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The Promise of Justice: Are Public and Private Defense Equal?

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The Promise of Justice: Are Public and Private Defense Equal?



Honors Thesis

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Abstract

This thesis attempts to uncover whether or not differences in unclassified felony and first-degree felony case outcomes arise as a result of the type of counsel representing the defendant. The types of defense counsel addressed in this project include public defenders, appointed counsel, and private counsel. This research project specifically focuses on Butler, Greene, and Montgomery Counties in Ohio, in order to cultivate large enough samples for statistical testing. The felony cases that were examined include aggravated murder, murder, rape, voluntary manslaughter, and kidnapping. Existing research (Cohen, 2014; Levine, 1975; Hartley, Miller, and Spohn, 2010; and Williams, 2002) largely shows that public defenders perform better than appointed counsel, and roughly equal to private counsel. In order to discover whether or not discrepancies between the three categories of defense counsel exist in southwestern Ohio, county-level crime and court data encompassing type of counsel, charge(s) filed, and conviction and post-conviction outcomes including guilty pleas, convictions, incarceration, and sentence lengths will be analyzed. The results of this analysis show that statistically significant differences in outcomes between appointed counsel and private counsel occur for conviction and incarceration. No significant differences occurred for guilty pleas or sentence length. Additionally, public defenders were not associated with statistically better or worse outcomes than either of the other types of counsel.

Dedication or Acknowledgements

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Introduction

The question of whether defense counsel influences case outcomes has been studied repeatedly over the past sixty years, beginning in the aftermath of the *Gideon* decision (372 U.S. 335 (1963)). Because the decision intended to assure fair trials to all, any advantage or disadvantage that a defendant faces based on the type of counsel, is fundamentally a problem of legal process. Types of counsel include public defender, appointed counsel, private counsel, or contract attorneys. Cases with the same characteristics should receive roughly the same outcomes, but, as detailed by Stephen Bright (1994), this is not always the case. In his study of defense counsel in capital cases, he discovered that criminal justice professionals in two states stated that cases where the defendant received the death penalty and cases where the defendant received a sentence of life in prison cannot be sorted out by sentence based on the facts of the case (Bright, 1994). Since the facts of the crimes and information about the offenders do not distinguish the cases, Bright (1994) posits that “abject poverty, debilitating mental impairments, minimal intelligence, and poor legal representation” do. He explained stories of public defense attorneys who possessed inadequate experience, knowledge, and resources to provide quality representation to the indigent defendants that they represented (Bright, 1994). Though these examples are from more than twenty years ago, whether public and private defense are equal in the present-day is still up for debate, as evidenced by the continued inquiry on the subject (Anderson and Heaton, 2012; Beck and Shumsky, 1997; Cohen, 2014; Hanson and Ostrom, 1998; Hartley, Miller, and Spohn, 2010; Hoffman, Rubin, and Shepherd, 2006; Iyengar, 2007; Levine, 1975; Roach, 2014; Williams, 2002 and 2013; Willison, 1984). These studies have aided in shaping the

research question at hand: are there differences in serious felony case outcomes based on type of defense counsel in southwestern Ohio?


Literature Review

Over the past six decades, many scholarly articles have been published on this important subject. The first titles published on this subject were written following the *Gideon* decision (372 U.S. 335 (1963)). The literature consulted in this project that is related to the present topic varies in terms of which types of counsel are compared, what geographical areas are studied, and what kinds of data are utilized. Though the findings of each are varied, they still merit comparison. None of these articles capture the topic of this thesis exactly, as this thesis focuses specifically on serious felonies in southwestern Ohio. Some of the studies examined in this paper discuss specific types of felony cases, such as capital murder cases; however, most of them discuss all types of felony cases. Five of the studies focus on smaller geographic areas comprised of less than three counties, but the other seven cover larger areas than the three-county area that this thesis will analyze. These studies provide a stepping stone with which to begin inquiry on the subject, through quantitative data analysis. The articles reviewed for this project have been divided into four subcategories, grouped by which kinds of defense counsel were studied, in order to more easily compare them. Specifically, the studies have been broken down into the following groups: those that compare all three types of counsel, those that compare public defenders to private counsel, those that compare appointed counsel to private counsel, and those that compare public defenders to appointed counsel. Though conclusions will be made within these four subcategories, those conclusions will then be compared to each other to show how all of the studies are connected. Note that the green

equal sign in the tables summarizing the findings of each group denotes a finding of no statistically significant difference (or that the outcome was equal regardless of type of counsel) and that the red not-equal sign denotes a finding of a statistically significant difference (or that the outcome was unequal based on type of counsel).

First, consider the two studies that compared all types of counsel; public defenders, appointed counsel, and private counsel; to each other. Hanson and Ostrom (1998) and Cohen (2014) each compared and contrasted all three types of defense counsel, but in different ways. While both examined felony cases, Hanson and Ostrom (1998) focused on “nine diverse courts” throughout the country that were handpicked to include courts with different types of indigent defense systems in both large and small communities for 1987, but Cohen (2014) focused on the largest counties in the United States by using the State Court Processing Statistics series for 2004 and 2006. These studies both found similarities in outcomes between types of counsel. However, their findings were not identical. Hanson and Ostrom (1998) discovered no significant difference in conviction for all types of counsel, but Cohen (2014) found that appointed counsel’s conviction rate was significantly higher than the rates for public defenders and private counsel. Both found that clients of private counsel are less likely to be sentenced to jail or prison. In addition to this, Cohen (2014) studied incarceration lengths, and found that although sentence lengths between public defenders and private counsel were not statistically different, clients with appointed counsel were statistically more likely to

receive longer sentences than those with public defenders (*Figure 1*).

	Conviction Rate	Guilty Plea Rate	Incarceration Rate	Incarceration Length
Hanson and Ostrom (1998)		n/a		n/a
Cohen (2014)		n/a		




Five studies published between 1975 and 2013 discussed the similarities and differences between public defenders and private counsel. Every study in this category focused on felony cases in different years from the 1970s until 2006, and they were all conducted in a specifically defined geographical area. Sources of data for each study were varied. Levine (1975) used interviews with attorneys to gather his data, and the other researchers used county-level data from various sources including, but not limited to, the Integrated Computerized Online Network (Hoffman et al., 2006) and the State Court Processing Statistics series 1990-2006 (Williams, 2013). Hoffman et al. (2006) and Williams (2013) determined that there were differences in outcomes between the two types of counsel. Defendants represented by public defenders face more time in prison (Hoffman et al., 2006) and are more likely to be convicted and less likely to get their charges dismissed (Williams, 2013). Levine (1975) found no statistically significant differences between public defenders and private counsel for conviction, but not for guilty pleas. Hartley et al. (2010) and Williams (2002) found that there were not statistically significant differences between public defenders and private counsel for

incarceration and incarceration length (*Figure 2*).

	Conviction Rate	Guilty Plea Rate	Incarceration Rate	Incarceration Length
Levine (1975)			n/a	n/a
Williams (2002)	n/a	n/a		
Hoffman, Rubin, and Shepherd (2005)		n/a	n/a	
Hartley, Miller, and Spohn (2010)	n/a	n/a		
Williams (2013)		n/a		

Beck and Shumsky (1997) and Willison (1984) compared and contrasted private counsel and appointed counsel. They went about their studies in dissimilar ways.

Willison (1984) studied felonies and misdemeanors in one county during 1982, while Beck and Shumsky (1997) studied death-eligible cases in the entire state of Georgia from 1973 to 1978. Their conclusions were opposite of each other, as Willison (1984) found that defendants represented by appointed counsel tend to face lighter sentences than defendants represented by private counsel, but Beck and Shumsky (1997) found that death sentences are more likely for defendants with appointed counsel (*Figure 3*).

	Conviction Rate	Guilty Plea Rate	Incarceration Rate	Incarceration Length
Willison (1984)	n/a	n/a	n/a	
Beck and Shumsky (1997)	n/a	n/a		

Lastly, three studies looked at public defenders and appointed counsel. Roach (2014) and Iyengar (2007) studied them on a national scale with data from the State Court Processing Statistics series 1990-2004 and from the Administrative Office of the US Courts Criminal Docket from 1997-2002, respectively. Anderson and Heaton (2012) studied murder cases in Philadelphia from 1994-2005. They found that public defenders had lower conviction rates and shorter sentence lengths (Anderson and Heaton, 2012). Roach (2014) exclusively studied felony cases at the state level, while Iyengar (2007) studied all criminal cases on the federal level. They both concluded that appointed counsel generates worse outcomes than public defenders in conviction rates and sentence lengths. In addition to this, both of these researchers explored the economic implications of attorney wages. Iyengar (2007) found that the closer appointed counsel's wages are to the market wage, the better they perform. Roach (2014) discovered that the outside option (or wage that can be earned outside of practicing as appointed counsel) for both high and low-quality appointed counsel can affect outcomes. Specifically, if the outside option for high-quality attorneys dips, or for low-quality attorneys rises, appointed counsel will perform better than if either had stayed the same (*Figure 4*).

	Conviction Rate	Guilty Plea Rate	Incarceration Rate	Incarceration Length
Iyengar (2007)			n/a	
Anderson and Heaton (2012)			n/a	
Roach (2014)		n/a	n/a	

Patterns in the Literature

The general conclusion from these twelve studies is that the results are varied and inconsistent. Though only two concluded that public defenders, appointed counsel, and private counsel are not different, the remaining studies do not show that all case outcomes are significantly different. While Beck and Shumsky (1997) showed that appointed counsel yielded worse outcomes than private counsel, Hoffman et al. (2006) identified that appointed counsel was indistinguishable from private counsel. Cohen (2014) demonstrated that appointed counsel yields the least favorable outcomes, which is consistent with the research of Iyengar (2007) and Roach (2014). Levine (1975), Williams (2002), and Hartley et al. (2010) found that public defenders appeared to be adequate, while Williams (2013) found the opposite. Clearly, the results of research on this subject have evolved as the years have passed, but they still have not become consistent. Perhaps, over time and with the undertaking of more research on types of defense counsel and their influences on case outcomes, the literature will begin to more clearly take a position as to whether or not type of counsel matters. This thesis attempts to add to the existing research and influence the direction that the literature may take in the future.

Methodology

This project utilizes a quantitative approach. Data for this thesis was gathered on a random sample of all eligible cases from the available public records of Butler, Greene, and Montgomery Counties in southwestern Ohio. Eligible cases include cases for which an unclassified or first-degree felony was the original charge filed from 2000 through 2015. These sampled cases will be analyzed to determine whether statistically significant

differences between types of counsel exist in the sample counties from southwestern Ohio. The analysis will reveal whether there are significant differences in each outcome of interest based on the type of defense counsel present for each case.

There are many variables that play a role in addressing the research question at hand. The independent variable is the type of defense counsel that represents the defendant. Classification of each type relies on the definitions used. Public defenders are attorneys employed at public expense to represent defendants in criminal trials who cannot afford legal assistance. Appointed counsel are attorneys appointed by the court to represent defendants who are unable to afford legal assistance. Private counsel are attorneys who represent defendants who can afford to pay for legal assistance. Because public defenders and appointed counsel appear to be very similar, there are a few complexities in the difference between the two that require explanation. Attorneys that serve as appointed counsel work in private practice in addition to their work with indigent defendants. Not all private defense attorneys take court appointments for indigent defendants, which could be attributed to financial incentives. One reason that some private attorneys become appointed counsel is to supplement their income. The type of counsel will be measured by what type of counsel a defendant had during his or her trial, when a plea deal was made, or when charges were dropped, as each of these occurrences constitutes a final step with a direct effect on the dependent variables.

The dependent variables are the conviction and post-conviction outcomes of the cases: guilty plea, conviction, incarceration, and incarceration length. Guilty plea, conviction, and incarceration are all outcomes that either happen or do not happen, and will be coded based on case records. Any defendant that pleads no contest will be coded

as not pleading guilty. Incarceration length will be determined by the minimum length of time that the defendant is sentenced to serve for one count of the offense, assuming that he or she will not get out on parole, even if it is or will be offered. In lieu of coding every single eligible case, a random sample of cases from each county was drawn and coded. The variables of gender, race, age, and prior felony convictions were controlled for, as each of these variables plays a role in the criminal justice system. All of this information will be found from public records, including county court databases, sex offender registries, and the Ohio Department of Corrections offender database.

The hypothesis that will be tested in this study is that there is no relationship between case outcomes and defense counsel. The reasoning behind this hypothesis is that the criminal justice system has undergone significant reforms since the early 1960s as a result of *Gideon v. Wainwright* (372 U.S. 335 (1963)), and efforts have been made to ensure that the system is fair.

In order to carry out the test of this hypothesis, applicable data will be found for five different crimes in three different southwestern Ohio counties. The crimes that will be analyzed in this thesis are unclassified and first-degree felonies: aggravated murder, murder, rape, voluntary manslaughter, and kidnapping, which are violations of Ohio Revised Code Statutes 2903.01, 2903.02, 2907.02, 2903.03, and 2905.01, respectively. The counties that this thesis is concerned with are Butler, Greene, and Montgomery Counties. Cases fitting both of these qualifications and filed on or between January 1, 2000 and December 31, 2015 that are selected in random samples of 25 percent of cases from each county will be coded and analyzed.

Statistical Package for the Social Sciences (SPSS) version 22 was used to conduct the quantitative analysis of the random samples taken from each county. Each variable of interest was coded as a binary, with yes coded as 1 and no coded as 0. The independent variable was coded as three binary variables (one for each type of counsel), which were used in a binary logistic regression, and one variable encompassing all three types of counsel (public defender coded as 1, appointed counsel coded as 2, and private counsel coded as 3), which was used in a linear regression. Three exceptions to the above are that of incarceration length, age, and prior felony convictions, which were coded on a scale. Incarceration length was coded into three categories: less than 10 years (coded as 1), 10 to 20 years (coded as 2), and more than 20 years (coded as 3). Age was coded into five categories: 18 to 24 (coded as 1), 25-34 (coded as 2), 35-44 (coded as 3), 45-54 (coded as 4), and 55 and older (coded as 5). Any juvenile charged as an adult was coded as if he or she was 18. Prior felony convictions were coded into three categories: none (coded as 1), 1 to 3 (coded as 2), and 4 or more (coded as 3). If a case was dismissed, all dependent variables were coded as 0, except incarceration length, which was left blank. Any missing or unknown data was left blank, with the exception of missing data for type of counsel, which led to the case being dropped from the sample. The primary test used was a binary logistic regression, which was used for the guilty plea, conviction, and incarceration variables. Linear regression was used for the incarceration length variable. In order for a relationship to be significant, it needed to have a p-value of .05 or lower.

Initially, in addition to the quantitative data collected as described above, qualitative data from a survey was intended to be used, but not coded or analyzed statistically. The survey was disseminated over the Internet to defense attorneys who

practice in the state of Ohio. Because this part of the research involved human subjects, rather than public records, an Institutional Review Board proposal was required. The questions in the survey revolved around professional opinions of the indigent defense system and what reforms, if any, the respondents believe are necessary. This perspective does not frequently appear in the quantitative data-oriented studies in the literature, so including opinions of professionals who work in the criminal justice sector every day could shed some light on why the data looks the way it does or determine whether attorneys' perceptions of the system are accurate. This information was intended to be included in the thesis after the analysis of the quantitative data in order to fulfill this function. However, only two attorneys responded to the survey, giving too small of a sample size for descriptive statistics on the closed-ended questions and too few perspectives from open-ended questions. The Institutional Review Board proposal, invitation to participate, and survey questions can be found in Appendix A.

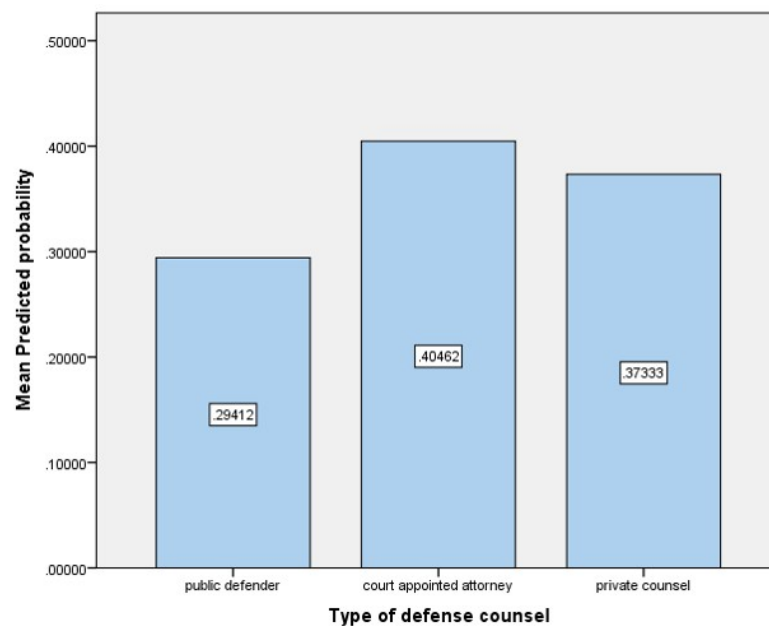
Results

For each of the following variables, six different binary logistic regression tests were run: guilty plea, conviction, and incarceration. Three of the tests included control variables and three did not. Six tests needed to be run because one independent variable must be left out of the equation, which the other independent variables are then compared to in order to determine whether there is a statistically significant relationship. The first three tests for each dependent variable were conducted without the control variables, running the regression three times and leaving each type of counsel out of the equation once. This process was then repeated with the inclusion of all control variables. For the incarceration length variable, two different linear regression tests were run. The first test

consisted of the counsel variable encompassing all types of counsel compared to the incarceration length variable. The second test was repeated with the addition of all control variables. All statistical tables can be found in Appendix B.

Guilty Plea

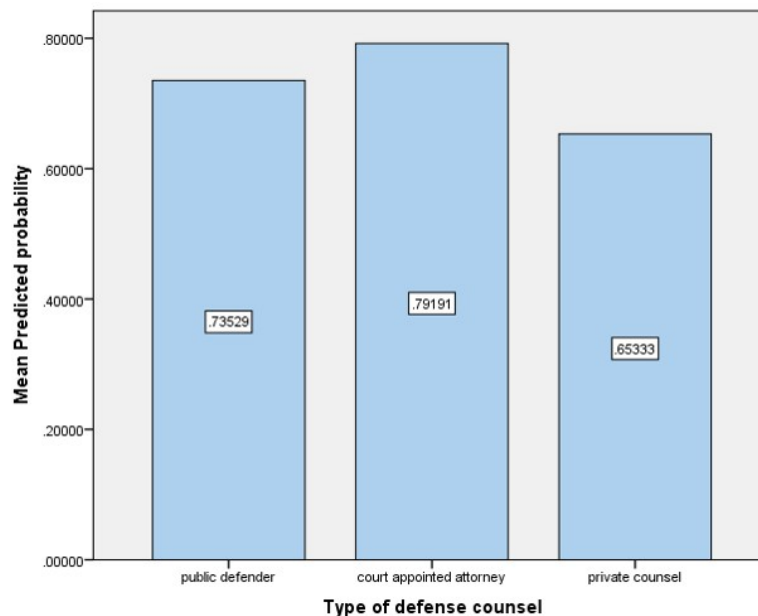
For the guilty plea variable, the binary logistic regression analysis showed that there were no statistically significant relationships, with or without the control variables. This means that type of counsel had no effect on whether or not a defendant pleaded guilty. However, the data does show that defendants with public defenders were about 11% less likely to plead guilty than defendants with appointed counsel when using the control variables, but, as stated above, this relationship is not statistically significant (*Figure 5*).



Conviction

Analysis shows that public defenders have no statistically significant relationship with the conviction outcome, regardless of whether they were compared to appointed counsel or private counsel. This holds with or without the control variables. However,

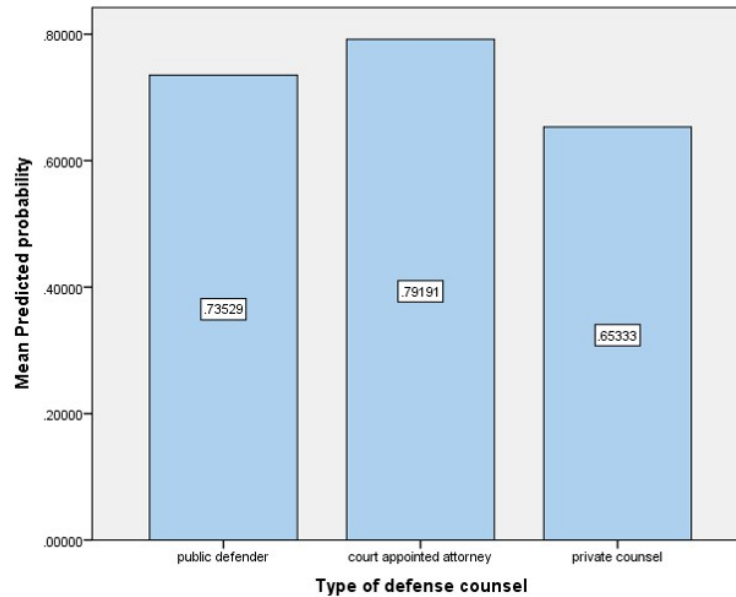
there are statistically significant relationships when appointed counsel and private counsel are compared. Without controls, defendants with appointed counsel were about 13% more likely to be convicted than defendants with private counsel, with a p-value of .023. When accounting for control variables, this relationship gets stronger, showing a p-value of .016. With control variables, defendants represented by appointed counsel were 14% more likely to be convicted than defendants represented by private counsel (*Figure 6*).



Incarceration

The relationships found in the binary logistic regression for incarceration were nearly exactly the same as for the conviction variable. Public defenders still exhibit no statistically significant relationship, regardless of which other type of counsel they were compared to. Appointed counsel does show a statistically significant relationship when compared to private counsel (and vice versa). Without controls, and with a p-value of .019, defendants with appointed counsel are about 13.5% more likely to be sentenced to incarceration than defendants with private counsel. This relationship strengthens when

including control variables, giving a p-value of .016 and a 14% higher chance of incarceration for defendants represented by appointed counsel (*Figure 7*).



Incarceration Length

The linear regression shows that there are no statistically significant relationships between type of counsel and length of incarceration, with or without control variables. This means that even though defendants represented by appointed counsel may fare worse when the type of sentence (either incarceration or community control) is decided, they are on equal footing with all other defendants when it comes to how long they will be sentenced to incarceration. This may be the result of statutory requirements and mandatory minimum sentences that reduce the discretion of the judge and the jury during the sentencing phase.

Discussion

Like previous inquiry on this subject, it is evident that the results are mixed as to whether all serious felony defendants with all types of counsel achieve equivalent

outcomes in their criminal trials. However, it is clear that defendants represented by public defenders will not receive better or worse outcomes than defendants with appointed or private counsel. This is interesting because it does not necessarily match the public's perception of what case outcomes are based on type of counsel. The dominant belief is that if a defendant can pay for representation, they will receive better outcomes than a defendant who is represented by a public defender, possibly because private counsel is more motivated in his or her efforts to represent the client as a result of financial incentives. This does not take into consideration the value of having a public defender who has a good working relationship with the prosecutor and the judge and the fact that many public defenders' offices have investigators on staff. Additionally, public defenders acquire valuable experience with criminal cases that is reinforced every day. This perception that private counsel is better may also persist because public defenders' offices are portrayed in the media as being overworked, understaffed, and having insufficient operating budgets. Though the perceptions addressed above may be true, the data gathered for this study still shows that public defenders achieve the same outcomes as the other types of counsel, as exhibited by the fact that there are no statistically significant relationships whether compared to appointed counsel or private counsel.

This data does show that defendants represented by appointed counsel fare worse than defendants with private counsel at two separate points: conviction and incarceration. There could be a variety of reasons for this, and the first that comes to mind is financial incentives. In Ohio, the reimbursement rate for appointed counsel is set by each county, but there are also maximum hourly rates and caps on reimbursement based on the type of case. The maximum hourly rates prescribed by the state are as follows: \$50.00 per hour

for out-of-court work and \$60.00 per hour for in-court work for cases not involving the death penalty and \$95.00 per hour for cases involving the death penalty (regardless of whether work is done in or out of court) (Ohio Public Defender). As a result of the caps per case, appointed counsel may limit the number of hours they put in on a case to minimize losses to their firm. Additionally, if appointed counsel wants to hire an investigator, he or she must petition the court to provide funding for that purpose, which may or may not be successful. Another possible reason for the inferior outcomes could be that appointed counsel have less experience than private counsel. The Ohio Revised Code provides that defendants can choose an attorney as appointed counsel or one can be appointed by the court. This could result in defendants choosing family members or friends as their appointed counsel even if they do not have as much experience as other criminal defense counsel. Experience level can also interact with the financial incentives, since it is possible that inexperienced attorneys in private practice will take cases as appointed counsel in order to gain experience and supplement their income. Though state statutes require that both public defenders and appointed counsel have “sufficient experience or training,” what constitutes “sufficient” is not explained, which means that appointed counsel that are not experienced enough can still represent defendants if the judge deems, subjectively, that their experience is sufficient.

Limitations of this Study

There are a few limitations to the present study, which all derive from the data that was acquired. First, the number of counties had to be reduced by half due to lack of availability of public records online. Identifying eligible cases was not possible, and even if it had been, the cost associated with obtaining the records would have been too high to

be practical. Additionally, the records that were located were not always complete, and multiple sources of information had to be used to code for each variable. For example, race was not part of the court record, and had to be determined through the prison database or sex offender registries. For defendants who were not convicted, it was nearly impossible to discover their race. More than 100 cases had missing data, limiting its ability to be an effective control variable. Similarly to race, gender had limited effectiveness as a control variable, although not because of information being missing. The problem with the gender variable was that only 12 out of the 378 defendants in the sample were women. This is not necessarily a problem with the data, but rather that offenders skew male as a whole, particularly for the types of crimes that this thesis addresses. The incarceration variable was also affected by the types of crimes examined, since it is unlikely (though not impossible) for a defendant to receive probation as a sentence for an unclassified or first-degree felony. Therefore, the vast majority of the defendants in this sample were sentenced to incarceration if convicted. The relationship between appointed counsel and private counsel explored above includes all cases, not just cases that resulted in a conviction. Though there was no relationship between type of counsel and dismissal of a case, dismissals could still be confounding the relationships seen for incarceration.

Next, it was not always clear what type of counsel a defendant was represented by, specifically in Butler and Greene Counties. These two counties use the same database for public records, and distinguishing between type of counsel was difficult. The Montgomery County public records database made it clear when a public defender was the attorney of record by showing an entry that states “Notice of appearance public

defender.” The other counties did not distinguish public defenders in this way, which may explain why the data shows only six defendants in Butler County and nine defendants in Greene County as being represented by public defenders. However, those numbers may be accurate, showing that the preferred method for providing defense services to indigent defendants in each county (public defender in Greene and Montgomery, and public defender or contract attorney in Butler County) is not necessarily followed, giving high percentages of defendants represented by appointed counsel. Regardless of whether the data on type of counsel is accurate, only 44 cases in the sample had a public defender as defense counsel which could have skewed the data.

Lastly, the number of cases initially coded was 539. However, any case that did not fit the specifications of the research design in any way was dropped from the sample and not replaced. This includes scenarios when defendants were charged under the statutes referenced above with slight modifications that made the crime a second-degree felony or lower. Modifications that reduce the degree by one step include an attempted offense or conspiracy to commit an offense. Aggravated murders and murders with these modifications were still included in the sample because they became first-degree felonies instead of unclassified felonies, but any rape, voluntary manslaughter, or kidnapping cases that had these attributes became second-degree felonies and thus had to be eliminated from the sample. Specific to kidnapping is a subsection of the statute that states that if the person is released safely, the charge is a second-degree felony, so any cases charged in this way were also eliminated. Cases that never had an attorney of record also had to be dropped because the relationship between type of counsel and outcomes could not be tested. These factors caused 161 cases to be unusable, bringing the

sample size down to 378 cases. For the population, which was 2,024 cases in total, a sample size of 378 at a confidence interval of 95% corresponds with a margin of error of about 4.5%.

Conclusions

This thesis attempted to examine whether or not conviction and post-conviction outcomes differ based on the type of counsel a defendant was represented by for three southwestern Ohio counties. Results from this research show that defendants with public defenders do not experience different outcomes than defendants with appointed counsel or private counsel, but that for conviction and incarceration, defendants with appointed counsel receive worse outcomes than defendants with private counsel. Previous research shows that defendants with private counsel do not fare significantly better than those with public defenders (Cohen, 2014; Hartley et al., 2010; Williams, 2002; Williams, 2013) and the present study clearly reflects these previous findings. The finding that defendants represented by appointed counsel receive worse conviction and incarceration outcomes is also supported by previous research (Beck & Shumsky, 1997; Cohen, 2014; Hanson & Ostrom; 1998).

Future research is still necessary, especially for geographic areas that have not been represented in the existing literature. However, research on this topic generally, regardless of where the research is carried out, will still be beneficial, as not all studies compare all three types of counsel. Though studies that review two types of counsel provide relevant conclusions, comparing all three types of counsel will provide the most complete perspective. Studies of jurisdictions within the same state would be the most appropriate, as each state has its own procedures for providing indigent defense. Though

reviewing cases from jurisdictions across state lines can add a comparative perspective that allows researchers and readers to see where public and private defense are equal and unequal, it can also introduce a problematic confounding effect. Because each state can set up its own public defense delivery system, it will be unclear whether any differences in outcomes directly result from the type of counsel or whether they are partly a result of the way the system is designed. Comparing jurisdictions within the same state will eliminate this confounding variable, and therefore this method is preferable.

Finally, recommendations on the keeping of public records can be given. First, public records databases should be maintained in a way that makes public access easy and convenient for the user, whether that user is a researcher or just a citizen looking for information. All three of the counties in this thesis (Butler, Greene, and Montgomery) did well on this point, to a certain extent, but three other counties initially slated for inclusion in this project (Clinton, Preble, and Warren) failed. For both Clinton and Warren Counties, searching for eligible cases was not possible because knowing the case number or the name of the defendant was necessary to searching the system. These systems seemed more suited for defendants, their family members, and their attorney(s), because those are the people who would likely know either the case number or the name of the defendant, if not both. The Preble County database was nearly the same as the databases for Butler and Greene Counties, but it did not identify charges in a convenient manner like the other two databases. Every criminal case file had to be opened and looked through, which was unrealistic given the timeframe for data collection. Excluding these three counties directly diminished the scope of this project. The second recommendation is to more clearly identify type of counsel, specifically with regard to public defenders

and appointed counsel. As noted above, Montgomery County did this well, including an entry in the docket that stated “notice of appearance public defender.” However, neither Butler nor Greene County did this, so the only way to distinguish what kind of counsel represented the defendant was to look for an entry that said “attorney fees.” Difficulty in discerning type of counsel may have led public defenders to be underrepresented in the data collected. Finally, the third recommendation is to include information about race and gender in the official court record, just as date of birth and place of arrest are. This will make it easier for future researchers to gather information, since they will only have to look in one place. Police incident reports containing this information are not necessarily public records, and certain constraints may prevent the public from requesting access to them. Additionally, including race and gender information in the official court record will allow that information to be known for defendants who are found not guilty or whose cases are dismissed. Should these recommendations be implemented, research on the important topic addressed in this thesis will become more complete and easier to undertake, two goals that should be universally desired.

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Appendix A: Institutional Review Board Proposal, Invitation to Participate, and Survey Questions

This Checklist may be used by researchers at the University of Dayton who want to conduct **anonymous paper surveys, confidential online surveys, or non-sensitive interviews using only adult subjects**. Any other type of research must use the appropriate exempt or non-exempt form available at the IRB web site. This application form may NOT be used if the research is sponsored with federal funds, if prison populations are used, if compensation is involved, or if minors under the age of 18 are involved. This form can only be submitted to the IRB by a University of Dayton faculty member or full-time staff member. **If you are a student, you must ask your faculty mentor to approve the checklist and submit it, along with the Invitation to Participate/Information Sheet and list of survey/interview questions** to IRB@udayton.edu. Visit: <http://www.udayton.edu/research/compliance/irb/>

1. PRIMARY RESEARCHER

Researcher name, department, and UD e-mail:

Alicia Linzmeier, Department of Criminal Justice Studies, alinzmeier1@udayton.edu

Faculty Sponsor Name (required for student projects), department and e-mail:

Arthur Jipson, Ph.D, Department of Criminal Justice Studies, ajipson1@udayton.edu

2. PROJECT TITLE: The Promise of Justice: Are Public Defense and Private Defense Equal?

3. CHECKLIST:

- ☒ No federal funds will be used in this research. (You may not use this form if federal funds are used.)
- ☒ No compensation will be offered to participants. (You may not use this form if compensation is used.)
- ☒ No subjects under the age of 18 will be used in this research.
- ☒ No prisoners will be used in this research.
- ☒ No deception will be used in this research.
- ☒ The researcher has approval to conduct their research at the data collection site.

LOCATION: Law Firms in Southwest Ohio

- ☒ The researcher will not be collecting or recording any identifying information from the subjects.
- ☒ If interviews are involved, NO sensitive topics are involved. (If for any reason the subject might be at risk if their identity and their responses are linked, you may not use this fast-track form.)
- ☒ Survey Data and Interview Responses will be secured and kept private using lock-and-key (paper data) or password-protected computer files (digital data) on a computer with limited access.
- ☒ Access to the research data will be protected and restricted to the researcher and/or faculty member.
- ☒ This type of research does not require the researcher to document informed consent. In lieu, the researcher will use the **University-approved Invitation/Information Sheet** template (see the IRB web site). This sheet will be provided to the subjects prior to data collection.
- ☒ I have included the **Invitation to Participate/Information Sheet** and **Survey/Interview Questions** for this study with this form for review.
- ☒ Only a faculty or staff member may submit this form to the IRB.

IF ANY OF THE BOXES ABOVE ARE NOT CHECKED, you may not use the FAST-TRACK FORM. Please visit the IRB web site for the regular application for exemption or non-exempt research application.

4. FACULTY/STAFF MEMBER CERTIFICATION OF FAST-TRACK APPLICATION: This form may only be submitted by a **full-time faculty or staff member** of the University of Dayton. This form must be submitted, along with the Invitation to Participate/Information Sheet, and list of survey/interview questions for this study, by e-mail to IRB@udayton.edu prior to any data collection. By submitting this form via e-mail to the IRB, the faculty/staff member is certifying that the above information has been reviewed and is true to the best of your knowledge. **The person signing/submitting this form accepts responsibility for the protection of the human subjects recruited to this research study, and for the ethical conduct of this research.**

Alicia Linzmeier

The Promise of Justice: Are Public and Private Defense Equal?

All participants are mailed copy of the questions and invitation to participate.

- Question 1: How long have you been a practicing defense attorney in the state of Ohio?
 - Rationale: not directly relevant to my research question, but seems like a good introductory question and a way to gauge experience and familiarity with criminal procedures used in Ohio courts
 - Follow-up questions:
 - Have you practiced as a different type of defense attorney?
 - Have you practiced in a state other than Ohio?
- Question 2: What is a general overview of the process that you go through, from beginning to end, when you take or receive a case?
 - Rationale: speaks to the style and nature of representation. Looking to uncover whether there could be a systematic difference between how each type of attorney goes about creating a defense strategy
 - Follow-up questions:
 - Does the process differ by crime? (example: murder vs. rape or manslaughter vs. kidnapping)
 - Does the process differ by type of defendant? (examples: first-time offender, indigent defendant, both?)
- Question 3: In your professional opinion, do you think that outcomes for indigent defendants differ from non-indigent defendants?
 - Rationale: allows for professional perspectives to be presented in addition to the academic perspectives of previous literature, adds real-life context because most of the literature did not use data from Ohio or interview attorneys from Ohio
 - Follow-up questions:
 - What are the reasons that you think that? What are the reasons for that conclusion(s)?
 - Do you think that these differences are inherent to the process? (if the interviewee says that there are differences)
 - In your professional opinion, what are the outcomes for defendants represented by each type of counsel (public defender, appointed counsel, retained counsel)? (if the interviewee says that there are differences)
- Question 4: In your professional opinion, does the indigent defense system need reform?
 - Rationale: allows for opinions from people who experience the system on a much more regular basis than the academics who study it, illustrates what kinds of policy changes attorneys think would work
 - Follow-up questions:
 - What are the reasons that you think that? What are the reasons for that conclusion(s)?

- If yes, what reforms do you see as necessary? If not, what are the reasons that the system is working well?

INVITATION TO PARTICIPATE IN RESEARCH

Surveys and Interviews

Research Project Title: The Promise of Justice: Are Public and Private Defense Equal?

You have been asked to participate in a research project conducted by Alicia Linzmeier from the University of Dayton, in the Department of Criminal Justice Studies.

The purpose of the project is to examine whether case outcomes for unclassified and first-degree felony defendants in southwestern Ohio are the same or similar based on the type of defense counsel that they are represented by.

You should read the information below, and ask questions about anything you do not understand, before deciding whether or not to participate.

- Your participation in this research is voluntary. You have the right not to answer any question and to stop participating at any time for any reason. Answering the questions will take about 30 minutes.
- You will not be compensated for your participation.
- All of the information you tell us will be confidential.
- If this is a recorded interview, only the researcher and faculty advisor will have access to the recording and it will kept in a secure place. If this is a written or online survey, only the researcher and faculty advisor will have access to your responses.
- I understand that I am ONLY eligible to participate if I am over the age of 18.
- If you are participating in an online survey: We will not collect identifying information, but we cannot guarantee the security of the computer you use or the security of data transfer between that computer and our data collection point. We urge you to consider this carefully when responding to these questions.

Please contact the following investigators with any questions or concerns:

Alicia Linzmeier, alinzmeier1@udayton.edu, 920-619-9428

Arthur Jipson, PhD., ajipson1@udayton.edu, 937-229-2153

If you feel you have been treated unfairly, or you have questions regarding your rights as a research participant, you may contact Candise Powell, J.D., Chair of the Institutional Review Board at the University of Dayton, IRB@udayton.edu; Phone: (937) 229-3515.

Criminal Defense in Southwestern Ohio

This survey is intended to collect professional opinions of defense attorneys on the indigent defense system in Ohio. Answering each question (beyond the first two) is voluntary and your responses will remain anonymous.

* 1. What type of defense counsel do you practice as?

- ☐ Public Defender
- ☐ Appointed Counsel
- ☐ Private Counsel
- ☐ Other (please specify)

* 2. How long have you been a practicing defense attorney in the state of Ohio?

- ☐ Less than 5 years
- ☐ 5 to 10 years
- ☐ More than 10 years

3. Have you ever practiced as a different type of defense attorney?

- ☐ Yes
- ☐ No

Criminal Defense in Southwestern Ohio

4. If so, what type?

- ☐ Public Defender
- ☐ Appointed Counsel
- ☐ Private Counsel

Criminal Defense in Southwestern Ohio

5. In your professional experience, what are the best practices after you decide to take or receive a case?

6. Does the process of preparing a defense differ by crime?

☐ Yes

☐ No

☐ Unsure

7. Does the process of preparing a defense differ by type of defendant, such as first-time offenders or indigent defendants?

☐ Yes

☐ No

☐ Unsure

8. What is a brief list of the steps that you go through, from beginning to end, when you take or receive a case?

Criminal Defense in Southwestern Ohio

9. Rate your agreement with the following statement:

In your professional opinion, outcomes for indigent defendants are the same as outcomes for non-indigent defendants.

Disagree	Strongly Agree	Agree	Neutral	Disagree	Strongly
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

10. In your professional experience, are outcomes for indigent defendants the same as outcomes for nonindigent defendants?

☐ Yes

☐ No

☐ Unsure

11. Briefly, what are the reasons you think that?

12. If you think there are differences, do you think that these differences are inherent to the process?

☐ Yes

☐ No

☐ Unsure

13. Briefly, in your professional opinion, what are the outcomes for defendants represented by each type of counsel (public defender, appointed counsel, retained counsel)?

Criminal Defense in Southwestern Ohio

14. Rate your agreement with the following statement:

In your professional opinion, the indigent defense system needs reform.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

15. Briefly, what are the reasons you think that?

16. If you strongly agree or agree, what reforms do you see as necessary?

If you disagree or strongly disagree, or feel neutral, what are the reasons that the system is working well?

Criminal Defense in Southwestern Ohio

Thank you for your participation. If you have any questions, please contact Alicia Linzmeier at alinzmeier1@udayton.edu or Dr. Art Jipson at ajipson1@udayton.edu.

Appendix B: Statistical Tables

Logistic Regression Tables: Guilty Plea

Variables in the Equation

	B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a PublicDefender	-.621	.385	2.597	1	.107	.537
PrivateCounsel	-.222	.253	.769	1	.380	.801
Constant	2.289	.932	6.025	1	.014	9.862

a. Variable(s) entered on step 1: PublicDefender, PrivateCounsel.

Variables in the Equation

	B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a PublicDefender	-.399	.418	.913	1	.339	.671
AppointedCounsel	.222	.253	.769	1	.380	1.249
Constant	1.179	.999	1.392	1	.238	3.251

a. Variable(s) entered on step 1: PublicDefender, AppointedCounsel.

Variables in the Equation

	B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a AppointedCounsel	.621	.385	2.597	1	.107	1.861
PrivateCounsel	.399	.418	.913	1	.339	1.490
Constant	-.816	1.192	.469	1	.493	.442

a. Variable(s) entered on step 1: AppointedCounsel, PrivateCounsel.

Variables in the Equation

	B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a PublicDefender	-.530	.419	1.599	1	.206	.589
PrivateCounsel	-.270	.293	.849	1	.357	.763
Minority	-.307	.264	1.352	1	.245	.736
Male	20.859	13278.017	.000	1	.999	1145706373.09
Age	.008	.111	.005	1	.942	1.008
Priors	-.431	.239	3.248	1	.071	.650
Constant	-20.465	13278.017	.000	1	.999	.000

a. Variable(s) entered on step 1: PublicDefender, PrivateCounsel, Minority, Male, Age, Priors.

Variables in the Equation

	B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a PublicDefender	-.260	.458	.323	1	.570	.771
AppointedCounsel	.270	.293	.849	1	.357	1.310
Minority	-.307	.264	1.352	1	.245	.736
Male	20.859	13278.019	.000	1	.999	1145707119.83
Age	.008	.111	.005	1	.942	1.008
Priors	-.431	.239	3.248	1	.071	.650
Constant	-20.735	13278.019	.000	1	.999	.000

a. Variable(s) entered on step 1: PublicDefender, AppointedCounsel, Minority, Male, Age, Priors.

Variables in the Equation

	B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a PrivateCounsel	.260	.458	.323	1	.570	1.297
AppointedCounsel	.530	.419	1.599	1	.206	1.699
Minority	-.307	.264	1.352	1	.245	.736
Male	20.859	13278.017	.000	1	.999	1145707137.97
Age	.008	.111	.005	1	.942	1.008
Priors	-.431	.239	3.248	1	.071	.650
Constant	-20.996	13278.017	.000	1	.999	.000

a. Variable(s) entered on step 1: PrivateCounsel, AppointedCounsel, Minority, Male, Age, Priors.

Logistic Regression Tables: Conviction

Variables in the Equation

	B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a PublicDefender	-.445	.335	1.761	1	.184	.641
PrivateCounsel	-.548	.241	5.152	1	.023	.578
Constant	1.266	.838	2.281	1	.131	3.546

a. Variable(s) entered on step 1: PublicDefender, PrivateCounsel.

Variables in the Equation

	B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a PublicDefender	.103	.362	.080	1	.777	1.108
AppointedCounsel	.548	.241	5.152	1	.023	1.729
Constant	-1.472	.892	2.726	1	.099	.229

a. Variable(s) entered on step 1: PublicDefender, AppointedCounsel.

Variables in the Equation

	B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a PrivateCounsel	-.103	.362	.080	1	.777	.902
AppointedCounsel	.445	.335	1.761	1	.184	1.561
Constant	-.959	1.033	.863	1	.353	.383

a. Variable(s) entered on step 1: PrivateCounsel, AppointedCounsel.

Variables in the Equation

	B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a PublicDefender	-.356	.441	.651	1	.420	.701
PrivateCounsel	-.756	.315	5.760	1	.016	.470
Minority	.214	.297	.520	1	.471	1.239
Male	1.130	.699	2.615	1	.106	3.096
Age	.011	.126	.007	1	.932	1.011
Priors	-.408	.237	2.972	1	.085	.665
Constant	.699	.844	.685	1	.408	2.011

a. Variable(s) entered on step 1: PublicDefender, PrivateCounsel, Minority, Male, Age, Priors.

Variables in the Equation

	B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a PublicDefender	.400	.469	.728	1	.394	1.492
AppointedCounsel	.756	.315	5.760	1	.016	2.129
Minority	.214	.297	.520	1	.471	1.239
Male	1.130	.699	2.615	1	.106	3.096
Age	.011	.126	.007	1	.932	1.011
Priors	-.408	.237	2.972	1	.085	.665
Constant	-.057	.863	.004	1	.947	.945

a. Variable(s) entered on step 1: PublicDefender, AppointedCounsel, Minority, Male, Age, Priors.

Variables in the Equation		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a	PrivateCounsel	-.400	.469	.728	1	.394	.670
	AppointedCounsel	.356	.441	.651	1	.420	1.427
	Minority	.214	.297	.520	1	.471	1.239
	Male	1.130	.699	2.615	1	.106	3.096
	Age	.011	.126	.007	1	.932	1.011
	Priors	-.408	.237	2.972	1	.085	.665
	Constant	.343	.899	.146	1	.703	1.410

a. Variable(s) entered on step 1: PrivateCounsel, AppointedCounsel, Minority, Male, Age, Priors.

Logistic Regression Tables: Incarceration

Variables in the Equation		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a	PublicDefender	-.425	.335	1.610	1	.204	.654
	PrivateCounsel	-.566	.241	5.531	1	.019	.568
	Constant	1.283	.837	2.349	1	.125	3.608

a. Variable(s) entered on step 1: PublicDefender, PrivateCounsel.

Variables in the Equation		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a	PublicDefender	.141	.362	.152	1	.697	1.151
	AppointedCounsel	.566	.241	5.531	1	.019	1.762
	Constant	-1.548	.891	3.018	1	.082	.213

a. Variable(s) entered on step 1: PublicDefender, AppointedCounsel.

Variables in the Equation		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a	PrivateCounsel	-.141	.362	.152	1	.697	.869
	AppointedCounsel	.425	.335	1.610	1	.204	1.530
	Constant	-.843	1.032	.667	1	.414	.430

a. Variable(s) entered on step 1: PrivateCounsel, AppointedCounsel.

Variables in the Equation		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a	PublicDefender	-.356	.441	.651	1	.420	.701
	PrivateCounsel	-.756	.315	5.760	1	.016	.470
	Minority	.214	.297	.520	1	.471	1.239
	Male	1.130	.699	2.615	1	.106	3.096
	Age	.011	.126	.007	1	.932	1.011
	Priors	-.408	.237	2.972	1	.085	.665
	Constant	.699	.844	.685	1	.408	2.011

a. Variable(s) entered on step 1: PublicDefender, PrivateCounsel, Minority, Male, Age, Priors.

Variables in the Equation		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a	PublicDefender	.400	.469	.728	1	.394	1.492
	AppointedCounsel	.756	.315	5.760	1	.016	2.129
	Minority	.214	.297	.520	1	.471	1.239
	Male	1.130	.699	2.615	1	.106	3.096
	Age	.011	.126	.007	1	.932	1.011
	Priors	-.408	.237	2.972	1	.085	.665
	Constant	-.057	.863	.004	1	.947	.945

a. Variable(s) entered on step 1: PublicDefender, AppointedCounsel, Minority, Male, Age, Priors.

Variables in the Equation		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 ^a	PrivateCounsel	-.400	.469	.728	1	.394	.670
	AppointedCounsel	.356	.441	.651	1	.420	1.427
	Minority	.214	.297	.520	1	.471	1.239
	Male	1.130	.699	2.615	1	.106	3.096
	Age	.011	.126	.007	1	.932	1.011
	Priors	-.408	.237	2.972	1	.085	.665
	Constant	.343	.899	.146	1	.703	1.410

a. Variable(s) entered on step 1: PrivateCounsel, AppointedCounsel, Minority, Male, Age, Priors.

Linear Regression Tables: Incarceration Length

Coefficients ^a					
Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
1 (Constant)	2.038	.174		11.715	.000
Type of defense counsel	-.120	.079	-.100	-1.526	.128

a. Dependent Variable: Length of incarceration

Coefficients ^a					
Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
1 (Constant)	1.956	.244		8.013	.000
Type of defense counsel	-.089	.082	-.077	-1.094	.275
Is defendant a minority	.099	.100	.073	.989	.324
Which age range defendant fits in	.001	.041	.001	.015	.988
How many prior felony convictions in that county	.025	.090	.020	.276	.783

a. Dependent Variable: Length of incarceration