the public defender office represented 1,882 cases between October 1, 2010 and September 30, 2011 at a total cost of \$655,982.<sup>96</sup> If these same cases had been represented by private assigned attorneys at the cost per case reported to the Commission<sup>97</sup> the county would have paid an additional \$14.23 per case.

Not only are public defenders more efficient in terms of cost, they are also more effective in terms of service delivery. Survey data shows public defender attorneys make initial contact and meet face-to-face with indigent clients 1 to 3 days earlier than attorneys in private practice, spend 21% more time on each misdemeanor and 42% more time on each felony case, and engage in more assertive pretrial advocacy as indicated by self-reported motion practice. If private assigned attorneys spent this same amount of time on the cases they represent, at their current hourly rate the cost of counsel would increase from \$200 to \$328 for each misdemeanor and from \$300 to \$722 for each felony. Overall costs to the county would rise by \$141,699.

## **Case Processing Costs**

In 2011 the public defender spent \$121,732 on investigators' services. These staff investigators assist in virtually all felony cases and in many misdemeanors. By contrast, auditor's data shows investigation is used in less than 1% of all cases represented by private assigned counsel and just 15% of the most severe "3 G" offenses.<sup>98</sup>

By gathering evidence early in the case before it is lost or destroyed, investigators preserve information needed to demonstrate to the prosecutor which cases are unlikely to stand up in court. As a result of this important resource, the public defender is much more successful than private assigned lawyers at attaining charge reductions and dismissals for their clients.

A multivariate model was constructed to demonstrate this effect using 100 statistically identical defendants assigned either public defender or a private assigned attorney. At the end of case processing, 13 fewer public defender clients are projected to be adjudicated on felony charges. Eleven of these individuals are

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<sup>96</sup> Supra note 71.

<sup>97</sup> Texas Indigent Defense Commission, supra note 7.

<sup>98</sup> Supra note 76.

expected to have all charges dismissed and 2 are expected to be adjudicated on reduced misdemeanor charges.

Whenever charges are reduced or dismissed, costs are avoided for court processing, prosecution, pretrial detention, and lost employment opportunity for defendants. Based on the results of the model, Wichita County avoids an average of \$269 for each statistically identical indigent defendant represented by the public defender instead of a private appointed attorney. After deducting the cost of investigation services – \$59 per case on average – the net benefit of public defender investigation equals \$210 per case. Public defender clients benefit as well, retaining an average \$179 more in personal earnings due to less time in pretrial detention.

### **Post-Disposition Jail Costs**

The third major area in which costs can be expected to differ between public defender and private assigned counsel involves post-disposition jail days. Among individuals found guilty, public defender clients have been shown to receive jail sentences nearly 30% higher than statistically identical peers with a private assigned attorney. When people found not guilty or with charges dismissed are included in the analyses, however, the differences by attorney type are much smaller. A model comparing 100 statistically identical defendants with each type of counsel shows that “typical” public defender clients<sup>99</sup> are expected to serve 21.32 post-disposition jail days, while those with a private assigned lawyer will serve 20.87 days in jail.<sup>100</sup> The difference of 0.45 days translates to an additional \$20 in costs to the county, and \$19 in defendant costs, for each case represented by the public defender.

### **Total Cost Impact of the Public Defender**

In summary, the public defender is able to deliver legal defense services for \$14.23 less cost per case, while investigation and other services provided by the office net a savings of \$210 in criminal case processing costs avoided for each client. On the other hand, public defender clients cost the county an additional \$20 per case in post-disposition jail costs compared to like defendants with private assigned counsel. Altogether these produce a net \$204 benefit per case to Wichita County.

For public defender clients, the \$19 loss of income due to more post-disposition jail time is offset by \$179 in additional income due to pretrial jail days avoided as a result of dismissals and charge reductions. Public defender services therefore produce a net \$160 in personal benefits for each client. The total benefit of the public defender for the county as well as defendants is estimated at \$364 per case.

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<sup>99</sup> Supra note 50.

<sup>100</sup> Ana Yanez-Correa and Molly Totman, supra note 85. Post-disposition jail days were measured as the difference between jail days sentenced and jail days credited. Each jail day was assumed to cost \$45.

## CONCLUSION

This case study from Wichita County offers just one perspective on the public defender model of indigent defense. It is not known if the effects measured here can be replicated in other public defender offices in Texas or elsewhere. Less mature offices, or those that are structured differently, may produce different results.<sup>101</sup> This research nonetheless confirms that public defender systems can be a viable model for the provision of indigent defense.

Findings show there are limitations to the model. Public defenders offer no advantages over private assigned counsel in bond-related outcomes, and public defender clients who are found guilty have worse sentencing outcomes than people with an assigned private attorney.

On the whole, however, the results validate the use of public defenders. Surveys indicate public defender attorneys provide a higher level of service, and their work is supported by investigators in the majority of cases. Consequently, people represented by a public defender are more likely to have all charges against them dismissed, and are less likely to be found guilty overall.

More dismissals mean counties can avoid many of the case processing costs associated with fully adjudicated cases and defendants benefit from fewer days in detention. Lower attorney and case processing costs produce a net benefit of \$204 to the county and \$160 to the defendant in each case represented by the public defender instead of a private assigned attorney.

These findings should give Texas counties confidence to explore whether a public defender office might be a good fit in their community. Though drawbacks exist, on the whole the data suggests public defenders can provide a higher quality of service at a lower cost than the more pervasive indigent defense systems using assigned private attorneys alone. Counties interested in achieving these outcomes can potentially strengthen local indigent defense system with a public defender to complement the existing private bar.

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<sup>101</sup> For example, other types of public defender offices include multi-county or regional configurations, specialized client populations such as juveniles or people with mental illness, or appeals cases. The complete list of public defender offices in Texas was available as of September 15, 2012 at <http://www.txcourts.gov/tidc/pdf/webpagepdmac.pdf>.

**APPENDIX A**  
**Methodological Notes**



# APPENDIX A

## Methodological Notes

Throughout this report, statistical procedures were used to measure factors that influence the type of attorney a defendant will have (Chapter 5), as well as the impact of attorney type on outcomes such as access to bond (Chapter 6), case disposition (Chapter 7), and indigent defense costs (Chapter 8). Two statistical methods were used to extract these findings including descriptive analyses (with results shown in tables) and multivariate analyses (with results shown in figures).

Descriptive Analyses. Descriptive (also called “bivariate”) analyses show the simple relationship between two variables. For example, descriptive analyses might show the proportion of people with mental illness that are represented by each attorney type, or the percentage of defendants that make bond with each type of counsel. While informative, bivariate analyses do not account for the influence of any factors other than the two variables being presented. If, for instance, defendants who are mentally ill are also more likely to have a large number of prior arrests and more likely to be indigent, bivariate analyses cannot separate the effects of these three different attributes on outcomes being measured.

Multivariate Analyses are a more sophisticated statistical technique that makes up for this limitation. Multivariate analyses control for the effect of all variables included the model at once. They can isolate the effect of changing a single client or case attribute while holding all other measurable factors constant.<sup>1</sup> As an example, with this tool, the effect of attorney type on the chance of making bond can be measured for people who are statistically identical in every way except their type of counsel (i.e., same demographics, same current offense, same number of charges, and same mental health status, among other things).

Interpreting Multivariate Findings. Because multivariate models account for every value of every variable at the same time, presenting results in a way that is easily understood can be a challenge. To communicate findings, a single value known as a “constant” is assigned to each variable being modeled. The most frequently occurring value (i.e., the mode) is usually assigned to dichotomous or categorical variables, while the mean is assigned to continuous variables. Because the values assigned are generally the most common in the dataset, results are said to represent a “typical” person. The values assigned to the “typical” person in the current analysis are shown in Table A2, below.

The characteristics of the “typical” person are first modeled to produce a known “base probability” for each outcome being tested (e.g., type of counsel assigned, access to bond, findings of guilt). The base probability describes the chance the “typical” defendant has of each outcome. One characteristic of the

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<sup>1</sup> Multivariate analyses can only control for factors for which data is available. A number of variables that could potentially impact type of counsel (e.g., client income and language) were unavailable in the current study.

“typical” defendant is then allowed to vary, and the effect of this change on the chance of the outcome is measured as a percentage change from the base.

**TABLE A1**

**Effect of Each Attorney Type on Bond Outcomes**

	<b>Retained Counsel Comparison Group</b>	<b>Private Appointed</b>	<b>Public Defender</b>	<b>Unspecified Counsel</b>
<b>Bond Made</b>				
Base Probability	91.0%	---	---	---
Effect Size	---	-17.4%	-15.4%	NS
Adjusted Probability	---	75.1%	77.0 %	

As an example, Table A1 shows the effect of each attorney type on the chance an individual will make bond compared to the retained counsel base category (i.e., the “typical” defendant is assumed to have retained counsel). People with retained counsel have a 91.0% chance of making bond (i.e., the base probability). People with a private appointed attorney have an 17.4% lower chance of making bond, or an actual probability of 75.1%. People with a public defender have a 15.4% lower chance of making bond, or an actual probability of 77.0%. People with unspecified counsel have a chance of making bond that is statistically identical to that of the retained counsel comparison group.

For the multivariate results reported in this study, effect size for each outcome tested is reported as the percent change from the base. The percent change above or below the base value is depicted graphically.

**TABLE A2**

**Multivariate Measures and Assigned Base Value**

*(Not all variables were used in all models)*

<b>VARIABLE NAME</b>	<b>VARIABLE TYPE/DEFINITION</b>	<b>ASSIGNED “TYPICAL” VALUE</b>
<b>Type of Counsel</b>		
Attorney Type	Categorical <ul style="list-style-type: none"> <li>• Pro Se or No Attorney Recorded</li> <li>• Private Assigned Counsel</li> <li>• Public Defender</li> <li>• Retained Counsel</li> </ul>	Retained Counsel

Continued...

**TABLE A2**

**Multivariate Measures and Assigned Base Value, Continued**

VARIABLE NAME	VARIABLE TYPE/DEFINITION	ASSIGNED "TYPICAL" VALUE
<b>Case Characteristics</b>		
Number of Prior Misdemeanor Arrests	Continuous- Number of misdemeanor arrests in the prior 2 Years.	Mean = 0.41
Number of Prior Felony Arrests	Continuous- Number of felony arrests in the prior 2 years.	Mean =0.24
Number of Charges Filed	Continuous- Number of charges filed	Mean = 1.28
Most Severe Charge Filed in the Current Offense	Categorical <ul style="list-style-type: none"> <li>• Misdemeanor B</li> <li>• Misdemeanor A</li> <li>• State Jail Felony</li> <li>• 1<sup>st</sup> Degree Felony</li> <li>• 2<sup>nd</sup> Degree Felony</li> <li>• 3<sup>rd</sup> Degree Felony</li> <li>• Capital Felony</li> </ul>	Misdemeanor B
Drug Offense	Dichotomous <ul style="list-style-type: none"> <li>• One of the charges is a drug offense</li> <li>• None of the charges are a drug offense</li> </ul>	None of the charges are a drug offense.
Felony Probation Violation	Dichotomous <ul style="list-style-type: none"> <li>• Defendant was on probation for a felony at arrest</li> <li>• Defendant was not on probation for a felony at arrest</li> </ul>	Defendant was not on probation for a felony at arrest
Bond Made	Categorical <ul style="list-style-type: none"> <li>• Bond made</li> <li>• Bond not made</li> </ul>	Bond made
Disposition Method	Categorical <ul style="list-style-type: none"> <li>• Plea</li> <li>• Trial</li> </ul>	Plea
Type of Plea	Categorical <ul style="list-style-type: none"> <li>• Deferred adjudication</li> <li>• No deferred adjudication</li> </ul>	No deferred adjudication
<b>Institutional Factors</b>		
Arresting Agency	Categorical <ul style="list-style-type: none"> <li>• Wichita Falls Police Department</li> <li>• Wichita County Sheriff's Office</li> <li>• Other law enforcement agencies</li> </ul>	Wichita Falls Police Department
Court of Jurisdiction	Categorical <ul style="list-style-type: none"> <li>• 30th District Court</li> <li>• 78th District Court</li> <li>• 89th District Court</li> <li>• County Court-at-Law #1</li> <li>• County Court-at-Law #2</li> </ul>	County Court-at-Law #2

Continued...

**TABLE A2**

**Multivariate Measures and Assigned Base Value, Continued**

VARIABLE NAME	VARIABLE TYPE/DEFINITION	ASSIGNED "TYPICAL" VALUE
<b>Defendant Characteristics</b>		
Sex	Dichotomous <ul style="list-style-type: none"> <li>• Male</li> <li>• Female</li> </ul>	Male
Race	Categorical <ul style="list-style-type: none"> <li>• African American</li> <li>• Hispanic</li> <li>• White</li> <li>• Other</li> </ul>	White
Citizenship	Dichotomous <ul style="list-style-type: none"> <li>• Citizen</li> <li>• Non-Citizen/No Record</li> </ul>	Citizen
Mental Health Status	Dichotomous <ul style="list-style-type: none"> <li>• Mental health indicator present at arrest</li> <li>• No mental health indicator present at arrest</li> </ul>	No mental health indicator present at arrest
Medical Condition Status	Dichotomous <ul style="list-style-type: none"> <li>• Medical condition indicators present at arrest</li> <li>• No medical condition indicators present at arrest</li> </ul>	No medical condition indicators present at arrest
Substance Abuse Status	Dichotomous <ul style="list-style-type: none"> <li>• Substance use indicators present at arrest</li> <li>• No substance use indicators present at arrest</li> </ul>	No substance use indicators present at arrest

## **APPENDIX B**

### **Attorney Survey**



## APPENDIX B

### Email Survey of Wichita County Court-Appointed Defense Attorneys

#### EXPERIENCE

How many years have you been licensed to practice criminal law? \_\_\_\_\_

What type of practice do you have?

- Solo practice
- Partnership/LLC
- Office share agreement
- Public Defender
- Other

Please describe your main areas of practice.

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#### CASELOADS

In the past 4 years have you represented indigent defendants in Wichita County?

- Yes \_\_\_\_\_  
No \_\_\_\_\_ → [IF NO, APPLY "RETAINED" QUESTIONS ONLY]

How many new cases do you accept in a typical month in each of the following categories:

- a) Appointed misdemeanor cases? \_\_\_\_\_
- b) Retained misdemeanor cases? \_\_\_\_\_
  
- c) Appointed felony cases? \_\_\_\_\_
- d) Retained felony cases? \_\_\_\_\_
  
- e) Civil cases? \_\_\_\_\_
  
- f) Juvenile cases? \_\_\_\_\_

Total new cases per month: (autocalculate)

How many total cases of all types do you usually have on you active caseload at any given time? \_\_\_\_\_

**APPOINTED PRACTICE**

How many billable hours does it typically take to dispose an appointed case? Answer for each type of case that you accept:

Misdemeanor            \_\_\_ hours  
 Felony                    \_\_\_ hours

[Measurable??] In what percentage of appointed cases do you typically file one or more pre-trial motions?

Misdemeanor            \_\_\_%  
 Felony                    \_\_\_%

[Measurable??] How many hearings does it typically take to dispose appointed cases in Wichita County?

Misdemeanor            \_\_\_ hearings  
 Felony                    \_\_\_ hearings

How many hours after being notified of an appointment do you typically contact an appointed client:

In custody                \_\_\_ hours  
 Out of custody            \_\_\_ hours

How many hours after being notified of an appointment do you typically meet with an appointed client:

In custody                \_\_\_ hours  
 Out of custody            \_\_\_ hours

In what percent of appointed cases do you perform the following types of investigation into the facts of a case?

	Misdemeanor	Felony
Interview the client	___%	___%
Review the District Attorney's file	___%	___%
You or a staff employee speak to witnesses, views the crime scene, or conducts other investigation into the case facts	___%	___%
Hire professional investigator	___%	___%

Only considering appointed cases, in what percent of cases do you request an expert witness?

Misdemeanor            \_\_\_%  
 Felony                    \_\_\_%

Of the requests made for either investigation or expert witnesses in appointed cases, what percent are typically approved?

Misdemeanor            \_\_\_%  
 Felony                    \_\_\_%

In what percentage of appointed cases do you use the county's video-technology system at least once to meet with clients?

Misdemeanor            \_\_\_%  
 Felony                    \_\_\_%

**RETAINED PRACTICE**

How many billable hours does it typically take to dispose a retained case? Answer for each type of case that you accept:

Misdemeanor            \_\_\_ hours  
 Felony                    \_\_\_ hours

What is your hourly rate for each type of case that you accept?

Misdemeanor            \$\_\_\_ per hour  
 Felony                    \$\_\_\_ per hour

[Measurable??] In what percentage of retained cases do you typically file one or more pre-trial motions?

Misdemeanor            \_\_\_%  
 Felony                    \_\_\_%

[Measurable??] How many hearings does it typically take to dispose retained cases in Wichita County?

Misdemeanor            \_\_\_ hearings  
 Felony                    \_\_\_ hearings

In what percent of retained cases do you perform the following types of investigation into the facts of a case?

	Misdemeanor	Felony
Interview the client	___%	___%
Review the District Attorney's file	___%	___%
You or a staff employee speak to witnesses, view the crime scene, or conduct other investigation into the case facts	___%	___%
Hire professional investigator	___%	___%

Only considering retained cases, in what percent of cases do you request an expert witness?

Misdemeanor            \_\_\_%

Felony                    \_\_\_%

In what percentage of retained cases do you use the county's video-technology system to meet with clients at least once?

Misdemeanor            \_\_\_%

Felony                    \_\_\_%

**TRAINING**

How many total hours of continuing legal education (CLEs) do you receive annually, on average?

1-2 hours

3-4 hours

5-8 hours

9 or more hours

How long has it been since you received training or CLEs related to criminal cases?

Within the past 6 months

Within the past 12 months

Within the past 18 months

Within the past 2 years

Longer than 2 years

## **APPENDIX C**

### **Detail Underlying Cost Calculations**



# APPENDIX C

## Detail Underlying Cost Calculations

### DETAIL FOR TABLE 8.1

Public defender costs were taken from Wichita County's FY 2011 actual expenditure records (available from the Wichita County Treasurer) covering the period January through December 2011. Because the expenditure record did not break out salaries and fringes for each position in the office, costs were apportioned to each job title based on Wichita County's FY 2011 budget.

Costs were divided between legal services and investigators based on job titles as shown in Table C1, below. Costs for job titles with an administrative support function were distributed proportionally between costs of counsel and costs of investigation.

**TABLE C1**

**Allocation of Public Defender's 2011 Actual Expenditures  
by Legal and Investigative Costs**

	Legal Services	Investigators	Administrative
<b>Public Defender</b>	\$43,714		\$43,714
<b>Attorneys</b>	\$270,564		
<b>Legal Secretaries</b>	\$47,359		
<b>Investigators</b>		\$65,922	
<b>Other Clerical</b>			\$82,949
<b>Fringe</b>	\$120,054	\$24,310	\$50,468
<b>Miscellaneous Costs*</b>			\$28,660
<b>Direct Costs</b>	<b>\$481,691</b>	<b>\$90,232</b>	\$205,791
<b>Indirect</b>	<b>\$174,291</b> <i>(85% of \$205,791)</i>	<b>\$31,500</b> <i>(15% of \$205,791)</i>	
<b>Total</b>	<b>\$655,982</b>	<b>\$121,732</b>	

\* Includes auto allowance.

## DETAIL FOR TABLE 8.2

Calculations to compute projected costs for private attorneys to represent public defender clients in Table 8.2 are as follows:

**TABLE C2**

### Projected Cost for Private Assigned Counsel to Represent the Public Defender Caseload

	<i>TIDC Public Info. Website<sup>1</sup></i>	<i>TIDC Public Info. Website<sup>1</sup></i>	<i>Cases/ Payments</i>	<i>TIDC Public Info. Website<sup>1</sup></i>	<i>Private Assigned Counsel Cost per Case x Number of PD Cases</i>
	<b>Payments to Private Assigned Attorneys</b>	<b>Number of Cases Assigned to Private Attorneys</b>	<b>Cost per Case</b>	<b>Number of Public Defender Cases</b>	<b>Projected Cost for Private Attorneys to Represent Public Defender Clients</b>
<b>Misdemeanor</b>	\$147,715	639	\$231	883	\$204,119
<b>Felony</b>	\$354,205	593	\$597	662	\$395,419
<b>Appeals</b>	\$26,996	10	\$2,700	4	\$10,798
<b>Dismissed Uncharged</b>	\$34,145	157	\$217	333	\$72,422
<b>Total</b>	\$563,061	1,399	---	1,882	\$682,759

<sup>1</sup> See the 2011 Indigent Defense Expenditure Report available on the Texas Indigent Defense Commission public information website at <http://tidc.tamu.edu/public.net/Reports/CountyFinancialReport.aspx?cid=243&fy=2011>).

## DETAIL FOR TABLE 8.4

Calculations to derive hourly rates for private assigned attorneys in Table 8.4 are as follows.

TABLE C3

### Private Assigned Counsel Cost per Hour

Sources:	<i>TIDC Public Info. Website<sup>1</sup></i>	<i>Known from Survey</i>	<i>Total Cases x Hours/Case</i>	<i>TIDC Public Information Website<sup>1,2</sup></i>	<i>Total Cost/ Total Hours</i>
	<b>PD Cases</b>	<b>Average Hours/Case</b>	<b>Total Hours</b>	<b>Total Cost</b>	<b>Cost/Hour</b>
<b>Misdemeanor</b>	639	3.1	1,981	\$147,715	\$74.57
<b>Felony</b>	593	8.6	5,100	\$354,205	\$69.45
<b>Appeals</b>	10	33.1 <sup>3</sup>	331	\$26,996	\$81.49
<b>Dismissed Uncharged</b>	157	1.0 <sup>4</sup>	157	\$34,145	\$217.48
	1,399	---	7,569	\$563,061	\$74.39

TABLE C4

### Public Defender Cost per Hour

Sources:	<i>TIDC Public Info. Website<sup>1</sup></i>	<i>Known from Survey</i>	<i>Total Cases x Hours/Case</i>	<i>Pro-rated from 2011PD legal services expenditures<sup>1,2</sup></i>	<i>Total Cost/ Total Hours</i>
	<b>PD Cases</b>	<b>Average Hours/Case</b>	<b>Total Hours</b>	<b>Total Cost</b>	<b>Cost/Hour</b>
<b>Misdemeanor</b>	883	4.4	3,885	\$150,876	\$38.83
<b>Felony</b>	662	10.4	6,885	\$452,628	\$65.74
<b>Appeals</b>	4	40.0 <sup>3</sup>	160	\$52,479	\$327.83
<b>Dismissed Uncharged</b>	333	1.0 <sup>4</sup>	0 <sup>5</sup>	\$0.00	\$0
	1,882	---	10,930	\$655,982	\$60.02

<sup>1</sup> See the 2011 Indigent Defense Expenditure Report available on the Texas Indigent Defense Commission public information website at <http://tidc.tamu.edu/public.net/Reports/CountyFinancialReport.aspx?cid=243&fy=2011>).

<sup>2</sup> Public defender expenditures were taken from the Wichita County expenditure report for the period January 1 – December 31, 2012, obtained from the County Treasurer through a public information request. Actual expenditure data from the County Treasurer was used instead of the expenditures reported on the Indigent Defense Expenditure Report (IDER) because the county data offered the most accurate means to allocate legal costs and investigative costs. Total public defender legal expenditures (excluding costs of investigators) were allocated across offense levels (misdemeanor, felony, appeals, and uncharged) based on the proportion of total personnel costs in each category reported in the Indigent Defense Expenditure Report (IDER).

<sup>3</sup> Because the attorney survey did not ask about the time spent in appeals, the public defender's office was asked to estimate hours for these cases. The public defender estimate was applied to private assigned attorneys after a 17% downward adjustment proportional to the difference in time spent by public defenders and private attorneys in felony cases.

<sup>4</sup> Because the attorney survey did not ask about time spent on cases that were dismissed prior to charges being filed, a minimal one-hour estimate was applied to cover time associated with receiving the request for counsel, initial contact with the client, and any work associated with achieving the dismissal.

<sup>5</sup> The public defender clearly does spend time representing cases that are dismissed before charges are filed. However, since they do not attribute costs to these cases in the TIDC Indigent Defense Expenditure report, it was not possible to compute a specific cost for these cases. Costs for unfiled cases are therefore assumed to be distributed across misdemeanor, felony, and appeals as described in Note 2, above.

## DETAIL FOR TABLE 8.7

Information about cases disposed in County and District Court was taken from the Texas Office of Court Administration's Court Activity Reporting and Directory System available on September 17, 2012 at <http://card.txcourts.gov/AdHocSearchNew.aspx>. These case counts were used to allocate costs between County and District Court and between criminal and non-criminal cases within each court.

**TABLE C5**

### Number and Percent of Criminal Cases Disposed in CY 2011

	Non-Criminal Cases <sup>1</sup>	Criminal Cases	Total Cases	% of All Cases in Each Court (n=10,172)	% of Cases in Each Court that are Criminal
<b>County Court</b>	1,144	3,761	4,905	48.2%	76.7%
<b>District Court</b>	3,122	2,145	5,267	51.8%	40.7%
<b>Total</b>	4,266	5,906	10,172	100%	

<sup>1</sup> Non-criminal cases include civil, juvenile, family, probate, and mental health.

### Allocation of Court Costs

Court, juror, and prosecutors' costs for the 2011 budget year were taken from the 2012 Wichita County Budget, available on September 17, 2011 at <http://www.co.wichita.tx.us/postings.htm>. Criminal case processing costs were assigned to courts and related support services as follows:

**TABLE C6**

### Allocation of Criminal Case Processing Costs between County and District Courts<sup>1</sup>

	Total Budgeted Costs	76.7% of County Court budget goes toward cases that are criminal	40.7% of District Court budget goes toward cases that are criminal
County Court Budget	\$559,061	\$428,670	
District Court Budget	\$397,865		\$162,032

<sup>1</sup> In Table 8.7, misdemeanor costs per case are higher than felony costs per case. This unintuitive result occurs because 76.7% of cases and estimated costs in County Court are criminal, whereas only 40.7% of cases and estimated costs in District Court are criminal. Proportionally fewer District Court costs attributed to criminal case processing produces a lower cost per felony case compared to misdemeanors.

**TABLE C7****Allocation of Other County Court-Related Criminal Case Processing Costs**

	<b>Total Budgeted Costs</b>	<b>48.2% of total budget goes toward cases in County Court</b>	<b>76.7% of County Court budget goes toward cases that are criminal</b>
Court Administration	\$157,817	\$76,068	\$58,351
Supply and Operation	\$144,200	\$69,504	\$53,317
Jurors	\$135,006	\$65,101	(100% of juror costs are criminal)

**TABLE C8****Allocation of Other District Court-Related Criminal Case Processing Costs**

	<b>Total Budgeted Costs</b>	<b>51.8% of total budget goes toward cases in District Court</b>	<b>40.7% of District Court budget goes toward cases that are criminal</b>
Court Administration	\$157,817	\$81,749	\$33,279
Supply and Operation	\$144,200	\$74,696	\$30,408
Jurors	\$135,006	\$69,905	(100% of juror costs are criminal)

**Allocation of Prosecutor's Costs**

The Prosecutors' 2011 budgeted amount was allocated between felonies and misdemeanors based on the National Advisory Commission on Criminal Justice Standards and Goals for prosecutor caseload. See National Advisory Commission on Criminal Justice Standards and Goals, *Courts Report* (Washington, DC: US Department of Justice, 1973).

By applying NAC guidelines, a misdemeanor is estimated to take 5 hours of prosecutors' time per case, and a felony is estimated to take 14 hours per case, calculated as follows.

- 2088 annual work hours/maximum 400 misdemeanor cases = 5 hours/case
- 2088 annual work hours/maximum 150 felony cases = 14 hours/case

These estimates of time per case were used as follows to compute prosecutors' percent time spent on felonies and misdemeanors.

**TABLE C9**

**Prosecutor's Time Allocation**

Sources:	<i>Known from dataset</i>	<i>Computed as described above</i>	<i># cases x hours/case</i>	<i>Misd. and felony work hours/ Total work hours</i>
	<b># Cases</b>	<b>Hours/Case</b>	<b>Total Work Hours</b>	<b>Percentage Allocation</b>
<b>Misdemeanors</b>	3,761	5	29,858	60%
<b>Felonies</b>	2,145	14	19,632	40%

Percentage time allocations were applied to the district attorney's 2011 budget to assign costs for prosecuting felony and misdemeanor cases (Table C9):

**TABLE C10**

**Application of Prosecutor's Time Allocation to Cost**

	<b>Total Cost</b>	<b>Felony Costs (Total x 60%)</b>	<b>Misdemeanor Costs (Total x 40%)</b>
<b>Criminal District Attorney</b>	\$2,575,037	\$1,553,550	\$1,021,487

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