

ABSTRACT

Indigent Defense Counsel Appointments and Criminal Case Outcomes: An Analysis of
the Definition of Indigency and its Effect on Criminal Punishments.

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In the United States, the Sixth Amendment guarantees criminal defendants the right to counsel. In criminal cases where defendants are financially unable to hire an attorney, the Court requires courts to appoint attorneys to indigent defendants. In state courts, these appointed attorneys are paid by state and local governments. Federal courts have never defined a set of criteria by which eligibility for court-appointed attorneys might be consistently determined and instead have left the decision on whether a defendant is “financially unable to hire an attorney” up to the states and their judiciaries. This study analyzes McLennan County’s formula for determining indigency and evaluates whether defendants whose financial situations put them either above or below the indigency line experienced significantly different case outcomes as a result of whether they did or did not qualify for a court-appointed attorney.

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INDIGENT DEFENSE COUNSEL APPOINTMENTS AND CRIMINAL CASE
OUTCOMES: AN ANALYSIS ON THE DEFINITION OF INDIGENCY AND ITS
EFFECT ON CRIMINAL PUNISHMENTS

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EPIGRAPH

“Reason and reflection require us to recognize that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.” *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963)

“A defendant in a criminal case who is just above the poverty line separating the indigent from the nonindigent must borrow money, sell off his meager assets, or call upon his family or friends in order to hire a lawyer.” *Fuller v. Oregon*, 417 U.S. 40, 53-54 (1974)

“A judicially approved practice should ‘assure that no man...be deprived of counsel merely because of his poverty.’ (pg 907). See *Powell v. Alabama*, 287 U.S. 477 (1932). (Black, J., dissenting).

INTRODUCTION

Throughout the last century, the Supreme Court has gradually extended the Sixth Amendment right to counsel to all citizens accused of crimes whose punishments might imprison them for up to a year or more. Since then, the demand for court-appointed counsel has become increasingly evident, as around two-thirds to four-fifths of all felony defendants nationwide do not have the funds to hire their own attorneys (McGough, 2011). Accused persons who are financially unable to hire counsel are referred to as indigents. Typically, accused indigents can be represented in one of three ways: by a public defender, court-appointed counsel, or contracted counsel. Attorneys under each type of indigent defense counsel are paid by the government, the state, or the county, or a combination of these.

Research has been conducted on the impact of public defenders, appointed counsel, and contracted counsel on case outcomes, as well as on sentencing outcomes and procedural outcomes. One study found that defendants with court-appointed counsel were more likely to receive convictions than those with either public defenders or contract counsel, though it did not investigate how eligibility for court-appointed counsel was determined (Cornwell, 2015; Anderson & Heaton, 2012; Cohen, 2014; Feeney & Jackson, 1990). This question is significant because no authoritative national guidelines exist for determining who is and is not indigent (Feeney & Jackson, 1990; Taylor et. al, 1973). As a result, different states use different standards for determining indigency. This also means that public defenders, appointed counsel, and contracted counsel across different states and even different counties can represent very different economic groups,

even though these groups of lawyers all claim to represent “indigent” defendants (Shubhangi & Lefstein, 2004).

While prior research has evaluated attorney performance, it has neglected to consider the objective financial state of the defendant groups in these studies and their realistic ability to afford counsel. Very little research has considered the criteria being used to determine indigency, and even fewer have evaluated these decisions at the individual case level (Gershowitz, 2005; Gross, 2013).

In this study, I have gathered data on 655 felony cases from McLennan County, Texas. Variables include information about each defendant, their crime, their financial records, their attorney and whether the attorney was appointed, and the outcome of the case. This study adds significant value to the research on indigent defense in several ways. First, it compares the effectiveness of court-appointed counsel to hired counsel. Second, it compares the McLennan County courts’ determination of indigency to the county’s stated definition of indigency, which is an objective formula based on a defendant’s financial circumstances. Third, in preparing this study, I discovered and began assembly of a rich new data set that will allow future work to be done on individual defendants as well as individual attorneys, rather than relying on aggregated data as past studies have done.

In the first chapter, I discuss the history of the right to counsel in the United States and its recently developed application to all felony criminals. Chapter two provides background on how the term “indigent” has been used over time and how that definition has changed across time, states, and research. I provide a description of my

data source, variables, and analysis model in chapter three, and in the fourth chapter I provide analysis on the constructed dataset.

This study finds that defendants with court-appointed counsel had significantly higher conviction rates than those with hired counsel, and that those with hired counsel had significantly higher dismissal and deferred adjudication rates. Defendants accused of drug crimes were more likely to hire attorneys, while defendants accused of non-violent, non-drug crimes were more likely to have court-appointed counsel. The court disagreed with the formula's determinations of indigency 10.32% of the time, including both the events where it denied counsel to those objectively determined indigent, and where it provided counsel even though the accused was objectively determined to be not-indigent.

CHAPTER ONE

An Overview of the Right to Counsel

The right to counsel in the United States originates in the Sixth Amendment of the Constitution, which states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence (U.S. Const. Amend. VI).

Though the right to “Assistance of Counsel” was first established in the Constitution, its meaning and scope of application were not fully developed until the last century. The Supreme Court decision in *Johnson v. Zerbst*, 304 U.S. 458 (1938), raised the question of an accused indigent’s right to appointed counsel in a non-capital, felony case. Building off of the earlier decision in *Powell v. Alabama*, 287 U.S. 45, where the Court upheld as absolute an indigent defendant’s right to appointed counsel in capital cases, the Court ruled in *Johnson* that due process requires the appointment of counsel to indigents accused of non-capital crimes in federal courts. In *Betts v. Brady*, 316 U.S. 455 (1942), the Court extended the right to counsel to non-capital cases in the states, yet refused to recognize a right to counsel in all felony cases. The right to appointed counsel for indigents was a conditional, rather than absolute right, and depended as much upon the circumstance and nature of the crime as it did upon the accused’s ability to afford a lawyer. A variety of factors such as the legal and factual complexity of the case, the defendant’s age and education, their moral competency, as well as previous experience

with the law were factors to be considered in determining whether an indigent defendant accused of a non-capital crime merited a “special” case where court-appointed counsel was necessary. *Betts v. Brady*, 316 U.S. 455 (1942); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Powell v. Alabama*, 287 U.S. 45 (1932).

Gideon v. Wainwright’s Impact on the Right to Counsel

This interpretation of the right to counsel remained non-controversial until twenty-five years later when Clarence Gideon of *Gideon v. Wainwright*, 372 U.S. 335 (1963) was convicted of a felony crime and was denied an appointed attorney. Mr. Gideon, left to defend himself, did not have the legal background to provide an adequate legal defense. When he was appointed an attorney on appeal, Mr. Gideon’s sentence was overturned and he was acquitted of the crime. The ruling in *Gideon v. Wainwright*, 372 U.S. 335 (1963), significantly impacted the Sixth Amendment’s development because it invalidated the prior assumption in *Betts v. Brady* that the right to counsel was not a fundamental right (Blume & Johnson, 2013). In fact, the Court recently ruled in *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006), that the right to counsel at felony trials is so fundamental that the violation of it requires an automatic reversal of conviction. Upon *Gideon*’s landmark decision, the Court retroactively applied the right to counsel to thousands of unrepresented criminal convicts, releasing them from their sentences (Blume & Johnson, 2013). Several years after *Gideon*, the landmark decision of *Miranda v Arizona*, 384 U.S. 436 (1966), required suspects to be informed of their right to assistance of counsel before any statements made by that suspect could be admitted

into court. The decision in *Brewer v. Williams*, 430 U.S. 387 (1977), affirmed the right to counsel at post-arrest interrogations, a right that was to be recognized regardless of the suspect's ability to afford a lawyer.

The Right to Self-Representation

While *Gideon* and *Miranda* recognized a felony defendant's right to counsel at trial, the Court has also recognized the accused's right to waive counsel and instead self-represent, referred to as Pro-Se representation. *Faretta v. California*, 422 US 806 (1975), acknowledged that the Sixth Amendment guarantees rights to the accused, not to their counsel, and therefore the accused can choose whether to exercise their right to legal counsel. Because the act of self-representing without formal legal training is an inherently risky decision with serious consequences to one's liberty, the Court ruled in *Johnson v. Zerbst*, 304 U.S. 458 (1938) that defendants who waive their right to counsel in federal courts must provide an intelligent and competent waiver with detailed explanation of the facts and circumstances, including the defendant's background and experience. It is important to note that while the Court requires defendants who waive their right to counsel in federal courts to explain and defend that decision, the same precautions do not exist for those accused in non-federal courts. Thus while a defendant in a federal court would be briefed on the disadvantages of a Pro-Se legal defense, the same defendant in a state court may choose to self-represent without ever being informed of the risks.

The Right to Effective Assistance of Counsel

Since *Gideon*, the Court has expanded on the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984), established a two-pronged test for determining whether counsel was unconstitutionally ineffective. First is the performance prong, where the defendant must demonstrate that his “counsel’s performance was deficient” and “fell below an objective standard of reasonableness.” The second is the prejudice prong, where the defendant must show that “there is reasonable probability” that the result of the case would have been different if not for the errors of the defendant’s counsel. The benchmark test adopted by the Court in *Strickland*, 466 U.S. at 669, is “whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” While this standard brought more structure to the question surrounding constitutional requirements on the effectiveness of counsel, it is still onerous and did not eliminate the practical barriers to successfully acquiring effective counsel (Blume & Johnson, 2013).

Rules on the Application of the Right to Counsel

The Court clarified in *Cuyler v. Sullivan*, 446 U.S. 335 (1980) that the right to assistance of counsel applies equally to retained and appointed counsel. Furthermore, the right to counsel applies at the beginning of a prosecution, which includes preliminary

hearings, arraignments, and plea negotiations; it also applies at the end of a prosecution, and on appeal, as these points cover all “critical stages” where the assistance of counsel can have a significant impact on the outcome of a case. *Brewer v. Williams*, 430 U.S. 387 (1977); *United States v. Wade*, 388 U.S. 218 (1967); *Coleman v. Alabama*, 399 U.S. 1 (1970); *Hamilton v. Alabama*, 368 U.S. 52 (1961); *Evitts v. Lucey*, 469 U.S. 821 (1985). In determining the stages at which the right to counsel does and does not apply, the Court delineated beyond a “critical stage” of a “criminal prosecution” in *United States v. Ash*, 413 U.S. 300, 310-11, 338 (1973), further requiring that the event must be a “trial-like confrontation where the accused has the right to be present.” With these three requirements surrounding the right to counsel, judges had a clearer standard to use when determining whether a constitutional right to legal assistance was present in criminal cases.

The Right to Counsel for Indigent Defendants

The method for determining whether an accused had a right to ask the court to pay for their counsel remained a separate and blurry issue. Since the 1960s, cases such as *Smith v. Bennett*, 365 U.S. 708 (1961), began establishing basic rights of indigent defendants by exempting them from requirements such as paying a filing fee before pursuing remedies prompted by a prosecutorial conviction. In *Williams v. Illinois*, 399 U.S. 295 (1970), the Court prohibited states from imprisoning an indigent defendant beyond the maximum term because of the defendant’s inability to pay his fines. Though

there is a clear trend of recognizing rights for indigent defendants, the Court has neglected to draw a universal line on how judges should determine indigency.

In the absence of clear direction, states have devised their own systems for determining whether defendants are indigent under the Sixth Amendment. While states use different methods to accommodate needs for government-funded counsel, three general systems for delivering indigent defense exist in the United States (Cohen, 2014; Spangenberg & Beeman, 1995). The first is the Public Defender System, where attorneys exclusively represent indigent defendants and are employed by the state, county, or locality with a government salary (Fredrique et al., 2015). The second is the court-appointed counsel or appointed attorney system, where the court assigns a private attorney to handle an individual case; the attorney is compensated on a case-by-case basis (Fredrique et al., 2015). Lastly is the contract system, where the state contracts with private attorneys or organizations who then represent a specified number of indigent cases; the contract outlines their compensation package (Feeney & Jackson, 1990). McLennan County only uses appointed counsel; it has neither a public defender system nor a contracted counsel system. This study seeks to further investigate the differences between court-appointed attorneys and privately-hired attorneys in McLennan County.

CHAPTER TWO

Indigent Defendants in the Criminal Justice System

In the United States, where more than a million felony defendants may face a criminal sentence in a given year, the issue of a constitutionally fair trial has become a significant concern, especially regarding Sixth Amendment rights (Bureau of Justice, 2013). Indigent defendants in particular comprise a significant portion of these defendants, ranging from two-thirds to four-fifths of the million American felony defendants each year (McGough, 2011). State-administered indigent defense offices spent more than \$1 billion to provide indigent defense in 2013. Out of all 50 states, only six did not charge indigents with application or recoupment fees (National Criminal Justice Association, 2013).

In the case of *Hardy v. United States*, 375 U.S. 277, 289 (1964), Justice Goldberg, in footnote two of his concurrence, suggested a definition of indigency by drawing on the Attorney General's Report on Poverty:

Indigence "must be conceived as a relative concept. An impoverished accused is not necessarily one totally devoid of means." An accused must be deemed indigent when "at any stage of the proceedings [his] lack of means... substantially inhibits or prevents the proper assertion of a [particular] right or claim of right." Indigence must be defined with reference to the particular right asserted. Thus, the fact that a defendant may be able to muster enough resources, of his own or of a friend or relative, to obtain bail does not in itself establish his nonindigence for the purpose of purchasing a complete trial transcript or retaining a lawyer (*Hardy v. United States*, 1964, 289; quoting Allen, 1963).

The ambiguous and non-committal definition of indigency presents a challenge to citizens who have a constitutional right to a fair trial regardless of their financial

ability; it also raises questions for the government that must provide American citizens with the means to the fair trial promised them. Despite the requirement for financial support to indigent felony defendants, the Supreme Court remains silent on how judges ought to determine an accused's eligibility for court-funded counsel (Gross, 2014).

Shortly after *Gideon v. Wainwright*, courts spent little time making eligibility decisions and considered a defendant financially unable to hire an attorney if that defendant simply stated that he was unable to hire an attorney (Spangenberg, 1986). Courts assumed that accused criminals who were able to hire their own attorneys would hire the best attorney that they could find and claim financial inability only as a last resort. As the Court said in *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) “there are few defendants charged with a crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses”.

However, the court did not realize the magnitude of indigent persons present in the criminal justice system. Many of these people could not afford to hire a lawyer, let alone the best lawyer. As court costs rose, states tried to control spending by limiting the number of defendants eligible for indigent defense (Spangenberg, 1986). Without national guidance, states took upon themselves the obligation to develop public defender and court-appointed attorney systems, which vary in standards and practice across America and have largely failed to follow nationally recommended standards (Wynne & Vaughn, 2017; American Bar Association, 2004). The lack of a centralized direction and a centralized solution has sparked a crisis for the field of indigent defense, resulting in “giant caseloads, a lack of training and standards for court-appointed attorneys, and

insufficient funding to properly address the issues” (Wynne & Vaughn, 2017, 899; Bright & Sanneh, 2013).

Surprisingly, national research was not conducted on indigent defense services until 1972, when the government began to realize the problem it had on its hands (NLADA & Benner, 1973). For example in 1974, a study on indigent defense in Ohio revealed that the state needed to quadruple its funding toward indigent defense to meet constitutional requirements (Fredrique et al., 2015; NLADA et al., 1973). As a result of the Ohio case study, many states began gathering data on their indigent defense counsel systems to evaluate and reassess their funding needs in light of constitutional requirements (Fredrique et al., 2015; Lefstein, 2011).

In the early 2000s, the National Institute of Justice initiated an Indigent Defense Research program, which promoted the standardization of indigent defense services implementation by studying state adherence to suggested national standards (National Institute of Justice, 2015). They concluded that consistent, national indigent defense standards were necessary for managing case workload, staffing demands, and adequate quality (Wallace & Carroll, 2004). Despite these resources, studies, and suggestions, indigent defense systems still lack the objective oversight and uniform eligibility standards to prevent unequal treatment of accused indigents (Wynne & Vaughn, 2017; Phillips, 2014). As the National Association of Criminal Defense Lawyers noted,

Defendants who are deemed ineligible for assigned counsel but who lack financial resources to hire an attorney are forced to waive their right to counsel. Those defendants fortunate enough to qualify for assigned counsel are often forced to reimburse the state for the cost of representation. These “marginally indigent” defendants have to contribute whatever financial resources they have to their defense, with the end result being that they become truly indigent by the time their case is resolved (Gross, 2014, 10-11).

A task force in New York noted that some defendants had been denied counsel simply because they owned a home, though the court never asked whether there was equity in the home or how accessible those assets were (NYSBA, 2012). In some areas, individuals who are financially dependent on parents can be denied counsel simply because the county expects those parents to be responsible for the defendant. In cases where the opposing party is an allegedly abusive spouse, there are times when the spouse's assets have been factored into the defendant's eligibility for indigency, though those funds were clearly not accessible (NYSBA, 2012). However and wherever the indigency line is drawn, it is inconsistent and applies blanket assumptions to subjective problems. As one defendant in New York who was found to be \$11 over the income cutoff line remarked, "What lawyer will represent me for \$11?" (NYSBA, 2013, 106). These inconsistencies have resulted largely from judicially ambiguous criteria surrounding the definition of indigence, allowing states to draw the indigency line locally without accountability to standardization.

National History of Indigent Defense Methodology

In its proposed *Standards for Providing Defense Services*, the American Bar Association suggested that the fundamental test for determining eligibility for counsel should be whether persons are "financially unable to obtain adequate representation without substantial hardship" (Exum, 1992, 88). The ABA also recommended a double-pronged financial inability and substantial hardship test. In applying those two criteria, the ABA encouraged states to use specific and detailed standards for determining

indigency through recording data on a defendant's income, expenses, and liquid assets, along with the number and age of dependents (Exum 1992). They also note that many states use variations on the Legal Service Corporation's Federal Poverty Guidelines Formula as a common practice for determining eligibility (Exum, 1992).

In practice, less than a third of states consider an accused's inability to hire an attorney as well as whether the accused will suffer "substantial hardship" if they are denied assigned counsel: Alabama, Florida, Hawaii, Indiana, Louisiana, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon. States such as Delaware, Nebraska, Utah, Rhode Island, and Alaska consider whether defendants would be effectively denied economic necessities if required to fund their own counsel. A majority of states, including Texas, use the Federal Poverty Guidelines as an eligibility criterion in determining whether a defendant is indigent.

The Federal Poverty Guidelines were originally developed in the 1960s as a general yardstick to measure the risks of low economic status, but they were never intended to be used as a financial boundary determining the amount of funds needed for basic necessities (Denavas-Walt et al., 2013). The Guidelines are calculated solely based on assumed food cost times three, assuming that Americans spend one-third of their income on food (Fischer, 1992). Necessary expenses such as housing, transportation, healthcare, and childcare are not directly accounted for in the Federal Poverty Guidelines, and it is insensitive to the geographically relative cost of living. The Legal Services Corporation, created by the Economic Opportunity Act of 1964, uses 125% of the Federal Poverty Guidelines as a standard for determining eligibility for its indigent defense services (Financial Eligibility Policies, 1977).

Many states have adopted this practice, using a multiple of the Federal Poverty Guidelines to calculate whether a defendant is unable to afford an attorney. In states such as Georgia, Maine, Missouri, and Virginia, as well as in McLennan County, gross incomes that reach just above the 125% poverty level (about \$15,000 in annual income for an unmarried individual) disqualify defendants from court-appointed counsel, even though those defendants are still eligible for programs such as CHIP, WIC, and School Lunches (Gross, 2014). The income being tested against the Federal Poverty Guidelines is gross income before expenses such as food, rent, and cellphone bills. Indigence eligibility standards in places like McLennan County assume the defendant will be able to use the surplus between income at the 125% poverty level and gross income earned above the 125% poverty level to fund the cost of counsel.

As a result of inconsistent guidelines for determining indigency, the American Bar Association in its *Standards for Providing Defense Services* issued a standard prohibiting courts from forcing defendants to choose between retaining their own counsel and paying bonds (Exum, 1992). Despite this, only a fifth of states including Florida, Missouri, West Virginia, and New Jersey have explicit standards that consider a defendant's eligibility for court-appointed counsel post-bond payment. A significant number of states consider public benefits as income when making eligibility determinations, disqualifying defendants who receive "too much" support for basic necessities from the indigency threshold (Gross, 2014). McLennan County currently counts public benefits as income as well. Including public benefits in income calculations inflates the available income a defendant appears to have, though the liquidity of those benefits in terms of their ability to be used toward legal counsel is controversial.

Several states also calculate whether a defendant is marginally indigent, or indigent but able to contribute through selling off assets or using savings. These states require such defendants to financially support their legal defense until they become completely indigent, per the poverty threshold standards, before receiving court-appointed counsel. The National Association of Criminal Defense Lawyers illuminates the injustice of this method for determining “eligibility”:

The end result is that the states make sure that those defendants who are marginally indigent at the time they are arrested will be completely destitute by the time the case ends, even if it ends in a dismissal (Gross, 2014, 16).

The NACDL calls for national procedural consistency in eligibility standards for indigent defendants that are consistent with the ABA Standards for Providing Defense Services, allowing those who are too poor to hire a lawyer access to the defense services to which they are constitutionally entitled. They also provide a helpful map which charts the differing methodologies used across states for determining indigency:

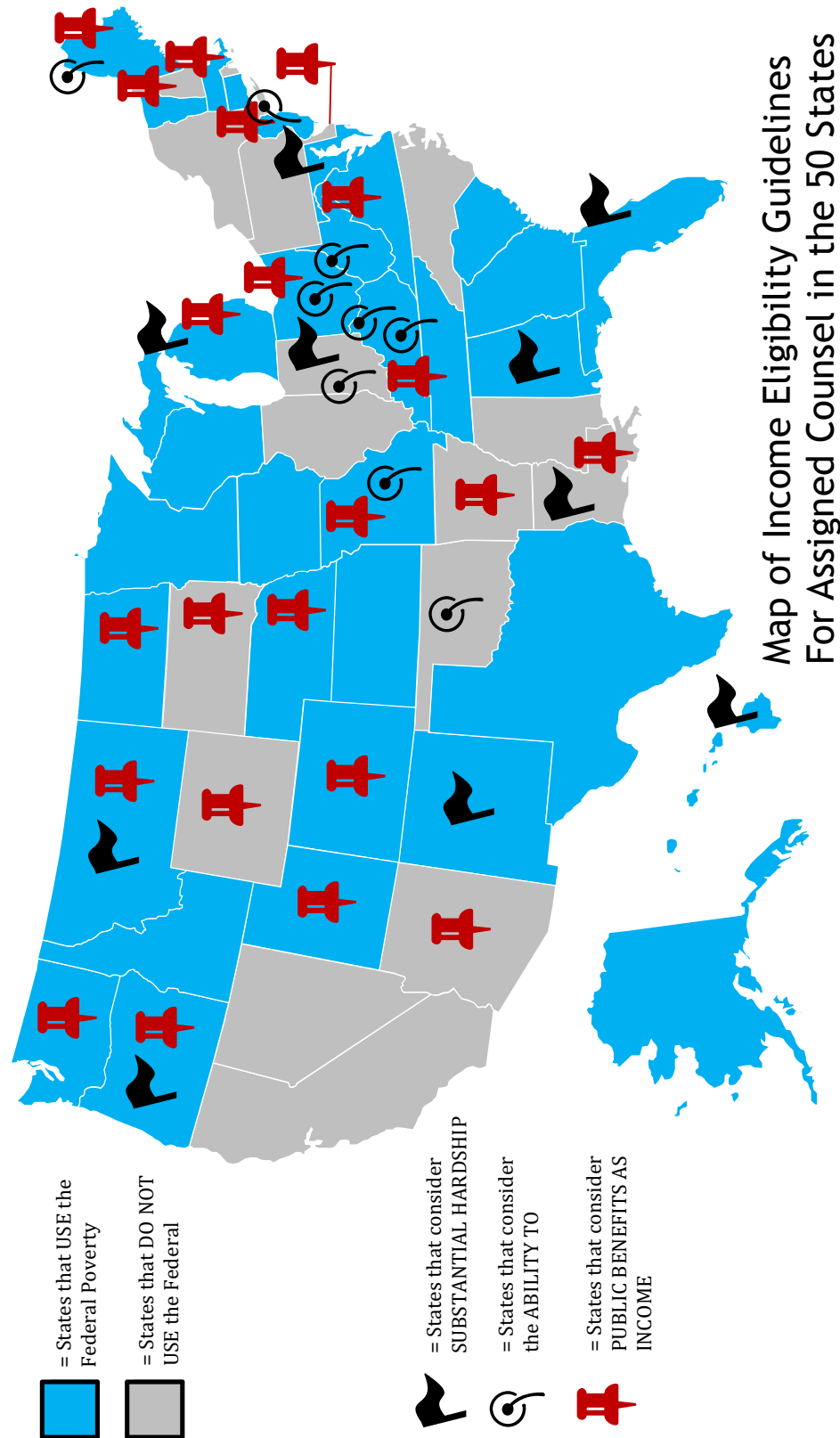


Figure 1: Gross, Systemic Barriers to Counsel for Adults, 2014. Remodeled.

State of Indigent Defense in Texas

In 2001, Texas passed the Texas Fair Defense Act which created state funding for indigent defense, chartered a Commission to provide oversight and receive reports from counties, codified key process standards, and outlined attorney qualifications along with caseload limits (Ehlers, 2017). Combined net state and county expenditures on indigent defense totaled over \$303 million in 2017, almost tripling from 2001 (Ehlers, 2017). Because both the state and county contribute to indigent defense spending in Texas, the sum of the 2017 entries under the Total Grants Disbursed and Gross Expenditures columns below comprise Texas' total 2017 expenditures on indigent defense.

HISTORICAL COUNTY EXPENDITURES AND STATE INVESTMENT

Year	County Expenditures			State Investment	
	Gross Expenditures (millions)	Net Expenditures ¹ (millions)	Annual Increase	Total Grants Disbursed (millions)	Grants as % of County Expenditures
2001	\$91.4	\$91.4	—	\$0.0	0%
2002	\$114.0	\$114.0	25%	\$7.2	6%
2003	\$129.3	\$129.3	13%	\$11.5	9%
2004	\$138.3	\$138.3	7%	\$11.6	8%
2005	\$140.3	\$140.3	1%	\$13.6	10%
2006	\$149.0	\$149.0	6%	\$13.8	9%
2007	\$161.1	\$161.1	8%	\$16.9	10%
2008	\$174.2	\$174.1	8%	\$21.0	12%
2009	\$186.9	\$186.4	7%	\$27.6	15%
2010	\$195.1	\$194.6	4%	\$27.5	14%
2011	\$198.4	\$197.7	2%	\$33.7	17%
2012	\$207.5	\$206.3	4%	\$28.2	14%
2013	\$217.1	\$215.4	4%	\$27.4	13%
2014	\$229.9	\$228.1	6%	\$44.8	20%
2015	\$238.0	\$235.6	3%	\$30.0	13%
2016	\$247.7	\$245.6	4%	\$32.2	13%
2017	\$265.1	\$263.3	7%	\$38.3	15%

Figure 2: TIDC, Annual Expenditure Report Fiscal Year 2017.

In 2017, indigent defense expenditures in Texas increased to \$263 million, though local counties are responsible for self-funding a majority of their indigent defense programs.

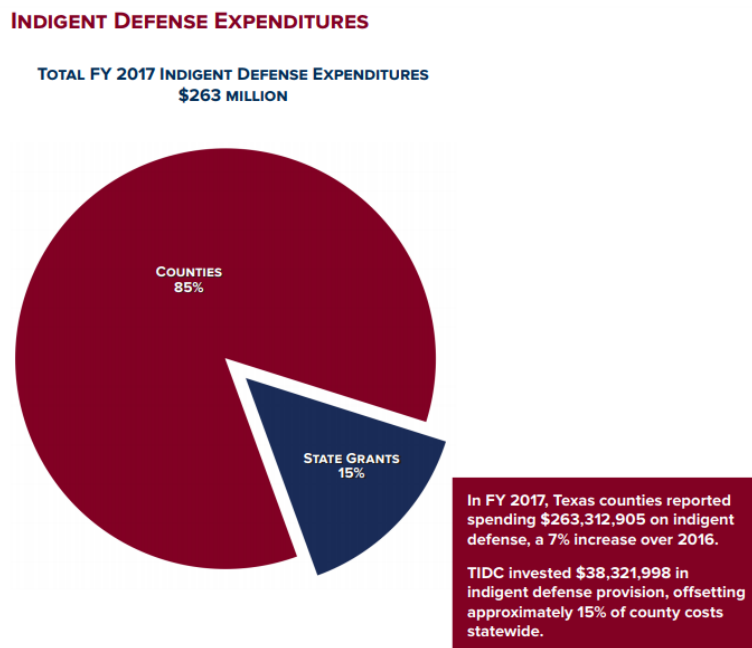


Figure 3: TIDC, Annual Expenditure Report Fiscal Year 2017.

Total statewide indigent defense costs have annually increased by about \$10 million since 2011, expanding an already large funding need (Ehlers, 2017). Felony appointment rates statewide have averaged around 70% in recent years, reaching the upper bound of the two-thirds to four-fifths national indigency range cited earlier (McGough, 2011). In Texas counties that are similar in size to McLennan, Pro-Se defendants average about 42.5% for felonies and misdemeanors combined (Ehlers, 2017).

In Texas, “indigent” is defined as a person who is financially unable to employ counsel (Texas Code of Criminal Procedure, Art 1.051b). McLennan County uses the 125% Federal Poverty Guideline as an eligibility criterion; however, use of the Federal Poverty Guidelines in determining indigency varies across Texas counties. Approximately 38 counties consider defendants indigent if they earn less than 100% of the FPG, 54 counties draw the eligibility line at 125% of the FPG, 6 counties determine indigency as below 150% of the FPG, and 156 counties do not use the guidelines at all (Task Force on Indigent Defense, 2007). Following the spirit of the ABA standards cited earlier, courts are instructed not to consider the defendant’s payment of bail or ability to pay bail when evaluating eligibility for court-appointed counsel, unless it enlightens that defendant’s financial circumstances (Texas Code of Criminal Procedure, Art 26.05m). In Texas, courts are required to charge the defendant with the proportional cost of his legal services if that court determines the defendant is financially able to contribute toward those services in part or whole. Even if the defendant is convicted, he must help the court offset his legal costs to the ability that he is able (Texas Code of Criminal Procedure, Art. 26.05g).

The Justice Index produced a 2016 study analyzing access to the justice system for individuals without lawyers, weighing different factors such as the availability of plain English written materials, electronic filing systems, web page forms, and the waiving of filing fees for Pro-Se defendants. The Index calculates a 45.00 score on a 100 point scale for Texas, thus ranking Texas 33rd compared to other states (Justice Index, 2016). Texas’s aggregate justice accessibility score for individuals self-representing, disabled, or who speak a different language put the state’s attorney accessibility ranking

at 34.08 out of 100, around the 37th percentile (Justice Index, 2016). Texas is clearly performing below the median state in its efforts to make justice accessible.

Despite the reforms Texas has made to its indigent defense system, significant variability still exists across different counties within the state. Because of inconsistency in the enforcement of indigence eligibility standards, similarly-situated defendants may be treated differently under the Sixth Amendment.

State of Indigent Defense in McLennan County

In 2017, McLennan County spent over \$3 million on indigent legal services; spending has consistently grown over the past five years (Texas Indigent Defense Commission, 2017).

Combined County Report				
October 1, 2016 - September 30, 2017				
Number of Courts: 6				
Category of Services	Attorney Fees	Investigation Expenditures	Expert Witness Expenditures	Other Litigation Expenditures
Juvenile				
Assigned Counsel	\$148,041	\$330	\$1,000	\$2,000
Contract Counsel				
Managed Assigned Counsel				
Capital Murder				
Assigned Counsel	\$46,562	\$14,525	\$44,080	
Contract Counsel				
Managed Assigned Counsel				
Adult Non-capital Felony				
Assigned Counsel	\$1,637,989	\$136,128	\$142,673	
Contract Counsel				
Managed Assigned Counsel				
Adult Misdemeanor				
Assigned Counsel	\$1,149,177	\$6,253	\$31,200	
Contract Counsel				
Managed Assigned Counsel				
Total Trial	\$2,981,769	\$157,236	\$218,953	\$2,000
Juvenile Appeals				
Assigned Counsel	\$620			
Contract Counsel				
Managed Assigned Counsel				
Adult Felony Appeals				
Assigned Counsel	\$99,685			
Contract Counsel				
Managed Assigned Counsel				
Adult Misdemeanor Appeals				
Assigned Counsel	\$6,986			
Contract Counsel				
Managed Assigned Counsel				
Total Appeals	\$107,272	\$0	\$0	\$0
Payments Made and No Charges Filed by Prosecutor - Juvenile				
Assigned Counsel				
Contract Counsel				
Managed Assigned Counsel				
Payments Made and No Charges Filed by Prosecutor - Adult				
Assigned Counsel				
Contract Counsel				
Managed Assigned Counsel				
Total NCF	\$0	\$0	\$0	\$0
Overall Total	\$3,089,040	\$157,236	\$218,953	\$2,000

Figure 4: TIDC, McLennan County Expenditure Report Summary, 2017.

MCLENNAN COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2014	2015	2016
Population Estimate	243,181	246,592	252,626
Juvenile Assigned Counsel	\$166,851	\$164,368	\$127,437
Capital Murder	\$190,377	\$97,106	\$39,419
Adult Non-Capital Felony Assigned Counsel	\$1,276,890	\$1,474,696	\$1,671,449
Adult Misdemeanor Assigned Counsel	\$1,116,446	\$1,097,094	\$1,152,627
Juvenile Appeals	\$0.00	\$830	\$2,890
Adult Felony Appeals	\$120,664	\$143,656	\$106,018
Adult Misdemeanor Appeals	\$2,396	\$2,875	\$2,975
Licensed Investigation	\$128,520	\$110,242	\$144,340
Expert Witness	\$223,780	\$188,721	\$197,080
Other Direct Litigation	\$20,350	\$11,000	\$10,100
Total Court Expenditures	\$3,246,273	\$3,290,590	\$3,454,334
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$0.00	\$0.00	\$0.00
Total Public Defender Expenditures	\$0.00	\$0.00	\$0.00
Total Court and Administrative Expenditures	\$3,246,273	\$3,290,590	\$3,454,334
Formula Grant Disbursement	\$471,739	\$278,441	\$273,512
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$303,115	\$290,549	\$281,670
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	5,842	5,867	6,035

Figure 5: TIDC, McLennan County Expenditure Reporting, 2014-2016.

The number of cases with attorney appointments averaged about 5,914 across 2014-2016, and reached 5,693 in fiscal year 2017 (Figure 5, Figure 6).

Category	Assigned Counsel Cases	Contract Counsel Cases	Managed Assigned Counsel Cases	Public Defender Cases
Juvenile Cases	509			
Capital Murder Cases	5			
Adult Non-Capital Felony Cases	2,279			
Adult Misdemeanor Cases	2,853			
Juvenile Appeals	1			
Adult Felony Appeal Cases	40			
Adult Misdemeanor Appeal Cases	6			
Payment Made and No Charges Filed By Prosecutor - Juvenile				
Payment Made and No Charges Filed By Prosecutor - Adult				
Total Cases	5,693			

Figure 6: TIDC, McLennan County Expenditure Report Summary, 2017.

Court-appointed attorneys represented 91% of 2017 felony cases charged in McLennan County alone, and there has been a 199% increase in total indigent defense county expenditures since 2001 (TIDC – County Dashboard, 2017). Data show that

McLennan County's judicial system has to become increasingly reliant on court-appointed counsel especially over the past three years, and the county's expenditures increased 5.5% faster than the state's last year (Figure 7).

McLennan County				
Year	2014	2015	2016	Texas 2016
Population (Non-Census years are estimates)	243,181	246,5927	252,626	27,725,192
Felony Charges Added (from OCA report)	2,897	3,079	2,554	276,879
Felony Cases Paid	2,137	2,305	2,517	200,580
% Felony Charges Defended with Appointed Counsel	74%	75%	99%	72%
Felony Trial Court-Attorney Fees	\$1,467,267	\$1,571,803	\$1,710,868	\$115,192,600
Total Felony Court Expenditures	\$1,810,431	\$1,847,671	\$1,983,536	\$131,727,198
Misdemeanor Charges Added (from OCA report)	5,741	5,353	4,338	481,253
Misdemeanor Cases Paid	2,972	2,900	2,992	214,674
% Misdemeanor Charges Defended with Appointed Counsel	52%	54%	69%	45 %
Misdemeanor Trial Court Attorney Fees	\$1,116,446	\$1,097,094	\$1,152,627	\$40,245,051
Total Misdemeanor Court Expenditures	\$1,133,260	\$1,128,880	\$1,185,954	\$41,003,480
Juvenile Charges Added (from OCA report)	420	396	370	27,307
Juvenile Cases Paid	659	611	473	41,989
Juvenile Attorney Fees	\$166,851	\$164,368	\$127,437	\$11,119,664
Total Juvenile Expenditures	\$179,522	\$166,678	\$133,037	\$11,424,425
Total Attorney Fees	\$2,873,624	\$2,980,626	\$3,102,814	\$172,232,454
Total ID Expenditures	\$3,246,273	\$3,290,590	\$3,454,334	\$247,730,647
Increase In Total Expenditures over Baseline	163%	167%	180%	179%
Total ID Expenditures per Population	\$13.35	\$13.34	\$13.67	\$8.94
Commission Formula Grant Disbursement	\$471,739	\$278,441	\$273,512	\$25,056,873
Cost Recouped from Defendants	\$303,115	\$290,549	\$281,670	\$11,055,035

Figure 7: TIDC, McLennan County Expenditure Reporting, 2014-2016.

McLennan County, in conjunction with the Texas Indigent Defense Commission, issued an Indigent Defense Plan in 2005 to define a county-wide system for dealing with defendants too poor to hire a lawyer. It created standards for the timeliness of defense counsel appointments, and also outlined the financial and non-financial factors to be considered when determining indigence. Those factors are as follows:

- The defendant's income from any and all sources;
- The sources of the defendant's income;
- Assets of the defendant;
- Property owned by the defendant or property in which the defendant has an interest;
- Outstanding obligations of the defendant;

- Necessary expenses of the defendant;
 - The number and age of the defendant's legal dependents;
 - Spousal income available to the defendant; and
 - Any other reasonable factor(s) the judge finds bears on the financial inability of the defendant to retain counsel.
- (Indigent Defense Plan, 2005, III-b)

The Plan specifically prohibits judges from considering the defendant's ability to pay bail as a criterion for determining indigence (Indigent Defense Plan, 2005, III-c).

Judges are not allowed to consider the resources of the accused's family or friends either (Indigence Form, II-B-v). Public benefits, however, are counted toward a defendant's income in McLennan County. Final decisions about indigence must consider the difference between the defendant's income, including spousal income if available, and "necessary expenses", defined as rent or mortgage, food or groceries, car payment, car insurance, and utilities (Indigent Defense Plan, 2005, III-d-1-3). Under the original Indigent Defense Plan, if the difference between income and expenses is greater than the defendant's 125% Federal Poverty Guideline limit (which is calculated based on the number of dependents in the household), then the defendant is not indigent. If the difference between income and expenses is smaller than the defendant's Federal Poverty Guideline limit, then the defendant is found to be indigent. Since its issuance in 2005, this rule has been modified and defendants must demonstrate that the difference between their income and expenses lies under \$500.

Three years after McLennan County's Indigent Defense Plan was issued, statistics were released by the National Legal Aid and Defender Association revealing that Texas indigent spending per capita was in the bottom five states nationally (NLADA, 2008). Texas is also one of 17 states that rely on counties for a majority of their indigent defense

spending, which makes local judiciaries dependent on the availability of local funding year-to-year (Figure 8).

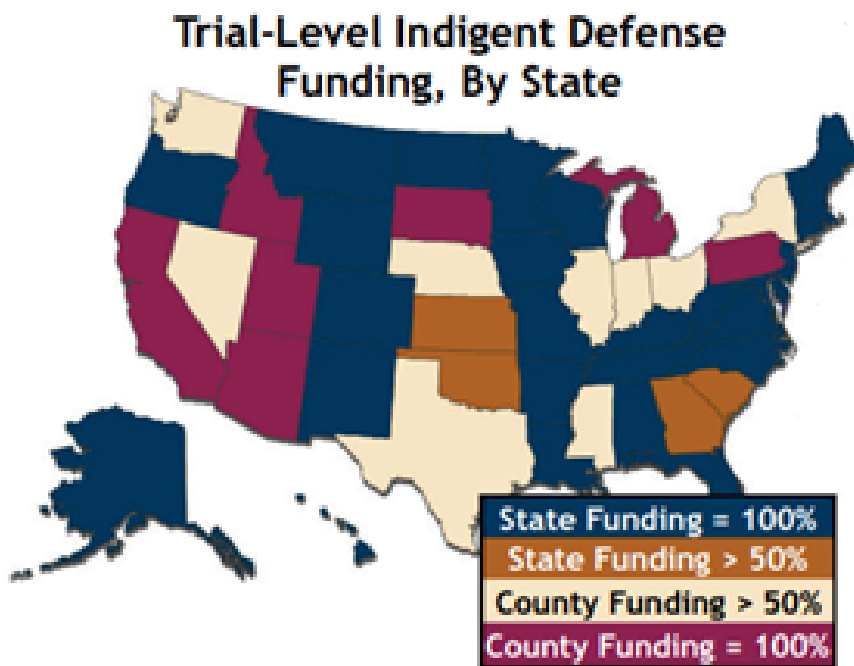


Figure 8: NLADA, Race to the Bottom, 2008.

In 2014, McLennan County received news coverage on this issue because their indigent defense counsel office had begun using a county detective to verify whether applicants for court-appointed counsel were truly indigent (Edelman, 2014). The County's investigative efforts were criticized due to a concern that defendants applying for county-funded counsel would be intimidated by the detective and would feel pressured to waive their Fourth Amendment rights to claim their Sixth Amendment right. Local authorities stressed the importance of making defendants aware of their right to refuse a search and assured the press that detectives were only used to verify indigency in cases where information on the application seemed suspicious or inconsistent. Jim Bethke, executive director of the Texas Indigent Defense Commission, sympathized with

the constitutional concerns of McLennan County's approach and discouraged other counties from following suit. It is important to note that the use of detectives to verify indigency was motivated largely out of a concern to keep costs down since McLennan County's indigent defense system is mostly locally funded. McLennan County's indigent defense counsel team was also found to be considerably understaffed, according to a 2014 TIDC finding which revealed that more defendants in McLennan County were denied assistance of counsel due to incomplete forms than to income exceeding local indigent defense standards. This is because defendants were not receiving the assistance they needed to fill out the indigence eligibility forms properly (TIDC – Effective Indigence Screening, 2015).

Indigence Eligibility Determinations in McLennan County

In the Texas Indigent Defense Commission's Model Forms and Procedure, a document entitled *Determination of Indigence for Adults* thoroughly outlines which factors should and should not be considered when determining an applicant's indigency (Indigence Form). Since McLennan County falls under TIDC's jurisdiction, these criteria are present within the McLennan County indigency formula.

In order to be determined indigent under the Indigent Defense Plan, McLennan County has two formal tests. Applicants must meet at least one criteria in each test to be determined indigent. For the first test, an applicant must meet one of the following three criteria: first, the defendant's gross household income must be below 125% of the Federal Poverty Guidelines, determined by the number of financially dependent persons in the accused's household (including the accused). Second, the difference between the

defendant's monthly net income, including spousal income if available, and "necessary expenses", defined as rent or mortgage, food or groceries, car payment, car insurance, and utilities, must be less than \$500 (Indigent Defense Plan, 2005, III-d-1-3). Third, the defendant may pass as indigent under the first test if he/she is currently serving in a public institution. If one of these three criteria are met, then the applicant has satisfied the first half of the indigence eligibility test (Indigence Form, II-B-ii-1-3).

The second half of the indigency test requires the defendant to meet only one of the following criteria. The accused's non-exempt assets must not exceed the greatest of the following: \$2,500; \$5,000 in the case where a financially dependent household member is 60 years old or older, disabled, or institutionalized; or the amount that is twice the cost of obtaining private representation for the offense charged (Indigence Form, II-B-iii-a-c).

If the accused satisfies one prong of the income test as well as one prong of the non-exempt assets test, that applicant is to be determined indigent. In practice, McLennan County has a simple worksheet that evaluates whether two of the three following criteria are met: whether gross income is below the 125% Federal Poverty Guideline, whether the difference in income and expenses is below 500, and whether non-exempt assets are valued below \$2,500.

In McLennan County, judges use the form in Figure 9 to gather data on the accused and thus make eligibility determinations. The Application for Court Appointment of Attorney must be filled out by any defendant who requests a court-appointed attorney on the basis of indigence. When applicants complete and sign the form, they also sign a statement declaring their financial inability to hire an attorney.

APPLICATION FOR COURT APPOINTMENT OF ATTORNEY - (Affidavit of Indigence)

Attachment 2

CID No.: _____

Cause No. _____

Defendant: _____

Offense Charged: _____

PRINT YOUR RESPONSES CLEARLY. FILL IN ALL BLANKS. If you do not follow these instructions completely, your request for a court appointed attorney may be denied. All responses must be complete, current, accurate, and true. Intentionally or knowingly giving false information may result in your prosecution for the felony offense of aggravated perjury. **The punishment for aggravated perjury includes imprisonment not to exceed ten (10) years and a fine not to exceed ten thousand dollars (\$10,000).** If you do not know the information being requested, answer "do not know." If the requested information does not apply to you, answer "n/a."

PERSONAL INFORMATION

Address: _____ Phone # _____

Name of Spouse: _____ # of Dependents _____ Their ages _____

EMPLOYMENTYour Employer: _____ Number of Hours Worked: _____ per _____ (week/month)
Pay Rate: \$ _____ per _____ (hour/week/month)Spouse's Employer: _____ Number of Hours Worked: _____ per _____ (week/month)
Pay Rate: \$ _____ per _____ (hour/week/month)

If Unemployed: Length of Time Unemployed: _____ Previous Employer: _____

MONTHLY Income**MONTHLY Expenses**

Take Home Pay	\$ _____	Rent/mortgage	\$ _____
Spouse's Take Home Pay	\$ _____	Car Payment	\$ _____
Retirement	\$ _____	Credit Cards	\$ _____
Unemployment	\$ _____	Gas/electric	\$ _____
Child Support	\$ _____	Water	\$ _____
Social Security	\$ _____	Food	\$ _____
SSI (disability)	\$ _____	Telephone	\$ _____
Medicaid	\$ _____	Insurance (Car/home)	\$ _____
Food Stamps	\$ _____	Child Care/child Support	\$ _____
Public Housing	\$ _____	Cable/satellite Tv	\$ _____
Rental Income	\$ _____	Cell Phone/pager	\$ _____
Other Income	\$ _____	Other Expenses	\$ _____
TOTAL	\$ _____	TOTAL	\$ _____

ASSETS

Do you own a house or real estate? Yes _____ No _____ Location of Property _____ Value of property: \$ _____

Do you own any cars or motorcycles? Yes _____ No _____ Make _____ Model _____ Year _____ Value \$ _____

Checking account location _____ Balance \$ _____ Savings account location _____ Balance \$ _____

Other Assets (jewelry, equipment, etc.) _____ Value \$ _____ **Total Value of Assets \$ _____**

By signing my name below, I swear that all of the above information about my financial condition is current, accurate, and true. By signing below, I understand that a court official can verify any of the information for accuracy as required to determine my eligibility.

✓

Defendant

Subscribed and sworn to before me on _____, 20____

Notary Public for McLennan County, Texas

Defendant's application is _____ GRANTED (indigent) / _____ DENIED (not indigent) / _____ DENIED (improperly submitted)

Signed on: _____

Indigent Defense Coordinator / Judge Presiding

This is an official governmental record.

Figure 9: McLennan District and County Court Affidavit of Indigence, 2013.

If an applicant does not pass the formal two-part indigency test, there are two other ways to claim indigency status. First, indigency should be granted if the applicant and his/her dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing (Indigence Form, II-b-i). Second, indigency should be granted if the applicant is unable to employ legal counsel without causing substantial hardship to the accused or the accused's dependents. Specific factors to be considered when determining whether substantial hardship will be created include the nature of the criminal charge, the anticipated complexity of the defense, the estimated cost of obtaining competent private legal representation for the matter(s) charged, the amount needed for the support of the accused and the accused's dependents, the accused's income, the source of income, assets and property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and the spousal income that is available to the accused (Indigence Form, II-B-iv-1-11).

Table 1 below provides a snapshot of how many defendants in McLennan County are receiving Food Stamps, Medicaid, Supplemental Security Income, or Public Housing and yet are denied court-appointed counsel upon application.

Table 1: Government Assistance on FAFF Applicants Only, Original Dataset.

Vars	Ct. Not-Indigent	Ct. Indigent	Total
Food Stamps	.99% 4	99.01% 400	100% 404
Medicaid	- 401	100% 2	100% 403
Supp. Sec. Income	.75% 3	99.25% 400	100% 403
Public Housing	-	100% 404	100% 404

According to the Texas Indigent Defense Commission’s rules explained above, a defendant should be considered indigent if he/she and his/her dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing (Indigence Form, II-b-i). This analysis reveals that out of the 407 defendants who applied for court-appointed counsel, seven were denied that assistance of counsel even though they met the first criteria of McLennan County’s indigence test.

If an accused is found indigent, that indigency status is presumed to continue during the remaining court proceedings (Indigence Form, II-B-iv-1). If the defendant is subsequently determined not to be indigent however, or if the court determines that the defendant has financial resources to cover the costs of the legal services procured either

in part or in whole, the defendant is required to compensate the court for legal fees incurred towards that case to the extent that he is able (Indigence Form, II-B-v) .

CHAPTER THREE

Data and Methodology

Data Source

The data for this study come from McLennan County Courthouse's Indigent Defense office, which is led by Indigent Defense Coordinator Cathy Edwards. The role of Indigent Defense Coordinator ("IDC") was created by the McLennan County Commissioner's Court, charted in the *Joint Indigent Defense Plan* which falls under the direction of the County Court at Law. McLennan's Indigent Defense Coordinator serves as the liaison between indigent defendants and county/state-funded legal services, and is directly supervised by the Associate Criminal Court Judge.

One major responsibility of the IDC is to provide Financial Affidavits of Indigence to all defendants, especially to those who appear indigent or who express a desire to act on their right to request court-appointed counsel. The Coordinator assists defendants in filling out this form by explaining terminology and procedure. For accused persons who filled out the form incorrectly or who did not have the opportunity to fill it out before being placed in detention, the Coordinator visits the jail and gives them the opportunity to fill out a Financial Affidavit of Indigence, offering her assistance if needed. Based on the information listed on the affidavits and the indigency formula described above, the Coordinator will decide whether or not the accused qualifies for court-appointed counsel. If the accused qualifies, the Coordinator will appoint an attorney from a list of attorneys who have applied and qualified to serve as court-appointed counsel. If the accused does not qualify, the Coordinator informs them of why

they did not qualify, which can be due to an incomplete form or to income in excess of the required standard. The Coordinator reminds them that they always have the opportunity to re-apply. If an accused makes a special request for review of their denied application, the Coordinator will take that request to the judge and ask for a special review. The Coordinator also tracks county-wide statistics on the types of crimes committed, the number of requests for court-appointed counsel, the number of court-appointments given, and so forth.

Mrs. Edwards served as my initial point of contact for gathering data about indigent defense appointments in McLennan County, and provided the felony disposed records for fiscal years 2012-2016 for this study, which she collected. Felony disposed records include the defendant's name, type of crime committed and sentence outcome. Mrs. Edwards also provided insight into the Financial Affidavit for Indigence, the attorney appointment process, and the indigent defense system in McLennan County. Individual case financial affidavits matching the cases in the felony disposed records were found through the county's public database, available at computers in the McLennan County Court office.

Data Collection

I began collecting data at the McLennan County Court office in the fall of 2017 using the public database. I first organized the felony disposed records from 2012 by month in Excel and proceeded to take pictures of each case's summary page, financial affidavit(s), court finding, letter of retention, substitutions of counsel, withdrawals of counsel, and waivers of arraignment by month. The images were then uploaded and

organized by month on a secure Baylor database. I also obtained data on pre-file case records from the Indigent Defense Counsel Office.

Description of Variables

The dataset collected from McLennan County includes three different documents, two of which are used in this analysis. The first is the felony disposed records, or the documents which contain data about the outcome of the case. The second is the financial affidavits, documents which contain data about the accused's financial status before trial. I will describe the variables associated with each document in turn.

Felony Disposed Records

The McLennan County felony disposed records provide a total of fourteen variables, all of which are related only to felony crimes committed in McLennan County. The records are organized by month and year. The first variable is the case number, which is unique to a specific instance of criminal activity exhibited by the defendant. A defendant may have multiple case numbers depending on how many crimes he/she has committed. Secondly is the type of case, which can be noted by one of three letters: I, W, or Z. An I indicates an indictment, a W indicates a writ of habeas corpus filed post-conviction, and a Z indicates a case which has been filed but never delivered to a grand jury for judgment on whether there was enough evidence to take the case to trial. The third variable is the defendant's name; fourth is the date the case was first filed. The fifth variable is a number, one through five, indicating the case category; this number has been

derived from the offense type listed, and was superimposed on the dataset. Of the case categories, a number one indicates a murder or manslaughter; a two is for violent crimes such as rape, sexual crime, robbery and child abuse; a three indicates a drug crime; a four is for non-violent and non-drug crimes such as burglary, larceny, theft, arson, a DWI, and weapons charges; a five is for post-conviction writ of habeas corpus. The sixth variable is an abbreviation of the case type, which provides a more thorough description of the offense referenced in the numerical category of variable five. Seventh is the number of counts with which the defendant was charged with that crime; eighth is a detailed description of the offense. The ninth variable is the defendant's plea, which can be one of three initials: a W which indicates a withdrawal, a G which indicates a guilty plea, and an NG which indicates a not-guilty plea. The tenth variable is the disposition which can take on one of six forms: a dismissal, deferred adjudication, a conviction of guilty by plea, a conviction of guilty by jury, an acquittal by the court, or an acquittal by a jury. Eleventh is the disposition date when the case outcome was finalized. Twelfth is the length of the sentence which can be listed in days, months, or years. Thirteenth is the result of the case, which can be dismissed, county jail, deferred adjudication, probation, the Texas Department of Criminal Justice,¹ and State Jail Felony.²

¹ The TDCJ receives convicted defendants whose sentences range from two years to life without parole, and it punishes capital, first, second, and third-degree felonies.

² This category applies to convicted defendants whose sentences range from six months to two years. It is punishment for lower level, non-violent crimes.

Financial Affidavits

Using the publicly available court records in the courthouse, I gathered data from each defendant's case summary page, financial affidavit, court finding, letters of retention, substitutions of counsel, withdrawals of counsel, and waivers of arraignment, creating a total of forty-seven additional observed variables, not including the calculated variables discussed below.

The first variable is the defendant's CID, or County Identification number, that is used to identify criminal defendants; this number stays with them forever as a unique identifier. Second is attorney appointment status, which can be one of five initials: "A" if the attorney was appointed, "NR" if no attorney was requested, "R/U" if the attorney was retained or the method of obtaining counsel is unknown, "Pro Se" if the defendant is self-representing, and "Hired" if the defendant has hired counsel. The designation "R/U" was entered whenever the records showed that an attorney had appeared on behalf of the defendant, but the records were unclear whether the attorney was hired or appointed.

The third variable is the offense number, which categorizes offenses according to an eight-digit code. The fourth and fifth variables are to allow data entry of two financial affidavit decisions, in case the defendant has chosen to apply for court-appointed counsel twice. In both the fourth and fifth variable, financial affidavit decisions can be recorded one of three ways: "Indigent" if the court has determined the defendant to be financially unable to afford their own counsel, "Not Indigent" if the court believes the defendant has the resources to employ their own attorney, and "NF" if the defendant has refrained from filing a financial affidavit. The name of the defendant's attorney is recorded as variable six, and the date when that attorney began representing the defendant is recorded as

variable seven. In several cases, attorneys initially appointed, retained, or hired chose to withdraw their services or substitute their services with another attorney; in these cases, the withdrawal or substitution of counsel is recorded along with the date change, the new attorney's name, and whether the new attorney was appointed, retained/unknown, or hired. The structure of the data set allows for up to four attorney changes to be recorded.

The eighth variable represented the date when the financial affidavit was signed by a judge, ninth is the defendant's street address, the tenth is the defendant's city of residence, and eleventh is the defendant's zip code. The number of hours worked per week by the defendant is variable twelve, and the defendant's hourly pay rate is variable thirteen. If the defendant has a spouse or significant other who contributes to the household income, the number of hours worked by that other is recorded under variable fourteen, and their hourly pay rate as variable fifteen. If the defendant is unemployed, the length of unemployment is recorded in months under variable sixteen; if they are employed, the letters NU are marked instead. Variable seventeen indicates the total number of financially dependent family members whom the defendant supports, including the defendant. This number is used to calculate a defendant's appropriate Federal Poverty Guideline threshold. The eighteenth variable tracks whether a defendant has family or friends who assist with expenses.

Financial data inputs start with the monthly income variables, which begin at nineteen with the defendant's take-home pay. Twenty is the spouse's take-home pay, twenty-one is retirement income, variable twenty-two records unemployment benefits, twenty-three is for child support, twenty-four is for social security benefits, twenty-five is supplemental security income, twenty-six counts Medicaid, twenty-seven is for food stamps, twenty-eight for public housing, twenty-nine for rental income, and thirty

considers other income. Monthly expense variables begin with rent/mortgage, which is variable thirty-one. Car payments are variable thirty-two, credit card payments are thirty-three, gas/electric payments are thirty-four, water payments are thirty-five, food is thirty-six, telephone payments are thirty-seven, insurance payments for the car and home are thirty-eight, child care and support payments are thirty-nine, cable and satellite TV payments are forty, cell phone and pager payments are forty-one, and other expenses are forty-two. A defendant's non-exempt assets are divided among their bank account and savings account, variables forty-three and forty-four respectively. Other assets include real-estate value which is variable forty-five, motor vehicles value which is forty-six, and other assets value, variable forty-seven.

Dataset Construction

After gathering images on each of the observed variables from the felony disposed records and financial affidavits, I designed an Excel spreadsheet to record each of these inputs and run calculations on the data. Because the quantity and quality of publically available documents on each case substantially varied, I wrote a five-page guide documenting each variable column and the methods for inputting data, including rules for dealing with special circumstances where data inputs were subjective. This ensured consistency in data collection. The documented guide also explained where each variable input could be found on legal forms, since some variables required logical deduction from a set of case documents. I took pictures of all relevant documents on each case listed in the felony disposed records I had gathered. Data from these images were manually entered into a maximum of ninety-nine input variable columns, where the

defendant had submitted two financial affidavits and had multiple attorneys on the case. The spreadsheet recorded the observed variables and used these to calculate another set of variables, which were used to construct a formula computing a defendant's indigency status under the 2013 McLennan County indigent defense standards. This indigency determination is referred to as "formula indigent". Since the data in this set was taken from 2013, the Federal Poverty Guidelines used in calculations were adjusted to the numbers used in 2013; current poverty guidelines were not imposed on the older data. The calculated variables include the defendant's annual and monthly gross income, the defendant's spouse's or other's annual and monthly gross income, the monthly gross household income, the defendant's monthly 125% of the Federal Poverty Guidelines income threshold, the defendant's allowance, taxable monthly income, estimated income tax, estimated social security and Medicare payments, and the defendant's net gross income after tax, social security, and Medicare payments. The defendant's total monthly income was calculated based on variables nineteen through thirty above, and the defendant's total monthly expenses were calculated based on variables thirty-one through forty-two above. These two numbers were used to compute the defendant's difference between income and expenses. The defendant's total non-exempt assets and total other assets were also calculated, along with total assets. Finally, three statements were tested: whether the defendant's household income exceeded 125% of the Federal Poverty Guidelines, whether the value of the defendant's non-exempt assets exceeded \$2,500, and whether the defendant's income exceeded expenses by \$500 or more. For statements affirmed by the defendant, a zero was calculated; if the statement was not true, a one was calculated. Any defendant who scored a two or higher was considered indigent

according to the McLennan County indigent defense standards outlined in its 2013 Indigent Defense Plan.

CHAPTER FOUR

Data Analysis

This study included 655 felony case observations from McLennan County's February, March, and April 2013 criminal records. Out of the 655 cases, 373 were determined indigent by the Court, and 34 were determined not to be indigent. Only 407 defendants submitted a financial affidavit for consideration of indigency; 248 defendants did not apply at all and therefore did not provide any personal financial or geographical data. Sentence length is listed in years while unemployment length is listed in months, and any numbers related to income or expenses are calculated on a monthly basis.

General Observations

Initial analysis of the data reveals that out of the 407 applicants who filed for indigency, McLennan County court ruled 3.38% or 12 applicants as not-indigent, even though the McLennan County indigency formula found these applicants to be financially unable to hire an attorney.

Table 2: Indigency Comparison on FAFF Applicants Only, Original Dataset.

Vars	Form. Not- Indigent	Form. Indigent	Total
Court Not-Indigent	42.31% 22	3.38% 12	8.35% 34
Court Indigent	57.69% 30	96.62% 343	91.65% 373
Total	100% 52	100% 355	100% 407

When making decisions about who was not indigent, the court affirmed the formula's not-indigent candidates 42.31% of the time, but 57.69% of the time determined the formula no-indigent applicants to be indigent anyway. This shows that the court tends to err on the side of appointing attorneys to its applicants rather than denying them, perhaps as precautionary protection of Sixth Amendment rights. The court's decision on indigent applicants aligned with the formula's determinations on indigent applicants 96.62% of the time, revealing that the court frequently agreed with the formula's indigency findings.

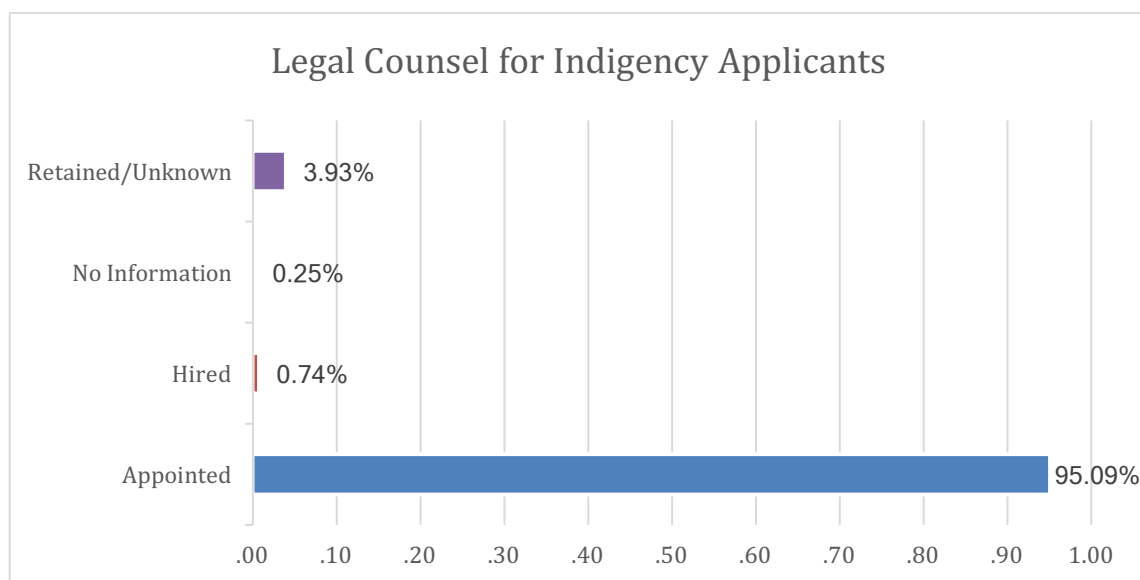


Figure 10: McLennan County Indigent Applicant Representation.

Of the 407 applicants, 387 or 95.09% received a court-appointed attorney (Figure 10). Three of those 407 applicants ended up hiring their own attorneys, while seventeen applicants retained or otherwise obtained their own attorneys (Figure 10). Legal representation trends for this sample set reveal that the top two most common methods of legal representation were court-appointment and retention of counsel. Most likely, some lawyers in the R/U count were court-appointed, and some were privately hired. However the documents used to construct this dataset were unclear as to how those lawyers were actually procured. Therefore, counsel who was retained or otherwise procured without clarification on the responsible hiring party has been grouped under the label “Retained/Unknown” until we are able to find more information.

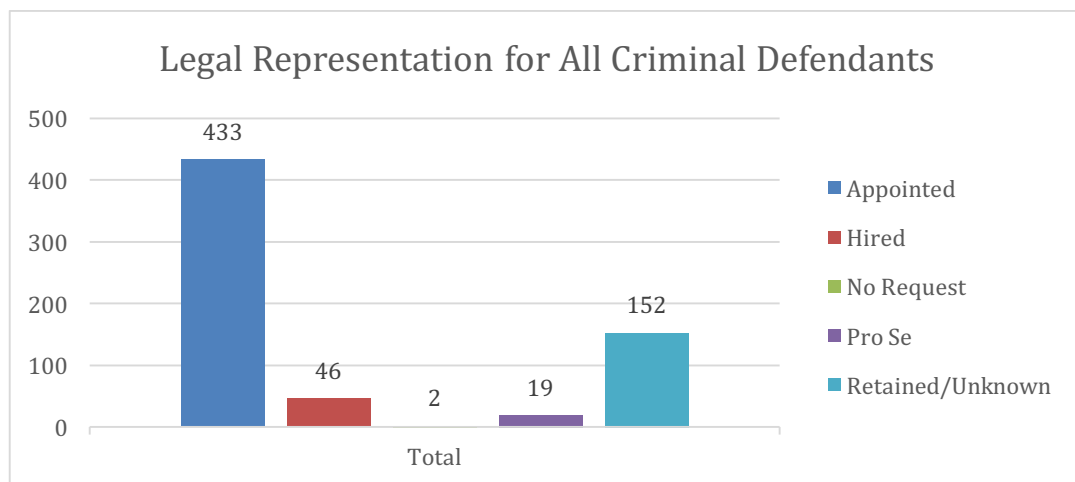


Figure 11: McLennan County Criminal Defendants Legal Representation.

Of all accused felony defendants in McLennan County, 433 or about 66% were represented by appointed counsel (Figure 11). Depending on how many attorneys in the Retained/Unknown category were actually appointed, the statistic on appointed attorneys in McLennan County may be significantly higher. Even so, a 66% appointment rate is directly in line with the research done by the National Institute of Justice in 2011, where two-thirds to four-fifths of all felony defendants in America were estimated to be indigent (McGough, 2011).

Initial demographic analysis on this dataset reveals that the top five zip codes for criminals in McLennan County are 76708, 76705, 76707, 76704, 76706, in that order. The top eight zip codes add 76710, 76711, and 76712 to that list. Collectively, these eight zip codes contain the area where 42.29% of the cases in this dataset originated.

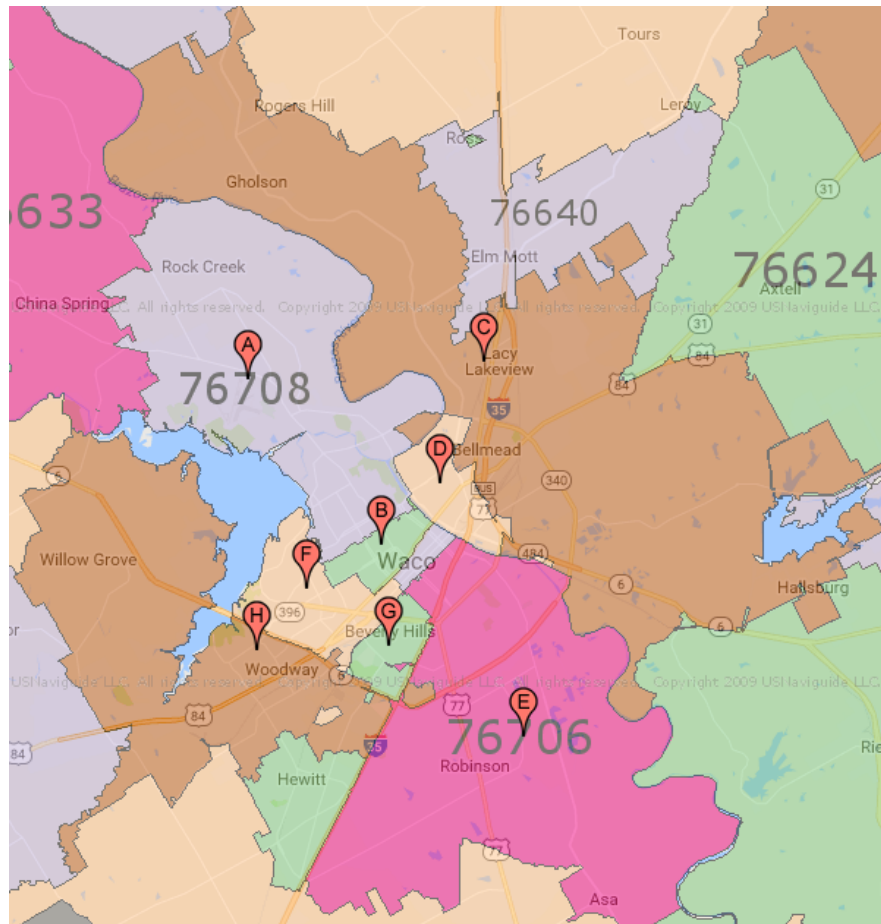


Figure 12: McLennan County Top 8 Zip Codes for Accused Felony Defendants.

Figure 12 above reveals that a significant number of felony crimes in McLennan County are committed by defendants who reside on the east side of the county. These areas primarily include East Waco and a small section of Woodway.

Table 3: Indigency Unemployment T-test on FAFF Applicants Only, Original Dataset.

Vars	Form. Not- Indigent	Form. Indigent	T-Stat. (p-value)
Unemployed	.3333 (.476)	.7224 (.449)	-5.5031 (.0000***)
¹ Unemp. Length	37.08 (75.6)	25.46 (46.1)	0.9189 (.3592)
Obs	48 ¹ 16	281 ² 203	329 ¹ 219

Note: Numbers shown are means; numbers in parenthesis are standard deviations.
The far right column contains the test statistic and the p-value underneath in parenthesis.

Analysis of unemployment rates reveals that 72.24% of applicants found indigent by McLennan County's indigency formula were unemployed, while non-indigents maintained a lower 33.33% unemployment rate. This is not particularly surprising, as those who do not have the financial ability to hire a lawyer would be expected either to have a low-paying job or not to have a job at all. The average length of unemployment for the 72.24% indigent defendants cited above was about 25 months, while the average length of unemployment for non-indigents was about 37 months. The length of unemployment for non-indigents could have been skewed due to only 16 observations in the non-indigent applicant pool, and also because the non-indigents tended to have more extreme numbers. For example, one non-indigent had been employed for as little as two weeks, while another had been unemployed for 25 years, drastically shifting the mean. The weighted average unemployment length for all defendants, indigent and non-indigent, who applied for court-appointed counsel was 26 months.

Table 4: Summary Statistics on Original Dataset.

Vars	All felons	Applied	Didn't Apply	Ct. Indigent	Ct. Not Indigent	Form. Indigent	Form. Not Ind.
Guilty Plea	.829 (0.377)	.8649 (0.342)	.7702 (0.422)	.866 (0.341)	.8519 (0.362)	.8308 (0.375)	.8077 (0.398)
NG Plea	.0244 (0.154)	.0319 (0.176)	.0121 (0.110)	.036 (0.187)	-	.0249 (0.156)	.0192 (0.139)
1) Murder	.0031 (0.055)	.0025 (0.05)	.004 (0.064)	.0026 (0.051)	-	.0033 (0.058)	-
2) Violent	.2198 (0.414)	.2482 (0.432)	.1734 (0.379)	.2448 (0.431)	.4074 (0.501)	.204 (0.403)	.4038 (0.496)
3) Drug	.1725 (0.378)	.1474 (0.355)	.2137 (0.411)	.1443 (0.352)	.1481 (0.362)	.1708 (0.377)	.1923 (0.398)
4) Other	.5634 (0.496)	.602 (0.490)	.5 (0.501)	.608 (0.489)	.4444 (0.506)	.5771 (0.494)	.4038 (0.496)
Convicted	.6061 (0.489)	.6413 (0.480)	.5484 (0.499)	.6546 (0.476)	.5185 (0.509)	.6153 (0.487)	.5 (0.505)
Sen. length	5.807 (10.92)	6.513 (12.76)	4.376 (5.303)	6.575 (12.99)	4.913 (6.588)	5.79 (11.1)	6.052 (8.27)
Appointed	.6611 (0.474)	.9509 (0.216)	.1855 (0.389)	.9871 (0.113)	.5556 (0.506)	.6517 (0.477)	.7692 (0.425)
R/U	.2321 (0.422)	.0393 (0.195)	.5484 (0.499)	.01 (0.101)	.4444 (0.506)	.2371 (0.426)	.1731 (0.382)
Hired	.0702 (0.256)	.0074 (0.086)	.1734 (0.379)	-	-	.073 (0.26)	.0385 (0.194)
Unemp.	.6657 (0.472)	.6657 (0.472)	-	.7003 (0.459)	.24 (0.436)	.7224 (0.449)	.3333 (0.476)
¹ Income	705.4 (948.5)	705.4 (948.5)	-	547.9 (679.7)	2822 (1446)	474.7 (613)	2280 (1287)
¹ Expenses	611.8 (746.0)	611.8 (746.0)	-	524.4 (621.6)	1567 (1048)	545.4 (672.7)	1066 (1024)
¹ Diff. I&E	93.53 (680.9)	93.53 (680.9)	-	23.53 (557.1)	1255 (1020)	-70.64 (456.3)	1214 (882)
Obs	655 ¹ 407	407 ¹ 407	248 -	388 ¹ 372	27 ¹ 26	355 ¹ 355	52 ¹ 52

Note: Numbers shown are means; numbers in parenthesis are standard deviations. Sentence length is shown in years and unemployment in months. Income and expenses are monthly.

Sentence length tended to be longer for indigents than non-indigents when looking at the court's decisions on indigency; however, when using the formula's standard, indigent defendants actually appeared to have shorter jail sentences. Court-appointed attorney rates under both the court and the formula's indigency decisions seemed strangely high for non-indigents. For example, 76.92% of those determined not-indigent according to the McLennan County indigency formula were appointed attorneys, and 55.56% of those determined not-indigent by the McLennan County court were given court-appointed counsel. This may reflect the court's tendency to give applicants the benefit of the doubt and grant them indigency status, even if the objective numbers say otherwise.

The average monthly income for defendants determined indigent by the McLennan County indigency formula was \$547.9, while the average monthly income for non-indigents was \$2,822, a gap of over \$2,000. Indigent defendants also tended on average to claim two dependents while non-indigents only had one dependent, lowering the 125% Federal Poverty income allowance for indigents by about \$335.

Some defendants received assistance from family members or friends in paying part or all of their bills, although the amount of support was not stated because McLennan County is not allowed to use that data point in determining indigency. Whether or not the defendant received assistance, however, can be tracked. Of the defendants who applied for court-appointed counsel and were determined indigent by the McLennan County formula, 33.8% received assistance from either their relatives or friends; only eight non-indigent applicants received financial assistance from their

support circles. A t-test shows that the differences between indigents and non-indigents who received financial assistance from friends/family for legal counsel are statistically very significant, with a p-value < 0.005.

Table 5: Financial Assist. Comparison & T-Test on FAFF Applicants Only.

Vars	Form. Not- Indigent	Form. Indigent	Total	T- Statistic (p-value)
No Family/Friend Assis.	84.62% 44	66.2% 235	68.55% 279	2.6886 (.0075***)
Family/Friend Assis.	15.38% 8	33.8% 120	31.45% 128	-2.6886 (.0075***)
Total	100% 52	100% 355	100% 407	

Note: Numbers shown are means; numbers in parenthesis are standard deviations. The far right column tests the difference between formula not-indigent and formula indigent, providing the test statistic and the p-value underneath in parenthesis.

Crimes committed by those determined formulaically indigent and not-indigent revealed that violent crimes were consistently more common for non-indigents than for indigents. Violent crimes such as rape, sexual assault, robbery, and child abuse comprised almost 50% of the non-indigent crimes, while non-violent, non-drug crimes described a majority of the indigent crimes, about 56.3%.

Analysis of Original Dataset

I constructed the following tables to analyze three different groups. Table 6 considers all defendants who applied for court-appointed counsel using a financial affidavit; Table 7 includes only defendants who did not apply for court-appointed counsel, and Table 8 analyses all criminal defendants. In Table 5, the defendants who applied for court-appointed counsel are further categorized by “Not Indigent” and “Indigent” columns; these columns indicate which defendants qualified as indigent according to the indigency formula used by McLennan County. The first row reveals the discrepancies between the court’s decisions on indigency versus the formula’s determinations on indigency.

Table 6: T-Tests on FAFF Applicants Only, Original Dataset.

Vars	Form. Not- Indigent	Form. Indigent	T-Stat. (p-value)
Court Indigent	.5769 (0.499)	.9662 (0.181)	-10.7058 (.0000***)
Avg. Mon. Gr. Income	1375.8 (1345)	270.61 (652)	9.6099 (.0000***)
Diff. Income & Expense	1214.3 (882)	-70.638 (456)	16.3562 (.0000***)
Guilty Pleas	.8077 (0.398)	.8732 (0.333)	-1.2907 (.1975)
Not-Guilty Pleas	.0192 (0.139)	.0338 (0.176)	-0.5569 (.5779)
Convicted	.5 (0.505)	.662 (0.474)	-2.2833 (.0229**)
Dismissed	.212 (0.412)	.087 (0.283)	2.769 (.0059***)
Deferred Adjudication	.2885 (0.457)	.2479 (0.432)	.6273 (.5308)
¹ Avg. Sentence Length	6.052 (8.27)	6.565 (13.18)	-0.2253 (.8219)
Murder	-	.0028 (0.053)	-0.3823 (.7024)
Violent	.4038 (0.495)	.2254 (0.418)	2.803 (.0053**)
Drug	.1923 (0.398)	.1408 (0.348)	0.9763 (.3295)
Non-violent non-drug	.4038 (0.495)	.631 (0.483)	-3.1555 (.0017***)
Obs	52 ¹ 35	355 ¹ 312	407 ¹ 347

Note: Numbers shown are means; numbers in parenthesis are standard deviations. The far right column tests the difference between formula not-indigent and formula indigent, providing the test statistic and the p-value underneath in parenthesis.

The sixth table reveals that in the months of February, March, and April 2013, the Court denied counsel to those truly indigent only 3.38% of the time. It also reveals that indigent defendants tended to have a conviction rate 16% higher than non-indigents, a difference that is statistically significant with a p-value of less than .05. This could be due to the nature of the crime or the quality of the defendants, the quality of the attorneys, or another factor; at this point, we cannot know for sure. Non-indigents also appeared to receive dismissals far more often than indigents by almost 3x, a difference that proved to be statistically significant with a p-value smaller than .01. Non-violent, non-drug crimes appear much higher proportionally in the indigent group than in the non-indigent group. This could be because indigent persons have a need for resources and basic living necessities, which make crimes like burglary or theft more appealing.

Table 7: T-Tests on Non-Applicants with Apptd or Hired Counsel & R/U Only, Original Dataset.

Vars	Hired	Apptd	T-Stat. (p-value)	Retained & Unknown
Guilty Pleas	.8372 (0.374)	.913 (0.285)	-1.0812 (.2826)	.8235 (0.383)
Not-Guilty Pleas	-	.0217 (0.147)	-0.9665 (.3365)	.0147 (0.121)
Convicted	.3488 (0.482)	.7391 (0.444)	-3.9754 (.0001***)	.6324 (0.484)
Dismissed	.2093 (0.412)	.0435 (0.206)	2.4266 (.0173**)	.0956 (0.295)
Deferred Adjudication	.4419 (0.502)	.2174 (0.417)	2.2991 (.0239**)	.1912 (0.395)
[‡] Avg. Sentence Length	4.691 (3.871)	4 (6.016)	.5074 (.6135)	4.502 (5.316)
Murder	-	-	-	-
Violent	.1395 (0.351)	.2609 (0.444)	-1.4243 (.1579)	.1838 (0.389)
Drug	.3488 (0.482)	.1522 (0.363)	2.1823 (.0318**)	.2206 (0.416)
Non-violent non-drug	.5116 (0.506)	.587 (0.498)	-0.7079 (.4809)	.5221 (0.501)
Obs	43 [‡] 24	46 [‡] 44	89 [‡] 68	136 [‡] 102

Note: Numbers shown are means; numbers in parenthesis are standard deviations. The third column tests the difference between hired and appointed, providing the test statistic and the p-value underneath in parenthesis.

The seventh table evaluates defendants who did not apply for a court-appointed attorney and either had appointed or hired counsel. Of the 89 defendants who met these criteria, 43 hired an attorney and 46 received court-appointed counsel. Conviction rates are significantly different between hired and appointed attorneys, with hired attorneys producing a conviction rate of 34.88% and appointed attorneys

maintaining a high 73.91% conviction rate. The difference between these two numbers is both literally and statistically different, with a very small p-value below .001. Hired attorneys appear to be producing significantly better outcomes, though we cannot know that to be true without controlling for other factors. Dismissal and deferred adjudication rates continue to demonstrate moderately statistically different between defendants with hired and appointed attorneys. Defendants who have committed drug crimes are more likely to have hired attorneys than appointed attorneys.

Table 8: T-Tests on All Defendants with Apptd or Hired Counsel & R/U Only, Original Dataset.

Vars	Hired	Apptd	T-Stat. (p-value)	Retained & Unknown
Guilty Pleas	.8478 (0.363)	.8661 (0.341)	-0.3425 (.7321)	.9375 (0.25)
Not-Guilty Pleas	-	.0323 (0.177)	-1.2372 (.2166)	-
Convicted	.3261 (0.474)	.6605 (0.474)	-4.5489 (.0000***)	.5 (0.5164)
Dismissed	.2174 (0.417)	.097 (0.296)	2.5068 (.0125**)	.0625 (0.25)
Deferred Adjudication	.4565 (0.504)	.2402 (0.428)	3.2039 (.0014***)	.4375 (0.512)
¹ Avg. Sentence Length	4.703 (3.79)	6.309 (12.4)	-0.6438 (.5201)	4.202 (2.946)
Murder	-	.0023 (0.048)	-0.3256 (.7448)	-
Violent	.1739 (0.383)	.2402 (0.428)	-1.0086 (.3137)	.375 (0.5)
Drug	.3478 (0.482)	.1478 (0.355)	3.4947 (.0005***)	.125 (0.342)
Non-violent non-drug	.4783 (0.505)	.61 (0.488)	-1.7298 (.0843*)	.5 (0.516)
Obs	46 ¹ 25	433 ¹ 377	479 ¹ 402	16 ¹ 12

Note: Numbers shown are means; numbers in parenthesis are standard deviations. The third column tests the difference between hired and appointed, providing the test statistic and the p-value underneath in parenthesis.

Table 8 is similar to the previous table, except that it includes all defendants rather than just those who did not apply for court-appointed counsel. Out of the 479 defendants who had either hired or appointed counsel, 9.6% hired their own attorneys, and 90.4% relied on court-appointed counsel. Several variables continue to demonstrate a statistical significance in this larger sample set. Conviction rates for

defendants with hired versus appointed attorneys still show staggeringly different rates, as do deferred adjudication rates. Case dismissal rates continue to be significant with a p-value just above .01. Criminals who committed drug crimes continue to appear to gravitate toward hired attorneys, and defendants accused of non-violent, non-drug crimes are more heavily represented by appointed attorneys. While nothing can be said yet about why these differences occur or what is causing the difference in outcomes between appointed and hired counsel, there do appear to be some differences that warrant future investigation into their causes.

Analysis of Controlled Group

In order to obtain a better understanding of the differences between hired and appointed attorneys, I constructed a controlled group which contains only attorneys who have worked as both hired and appointed attorneys within the 3-month window this data captures. A total of 14 lawyers worked as both appointed and hired counsel, and they represented 116 cases. Given that this is a much smaller sample set than the one above, observations are not likely to provide a good indicator of the behaviour exhibited by those accused of felony crimes. Future research with a larger dataset could provide more insight to the accuracy of these observations.

As an attempt to compare the results of this controlled group to those of the complete dataset, I calculated the same analysis as was provided above. Table 9 provides an overview of the behavior in this controlled group across all defendants, those who did or didn't apply for court-appointed counsel, those who were and were not determined

indigent by the court, and those who were and were not determined indigent according to the McLennan County indigency formula.

Table 9: Summary Statistics with Apptd & Hired Counsel Only, Control Group.

Vars	All felons	Didn't Apply	Applied	Ct. Indigent	Ct. Not Indigent	Form. Indigent	Form. Not Ind.
Guilty Plea	.8879 (0.317)	.8438 (0.369)	.9048 (0.295)	.8875 (0.318)	1 (0)	.8873 (0.318)	.8889 (0.318)
NG Plea	.0259 (0.159)	.0313 (0.177)	.0238 (0.153)	.0375 (0.191)	-	.0282 (0.167)	.0222 (0.149)
1) Murder	-	-	-	-	-	-	-
2) Violent	.2328 (0.424)	.1563 (0.369)	.2619 (0.422)	.225 (0.42)	.75 (0.5)	.2254 (0.421)	.2444 (0.435)
3) Drug	.1552 (0.364)	.2188 (0.42)	.131 (0.339)	.125 (0.333)	-	.1408 (0.35)	.1778 (0.387)
4) Other	.6121 (0.489)	.625 (0.492)	.6071 (0.491)	.65 (0.48)	.25 (0.5)	.6338 (0.485)	.5778 (0.499)
Convicted	.569 (0.497)	.4063 (0.499)	.631 (0.485)	.6625 (0.476)	.5 (0.577)	.6197 (0.489)	.4889 (0.506)
Sen. length	4.936 (8.083)	3.965 (4.16)	5.197 (8.85)	5.014 (9)	6 (1.826)	5.501 (9.54)	3.807 (3.643)
Appointed	.7759 (0.419)	.2813 (0.457)	.9643 (0.187)	1 (0)	1 (0)	.9859 (0.119)	.4444 (0.503)
Hired	.2241 (0.419)	.7188 (0.457)	.0357 (0.187)	-	-	.014 (0.119)	.5556 (0.503)
¹ Income	862.95 (1018)	-	863 (1018)	666.9 (771)	3115 (1498)	560.4 (671)	2516 (1020)
¹ Expenses	731.14 (838.6)	-	731.1 (839)	570.6 (604)	1816 (522.2)	578.2 (689)	1567 (1097)
¹ Diff. I&E	131.81 (632)	-	131.8 (632)	96.28 (495)	1299 (1016)	-17.8 (329)	948.9 (1130)
¹¹ Unemp.	.6026 (0.493)	-	.6026 (0.493)	.6286 (0.487)	.25 (0.5)	.6769 (0.471)	.2308 (0.439)
Obs	116 ¹ 84 ¹¹ 78	32	84 ¹ 84 ¹¹ 78	80 ¹ 76 ¹¹ 70	4 ¹ 4 ¹¹ 4	71 ¹ 71 ¹¹ 65	45 ¹ 13 ¹¹ 13

Note: Numbers shown are means; numbers in parenthesis are standard deviations. Sentence length is shown in years and unemployment in months. Income and expenses are monthly.

The sample of defendants in the controlled group does not include any murder cases. Violent crimes continue to appear more heavily committed by non-indigents than indigents, under the court's decisions on indigency. The length of jail sentences also appears to be slightly longer for formulaic indigents than non-indigents, though the same phenomenon from the original dataset appears to be present here also – defendants determined indigent by the court appear to have slightly shorter sentences than those determined not-indigent by the court. Unemployment rates for indigents are almost triple that of non-indigents, under both the court and the formula's determinations of indigency. Curiously, defendants determined not-indigent by the court appear to have a 100% appointment rate. Table 10 below reveals the discrepancies between court indigency determinations and the formula's indigency decisions.

Table 10: Indigency Comparisons on FAFF Applicants Only, Control Group.

Vars	Form. Not- Indigent	Form. Indigent	Total
Court Not-Indigent	38.46% 5	4.23% 3	9.52% 8
Court Indigent	61.54% 8	95.77% 68	90.48% 76
Total	100% 13	100% 71	100% 84

In table 10, the court appears to have denied appointed counsel to 4.23% of those formulaically indigent, while it appointed counsel to 61.54% of defendants determined

formulaically not-indigent. The court seems to have agreed with the formula's decision 95.77% of the time when affirming indigency, and 38.46% of the time when rejecting false indigency claims.

Table 11: Indigency Unemployment T-test on FAFF Applicants Only, Control Group.

Vars	Form. Not- Indigent	Form. Indigent	T-Stat. (p-value)
Unemployed	.2308 (.439)	.6769 (.471)	-3.1494 (.0023***)
¹ Unemp. Length	140.1 (151)	32.63 (71.5)	2.3337 (.0244*)
Obs	13 ¹ 3	65 ¹ 42	78 ¹ 45

Note: Numbers shown are means; numbers in parenthesis are standard deviations. The far right column tests the difference between formula not-indigent and formula indigent, providing the test statistic and the p-value underneath in parenthesis.

Unemployment rates in the controlled group are almost triple for indigent defendants compared to not-indigent defendants, assuming the formula's definition of indigency. The difference in unemployment rates is highly statistically significant with a p-value below .005. Unemployment length also varies by 108 months between indigents versus non-indigents.

Below, table 12 reveals that the differences in monthly gross income and income after expenses still is significantly different when comparing indigents and non-indigents. The differences between conviction rates, dismissals, and deferred adjudication rates have waned, however. Because the sample size of 84 is fairly small, it is difficult to tell whether these observations are truly reflective of the performance of an attorney who

represents both as hired and appointed counsel, or whether these observations are simply skewed. There still are differences in representation for defendants who commit violent crimes as well as non-violent, non-drug crimes.

Table 12: T-Tests on FAFB Applicants Only, Control Group.

Vars	Form. Not- Indigent	Form. Indigen t	T-Stat. (p- value)
Court Indigent	.6154 (0.506)	.9577 (0.203)	-4.213 (.0001***)
Avg. Mon. Gr. Income	1819 (1146)	259.2 (591)	7.3848 (.0000***)
Diff. Income & Expense	948.9 (1130)	-17.8 (329)	6.0661 (.0000***)
Guilty Pleas	1 (0)	.8873 (0.318)	1.2694 (.2079)
Not-Guilty Pleas	-	.0282 (0.167)	-0.6065 (.5459)
Convicted	.6923 (0.48)	.6197 (0.058)	0.4934 (.0623)
Dismissed	.0769 (0.277)	.0845 (0.28)	-0.0899 (.9286)
Deferred Adjudication	.2308 (0.439)	.2958 (0.46)	-0.4719 (.6382)
¹ Avg. Sentence Length	3.534 (2.67)	5.501 (9.54)	-0.6754 (.5017)
Murder	-	-	-
Violent	.4615 (0.519)	.2254 (0.421)	1.7935 (.0766*)
Drug	.0769 (0.277)	.1408 (0.35)	-0.622 (.5356)
Non-violent non-drug	.4615 (0.519)	.6338 (0.485)	-1.1647 (.2475)
Obs	13 ¹ 11	71 ¹ 60	84 ¹ 71

Note: Numbers shown are means; numbers in parenthesis are standard deviations. The far right column tests the difference between formula not-indigent and formula indigent, providing the test statistic and the p-value underneath in parenthesis.

The sample size of 32 in table 13 is much smaller even than that of Table 12 above, making it difficult to find statistically significant inferences. A larger sample set will reveal whether there are more significant differences to be gleaned from the non-applicant pool which was represented by only appointed or hired counsel.

Table 13: T-Tests on Non-Applicants with Apptd or Hired Counsel & R/U Only, Control Group.

Vars	Hired	Apptd	T-Stat. (p-value)	Retained & Unknown
Guilty Pleas	.8696 (0.344)	.7778 (0.441)	0.6266 (.5357)	.8095 (0.397)
Not-Guilty Pleas	-	.1111 (0.333)	-1.6417 (.1111)	-
Convicted	.3478 (0.487)	.5556 (0.527)	-1.0609 (.2972)	.6429 (0.485)
Dismissed	.2174 (0.422)	.1111 (0.333)	0.6756 (.5044)	.0952 (0.297)
Deferred Adjudication	.4348 (0.507)	.3333 (0.5)	0.5109 (.6132)	.1905 (0.397)
¹ Avg. Sentence Length	4.28 (4.87)	3.53 (3.22)	0.3776 (.7104)	4.909 (6.258)
Murder	-	-	-	-
Violent	.1304 (0.344)	.2222 (0.441)	-0.6266 (.5357)	.1905 (0.397)
Drug	.304 (0.47)	-	1.9213 (.0642)	.2619 (0.445)
Non-violent non-drug	.5652 (0.507)	.7778 (0.441)	-1.1029 (.2788)	.4762 (0.505)
Obs	23 ¹ 11	9 ¹ 8	32 ¹ 19	42 ¹ 32

Note: Numbers shown are means; numbers in parenthesis are standard deviations. The third column tests the difference between hired and appointed, providing the test statistic and the p-value underneath in parenthesis.

In order to gain perspective on all defendants in the control group, Table 14 evaluates each variable without preference to whether or not the defendant applied and instead compares outcomes under hired attorneys versus appointed attorneys. Conviction rates once again are statistically significant with a p-value below .005; dismissal and deferred adjudication rates also have moderately significant differences when comparing hired and appointed attorneys. Strangely, violent crimes and non-violent, non-drug crimes do not appear to have significant differences in distribution across the entire control group. However, defendants who commit drug crimes have significantly more representation from hired attorneys rather than appointed attorneys.

Table 14: T-Tests on All Defendants with Apptd or Hired Counsel & R/U Only, Control Group.

Vars	Hired	Apptd	T-Stat. (p-value)	Retained & Unknown
Guilty Pleas	.8846 (0.326)	.8889 (0.316)	-0.0603 (.952)	.8182 (0.39)
Not-Guilty Pleas	-	.0333 (0.181)	-0.9387 (.3499)	-
Convicted	.3077 (0.471)	.6444 (0.481)	-3.1573 (.0020***)	.6364 (0.487)
Dismissed	.2308 (0.43)	.0778 (0.269)	2.205 (.0295**)	.0909 (0.044)
Deferred Adjudication	.4615 (0.508)	.2778 (0.45)	1.7797 (.0788*)	.2045 (0.408)
¹ Avg. Sentence Length	4.34 (4.65)	5.03 (8.51)	-0.2732 (.7854)	4.768 (6.213)
Murder	-	-	-	-
Violent	.1923 (0.402)	.2444 (0.432)	-0.5501 (.5834)	.2045 (0.408)
Drug	.3077 (0.471)	.1111 (0.16)	2.4819 (.0145**)	.2727 (0.451)
Non-violent non-drug	.5 (0.51)	.6444 (0.481)	-1.3301 (.1862)	.4545 (0.504)
Obs	26 ¹ 12	90 ¹ 78	116 ¹ 90	44 ¹ 33

Note: Numbers shown are means; numbers in parenthesis are standard deviations. The third column tests the difference between hired and appointed, providing the test statistic and the p-value underneath in parenthesis.

In the control group, formulaically indigent applicants for court-appointed attorneys appeared to have a moderately significant amount of financial assistance compared to formulaically not-indigent applicants. While financial assistance from family and friends is not standard for indigent defendants, it does appear more heavily weighted toward defendants determined indigent by the formula.

Table 15: Financial Assist. Comparison & T-Test on FAFF Applicants Only, Control Group.

Vars	Form. Not- Indigent	Form. Indigent	Total	T-Stat. (p-value)
No Family/Friend Assis.	92.31% 12	63.38% 45	67.86% 57	2.0815 (.0405)
Family/Friend Assis.	7.69% 1	36.62% 26	32.14% 27	-2.0815 (.0405**)
Total	100% 13	100% 71	100% 84	

Note: Numbers shown are means; numbers in parenthesis are standard errors. The far right column tests the difference between formula not-indigent and formula indigent, providing the test statistic and the p-value underneath in parenthesis.

Lastly, evaluating the financial affidavits of indigents and non-indigents in the control group reveals that the three defendants identified earlier in the Supplemental Security Income group, who were incorrectly denied court-appointed counsel even though they were formulaically indigent, indeed lie in this control group. The court does not appear to be consistently applying the TIDC rule which defines indigency as participating in one of these government assistance programs.

Table 16: Indigency Comparison on FAFF Applicants Only, Control Group.

Vars	Ct. Not- Indigent	Ct. Indigent	Total
Food Stamps	- 7	91.57% 76	100% 83
Medicaid	- 7	91.57% 76	100% 83
Supp. Sec. Income	3.61% 3	96.39% 80	100% 83
Public Housing	-	-	-

CONCLUSION

In this research, I studied the impact that the definition of indigency has on the right to counsel in felony criminal cases, and the effectiveness of appointed counsel in those cases. Due to the time constraints of this research, I was unable to gather more than three months of data from which to make observations. While I gathered data on all financial affidavits submitted by applicants, I only included an applicant's initial financial affidavit in this analysis. I also did not include data from pre-file records which include information about the defendant's date of birth, race, and sex.

On the entire dataset, I found conviction rates to be significantly higher for defendants represented by appointed attorneys than those represented by hired attorneys. I also found that dismissal and deferred adjudication rates for defendants with appointed counsel tended to be significantly lower. Persons accused of drug crimes had a significant tendency to hire their own attorneys, whereas those accused of non-violent, non-drug crimes tended to be indigent and had a significant likelihood of receiving court-appointed counsel. I then created a controlled dataset which included only lawyers who had been employed to represent defendants of felony crimes as both hired and appointed counsel. Analysis on this controlled group revealed that conviction rates for those with appointed counsel was still significantly higher than for those with hired counsel, even though the attorneys in this set had experience with employment both as hired and appointed counsel. The presence of higher conviction rates under the appointed lawyers could be due to the fact that appointed counsel are compensated less for government-employed work than if they were hired privately. Differences between

conviction rates for appointed and hired counsel could also be due to differences in the type and quality of crimes being represented by hired versus appointed attorneys.

Data also showed that defendants accused of drug crimes seemed significantly more likely to hire their own attorneys rather than receive court-appointed attorneys. One possible explanation is that those who commit drug crimes are in a lucrative business which brings financial resources with which one could hire an attorney. Another is that many people who commit drug crimes do so for recreational or entertainment purposes, and perhaps have tend to have more money than those who tend to commit non-violent, non-drug crimes such as burglary or theft. Though many potential explanations exist, we cannot yet tell with this dataset what motivates these statistically significant differences. A larger dataset and additional analysis may be able to control for differences in cases, and reveal where the true causes lie.

This study's findings contribute to existing research because they consider not only the effectiveness of different types of counsel, but also the economic variables of accused felony defendants, along with different standards of indigency. With future research and analysis, this sample size can be expanded to include thousands of observations. That would allow for more informed inferences along with the opportunity to analyze Pro-Se representation and conduct a regression discontinuity analysis on defendants who are marginally indigent. Future studies can investigate possible causes for differences in conviction rates, dismissal rates, deferred adjudication rates, unemployment rates, violent crime rates, drug crime rates, non-violent and non-drug crime rates, and indigency determinations.

BIBLIOGRAPHY

- Allen, Francis A., Et Al. U.S. The Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice. Rept. 1963. 48-49.
- Anderson, James M., and Paul Heaton. "How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes." *Yale Law Journal*, 2012-2013, 122, no. 1 (October 2012): 122.
- Benner, Laurence A. *The Other Face of Justice: A Report of the National Defender Survey*. Chicago: National Legal Aid and Defender Association, 1973.
- Blume, John H., and Johnson, Sheri Lynn. "Gideon Exceptionalism?" *Yale Law Journal*, 2012-2013, 122, no. 8 (June 2013): 2126-148.
- Bright, Stephen B., and Sia M. Sanneh. "Fifty Years of Defiance and Resistance after *Gideon v. Wainwright*." *Yale Law Journal* 122 (June 2013): 2150-153.
- Cohen, Thomas H. "Who's Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes." *Criminal Justice Policy Review* 25, no. 1 (January 1, 2014): 29-58.
- Cornwell, Erin York. "The Trials of Indigent Defense: Type of Counsel and Case Outcomes in Felony Jury Trials." *Review of Albany Law Review*. 2015, 1249-250.
- DeNavas-Walt, Carmen, Bernadette D. Proctor, and Jessica C. Smith. *Income, Poverty, and Health Insurance Coverage in the United States: 2012*. Washington, D.C.: United States Census Bureau, 2013. 45.
- Deoras, Shubhangi, and Norman Lefstein. *Gideons Broken Promise: Americas Continuing Quest for Equal Justice: A Report on the American Bar Associations Hearings on the Right to Counsel in Criminal Proceedings*. Chicago, IL: American Bar Association, 2004. 24.
- "Determination of Indigence for Adults - Primary Net Income Assets Test." *Model Forms and Procedures*. <http://www.tidc.texas.gov/policies-standards/model-forms-procedures/>.
- Edelman, Gilad. "In Waco, Checking on Criminal Defendants' Claims of Poverty." *The Texas Tribune*. July 22, 2014. <https://www.texastribune.org/2014/07/22/strains-show-county-based-public-defense-system/>.

- "Effective Indigence Screening." September 2015.
<http://www.tidc.texas.gov/media/40461/effective-indigence-screening-final.pdf>.
2, note 9.
- Ehlers, Scott. "Overview of Texas Indigent Defense." Texas Indigent Defense Commission, April 27, 2017, 5-9.
- "Evaluation of Trial-Level Indigent Defense Systems in Michigan." *A Race to the Bottom: Speed and Savings Over Due Process - A Constitutional Crisis*. June 2008. 2-3.
- Exum, James G. *ABA Standards for Criminal Justice Providing Defense Services, Standard 5-7.1: Eligibility For Assistance*. Washington, D.C.: American Bar Association, Criminal Justice Standards Committee, Criminal Justice Section, 1992. 88.
- Feeney, F., Jackson, P. "Public defenders, assigned counsel, retained counsel: Does type of criminal defense counsel matter?" *Rutgers Law Journal*, 1990-1991. 22, 361-456.
- "Felony Defendants." Bureau of Justice Statistics (BJS). March 25, 2013.
<http://bjs.gov/index.cfm?ty=tp&tid=231>.
- "Financial Eligibility Policies, 45 C.F.R. § 1611.3(b)." *Federal Register*, 1977.
- Fischer, Gordon M. "The Development and History of the Poverty Thresholds." *Social Security Bulletin* 55, no. 4 (December 1992): 43.
- Fredrique, Nadine, Patricia Joseph, and Christopher C.R. Hild. "What Is the State of Empirical Research on Indigent. Defense Nationwide? A Brief Overview and Suggestions for Future Research." *Albany Law Review* 78, no. 3 (June 16, 2015): 1317-340.
- Gershowitz, Adam M. "The Invisible Pillar of Gideon." *Indiana Law Journal* 80 (2005): 571, 578, 581-84, 586.
- Gross, John P. "Too Poor to Hire a Lawyer but Not Indigent: How States Use the Federal Poverty Guidelines to Deprive Defendants of Their Sixth Amendment Right to Counsel." *Washington and Lee Law Review*, 11th art., 70, no. 2 (March 1, 2013): 1173, 1218.

- Gross, John P. Gideon at 50: A Three-Part Examination of Public Defense in America. Part II - Redefining Indigence: Financial Eligibility Guidelines for Assigned Counsel. Report. National Association of Criminal Defense Lawyers. 2014. 10-11, 14, 16.
- "Indigence Form - McLennan District and County Court Affidavit of Indigence." Joint Indigent Defense Plan. <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=618>.
- "Indigent Defense Research." National Institute of Justice. 2015. <https://www.nij.gov/topics/courts/indigent-defense/Pages/research.aspx>.
- Lefstein, Norman, and Robert L. Spangenberg. Justice Denied: Americas Continuing Neglect of Our Constitutional Right to Counsel: Report. Washington, DC: Constitution Project, 2009. 50.
- Lefstein, Norman. Securing Reasonable Caseloads: Ethics and Law in Public Defense. Chicago, IL: American Bar Association, 2011.
- McGough, Maureen. "Indigent Defense: International Perspectives and Research Needs." National Institute of Justice 268 (October 2011): 32.
- "McLennan County Dashboard." Indigent Defense Data for Texas. 2018. <http://tidc.tamu.edu/public.net/Reports/DataSheet.aspx?cid=155>.
- "McLennan County Data Sheet." Indigent Defense Data for Texas. 2018. <http://tidc.tamu.edu/public.net/Reports/DataSheet.aspx?cid=155>.
- "Measuring Access to Justice: Self-Representation Access Findings." The Justice Index. 2016. http://justiceindex.org/wp-content/uploads/2016/05/Self-Representation_Highlights.pdf.
- NYSBA. Task Force on Family Court, Final Report. Report. NY, 2013. 106.
- NYSBA. The Task Force on Family Court Hearing, Third Dep't., 44:19 - 45:19 (December 1, 2012) (testimony of Paul Lupia). New York State Bar Association, December 2012.
- Phillips, Carrie Savage. "Oklahoma's Indigency Determination Scheme: A Call for Uniformity." Oklahoma Law Review 66, no. 3 (2014): 655, 662-64.
- Schaefer, Gerald F., Laurence A. Benner, and John Darrah. Cost of Providing Defense Services for Indigent Accused in Ohio. Washington, D.C.: National Legal Aid and Defender Association, 1974.

- Spangenberg, Robert L. Containing The Costs of Indigent Defense Programs : Eligibility Screening and Cost Recovery Procedures. Washington, D.C. :U.S. Dept. of Justice, National Institute of Justice, Office of Development, Testing, and Dissemination, 1987. 1, 9.
- “State-Administered Indigent Defense Systems." Bureau of Justice Statistics (BJS). 2013. https://www.bjs.gov/content/pub/pdf/saids13_sum.pdf.
- Taylor, Jean G., Et. Al. "An Analysis of Defense Counsel in the Processing of Felony Defendants in San Diego, California." *Denver Law Journal* 49 (1973): 233-75.
- Texas Criminal Procedure Article 1.051(b), vol. 2. 317 (January 1, 1966).
- Texas Criminal Procedure Article 26.05(g), vol. 2. 317 (January 1, 1966).
- Texas Criminal Procedure Article 26.05(m), vol. 2. 317 (January 1, 1966).
- “The Costs and Benefits of an Indigent Defendant Verification Study." Texas Task Force on Indigent Defense 3 (November 2007).
- “TIDC Annual Expenditure Report Fiscal Year 2017." Indigent Defense Data for Texas. 2018. <http://www.tidc.texas.gov/media/57930/fy17-expenditure-report.pdf>.
- Wallace, Scott, and David Carroll. "The Implementation and Impact of Indigent Defense Standards." *Southern University Law Review* 31, no. 2 (April 2004): 245-327.
- Wynne, Susan L., and Michael S. Vaughn. "Eligibility for Court-Appointed Counsel in Federal Cases: A Review of Legislation and Case Law." *Albany Law Review* 80, no. 3 (2016/2017): 899-946.

CASES CITED

- Betts v. Brady*, 316 U.S. 455 (1942)
- Brewer v. Williams*, 430 U.S. 387 (1977)
- Coleman v. Alabama*, 399 U.S. 1 (1970)
- Cuyler v. Sullivan*, 446 US 335 (1980)
- Evitts v. Lucey*, 469 US 821 (1985)
- Faretta v. California*, 422 US 806 (1975)
- Gideon v. Wainwright*, 372 U.S. 335, 344 (1963)
- Hamilton v. Alabama*, 368 U.S. 52 (1961)
- Hardy v. United States*, 375 U.S. 289 n.7 (1964)
- Johnson v. Zerbst*, 304 U.S. 458 (1938)
- Miranda v. Arizona*, 384 U.S. 436 (1966)
- Powell v. Alabama*, 287 U.S. 45 (1932)
- Smith v. Bennett*, 365 US 708 (1961)
- Strickland v. Washington*, 466 U.S. 669-670 (1984)
- U.S. Const. Amend. VI
- United States v. Ash*, 413 U.S. 300, 310-11, 338 (1973)
- United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006)
- United States v. Wade*, 388 U.S. 218 (1967)
- Williams v. Illinois*, 399 US 295 (1970)