**Who's better at defending criminals? Does type of defense attorney matter in terms of producing favorable case outcomes**

**By Thomas H. Cohen**[*]

The role of defense counsel in criminal cases constitutes a topic of substantial importance for judges, prosecutors, defense attorneys, scholars, and policymakers. What types of defense counsel (e.g., public defenders, privately retained attorneys, or assigned counsel) represent defendants in criminal cases and how do these defense counsel types perform in terms of securing favorable outcomes for their clients? These and other issues are addressed in this article analyzing felony case processing data from the Bureau of Justice Statistics (BJS). Specifically, this paper examines whether there are differences between defense counsel type and the adjudication and sentencing phases of criminal case processing. Results show that private attorneys and public defenders secure similar adjudication and sentencing outcomes for their clients. Defendants with assigned counsel, however, receive less favorable outcomes compared to their counterparts with public defenders. This article concludes by discussing the policy implications of these findings and possible avenues for future research.

**Introduction**

The Sixth Amendment to the U.S. Constitution establishes the right to counsel in Federal criminal prosecutions. The U.S. Supreme Court expanded the defense counsel right for indigent defendants in a series of cases decided in the 1960s and 1970s. One of the landmark decisions that occurred during this period was *Gideon v. Wainwright* (372 U.S. 335 (1963)) where the U.S. Supreme Court held that a defendant charged with a felony, including state crimes, had the right to government provided counsel. The Supreme Court further extended the defense counsel right to juvenile court proceedings in the *In re Gault* case (387 U.S. 1 (1967)) and to defendants facing imprisonment for either felony or misdemeanor offenses in *Argersinger v. Hamlin* (407 U.S. 25 (1972)). More recently the Court held in *Alabama v. Shelton* (535 U.S. 654 (2002)) that indigent defendants are entitled to court appointed counsel even when facing a suspended jail term.

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While the Supreme Court has recognized the right to defense counsel in most criminal proceedings, it has not mandated how the provision of criminal defense should be provided by the states. For this reason, states have adopted a variety of approaches to defending the criminally accused including the utilization of some combination of public defender systems, assigned counsel programs, or contract attorneys (Neubauer and Fradella, 2011). In addition, defendants with the means can always hire their own attorneys for the purpose of criminal defense. The ability of some defendants to hire their own attorneys, coupled with the fact that many defendants do not have the means to pay for legal representation, raises questions of attorney effectiveness. What types of defense counsel represent criminal defendants and how do these attorneys perform in terms of securing favorable outcomes for their clients? Are private attorneys more effective in keeping their clients from being convicted and protecting those convicted clients from harsher punishments than public defenders or assigned counsel? How do assigned counsel systems perform in comparison to public defenders? Are assigned counsel securing dismissals and obtaining sentences at rates similar to that of public defenders?

This article will address these key questions about the role of defense counsel in criminal cases. First, it will detail the types of defense counsel currently employed in state courts and highlight prior research examining the effectiveness of public defenders, assigned counsel and private attorneys. The data utilized in this article will be described and then a bivariate analysis examining how frequently the various types of defense counsel including public defenders, assigned counsel and private attorneys are employed and whether key case outcomes including the likelihood of conviction, incarceration, and sentence length vary by these defense attorneys will be provided. This paper will then build on the bivariate findings by attempting to model the outcomes of conviction, incarceration, and sentence length for the purpose of discerning whether

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associations at the bivariate level hold when other factors related to these outcomes are statistically controlled. Model results will be explicated and the article will conclude by discussing the possible repercussions and implications inherent in the current research.

**Types of defense counsel in state courts**

Although the U.S. Supreme Court requires states to provide representation to indigent defendants, the method of defense counsel provision is not specified. Consequently, states have adopted different approaches to providing counsel for poor defendants. The major types of publicly financed defense counsel representation provided by the states include some combination of public defender systems, assigned counsel programs, or contract attorneys (Neubauer and Fradella, 2011; Spangenberg and Beeman, 1995). These systems of indigent defense are applied in a blended format throughout the states. Some states, for example, employ statewide public defender systems but still utilize contract or assigned counsel in conflict cases or as a means of alleviating heavy caseloads. Other states have no centralized mechanism of public defense and employ differing methods of indigent representation at the local level with some counties using public defenders and others employing contract attorneys or assigned counsel in the same state (Farole and Langton, 2010; Spangenberg and Beeman, 1995). [1]

Of all the methods of indigent representation, the system of assigned counsel is perhaps the oldest (Neubauer and Fradella, 2011). Assigned counsel systems involve the appointment by the courts of private attorneys as needed from a list of available attorneys. Assigned counsel systems consists of either an ad hoc structure where private attorneys are appointed by judges on a case by case basis or coordinated systems in which an administrator oversees the appointment

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[1] While there are no nationwide statistics on the prevalence of these three forms of indigent defense, a survey of indigent defense systems in the nation's 100 most populous counties conducted in 2000 showed public defenders handling 82%, assigned counsel 15%, and contract attorneys 3% of the 4.2 million cases disposed of in these counties (DeFrances and Litras, 2000).

of counsel (Neubauer and Fradella, 2011; Spangenberg and Beeman, 1995). Assigned counsel systems have been criticized for appointing attorneys with inadequate skills, experience, and qualifications to represent indigent defendants. This problem is especially acute in counties with ad-hoc assignment systems where recent law school graduates or attorneys of marginal capabilities will sometimes take clients as a means of gaining trial experience or supplementing income (Neubauer and Fradella, 2011; Iyengar, 2007; Beck and Shumsky, 1997; Spangenberg and Beeman, 1995; Gist, 1989-1990). Scholars specializing in indigent defense, however, argue that these weaknesses can be overcome by the establishment of administrative oversight organizations whose purpose is to ensure that appointed counsel have the requisite skills and qualifications to provide adequate defense. These oversight boards can also provide supervision, training, and support for attorneys selected to participate in assigned counsel systems (Spangenberg and Beeman, 1995).

Compared to assigned counsel systems, contract attorneys are a more recent approach for providing indigent representation through the private market (Neubauer and Fradella, 2011). Contract attorneys involve governmental units reaching agreements with private attorneys, bar associations, or law firms to provide indigent defense services for a specific dollar amount and time period (Spangenberg and Beeman, 1995; Worden, 1993, 1991). Although contract systems can limit the costs governments pay for indigent defense, critics argue that these systems could reduce the quality of representation as law firms underbid each other in an effort to secure competitive contracts. In some markets, however, contract systems have failed to reduce the costs of indigent defense and have actually resulted in higher defense costs as a result of not enough attorneys being available to generate competitive markets (Spangenberg and Beeman, 1995; Worden, 1990-1991).

Of all forms of indigent defense, the most popular and widely used are public defender programs. Under a public defender system, salaried staff attorneys render criminal indigent defense services through a public or private nonprofit organization or as direct government employees. The first public defender program started in Los Angeles County in 1913 and spread gradually until the Supreme Court decisions of *Gideon* and *Argersinger* resulted in a more rapid expansion (Neubauer and Fradella, 2011; Spangenberg and Beeman, 1995). The administration and funding of public defender programs occurs at either the state or county levels. In 2007, 22 states administered and provided funding to public defender offices at the state level, while in the remaining 27 states and the District of Columbia, public defender offices were funded and administered at the local level (Farole and Langton, 2010; Langton and Farole, 2010).

Public defender programs have a variety of strengths which have been discussed extensively in the literature. The principle benefits of the public defender system are that it provides indigent defendants with access to professional legal staff with the training, experience, and skills to provide adequate legal defense. Public defenders offices can also employ investigative and other support services that might not be available through assigned counsel or contract programs (Neubauer and Fradella, 2011; Spangenberg and Beeman, 1995). Lastly, intensive interactions with prosecutors and judges enable public defenders to forge close relationships with key members of the courtroom workgroup ensuring that these attorneys are well positioned to strike favorable bargains for their clients (Hartley, Miller, and Spohn, 2010; Fleming, Nardulli, and Eisenstein, 1992; Champion, 1989; Heumann, 1978).

Criticisms of public defender programs center on issues related to funding and co-optation. In many jurisdictions, public defender programs are not allocated enough resources to keep up with expanding caseloads which could prevent them from adequately representing their

clients (Spangenberg and Beeman, 1995). Another key criticism concerns the phenomena of public defenders being pressured by members of the courtroom workgroup to emphasize rapid case processing over vigorous criminal defense. Public defenders often work in an environment in which judges and prosecutors stress the need to process large numbers of defendants who are either factually or legally guilty. Some argue that the rapid processing of these defendants, as opposed to an adversarial forum where prosecutors and public defenders forcefully represent their positions before neutral judges, defines the true nature of the courtroom workgroup and criminal case processing (Heumann, 1978; Blumberg, 1966-1967). By placing a premium on the expeditious disposition of factually or legally guilty defendants, public defenders face enormous pressures to cooperate with judges and prosecutors by encouraging their clients to plead guilty rather than mount strong adversarial defenses (Hartley, Miller, and Spohn, 2010; McCoy, 1993; Fleming, Nardulli, and Eisenstein, 1992; Feeley, 1992; Heumann, 1978).

Defendants who don't wish to avail themselves of indigent representation, and who have the means of doing so, can hire a private attorney. Since private attorneys are not part of the courtroom workgroup, they cannot be as easily pressured into emphasizing expeditious case resolution over vigorous advocacy. In theory, private attorneys should be able to forcefully represent their clients without taking into consideration their relationships with the local judges or prosecutors. Private attorneys might also have the financial resources to mount a stronger defense than their indigent counterparts (Neubauer and Fradella, 2011; Hartley, Miller, and Spohn, 2010).

In spite of these potential strengths, several factors call into question whether private attorneys are truly superior to indigent counsel. Private attorneys rarely have the opportunity to specialize solely in the practice of criminal defense. Unlike their public defender counterparts,

most private practices have a multitude of different case types which prevents these attorneys from developing the levels of professionalism and expertise approaching that of public defenders in the area of criminal law and procedure (Hanson, Ostrom, Hewitt, and Lomvardias, 1992). Also, the weaker relationships between private attorneys and other courtroom actors might hinder these attorneys from striking deals with prosecutors that public defenders, who are more integrally ensconced with the court community, might be able to reach (Hartley, Miller, and Spohn, 2010; Fleming, Nardulli, and Eisenstein, 1992; Feeley, 1992; Champion, 1989).

**Prior research on the effect of attorney type on case outcomes**

There is an extensive literature comparing different attorney types in terms of their effectiveness in securing favorable outcomes for their clients (Feeney and Jackson, 1990-1991). Most of this literature examines whether public defenders represent their clients as effectively as private counsel in terms of securing acquittals or dismissals, keeping their clients from being incarcerated, or ensuring that the shortest possible sentences are imposed on their clients (Hanson, Ostrom, Hewitt, and Lomvardias, 1992).[2] Evaluations comparing public defenders to assigned counsel or contract attorneys regarding the abovementioned outcome characteristics are less frequent. A brief overview of the literature examining whether public defenders do better at criminal defense than private attorneys or assigned/contract counsel is provided below.

The majority of studies show defendants with public defenders receiving adjudication, incarceration, and sentencing outcomes that are not appreciably different compared to those with private attorneys (Feeney and Jackson, 1990-1991). Some notable studies comparing public defenders to private attorneys include Hartley, Miller and Spohn (2011) examination of counsel

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[2] Another type of literature examines the relationship between attorneys and their clients through a variety of "input" measures including number of meetings, time of first meeting, and level of legal work for a particular case (Harlow, 2000; Hanson, Ostrom, Hewitt, and Lomvardias, 1992). Since this article focuses on outcomes and not attorney client relationships, this line of research is omitted from further discussion.

type effects in criminal cases processed in Cook County; Williams (2002) study of the efficacy of private vs. public defenders in a northern Florida jurisdiction; Hanson, Ostrom, Hewitt, and Lomvardias (1992) evaluation of defense counsel effectiveness in nine jurisdictions; and Nardulli, Eisenstein, and Flemming (1988) exploration of defense counsel as part of a general examination of criminal case processing in nine counties located in several mid-western states.[3] For the most part, these studies found that defendants represented by public defenders do not receive disadvantageous outcomes compared to their counterparts with private attorneys.

Although most studies find public defenders and private attorneys securing similar outcomes for their clients, some research shows private attorneys doing better at criminal defense. A study conducted by Hoffman, Rubin, and Shepherd (2005) showed defendants with private attorneys receiving shorter prison sentences than those with public defenders. Other studies have found that attorney type can influence pretrial release decisions, charge reductions, and sentencing outcomes in certain contexts (Hartley, Miller and Spohn, 2011). Lastly, several studies show private attorneys obtaining favorable results for some outcomes such as incarceration decisions but not for the remainder of outcomes including likelihood of conviction and length of imposed sentence (Hanson, Ostrom, Hewitt, and Lomvardias, 1992).

Empirical studies comparing public defenders to assigned attorneys or contract counsel are less frequent. Several earlier studies including Hermann, Single, and Boston (1977) evaluation of defense counsel types among 3,000 felony cases processed in Los Angeles, New York, and Washington, DC and others conducted by Radtke, Semple, and Cohen (1982) and Clarke and Koch (1980) found that defendants represented by public defenders and assigned counsel received similar outcomes (Feeney and Jackson, 1990-1991). The National Center for

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[3] For an excellent summary of earlier studies on this issue see Feeney and Jackson (1990 – 1991). For a more recent overview of this topic, see Hartley, Miller and Spohn (2011).

State Courts evaluation of several indigent defense types including public defenders, assigned counsel, and contract attorneys also showed little discernible differences among these various types of defense counsel (Hanson, Ostrom, Hewitt, and Lomvardias, 1992).

Several recent studies comparing public defenders to assigned counsel, however, have found assigned counsel producing less favorable outcomes for their clients. In a study comparing defendants represented by public defenders to those with court appointed counsel in federal district courts, Iyengar (2007) found that defendants with assigned counsel were more likely to be convicted and receive longer sentences than defendants with public defenders. Another study conducted by Roach (2010) using a sub-sample of felony cases from the State Court Processing Statistics (SCPS) project discerned assigned counsel obtaining noticeably less favorable outcomes for their clients compared to public defenders. In addition to these studies, research has also shown assigned counsel performing poorly when compared to private attorneys (Beck and Shumsky, 1997; Champion, 1989).

In summary, these studies have advanced our understanding of how counsel type may influence case processing outcomes. Overall, these studies show private attorneys and public defenders obtaining similar results for their clients; however, they also provide some evidence suggesting that assigned counsel are less effective advocates than other types of criminal attorneys. While this research has illuminated how the different types of defense counsel might affect case processing outcomes, there are some limitations that could be addressed by the current study. First, most studies involve comparisons of either public defenders to private attorneys or public defenders to assigned counsel. Few research efforts attempt to examine the impact of private attorneys, public defenders, and assigned counsel on case outcomes simultaneously. In addition, many of these studies have at most a limited number of jurisdictions

or relied on relatively dated data. Moreover, the few multijurisdictional studies on this topic did not take advantage of the statistical techniques currently available to account for the hierarchical nature of their data. Nor did many of the abovementioned studies address the problem of possible sample selection biases that could occur as case outcomes are followed from charging through adjudication and sentencing (Berk, 1983). Lastly, there have been few recent studies comparing public defenders to assigned counsel in state court systems. Of the two research efforts mentioned, one focused on comparing assigned counsel to public attorneys in the federal courts and the other used a sub-sample of felony case processing data from the State Court Processing Statistics (SCPS) project (Roach, 2010; Iyengar, 2007).[4]

This article will attempt to address these limitations by using more updated state level felony data, by examining data covering a larger and more varied number of jurisdictions, and by applying statistical techniques that can handle the sampling framework and sample selection biases of the data being analyzed. This article will also attempt a more in-depth comparison of assigned counsel to public defenders than has been attempted in prior studies.[5] Specifically, this article will attempt to address the following research questions:

- How do public defenders, private attorneys, and assigned counsel compare in terms of securing favorable outcomes for their clients? Are defendants represented by private attorneys or assigned counsel more or less likely to be convicted, incarcerated, or sentenced to prison than their counterparts represented by public defenders? Are defendants with private attorneys or assigned counsel sentenced to shorter or longer periods of confinement than those with public defenders?

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[4] Roach (2010) used data only in instances where random assignment between public defenders and assigned counsel could be supported with the SCPS data. For these reasons, counties relying solely on public defenders or assigned counsel were excluded from that analysis.
[5] It should be noted that assigned counsel refers to both attorneys working under an assigned counsel system and contract attorneys. For reasons that are further described in the methodology section, the data examined do not distinguish assigned from contract attorneys.

- Are defendants represented by private attorneys or assigned counsel receiving more or less advantageous outcomes for certain offense categories? For example, are defendants charged with violent crimes in a better or worse position if they are represented by private attorneys or assigned counsel compared to their counterparts with public defenders?

- What are the characteristics of defendants represented by the different types of defense attorneys? Are defendants retaining private counsel different in terms of their offense charge seriousness, criminal history, and demographic characteristics compared to defendants represented by public defenders or assigned counsel? Are indigent defendants represented by assigned counsel or public defenders comparable concerning their most serious criminal charges, criminal histories, and demographic characteristics?

**Data used to examine the effect of defense counsel on criminal case outcomes**

This article analyzed data from the State Court Processing Statistics *(*SCPS*)* series, covering felony cases filed in May of even-numbered years in 2004 and 2006. SCPS is a biennial data collection series sponsored by the Bureau of Justice Statistics that examines felony cases processed in a sample of 40 of the nation's 75 most populous counties. The SCPS sample is a 2-stage stratified sample, with 40 of the nation's 75 most populous counties selected at stage one and a systematic sample of state court felony filings (defendants) within each county selected at stage two.  Counties selected to participate in SCPS provide a list of defendants charged with a felony on certain randomly selected business days of May of an even number year and these cases are followed until case disposition or May 31st of the following year. Weights are applied so that these data represent felony case processing for the entire month of May in the nation's 75 most populous counties.[6]

Each SCPS data collection tracks approximately 15,000-16,000 felony defendants for up to one year. A variety of information is collected on these defendants including the types of arrest charges filed against felony defendants, conditions of pretrial release, and pretrial

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[6] For more information about the SCPS methodological framework, see Cohen and Kyckelhahn (2010) report titled *Felony Defendants in Large Urban Counties, 2006* at http://bjs.ojp.usdoj.gov/.

misconduct. The adjudication outcomes encompassing the dismissal, diversion, guilty plea, and trial conviction rates for felony defendants are also recorded.  For those defendants convicted, information on the sentencing of felony defendants including the imposition of prison, jail, and probation sentences are provided. The SCPS project, moreover, obtains data on the defendant's demographic characteristics, criminal justice status at the time of arrest, and prior arrests and convictions.

In addition to this case and defendant level data, the SCPS series also obtains information on the types of defense counsel representing felony defendants in state courts located in the nation's 75 most populous counties. Specifically, SCPS collects information on whether the defendant was represented by a public defender, assigned counsel, or private attorney at the time of case adjudication. SCPS also identifies those defendants who decided to proceed without an attorney (pro-se) at the time of case adjudication.

There are many challenges associated with collecting data on defense counsel type for felony defendants in state courts. First, many jurisdictions do not capture information on defense counsel in a way that is readily accessible for the SCPS project. In prevision iterations of SCPS, the difficulties associated with collecting defense counsel information resulted in a high proportion of felony cases with missing data for this particular element. For example, defense counsel data were missing for approximately two-fifths of defendants in the 1992 and 1994 SCPS collections and were not available for about a third of defendants tracked in the 1996 through 2002 SCPS series. The 2004 and 2006 SCPS projects witnessed a decline in missing defense counsel data to about 25% of all SCPS cases. Since the two most recent SCPS iterations

had fewer defendants with missing defense counsel data, this article focuses on these newer

datasets and excludes earlier years.[7]

The other challenge inherent in collecting information on defense counsel type is that

there can be substantial churn in who represents defendants in court. Defendants, at times, will

ask for or demand a change in defense counsel and attorneys have been known to withdraw from

cases in which they are in conflict with clients over legal strategy or compensation.

Unfortunately, by focusing on attorney type at the date of case disposition, SCPS is unable to

measure or ascertain possible movements of attorneys on and off specific cases. Lastly, SCPS

does not distinguish assigned counsel from contract attorneys. Both types of defense counsel

representation are treated as the same and are labeled as "assigned counsel" for the purposes of

this article. Although it cannot be stated with certainty what proportion of assigned counsel are

contract attorneys, an examination of indigent defense systems in the 100 most populous

counties showed contract attorneys accounting for a relatively small percent of indigent defense

systems in highly populated jurisdictions (DeFrances and Litras, 2000).

Before delving into the statistical models examining the impact of defense counsel on

case outcomes, it's important to use descriptive techniques to see how frequently public

defenders, assigned counsel and private attorneys are employed in felony cases and examine

whether felony defendants are similar or different in terms of their offense seriousness, criminal

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[7] Although the defense counsel field has improved, the fact that this information was missing for 25% of cases raises the possibility that the results in this article could change if defense counsel information were available for all cases tracked in the SCPS sample. While it's impossible to determine with certainty what would happen if defense counsel data were obtainable for all SCPS cases, the influence of missing data can checked through an imputation procedure. Imputation techniques were used to estimate defense counsel type for cases that did not have this information. These techniques assessed the effect of missing data by comparing results in which defense counsel type were estimated against results in which the categories of defense representation were not available. Results were not appreciably different between the imputed and non-imputed data at the bivariate and multivariate levels. Since only minor changes occur with using imputed data and since it's generally not suggestive to impute when data are missing for over 10% of cases, this article did not rely on the imputed data for further analysis.

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histories, and demographic characteristics across these various forms of defense counsel. A descriptive analysis can also illuminate whether key case outcomes including the likelihood of conviction, incarceration, and sentence length vary by these defense attorneys without the complexities inherent in statistical model building. The descriptive results follow below.

**Descriptive analysis of characteristics of felony defendants by attorney type and relationship between attorney type and case outcomes**

An analysis of defense counsel among felony defendants shows the vast majority employing some form of indigent representation. In 2004 and 2006, about 80% of defendants charged with a felony in the nation's 75 most populous counties reported having public defenders or assigned counsel, while 20% hired an attorney (table 1). Among the estimated 69,000 felony defendants using publicly financed defense services, approximately three-fourths were represented by public defenders. Defendants charged with property or drug crimes were slightly more likely to have been represented by public defenders or assigned counsel (80%) than those charged with public-order (74%) or violent (76%) offenses. Interestingly, about 2% of felony defendants proceeded pro-se, meaning that they represented themselves in court. Since this research is interested in examining the relationship between defense counsel type and criminal case processing outcomes, these pro-se defendants are excluded from the remainder of this analysis.[8]

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[8] See Hashimoto (2007) for an analysis of the implications of proceeding without an attorney in criminal cases.

**Table 1. Types of defense counsel, by most serious arrest charge category, in the nation's 75 most populous counties, 2004 & 2006**

| Most serious arrest charges | Number of defendants | Percent of felony defendants represented by - | | | |
|---|---|---|---|---|---|
| | | Public defender | Assigned counsel | Private attorney | Pro - se |
| All defendants | 87,661 | 60 % | 19 % | 20 % | 2 % |
| Violent | 19,059 | 57 | 19 | 22 | 2 |
| Property | 26,844 | 59 | 20 | 18 | 2 |
| Drug | 32,387 | 63 | 17 | 18 | 2 |
| Public-order | 9,371 | 55 | 20 | 25 | 1 |

Analyzing the distribution of offense charges across the defense counsel categories provides another method for examining the variation of legal counsel for felony defendants. For the general and specific SCPS offense categories, defendants with public defenders and assigned counsel were charged with relatively similar offenses[9]; however, defendants with private attorneys had a different distribution of offense charges compared to defendants with public defenders or assigned counsel (table 2).[10] In terms of specific offense charges, a greater percentage of rape/sexual assault, drug trafficking, and public-order defendants clustered around private attorneys compared to their indigent counterparts. For example, 7% of defendants represented by private attorneys were charged with rape or other violent[11] crimes, while about 4% of defendants with public defenders or assigned counsel were charged with these offenses. Private attorneys also had a higher proportion of their clients charged with drug trafficking (17%) compared to their assigned counsel (13%) or public defender (14%) counterparts. In

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[9] Chi-square statistic of 2.5, $p > .05$ demonstrates no statistically significant difference between the offense distributions for defendants represented by public defenders and assigned counsel. For the remainder of the descriptive section, chi-square and other tests of significance are reported only in instances where the categories of defense counsel significantly differ from each other.

[10] Chi-square tests of offense distributions between private attorneys and public defenders (23.4, $p < .001$) and private attorneys and assigned counsel (4.1, $p < .05$).

[11] A large portion of "other" violent offenses includes non-rape sexual offenses.

addition, private attorneys represented more defendants charged with public-order offenses (14%) than public defenders (10%) or assigned counsel (11%).

Although the offense distributions between defendants represented by public defenders and assigned counsel were not significantly different, there were some disparities worth noting. In particular, a slightly higher proportion of defendants with public defenders were charged with other drug (e.g., drug possession) offenses (25%) than their equivalents with assigned counsel (21%). Also, defendants with assigned attorneys witnessed a somewhat higher number of charges involving very violent crimes such as murder, rape, or robbery (8%) than defendants with public defenders (6%).

**Table 2. Comparing types of defense counsel, by most serious arrest charge category, in the nation's 75 most populous counties, 2004 & 2006**

| Most serious arrest charges | Felony defendants represented by - | | |
|---|---|---|---|
| | Public defender | Assigned counsel | Private attorney |
| **General categories** | | | |
| Violent | 21 % | 22 % | 25 % |
| Property | 30 | 33 | 29 |
| Drug | 39 | 34 | 33 |
| Public-order | 10 | 11 | 14 |
| **Specific categories** | | | |
| Murder | 0.4 % | 0.7 % | 0.6 % |
| Rape | 0.5 | 0.9 | 1.6 |
| Robbery | 5.5 | 6.7 | 5.1 |
| Assault | 11.1 | 11.2 | 11.8 |
| Other violent | 3.3 | 2.6 | 5.4 |
| Burglary | 8.8 | 8.9 | 7.3 |
| Larceny-theft | 8.6 | 8.3 | 8.0 |
| Motor vehicle theft | 4.0 | 3.9 | 1.7 |
| Forgery | 2.7 | 3.3 | 3.0 |
| Fraud | 2.4 | 4.7 | 5.0 |
| Other property | 4.1 | 3.6 | 3.8 |
| Drug sales | 14.2 | 13.3 | 17.3 |
| Other drug | 24.8 | 20.8 | 15.9 |
| Weapons | 3.4 | 2.5 | 3.9 |
| Driving-related | 2.9 | 3.2 | 5.0 |
| Other public order | 3.6 | 5.4 | 4.7 |
| **Number of defendants** | 52,337 | 16,613 | 17,101 |

Comparing demographic characteristics shows virtually no differences in terms of age or gender across these various forms of defense counsel but reveals private attorneys representing a greater percentage of whites than their indigent counterparts (table 3).[12] For example, 36% of defendants retaining private attorneys were white compared to 29% with assigned counsel and 26% with public defenders. Conversely, a higher proportion of defendants represented by public defenders (44%) or assigned counsel (47%) were black than defendants with the means to hire their own attorneys (34%).

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[12] Defendants represented by private attorneys had significantly different racial characteristics compared to defendants with public defenders (chi-square = 20.2, p < .001) or assigned counsel (chi-square = 16.3, p < .001).

**Table 3. Comparing types of defense counsel, by demographic characteristics, in the nation's 75 most populous counties, 2004 & 2006**

| Demographic characteristics | Felony defendants represented by - | | |
|---|---|---|---|
| | Public defender | Assigned counsel | Private attorney |
| **Gender** | | | |
|   Male | 82 % | 82 % | 83 % |
|   Female | 18 | 18 | 17 |
| **Race** | | | |
|   White | 26 % | 29 % | 36 % |
|   Black | 44 | 47 | 34 |
|   Hispanic | 27 | 23 | 27 |
|   Other | 2 | 1 | 3 |
| **Mean Age** | 32 yrs. | 32 yrs. | 31 yrs. |

A defendant's criminal background constitutes another area of potential differences between defendants represented by indigent counsel and private attorneys. In general, criminal backgrounds were less common among defendants who retained private counsel. Nearly a third (31%) of defendants with private attorneys had no previous arrest history, while only about a fifth of defendants with public defenders (17%) or assigned counsel (19%) had never been arrested (table 4).[13] Convictions mirrored arrest history with approximately half of defendants with public defenders or assigned counsel having at least one prior felony conviction compared to 36% of defendants with private attorneys.[14] Unlike those with private counsel, the criminal histories of defendants represented by public defenders and assigned counsel were nearly identical. Only in the area of criminal justice status (e.g., on probation, parole, etc) were

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[13] Defendants with private attorneys were significantly less likely to have prior arrest records compared to defendants with public defenders (chi-square = 87.1, p < .001) or assigned counsel (chi-square = 60.0, p < .001).

[14] Prior felony convictions significantly less common among defendants with private attorneys than defendants with public defenders (chi-square = 88.9, p < .001) or assigned counsel (chi-square = 34.5, p < .001).

defendants with public defenders manifesting a more serious criminal history than defendants with assigned counsel.

Table 4. Comparing types of defense counsel, by defendant criminal history, in the nation's 75 most populous counties, 2004 & 2006

| Criminal history | Percent of felony defendants represented by - | | |
| --- | --- | --- | --- |
| | Public defender | Assigned counsel | Private attorney |
| **Active criminal justice status** | 41 % | 33 % | 28 % |
| **Most serious prior arrest** | | | |
| Felony | 72 % | 69 % | 54 % |
| Misdemeanor | 11 | 12 | 14 |
| None | 17 | 19 | 31 |
| **Most serious prior conviction** | | | |
| Felony | 51 % | 50 % | 36 % |
| Misdemeanor | 17 | 17 | 17 |
| None | 32 | 33 | 47 |

This analysis has examined whether felony defendants represented by public defenders, assigned counsel, or private attorneys had similar or different characteristics by several criteria including offense charges, demographics, or criminal history. The next part focuses on adjudication and sentencing outcomes and examines whether they vary by defense counsel type.

In the nation's 75 most populous counties, the overall conviction rates were about the same for felony defendants represented by public defenders (73%) or hired attorneys (72%) (table 5). Defendants with assigned counsel, in comparison, faced a higher likelihood (78%) of

conviction.[15] Among those defendants convicted, approximately 90% with assigned counsel or public defender representation, and about 85% with private attorneys, were convicted of a felony. The remaining 10-15% of defendants were convicted of a misdemeanor across these defense counsel categories. The vast majority of convicted defendants plead guilty irrespective of who represented them in court with only a slightly higher percentage of defendants with private attorneys using the trial option (4%) compared to defendants with public defenders or assigned counsel (3%).

Convicted defendants represented by public defenders or assigned counsel were more likely than those hired by private attorneys to be sentenced to incarceration. About two-thirds of convicted defendants with private attorneys were sentenced to either prison or jail; in comparison, 78% of convicted defendants represented by assigned counsel and 74% represented by public defenders received an incarceration sentence.[16] The percent of defendants sentenced to incarceration did not differ significantly between defendants with public defenders or assigned counsel. When examining the type of incarceration sentence imposed, convicted defendants represented by assigned counsel were significantly more likely to receive prison sentences compared to those represented by either public defenders or private attorneys. Nearly half (46%) of convicted defendants with an assigned counsel received a prison sentence, while approximately a third of convicted defendants with retained counsel (29%) or public defender (32%) representation were sentenced to prison.[17]

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[15] Defendants with assigned counsel were significantly more likely to be convicted than defendants with public defenders (chi-square = 7.9, p < .01) or private attorneys (chi-square = 9.1, p < .001).
[16] Higher percentage of defendants with assigned counsel (chi-square = 11,.6, p < .01) and public defenders (chi-square = 19.9, p < .001) received incarceration compared to defendants with private attorneys.
[17] Significant differences in prison incarceration for defendants represented by assigned counsel compared to defendants with public defenders (chi-square = 5.9, p < .01) or private attorneys (chi-square = 16.1, p < .001)

Among convicted defendants sentenced to serve time either in prison or jail, those using public defenders received shorter average sentences than those with private attorneys or assigned counsel. Defendants with public defenders were sentenced to an average of 23 months of confinement, while those with hired attorneys or assigned counsel were sentenced to incarceration terms averaging 31 and 35 months, respectively.[18] The average incarceration periods between defendants represented by assigned and private counsel were not significantly different.

**Table 5. Comparing types of defense counsel, by felony case processing outcomes, in the nation's 75 most populous counties, 2004 & 2006**

| Felony case processing outcomes | Felony defendants represented by - | | |
|---|---|---|---|
| | Public defender | Assigned counsel | Private attorney |
| **Adjudication outcomes** | | | |
| Convicted | 73 % | 78 % | 72 % |
| Not convicted | 22 | 14 | 23 |
| Other outcome | 6 | 8 | 6 |
| **Conviction level** | | | |
| Felony conviction | 88 % | 91 % | 85 % |
| Misdemeanor conviction | 12 | 9 | 15 |
| **Type of conviction** | | | |
| Guilty plea | 97 % | 98 % | 97 % |
| Bench trial | 1 | 1 | 2 |
| Jury trial | 2 | 2 | 2 |
| **Most serious sentence** | | | |
| Incarceration | 74 % | 78 % | 65 % |
| Prison | 32 | 46 | 29 |
| Jail | 42 | 32 | 36 |
| Non - incarceration | 26 % | 22 % | 35 % |
| Probation | 23 | 20 | 30 |
| Other | 3 | 2 | 5 |
| **Mean sentence length (in months)** | 23 mths. | 35 mths. | 31 mths. |

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[18] Confidence intervals show public defenders garnering significantly shorter sentences for their clients than those with private attorneys or assigned counsel.

So far, this article has provided some interesting findings concerning whether defendants differ in several key characteristics across the various types of defense counsel and the possible relationships between defense counsel types and case outcomes. In terms of defendant characteristics, these findings show that defendants represented by assigned counsel and public defenders have remarkably similar characteristics. In general, defendants receiving legal representation through these two forms of indigent counsel are charged with relatively comparable crimes and have similar criminal histories and demographic characteristics. In comparison, defendants with the means to hire their own attorneys are exemplified by different attributes compared to their indigent counterparts. These defendants tend to have less serious criminal backgrounds and are charged with an array of offenses both more and less serious compared to their contemporaries with indigent counsel. For example, private attorneys represented a greater proportion of defendants charged with sexual and drug trafficking crimes than those with assigned counsel or public defenders. However, these attorneys also provided legal advocacy to more defendants charged with less serious public-order offenses compared to defendants who could not afford to hire their own attorneys. Lastly, private attorneys represented minorities less frequently than public defenders or assigned counsel.

While these findings offer some intriguing insights into who gets what types of defense counsel, their overall repercussions are limited by the nature of the SCPS data. There are a variety of socio-economic factors that could influence the distribution of defense counsel types over felony defendants including income levels, employment status, community ties, and residential stability that for reasons related to cost and accessibility are currently not collected in SCPS. Nevertheless, these findings suggest that defendants with public defenders and assigned

counsel have relatively similar attributes and that the major differences occur when comparing defendants with indigent counsel to those with private attorneys.

The similarities between assigned counsel and public defenders, however, do not carry over when examining case outcomes. Here, the descriptive analysis shows defendants with assigned counsel receiving outcomes that, on the whole, are less favorable compared to defendants with public defenders or private attorneys. In general, defendants with assigned counsel are more likely to get convicted and sentenced to prison than their equivalents who are represented by public defenders or who have the means to hire their own attorneys. Moreover, defendants with assigned counsel were sentenced to longer periods of confinement than those with public defenders. Another finding concerned the underwhelming evidence in support of the proposition that private attorneys secure better outcomes for their clients. Overall, the descriptive section showed that defendants who hired their own attorneys were just as likely to get convicted and actually received longer sentences compared to defendants represented by public defenders. The one area in which private attorneys seemed to be doing better involved the decision by courts to incarcerate defendants. The descriptive analysis found defendants with private attorneys being incarcerated less frequently compared to their counterparts with indigent counsel.

In conclusion, these findings suggest that indigent defendants who are represented by assigned counsel are receiving less favorable outcomes compared those with public defenders or private attorneys. They also imply that hiring an attorney does not automatically guarantee superior results; although, there is some evidence that private attorneys are keeping their clients out of prison or jail to a greater extent than indigent counsel. Although illuminating, these results do not attempt to control for other factors that could influence these key outcomes such as offense charge severity or prior criminal history. Therefore, the next part of this article applies

multivariate techniques to examine the relationship between defense counsel type and adjudication and sentencing outcomes.

**Modeling conviction, incarceration, and sentence length outcomes by defense counsel type**

In this section, multivariate statistical techniques are used to further refine our understanding of the relationship between defense counsel type and case outcomes. Multivariate analysis can help us disentangle the effects of defense counsel type from other factors such as criminal history or offense charge severity that could influence adjudication and sentencing outcomes. For example, if the multivariate analysis shows that defendants with assigned counsel are still more likely to be convicted or sentence to prison than defendants with public defenders, net of other controls, that would provide more confidence of the extant findings and conclusions. The multivariate analysis proceeds in several parts. First, the dependent and independent variables used in the statistical models are detailed. Next, the discussion highlights the technical issues associated with modeling adjudication and sentencing outcomes. Model results are then explicated and conclusions offered regarding the model's overall findings.

*Dependent variables*

There are four major dependent variables analyzed in the multivariate section including conviction, incarceration, prison, and sentence length. The conviction variable examines whether a defendant charged with a felony was eventually convicted of either a felony or misdemeanor, and the incarceration and prison variables measure whether a convicted defendant was incarcerated in a county jail or state prison facility. The incarceration variable has a broader scope because it tracks convicted defendants receiving prison or jail sentences, while the prison variable identifies only those convicted defendants sentenced to state prison. Unlike the previous three dependent variables that have dichotomous outcomes, sentence length is a continuous

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variable measuring the length in months of both prison or jail terms combined. The dependent

variables of conviction, incarceration, prison, and sentence length are typically used in research

examining case processing outcomes among different types of defense counsel (Roach, 2010;

Iyengar, 2007; Hanson, Ostrom, Hewitt, and Lomvardias, 1992; Feeney and Jackson, 1990-

1991).

*Independent variables*

The primary independent variable of interest is type of defense counsel which includes

defendants represented by public defenders, private attorneys, or assigned counsel. In the

regression models, public defenders represent the reference category meaning that the case

processing outcomes of defendants with private attorneys or assigned counsel are compared to

their counterparts with public defender representation. Other independent variables include

extra-legal and legal covariates measuring defendant demographics, most serious arrest or

conviction charges, criminal justice status and history, monetary bond amounts, case processing

time, and type of conviction. Along with attorney type, these extra-legal and legal covariates

have been found to be significantly associated with various court outcomes related to conviction

and sentencing. Moreover, several researchers have concluded that these variables constitute key

factors in court adjudication and sentencing decisions in the context of the SCPS data file (Piehl

and Bushway, 2007; Steffensmeier and Demuth, 2006; Demuth and Steffensmeier, 2004;

Weidner, Frase, and Pardoe, 2004).

The extra-legal factors in the SCPS data file measure a defendant's gender, race/ethnicity,

and age. Gender is a single dummy variable. Race/ethnicity is categorized into three dummy

variables including White non-Hispanic, which serves as the reference category, Black non-

Hispanic, and Hispanic. The defendant's age is continuous variable; however, an age-squared

term has been added to the model because prior research has shown age to have a non-linear relationship with court sentencing decisions (Steffensmeier and Demuth, 2006; Demuth and Steffensmeier, 2004; Steffensmeier, Krammer, and Ulmer, 1995).[19]

Among the legal factors, prior research has shown offense severity and criminal history accounting for the most important predictors in regression models examining adjudication and sentencing decisions (Steffensmeier and Demuth, 2006; Demuth and Steffensmeier, 2004). Offense severity is measured with 13 dummy variables representing either the most serious arrest charges, for models examining the likelihood of conviction, or the most serious conviction charges, for models analyzing factors related to incarceration, prison, and sentence length outcomes. Specific offense types measured include drug possession, which serves as the reference category, murder, rape, robbery, assault, burglary, larceny, motor vehicle theft, other property, drug trafficking, weapons, driving/public-order, and misdemeanor[20] offenses. In terms of measuring criminal history, two covariates were employed in the regression models. The first is a dummy variable representing defendants with a criminal justice status (e.g., on pretrial release, probation, parole, or other criminal justice status) at the time of arrest. The second criminal history factor contains three dummy variables quantifying a defendant's criminal conviction history. These include no conviction history, which serves as the reference category, prior felony conviction, and prior misdemeanor conviction.[21]

The remaining independent variables measures bail amounts set by the court, time from arrest to adjudication, and type of conviction. Monetary bond serves as an important determinant

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[19] The age-squared term was also mean centered in order to avoid multicollinearity issues associated with using an age and age-squared term (Steffensmeier and Demuth, 2006).

[20] Misdemeanor offenses are included only in the incarceration, prison, and sentence length models and not the initial models examining likelihood of conviction.

[21] It should be noted that SCPS contains other potential criminal history covariates including prior arrest and incarceration history. Preliminary models revealed high correlation levels between prior arrest, conviction, and incarceration history and that the most parsimonious models were ones which excluded some of these criminal history factors.

of pretrial release decisions with higher bond amounts associated with increased likelihoods of

pretrial detention. Monetary bond also provides an indirect measure of case seriousness because

more serious cases tend to garner higher bond amounts (Cohen and Reaves, 2007). Monetary

bond is measured through five dummy variables with no bond serving as the reference category,

and bond amounts of $1-$9,999; $10,000-$24,999; $25,000-$49,999; and $50,000 or more[22]

providing measures of escalating monetary bail. The case processing time variable measures the

number of days from arrest to case adjudication for each felony defendant. This variable has

been logged transformed so that the regression assumptions of linearity and constant variance are

not violated in the models. The final covariates include three dummy variables detailing the

mode of conviction which includes the reference category of guilty plea, bench trial conviction,

and jury trial conviction. Numerous adjudication and sentencing studies have demonstrated that

the defendants convicted through trial receive harsher sentences compared to their counterparts

who plead guilty (Piehl and Bushway, 2007; Steffensmeier and Demuth, 2006; Demuth and

Steffensmeier, 2004). The various legal and extra-legal independent variables described above

are also detailed in table 6.[23]

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[22] The $50,000 or more variable includes cases in which the court did not set bond or refused to the release the defendant under any circumstances.

[23] Several covariates described above measure relatively similar attributes implicating multicollinearity issues. Variance inflation factors (VIF) were calculated to test for potential multicollinearity in the models. The VIF calculations revealed that multicollinearity was not an issue for these analyzes.

**Table 6. Profile of variables utilized in conviction, incarceration, and sentence length models**

| Variables in model | Coding |
|---|---|
| **Type of attorney** | |
| *Public defender* | *0 = Reference category* |
| Private attorney | 1 = Private attorney |
| Assigned counsel | 1 = Assigned counsel |
| **Gender** | |
| Female defendant | 1 = Female defendant |
| **Race/Hispanic origin** | |
| *White* | *0 = Reference category* |
| Black, non-Hispanic | 1 = Black defendant |
| Hispanic, any race | 1 = Hispanic defendant |
| **Age at arrest** | |
| Age | Age at arrest |
| Age-Squared | Age at arrest (mean centered and squared) |
| **Most serious arrest/ conviction offense** | |
| *Drug possession* | *0 = Reference category* |
| Murder | 1 = Murder |
| Rape | 1 = Rape |
| Robbery | 1 = Robbery |
| Assault | 1 = Assault |
| Burglary | 1 = Burglary |
| Larceny | 1 = Larceny |
| Motor vehicle theft | 1 = Motor vehicle theft |
| Other property | 1 = Other property offenses |
| Drug trafficking | 1 = Drug trafficking |
| Weapons | 1 = Weapons |
| Driving or public order | 1 = Driving or other public-order |
| Misdemeanor | 1 = Misdemeanor |
| **On probation, parole, or other status at arrest** | 1 = On probation, parole, or criminal justice status at arrest |
| **Most serious prior conviction** | |
| *No prior conviction* | *0 = Reference category* |
| Felony | 1 = Prior felony conviction |
| Misdemeanor | 1 = Prior misdemeanor conviction |
| **Monetary bail amounts** | |
| *No bail set* | *0 = Reference category* |
| $1 - $9,999 | 1 = Bail amounts $1-$9,999 |
| $10,000 - $24,999 | 1 = Bail amounts $10,000-$24,999 |
| $25,000 - $49,999 | 1 = Bail amounts $25,000-$49,999 |
| $50,000 or more | 1 = Bail amounts $50,000 or more or no bond set |
| **Time from arrest to adjudication** | Number of months from arrest to adjudication (logged transformed) |
| **Type of conviction** | |
| *Guilty plea* | *0 = Reference category* |
| Bench trial | 1 = Bench trial |
| Jury trial | 1 = Jury trial |

*Modeling conviction, incarceration, prison, and sentence length outcomes*

Binary probit regression models were used to estimate the probability of being convicted and sentenced to incarceration or prison and ordinary least squares (OLS) regression models were employed to analyze sentence length. Binary probit regression is one widely accepted

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method for analyzing the effects of multiple independent factors on dichotomous or binomial outcomes such as whether defendants charged with felony offenses are convicted, sentenced to incarceration, or sent to state prison, while OLS regression is a commonly employed technique for examining the effects of multiple factors on a continuous dependent variable such as sentence length (Long and Freese, 2006; Pardoe, 2006).

There were several technical issues associated with modeling court adjudication and sentencing outcomes. One primary issue concerned the sampling structure of the data being analyzed. To reiterate, the SCPS data are drawn from a random sample of days in 40 counties and are weighted to represent cases processed in the 75 most populous counties during the month of May. When the regressions utilize these weighted data, the large number of weighted cases might result in statistical significance for nearly all the variables in the model. Finite population correction adjustments were used to adjust for the weighted structure of the SCPS data by accounting for the probability of a county and case appearing in the sample. In addition, the county based nature of SCPS potentially could violate the independence of observation assumptions inherent in regression modeling. In other words, the fact that the SCPS data hail from different counties means that important differences in local legal culture and sentencing frameworks need to be accounted for in these models. Hence, the standard errors in these models were further adjusted in order to take into account the clustering of cases by their primary sampling units (e.g., counties). Clustering standard errors by their primary sampling units allows for the models to take into account the effects of unmeasured county characteristics such as differences in sentencing systems, criminal laws, and localized culture of criminal case processing.

Another issue involved sample selection bias. By focusing on incarceration and sentence length outcomes, in addition to examining the conviction decision, this article analyzes sub-samples of the SCPS cohort. The first sub-sample is created for the incarceration analysis which excludes defendants who were not convicted, while the second sub-sample is generated for the sentence length decision, which excludes convicted defendants who were not incarcerated. Two statistical techniques were employed to control for this narrowing funnel of defendants moving from conviction to incarceration and sentencing.[24] The initial statistical approach involved employing a probit model with Heckman selection to model incarceration and prison decisions. A probit model with Heckman selection is one commonly used technique to model outcomes such as incarceration and prison where a segment of defendants (e.g., those who are not convicted) are excluded (Cameron and Trivedi, 2009). The second approach utilized an OLS Heckman selection model to examine sentence length outcomes. The OLS Heckman selection technique is another accepted approach for modeling a continuous outcome such as sentence length where a segment of defendants (e.g., convicted defendants who were not incarcerated) have been excluded (Cameron and Trivedi, 2009; Heckman, 1976). The utilization of these selection models helped correct for biases associated with selecting convicted defendants for the purposes of modeling incarceration decisions and selecting incarcerated defendants for the purposes of modeling sentence length outcomes. [25]

For the OLS Heckman regression, there were some additional adjustments that should be noted. First, the dependent variable sentence length was transformed using a natural log because

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[24] It should be noted that a selection effect also occurs from arrest to the initial charging decision. Unfortunately, SCPS is unable to determine how many arrested defendants were charged with a felony. The starting point for SCPS is the moment a prosecutor files a felony charge; hence, these data cannot be used to model prosecutor charging decisions from the point of arrest.

[25] The Stata commands "heckprob" and "heckman" were utilized to model sentencing and incarceration decisions. Since Heckman relies on a two-stage modeling approach, the selection equation should have at least one variable that is not in the primary equation. In this article, the bail amounts have been placed in the primary equations but excluded from the selection equations.

of the non-normal distribution of the regression residuals. Because interpreting a log transformed sentence can be difficult, a proportional change in the log transformed sentence was calculated by exponentiating it and then subtracting one (Pardoe, 2006). This calculation provided an expected proportional change in the log transformed sentence length for defendants represented by private attorneys and assigned counsel compared to public defenders net of other controls in the SCPS data file. Also, before the variable sentence length was log transformed, life sentences were recoded to 720 months (60 years) and the influence of outliers on the dependent variable sentence length was checked by examining the studentized residuals for each of the regression models. For the most part, these models showed studentized residuals within appropriate parameters, however, there were 392 cases  - 1% of convicted defendants – with sentences of less than a week that were excluded because their studentized residuals scores were below -3 indicating that these cases were outliers.

For each dependent variable, regression models were run for all felony defendants and then separately for felony defendants charged with or convicted of violent, property, drug, or public-order offenses. Running separate regression models allows for an examination of whether defendants represented by private attorneys or assigned counsel are receiving more or less advantageous outcomes for certain offense categories. For example, private attorneys may be doing a better job representing felony defendants charged with violent offenses compared to their counterparts charged with property or drug crimes.

**Model findings**

Table 7 contains the results of the probit and Heckman models examining the likelihood of conviction, incarceration, and prison by defense attorney type for the combined populations of SCPS defendants. All three multivariate models show defendants with private attorneys

receiving outcomes that were not significantly different compared to their counterparts with public defenders. In other words, defendants who hired a private attorney were just as likely to get convicted, incarcerated, or sentenced to prison compared to indigent defendants with public defenders. These results are somewhat at odds with the descriptive section which showed defendants with private attorneys being sentenced to incarceration less frequently than those with public defenders. While the probit model does show the Z-score for incarceration being reduced by .118 for defendants represented by private attorneys, that reduction was not statistically significant when other factors in the model were taken into account.

A more interesting finding involves the outcomes for defendants with assigned counsel representation. According to the probit models, defendants with assigned counsel were significantly more likely to be convicted and sentenced to prison, net of controls, compared to defendants represented by public defenders. For example, the Z-scores measuring the likelihood of conviction and state imprisonment for defendants with assigned counsel were .232 and .305 higher, respectively, than for defendants with public defenders. The only outcome in which assigned counsel garnered similar results to public defenders was for incarceration. Defendants represented by assigned counsel were just as likely to receive some form of incarceration as defendants with public defenders. Despite similarities in incarceration outcomes, the combined models provide evidence that defendants represented by assigned counsel received significantly worse outcomes in terms of being convicted and sentenced to prison compared to their counterparts who were represented by public defenders.

Before delving into the offense specific models, it is worth noting the impact of other covariates on the likelihood of conviction, incarceration, and prison. Concerning demographics, females were less likely to be incarcerated and sentenced to prison than males and for

race/ethnicity, blacks had a greater likelihood of being sentenced to incarceration or prison than whites. Hispanics were just as likely to get convicted and sentenced to prison as whites; however, these defendants had a higher likelihood of receiving an incarceration sentence. Age did not have an impact on conviction; yet, the models show age having a curvilinear influence on the likelihood of receiving a prison sentence.

The influence of the most serious offense or conviction charges depended upon the outcome being examined. For the conviction model, several of the more serious offense charges such as rape or assault were associated with a lower likelihood of conviction compared to drug possession defendants. In comparison, the incarceration model witnessed all defendants having a greater likelihood of incarceration than defendants convicted of drug possession. Lastly, the probability of being sentenced to prison was higher for the more serious offense categories such as murder, rape, robbery, assault, or burglary than for defendants convicted of drug possession.

Among the remaining variables, criminal history and monetary bonds were associated with higher likelihoods of defendants being convicted, incarcerated, and sentenced to prison, while case processing time and conviction types had mixed effects on these outcomes. Specifically, defendants with a prior felony conviction and higher bond amounts were significantly more likely to be convicted, incarcerated, and sent to state prison net of controls. Longer case processing times were associated with increased likelihoods of conviction and prison but not incarceration. Lastly, defendants convicted by bench or jury trial were significantly more likely to receive a state prison sentence compared to their counterparts who plead guilty. A trial conviction, however, was not associated with increased probabilities of receiving any form of incarceration.

**Table 7. Probit regression models comparing types of defense counsel, by conviction, incarceration (in/out), and prison (prison vs. jail or other non-incarceration sentence) outcomes, in the nation's 75 most populous counties, 2004 & 2006**

| Variables in model | Probit model of conviction outcome<br>Coefficient & standard errors | Probit model with sample selection of incarceration outcome<br>Coefficient & standard errors | Probit model with sample selection of prison outcome<br>Coefficient & standard errors |
|---|---|---|---|
| **Type of attorney** | | | |
| Private attorney | -0.063 | -0.118 | 0.034 |
| | (0.034) | (0.068) | (0.060) |
| Assigned counsel | 0.232 *** | 0.074 | 0.305 ** |
| | (0.068) | (0.118) | (0.101) |
| **Gender** | | | |
| Female defendant | 0.029 | -0.137 *** | -0.220 *** |
| | (0.034) | (0.029) | (0.024) |
| **Race/Hispanic origin** | | | |
| Black, non-Hispanic | -0.144 *** | 0.109 ** | 0.153 *** |
| | (0.043) | (0.037) | (0.045) |
| Hispanic, any race | 0.013 | 0.202 *** | 0.013 |
| | (0.037) | (0.040) | (0.034) |
| **Age at arrest** | | | |
| Age | 0.000 | 0.004 * | 0.006 *** |
| | (0.001) | (0.002) | (0.001) |
| Age-Squared | 0.000 | 0.000 ** | -0.001 *** |
| | (0.000) | (0.000) | (0.000) |
| **Most serious arrest/ conviction offense** | | | |
| Murder | -0.253 | 1.311 ** | 1.501 *** |
| | (0.170) | (0.411) | (0.347) |
| Rape | -0.260 * | 0.926 *** | 0.685 *** |
| | (0.132) | (0.198) | (0.134) |
| Robbery | 0.019 | 0.594 *** | 0.697 *** |
| | (0.125) | (0.114) | (0.086) |
| Assault | -0.304 ** | 0.526 *** | 0.266 *** |
| | (0.111) | (0.100) | (0.068) |
| Burglary | 0.243 * | 0.552 *** | 0.204 ** |
| | (0.110) | (0.118) | (0.076) |
| Larceny | 0.241 | 0.342 ** | 0.065 |
| | (0.125) | (0.114) | (0.082) |
| Motor vehicle theft | 0.242 * | 0.740 *** | 0.185 * |
| | (0.118) | (0.137) | (0.082) |
| Other property | 0.088 | 0.311 *** | 0.020 |
| | (0.098) | (0.085) | (0.080) |
| Drug trafficking | 0.258 ** | 0.368 ** | 0.067 |
| | (0.102) | (0.113) | (0.072) |
| Weapons | 0.129 | 0.474 ** | 0.306 *** |
| | (0.113) | (0.149) | (0.075) |
| Driving or public order | 0.279 ** | 0.293 ** | 0.059 |
| | (0.098) | (0.109) | (0.085) |
| Misdemeanor | -- | 0.178 ** | -1.020 *** |
| | -- | (0.067) | (0.094) |
| **Continued on next page** | | | |

**Table 7. Probit regression models comparing types of defense counsel, by conviction, incarceration (in/out), and prison (prison vs. jail or other non-incarceration sentence) outcomes, in the nation's 75 most populous counties, 2004 & 2006**

| Variables in model | Probit model of conviction outcome | Probit model with sample selection of incarceration outcome | Probit model with sample selection of prison outcome |
|---|---|---|---|
| | Coefficient & standard errors | Coefficient & standard errors | Coefficient & standard errors |
| **On probation, parole,** | | | |
| **or other status at arrest** | 0.116 ** | 0.017 | 0.048 |
| | (0.040) | (0.053) | (0.041) |
| **Most serious** | | | |
| **prior conviction** | | | |
| Felony | 0.286 *** | 0.375 *** | 0.401 *** |
| | (0.052) | (0.038) | (0.055) |
| Misdemeanor | 0.191 *** | 0.143 ** | -0.137 ** |
| | (0.043) | (0.044) | (0.043) |
| **Monetary bail amounts** | | | |
| $1 - $9,999 | 0.144 ** | 0.115 * | 0.107 * |
| | (0.046) | (0.058) | (0.048) |
| $10,000 - $24,999 | 0.371 *** | 0.279 *** | 0.225 *** |
| | (0.050) | (0.076) | (0.063) |
| $25,000 - $49,999 | 0.563 *** | 0.418 *** | 0.355 *** |
| | (0.099) | (0.071) | (0.068) |
| $50,000 or more | 0.608 *** | 0.621 *** | 0.621 *** |
| | (0.079) | (0.074) | (0.059) |
| **Time from arrest to** | | | |
| **adjudication - natural log** | 0.100 ** | -0.049 | 0.063 * |
| | (0.032) | (0.026) | (0.027) |
| **Type of conviction** | | | |
| Bench trial | -- | -0.055 | 0.278 ** |
| | | (0.082) | (0.090) |
| Jury trial | -- | 0.100 | 0.352 ** |
| | | (0.140) | (0.118) |
| Constant | -0.300 | 0.161 | -1.047 |
| | | (0.155) | (0.175) |
| Rho | -- | -0.777 *** | -0.807 *** |
| | | (0.053) | (0.027) |
| Number of observations | 21,048 | 19,341 | 19,342 |
| Population size | 77,538 | 71,013 | 71,016 |

Notes: Model (1) includes probit regression of conviction outcome; model (2) includes Heckman model
of incarceration outcome, and model (3) includes Heckman model of prison outcome.
The Heckman model includes equation accounting for the selection effect of conviction on
the incarceration and prison outcome. Asterisks indicate category difference
from the following significance levels: *>=.05, **>=.01, ***>=.001.
Models adjusted to account for clustering of standard errors at the county level
and stratified sampling pattern. Finite population correction adjustments also
used to account for probability of county and case appearing in sample.
Model standard errors in parentheses. Overall model fit statistics not provided through
survey command in Stata. Reference group for defense counsel type is public defender.

Table 8 provides separate model results of defense counsel's impact for defendants

charged with or convicted of violent, property, drug, or public-order offenses. Overall, the

models show defendants with private attorneys receiving similar outcomes compared to their

counterparts with public defenders. For example, although the probit models indicate reduced Z-scores among violent felony defendants represented by private attorneys in terms of their likelihood of being convicted, incarcerated, and sentenced to prison, the reduction of these Z-scores was not statistically significant when other factors in the models were controlled. A similar pattern holds when comparing the outcomes for drug offenders with private attorneys and public defenders.

The only offense categories where having a private attorney made some difference was for defendants charged with or convicted of property or public-order offenses. In the property category, defendants with retained counsel were less likely to be convicted than defendants with public defenders. Among public-order defendants, having a private attorney reduced the Z-score probability of receiving an incarceration sentence by .329. These effects, however, were not incredibly strong or consistent. For example, property defendants with private attorneys were just as likely to receive incarceration for state prison as their equivalents with public defenders. Among public-order defendants, the likelihood of conviction or state prison was essentially the same for defendants represented by public defenders and private attorneys.

While the likelihood of conviction, incarceration, and state prison was not significantly different for defendants represented by private attorneys and public defenders across the major SCPS offense categories, the same pattern does not hold for assigned counsel. Indigent defendants represented by assigned counsel received worse case outcomes, particularly for property or drug crimes, than their public defender counterparts. For example, property and drug defendants with assigned counsel had statistically higher Z-scores in terms of their likelihood of being convicted and sentenced to state prison than property or drug defendants with public defenders. The association of assigned counsel with inferior results, however, is not has

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consistent for violent or public-order defendants. Violent defendants represented by assigned

counsel were more likely to be convicted but had similar Z-scores in terms of being incarcerated

or sentenced to state prison compared to those with public defenders. Public-order defendants

with assigned counsel did not manifest any statistically appreciable differences compared to

public defenders regarding the likelihood of conviction, incarceration, or state imprisonment.

**Table 8. Probit regression models comparing types of defense counsel for specific offenses, by conviction, incarceration (in/out) and prison (prison vs. jail or other non-incarceration sentence) outcomes, in the nation's 75 most populous counties, 2004 & 2006**

| Most serious offense by type of counsel | Probit model of conviction outcome Coefficient & standard errors | Probit model with sample selection of incarceration outcome Coefficient & standard errors | Probit model with sample selection of prison outcome Coefficient & standard errors |
|---|---|---|---|
| **Violent** | | | |
| Private attorney | -0.061 | -0.121 | -0.122 |
| | (0.056) | (0.075) | (0.066) |
| Assigned counsel | 0.186 ** | 0.024 | 0.079 |
| | (0.061) | (0.096) | (0.064) |
| **Property** | | | |
| Private attorney | -0.123 * | -0.074 | -0.006 |
| | (0.057) | (0.079) | (0.090) |
| Assigned counsel | 0.215 ** | -0.057 | 0.242 ** |
| | (0.077) | (0.108) | (0.091) |
| **Drug** | | | |
| Private attorney | -0.049 | -0.068 | 0.130 |
| | (0.062) | (0.084) | (0.084) |
| Assigned counsel | 0.299 ** | 0.270 | 0.510 *** |
| | (0.107) | (0.152) | (0.133) |
| **Public-order** | | | |
| Private attorney | 0.023 | -0.329 * | -0.106 |
| | (0.071) | (0.137) | (0.078) |
| Assigned counsel | 0.070 | -0.176 | 0.079 |
| | (0.142) | (0.211) | (0.153) |

Notes: Model (1) includes probit regression of conviction outcome; model (2) includes Heckman model
of incarceration outcome, and model (3) includes Heckman model of prison outcome.
The Heckman model includes equation accounting for the selection effect of conviction on
the incarceration and prison outcome. Asterisks indicate category difference
from the following significance levels: *>=.05, **>=.01, ***>=.001.
Models adjusted to account for clustering of standard errors at the county level
and stratified sampling pattern. Finite population correction adjustments also
used to account for probability of county and case appearing in sample.
All variables in table 7 are included in the regression models.
Model standard errors in parentheses.
Overall model fit statistics not provided through survey command in Stata.
Reference group for defense counsel type is public defender.

Table 9 highlights results of the OLS Heckman regression model examining sentence length by defense counsel type. Overall, the analysis yielded patterns of association between defense counsel type and sentence length that were somewhat similar to that of the bivariate results. Although defendants represented by private attorneys received log transformed sentences that were 11% proportionally higher compared to defendants using public defenders, the differences in sentence length between defendants represented by these forms of defense counsel were not statistically different. In a finding mirroring the bivariate results, defendants with assigned counsel received log transformed sentences that were 26% proportionately longer than defendants with public defenders. The differences in sentence length between defendants with assigned counsel and public defenders were statistically significant.

Before examining the relationship between sentence length and defense counsel type for the specific SCPS offenses, the influence of other covariates on sentence length should be noted. In regards to demographics, females received shorter sentences than males, and for race/ethnicity, blacks were sentenced to incarceration terms that were no different than whites. Hispanics, however, had log transformed sentences that were 15% shorter than whites. The model also shows age having a curvilinear effect with increases in age associated with longer log transformed sentences but with older defendants receiving shorter sentences.

The influence of the conviction charges on sentence length depended upon their severity. In general, higher sentences were associated with the more serious offense categories such as murder, rape, robbery, assault, burglary, or drug trafficking, while shorter sentences were correlated with less serious offenses. The remaining variables including criminal history, monetary bonds, case processing time, and conviction type were associated with longer sentences. Specifically, defendants with a prior felony conviction and higher bond amounts were

significantly more likely to receive longer log transformed sentences net of controls. Longer case processing times were associated with increases in sentence length. Lastly, defendants convicted by bench or jury trial were significantly more likely to receive a longer incarceration sentence compared to their counterparts who plead guilty.

**Table 9. Heckman regression model comparing types of defense counsel, by sentence length outcomes, in the nation's 75 most populous counties, 2004 & 2006**

| Variables in model | Coefficient & standard error | Proportional change in log sentence/a |
|---|---|---|
| **Type of attorney** | | |
| Private attorney | 0.100 | 10.6 % |
| | (0.057) | |
| Assigned counsel | 0.230 | 25.9 ** |
| | (0.070) | |
| **Gender** | | |
| Female defendant | -0.215 | -19.4 %*** |
| | (0.037) | |
| **Race/Hispanic origin** | | |
| Black, non-Hispanic | 0.055 | 5.7 % |
| | (0.042) | |
| Hispanic, any race | -0.157 | -14.5 *** |
| | (0.037) | |
| **Age at arrest** | | |
| Age | 0.005 | 0.5 %** |
| | (0.002) | |
| Age-Squared | -0.000 | 0.0 *** |
| | (0.000) | |
| **Most serious conviction offense** | | |
| Murder | 2.142 | 751.3 %*** |
| | (0.198) | |
| Rape | 1.130 | 209.6 *** |
| | (0.158) | |
| Robbery | 1.042 | 183.4 *** |
| | (0.114) | |
| Assault | 0.237 | 26.7 * |
| | (0.100) | |
| Burglary | 0.275 | 31.7 * |
| | (0.112) | |
| Larceny | 0.034 | 3.4 |
| | (0.088) | |
| Motor vehicle theft | 0.089 | 9.3 |
| | (0.090) | |
| Other property | 0.073 | 7.5 |
| | (0.088) | |
| Drug trafficking | 0.197 | 21.8 * |
| | (0.087) | |
| Weapons | 0.171 | 18.7 |
| | (0.176) | |
| Driving or public order | 0.007 | 0.7 |
| | (0.082) | |
| Misdemeanor | -0.690 | -49.8 *** |
| | (0.078) | |
| **Continued on next page** | | |

**Table 9. Heckman regression model comparing types of defense counsel, by sentence length outcomes, in the nation's 75 most populous counties, 2004 & 2006**

| Variables in model | Coefficient & standard error | Proportional change in log sentence/a |
|---|---|---|
| **On probation, parole, or other status at arrest** | 0.214 (0.037) | 23.9 %*** |
| **Most serious prior conviction** | | |
| Felony | 0.289 (0.078) | 33.5 %*** |
| Misdemeanor | -0.165 (0.046) | -15.2 *** |
| **Monetary bail amounts** | | |
| $1 - $9,999 | -0.078 (0.086) | -7.5 % |
| $10,000 - $24,999 | 0.110 (0.088) | 11.6 |
| $25,000 - $49,999 | 0.335 (0.108) | 39.8 ** |
| $50,000 or more | 0.583 (0.111) | 79.1 *** |
| **Time from arrest to adjudication** | 0.270 (0.015) | 31.0 %*** |
| **Type of conviction** | | |
| Bench trial | 0.484 (0.091) | 62.3 %*** |
| Jury trial | 0.834 (0.104) | 130.3 *** |
| **Constant** | 0.865 | |
| Rho | -0.556 *** | |
| Number of observations | 13,690 | |
| Population size | 49,846 | |

Notes: Model includes Heckman model of sentence length outcome.
The Heckman model includes equation accounting for the selection effect of
incarceration on the sentence length outcome. Asterisks indicate category difference
from the following significance levels: *>=.05, **>=.01, ***>=.001.
Models adjusted to account for clustering of standard errors at the county level
and stratified sampling pattern. Finite population correction adjustments also
used to account for probability of county and case appearing in sample.
Model standard errors in parentheses.
Overall model fit statistics not provided through Heckman survey command in Stata.
Reference group for defense counsel type is public defender.
a/Dependent variable sentence length was transformed using a natural log because of non-normal distribution
of regression residuals. Interpreting log transformed sentences involves exponentiating it and
and subtracting one. This calculation provides an expected proportional change in sentence length
for defendants represented by private attorneys and assigned counsel compared to public defenders.

Table 10 provides separate model results of defense counsel's impact on the log transformed sentence for defendants convicted of violent, property, drug, or public-order crimes. With the exception of the drug offense category, defendants convicted of violent, property, or public-order offenses received similar sentences regardless of whether they were represented by a private attorney or public defender. Only the drug offense category manifested sentences that

were appreciably different between private attorneys and public defenders; however, for this offense category, convicted defendants with private counsel were sentenced to periods of confinement 37% longer than their counterparts with public defenders.

In a finding paralleling the bivariate analysis, longer sentences were associated with defendants represented by assigned counsel compared to their public defender equivalents. For example, defendants convicted of violent crimes received log transformed sentences that were 33% higher if they had assigned counsel than if they were represented by public defenders. Among convicted property defendants, the log transformed sentences were 22% higher for defendants with assigned as opposed to public defender representation. Defendants convicted of public-order offenses received log transformed sentences that were 40% higher if they received legal assistance through an assigned counsel rather than public defender program. Only in the drug offense category were sentences between defendants with assigned counsel and public defender representation not significantly different.

**Table 10. Heckman regression models comparing types of defense counsel for specific offenses, by sentence length outcomes, in the nation's 75 most populous counties, 2004 & 2006**

| Most serious offense by type of counsel | Coefficient & standard error | Proportional change in log sentence |
|---|---|---|
| **Violent** | | |
| Private attorney | 0.004 | 0.4 % |
| | (0.085) | |
| Assigned counsel | 0.283 | 32.7 *** |
| | (0.089) | |
| **Property** | | |
| Private attorney | -0.080 | -7.7 % |
| | (0.066) | |
| Assigned counsel | 0.203 | 22.5 *** |
| | (0.068) | |
| **Drug** | | |
| Private attorney | 0.318 | 37.4 %*** |
| | (0.132) | |
| Assigned counsel | 0.081 | 8.4 |
| | (0.129) | |
| **Public-order** | | |
| Private attorney | 0.014 | 1.4 % |
| | (0.149) | |
| Assigned counsel | 0.337 | 40.0 ** |
| | (0.129) | |

Notes: Model includes Heckman models of sentence length outcome.
The Heckman model includes equation accounting for the selection effect of
incarceration on the sentence length outcome. Asterisks indicate category difference
from the following significance levels: *>=.05, **>=.01, ***>=.001.
Models adjusted to account for clustering of standard errors at the county level
and stratified sampling pattern. Finite population correction adjustments also
used to account for probability of county and case appearing in sample.
Model standard errors in parentheses.
All variables in table 9 are included in the regression models.
Overall model fit statistics not provided through Heckman survey command in Stata.
Reference group for defense counsel type is public defender.
a/Dependent variable sentence length was transformed using a natural log because of non-normal distribution
of regression residuals. Interpreting log transformed sentences involves exponentiating it and
and subtracting one. This calculation provides an expected proportional change in sentence length
for defendants represented by private attorneys and assigned counsel compared to public defenders.

**Discussion of model results and primary findings**

This article sought to examine the role of defense counsel in felony case processing and investigate whether key case outcomes are similar or different by defense counsel type. For the most part, the extant analysis does not support the contention that utilizing a private attorney is equated with superior outcomes. Overall, the models show that defendants who hire private attorneys were just as likely to be convicted, incarcerated, and sentenced to prison as their counterparts with public defenders. For those defendants sentenced to incarceration, the sentences imposed were not statistically different between defendants represented by public

defenders or retained counsel. Even though the offense specific models produced some minor exceptions to these findings, they were not consistent or strong enough to negate the general pattern of negligible differences between defendants represented by public defenders and private attorneys.

That the findings showed defendants represented by public defenders and private attorneys receiving similar outcomes should not be too surprising. As discussed in the literature, the majority of studies show defendants with public defenders receiving adjudication, incarceration, and sentencing outcomes that were relatively similar compared to those with private attorneys (Hartley, Miller, Sophn, 2010; Hanson, Ostrom, Hewitt, and Lomvardias, 1992; Feeney and Jackson, 1990-1991). Even studies that found defendants with private attorneys receiving favorable outcomes in certain contexts are not entirely at odds with the current research. Similar to the Hanson, Ostrom, Hewitt, and Lomvardias (1992) report, this article also found defendants represented by private attorneys receiving incarceration less frequently at the bivariate level. However, when other factors in the SCPS data file are statistically controlled, the differences in incarceration rates between defendants represented by private attorneys and public defenders becomes insignificant.

Rather than contradicting the prior research, this study produces findings that are in line with others evidencing little to no differences in key case outcomes between defendants represented by private attorneys and public defenders. That this is so can probably be explained by the levels of professionalism inherent in many public defender offices. In many states and locales, the establishment of the public defender office has given rise to a group of attorneys with significant experience, expertise, and specialization in criminal law and procedure. Moreover, since the defendants being examined are those charged with felony offenses, the public defenders

assigned to represent these defendants are often required to have significant courtroom training

before moving into the practice of felony defense (Hanson, Ostrom, Hewitt, and Lomvardias,

1992). Lastly, the close working relationships public defenders develop with other courtroom

workgroup actors including prosecutors and judges allows them at least the opportunity to strike

favorable deals for their clients (Hartley, Miller, and Spohn, 2010; Fleming, Nardulli, and

Eisenstein, 1992; Heumann, 1978).

In summary, the competence public defenders show "in their knowledge of court

procedures and practices, their abilities to negotiate the most favorable outcomes for their clients,

and their success in knowing how to achieve favorable outcomes expeditiously" (Hanson,

Ostrom, Hewitt, and Lomvardias, 1992: 105) places them in a position to rival their counterparts

in the private defense bar. Many private attorneys, who engage in criminal defense, have other

practice areas as well and hence, do not have the resources, training, or expertise to practice

criminal defense at levels equaling the public defender's office (Neubauer and Fradella, 2011).

The fact that very few private attorneys can engage solely in the practice of criminal defense

places them in a position where they can at best provide legal advocacy that equals the public

defender system.

Although this article supports the contention that defendants with private attorneys and

public defenders receive similar outcomes, some caution should be used before concluding that

hiring an attorney makes no difference under any circumstances. As revealed in the bivariate

analysis, defendants retaining private attorneys are appreciably different compared to indigent

defendants. On the whole, they tend to be whiter, have less substantial criminal histories, and are

charged with offenses that are both more and less serious compared to defendants who lack the

resources to hire their own attorneys. While the regression models have attempted to account for

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these factors, there are other unmeasured covariates that, if controlled, could perhaps reveal a different story. For example, it is possible that attorney experience has a paramount effect on case outcomes, and that private attorneys who are able to develop significant expertise and practice areas in criminal defense, obtain outcomes that exceed those of public defenders. Unfortunately, SCPS does not measure attorney experience and hence is unable to discern how the degree of attorney expertise could influence case outcomes. Thus, although this research can assess attorney effectiveness in overall felony case processing, it cannot tease out how private attorneys with significant expertise in criminal practice compare to public defenders. Future research analyzing the role of the private defense bar might want to focus on the issue of attorney expertise and examine how that factor impacts on case outcomes.

A more interesting, and in some ways troubling, finding concerns the role of assigned counsel in felony case processing. In general, defendants represented by assigned counsel received the least favorable outcomes in that they were convicted and sentenced to state prison at higher rates compared to defendants with public defenders. These defendants also received longer sentences than those who had public defender representation. Although the offense specific analyzes did not always find significant associations between assigned counsel and the case processing outcomes being modeled, for several of these models the likelihood of conviction and state imprisonment, as well as the length of sentence, were found to be significantly higher for defendants with assigned counsel representation. The patterns of assigned defense counsel representation and unfavorable case outcomes held even when the various factors in the SCPS data file were statistically controlled.

The findings reported in this article diverge somewhat from the prior research on this topic. While earlier studies found negligible differences in case processing outcomes between

assigned counsel and public defenders, several more recent studies including Roach (2010) and Iyengar (2007) noted significant differences between defendants with these differing forms of public defense. To reiterate, both papers found defendants with assigned counsel being subjected to appreciably worse outcomes in terms of likelihood of conviction and severity of punishment compared to defendants with public defenders. That the current research aligns with these studies provides further empirical evidence calling into question the assigned counsel system as a form of adequate indigent defense.

While this paper has highlighted correlations between being represented by an assigned attorney and receiving less favorable case processing outcomes, it is important to note that one should be careful before using these results to infer causation or conclude that the assigned counsel system is an inferior form of indigent defense. There are many factors that could potentially be associated with the case outcomes of conviction, incarceration, and sentence length that are not measured directly in SCPS including strength of the evidence, levels of victimization, aggravating factors such as weapon use, or mitigating circumstances including the defendant's employment status, family relations, or community ties. Even though this article has attempted to control for a variety of key covariates such as offense severity, criminal history, bail status, demographics, and the SCPS sample design, the data cannot be modeled in a way that controls for every variable associated with these criminal case outcomes.

The inability to account for all factors associated with felony case processing outcomes opens the possibility of selection biases explaining some of the differences between assigned counsel and public defenders. For example, many SCPS jurisdictions employ both public defenders and assigned counsel to represent indigent defendants and in these counties, it is possible that the public defenders are able to select cases where they are more likely to prevail or

produce outcomes entailing less severe punishments for their clients. In these jurisdictions, a selection process where assigned counsel are provided the worst cases in terms of conviction and punishment probability, rather than inferior legal advocacy, could explain why public defenders produce better outcomes for their clients. Selection bias could be especially problematic in jurisdictions where heavy caseloads necessitate the utilization of assigned counsel as a means of alleviating public defender workloads. Unless random assignment is applied, public defenders could offload their less favorable cases into the assigned counsel system.

While the possibility of selection bias cannot be fully discounted, an alternative explanation of the assigned counsel system providing an inadequate form of indigent defense should also be considered. As noted by several scholars, the assigned counsel system has been disparaged for appointing attorneys with inadequate skills and qualifications to represent indigent defendants (Neubauer and Fradella, 2011; Iyengar, 2007; Spangenberg and Beeman, 1995). This line of reasoning has become more prevalent in some recent studies including Iyengar's (2007) analysis of assigned counsel in federal courts and Roach's (2010) examination of assigned counsel in several SCPS jurisdictions. In addition to comparing case outcomes, both authors attempted to discern qualification levels of these two forms of indigent counsel. Iyengar examined the law school attended and bar passage date of public defenders and assigned counsel in three federal districts, while Roach collected similar information for a group of assigned attorneys in one SCPS jurisdiction (Franklin, OH). Both authors found evidence supporting the proposition that assigned counsel have less experience and hail from lower quality law schools than their public defender counterparts.

Although this article does not examine the issue of attorney qualifications, the fact that some studies have found differences in attorney quality, as measured by law school attended and

number of years in practice, provides some evidence supporting the contention that the structure

of the assigned counsel system explains the findings highlighted in this study. Other evidence in

support of this argument hails from the fact that, as measured by SCPS, defendants represented

by assigned counsel and public defenders are markedly similar. Indigent defendants with both

forms of defense counsel tend to be charged with similar offenses and have comparable criminal

histories. Moreover, the multivariate models show that at least in regards to the covariates related

to offense severity, criminal history, demographics, bail amounts, conviction type, and sample

design, the differences in case processing outcomes between assigned counsel and public

defenders are still statistically significant. Whether these findings would change if additional

covariates were brought into models is unfortunately a question that cannot be addressed in the

current research.

**Conclusion**

This article sought to examine the role of defense counsel in criminal cases and analyze

differences in case outcomes between defendants represented by public defenders, assigned

counsel, and private attorneys. BJS data tracking defendants charged with a felony offense in the

nation's 75 most populous counties in 2004 and 2006 were employed to address issues including

the types of defense counsel representing felony defendants and the performance of these

attorneys in terms of securing favorable outcomes for their clients. Results from this research

show private attorneys and public defenders securing similar adjudication and sentencing

outcomes for their clients, while assigned counsel generated less favorable outcomes in terms of

likelihood of conviction, state imprisonment, and sentence length.

The negligible differences in case outcomes between defendants with public defenders

and private attorneys should not be too surprising. A plethora of research dating back to the

1970s shows that hiring a private attorney does not raise the odds of escaping a conviction or receiving a less harsh sentence. In a sense, this article has produced findings in line with prior studies on the topic comparing case outcomes among defendants with private attorneys and public defenders. What this article has not done is examine issues related to how the experience and qualifications of private attorneys impact on case processing. It is quite possible that private attorneys who have significant expertise and practice areas in criminal defense are able to secure favorable outcomes for their clients at rates exceeding the public defense bar. Future research may want to test the efficacy of private attorneys who are experienced in criminal defense and compare how these attorneys stack up to public defenders with similar backgrounds.

A more problematic finding concerns the role of assigned counsel in felony criminal defense. In theory, defendants represented by assigned counsel and public defenders should receive similar outcomes because they are comparable in terms of the offenses they are charged with, their criminal backgrounds, and their socio-economic characteristics since both sets of defendants could not afford a private attorney. The fact that defendants with assigned counsel receive less favorable outcomes raises the possibility that these attorneys are being assigned cases that are more likely to result in a conviction and longer sentence compared to their public defender counterparts. An alternative explanation would be that the assigned counsel system may be seriously impaired by funding and other organizational issues in its ability to utilize competent attorneys with sufficient expertise in criminal defense.

Although this article cannot provide enough measures to truly ascertain whether selection bias or an inadequate assigned counsel system explains these findings, the extant study raises the possibility of serious problems with the practice of assigning private attorneys to represent indigent defendants. Many jurisdictions rely on assign counsel to represent indigent defendants

and this is especially the case for less populous counties or states without centralized state

funded public defender systems. Defendants who are defended by assigned counsel could be

seriously disadvantaged compared to those who are represented by public defenders. The

discrepancy in attorney quality and competence raises issues of fairness and justice in the

nation's state criminal courts.

It is imperative to stress that more research is needed before concluding that the assigned

counsel system is seriously flawed as a means of providing legal assistance to indigent

defendants. Future research into this area might want to employ more rigorous techniques such

as random assignment to evaluate the effectiveness of assigned counsel.[26] Subsequent research

might also examine the efficacy of different types of assigned counsel systems. For example,

perhaps assigned counsel systems with strict administrative oversight are more effective

compared to instances with little oversight or monitoring. Irrespective of the research techniques

employed, more effort is needed to begin providing nuance and texture to the findings

highlighted in this paper.

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[26] See Huang, Chen, and Lin (2010) for an interesting example of how random assignment was used to compare public defenders and assigned counsel in the Taiwanese courts.

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