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Defense Counsel in Criminal Cases

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Almost all persons charged with a felony in Federal and large State courts were represented by counsel, either hired or appointed. But over a third of persons charged with a misdemeanor in cases terminated in Federal court represented themselves (pro se) in court proceedings prior to conviction, as did almost a third of those in local jails.

Indigent defense involves the use of publicly financed counsel to represent criminal defendants who are unable to afford private counsel. At the end of their case approximately 66% of felony Federal defendants and 82% of felony defendants in large State courts were represented by public defenders or assigned counsel.

In both Federal and large State courts, conviction rates were the same for defendants represented by publicly financed and private attorneys. Approximately 9 in 10 Federal defendants and 3 in 4 State defendants in the 75 largest counties were found guilty, regardless of type of attorney.

However, of those found guilty, higher percentages of defendants with publicly financed counsel were sentenced to incarceration. Of defendants found guilty in Federal district courts, 88% with publicly financed counsel and 77% with private counsel received jail or prison sentences; in large State courts 71% with public counsel and 54% with private attorneys were sentenced to incarceration.

Highlights

At felony case termination, court-appointed counsel represented 82% of State defendants in the 75 largest counties in 1996 and 66% of Federal defendants in 1998

	Percent of defendants	
	Felons	Misdemeanants
75 largest counties		
Public defender	68.3%	--
Assigned counsel	13.7	--
Private attorney	17.6	--
Self (pro se)/other	0.4	--

U.S. district courts

Federal Defender Organization	30.1%	25.5%
Panel attorney	36.3	17.4
Private attorney	33.4	18.7
Self representation	0.3	38.4

Note: These data reflect use of defense counsel at termination of the case.
--Not available.

- Over 80% of felony defendants charged with a violent crime in the country's largest counties and 66% in U.S. district courts had publicly financed attorneys.

- About half of large county felony defendants with a public defender or assigned counsel and three-quarters with a private lawyer were released from jail pending trial.

Defendants with publicly financed or private attorneys had the same conviction rates

Case disposition	Public counsel	Private counsel
75 largest counties		
Guilty by plea	71.0%	72.8%
Guilty by trial	4.4	4.3
Case dismissal	23.0	21.2
Acquittal	1.3	1.6
U.S. district courts		
Guilty by plea	87.1%	84.6%
Guilty by trial	5.2	6.4
Case dismissal	6.7	7.4
Acquittal	1.0	1.6

- In State courts in the largest counties, 3 in 4 defendants with either court-appointed or private counsel were convicted; in Federal courts 9 in 10 felony defendants with public or private attorneys were found guilty.

- In Federal court 88% of felony defendants with publicly financed attorneys and 77% with private lawyers received a prison sentence.

Except for State drug offenders, Federal and State inmates received about the same sentence on average with appointed or private legal counsel

Offenses	State prison inmates		Federal prison inmates	
	Public counsel	Private counsel	Public counsel	Private counsel
Total	155 mo	179 mo	126 mo	126 mo
Violent	223	231	164	162
Property	118	128	59	59
Drug	97	140	126	132
Public-order	80	98	103	119

- Three-fourths of State and Federal inmates with an appointed counsel and two-thirds with a hired counsel had pleaded guilty.

This report uses information from Bureau of Justice Statistics (BJS) data collections that, although gathered for wider purposes, present information about the type of counsel defendants and inmates used in their criminal case. Data are from —

- U.S. district court statistics for persons accused of Federal crimes (fiscal year 1998),
- pretrial records for felony defendants in the Nation's 75 largest counties (1992-96),
- State court prosecutors' information gathered nationwide (1990-94),
- the Administrative Office of the U.S. Courts (1998), and
- personal interviews with nationally representative samples of inmates in local jails (1996) and State and Federal prisons (1997). For more information on the data used in this report, see *Data sources*, page 11.

In this report the type of counsel for Federal and State defendants was the type at case termination. Other counsel may have represented the defendant earlier. Data describing counsel at filing or initiation were not used because they were incomplete or unavailable. The terms "publicly financed attorneys," "public attorney," and "appointed attorney" used in this report include public defenders, panel attorneys, assigned counsel, contract attorneys, and any other government-funded attorney programs for those unable to provide their own attorney.

Right to counsel is in the U.S. Constitution

The sixth amendment to the U.S. Constitution, a part of the Bill of Rights, provides that "In all criminal prosecutions, the accused shall...have the Assistance of Counsel for his defence."

In the 1960's and 1970's, the Supreme Court expanded this clause by recognizing a constitutional right to counsel at public expense for those unable to pay a private attorney. In *Gideon v. Wainwright* (372 US 335 (1963)) the Supreme Court held that the sixth amendment requires indigent defendants in State court proceedings to have appointed counsel. *Gideon* involved a felony, but in another case, *Argersinger v. Hamlin* (407 US 25 (1972)), the Court ruled that an indigent defendant may not be imprisoned, even for a misdemeanor, unless afforded the right to counsel.

Two types of programs provide indigent representation in Federal cases

Pursuant to the Criminal Justice Act of 1964 (18 USC § 3006 A), the Defender Services Division of the Administrative Office of the U.S. Courts oversees spending for Federal defendants through two types of programs:

- *Panel attorneys*, appointed by the court from a list of private attorneys on a case-by-case basis. At the end of 1998 all 94 U.S. district courts used such panels, including 20 districts in which only panel attorneys were used.

- *Federal defender organizations* (FDO's), take one of two forms:

— Federal public defender organizations staffed with Federal Government employees and headed by a public defender appointed by the court of appeals

or

— Community defender organizations that are incorporated, nonprofit legal service organizations receiving grants from the Administrative Office of the U.S. Courts.

At the end of 1998, 63 Federal or community defender organizations served 74 of the 94 U.S. district courts.¹

Workloads rose more than spending for the Defender Services Division

The panel attorney and FDO programs can represent defendants at any time from arraignment through appeal and during supervised release. The Defender Services Division counts use of these publicly financed attorneys in terms of *representations*.

Total representations by panel attorneys and FDO's rose 26% from 80,200 in fiscal year 1994 to 101,200 in fiscal 1998 (table 1). The number of criminal representations grew substantially during the period (25%), with the FDO workload increasing 35% and the panel attorney workload 17%. The Defender Services Division estimates that court-appointed counsel represent 85% of

¹Administrative Office of the U.S. Courts, *Judicial Business of the United States Courts*, 1998.

Table 1. Federal representations closed, by type of Criminal Justice Act attorney, 1994-98

Year	All representations			Federal Defender Organization representations			Panel attorney representations		
	Total	Criminal	Other*	Total	Criminal	Other*	Total	Criminal	Other*
1994	80,200	54,200	26,000	42,100	26,300	15,800	38,100	27,900	10,200
1995	78,700	51,700	27,000	43,700	26,700	17,000	35,000	25,000	10,000
1996	83,700	55,400	28,300	47,900	29,100	18,800	35,800	26,300	9,500
1997	90,000	59,200	30,800	52,200	31,900	20,300	37,800	27,400	10,500
1998	101,200	68,000	33,200	57,600	35,500	22,100	43,600	32,500	11,100

Note: For a Federal Defender Organization a representation is counted usually when the case is closed or the client no longer needs or wants Criminal Justice Act services; for a panel attorney a representation is counted when the first payment claim is submitted. Representations may include defendants with a case pending at the end of the reporting period and those who retained private counsel after an initial representation by public counsel. Numbers are rounded to the nearest hundred.

*Includes appeals, probation/supervised release revocation hearings, motions to correct or reduce sentence, habeas corpus other than capital petitions, court-directed prisoner representations, bail presentment, witness representation, and other matters.

Source: Administrative Office of the U.S. Courts, *Judicial Business of the United States Courts*, 1994 through 1998, and unpublished data.

criminal defendants at some time during the conduct of their case (unpublished correspondence).

From fiscal year 1994 through fiscal year 1998, spending grew 20% in constant 1998 dollars from \$293 million to \$353 million.

Criminal Justice Act obligations, 1994-98 (in 1998 dollars)

1994	\$293,342,000
1995	\$296,794,000
1996	\$316,884,000
1997	\$338,028,000
1998	\$352,837,000

Note: An obligation is generally defined as a legal commitment for goods or services ordered or received by the government.

Source: Unpublished data, Administrative Office of the U.S. Courts, Defender Services Division.

All felony defendants in cases terminated in U.S. district court had an attorney in 1998

Nearly all defendants facing a felony charge terminated in U.S. district court in 1998 and almost two-thirds with a misdemeanor charge had lawyers to represent them in court (table 2). Felony defendants were more likely than misdemeanants to have publicly financed counsel. Sixty-six percent of those facing a felony charge and 43% with a misdemeanor charge had used either a FDO or panel attorney.

Defendants charged with a felony (33%) were also more likely than those charged with a misdemeanor (19%) to have private representation. About a third of misdemeanants represented themselves during judicial proceedings.

White collar Federal defendants most likely to use private counsel

Most likely to have a private attorney were defendants charged with a white collar offense, primarily fraud or a regulatory offense. Having private counsel were 43% of fraud defendants and 63% of those charged with a regulatory offense — violations of laws pertaining to agriculture, antitrust, food

Table 2. Type of counsel for defendants in cases terminated in U.S. district courts, fiscal year 1998

Type of counsel	Total	Charged with —	
		Felony	Misdemeanor
Federal Defender Organization*	29.3%	30.1%	25.5%
Panel attorney	32.9	36.3	17.4
Private attorney	30.8	33.4	18.7
Self representation (pro se)	7.0	0.3	38.4
Number of defendants	68,031	56,046	11,985

Note: Excludes 1,739 defendants for whom type of counsel was missing.
*Includes both Federal Public Defenders and Community Defender Organizations.

Source: Administrative Office of the U.S. Courts, Criminal Master File, FY 1998.

Table 3. Type of counsel for felony defendants in cases terminated in U.S. district court, by offense, fiscal year 1998

Type of counsel	Violent	Fraud	Other property	Drug	Regulatory	Other public-
						order
Federal Defender Organizations*	42.4%	26.9%	31.0%	21.7%	16.9%	43.9%
Panel attorney	38.0	29.9	34.3	42.2	19.8	32.4
Private attorney	19.3	42.8	34.2	35.8	63.0	23.4
Self representation (pro se)	0.3	0.3	0.5	0.2	0.2	0.3
Number of defendants	3,426	10,795	2,487	23,699	1,063	14,476

Note: Excludes 1,739 defendants with missing data on type of counsel and 494 with missing data on offense.
*Includes both Federal Public Defenders and Community Defender Organizations.

Source: Administrative Office of the U.S. Courts, Criminal Master File, FY 1998.

and drug, transportation, civil rights, communications, customs, and postal delivery (table 3). By contrast, about 2 in 10 defendants charged with a violent crime used private attorneys.

9 in 10 Federal defendants found guilty regardless of type of attorney

In 1998, 92% of defendants with public counsel and 91% with private counsel either pleaded guilty or were found guilty at trial.

Disposition	Type of counsel	
	Public*	Private
Guilty		
By plea	87.1%	84.6%
By trial	5.2	6.4
Acquittal	1.0	1.6
Dismissal	6.7	7.4
Number of defendants	37,188	18,709

*Includes Federal Defender Organizations (FDO's) and panel attorneys.

Source: Administrative Office of the U.S. Courts, Criminal Master File, FY 1998.

Incarceration more likely for Federal defendants with public counsel than for those with private attorneys

Defendants found guilty after using a FDO or panel attorney were more likely to be sentenced to prison (about 88% of defendants found guilty) than those with private attorneys (77%). The difference in incarceration rates is explained in part by the likelihood of prison after conviction for different types of offenses. As has been shown, public counsel represented a higher percentage of violent, drug, and public-order (excluding regulatory crimes) offenders, who were very likely to receive a sentence to serve time, and private counsel represented a higher

Sentence	Type of counsel	
	Public*	Private
Incarceration	87.6%	76.5%
Probation only	12.1	22.4
Fine only	0.3	1.1
Number of defendants	33,068	16,622

*Includes Federal Defender Organization (FDO's) and panel attorneys.

Source: Administrative Office of the U.S. Courts, Criminal Master File, FY 1998.

Table 4. Length of prison sentence imposed on felony defendants convicted in U.S. district court, by type of counsel and offense, fiscal year 1998

Offense and type of counsel	Number of Federal defendants	Sentence to prison	
		Mean	Median
Total			
Public	28,453	58 mo	33 mo
Private	12,563	62	37
Violent offenses			
Public	2,266	84 mo	60 mo
Private	471	74	41
Fraud offenses			
Public	3,413	22 mo	15 mo
Private	2,426	23	15
Other property offenses			
Public	862	38 mo	18 mo
Private	380	40	24
Drug offenses			
Public	12,297	75 mo	51 mo
Private	6,753	84	60
Regulatory offenses			
Public	261	33 mo	17 mo
Private	244	23	15
Other public-order offenses			
Public	9,329	46 mo	27 mo
Private	2,283	44	24

Note: Excludes 304 inmates sentenced to life or death, 2,803 with suspended or sealed sentences, 383 with missing offense data, and 445 with data missing on counsel type.

Source: Administrative Office of the U.S. Courts, Criminal Master File, FY 1998.

percentage of white collar defendants, who are not as likely to receive incarceration sentences.²

Federal defendants with private attorneys had longer average sentences than defendants with publicly financed attorneys

Defendants with private attorneys were sentenced to an average of 62 months in prison, and those with publicly financed attorneys, to 58 months (table 4). The primary differences in average sentence length were between offenses, not between the types of attorney. Other factors not shown may also have had a role.

Among those sentenced to incarceration, drug offenders who used publicly financed counsel had shorter sentences on average than those who used private attorneys — an average of 75 months compared to 84 months.

Among Federal violent and regulatory offenders, those with private attorneys received shorter sentences than those with public lawyers. Violent offenders who used private attorneys were given 74 months on average, and those with public counsel, 84 months. Similarly, those sentenced for a regulatory offense with a private lawyer had an

²Compendium of Federal Justice Statistics, 1998, BJS report, NCJ 180258, table 5.1.

average sentence of 23 months, and those with a public attorney, 33 months.

Most criminal defendants are tried in State courts

The bulk of the task of providing counsel for the indigent has fallen to lawyers working in State courts. Approximately 95% of criminal defendants are charged in State courts, with the remainder tried in Federal courts.

Two-thirds of State prosecutors reported that their courts used public defenders

Three systems now serve as the primary means for providing defense services to indigent criminal defendants charged in State court.

- Under a *public defender system*, salaried staff attorneys render criminal indigent defense services through a public or private non-profit organization or as direct government employees. In 1994, 68% of State court prosecutors reported that a public defender program was used to defend indigents in cases they prosecuted (table 5).

- In an *assigned counsel system*, courts appoint attorneys from a list of private bar members who accept cases on a judge-by-judge, court-by-court, or case-by-case basis. About 63% of prosecutors in State criminal courts reported an assigned counsel program in their jurisdiction.

- In *contract attorney systems*, private attorneys, bar associations, law firms, groups of attorneys, and nonprofit corporations provide indigent services based on legal agreements with State, county, or other local governmental units. Approximately 29% of prosecutors indicated that in their jurisdiction contracts were awarded to attorney groups to provide indigents with legal representation.

Although the Supreme Court in *Gideon* mandated that the States must provide counsel for indigents accused of serious crimes, the court did not

Table 5. Indigent defender systems for felony defendants in State general jurisdiction courts, 1990-94

Indigent defense system	Percent of prosecutors ¹		
	1990	1992	1994
Public defender programs	56.6%	64.9%	67.8%
Only	27.0	27.8	20.8
With assigned counsel	21.5	23.4	31.0
With contract attorney	4.2	7.8	9.6
With assigned counsel and contract attorney	3.9	5.8	6.4
Assigned counsel programs	57.8%	55.4%	62.5%
Only	30.7	23.0	19.3
With public defender	21.5	23.4	31.0
With contract attorney	1.7	3.1	5.7
With public defender and contract attorney	3.9	5.8	6.4
Contract attorney programs	20.8%	25.0%	28.9%
Only	11.0	8.2	7.1
With public defender	4.2	7.8	9.6
With assigned counsel	1.7	3.1	5.7
With public defender and assigned counsel	3.9	5.8	6.4
Number of prosecutors' offices	2,272	2,352	2,336

Source: BJS, National Survey of State Court Prosecutors, 1990, 1992, and 1994.

Table 6. Type of counsel for felony defendants in the Nation's 75 largest counties, 1992, 1994, and 1996

Type of counsel	Percent of felony defendants		
	1992	1994	1996
Public defender	59.3%	60.4%	68.3%
Assigned counsel	21.4	18.6	13.7
Hired attorney	17.6	20.1	17.6
Self (pro se)/other	1.7	0.9	0.4
Number of defendants	33,092	32,909	37,410

Note: Missing data were 40.2%, 1992; 37.7%, 1994; and 31.1%, 1996.
Source: BJS, State Court Processing Statistics, 1992, 1994, 1996.

Table 7. Type of counsel for felony defendants in the Nation's 75 largest counties, by most serious charge, 1996

Type of counsel	Most serious charge at arrest			
	Violent	Property	Drug	Public-order
Public defender	67.9%	68.3%	69.5%	64.3%
Assigned counsel	14.9	12.8	14.8	8.7
Hired attorney	16.8	18.3	15.4	26.7
Self (pro se)/other	0.4	0.5	0.3	0.3
Number of defendants	9,003	12,006	13,338	3,063

Note: Data were missing on type of counsel for 31.1% of cases.
Source: BJS, State Court Processing Statistics, 1996.

specify how such services were to be provided. State court prosecutors increasingly report that their jurisdictions use more than one type of program to defend indigents. In 1990, 31% of prosecutors' offices reported that their courts used a combination of public defenders, assigned counsel, and contract attorneys; in 1994 — the last time BJS asked prosecutors about their indigent defense systems — 53% of the courts relied on more than one program.

In 1994 about 6% of prosecutors reported the court of their jurisdiction using all three systems: public defenders, assigned counsel, and contract attorneys. The most prevalent combination of two programs was public defenders and assigned counsel — indicated by almost a third of prosecutors' offices.

Table 8. Type of counsel for felony defendants in the Nation's 75 largest counties, by prior conviction and criminal justice status, 1996

	Type of counsel	
	Public	Private
Prior conviction		
Any	85.5%	14.2%
None	77.3	22.0
Criminal justice status at arrest		
Any	86.3%	13.5%
None	78.8	20.6

Note: Data were missing on type of counsel or prior convictions for 36.9% of cases, and on type of counsel or criminal justice status for 38.9% of cases. Pro se and other categories are included in the analysis but are not displayed.

Source: BJS, State Court Processing Statistics, 1996.

8 in 10 felony defendants in large State courts used publicly financed attorneys

In 1992 and 1996 about 80% of defendants charged with a felony in the Nation's 75 most populous counties reported having public defenders or assigned counsel while nearly 20% hired an attorney (table 6). Between 1992 and 1996 the percentage of felons in large counties using public defenders increased from 59% to 68% and the percentage with assigned counsel decreased from 21% to 14%.

Defendants charged with violent, property, and drug crimes were more likely to have been represented by public defenders or assigned counsel (81%-84%) than those charged with public-order offenses (73%) (table 7). Public-order offenses include weapons, driving-related, flight/escape, parole or probation, prison contraband, habitual offender, obstruction of justice, rioting, libel, slander, treason, perjury, prostitution/pandering, bribery, and tax law violations.

State defendants with a criminal record more likely than other defendants to use public counsel

Felony defendants with prior convictions were more likely than those without a criminal record to have used a publicly financed lawyer. According to criminal history records available to the court, 86% with a previous conviction and 77% without had public defenders or assigned counsel (table 8). When arrested for their current charge, about 86% of those already on criminal justice status — for example, on pretrial release, probation, or parole — and 79% not on criminal justice status used appointed counsel.

Pretrial release less common for State defendants with public attorneys

About half of defendants using a public defender or assigned counsel, compared with over three-quarters employing a private attorney, were released from jail prior to trial (table 9).

Release on bail, a payment to a court to guarantee the defendant's appearance at subsequent court dates, was awarded to 57% of defendants with public counsel and to 65% with a private lawyer. Of those allowed bail, about a third with a public attorney and three-quarters with a hired attorney were released before adjudication.

Table 9. Pretrial release of felony defendants in the Nation's 75 largest counties, by type of counsel, 1996

Pretrial release	Type of counsel	
	Public	Private
Released	52.2%	79.0%
Financial	19.2	51.0
Nonfinancial	32.3	27.7
Emergency	0.7	0.3
Detained	46.1	20.1
With bail	38.2	14.3
Denied bail	7.8	5.8
Case closed	1.8	0.9
Number of defendants	28,127	6,232

Note: Data were missing on type of counsel or pretrial release for 36.5% of cases.

Source: BJS, State Court Processing Statistics, 1996.

Table 10. Case disposition for defendants in the Nation's 75 largest counties, by type of counsel, 1996

Case disposition	Type of counsel	
	Public	Private
Convicted	75.3%	77.0%
Felony	60.2	62.7
By plea	56.3	59.3
By trial	3.9	3.5
Misdemeanor	15.1%	14.3%
By plea	14.7	13.5
By trial	0.5	0.8
Not convicted	24.3%	22.8%
Acquittal	1.3	1.6
Dismissal	23.0	21.2
Other	0.3%	0.2%
Number of defendants	29,984	6,583

Note: Data were missing on 32.4% of cases on type of counsel or case disposition.

Source: BJS, State Court Processing Statistics, 1996.

About 3 in 4 State defendants with public or private attorneys were found guilty

Conviction rates were about the same for defendants with court-appointed attorneys (75%) and for those who hired private counsel (77%) (table 10). Of those convicted, about 8 in 10 were convicted of a felony and the remainder of a misdemeanor, regardless of type of attorney.

Table 11. Sentences for convicted defendants in the Nation's 75 largest counties, by type of counsel, 1996

Sentences	Type of counsel	
	Public	Private
Incarcerated	71.3%	53.9%
Prison	31.0	23.6
Jail	40.2	30.3
Not incarcerated	28.7%	46.1%
Probation	27.8	43.3
Fine	1.0	2.9
Number of defendants	20,131	4,666

Note: Cases were missing for 36.4% of cases and excluded for an additional 17.8% that were acquitted, dismissed, or not yet adjudicated.

Source: BJS, State Court Processing Statistics, 1996.

Almost a quarter of defendants with publicly financed or private attorneys had their cases dismissed or were acquitted. Just over a fifth had charges dismissed and around 2% were acquitted.

State defendants with public counsel sentenced more often to prison or jail but for shorter terms than those with private lawyers

Convicted defendants represented by publicly financed counsel were more likely than those who hired a private attorney to be sentenced to incarceration. About 7 in 10 with appointed counsel and 5 in 10 with a private attorney were sentenced to a prison or jail term (table 11).

Of defendants sentenced to serve time, those using publicly financed attorneys had shorter sentences than those with private counsel. Those with publicly financed attorneys were sentenced to an average of 2½ years of incarceration and those with private counsel to 3 years (table 12).

Similar to drug offenders convicted in Federal court, those sentenced for drug offenses with court-appointed attorneys had shorter sentences (2 years) than those who hired their attorneys (3 years). For other offense categories, sentences were about the same for defendants with public and private attorneys.

Table 12. Sentence length to incarceration for defendants convicted of a felony in the Nation's 75 largest counties, by offense and type of counsel, 1996

Offense and type of counsel	Number of defendants	Sentence length	
		Mean	Median
Total			
Public	11,089	31.2 mo	16 mo
Private	1,857	38.3	17
Violent			
Public	2,102	55.2 mo	36 mo
Private	381	59.4	36
Property			
Public	3,276	27.4 mo	14 mo
Private	451	29.7	11
Drug			
Public	4,754	25.3 mo	12 mo
Private	773	38.8	21
Public-order			
Public	911	19.7 mo	16 mo
Private	244	19.9	12

Note: Data were missing on sentence length for 42% of cases.

Source: BJS, State Court Processing Statistics, 1996

Local jail inmates described their experiences with the criminal justice system

In addition to gathering information on defendants in Federal and State courts, BJS sponsors interviews of inmates in local jails and State and Federal prisons. Nationally representative samples of inmates describe their

Table 13. Type of counsel for jail inmates, 1996 and 1989

Type of counsel	Percent of jail inmates, 1996			1989 total
	Total	Charged with felony	Charged with misdemeanor	
Court appointed	68.1%	76.6%	56.3%	64.1%
Inmate hired	16.7	19.2	14.7	18.5
Both appointed and hired	1.2	1.3	0.7	--
No counsel	14.0	2.9	28.3	17.3
Number of jail inmates	483,438	204,700	97,855	373,259

--Not available.

Source: BJS, Survey of Inmates in Local Jails, 1996 and 1989.

Table 14. Type of counsel for jail inmates, by type of offense, 1996

Offense	Percent of all jail inmates with counsel			
	Public	Private	Both	Pro se
Violent offenses	70.7%	20.1%	1.4%	7.8%
Homicide	55.5	39.5	2.5	2.5
Sexual assault	66.5	24.8	2.1	6.7
Robbery	78.6	16.7	0.7	4.0
Assault	71.6	16.2	1.2	11.0
Property offenses	75.5%	11.5%	1.0%	12.0%
Burglary	82.0	9.1	1.2	7.7
Larceny	77.9	9.6	0.5	12.0
Fraud	65.2	19.1	1.9	13.9
Drug offenses	73.0%	17.4%	1.6%	8.0%
Possession	74.3	15.7	0.6	9.4
Trafficking	71.1	20.7	2.8	5.5
Public-order offenses	51.8%	18.1%	0.7%	29.4%
Weapons	68.2	25.0	0.1	6.7
DWI	49.7	28.1	1.1	21.2
Other public-order	50.1	11.1	0.5	38.2

Source: BJS, Survey of Inmates in Local Jails, 1996.

personal experiences with the criminal justice system. Jail inmates either may be awaiting trial or sentencing or may be serving their sentence; prison inmates are serving a sentence.

In the 1996 Survey of Inmates in Local Jails, most inmates charged with a felony reported they were represented by counsel; 97% had an attorney — 77% a court-appointed counsel and 20% a private attorney (table 13). Over a quarter of jail inmates charged with a misdemeanor had no attorney, and over half used public counsel.

The percent of all jail inmates who had been represented by a publicly financed attorney rose from 64% in 1989 to 68% in 1996.

Defendants in jail for homicide most likely to hire their own attorneys

About 40% of jail inmates charged with homicide hired their own attorney, as did 25% charged with rape or sexual assault, 28% driving while intoxicated, and 25% weapons offenses (table 14).

Public-order defendants were more likely than other defendants to represent themselves in legal proceedings. About 4 in 10 charged with a public-order offense such as obstruction of justice, a traffic violation, drunkenness, or a violation of probation or parole represented themselves. Two in ten

charged with driving while intoxicated reported that they had no lawyer.

1 in 4 convicted jail inmates with public counsel and with bail set were released before trial

Whether their attorney was appointed or hired, about three-quarters of convicted jail inmates charged with a felony had bail or bond set for them (table 15). Of inmates with bail set, a quarter with a court-appointed attorney and two-thirds with hired attorneys were released on bond before their trial. The lack of financial assets that prevented hiring a private attorney may have also impeded posting bond.

Convicted jail inmates with a public attorney were more likely than those with private counsel to have entered a guilty plea after reaching an agreement with the prosecutor to plead guilty to a

Table 15. Release before trial and disposition of case with a felony charge, by type of counsel, for convicted jail inmates, 1996

	Type of counsel	
	Public	Private
Release before trial*		
Released	22.5%	54.5%
Without bail or bond	3.8	4.1
With bail or bond	18.7	50.4
No release	77.5	45.5
Bail or bond set	57.0	26.0
Bail or bond not set	20.5	19.5
Disposition of case		
Not guilty	14.0%	20.7%
Bench trial	7.6	8.7
Jury trial	5.0	10.7
Unknown type of trial	1.4	1.3
Guilty/no contest plea	85.9	79.3
With plea bargain	53.5	48.7
Without plea bargain	32.4	30.6

*Counsel may have been appointed or hired after bail hearing.

Source: BJS, Survey of Inmates in Local Jails, 1996.

lesser charge or fewer counts. An estimated 54% with a publicly financed attorney and 49% with a hired attorney plea bargained.

Prison inmates — those already convicted — reported their experience with their attorneys

In 1997 publicly financed attorneys had represented in court proceedings 3 in 4 inmates in State prison and 6 in 10 in Federal prison (table 16). About 1%-2% represented themselves rather than using a lawyer.

From 1991 to 1997 the percentage of State inmates with appointed counsel remained the same, while that of sentenced Federal inmates increased from 54% to 60%.

Table 16. Type of counsel for State and Federal prison inmates, 1997 and 1991

Type of counsel	Percent of inmates in —			
	State prison		Federal prison	
	1997	1991	1997	1991
Court appointed	73.4%	73.8%	60.3%	53.7%
Inmate hired	22.7	21.2	36.4	42.1
Both appointed and hired	1.6	2.1	2.1	3.2
No counsel	2.2	2.9	1.3	1.0
Number of prison inmates	1,048,236	702,116	88,483	53,342

Source: BJS, Survey of Inmates in State and Federal Correctional Facilities, 1997.

Prison inmates spoke to court-appointed lawyers later and less often than to private attorneys

Of inmates with court-appointed counsel, 37% of State inmates and 54% of Federal inmates spoke with their attorneys within the first week (table 17). In contrast, of those with hired counsel, about 60% of State inmates and 75% of Federal inmates had contact with their attorneys within a week of arrest.

Few inmates said they never spoke to their attorneys. Of those with appointed counsel, about 5% of State inmates and 2% of Federal inmates did not discuss their cases with an attorney; of those with hired attorneys, 1-2% never spoke to them.

Inmates with appointed lawyers spoke to them less frequently than inmates with private lawyers. About 26% of State inmates and 46% of Federal inmates with court-appointed attorneys discussed their cases with counsel at least four times. An estimated 58% of State inmates and 65% of Federal inmates who employed their own attorneys talked with them four or more times about their charges.

Inmates who used public counsel were less likely to proceed to trial than those employing private attorneys. A quarter of both State and Federal inmates with public counsel pleaded not guilty, as did about a third of those with hired attorneys.

In an Alford plea the defendant agrees to plead guilty because he or she realizes that there is little chance to win acquittal because of the strong evidence of guilt. About 17% of State inmates and 5% of Federal inmates submitted either an Alford plea or a no contest plea, regardless of the type of attorney. This difference reflects the relative readiness of State courts, compared to Federal courts, to accept an alternative plea.

State and Federal inmates who used public attorneys were less likely than those with private attorneys to have been tried by jury. Among State inmates 17% who used appointed counsel and 22% who employed a private lawyer were tried before a jury. Among Federal inmates 21% of those with appointed lawyers and 27% with privately hired counsel had jury trials.

State and Federal inmates with public attorneys and those with private lawyers were equally likely to have pleaded guilty to a lesser offense or fewer counts than originally charged. About half had plea bargained, regardless of the type of attorney or the jurisdiction of the court.

Table 17. Contact with counsel, type of plea, and case disposition, by type of counsel, for State and Federal prison inmates, 1997

	Type of counsel for			
	State inmates		Federal inmates	
	Public	Private	Public	Private
Contact with counsel				
Within 24 hours of arrest	8.8%	26.3%	17.6%	38.2%
Within week of arrest	27.7	33.9	36.1	36.3
More than week before trial	32.8	29.6	33.1	18.4
Within week of trial	12.6	4.8	6.6	4.3
At trial	13.6	3.5	4.9	1.7
Did not talk with counsel	4.5	1.9	1.6	1.2
Number of times talked with counsel				
0	4.6%	2.0%	1.7%	1.3%
1	24.6	9.6	10.4	6.7
2-3	44.5	30.6	42.3	27.0
4-5	13.4	20.7	23.1	19.7
6 or more times	12.9	37.2	22.5	45.3
Type of plea*				
Not guilty	24.3%	31.4%	25.4%	31.7%
Other plea				
Guilty	60.6	54.7	71.1	66.3
Alford	6.3	6.7	3.0	2.8
No contest	11.1	10.3	2.6	1.6
Other	0.4	0.3	0.2	0.1
Case disposition				
Not guilty plea	24.3%	31.4%	25.4%	31.7%
Bench trial	7.7	9.0	4.5	5.2
Jury trial	16.6	22.4	20.9	26.5
Guilty or no contest plea	75.7	68.6	74.5	68.3
With plea bargain	50.6	47.2	50.5	48.4
Without plea bargain	25.1	21.4	24.0	19.9
Number of inmates	765,763	236,550	53,215	32,032

* Inmates may have entered more than one type of plea if charged with multiple offenses.

Source: BJS, Survey of Inmates in State and Federal Correctional Facilities, 1997.

Table 18. Sentence length and total time to expected release, by offense and type of counsel, for State and Federal inmates, 1997

Offense and type of counsel	State inmates			Federal inmates		
	Maximum sentence ^a		Mean time to expected release ^b	Maximum sentence ^a		Mean time to expected release ^b
	Median	Mean		Median	Mean	
Total						
Private	120 mo	179 mo	96 mo	96 mo	126 mo	104 mo
Public	114	155	89	96	126	106
Violent offenses						
Private	180 mo	231 mo	131 mo	156 mo	162 mo	150 mo
Public	180	223	133	120	164	134
Property offenses						
Private	84 mo	128 mo	68 mo	36 mo	59 mo	43 mo
Public	72	118	64	36	59	52
Drug offenses						
Private	84 mo	140 mo	58 mo	114 mo	132 mo	111 mo
Public	60	97	46	108	126	107
Public-order offenses						
Private	54 mo	98 mo	50 mo	70 mo	119 mo	84 mo
Public	48	80	48	70	103	85

Note: Because data are restricted to persons in prison, they may overstate the average sentence and time to be served by those entering prison. Persons with shorter sentences leave prison more quickly, resulting in a longer average sentence among persons in the inmate sample.

^aBased on the total maximum for all consecutive sentences. Means exclude prisoners sentenced to life or death.

^bBased on time served when interviewed plus time to be served until the expected date of release. Excludes prisoners sentenced to life without expected release or to death.

Source: BJS, Survey of Inmates in State and Federal Correctional Facilities, 1997.

Table 19. State and Federal prison inmates with appointed counsel, by selected characteristics, 1997

Characteristics	Percent of prison inmates with appointed counsel	
	State	Federal
Gender		
Male	73.3%	60.1%
Female	75.9	63.3
Race/Hispanic origin		
White	69.0%	56.5%
Black	76.6	64.7
Hispanic	73.1	56.0
Other	75.2	73.2
Age		
24 or younger	71.9%	70.8%
25-34	74.1	64.3
35-44	75.9	57.8
45 or older	68.0	53.4
Educational attainment		
Less than high school diploma	78.0%	70.2%
High school diploma or GED	73.2	60.6
More than high school diploma	61.1	49.6
Citizenship		
United States	73.6%	60.7%
Other	69.7	58.7

Source: BJS, Survey of Inmates in State and Federal Correctional Facilities, 1997.

State inmates with public attorneys had shorter sentences than inmates with private counsel

On average State inmates who used appointed counsel expected to serve over 7 years on sentences of 13 years, while those who hired their attorneys expected to remain in prison 8 years on sentences of 15 years (table 18). Federal inmates expected to serve an average of almost 9 years for sentences of 10½ years, whether they had appointed attorneys or hired their own.

Drug offenders in State prison who had appointed counsel expected shorter prison stays on shorter sentences than those who hired their own lawyers. The average length of stay expected by State drug offenders who used appointed counsel was 4 years while that expected by those who employed their own lawyers was almost 5 years.

Federal public-order offenders with appointed counsel had on average shorter sentence lengths than those with private counsel (9 versus 10 years).

Minority inmates were more likely than whites to have appointed counsel

In State prisons, while 69% of white inmates reported they had lawyers appointed by the court, 77% of blacks and 73% of Hispanics had public defenders or assigned counsel (table 19). In the Federal system, blacks also were more likely to have public defenders or panel attorneys than other inmates; 65% of blacks had publicly financed attorneys. About the same percentage of whites and Hispanics used publicly financed attorneys (57% of whites and 56% of Hispanics).

Lower educational attainment among inmates was associated with higher use of court appointed attorneys. Over 7 in 10 with less than a high school diploma or GED used government financed attorneys. Sixty-one percent of State inmates and 50% of Federal inmates who had attended at least some college also had appointed lawyers.

Inmates who were unemployed were more likely than other inmates to use court-appointed attorneys

About 8 in 10 State inmates without a job before their most recent arrest, compared to 7 in 10 employed full time, had appointed counsel (table 20). Among Federal inmates two-thirds who were not employed and half who were

employed full time had publicly financed attorneys.

Over three-quarters of State inmates with monthly personal incomes of less than \$1,000 had publicly financed defenders. Less than two-thirds of those with incomes of \$2,000 or more per month had publicly financed lawyers. Over two-thirds of Federal inmates with incomes less than \$1,000 and nearly half with incomes of \$2,000 or more per month had publicly supported attorneys.

For both State and Federal inmates, 9 in 10 who were homeless at any time in the year before their most recent arrest had court-appointed counsel.

Type of counsel for prison inmates varied by conviction offense

Among State offenders, those serving sentences for burglary, larceny, fraud, or robbery had relatively high rates of court appointed attorneys; about 8 in 10 had publicly financed counsel (table 21). Similarly in the Federal system, 8 in 10 robbery or burglary offenders used public defenders or panel attorneys.

State inmates convicted of serious violent and drug offenses made less

use of publicly financed attorneys. Approximately two-thirds of those convicted of homicide, sexual offenses, drug trafficking, and drug possession reported using public defenders or assigned counsel.

Among Federal offenders about half convicted of fraud (46%), drug trafficking (55%), or drug possession (56%) reported using public defenders or panel attorneys. Over 8 in 10 sentenced for rape or other sexual crime, robbery, and burglary used publicly financed attorneys.

Methodology

Data sources

This report uses a variety of data sources.

- Data on Federal court representations were published by the Administrative Office of the U.S. Courts (AOUSC) in their annual, *Judicial Business of the United States Court*. The AOUSC's Defender Services Division supplied additional unpublished data.

- The AOUSC also provides BJS with data from their Criminal Master File. This dataset includes defendants in cases terminated each year in the Federal court system. Tables from the data are published each year in the *Compendium of Federal Justice Statistics*. BJS makes these data available on its Federal Justice Statistics website <<http://fjsrc.urban.org/index.shtml>>.

- In the National Survey of State Court Prosecutors, BJS has surveyed local prosecutors' offices biennially and several times has asked about types of indigent attorney programs in their jurisdictions. For more information, see the publication *Prosecutors in State Courts, 1996* (July 1998, NCJ 170092). The data, together with the code sheet and documentation, are available at <<http://www.icpsr.umich.edu/NACJD/bus.html#nps>>.

In 1999 BJS fielded the National Survey of Indigent Defense Systems to collect data from providers of criminal indigent services. Results are

Table 20. State and Federal inmates with appointed counsel, by selected economic characteristics, 1997

Selected economic characteristics	Percent of prison inmates with appointed counsel	
	State	Federal
Employment at arrest		
Full time	69.6%	56.6%
Part time or occasional	75.8	61.2
Not employed	79.4	67.6
Monthly income at arrest		
Less than \$600	80.1%	71.2%
\$600-\$999	76.4	65.1
\$1,000-\$1,999	69.9	58.3
\$2,000 or more	61.1	47.1
Homeless at any time in year before arrest		
Homeless	89.5%	90.6%
Not homeless	71.6	58.8

Source: BJS, Survey of Inmates in State and Federal Correctional Facilities, 1997.

Table 21. State and Federal prison inmates with appointed counsel, by type of offense, 1997 and 1991

Offense	Percent of prison inmates with appointed counsel			
	State		Federal	
	1997	1991	1997	1991
Violent offenses				
Homicide	71.7%	73.0%	83.4%	77.5%
Rape/sexual assault	67.0	65.2	76.0	76.7
Robbery	67.5	70.4	72.3	82.2
Assault	78.5	79.5	86.2	81.3
	72.5	75.7	80.3	62.7
Property offenses				
Burglary	82.8%	82.0%	52.5%	51.8%
Larceny	84.5	83.8	82.6	79.6
Fraud	82.3	82.8	66.5	61.8
	76.3	74.0	46.1	47.7
Drug offenses				
Possession	69.9%	67.8%	54.4%	48.2%
Trafficking	71.8	69.7	55.8	48.0
	68.4	66.6	55.0	48.4
Public-order offenses				
Weapons	68.8%	69.7%	65.9%	48.6%
Other public-order	73.1	70.5	72.8	59.2
	67.3	69.5	59.7	39.4

Source: BJS, Survey of Inmates in State and Federal Correctional Facilities, 1997.

Appendix table 1. Standard error of estimates for the Survey of Inmates in Local Jails, 1996

	Standard error of the estimates for type of counsel	
	Public	Private
All jail inmates	0.83%	0.63%
Those charged with a —		
Felony	1.04%	0.97%
Misdemeanor	1.84	1.21
Type of offense		
Violent	1.38%	1.24%
Property	1.33	0.91
Drug	1.47	1.23
Public-order	1.81	1.27

published in *Indigent Defense Services in Large Counties, 1999* (BJS Bulletin, NCJ 184932).

- In the State Court Processing Statistics data (formerly known as the National Pretrial Reporting Program) BJS collects a sample of records for felony cases filed in the Nation's 75 most populous counties in the United States. This survey includes information on the type of attorney used by the defendants. For more information, see *Felony Defendants in Large Urban Counties, 1996* (October 1999, NCJ 176981). Data are available at <<http://www.icpsr.umich.edu/NACJD/bjs.html#scps>>.

- Every 5 to 6 years BJS sponsors surveys of inmates in State prisons, Federal prisons, and local jails. In hour-long personal interviews with a nationally representative sample of inmates, respondents are asked about their current and prior offenses, personal and family characteristics, and the processes that resulted in their current incarceration. For further information, see *Profile of Jail Inmates, 1996* (April 1998, NCJ 164620) and *Substance Abuse and Treatment of*

Appendix table 2. Standard errors for felony defendants in the Nation's 75 largest counties, by type of offense, 1996

Type of counsel	Standard error of the estimates for type of offense				
	Total	Violent	Property	Drug	Public-order
Public defender	1.4%	1.0%	2.0%	1.1%	2.7%
Assigned counsel	0.7	0.7	0.9	0.9	0.8
Hired attorney	1.4	1.0	2.1	1.0	3.0
Pro se/other	0.1	0.2	0.1	0.1	0.1

State and Federal Prison Inmates, 1997 (December 1998, NCJ 172871).

Documentation, codebook, questionnaire, and the public use data files can be accessed at <<http://www.icpsr.umich.edu/NACJD/bjs.html#silj>> for the Survey of Inmates in Local Jails and at <<http://www.icpsr.umich.edu/NACJD/bjs.html#siscf>> for the Surveys of Inmates in State and Federal Correctional Facilities.

Standard errors and accuracy of the estimates

The accuracy of the estimates presented in this report for the State Court Processing Statistics, Survey of Inmates in Local Jails, and the Surveys of Inmates in State and Federal Correctional Facilities depend on the size of the sampling error. This error, as measured by an estimated standard error, varies with the size of the estimate and the size of the base population. Estimates of the standard error for selected characteristics have been calculated for each survey. (See appendix tables.) These standard errors may be used to construct confidence intervals around percentages.

For example, using standard errors from appendix table 1, the 95% confidence interval for the estimated 68%

of jail inmates using court appointed counsel is calculated as 68.1% ± 1.96(.83), or 66.5-69.7%.

The standard error of the difference of two percentages is the square root of the sum of the squared standard errors for each group. For example, also using standard errors from appendix table 1, the 95% confidence interval for the estimated difference in the percentage with appointed counsel for jail inmates charged with a felony (76.6%) or misdemeanor (56.3%) is calculated as 20.3 ± 1.96(2.1), or 16.2 to 24.4. Because this interval does not include zero, we can conclude with 95% confidence that the percentages of those charged with a felony or misdemeanor using public counsel are actually different.

All relationships discussed in the text of this report are significant at the 95% confidence level.

Appendix table 3. Standard error of estimates for the Surveys of Inmates in State and Federal Correctional Facilities

Characteristic	Standard error of the estimated percent of inmates with appointed counsel	
	State	Federal
All prison inmates	0.48%	1.02%
Gender		
Male	0.50%	1.10%
Female	1.00	2.00
Race/Hispanic origin		
White	1.03%	2.39%
Black	0.82	2.14
Hispanic	1.38	2.68
Educational attainment		
Less than high school diploma	0.72%	1.87%
High school diploma or GED	0.71	1.49
More than high school diploma	1.46	2.04
Employment at arrest		
Full time	0.67%	1.34%
Part time or occasional	1.32	2.97
Not employed	0.79	1.86
Monthly income at arrest		
Less than \$600	0.70%	1.71%
\$600-\$999	1.15	2.65
\$1,000-\$1,999	1.06	2.27
\$2,000 or more	1.42	1.99
Offense		
Violent	0.72%	2.04%
Property	0.88	4.05
Drug	1.10	1.32
Public-order	1.64	2.61

Appendix table 4. Standard error of estimates from the Surveys of Inmates in State and Federal Correctional Facilities, 1997

Case disposition	Standard error of the estimate for type of counsel	
	Public	Private
State inmates		
Pleas of not guilty	0.55%	1.07%
Bench trial	0.34	0.66
Jury trial	0.47	0.96
Guilty or no contest plea		
With plea bargain	0.55	1.10
Without plea bargain	0.64	1.13
	0.55	0.94
Federal inmates		
Pleas of not guilty	1.18%	1.62%
Bench trial	0.56	0.77
Jury trial	1.10	1.54
Guilty or no contest plea		
With plea bargain	1.18	1.62
Without plea bargain	1.35	1.74
	1.16	1.39

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jan M. Chaiken, Ph.D., is director.

BJS Special Reports address a specific topic in depth from one or more datasets that cover many topics.

Caroline Wolf Harlow wrote this report under the supervision of Allen J. Beck. In BJS, Carol DeFrances consulted extensively on research approaches and reviewed the State prosecutor data analysis; John Scalia provided numbers and reviewed the items dealing with Federal defendants; Tim Hart reviewed the section from State Court Processing Statistics; David Levin assisted in accessing the SCPS dataset; Tracy Snell provided a statistical review of material from the

surveys of inmates in State or Federal prisons or local jails; and Greg Steadman reviewed the standard error calculations.

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