THE EVOLVING CHARACTER OF PUBLIC DEFENSE: COMPARING CRIMINAL CASE PROCESSING EFFECTIVENESS AND OUTCOMES ACROSS HOLISTIC PUBLIC DEFENSE, TRADITIONAL PUBLIC DEFENSE, AND PRIVATELY RETAINED COUNSEL

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ABSTRACT

The emergence and growth of professional criminal defense attorneys for indigent defendants are among the most important contemporary developments in the American legal system. As public defense systems mature, questions persist over how public defenders should best use their limited resources to enhance performance of their duties. In addressing the continuing debate over the quality of legal assistance to indigent clients, the public defense community has not been idle in advancing what it means to provide effective assistance of counsel. Under the emerging model of holistic defense, the defense attorney is one member of an interdisciplinary team of social workers, investigators, paralegals, and other support staff that provides a comprehensive strategy for addressing a defendant's legal needs, as well as any underlying social needs that may have contributed to a defendant's criminal justice system involvement. Holistic defense, also known as community-oriented defense, is currently the fullest articulation of what constitutes effective criminal defense. Although in the last decade a growing number of indigent defense providers have adopted the holistic defense model, there is a lack of empirical evidence as to what effect holistic defense has on case outcomes.

The Hennepin County Public Defender's Office ("HCPD") in Minneapolis, Minnesota meaningfully engages in all aspects of the holistic defense model and is particularly notable for its team-based approach to representation as well as its use of dispositional advisors as sentencing advocates. Our primary analysis examines felony cases handled by holistic

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public defenders in the Hennepin County District Court and compares results with those obtained by privately retained attorneys in Hennepin County, as well as public defenders who practice a more traditional form of defense in the adjacent counties of Ramsey and Anoka.

Drawing on a comprehensive data set from these three large Minnesota counties, this Article examines ten performance measures focused on two key areas of defense practice: (1) the effectiveness of defense attorney system performance and (2) the quality of client outcomes. This dual perspective allows us to address the empirical question of whether gains in efficiency affect client outcomes.

The evidence gained from an examination of felony case resolutions in Minnesota shows that holistic and traditional public defenders are more successful than privately retained counsel in terms of the effectiveness of case processing practices. This is an important new finding as only minimal attention has been paid in the literature as to how cost-effectiveness and efficiency of case processing practices vary by type of attorney. Both holistic and traditional public defenders resolve their cases more quickly than privately retained counsel, scheduling cases more effectively by reducing the number of continuances and requiring about 1.5 fewer hearings per disposition. The enhanced efficiency of holistic and traditional public defenders does not come at the expense of the clients. Public defenders, both holistic and traditional, are as successful as privately retained attorneys in achieving favorable outcomes for their clients, including by way of acquittals, dismissals, and charge reductions. For individuals convicted of a felony offense, this analysis uses a novel approach in examining sentencing outcomes by controlling for the type of defense counsel together with the employment of a state sentencing guideline system. The analysis of sentencing outcomes shows that clients represented by holistic defenders in Hennepin County receive an expected sentence that is approximately four months shorter than do clients represented by private counsel, taking into account offense seriousness, criminal history, other sentencing factors, and demographics.

The results suggest a positive value to defenders of regularly collecting and analyzing data related to core organizational goals and objectives. Objective information about case activities and outcomes supports public defense efforts to evaluate performance and improve client representation. The current research identifies many strengths of public defense in the sites examined, but indicates a need for continued attention to enhancing data and information to more fully assess the role of holistic defense in improving the delivery of indigent defense services.

I. INTRODUCTION

Since *Gideon v. Wainwright,* the provision of an attorney to a criminal defendant is an accepted constitutional right.[1] The past fifty years have witnessed the ongoing development by defense practitioners of what it means to provide the "effective assistance of counsel"[2] through strong legal

[1] *See* Gideon v. Wainwright, 372 U.S. 335 (1963).

[2] Strickland v. Washington, 466 U.S. 668, 686 (1984).

advocacy. More recently, many practitioners contend that in addition to the defense attorney, professional support services, such as social workers, paralegals, and criminal investigators, are critical to effective assistance of counsel in indigent defense cases. Investment by defender offices in resources and skills beyond traditional legal expertise promises to bring positive returns not just for clients, but for the criminal justice system and taxpayers as well. The umbrella of what we will call the holistic defense model covers the most developed concepts and practices of an integrated defense team. Proponents of holistic defense claim a wide range of enhanced client outcomes, including more favorable court dispositions and successful treatment of recurring problems (e.g., addiction, joblessness, mental illness), as well as associated public benefits such as reduced recidivism and less reliance on costly incarceration. As promising as these claims may be, the current dearth of rigorous evaluative research means they remain unverified.

Holistic defense is an alternative organizational strategy for optimal resource allocation within a system of public defense.[3] Public defender offices, featuring a salaried staff of full or part-time government-funded attorneys, have emerged as the dominant method of providing legal assistance to indigents. The number of public defender offices has grown dramatically since the 1960s, and these government-funded attorneys handle over of 80% of indigent defense cases nationally.[4] Public defender systems differ in administration and finance, and public defender offices vary in the types of professionals they employ. Given the perennial issues of funding and workload, different schools of thought have emerged over the utility of increasing the complement of specialized staff, such as social workers, investigators, and other experts, to help defenders provide more complete and professional services to their clients.

The emerging model of holistic defense is a strong force in defining what it means to provide effective representation to indigent clients.[5] Holistic defense extends beyond traditional criminal defense in several ways, such as

[3] Consistent with the expansion of the right to counsel, state and local governments have established a variety of systems for representing indigent criminal defendants. Three types of organizational structures account for how the appointment of legal counsel generally works. The assigned counsel method involves the appointment of a private attorney to represent indigent defendants on a case-by-case basis. A second type of appointment scheme concerns a contractual arrangement where an attorney who otherwise represents clients on privatively retained basis bids on a competitive basis for a portion of a court's caseload. The third type are government-funded public defenders. Because of the variation in local circumstances, one, or a combination, of these appointment methods are in use in every U.S. community. Roger A. Hanson & Brian J. Ostrom, *Indigent Defenders Get the Job Done and Done Well*, *in* CRIMINAL JUSTICE SYSTEM: POLITICS AND POLICIES 264 (George F. Cole & Marc G. Gertz eds., 1998).

[4] OFF. JUST. PROGRAMS, U.S. DEP'T OF JUST., FACT SHEET: INDIGENT DEFENSE (2011), https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/factsheets/ojpfs_indigentdefense.html [https://perma.cc/7WEB-UCXB].

[5] There is no official count for the number of holistic defense programs that currently exist in the United States. However, many holistic defense programs are members of the Community Oriented Defender Network ("COD Network"), which was created in 2003. The COD Network serves as a resource to participating members and offers training to help them expand services and engage with legislators and policy-makers in order to pursue defense policy reform. In 2010, there were fifty-three members of the COD Network. *See* MELANCA CLARK & EMILY SAVNER, COMMUNITY ORIENTED DEFENSE: STRONGER PUBLIC DEFENDERS 60–61(2010), https://www.brennancenter.org/sites/default/files/legacy/Justice/COD%20Network/Community%20Oriented%20Defense-%20Stronger%20Public%20Defenders.pdf. This has more than doubled to include over one hundred public defender offices in 2014, showing the fast expansion of interest in the holistic defense model. *Community-Oriented Defender Network*, BRENNAN CTR. FOR JUST. (Jan. 6, 2014), https://www.brennancenter.org/analysis/community-oriented-defender-network.

an increased focus on meeting clients' social service needs, addressing collateral consequences, and advocating for systemic change. By calling attention to the need for manageable caseloads, sufficient funding, and access to appropriate resources, holistic defense seeks to address persistent concerns about the quality of indigent defense services. In the decades since *Gideon*, critics have argued that indigent defense systems are overworked and underfunded.[6] Social scientists have offered a complementary battery of criticisms, arguing that indigent defenders receive inadequate compensation, handle too many cases, appear in court unprepared, spend only a minimal amount of time researching the law and investigating the facts of their cases, dedicate insufficient attention to individual cases, and lack political and leadership influence in the justice system.[7] Simply stated, the charge is that conventional public defense leaves *Gideon*'s promise unfulfilled.

This Article focuses on outcomes and processing characteristics of felony cases handled by the Hennepin County Public Defender's Office ("HCPD"), a large public defense provider in Minneapolis that practices holistic defense. The primary analysis examines felony cases handled by holistic public defenders in the Hennepin County District Court and compares results with those obtained by (1) privately retained attorneys in Hennepin County and (2) public defenders who practice a more traditional form of defense in the adjacent counties of Ramsey (the second most populous county and location of the capital, St. Paul) and Anoka (the fourth most populous county).

Proponents of holistic defense see it not only as an advance over traditional public defense, but also comparable in quality to the services provided by privately retained counsel. However, an absence of strong evidence plagues the claims for each type of defense counsels' outcomes, whether positive or negative. Public defense has been slow to embrace program evaluation and performance measurement to assess quality of services and efficiency of resource use. Central to the discussion is the provision of information-capturing key aspects of what defense counsel can be expected to deliver on behalf of their clients that are measurable, connect to related areas of research, and are available in public defense or court-automated systems to permit regular review and comparison. Past literature and recent developments by public defense organizations on quality standards and measurement strategies highlight a range of tangible goals related to case processing effectiveness and quality outcomes that can usefully frame examination of defense attorney performance.[8] Drawing on a

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[6] *See* A.B.A. STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, GIDEON'S BROKEN PROMISE: AMERICA'S CONTINUING QUEST FOR EQUAL JUSTICE (2004); Lauren Sudeall Lucas, Note, *Effectively Ineffective: The Failure of Courts to Address Underfunded Indigent Defense Systems*, 118 HARV. L. REV. 1731, 1733–35 (2005); PRESIDENT'S COMM'N ON L. ENF'T & ADMIN. JUST., THE CHALLENGE OF CRIME IN A FREE SOCIETY (1967); *see also*, GIDEON UNDONE: THE CRISIS IN INDIGENT DEFENSE SPENDING (John Thomas Moran ed., 1982).

[7] *See generally* ISAAC BALBUS, DIALECTICS OF LEGAL REPRESSION: BLACK REBELS BEFORE THE AMERICAN CRIMINAL COURTS (1973); Abraham S. Blumberg, *The Practice of Law as a Confidence Game: Organizational Cooptation of a Profession*, 1 L. SOC. REV. 15 (1967); James P. Levine, *The Impact of "Gideon": The Performance of Public and Private Criminal Defense Lawyers*, 8 POLITY 215 (1975); Suzanne E. Mounts & Richard Wilson, *Systems for Providing Indigent Defense: An Introduction*, 14 N.Y.U. REV. L. & SOC. CHANGE 193 (1986); David Sudnow, *Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office*, 12 SOC. PROBLEMS 255 (1965).

[8] NAT'L CTR. FOR ST. CTS., TRIAL COURT PERFORMANCE STANDARDS WITH COMMENTARY (1997); MARGARET A. GRESSENS & DARYL V. ATKINSON, THE CHALLENGE: EVALUATING INDIGENT DEFENSE 1

comprehensive data set from three large Minnesota counties, this Article examines numerous measures related to the effectiveness of defense attorney system performance and quality of client outcomes. Moreover, examining multiple measures allows assessment of the empirical question of whether gains in efficiency come at the expense of client outcomes.

Efficiency within the context of case processing means using scarce resources in their most productive fashion to further the interests of clients as well as align with public defense organizational imperatives. For public defenders, using resources wisely applies both to meeting the needs of each individual client and, simultaneously, to managing their entire caseload effectively. Acknowledging the importance of managing resources emphasizes assessing whether clients have timely access to defense services, determining the number of hearings essential to effective case resolution, and ensuring cases are resolved in the timeframe least harmful to the client. Specifically, the focus is on the overall time to resolution, the number of days to appointment of counsel and initial appearance before a judge, and the number of hearings and continuances per case.[9] The analysis presented in this Article of felony case resolutions shows that holistic and traditional public defenders are more successful than private counsel in terms of the effectiveness of case processing practices. When compared to private counsel, public defenders, on average, resolve cases about fifty days faster, require about 1.5 fewer hearings per disposition, and have about one fewer continuance per disposition. Not only are public defender caseloads resolved in a timeframe that is less harmful to clients, their practices also benefit the criminal justice system more generally in its efforts to provide fair, timely, predictable, and cost-effective use of taxpayer money.

Many within the public defense community argue that the most important indicators of attorney performance relate to the quality of case outcomes.[10] The results of this study show that the enhanced efficiency of holistic and traditional public defenders does not harm clients. Public defenders, both holistic and traditional, are as successful as privately retained counsel in obtaining favorable outcomes for their clients, including acquittals, dismissals, and charge reductions. The current analysis requires explicitly taking into account the mechanics of the sentencing process for individuals convicted of a felony offense to determine the effect of type of defense attorney in the decisions of whether or not to incarcerate and, if so,

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(2012), http://ncids.org/systems%20evaluation%20project/performancemeasures/PM_guide.pdf; MARIA BEEMAN, BASIC DATA EVERY DEFENDER PROGRAM NEEDS TO TRACK 7–8 (2014); McGregor Smyth, *"Collateral" No More: The Practical Imperative for Holistic Defense in a Post-Padilla World . . . Or, How to Achieve Consistently Better Results for Clients*, 31 ST. LOUIS U. PUB. L. REV. 139, 150–151, 162–164 (2011); Robin Steinberg, *Heeding Gideon's Call in the Twenty-First Century: Holistic Defense and the New Public Defense Paradigm*, 70 WASH. & LEE L. REV. 961, 1003–1004, 1007–1009 (2013); BRIAN J. OSTROM & ROGER A. HANSON, EFFICIENCY, TIMELINESS, AND QUALITY: A NEW PERSPECTIVE FROM THE VIEW OF NINE CRIMINAL TRIAL COURTS 4–6 (1999).

[9] The occurrence of fewer hearings could be viewed as a negative phenomenon if, for example, fewer hearings resulted from public defenders failing to zealously file and argue meritorious motions. However, when viewed in conjunction with data demonstrating that there is little difference in case outcomes between public defenders and private counsel, the occurrence of fewer hearings indicates that public defenders are more efficient without detriment to zealous representation.

[10] *See, e.g.*, Ronald F. Wright & Ralph A. Peeples, *Criminal Defense Lawyer Moneyball: A Demonstration Project*, 70 WASH. & LEE L. REV. 1221 (2013), https://scholarlycommons.law.wlu.edu/wlulr/vol70/iss2/12.

for how long. In the current study, new ground is broken by looking at sentencing outcomes controlling for type of defense counsel in tandem with the employment of a state sentencing guideline system. The Minnesota sentencing guidelines use a structured method to score the conviction offense and offender prior record to place each convicted person on the sentencing grid to determine the recommended sentence type and length. The analysis of sentencing outcomes shows that clients represented by holistic defenders in Hennepin County receive an expected sentence approximately four months shorter than clients represented by private counsel, taking into account offense severity, criminal history, other sentencing factors, and demographics. This analytic strategy also allows investigation of equality of treatment; results show no evidence of racial disparity, although some models show minimal differences associated with age and gender.

Section I draws on the literature to clarify the conceptual differences between holistic defense and traditional public defense, and reviews previous studies that analyze whether different types of attorneys achieve different results for clients. Section II describes the three Minnesota jurisdictions under examination and summarizes the caseload size and mix handled by public and private attorneys in each site. Section III lays out the study methodology and identifies ten performance measures used to evaluate public defenders versus privately retained counsel in terms of effectiveness of case processing practices and quality of client outcomes. Section IV presents findings related to the effectiveness of case processing practices for holistic public defenders, traditional public defenders, and privately-retained counsel, including overall timeliness, time to appointment of counsel and to initial appearance, and number of hearings and continuances per disposition. Section V explores variation in the quality of client outcomes, such as acquittals, dismissals, charge reductions, and favorable sentencing outcomes, related to different types of attorney representation. Section VI extends the analysis of the sentencing decision using a quasi-experimental design that includes matched comparison groups and multivariate statistical models to examine the relative impact of attorney type on sentencing outcomes within the Minnesota sentencing guideline system, controlling for case and defendant characteristics. The final Section provides summary and conclusions.

II. LITERATURE REVIEW

A. HOLISTIC DEFENSE V. TRADITIONAL DEFENSE

1. Distinguishing Holistic Defense From Traditional Defense

Traditional defense tends to be case-centered, with the focus of representation driven largely by type and severity of the criminal charges. In contrast, the holistic model is client-centered, with a focus on the "whole client," including the client's social needs, physical health, and mental health.[11] This is not to say that the holistic model ignores legal needs; "The

[11] *See* Robin Steinberg & David Feige, *Cultural Revolution: Transforming the Public Defender's Office*, HARV. U. JOHN F. KENNEDY SCH. GOV'T BULL., Aug. 2002, at 1; ELAINE WOLF & ALAN ROSENTHAL, AN ADVOCACY ORGANIZATION'S VIEW OF ISSUES SURROUNDING REENTRY: SETTING AN

goal is not to diminish zealous legal practice, but to augment it."[12] The holistic defense model arose partly in response to widespread criticism of existing systems for delivering defense services to indigent clients and partly as a component of the larger problem-solving movement taking hold in the criminal justice system over the past two decades.

Advocates for holistic defense argue that the criminal justice system can have "draconian" effects on criminal defendants and that a holistic approach is needed to protect defendants from consequences that are often hidden.[13] Collateral consequences,[14] also referred to as collateral sanctions, have been defined as "the indirect, rather than direct, consequences that flow from a criminal conviction."[15] These collateral consequences may be better described as "invisible punishment," often consisting of penalties that are civil or social in nature and thus separated from the traditional sentencing framework.[16]

For those defendants who are ultimately incarcerated, a holistic approach is also needed to help them reenter their communities and overcome social and legal disabilities.[17] Steinberg and Feige (2002) note that many public defenders are dissatisfied by the limitations of a traditional representation model, which they say seeks only to satisfy minimal constitutional requirements.[18] Public Defenders, frustrated with the traditional representation model, believe that a holistic defense model can help them do more for their clients and communities.[19] Advocates for holistic defense argue that because it is client-centered, holistic defense humanizes clients and affords them more dignity and respect than a traditional model of criminal defense.[20]

AGENDA FOR RESEARCH AND POLICY 12-13 (2004); Erik Luna, *The Practice of Restorative Justice: Punishment Theory, Holism, and the Procedural Conception of Restorative Justice*, 2003 UTAH L. REV. 205 (2003).

[12] *See* Steinberg & Feige, *supra* note 11, at 2.

[13] McGregor Smyth, *Holistic is Not a Bad Word: A Criminal Defense Attorney's Guide to Using Invisible Punishments as an Advocacy Strategy*, 36 TOLEDO L. REV. 479, 479-80 (2005).

[14] In *Padilla v. Kentucky*, 599 U.S. 356 (2010), the Court held that the Sixth Amendment right to effective assistance of counsel requires a defense attorney to inform their client whether a plea bargain carries with it a risk of deportation. In doing so, the Court departed from a longstanding body of law that drew a bright line between direct and collateral consequences and holding that defense counsel did not have a constitutional duty to offer advice on collateral consequences. Although the Court limited this holding to advice regarding deportation, some argue that the logic behind Padilla is far-reaching and can support a constitutional right to effective assistance of counsel on a range of collateral issues. *See, e.g.*, Robin Steinberg, *Heeding Gideon's Call in the Twenty-First Century: Holistic Defense and the New Public Defense Paradigm*, 70 WASH & LEE UNIV. L. REV. 961 (2013). Scholars such as McGregor Smyth and Robin Steinberg have argued that the Court's analysis in Padilla comports with theories of holistic defense because it is "client-driven and context-dependent, and . . . not amenable to bright-line rules such as the purported 'collateral/direct' distinction." McGregor Smyth, *From "Collateral" to "Integral": The Seismic Evolution of* Padilla v. Kentucky *and its Impact on Penalties Beyond Deportation*, 54 HOW. L.J. 795, 805 (2011).

[15] Michael Pinard, *Broadening the Holistic Mindset: Incorporating Collateral Consequences and Reentry into Criminal Defense Lawyering*, 31 FORDHAM URB. L.J. 1067, 1069 (2004).

[16] Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, *in* INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 15, 15-17 (Marc Mauer & Meda Chesney-Lind eds, 2002).

[17] Smyth, *supra* note 13, at 480–83.

[18] Steinberg & Feige, *supra* note 11, at 2.

[19] *Id.*

[20] Douglas Ammar & Tosha Downey, *Transformative Criminal Defense Practice: Truth, Love, and Individual Rights–The Innovative Approach of the Georgia Justice Project*, 31 FORDHAM URB. L.J. 49, 62 (2003).

Central to most versions of the holistic defense model is the formation of an interdisciplinary team of lawyers, social workers, investigators, and professional support staff to address the criminal case as well as other legal (e.g., immigration issues, child custody, child support) and non-legal (e.g., mental health, drug and alcohol abuse, housing, education, employment) challenges confronting the defendant that might have initiated or contributed to the client's contact with the judicial system.[21] This team tends to rely heavily on community contacts and partnerships to address defendants' non-criminal needs. The claim is that with enhanced information about the client and the facts of the case, the defense team can help the attorney advocate more effectively for pretrial release, alternatives to incarceration, and shorter jail or prison sentences.[22]

Other supporters view the holistic defense model as conducive to addressing structural inefficiencies in traditional models of defense through early intervention in cases. The rapid assembling of enhanced information about the case and potential options for disposition contributes to defense goals of early pretrial release, well-informed plea bargains, and timely disposition of cases.[23] Such outcomes benefit the criminal justice system, as increasing the timeliness of pretrial release and reducing the time to disposition are important goals of state courts.[24] The Early Representation by Defense Counsel ("ERDC") Field Test, a project conducted in three sites employing an experimental design, also had a key finding of improved timeliness associated with enhanced client outcomes. Their design showed how early and intensive representation can promote both system efficiency and quality of service. The ERDC field test concluded that early investigation, early plea negotiation, and increased public defender involvement beginning at case initiation reduced time to disposition, hastened pretrial release, reduced number of appearances, had no impact on trial rates, and improved attorney-client relations relative to clients in the control groups.[25] There is a growing demand for criminal case processing practices that reduce delay while preserving fair and effective outcomes. The solution includes programs encouraging the early assignment of counsel, the prompt exchange of discovery, and the early involvement of social workers and investigators to focus and inform attorney efforts early in the process. All of these are intrinsic parts of the holistic defense model. In fact, the issue of delay was addressed in the evaluation of the Neighborhood Defender Service of Harlem ("NDS"), the first public defender office to practice holistic defense:

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[21] *See* Cait Clarke & James Neuhard, "*From Day One": Who's in Control as Problem Solving and Client-Centered Sentencing Take Center Stage?*, 29 N.Y.U. REV. L. & SOC. CHANGE 11 (2004).

[22] Robin G. Steinberg, *Beyond Lawyering: How Holistic Representation Makes for Good Policy, Better Lawyers, and More Satisfied Clients*, 30 N.Y.U. REV. L. & SOC. CHANGE 625, 630 (2006).

[23] SUSAN SADD & RANDOLPH GRINC, THE NEIGHBORHOOD DEFENDER SERVICE OF HARLEM: RESEARCH RESULTS FROM THE FIRST TWO YEARS 1 (1993).

[24] *See, e.g.*, DAVID C. STEELMAN ET AL., CASELOAD MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM (2000).

[25] *See* ERNEST J. FAZIO ET AL. EARLY REPRESENTATION BY DEFENSE COUNSEL FIELD TEST: A SUCCESSFUL DEMONSTRATION (1985), https://www.ojp.gov/pdffiles1/Digitization/97595NCJRS.pdf.

> It is commonly thought that defense practices are a major cause of delay in the adjudication of criminal cases; but this does not mean that public defenders are necessarily hostile to efforts to reduce delay. Indeed, defense providers are increasingly willing to accept delay reduction as a legitimate measure of their performance.[26]

Performance measures related to timeliness are incorporated as key outcomes in the emerging field of assessing the quality and cost-effectiveness of public defense.[27]

Views on the holistic defense model are not uniformly positive, however, as it has been criticized on ethical and professional grounds. Mark Moore (2004) notes ethical concerns with the holistic defense model when a defender substitutes a "client['s] liberty interests" with their own "professional judgments about what is really in the best interest of the client."[28] This concern is rooted in the possibility that some treatment programs such as drug court, which may align with the client's best health and social interests, can be accompanied by severe penalties for noncompliance or dismissal from that program. Moreover, some argue that holistic defense may directly conflict with the attorney's obligation of "zealous advocacy," with a detrimental effect on a defender's ability to obtain the best legal outcomes for their clients. As lawyers increasingly ask prosecutors and courts to address the whole client, "lawyers may hamper their ability to take independent stands whenever a client's legal interests conflict with the whole client's best interests."[29]

While critics seldom dispute the value of an interdisciplinary team, they typically highlight practical concerns grounded in resource limitations. High caseloads are the norm for many public defenders. Because the organizational capacity of public defender offices is driven by attorneys, one common concern is that the holistic defense model will reallocate already scarce resources away from securing an adequate number of defense attorneys. If funds are shifted to add social workers and investigators, it may mean fewer attorneys and a corresponding rise in average attorney caseloads. As a result, defense counsel will have less time to prepare and investigate cases, potentially reducing the adversarial character of defense and lowering the chance of trial: "the holistic advocacy model may cause lawyers to have even less time for each client's case, increasing the already high pressure to dispose of many cases quickly."[30]

Brooks Holland (2006) has also argued that a similar outcome may emerge because the holistic defense model has not sufficiently prioritized the reality that the "criminal justice system is structured entirely around the premise that every case will have, as its potential endgame, a trial on the merits, even if few cases actually result in a trial."[31] If a holistic defender too

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[26] SADD & GRINC, *supra* note 23, at 6–7.

[27] GRESSENS & ATKINSON, *supra* note 8, at 8, 33.

[28] Mark H. Moore*, Alternative Strategies for Public Defenders and Assigned Counsel*, 29 N.Y.U. REV. L & SOC. CHANGE 83, 105 (2004).

[29] Brooks Holland, *Holistic Advocacy: An Important but Limited Institutional Role*, 30 N.Y.U. REV. L. & SOC. CHANGE 637, 643 (2006).

[30] *Id.*

[31] *Id.* at 642.

often seeks negotiated settlement in line with rehabilitative, client-focused goals, judges and prosecutors may think that that an office dodges trials and "shrink[s] from the tough task of trying cases."[32] As such, pressing holistic advocacy in too many cases can hurt the interests of not only those clients who would be well-served by holistic advocacy, but also those clients with whom the attorney takes a less holistic approach. That is, the critics' concerns raise the question of whether efforts to institutionalize holistic defense come at a loss in adversarial relations. An unintended consequence of greater reliance by defense counsel on requesting pleas based on holistic motives may be to actually reduce their effectiveness in negotiation and their ability to obtain favorable outcomes for their clients.

2. Assessing the Difference

To date, there have been few empirical studies regarding the effectiveness of the holistic defense model in improving the quality of outcomes relative to traditional public defense. In 1991, the first evaluation of a holistic defense program was conducted by the NDS.[33] The NDS study compared NDS clients with the larger population of arrestees in Manhattan and found that NDS clients were slightly more likely (47%) to receive a sentence of imprisonment than other indigent defendants in Manhattan (43%), although the study was limited by small sample sizes. In 1993, a follow-up to the NDS study used match pairing between NDS clients and non-NDS clients in Manhattan to further evaluate the effectiveness of the NDS program. Although there were no statistically significant differences between NDS and non-NDS clients on measures of pretrial release, manner of disposition, and number of court appearances, the study did find that NDS clients received sentences of an average of one hundred days fewer than non-NDS clients.[34]

The most recent evaluation of the effectiveness of holistic defense services focused on another holistic defense provider in New York City (the Bronx Defenders), comparing holistic practices and outcomes to those of a traditional legal defense provider (the Legal Aid Society) within the same court system.[35] This methodologically strong effort focused on a unique, high-profile early adopter of the holistic model. Using a quasi-experimental research design, researchers measured a range of client outcomes, including case processing time, pretrial release, charge reduction, manner of disposition, sentencing, and future criminal justice involvement. Holistic defense was associated with a 9% increase in case processing time,[36] a reduced likelihood of 8.6% in overall pretrial detention,[37] and a slight increase of 2.7% in the rate of charge reductions.[38] Although no difference in conviction rates was found, clients receiving holistic defense services were less likely to receive custodial sentences and, on average, received

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[32] *Id.* at 645.

[33] *See* MICHELE SVIRIDOFF ET AL., DEVELOPING AND IMPLEMENTING A COMMUNITY-BASED DEFENSE SERVICE: PILOT OPERATIONS OF THE NEIGHBORHOOD DEFENDER SERVICE OF HARLEM (1991).

[34] SADD & GRINC, *supra* note 23, at 18.

[35] *See* James M. Anderson et al., *The Effects of Holistic Defense on Criminal Justice Outcomes*, 132 HARV. L. REV. 819 (2019).

[36] *Id.* at 864.

[37] *Id.*

[38] *Id.* at 865.

sentences that were about 24% shorter than clients served by a traditional defense model.[39] The authors also found that holistic defense had no significant effect on recidivism.[40]

While minimal social science research related to the performance of holistic defense has been conducted, proponents continue to develop principles, standards, and largely qualitative "best practice" strategies for what constitutes effective representation.[41] This approach is useful for identifying practices appropriate for providing meaningful legal assistance to indigent clients, yet this method is silent on what an attorney accomplishes. It is possible for an attorney to work as part of an interdisciplinary team, meet with clients, interview witnesses, and evaluate civil legal and nonlegal problems, but do none of these activities effectively. Addressing the larger issues of attorney and system performance, the public defense community has begun augmenting principles with associated and measurable indicators of performance. A major push in this area has come from the Justice Standards, Evaluation and Research Initiative ("JSERI") to identify and develop measures related to evaluating the quality and cost-effectiveness of public defense services.[42] JSERI has identified a comprehensive set of indigent defense metrics covering many aspects of indigent defense practice. While the authors note that the full set of measures is beyond the capacity of most offices to implement, they specify certain core indicators—such as case outcomes, including determination of guilt, sentence, and sentence type—for immediate enactment. Thus, while the complete performance framework remains largely untested, the embracing of empirically based performance assessment supports evaluation efforts of indigent defense services. The application of social science methods is needed to establish valid conclusions and implications for legal policy.

B. PUBLIC DEFENSE V. PRIVATELY RETAINED COUNSEL

1. Debate Over the Quality of Public Defense

While the specific impact of holistic defense practice on system and client outcomes remains largely unexplored, there has been considerable scholarly attention on whether clients represented by public defenders generally receive the same level of representation as clients with privately retained attorneys. One striking feature of public defense is the continuing debate over the quality of legal assistance provided as compared with the quality of private counsel. Put bluntly, from the time of *Gideon*, scholars

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[39] *Id.* at 865.

[40] *Id.* at 868.

[41] A.B.A., TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM (2002); A.B.A., CRIMINAL JUSTICE STANDARDS FOR THE DEFENSE FUNCTION (2017), https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/; Robin Steinberg, *Heeding Gideon's Call in the Twenty-First Century: Holistic Defense and the New Public Defense Paradigm*, 70 WASH. & LEE U. L. REV. 961 (2013); CLARK & SAVNER, *supra* note 5. For a comprehensive overview of the competing definitions of holistic defense and development of a unified framework to evaluate holistic defense, *see* Cynthia G. Lee et al., *The Measure of Good Lawyering: Evaluating Holistic Defense in Practice*, 78 ALB. L. REV. 1215 (2015).

[42] JSERI is a joint effort by the National Legal Aid & Defender Association ("NLADA") and the North Carolina Office of Indigent Defense Services ("NCIDS"). *See* BEEMAN, *supra* note 8, at 4, 7; GRESSENS & ATKINSON, *supra* note 8, at 2–3.

have asserted that public defenders are undercompensated, overworked, and unprepared and, consequently, fail to be vigorous advocates for their clients. Lack of training and experience, especially in more serious cases, makes them amenable to the swift and "mass disposition of . . . criminal cases [through] guilty pleas."[43] Moreover, inadequate compensation reportedly makes it difficult to attract and keep talented attorneys.

Public defenders are also said to ineffectively represent the rights of the accused because they are coopted by the rest of the courthouse community. Judges and prosecutors, it is argued, have certain expectations about how criminal cases should be processed, and public defenders are coerced into making their practices conform to the court's objectives. Typically, that involves accepting an assembly line process that treats cases routinely and moves them quickly through the legal process.[44] Private counsel are said to be able to avoid this cooptation because they have less regular contact with the court. Some commentators propose that the criminal legal process functions to resolve cases by guilty pleas and that the lack of political power among public defenders makes them weak links in the chain of the courtroom workgroup participants.[45] In sum, critics assert that the institutional constraints and personal limitations of public defenders ensure that their performance is substandard relative to that of their privately retained counterparts.

In sharp contrast, Ostrom and Hanson (1999) demonstrated that the nature of the courtroom workgroup is not monochromatic and that high-quality criminal case processing is achieved under particular cultural environments.[46] Moreover, the quality of case outcomes is linked directly to courtwide case management practices that support the timely resolution of cases. In more expeditious courts, defense counsel and prosecutors remain adversarial but share viewpoints with respect to resources, management, and competency of their opponents that are unlike those of their counterparts in less expeditious courts. In faster courts, defense attorneys and prosecutors are more likely to see each other as well prepared, well trained, and trial tested. Additionally, they are less likely to see resource shortages, even though their caseloads are no less burdensome than those of their counterparts in slower courts. A key finding is that critical aspects of due process are enhanced in faster courts and less so in slower courts, countering the frequent assertion that faster case processing is not in the best interest of defendants.

2. Case Outcomes

A major theme is that excessive public defender caseloads and limited resources inhibit their ability to provide the same quality of representation as do their private counterparts, with quality typically measured by various case

[43] Michael McConville & Chester L. Mirsky, *Criminal Defense of the Poor in New York City: An Evaluation*, 15 N.Y.U. REV. L. & SOC. CHANGE 581, 881 (1986–87).

[44] David Sudnow, *Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office*, 12 SOC. PROBS. 255 (1965); Blumberg, *supra* note 7, at 39.

[45] JAMES EISENSTEIN & HERBERT JACOB, FELONY JUSTICE: AN ORGANIZATIONAL ANALYSIS OF CRIMINAL COURTS (1977); PETER NARDULLI ET AL., THE TENOR OF JUSTICE: CRIMINAL COURTS AND THE GUILTY PLEA PROCESS (1988).

[46] OSTROM & HANSON, *supra* note 8.

outcomes. These outcomes have included the likelihood of acquittal or dismissal of charges, whether there was a reduction in the seriousness of charge, whether conviction resulted from plea or trial, and whether conviction resulted in incarceration. The results of these comparative analyses have been mixed. Earlier studies conducted in the wake of the *Gideon* decision tended to find privately retained counsel outperforming public defenders in such terms as charge reductions and sentence severity.[47] These early studies faced analytic limitations, however, as outcomes were based solely on type of attorney without controlling for differences in clients represented.

Later, more sophisticated studies largely challenged these initial claims, demonstrating that public defenders perform as well as retained counsel in achieving favorable legal outcomes for their clients. For example, Hanson, Ostrom, Hewitt, and Lomvardias (1992) found that public defenders resolve cases more quickly and are no less successful in gaining acquittals and dismissals for their clients than are privately retained counsel.[48] Other studies found that attorney type did not influence the prevalence of plea bargains, conviction rates, or the likelihood of incarceration.[49] In contrast, some later studies found evidence that privately retained counsel secured more favorable outcomes for their clients, including the likelihood of dismissal and willingness to take cases to trial.[50]

Research in this area has slowed considerably over the past twenty years. The few empirical studies conducted tend to offer improvements over earlier studies in terms of statistical modeling techniques and controls. However, the findings remain decidedly mixed. In an econometric analysis of sentencing outcomes in eleven jurisdictions, Hanson and Ostrom (2002) found the type of criminal defense attorney had no independent effect on the likelihood of incarceration.[51] Relatedly, Hartley et al. (2010) found that attorney type does not affect the likelihood of charge reduction and is not a significant predicter of the likelihood of incarceration or sentence length.[52] In contrast, Hoffman et al. (2005) reported that private defense lawyers obtain lower sentences for their clients than public defenders, and Marian

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[47] LEE SILVERSTEIN, DEFENSE OF THE POOR IN CRIMINAL CASES IN AMERICA STATE COURTS: A FIELD STUDY AND REPORT (1965); Jonathan D. Casper, *Did You Have a Lawyer When You Went to Court? No, I Had a Public Defender*, 1 YALE REV. L. & SOC. ACTION 4, 7–8 (1971); Stuart S. Nagel, *Effects of Alternate Types of Counsel on Criminal Procedure Treatment*, 48 IND. L. J. 404, 415–16, 419 (1973).

[48] Hanson & Ostrom, *supra* note 3, at 277.

[49] Peter F. Nardulli, *"Insider" Justice: Defense Attorneys and the Handling of Felony Cases*, 77 J. L. CRIM. L. & CRIMINOLOGY 379, 413–15 (1986); ROBERT HERMANN ET AL., COUNSEL FOR THE POOR: CRIMINAL DEFENSE IN URBAN AMERICA (1977); Gerald R. Wheeler & Carol L. Wheeler, *Reflections on Legal Representation of the Economically Disadvantaged: Beyond Assembly Line Justice*, 26 CRIM. & DELINQ. 319 (1980); David Willison, *The Effects of Counsel on the Severity of Criminal Sentences: A Statistical Assessment*, 9 JUST. SYS. J. 87 (1984); David Holleran & Cassia Spohn, *The Imprisonment Penalty Paid by Young, Unemployed, Black, and Hispanic Male Offenders*, 38 CRIMINOLOGY 281 (2000); NARDULLI ET AL., *supra* note 45.

[50] Dean J. Champion, *Private Counsels and Public Defenders: A Look at Weak Cases, Prior Records, and Leniency in Plea Bargaining*, 17 J. CRIM. JUST. 253, 258 (1989).

[51] *See* ROGER A. HANSON, BRIAN J. OSTROM & ANN M. JONES, *Effective Adversaries for the Poor*, *in* THE JAPANESE ADVERSARY SYSTEM IN CONTEXT: CONTROVERSIES AND COMPARISONS 89 (Malcolm M. Feely & Setsuo Miyazawa ed., 2002).

[52] *See* Richard D. Hartley et al., *Do You Get What You Pay For? Type of Counsel and its Effect on Court Outcomes*, 38 J. CRIM. JUST. 1063, 1068 (2010).

Williams (2013) found that clients with public defenders are more likely to be convicted and less likely to have their cases dismissed.[53]

3. Client Perspective

Another way to assess the work of public defenders is to ask clients about their experience. While empirical analyses show little difference in outcomes between attorney types, the few studies conducted on client attitudes show a strong preference for the representation of private counsel. The argument often goes that overworked public defenders have insufficient time to meet with clients, are unable or unwilling to make strong legal defenses, and are held in sway to the criminal justice assembly line. The result: public defenders have little incentive to fight hard for their clients. Negative opinions on public defense typically entail some version of "you get what you pay for," or the now classic line that, when asked "Did you have a lawyer when you went to court?" the client responds "No, I had a public defender."[54]

The research on client perceptions conducted by Jonathan Casper (1971) is the most widely cited, drawing on seventy-two defendant interviews involving both prison inmates and probationers, about two-thirds of whom were represented by public defenders.[55] When asked whether they thought their defense attorneys were on their side, 100% of defendants who had privately retained counsel said yes, while only 20% with public defenders responded affirmatively. Casper's interpretation of why criminal defendants believe public defenders are not on their side is the perception that they meet only briefly with clients, are deferential to prosecutors, and want to please the judge with quick dispositions. Clients may have this impression because public defenders are employed and paid by the state and therefore seem to represent the interests of the state, becoming, in essence, "a kind of middle-man or, more often, an agent of the prosecution."[56]

Holistic defense seeks to correct the negative perception of public defense through a greater commitment to client-centered representation and the suitable involvement of a more diverse, interdisciplinary team of professional practitioners. This "team" is not in lieu of legal expertise. Rather, it is designed to help the client present a fuller picture of their circumstances and determine the most appropriate resolution of the case. In addition, the concept of procedural fairness emphasizes the importance to litigants and criminal defendants that criminal justice system processes are fair, or at least perceived as fair.[57] A critical role of public defense is to create a level playing field through the presence of counsel, and to assist clients in having a voice during the case, thus improving clients' perceptions of

[53] Morris B. Hoffman et al., *An Empirical Study of Public Defender Effectiveness: Self-Selection by the "Marginally Indigent"*, 3 OHIO ST. J. CRIM. L. 223, 242 (2005); Marian R.Williams, *The Effectiveness of Public Defenders in Four Florida Counties*, 41 J. CRIM. JUST. 205, 210–211 (2013).

[54] *See* Casper, *supra* note 47, at 3.

[55] *Id.*

[56] Casper, *supra* note 47, at 6.

[57] *See, e.g.*, Tom R. Tyler, *Procedural Justice and the Courts*, 44 CT. REV. 26, 27–28 (2007) (providing a concise overview of the relevance of procedural fairness in the court context, and the component principles of voice, neutrality, respect, and trust). *See also* Kevin Burke & Steve Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction*, 44 CT. REV. 4, 5 (2007) ("Most people care more about procedural fairness—the kind of treatment they receive in court—than they do about 'distributive justice,' i.e., winning or losing the particular case.").

fairness within the court system.[58] Enhanced procedural fairness—improving how a client perceives their court experiences—has been shown to increase client satisfaction and trust in the legal system, as well as their willingness to accept and adhere to court rulings and orders regardless of how the case outcome.[59]

III. JURISDICTIONS AND CASE TYPE AND ATTORNEY PROPORTIONS

This analysis primarily focuses on criminal case processing in Hennepin County in comparison to case processing in Ramsey County and Anoka County.[60] Minnesota state courts operate as a single tier, with cases of all types being heard and resolved in the district court. The analysis is based on case-level data received from the Minnesota State Court Administrator's Office and the Minnesota Sentencing Commission, comprising all criminal cases disposed during the 2016 calendar year. Although the initial focus was on the state's five largest counties, data constraints related to consistency of reporting attorney type information limited the analysis to three counties: Hennepin, Ramsey, and Anoka.[61]

The HCPD is a large office employing about 120 attorneys and is centrally located in downtown Minneapolis, serving a population of over one million people. It uses the model of holistic defense and is organized around a defense team, for which HCPD has invested in the services of 11.5 dispositional advisors and 14 investigators. The dispositional advisors play a key role in identifying clients' social service needs and connecting clients with service providers. The investigators are typically used to collect information about the case in the pretrial phase, such as interviewing witnesses, examining the crime scene, and gathering other case-related evidence. Other features of holistic defense at HCPD include early involvement by a dispositional advisor or social worker at arraignment; the presentation of evidence to the court by dispositional advisors advocating for reduced or alternative sentencing; a focus on reduction of collateral consequences by having an in-house attorney with immigration expertise; and active engagement with other criminal justice system stakeholders on initiatives to address criminogenic issues such as mental health.[62]

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[58] *See* Nourit Zimerman & Tom R. Tyler, *Between Access to Counsel and Access to Justice: A Psychological Perspective*, 37 FORDHAM URBAN L.J. 473, 478–492, 502 (2010) (discussing the importance of the quality of representation for procedural justice in civil and criminal cases).

[59] *Id.* at 487. *See also* Tyler, *supra* note 57, at 28 ("[P]rocedural justice is a very good way to build trust and encourage compliance irrespective of who is using the courts.").

[60] Hennepin County comprises the 4th judicial district, Ramsey comprises the 2nd judicial district, and Anoka is the largest of eight counties in the 10th judicial district. Minnesota Judicial Districts align completely with Minnesota Public Defender Districts.

[61] Data on case processing and sentencing were obtained for the five largest counites in Minnesota in terms of population: Hennepin, Ramsey, Washington, Dakota, and Anoka. A key variable necessary for inclusion in this analysis was reliable information on type of attorney (e.g., public defender, privately retained). Case-level data is assembled locally in each court and entered into the state case management system ("CMS"). In two jurisdictions (i.e., Washington and Dakota), minimal data was recorded in the CMS field related to attorney type and, as a consequence, those jurisdictions are excluded from this analysis.

[62] In 2019, HCPD has transitioned to contracting with an attorney who serves as a resource for immigration-related collateral consequences.

Public defenders in Ramsey and Anoka employ a more traditional model of public defense and serve as a useful comparison to HCPD's holistic approach. These offices employ about forty-five and fifty full- and part-time attorneys, respectively.

HCPD attorneys are primarily full-time and are organized into units handling all types of felony and misdemeanor crimes in the downtown office, with separate offices for suburban courts and for conflict cases. Although most attorneys are in-house, some are contract employees, particularly those attorneys in the conflicts unit. Public defender offices for Ramsey and Anoka Counties use an almost equal split of full-time and part-time attorneys and make use of part-time public defenders as a cost-effective and flexible way to assign defense counsel when another attorney has a conflict of interest in a case.

Table A shows the number of 2016 felony dispositions handled by each jurisdiction, along with proportions of attorneys handling those cases. The total caseload disposed by each court is presented, along with a breakdown by case type. Public defenders handled the greatest portion of felony cases in these courts, with privately retained counsel representing less than one-third (30.4%) of felonies. Proportions of cases handled by public defenders were significantly different between jurisdictions, with the largest proportion in Ramsey County and the smallest in Hennepin County.

Table A. Case Types and Overall Attorney Proportions

							Percent	
Site	**Homicide**	**Person**	**Property**	**Drugs**	**Other Felony**	**Total**	**Private Attorney**	**Public Defender[1]**
Hennepin	74	1,952	1,255	1,644	556	**5,481**	33	67
Anoka	7	464	357	616	92	**1,536**	28	72
Ramsey	22	603	425	366	175	**1,591**	24	76
Total	**103**	**3,019**	**2,037**	**2,626**	**823**	**8,608**	**30**	**70**

[1]The difference in attorney proportions is statistically significant across all jurisdictions (difference of means, $p<.05$).

Case type composition by representation type for each court is shown in Table B. Public defenders handled a greater share of person and property crimes, and private attorneys represented a higher portion of drug cases. While there are significant differences within the specific composition of the cases handled by public defenders and privately retained counsel, roughly 90% of the felony cases handled by both attorney types are comprised of person, property, and drug-related offenses.

Table B. Caseloads by Attorney Type

	Homicide		Person		Property		Drugs		Other Felony	
Site	Public Defender	Private Attorney	Public Defender	Private Attorney	Public Defender	Private Attorney	Public Defender	Private Attorney	Public Defender	Private Attorney
Hennepin	1%	2%	**39%**	29%	23%	23%	27%	**36%**	10%	10%
Anoka	1	1	29	33	**25**	18	41	39	4	10
Ramsey	1	**3**	**40**	32	**29**	19	21	**29**	9	16
Percent of Total Caseload	1%		35%		24%		31%		10%	

Bold indicates statistically significant difference between attorney types.

IV. METHODOLOGY AND PERFORMANCE MEASURES

The analytic strategy of this Section is to identify measurable outcomes that allow the performance of attorneys to be evaluated in light of the goals of the office of public defense, the extent to which it is meeting its goals, and the parties for whom the benefits accrue. While quality representation for individual clients is at the forefront, public defense offices also have a duty to demonstrate effective stewardship of taxpayer-funded resources. One belief is that the practice of holistic defense provides a deeper understanding of the client's background, their current situation, and their desired direction in which the case should be taken. If so, this enhanced awareness may translate into more effective use of scarce defender resources and more favorable outcomes for the client. In assessing performance in the quality and cost-effectiveness of public defense services, we draw on ten performance indicators promulgated through JSERI,[63] in combination with measures identified in earlier empirical evaluations of public defense and data available for the offices under study.

A. SELECTION OF OUTCOME INVESTIGATED

Previous research has identified at least three aspects of defense attorney work conditions that potentially impact performance and differentiate public defenders from privately retained counsel. To be successful, defense counsel must balance the imperatives of working within the larger criminal justice system, managing their workload efficiently to reduce prolonged litigation and repeated events, and seeking to resolve cases to the greatest benefit of individual clients. Effectively navigating this complex work environment requires recognizing and attending to both broader criminal justice system goals and narrower client interests. Consequently, ten performance indicators are used to evaluate defense attorney performance in providing the best outcomes for clients: five performance indicators examine whether case resolution is marked by timely and meaningful case processing, and five performance indicators assess the quality of client outcomes. Examining both case management practices and quality of client outcomes also allows assessing any linkage between the two areas of attorney performance; for example, are more efficient case management practices associated with high quality client outcomes?

[63] *See supra* note 42 and accompanying text.

B. TIMELY AND MEANINGFUL CASE-PROCESSING MEASURES

Only minimal attention has been paid in the literature as to how case processing practices vary by type of attorney. Addressing this issue requires a focus on the purpose and practice of caseflow management, defined as the blend of processes, techniques, and resources necessary to move a case efficiently and effectively to resolution.[64] Public defenders, prosecutors, and judges all face high caseloads, and using scarce resources wisely is enhanced by a system wide commitment to manage and control the flow of cases through the court. The design and operation of a criminal caseflow management system should be tempered by regular consultation with attorneys and others as to the best means for improvement. However, judges and court administration must lead the effort for it to succeed.[65] As noted in the earlier research, multiple authors from multiple perspectives have speculated on how clients, public defenders, and the criminal justice system may benefit from practices such as timely case processing, early intervention in the case, and realistic schedules and meaningful pretrial court events. Yet, few of these practices have actually been measured. Because this is largely a new area of research, we develop the concepts and identify related performance measures.

1. Overall Time to Disposition

The methods and practices used by defense counsel in moving cases from filing to resolution affects the time to disposition for criminal cases. The timely resolution of criminal cases is both a right guaranteed under the U.S. Constitution and a standard to which courts are held accountable.[66] Consequently, public defenders have a fiduciary obligation to avoid unnecessary delays.

At the case level, processing time falls most heavily on the defendant, who may be in pretrial detention or foregoing the use of bail money and is almost certainly under psychological duress. On the other hand, some contend that a longer case processing time benefits the defendant as evidence decays and witnesses forget, lose interest, or move away, reducing the probability of conviction. Clearly, cutting case processing time too short may sacrifice the quality of justice, but beyond some reasonable bound, longer time is also detrimental to many clients and to the system. Increasing pending caseloads leads to overconsumption of jail space, defense counsel time, and court resources.

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[64] *See* Barry Mahoney & Dale Anne Sipes, *Toward Better Management of Criminal Litigation*, 72 JUDICATURE 29, 34–37 (1988); Brian Ostrom & Roger Hanson, *Achieving High Performance: A Framework for State Courts* (Nat'l Ctr. For St. Cts, Working Paper, 2010); STEELMAN, *supra* note 24, at 18.

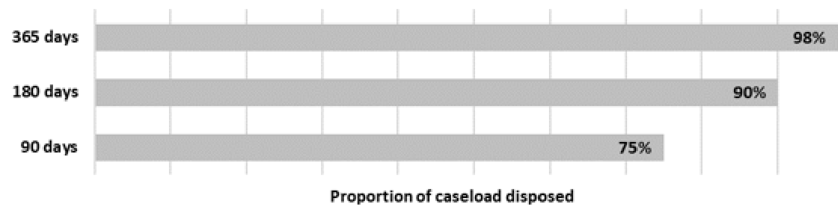
[65] This principle is embodied in the American Bar Association's delay reduction standards: "to enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation." STANDARDS RELATING TO TRIAL COURTS § 2.5 (AM. BAR ASS'N 1992).

[66] U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial."). In 1967, the U.S. Supreme Court held that the speedy trial provisions of the Sixth Amendment to the U.S. Constitution apply through the Fourteenth Amendment Due Process Clause to criminal proceedings in state courts. *See* Klopfer v. North Carolina, 386 U.S. 213 (1967). Only after the U.S. Supreme Court's 1972 decision in *Barker v. Wingo* did the U.S. Congress pass legislation (the Federal Speedy Trial Act of 1974) mandating speedy trials in federal courts. *See* Barker v. Wingo, 407 U.S. 514 (1972); 18 U.S.C.S. §§ 3161-3174 (LexisNexis 2020).

Time standards are a natural starting point for discussing case processing time and can provide general boundaries for case processing by balancing the concerns of quality and timeliness. The very notion of criminal justice reflects two legitimate but competing perspectives. One perspective emphasizes the importance of timeliness and the need to make the best use of attorney time and resources to meet timeframes that are least harmful to the client. For example, all other things being equal, early guilty pleas are preferred to late pleas to permit public defenders to keep up with incoming cases. Relatedly, for a client held in pretrial detention, a quick guilty plea may be the best outcome, especially if it avoids loss of a job or housing. The other perspective emphasizes sufficient time to ensure quality of justice, including the importance of a thorough review in every individual case and the need to protect the client's constitutional rights at all stages of the legal process.

Standards that balance timeliness and quality are necessary to give criminal court participants direction and guidance on how they conduct their business. In response, without removing local court discretion in managing caseloads, professional organizations of attorneys, as well as judges and court managers, have established guidelines for case processing that reflect how long it should take to resolve cases.[67] The most recent articulation of time standards is laid out in the *2011 Model Time Standards for State Trial Courts* ("Model Time Standards"), which establishes parameters for the time required to dispose of a case from the date of filing to the date of disposition.[68] For criminal cases, the Model Time Standards provide for a first-tier time period within which 75% of filed cases should be resolved, a second-tier time period within which 90% of filed cases should be resolved, and a third-tier within which 98% of filed cases should be resolved (Figure 1). The 98% tier is meant to establish a backlog measure and to fix the maximum time that should be taken to decide and finalize all but the most highly complex cases.[69]

Figure 1. Model Time Standards for Felony Cases



[67] The American Bar Association was the first organization to promulgate time standards in 1987.

[68] RICHARD VAN DUIZEND ET AL., MODEL TIME STANDARDS FOR STATE TRIAL COURTS (2011). The Model Time Standards have been adopted by the Conference of Chief Justices, the Conference of State Court Administrators, the National Association for Court Management, and the American Bar Association. All these organizations have urged the adoption of time standards for expeditious caseflow management.

[69] Minnesota employs a somewhat more stringent set of time standards for felony case processing. The Minnesota time standards for Major Criminal are 90 percent in 120 days (four months), 97 percent in 180 days (six months), and 99 percent in 365 days (twelve months). MINN. JUDICIAL BRANCH, PERFORMANCE MEASURES KEY RESULTS AND MEASURES, ANNUAL REPORT 15 (2017).

Meeting the overall time goals for criminal cases is challenging because effective outcomes require the involvement of multiple justice system partners, including the public defender's office, the prosecutor's office, and pretrial services. All agencies must work together to achieve fair and timely resolution of criminal cases while meeting their institutional responsibilities.

Measure 1: ***Timely Case Resolution***. Percent of cases where the time from filing to disposition meets established Model Time Standards.

While time to disposition was measured in a previous study,[70] the data do not differentiate between the three types of defense counsel, and the results do not benefit from the context of time standards. However, a key finding that cases with privately retained counsel will take longer to process than cases with public defenders is expected to remain true.

2. Early Access to Defense Counsel

Fair and expeditious handling of criminal cases begins with an early determination of the defendant's eligibility for public defense so that defendants can be represented by counsel as soon as possible after arrest and at the initial court appearance.[71] Having defense counsel appear early in a case permits early assessment of the prosecution's case to determine if the client's interests are better served by going to trial or by negotiating a plea. In Minnesota, as in most, if not all, states, there must be a prompt initial court appearance, during which the defendant is informed of the charges and their rights, and conditions of release are set.[72] Timing of the first appearance is driven largely by custody status. A defendant who is in custody following their arrest on a warrant must be brought before a judge within thirty-six hours (forty-eight hours if arrested and held without a warrant).[73] If out-of-custody, the defendant is informed at release of the date of first appearance, usually several weeks later.[74] In addition, to best preserve the defendant's constitutional rights, appointment of counsel must occur early enough so that counsel is present with sufficient time to meet with the defendant before the hearing.

Measure 2: ***Timely Access to an Attorney.*** Number of days from filing of criminal charges to the appointment of counsel.

Measure 3***: Timely Appearance Before a Judge With an Attorney.*** Number of days from filing of criminal charges to the first appearance of the client before a judge.

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[70] Hanson & Ostrom, *supra* note 3, at 276.

[71] In Minnesota, following the filing of a complaint with the district court, a prosecutor determines whether to issue an arrest warrant or mail the defendant a summons listing a court date for initial appearance. In addition, if a person is arrested without a warrant for a felony or gross misdemeanor and brought to a police station or county jail, the official in charge may issue a summons and release the defendant with direction to appear at a designated time and place or to contact the court to schedule an appearance. Minn. R. Crim. P. 6.01 (2021).

[72] MINN. R. CRIM. P. 5.

[73] MINN. R. CRIM. P. 4.01, 4.02.

[74] MINN. R. CRIM. P. 6.01.

Differentiating by type of attorney, the relationship between time from filing to appointment of counsel and the time from filing to first appearance has not been examined.

3. Realistic Schedules and Meaningful Court Events

A basic tenet of criminal caseflow management is that court scheduling of case events should ensure that no case is unreasonably interrupted in its procedural process and that client constitutional rights are preserved.[75] For management of case progress to be effective, the court must promote preparation for court events by the lawyers. As noted by David Steelman, "[i]t is lawyers, not judges, who settle cases. Lawyers settle cases when they are prepared, and lawyers prepare for significant and meaningful court events."[76] Preparation is enhanced by creating the expectation that court events are meaningful. That is, the court must communicate to all participants the purpose, deadlines, and possible outcomes of all proceedings so all events can occur as scheduled and contribute substantially to the resolution of the case. This requires careful exercise of judicial control. It is essential to balance the interest in reasonably prompt completion of necessary case events with reasonable accommodation for the demands placed on the time of the participants in the proceedings.

Minnesota Criminal Procedure. Attention to effective scheduling is particularly relevant in Minnesota as statutes and rules of court specify a wide range of hearings that can potentially occur in the life of a criminal case. As noted, an initial appearance, called a Rule 5 Hearing, starts the court process. The second court appearance, called a pretrial conference ("PTC") or Rule 8 Hearing, is usually set a few weeks after the initial appearance. It is used to again advise the defendant of their rights, allow the defendant to enter a plea, and provide the prosecution and defense an opportunity to discuss issues of discovery, pretrial motions, and possible outcome and settlement options. There may be one or more additional PTCs if the prosecution has not provided the defense with complete discovery.[77] An omnibus hearing, required in every case,[78] is then set within twenty-eight days after the final PTC—though the twenty-eight-day limit is typically waived by defense. An omnibus hearing may involve contested issues, require live testimony, and be potentially dispositive of the case. With no contested issues or change in plea, there may be nothing meaningful to do at this scheduled hearing. If the defendant does not plead guilty, a trial date is set. Following the omnibus hearing, most courts schedule one or more settlement conferences, an in-court hearing used to see if the prosecution and defense can reach a settlement prior to a trial taking place. If the defendant pleads guilty or is found guilty at trial, a sentencing hearing is scheduled. In a typical felony case in the three Minnesota counties examined, about six hearings are required to resolve the case.

Evaluating Intermediate Court Events. The time to disposition does not directly reflect when the system's resources are being used well or being

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[75] STANDARDS RELATING TO TRIAL COURTS, *supra* note 65, at § 2.51(a).
[76] STEELMAN, *supra* note 24, at 6.
[77] MINN. R. CRIM. P. 9.01, 9.02.
[78] MINN. R. CRIM. P. 11.01.

wasted. Two ways to assess this issue are by examining (1) the number of court hearings scheduled per disposition and (2) if there is evidence of redundant and unnecessary work caused by continuances.

> **Measure 4*: Number of Court Appearances (Hearings) Least Harmful to Client.*** From the perspective of defense counsel, the number of hearings held during the life of a criminal case should align with the number needed to obtain the best outcome for the client.

Scheduling more hearings than necessary slows down the process, squanders court resources, and wastes attorney time used in preparation for the unnecessary event. In addition, for out-of-custody clients, additional hearings require more trips to the courthouse and more phone calls to keep the client informed. For the client, beyond managing the logistics of attendance, such as taking time off work, transportation, and child care, having more hearings increases the possibility of missing a hearing and bearing the attendant costs that can include a bench warrant.

Related to the number of hearings actually held is the number of hearings continued when a scheduled court hearing is postponed at the request of either the prosecution or defense. A key to establishing meaningful court events is reducing the excessive use of continuances. Hearings can be continued for good cause (e.g., full discovery has not been provided to the defense), but continuance practices that are too lenient fail to encourage attorneys to be prepared and further delay determining whether a case is best resolved by trial, plea, or other means. Attorney productivity is lowered through unnecessary work caused by continuances.[79]

> **Measure 5*: Limited Number of Repeat Court Appearance (Continuances).*** Continuances granted without good cause lead to delay and increase the cost and stress of litigation because of the need to prepare for additional court appearances.

If a case is ready for trial and both prosecutor and public defender have prepared their cases, talked to the witnesses, and assembled the evidence, only to have the case continued, some of the effort spent in preparation will have to be redone at a future time. Delay has a direct effect on attorney time and resources. Therefore, to the extent that continuances are liberally granted and backlogs grow, the resource pool is drained unnecessarily, and the productivity of the courts, prosecution, and defense declines. Time used to prepare cases for the second and third time before a scheduled court hearing is conducted means that other case activities that could or should be performed must either be abbreviated or dropped.[80] The relationship between

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[79] The A.B.A. Standards for Criminal Justice Speedy Trial and Timely Resolution of Criminal Cases states that a "court should grant a continuance only upon a showing of good cause and only for so long as is necessary . . . [,] tak[ing] into account not only the request or consent of the prosecution or defense, but also the public interest in timely resolution of [the] case[]." STANDARDS FOR CRIMINAL JUSTICE: SPEEDY TRIAL AND TIMELY RESOLUTION OF CRIMINAL CASES § 12-4.5 (AM. BAR ASS'N 2006).

[80] Of course, continuances also affect victims and witnesses. Court appearances are costly in terms of time and other expenses related to employment, travel, and special arrangements. Delay and lack of predictability in the process erode public trust in the criminal justice system, which hampers willingness to participate.

attorney type and number of hearings and continuances remains largely unaddressed.

C. Quality of Case and Sentencing Outcome Measures

Drawing on recent empirical studies and the work of JSERI, in combination with available data, a range of case and client outcome measures are developed that tap into the quality of results obtained. The quality measures focus on issues of fundamental concern to clients: conviction rates and the likelihood of gaining a dismissal or acquittal; charge reduction rates to reduce exposure to incarceration; incarceration rates; and, if incarcerated, sentence length.

1. Dismissals, Acquittals, and Charge Reductions

The next three measures focus on the extent to which defense attorneys achieve favorable outcomes for their clients in terms of reducing exposure to incarceration.

Measure 6*: Dismissal of all charges.* Percentage of cases where all charges against the client are dismissed.

Measure 7*: Acquittal at trial.* Percentage of cases where the client is acquitted at trial.

Measure 8: *Reduction of most serious charge.* Percentage of cases where there is a reduction of the most serious charge between the original charge at filing and the final charge at disposition.

The dominant, though not unanimous, finding in the literature is that clients with privately retained counsel are more likely to have their cases dismissed or acquitted at trial or their charges reduced.

2. Sentencing Outcomes

The sentencing stage follows conviction. For clients convicted of a felony offense, a primary goal of defense counsel is to obtain the best outcome possible, including minimizing or avoiding client prison sentences. Under the Minnesota sentencing guidelines, as described below, sentencing is structured to incorporate detailed information on the seriousness of the conviction offense and offender prior record. Therefore, an evaluation of sentencing outcomes in Minnesota must directly accommodate the content and mechanics of the sentencing guidelines. Drawing on sentencing data obtained from the Minnesota Sentencing Commission, matched samples and multivariate modeling are used to investigate whether there is independent effect from type of attorney on sentencing outcomes.

Measure 9: *Lower likelihood of prison sentence.* Percentage of convictions that result in a prison sentence.

Measure 10*: Shorter length of prison sentence.* The length of prison sentence imposed following conviction.

Previous research on the relationship between attorney type and sentencing outcomes has been mixed and subject to criticism for use of inadequate statistical methods.

The ten performance measures being examined are summarized in Table C. While there are certainly limitations to the measures available for this analysis, it is an important first step in developing more refined indicators of timely and meaningful case processing and quality of client outcomes.

Table C. Summary of Performance Measures

Timely and Meaningful Process	Best Client Outcomes
Timely Resolution of Case within Time Standards	Dismissal of All charges
Timely Access to Attorney	Acquittal at Trial
Timely Appearance before a Judge with Attorney	Reduction of Most Serious Charge
Number of Court Appearances (Hearings) Least Harmful to Client	Lower Likelihood of Prison Sentence
Limited Number of Repeat Court Appearance (Continuances)	Shorter Length of Prison Sentence

V. CASE PROCESSING PRACTICES

Effective criminal caseflow management practices include timely case processing, early intervention in the case, realistic schedules, and meaningful pretrial court events. An examination of case processing practices for Hennepin holistic public defenders, traditional public defenders, and privately retained counsel is addressed in five ways: (1) overall time to disposition, (2) time from filing to appointment of counsel, (3) time from filing to initial appearance, (4) number of hearings held per disposition, and (5) number of continuances per disposition.

A. TIMELY RESOLUTION OF CASES WITHIN TIME STANDARDS

The model time standards and mean and median comparisons are used to assess the overall length of time taken by different types of attorneys to resolve felony cases. Overall, none of the attorney categories across jurisdictions met the Model Time Standards for felony cases in any tier (Table D), but there were notable points of comparison. Public defenders consistently outperformed private attorneys across the three courts in each tier. Between jurisdictions, holistic defenders from Hennepin County outperformed the other two sites in the 75-percent tier, disposing 28% of their felony caseload within ninety days. However, Ramsey County traditional defenders disposed the largest proportion of felony cases within 180 days (90-percent goal) and 365 days (98-percent goal) compared to the other courts.

Table D. Compliance with Model Time Standards

	Hennepin		Anoka		Ramsey	
Model Time Standards	**Private Attorney**	**Public Defender**	**Private Attorney**	**Public Defender**	**Private Attorney**	**Public Defender**
90 days	19%	**28%**	12%	**16%**	12%	**21%**
180 days	43	**56**	31	**48**	47	**64**
365 days	78	**85**	76	**84**	84	**90**
Mean	253	**201**	296	**249**	256	**190**
Median	201	154	232	187	188	139

Bold indicates statistically significant difference between attorney types.

While examining compliance with the time standards is useful, it is enhanced by reference to mean and median times.[81] On average, holistic and traditional public defenders had faster times to disposition compared to private attorneys in felony cases, which was consistent among all three sites (Table D). Overall, the analysis related to Measure 1 shows that, in each site, public defender cases tend to be resolved in a more timely fashion than private attorney cases. Between jurisdictions, Anoka County traditional public defenders had longer case times compared to Hennepin and Ramsey counties, which were similar in average duration (about six months).

B. Timely Access to an Attorney and to Initial Appearance Before a Judge

The number of days to appointment of counsel was measured using the time between filing date and the appointment of counsel date. A similar approach was used to calculate the time to first appearance. In Minnesota, the purpose of the initial appearance is for the court to inform the defendant of his or her charges and the right to counsel, and to give the opportunity for the defendant to enter a plea. The stated practice in Hennepin County is for defendants to be informed of their right to an attorney if they cannot afford one and screened for eligibility prior to the initial appearance. This allows in-custody defendants to be represented at the initial appearance, when the client first appears before a judge. The data are largely supportive in that the median time from filing to appointment of counsel in Hennepin is three days, as is the median time to first appearance. The longer mean times reflect the situation of out-of-custody clients for whom the court assigns a first appearance date roughly thirty days after filing. Analyses related to Measures 2 and 3 show no consistent patterns across jurisdictions on the time to appointment of counsel and time to first appearance between Hennepin holistic defenders, Hennepin privately retained attorneys, and traditional defenders in Ramsey County (Tables E and F). On the other hand, Anoka County public defender cases had a significantly higher number of days to appointment of counsel and to first appearance.

[81] Mean and median comparisons were calculated using all cases that were disposed below the 98th percentile. This method, which removes a small (top 2 percent) portion of cases, excludes cases in each court that took an extreme time to resolve. The main reason for exclusion is due to concern with data quality. All mean and median comparisons for time to disposition use this metric.

Table E. Days to Appointment of Counsel

	Hennepin		Anoka		Ramsey	
	Private Attorney	Public Defender	Private Attorney	Public Defender	Private Attorney	Public Defender
Mean	32	46	35	**70**	24	37
Median	3	3	1	**27**	3	4
Percent within 72 hours	61%	59%	**43%**	34%	55%	50%

Bold indicates statistically significant difference between attorney types.

Table F. Days to Initial Appearance

	Hennepin		Anoka		Ramsey	
	Private Attorney	Public Defender	Private Attorney	Public Defender	Private Attorney	Public Defender
Mean	27	23	27	**54**	30	32
Median	3	3	27	26	5	3
Percent within 72 hours	54%	**60%**	43%	41%	47%	**55%**

Bold indicates statistically significant difference between attorney types.

Another metric related to time to first appearance is a comparison of how many cases meet a certain benchmark for an early hearing. In this analysis, seventy-two hours between filing and initial appearance was chosen as an appropriate time frame for comparison. Proportions of cases that met the three-day standard are shown in Table F. Cases handled by Hennepin holistic defenders and Ramsey traditional public defenders were significantly more likely to hold initial appearance within three days, at 60% and 55%, respectively.

C. Number of Court Appearances (Total Hearings Held)

Purposeful scheduling encourages the prosecutor and defense counsel to be fully prepared for each court hearing, making court events meaningful in their contribution to case resolution. If that goal is met, experienced attorneys should be able to quickly and accurately evaluate each case to determine the level of attention and the number of events required to reach appropriate resolution. Given that the vast majority of criminal cases are resolved by plea or by other non-trial means, criminal case management should focus on ways to provide meaningful plea discussions between prosecution and defense counsel at an early stage in the proceedings. If both sides are prepared, prosecutors should be ready to make realistic plea offers, and defense counsel, in turn, should be able to effectively negotiate, balancing the best interests and constitutional rights of their clients. Such practice by defense counsel works to resolve cases using only the number of hearings that best serve the interests of the client. This analysis compares the average number of hearings held between public defenders and privately retained attorneys.

Overall, felony cases handled by private attorneys had significantly more hearings compared to cases handled by both holistic and traditional public defenders (Table G). This was consistent across the three courts, and averages for each attorney type were similar between courts. Felony cases

had an overall average of six hearings, an indication of how much in-court time is spent litigating these matters.

Table G. Average Number of Hearings

	Hearings		
Site	**Private Attorney**	**Public Defender**	**Total**
Hennepin	**7.1**	5.6	6.1
Anoka	**6.5**	5.8	6.0
Ramsey	**7.0**	5.6	5.9
Average	7.0	5.6	6.0

D. NUMBER OF REPEAT COURT APPEARANCES (CONTINUANCES)

To effectively manage time and resources, the scheduling of pretrial matters requires the careful exercise of court control. Defense attorneys must be able to predictably make progress on each individual case while also overseeing the rest of their caseloads. Continuances are expensive in terms of emotional cost to clients and time and work wasted by counsel. While there will always be continuances in any court system, the challenge is defining the appropriate level. This analysis compares continuance practices of public defenders with privately retained counsel.

Private attorney cases had significantly more continuances compared to cases managed by holistic and traditional public defenders, which was consistent across the three courts (Table H). While the overall average number of hearings held was similar across courts, the number of continuances varied significantly. This provides some evidence of differing continuance practices among the courts, with Anoka County reporting the lowest average number of continuances and Ramsey reporting the highest.

Table H. Average Number of Continuances

	Continuances		
Site	**Private Attorney**	**Public Defender**	**Total**
Hennepin	**2.3**	1.5	1.8
Anoka	**1.7**	0.9	1.2
Ramsey	**3.3**	2.3	2.5
Average	2.4	1.6	1.8

Bold indicates statistically significant difference between attorney types (difference of means, $p<.05$).

The results, which show that public defenders achieve greater timeliness and compliance with the Model Time Standards, have important

implications. First, timely case processing is associated with a reduced demand for additional court hearings, which also lowers the likelihood of an out-of-custody client missing a scheduled court appearance and becoming the potential recipient of a bench warrant. For in-custody defendants, more expeditious case processing decreases the time a client must spend in jail awaiting disposition of their case. Beyond the direct cost to clients, assembling all the participants in the legal process for court proceedings and pretrial detention of defendants are undeniably costly. Therefore, public defenders contribute to justice system savings through their timeliness.

Second, the timeliness exhibited by public defenders presents a picture that diverges from the popular image. A common view is that the high caseloads facing public defenders prevent them from providing competent and effective representation, while often leading irreparably to greater use of continuances and consequent lengthy delays in adjudication. Simply said, the public view is that overworked public defenders are unable to effectively schedule their work, prepare for court hearings, and satisfy time requirements. However, this point of view is not supported by the data for holistic and traditional public defenders in this study. In terms of managing scheduled court appearances and approximating time standards, public defenders perform better than privately retained attorneys.

Third, timely attention to cases frames the issue of effective representation in a new light. Instead of engaging in a philosophical debate over whether timeliness in criminal case processing is inherently good or bad, it is possible to assess empirically whether the efficient handling of cases is made at the expense of clients. The achievement of timeliness and control over court appearances needs to be viewed side-by-side with information on the outcomes for clients. Combining information on case management and outcomes provides a means to assess whether effective case processing practices align with favorable client outcomes.

VI. QUALITY OF CASE OUTCOMES

It may be argued that the more efficient case processing practices attained by holistic and traditional public defenders described above are of primary benefit to the criminal justice system and are less directly relevant to clients. Certainly, delay wastes resources and reduces the productivity of courts, prosecution, and defense counsel. One view is that delay also jeopardizes the defendant's right to a speedy trial, impedes society's need for swift and certain convictions, and wears away public confidence in the courts. However, the link between efficient case management practices by public defenders and quality of outcomes for clients remains largely unexplored. The evidence above shows public defenders use more efficient case management practices than private counsel. Given these differences in practice, performance measures focused on the quality of services delivered to clients can now be used to assess the extent to which public defenders achieve favorable outcomes.

One potential concern is that the observed differences in case processing time are attributable to differences in the ways different types of attorneys handle their cases. For example, public defenders may appear timelier because they treat all cases in relatively the same manner regardless of

offense seriousness, or they may process cases more quickly due to higher rates of guilty pleas, which generally take less time than cases resolved at trial.

Variation in caseload composition matters if certain types of cases (e.g., homicide) are inherently more complex (e.g., more motions, more investigation) and require more court time and attention to resolve than do other cases. In addition, judges may believe that more serious cases deserve more time and attention from the court and establish explicit or implicit priorities to meet that goal. Likewise, taking a case to trial requires more preparation time by defense counsel and typically results in longer case processing time. If one type of attorney takes a greater proportion of cases to trial, lengthier disposition times may be expected. In contrast, a greater share of cases ending in a guilty plea can reduce time to disposition while also leading to the impression of a "meet 'em and plead 'em" system of justice.

A. Manner of Disposition

Table I provides the number and proportion of cases by their manner of disposition. The "other" manner category includes transfers and diversions. Overall, Hennepin County had significantly higher rates of trials, dismissals, and other manners of disposition, with lower rates of guilty pleas, compared to Anoka and Ramsey counties.

Table I. Manner of Disposition

	Tried		Pled Guilty		Dismissed		Other	
Site	n	Percent	n	Percent	n	Percent	n	Percent
Hennepin	874	**15.9**	2,983	**53.5**	867	**19.6**	779	**14.0**
Anoka	40	2.2	1,153	69.2	278	17.2	191	11.7
Ramsey	84	3.8	1,153	76.2	235	13.4	135	6.9

Bold indicates statistically significant difference between jurisdictions.

Table J breaks down the manner of disposition by attorney type. For Hennepin County, felony cases handled by private attorneys had more trials and other dispositions but fewer guilty pleas compared to those handled by holistic public defenders. However, Hennepin holistic public defenders had higher rates of dismissals. Private attorneys consistently had higher rates of trials across courts. Holistic public defenders in Hennepin County had higher rates of trials and dismissals and lower rates of guilty pleas compared to their more traditional counterparts in Anoka and Ramsey counties.

Table J. Manner of Disposition by Attorney Type

	Tried		Pled Guilty		Dismissed		Other	
Site	Private Attorney	Public Defender	Private Attorney	Public Defender	Private Attorney	Public Defender	Private Attorney	Public Defender
Hennepin	**18%**	15%	50%	**57%**	13%	**17%**	**19%**	12%
Anoka	**4**	2	69	71	15	15	12	11
Ramsey	**12**	3	63	**75**	14	15	**11**	8
Total	12%		61%		15%		13%	

Bold indicates statistically significant difference between attorney types.

B. TRIAL OUTCOMES

A fundamental concern of criminal defendants who take their cases to trial is gaining an acquittal or a dismissal of the case. With conviction comes the imposition of penalties. One basic goal of a defense attorney is to minimize exposure to criminal sanctions. In measuring this goal, the standard employed is that the lower the conviction rate at trial for a given group of attorneys, the more successful they are at obtaining favorable outcomes for their clients. A recent study shows that, nationally, trial rates are about 3% for felony cases.[82] From this perspective, felony trial rates in Hennepin County for both holistic public defenders and privately retained counsel are well above average. For cases resolved at or just prior to the start of trial, Table K shows the trial outcomes for felonies. The dominant outcome is conviction across all jurisdictions for all attorney types, although there are observable differences in the share of tried cases that end in acquittal or dismissal. Cases classified as dismissals are cases set on the trial calendar and resolved through dismissal just prior to the start of trial. While public defenders fare well (especially with regard to dismissals), the differences are not statistically significant as the small sample size of tried cases means statistical analyses did not have sufficient power to detect any differential effects (see Table K).

Table K. Trial Outcomes by Attorney Type

	Conviction		Acquittal		Dismissal	
Site	Private Attorney	Public Defender	Private Attorney	Public Defender	Private Attorney	Public Defender
Hennepin	73%	71%	11%	7%	15%	20%
Anoka	82	57	6	22	6	22
Ramsey	82	73	13	14	2	14

[1]No statistically significant differences found. This may be due to the small number of tried cases across jurisdictions.

Notably, overall rates of conviction were actually higher for private attorneys, while rates of dismissal were higher for public defenders. Although the differences were not statistically significant, the results do provide insight into the direction of case outcomes between the two groups.[83]

C. CHARGE REDUCTIONS

From the perspectives of the client and defense attorney, any success can be considered a victory. Because most criminal defendants are convicted, another important outcome that benefits the client is a reduction in the seriousness of charge. If the offense at conviction is less than the seriousness of the original offense at filing, the outcome is favorable to the client. Here, charge reduction is measured as the percent of felony cases that ended in conviction of a nonfelony. Table L shows how the rate of charge reductions

[82] Brian J. Ostrom, Lydia E. Hamblin, & Richard Y. Schauffler, *Effective Criminal Case Management: Project Overview*, NAT'L CTR. FOR ST. CTS. (2019), https://www.ncsc.org/__data/assets/pdf_file/0017/53216/Delivering-Timely-Justice-in-Criminal-Cases-A-National-Picture.pdf.

[83] The small number of cases resulting in diversion or continued without a finding are not reflected in the tables due to inconsistencies in reporting these trial outcomes between courts. Thus, proportions of trial outcomes in Table K do not always equal 100 percent.

obtained by public defenders compared to those of privately retained counsel.

Table L. Charge Reduction by Attorney Type

	Felony	
Site	**Private Attorney**	**Public Defender**
Hennepin	**13%**	10%
Anoka	**25**	17
Ramsey	**11**	7
Total	14	11

Bold indicates statistically significant difference between attorney types.

While the absolute difference is relatively small in Hennepin and Ramsey counties, private attorneys do have a significantly higher rate of charge reductions for felony cases across sites. In addition, there are significantly different rates of charge reductions among the three public defender offices. Hennepin County was in the middle, while Anoka had the highest rate of charge reductions, and Ramsey had the lowest rate.

D. Sentencing Outcomes

From the perspective of the client, major concerns following conviction include whether the sentence will involve prison, jail, or probation, as well the length of any custodial sentence. Basic information on conviction rates and sentencing outcomes for the three jurisdictions are displayed in Table M and show similarities and differences across attorney type and location. As can be seen, conviction rates are typically between 60% and 70%. While only a small percentage receive a sentence of straight probation, nearly two-thirds of convicted felons receive a jail sentence, with an average sentence of about four to six months. Prison sentences, imposed overall in about one-third of felony convictions, tend to be levied at a slightly higher rate for clients represented by public defenders. On the other hand, average sentences are considerably lower for those clients represented by holistic and traditional public defenders (about three years) compared to those represented by private counsel (about five years). Both the decision to impose a prison sentence and the length of sentence likely reflect the seriousness of the conviction offense and the extent of prior record. Table M shows variation in the category of offense at conviction by attorney type. Also, clients represented by holistic and traditional public defenders have, on average, a higher number of prior felony and misdemeanor convictions than those represented by privately retained attorneys. Therefore, to better understand the relationship between sentencing outcomes and the type of defense counsel, it is necessary to use statistical models that control for relevant differences in offense and offender characteristics among the cases handled by each type of attorney.

Table M. Felony Conviction Outcomes

	Hennepin		Anoka		Ramsey	
	Private Attorney	Public Defender	Private Attorney	Public Defender	Private Attorney	Public Defender
Number of Felony Convictions	829	1,841	154	510	189	696
Conviction Rates	64%	65%	63%	62%	70%	76%
Probation only	7%	4%	5%	2%	2%	<1%
Jail, no prison	62%	59%	75%	66%	65%	62%
Average Jail Sentence (months)	6.1	6.2	4.6	5.4	4.3	4.0
Prison	32%	38%	19%	32%	34%	38%
Average Prison Sentence (months)	58.1	38.1	57.9	37.6	63.5	34.8
Percent detained pre-conviction	83%	92%	85%	89%	98%	99%
Average Credit Time (months)	2.6	3.2	2.4	3.5	2.9	3.2
Conviction Offense						
Person Offense	25.8%	36.0%	29.2%	27.5%	33.3%	39.5%
Property Offense	27.0	27.6	21.4	30.8	22.2	31.5
Drug Offense	31.4	22.3	34.4	34.5	25.9	20.3
DWI Offense	5.1	3.6	9.1	1.2	5.3	2.0
Weapons Offense	5.2	5.0	1.3	1.6	7.4	3.7
Other Offense	5.5	5.6	4.6	4.5	5.8	3.0
Prior Record						
Average # Prior Misdemeanors	0.9	1.0	0.8	1.2	0.8	1.1
Avg # Prior Person Felony Offenses	0.4	0.6	0.2	0.5	0.4	0.8
Avg # Prior Property Felony Offenses	0.8	1.0	0.6	1.3	0.7	1.1
Avg # Prior Drug Felony Offenses	0.6	0.6	0.6	0.8	0.5	0.5
Avg # Prior Other Felony Offenses	0.3	0.3	0.2	0.2	0.4	0.3
Avg # Prior Sex Felony Offenses	0.0	0.1	0.0	0.0	0.0	0.1
Avg # Total Prior Felony Offenses	2.1	2.5	1.6	2.9	2.0	2.6

VII. A DEEPER LOOK AT SENTENCING IN MINNESOTA

This analysis focuses on sentencing outcomes for clients represented by the HCPD compared with outcomes for clients represented by privately retained counsel in Hennepin County and public defenders representing clients in Ramsey County and Anoka County.[84] A multivariate analysis is used to take into account differences in the profile of clients handled by holistic defenders, traditional defenders, and privately retained counsel. As Table M shows, variation exists across attorney types in terms of the

[84] To ease interpretation, all cases resolved by public defenders in Ramsey and Anoka counties are combined into a single comparison group. The decision to combine the two counties was bolstered by additional analyses that found few differences when the statistical models kept each county separate.

likelihood that a client receives a prison sentence, the average length of prison sentence, the type of conviction offense, and extent of prior record. The extensive literature on felony sentencing outcomes indicates that the severity of conviction offense and degree of prior record are strong determinants of receiving a prison sentence and the length of term imposed, which need to be examined in combination.[85] In addition, this method allows the measurement of disparity based on race, ethnicity, sex, and age. Moreover, there is need for an analysis technique that recognizes and incorporates the two judicial decisions being made: the decision of whether to sentence a client to prison and, if so, the decision of how long the sentence should be. In Minnesota, the judicial sentencing decision is shaped by sentencing guidelines. The Minnesota guidelines bring together characteristics of the offense and offender in a designed and structured format that determines both the location and severity of punishment. In this context, the analysis examines whether there remains an independent role for defense counsel to influence the outcome.

The dependent variables examined correspond to the two types of sentencing decisions. Here, a statistical model is constructed to establish the relationship between two sets of independent variables, explained below, and each of these two dependent variables: (1) measures of the essential elements and mechanics of the Minnesota guidelines and (2) measures of extra-legal or, more specifically, extra-guideline factors.

The first set of independent variables is tailored to fit the specific features of the guideline system, including measures of the basic offense at conviction, criminal history, the type of grid cell in which the offender is located, modifier status, and the invocation or not of a departure from the recommended range by the sentencing judge. The second set of independent variables includes measures of the offender's age, race, ethnicity, and sex, whether the case was resolved at trial, and type of defense counsel (i.e., holistic, traditional, privately retained). To begin, the design and operation of the sentencing guidelines in Minnesota are reviewed along with the explicit role of conviction offense and prior record. The structure of the sentencing guidelines has a strong influence on judicial decision-making, and this information is incorporated into the upcoming statistical analyses.

A. SENTENCING MECHANICS

1. Sentencing Grid

The Minnesota guidelines—the nation's first legislatively mandated sentencing guidelines—employ a single grid based on two dimensions: the severity of the conviction offense (vertical axis) and the extent of the offender's criminal history (horizontal axis).[86] Tabulated scores on each dimension are used to place the offender into a particular cell on the grid and

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[85] BRIAN J. OSTROM ET AL., ASSESSING CONSISTENCY AND FAIRNESS IN SENTENCING: A COMPARATIVE STUDY IN THREE STATES (2008).

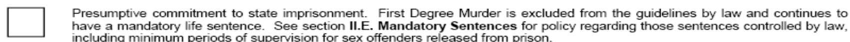
[86] For a comprehensive history of the development of the Minnesota sentencing guidelines, see Richard S. Frase, *Sentencing Guidelines in Minnesota*, 1978-2003, 32 CRIME & JUST. 131 (2005); DALE G. PARENT, STRUCTURING CRIMINAL SENTENCES: THE EVOLUTION OF MINNESOTA'S SENTENCING GUIDELINES (1988).

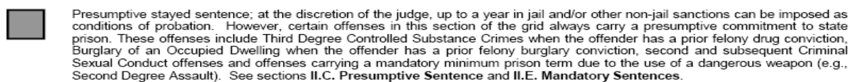
determine whether the offender should be sentenced to prison and, if so, for how long. The guidelines provide presumptive recommendations for sentences based on typical circumstances. The sentencing guidelines apply to all felonies except for first-degree murder and other offenses that carry a statutory life sentence.[87] A copy of Minnesota's sentencing grid is presented as Table N.

Table N. Minnesota's Sentencing Grid

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with nonimprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE 0	1	2	3	4	5	6 or more
Murder, 2nd Degree (intentional murder; drive-by-shootings)	XI	306 *299-313*	326 *319-333*	346 *339-353*	366 *359-373*	386 *379-393*	406 *399-413*	426 *419-433*
Murder, 3rd Degree Murder, 2nd Degree (unintentional murder)	X	150 *144-156*	165 *159-171*	180 *174-186*	195 *189-201*	210 *204-216*	225 *219-231*	240 *234-246*
Criminal Sexual Conduct, 1st Degree[2] *Assault, 1st Degree*	IX	86 *81-91*	98 *93-103*	110 *105-115*	122 *117-127*	134 *129-139*	146 *141-151*	158 *153-163*
Aggravated Robbery 1st Degree	VIII	48 *44-52*	58 *54-62*	68 *64-72*	78 *74-82*	88 *84-92*	98 *94-102*	108 *104-112*
Felony DWI	VII	36	42	48	54 51-57	60 57-63	66 63-69	72 69-75
Criminal Sexual Conduct, 2nd Degree (a) & (b)	VI	21	27	33	39 *37-41*	45 *43-47*	51 *49-53*	57 *55-59*
Residential Burglary Simple Robbery	V	18	23	28	33 *31-35*	38 *36-40*	43 *41-45*	48 *46-50*
Nonresidential Burglary	IV	12[1]	15	18	21	24 *23-25*	27 *26-28*	30 *29-31*
Theft Crimes (Over $2,500)	III	12[1]	13	15	17	19 *18-20*	21 *20-22*	23 *22-24*
Theft Crimes ($2,500 or less) Check Forgery ($200-$2,500)	II	12[1]	12[1]	13	15	17	19	21 *20-22*
Sale of Simulated Controlled Substance	I	12[1]	12[1]	12[1]	13	15	17	19 *18-20*


Presumptive commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section **II.E. Mandatory Sentences** for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.


Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. These offenses include Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault). See sections **II.C. Presumptive Sentence** and **II.E. Mandatory Sentences**.

[1] One year and one day

[2] Pursuant to M.S.§ 609.342, subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months (see **II.C. Presumptive Sentence** and **II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers**).

Effective August 1, 2002

2. Offense Severity

Assessment of offense is limited to the severity of the conviction offense. Eleven levels of offense severity are distinguished, from low (severity Level I) to high (Severity Level XI). The offenses found within each severity level have been deemed reasonably equivalent in severity by the Minnesota Sentencing Guidelines Commission ("Sentencing Commission").[88] Table N

[87] A handful of cases in the analysis data are first-degree murder charges, which are denoted with a severity score of 12.

[88] The Sentencing Commission established the Minnesota Sentencing Guidelines to promote uniform and proportional sentences for convicted felons. A key purpose of the Guidelines is to ensure that the

shows the eleven offense categories and common offenses included in each level on the vertical axis.

3. Offender Criminal History

The criminal history index constitutes the horizontal axis of the sentencing grid and is composed of points based upon prior felony record, prior misdemeanor record, custody status at time of offense, and prior juvenile record. For example, with respect to prior felony record, an offender is given points for every prior felony conviction, with the specific number of points depending on severity level (e.g., a prior felony from grid severity level I–II receives 0.5 points, and a prior felony from grid severity level IX–XI receives two points). For prior misdemeanors, an offender must have amassed four prior misdemeanor convictions to acquire one point on the criminal history score, and no offender can receive more than one point for prior misdemeanor convictions.[89] Each offender's criminal history score is determined by summing the points and locating the relevant criminal history level on the grid.

Eleven offense groups and seven prior record levels produce a grid with seventy-seven cells. The presumptive sentence is identified by the intersection of the row and column. The recommended sanction type is either non-prison (below or to the left of the solid line) or prison (above or to the right of the solid line). For prison sentences, the presumptive length is contained in the grid cell. If the presumptive sentence falls within the gray area of the grid (recommended non-prison), the sentence imposed is at the discretion of a judge and can range from up to a year in jail to non-jail sanctions such as conditions of probation. The length of probation is determined by the judge, but it cannot be longer than the statutory maximum. Other conditions such as fines, restitution, treatment, and house arrest may also be imposed. Judges are required by the sentencing commission to follow the presumptive recommendations of the guidelines. However, for cases in which substantial and compelling factors exist, a judge may depart from the guidelines' recommendation and must provide written reasons for the departure.

Sentencing guidelines bring together characteristics of the offense and offender in a designed and structured format that determines both the type and severity of punishment. These characteristics of the offense and offender are primary drivers in determining the imposition of a jail or prison sentence, but there may still be room for the type of representation to have some influence on the type and length of sentence given. However, comparing case outcomes by type of representation can prove misleading if the case and client characteristics factoring into sentence type and severity vary substantially among different types of attorneys. Appropriate statistical controls help make these groups more comparable.

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sanctions imposed for felony convictions are proportional to the severity of the offense and the offender's criminal history. *About MSGC*, MINNESOTA SENT'G GUIDELINES COMM'N, https://mn.gov/sentencing-guidelines/about/ (last visited January 13, 2020).

[89] The exception is DWI and Criminal Vehicular Operation ("CVO"), where there is no limit to the total number of misdemeanor points due to DWI or CVO violations included in the criminal history score.

B. COMPARING DEFENSE MODELS: PRIVATE REPRESENTATION, PUBLIC DEFENDERS, AND HOLISTIC DEFENSE

The methods used below to evaluate the role of alternative types of defense counsel on sentencing outcomes compare holistic public defense in Hennepin County with two comparison groups: privately retained counsel in Hennepin County and more traditional public defense in Anoka and Ramsey counties. Table O presents descriptive statistics for case-level variables used in the sentence models. For example, comparing case characteristics for clients represented by holistic public defenders in Hennepin County with clients of privately retained counsel in Hennepin County shows that public defender clients tend to have more extensive prior records (higher history score) and to be slightly younger and nonwhite. Clients of retained counsel tend to have higher current offense severity score and to be somewhat older and white.[90]

Table O. Descriptive Comparisons for Hennepin Public Defender, Hennepin Private Attorney, and Anoka/Ramsey Public Defender Cases

Variable	Definition	Hennepin Public Defender	Hennepin Private Attorney	Anoka & Ramsey Public Defender
		Average Values		
Severity Score	Severity of conviction offense (I to XI)	4.2	**4.5**	3.8
History Score	Criminal history score (0 to 6+)	2.3	**1.9**	2.4
Age at Offense	Age in years at time of offense	31.5	**34.0**	32.6
		Percentages		
Presumptive Commit	Recommended sentence of prison	40.1	40.9	35.3
Aggravated Disposition	Upward departure from stayed to prison	2.0	2.0	3.0
Aggravated Duration	Prison sentence greater than range maximum	2.0	2.0	1.0
Mitigated Disposition	Downward departure from prison to stayed	14.0	16.0	10.0
Mitigated Duration	Prison sentence less than range maximum	17.0	14.0	**9.0**
Attempt	Convicted of attempted felony	2.9	**1.6**	**0.9**
Conspiracy	Convicted of conspiracy	0.1	0.0	0.1
Weapon Aggravation	Dangerous weapon used in offense	10.4	**12.7**	**5.4**
Convicted at Trial	Person is convicted at trial	15.8	**19.1**	**2.3**
Female	Person is female	14.3	16.3	**21.3**
Hispanic	Person is hispanic	2.8	3.6	4.0
White	Person is white	32.4	**47.2**	**50.7**

Bold indicates statistically significant difference between Hennepin Public Defender and the other attorney types.

[90] To address the issue of systematic differences among the treatment and comparison groups, the analysis employs the "inverse probability weighted" ("IPW") estimator that weights observations to increase the overlap between treated (holistic defense) and untreated (private or traditional public defense) cases in covariates of interest. The IPW estimator uses a maximum likelihood model—in this case logit—to model the probability of being in the treatment group for every case, then uses those probabilities to construct a weight, which is applied to the cases in subsequent analyses. Significant differences tend to be reduced by the weighting procedure.

C. Modeling Prison Sentence Outcomes: Incarceration Type and Sentence Length Decisions

There are two separate but likely related judicial decisions built into sentencing guidelines: the "prison/no prison" and the "sentence-length" decisions. An accurate assessment of sentencing outcomes requires that the dependent variables be appropriately defined for the two sentencing stages. The first measure is a categorical variable for the prison/no prison decision. In the second stage, the natural logarithm of the imposed sentence is used to assess the magnitude of the prison sentence. This metric is used, rather than the actual number of months, since the dependent variable arises from the inherent design of the guidelines themselves. Sentences increase with an increase in the severity of the offense. However, an examination of the guideline systems reveals recommended sentences increase at an accelerated rate as offense severity rises.[91] Using the natural log of prison months imposed takes into account the reality that prominent sentences increase at an increasing rate. Doing so, therefore, puts the statistical model in a firmer position to produce reliable statistical coefficients and enhances the likelihood of drawing valid conclusions about sentencing outcomes.[92]

The following statistical models are designed to capture the "moving parts" of the Minnesota sentencing system, including offense severity score, criminal history score, and presence of an upward or downward departure.[93] In addition, the analysis uses separate variables to control for the impact of age, race, sex, and plea bargaining. Finally, a dichotomous variable was

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[91] It is worthwhile considering the issues raised by Engen and Gainey concerning the analysis of sentencing data (especially that gleaned from a sentencing guidelines state). *See* Rodney L. Engen & Randy R. Gainey, *Modelling the Effects of Legally Relevant and Extralegal Factors Under Sentencing Guidelines: The Rules Have Changed*, 38 CRIMINOLOGY 1207, 1209 (2000). They begin their argument by suggesting ". . . most analyses predicting sentence length under guidelines fail because they incorrectly assume linear, additive relationships between the principal legally relevant factors and the sentence length." They base their conclusion partly on the observation that "sentencing guidelines typically increase the severity of sentencing more sharply for more serious offenses and for offenders with extensive criminal histories." From this they argue, "the joint influence of offense seriousness and criminal history on sentencing ranges is not additive." In summarizing their findings, Engen and Gainey conclude that "the legally prescribed effects of offense seriousness and criminal history are, by definition, *nonlinear*, and there is an *interaction* between offense seriousness and prior history built into most sentencing guideline systems." (emphasis added).

[92] Bushway and Piehl note that the use of the natural logarithm of the sentence length increases the chances of satisfying the normality assumption. Shawn Bushway et al., *Is the Magic Still There? The Use of the Heckman Two-Step Correction For Selection Bias in Criminology*, 23 J. QUANTITATIVE CRIMINOLOGY 151, 171 (2007).

[93] Joint estimation of the sentence type and the sentence magnitude decisions raises the issue of sample selection bias, a concern related to possible correlation of error terms in the two equations. Marjorie S. Zatz & John Hagan, *Crime, Time, and Punishment: An Exploration of Selection Bias in Sentencing Research*, 1 J. QUANTITATIVE CRIMINOLOGY 103, 112 (1985). Sample selection bias is addressed in this analysis via the Heckman procedure, recognized as a best practice in studies of sentencing. *See, e.g.*, Engen & Gainey, *supra* note 91, at 1216; Martha A. Myers & Susette M. Talarico, *Urban Justice, Rural Injustice? Urbanization and its Effect on Sentencing*, 24 CRIMINOLOGY 367, 375 (1986); Ruth D. Peterson & John Hagan, *Changing Conceptions of Race: Toward an Account of Anomalous Findings of Sentencing Research*, 49 AM. SOCIO. REV. 56, 60 (1984); Darrell Steffensmeier et al., *The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment of Being Young, Black, and Male*, 36 CRIMINOLOGY 763, 773 (1998); JEFFERY T. ULMER, SOCIAL WORLDS OF SENTENCING: COURT COMMUNITIES UNDER SENTENCING GUIDELINES 11 (1997); John D. Wooldredge, *Analytic Rigor in Studies of Disparities in Criminal Case Processing*, 14 J. QUANTITATIVE CRIMINOLOGY 155, 156 (1998). The current research employs the one-step maximum likelihood version of the Heckman type estimation algorithm with robust standard errors.

included to distinguish the impact of attorney type. Table P provides results for the two comparisons:

Model 1: HCPD v. Hennepin County Privately Retained Counsel

Model 2: HCPD v. Traditional Public Defense in Anoka and Ramsey Counties

In the discussion below, HCPD is referred to as "Holistic", Hennepin County Privately Retained Counsel is referred to as "Private", and Anoka and Ramsey Counties Public Defense is referred to as "Traditional."

1. Assessing the Prison/No Prison Decision

The evaluation of the models begins by examining the selection equation. A first step is to see how well the models, as a whole, distinguish offenders who receive a prison sentence from those who do not. For example, in Hennepin County, 36% of convicted offenders receive a prison sentence. Knowing only this fact, one can predict that there is a chance of about two-in-three that any offender in the sample will not receive a prison sentence. However, understanding more about each individual's circumstances, the chance of error in prediction should be reduced appreciably. This is the case with the prison/no prison stage in each model, which correctly predicts 92% of the cases in the Holistic v. Private model, with a 76% reduction in error, as summarized at the bottom of Table P. Very similar results are obtained for the Holistic v. Traditional model with 90% of cases correctly predicted and a 74% reduction in error.

The second step examines the role and significance of each variable in the analysis. The influence of each coefficient is gauged in terms of the change in probability of receiving a prison sentence when all other variables are held at their mean value. This approach is used because the interpretation of the individual coefficients from the prison/no prison equation (i.e., a probit model is used in the first stage) displayed in Table P is not straightforward. The column labeled "Change in Probability" shows how each variable changes the estimated probability of receiving a prison sentence relative to the baseline offender who has a 36-percent probability of receiving a prison sentence. For example, on the left side of the table showing Holistic v. Private, each one-point increase in the Severity Score increases the probability of a prison sentence by 3.6%, and each one-point increase in the History Score increases the probability of prison by 10.4%. If the offender falls into a presumptive commit grid cell, the probability of a prison sentence rises by 122.3%. Similar values are found for these three variables in the Model 2 selection equation focused on Holistic v. Traditional.

Therefore, the Change in Probability column provides three ways to evaluate each coefficient: the numerical value of the change in probability, the sign of the coefficient shows whether the direction of change is positive or negative, and bolding indicates a statistically significant effect. Models 1 and 2 show similarity in terms of size, sign, and statistical significance across all coefficients. This includes the extra guideline factors where, holding all else constant, older individuals and female offenders tend to have a slightly lower probability of prison. There is no evidence of a prison selection effect based on race or ethnicity in either model. A notable difference is type of

attorney, as clients represented by Holistic are 11% more likely to receive a prison sentence than individuals represented by Private. On the other hand, there is no difference in the probability of receiving a prison sentence between Holistic and Traditional.

2. Sentence Length Decision

Results for the sentence length decision for both models are shown in Table P. The analysis of sentence length follows the same basic approach as above. In terms of a baseline, the average prison sentence for Hennepin County (for all cases handled by both Holistic and Private) is forty-three months, while the average prison sentence for offenders represented by Traditional is thirty-six months.[94] Because the dependent variable is the logarithm of actual months, the coefficients of the independent variables are interpretable in percentage terms. Specifically, each coefficient essentially measures the percent change in estimated prison length caused by a one-unit change in an independent variable. For example, the coefficient for Severity Score in the Holistic v. Private model is 0.27. This suggests that, all else being equal, a one-unit change in the offense severity score leads to a 32% increase in prison sentence length. The estimated percent change in prison length associated with all variables in the sentence length models are summarized in the column titled Percent Change in Prison Length on Table P.

[94] Concerning statistical validity and the presences of sample selection bias, the estimate for the inverse Mills Ratio is -.05 in both models and insignificant. Therefore, it is possible to accept the null proposition for each model that the two equations are independent.

Table P. Descriptive Comparisons for Hennepin Public Defender, Hennepin Private Attorney, and Anoka/Ramsey Public Defender Cases

	Holistic Defense v. Hennepin Privately Retained						Holistic Defense v. Traditional Public Defense					
	Selection Equation			Sentence Length Equation			Selection Equation			Sentence Length Equation		
Variable	Coeff.	z-score	Change in Probability	Coeff.	z-score	% Chg in Prison Lgth	Coeff.	z-score	Change in Probability	Coeff.	z-score	% Chg in Prison Lgth
Guideline Factors												
Severity Score	**0.10**	3.91	**3.6%**	**0.27**	46.07	**32.0%**	**0.08**	3.65	**3.3%**	**0.26**	39.41	**30.6%**
History Score	**0.28**	10.02	**10.4%**	**0.11**	15.21	**12.6%**	**0.22**	8.76	**8.7%**	**0.10**	12.84	**11.4%**
Grid cell type												
Presumptive Commit	**3.24**	12.95	**122.3%**	**-0.06**	-1.66	6.7%	**3.27**	14.24	**128.1%**	-0.01	-0.43	9.4%
Departure												
Aggravated Disposition	**3.21**	6.68	**43.8%**				**3.02**	9.18	**42.6%**			
Mitigated Disposition	**-3.72**	-16.75	**-56.9%**				**-3.61**	-17.50	**-57.3%**			
Aggravated Duration				**0.36**	6.49	**43.6%**				**0.36**	5.94	**43.5%**
Mitigated Duration				**-0.39**	-19.74	**-32.4%**				**-0.37**	-21.34	**-30.8%**
Modifiers												
Attempt	0.10	0.30	3.8%	**-0.48**	-9.63	**-37.8%**	0.13	0.41	5.1%	**-0.51**	-9.76	**-39.6%**
Conspiracy	**3.59**	12.09	**135.3%**	**-0.62**	-16.29	**-38.6%**	-0.60	-1.47	-23.4%	**-0.61**	-15.85	**-46.7%**
Weapon Aggravation	0.04	0.21	1.5%	**0.26**	8.74	29.7%	-0.03	-0.16	-1.2%	**0.24**	7.19	**27.2%**
Attorney Type												
Holistic Defender	**0.29**	3.22	**11.0%**	**-0.09**	-4.36	**-7.3%**	0.05	0.70	2.0%	-0.01	-0.72	-1.1%
Extra Guideline												
Convicted at Trial	-0.16	-1.43	-6.2%	0.01	0.23	-0.1%	-0.19	-1.43	-7.5%	0.00	-0.15	-1.0%
Age at Sentencing	**-0.05**	-2.55	**-0.6%**	-0.01	-0.87	-0.2%	-0.04	-1.61	-0.8%	0.00	-0.78	-0.1%
Age squared	0.00	1.90		0.00	0.70		0.00	0.73		0.00	0.78	
Female	**-0.33**	-2.66	**-12.5%**	-0.01	-0.41	-2.4%	**-0.39**	-3.71	**-15.3%**	**0.05**	2.00	**3.7%**
Hispanic	0.04	0.19	1.6%	-0.09	-1.29	-8.1%	0.09	0.46	3.7%	**-0.10**	-2.36	**-8.9%**
White	-0.08	-1.00	-3.1%	-0.02	-1.07	-2.2%	-0.01	-0.08	-0.2%	0.00	0.06	0.1%
Constant	**-1.09**	**-3.02**		**2.02**	**13.84**		**-0.86**	**-2.23**		**1.91**	**17.30**	
Mills Ratio	-0.05						-0.05					
rho	-0.21						-0.19					
sigma	0.25						0.24					
Percent correctly predicted												
Null model	64%						63%					
Percent correctly predicted	92%						90%					
Percent reduction in error	76%						74%					
Percent correct no prison	99%						99%					
Percent correct prison	76%						75%					

The Minnesota guidelines distinguish between attempts and completed offenses, as well as between conspiracies and non-conspiracies, when determining recommended sentence length. Conviction of an attempt or conspiracy serves to cut recommended prison length in half. Both coefficients are significant in both models, with attempt reducing the predicted sentence by 38% in Model 1 (40 percent in Model 2) and conspiracy reducing it by 39% in Model 1 (47% in Model 2). The finding that these two coefficients are close to the mandated formula (i.e., 50% reduction in sentence) shows consistent application of these modifiers by Minnesota judges.

The Minnesota guidelines require a "substantial and compelling" reason to depart. For the cases under study, Table O shows that aggravated durational departures occur in about 2% of cases, and mitigated departures happen in between 9% and 17% of cases. The two departure variables are significant in both models. A departure above the recommended range leads to a 44% increase in the sentence for both Models 1 and 2, while a departure below the recommended range leads to a decrease of 32% in Model 1 (31% in Model 2) in the prison length.

In addition to controlling for all guideline relevant factors, the models examine the potential role of attorney type and extra guideline factors (e.g., age, sex, and race). With respect to attorney type, the model shows that, all else being equal, offenders represented by Holistic receive a prison sentence 7.3% shorter than offenders represented by Private. There is no observed difference in sentence length based on attorney type in the second model comparing Holistic to Traditional.

None of the extra guideline variables are significant in Model 1 (Holistic v. Private). However, Female is slightly significant and positive, and Hispanic is significant and negative in Model 2 (Holistic v. Traditional). Overall, the extra guideline factors—trial, age, sex, race, ethnicity, and location—play a modest role in both sentencing decisions in Minnesota. While sometimes significant, their role does not appear to be substantively very large.

3. Role of Attorney

As noted above, Model 1 finds that clients represented by Holistic have an 11% *greater* chance of receiving a prison sentence than do clients represented by Private, all else being equal. However, Model 1 also finds that for clients sentenced to prison, those represented by Holistic receive a sentence that is 7.3% *shorter* than those represented by Private. This raises the question of how to gauge the overall impact of attorney type in Hennepin County. In contrast, Model 2 finds no difference between Holistic and Traditional in the likelihood of receiving a prison sentence or in the length of prison sentence imposed.

Determining the overall effect of Holistic defense in Hennepin County is complicated by having two connected "outcomes"—the likelihood of receiving a prison sentence (instead of a jail sentence or probation) and the estimated length of that sentence—moving in opposite directions, with clients represented by Holistic having a higher chance of receiving a prison sentence but a lower length of sentence if received. Consequently, it is difficult to ascertain the overall impact that type of attorney has on estimated incarceration. To address this difficulty, the "expected prison sentence" was estimated for every case in the analysis by multiplying the estimated probability of receiving a prison sentence by the estimated prison sentence received if a prison sentence is expected. The resulting expected prison sentence for each defendant is the amount of prison time expected given all the facts of the case, modified by the probability of receiving that time as shown in Table Q.

Table Q. Comparing Expect Prison Sentences (in months)

	Hennepin Private Attorney	Hennepin Holistic Defender	Expected Difference
Expected prison sentence	16.1	11.9	4.2*

* indicates statistically significant difference between attorney types (difference of means, $p < .05$).

The average expected prison sentence is approximately four months shorter for clients of Holistic than for clients of Private, controlling for other conditions such as offense severity, criminal history, other sentencing factors, and demographics. This difference is statistically significant.

VIII. CONCLUSION

Few issues in the American justice system evoke more controversy than the quality of court-appointed attorneys. Several factors are said to reduce the quality of publicly appointed attorneys in comparison to the quality of privately retained counsel, including excessive workload, inadequate compensation, inexperience, and cooptation by the rest of the courthouse community. Such constraints are said to limit the effort devoted to individual cases and to curtail overall effectiveness. The level of effort extended, however, is difficult to measure objectively. Moreover, it is impossible to assess the effectiveness of that effort without examining the results. This Article has explored the consequences of the attorneys' effort in terms of the effectiveness of case processing practices and the quality of client outcomes. The analysis has focused on outcomes achieved by (1) holistic public defenders compared with privately retained counsel; and (2) public defenders practicing holistic defense compared with public defenders practicing a more traditional model of representation.

The evidence gained from an examination of felony case resolution in Minnesota shows that holistic and traditional public defenders are more successful than privately retained counsel in terms of the effectiveness of case processing practices. This is an important new finding, as only minimal attention has been paid in the literature as to how cost-effectiveness and efficiency of system case processing practices vary by type of attorney. Five performance measures focused on timely case processing, early intervention in the case, and control of the number of continuances and court appearances needed to effectively resolve a case; variation in results among alternative types of defense counsel was examined. With respect to the timeliness of case processing, both holistic and traditional public defenders resolved their cases in a more timely fashion than privately retained counsel. In this analysis, case processing time was assessed in relation to time standards developed to balance concerns of quality and timeliness. Greater compliance with time standards is deemed positive because prolonged litigation can harm clients, especially if they are incarcerated, and increase the cost and burden of the accused to defend themselves. In addition, timely case processing helps clear space on crowded dockets for the system-wide benefit of defense counsel, prosecutors, and judges.

Measures 2 and 3 focused on the number of days from case filing to appointment of counsel and from case filing to initial appearance. No difference was found in the time to appointment between public defenders and private counsel in Hennepin and Ramsey counties (although a difference was found in Anoka County). In both these jurisdictions, clients benefited from early access to legal counsel, with more than one-half being provided attorneys within seventy-two hours. Timely appointment of counsel also meant the majority of public defender clients in Hennepin and Ramsey were represented at initial appearance—their first hearing before a judge. In fact,

a significantly higher proportion of clients represented by public defenders as compared to private counsel in Hennepin and Ramsey counties had their initial appearance conducted within seventy-two hours.

Two other measures of cost-effective case processing relate to the number of hearings required to resolve a case and evidence of redundant work caused by continuances. Diligent defense counsel seek to hold just the number of court hearings necessary to reach the best outcome for their client. Unwarranted hearings only serve to prolong the case, misuse court resources, inconvenience clients, and waste valuable attorney time. The analysis shows that public defenders in all three jurisdictions hold significantly fewer hearings in resolving cases than privately retained counsel (an average of 5.6 hearings per disposition v. 7 hearings per disposition). Public defenders in these three locations also had significantly fewer continuances than private counsel. While continuances can benefit the defense in certain situations, such as allowing time for the full exchange of discovery, excessive use of continuances slows the process and wastes resources. Data from these courts show public defenders average about one fewer continuance per case than privately retained counsel, thereby providing the system with more cost-effective case processing.

The enhanced efficiency gained by holistic and traditional public defenders does not come at the expense of the clients. Public defenders, both holistic and traditional, are as successful as are privately retained attorneys in achieving favorable outcomes for their clients. Felony cases can be resolved in several ways; certain outcomes are more preferable from the client's perspective. Clients have a clear preference for having their cases dismissed or in being acquitted at trial, although a positive outcome can also include having the charges at conviction reduced from those at indictment. While such charge reductions do not typically eliminate punishment, they may substantially reduce the severity of penalty faced by the convicted client. Finally, if found guilty by plea or trial, convicted offenders benefit from shorter prison sentences.

One basic goal of the defense attorney is to minimize the possibility of criminal sanctions. The lower the conviction rate for a given type of defense attorney, the more successful the attorney is in gaining favorable outcomes. The most favorable outcome for a client is the dismissal of the case (Measure 6). At 17%, Hennepin holistic defenders had the highest level of dismissals, a rate significantly higher than Hennepin privately retained counsel (13%). There is no difference in dismissal rates between attorney types in Ramsey and Anoka. In terms of overall conviction rates, this analysis found no difference based on type of attorney across the three sites.

Measure 7 focused on trial outcomes, specifically the acquittal rate. Nationally, trial rates in felony cases represent about 3% of dispositions, which is essentially the rate observed in Ramsey and Anoka counties. In contrast, an overall trial rate of nearly 16% in Hennepin County is well above average for both holistic defenders (15%) and private counsel (18%), although the higher rate for privately retained attorneys is statistically significant. However, in terms of trial outcomes, there was no statistically significant difference in the conviction or acquittal rates among different types of attorneys.

Because most defendants are convicted, an important outcome sought by most clients is a reduction in the seriousness of charge at conviction (Measure 8). If the offense at conviction is less serious than that with which the client was initially charged, this outcome is favorable. While relatively few cases involved charge reductions, results across all three jurisdictions show privately retained attorneys were significantly more successful in gaining charge reductions (14% of clients overall) than public defenders (11% of clients overall).

Sentencing outcomes capture important aspects of criminal defense attorney performance for clients who have been convicted of a felony. With liberty at stake, defense attorneys seek the minimum chance of incarceration for the least length of time. Sentencing in the jurisdictions examined is strongly shaped by the Minnesota Sentencing Guidelines, which are presumptive and impose tight structure on the sentencing decision. Three types of independent variables were examined. First, all elements of the guidelines are included, with the guideline recommendation strongly influenced by the legally relevant factors of the severity of charge at conviction and the extent of the client's prior record. Second, whether certain extra-legal factors—the client's age, sex, ethnicity, and race—influence the sentencing decision was also examined. Third, type of defense attorney was distinguished. This final control, included for the first time, examines the extent to which there is still room for the type of defense counsel to have an independent effect on sentencing outcomes within the context of sentencing guidelines. In Hennepin County, the results suggest that holistic public defenders outperform private counsel.

Measures 9 and 10 focus on the two stages of the sentencing process: the judicial decision of whether to impose a prison sentence and the length of the sentence imposed. Given the design and structure of the sentencing guidelines, the null hypothesis anticipates no independent effect based on attorney type. A finding of no difference was confirmed in the analysis comparing Hennepin Holistic defense v. traditional public defense in Ramsey and Anoka (Model 2). However, in Hennepin County, attorney type was found to make a difference in whether an offender is incarcerated and for how long within the framework established by the sentencing guidelines (Model 1).

Clients represented by Hennepin holistic have a higher likelihood of receiving a prison sentence than do clients represented by Hennepin private attorneys. On the other hand, clients represented by Hennepin holistic gained shorter sentences than did clients represented by Hennepin private counsel. To reconcile these divergent effects, the expected prison sentence for every case was calculated by multiplying the estimated probability of receiving a prison sentence by the estimated prison sentence received if a prison sentence is expected. The results show that clients represented by Hennepin holistic receive an expected prison sentence approximately four months shorter than clients of privately retained attorneys, controlling for such factors as offense severity, criminal history, other sentencing factors, and demographics. This finding challenges the common notion that public defenders lack the commitment and skill level to rigorously defend their clients.

The results suggest that public defenders outperform privately retained counsel, raising several issues for consideration. First, the results suggest that policymakers and the criminal justice community are not required to choose between the effective case processing practices and the quality of case outcomes when it comes to providers of criminal defense. Evidence indicates that, as far as public defenders are concerned, both goals are possible to achieve. The fact that these goals are not necessarily in conflict means that the task confronting funders is to organize a public defense system responsive to community needs and circumstances that achieves both goals. While this task is neither easy nor obvious, the lesson to be learned is that funders of public defense have an opportunity to design a system where both case processing effectiveness and quality outcomes are attained.

This finding is an interesting contrast to the recent outcome in an analysis of cases in which the Bronx Defenders provided representation.[95] Notably, representation by the Bronx Defenders, a provider of holistic defense, was associated with a 9% increase in time to initial disposition as compared to traditional representation. Hypothesized explanations were that holistic defenders strategically delay cases to address defendants' social or substance abuse treatment needs, or that screening processes delay case disposition. The current study did not identify meaningful differences in measures of case processing efficiency (continuances, time to disposition) between holistic and traditional defense providers, finding that both are more efficient than private practitioners.[96] This suggests that screening and addressing defendants' social services needs, both of which occur in Hennepin County, need not necessarily result in case processing delays. Furthermore, representation by the Bronx Defenders was associated with reductions in the likelihood of receiving, and the average duration of, a custodial sentence when compared to traditional public defense. Neither of these differences were observed in the current study when comparing outcomes in Hennepin with Ramsey and Anoka counties.[97] One explanation for the different results observed in the current study may be variation in the strategies or practices implemented by the Bronx Defenders as compared to the HCPD.

Second, the results are helpful in identifying which aspects of system and client outcomes are measurable and translatable into performance metrics, as well as which aspects warrant further research and development. The measures examined here seem sufficiently feasible, and the results sufficiently meaningful, to merit inclusion in the monitoring of indigent defense systems. Of course, it is possible to develop a wide range of additional performance indicators to address a broader set of public defense system goals. For example, if one goal of a successful public defender office is to reduce reliance on pretrial detention, then assembling data on such factors as the percentage of clients held in jail, the number of days of pretrial

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[95] *See* Anderson, *supra* note 35, at 864.

[96] *Id*. ("Holistic representation was, however, associated with a 9% increase in the amount of time it takes to resolve a case.")

[97] Although significant differences in case outcomes were not observed between Hennepin and Ramsey/Anoka counties, representation by the HCPD was associated with a higher likelihood of receiving a prison sentence and a shorter average sentence when compared to Hennepin County private practitioners. *See supra*, pages 53-56.

incarceration, the bail or bond conditions, and the number of bail or bond reduction motions filed and granted can provide insight into public defender practice generally. The issue becomes identifying a reasonable set of performance measures useful for evaluating the cost-effectiveness and quality of public defense systems that are workable and supported by management information systems. Consequently, it is incumbent on judges, policymakers, and criminal defense providers to determine what information should be gathered to assess public defender success in providing high-quality representation to their clients.

Third, the results also highlight limitations in our current ability to differentiate how the model of holistic public defense compares with the traditional model of public defense in terms of attorney performance and client outcomes. In theory, holistic defense asks public defenders to do more for their clients than merely satisfy minimal constitutional requirements. At its core, holistic defense strives for high-quality, client-centered criminal defense representation that goes beyond the traditional defense model in several ways, such as an increased focus on collateral consequences, social service needs, and tailored treatment plans. One potential benefit of this enhanced scope of service is that it achieves more favorable client outcomes. So, what are we to make of the current results that find few differences between the outcomes obtained by holistic public defenders and traditional public defenders? One interpretation supported by the evidence is that the quality of public defense is high in all three jurisdictions examined.

Another consideration is that many aspects of holistic defense serve to provide more authentic and effective representation as an end in itself. That is, holistic defense provides a truer means to effective assistance of counsel regardless of case outcome. As is the case with many features of public defender performance, the information has not yet been compiled to measure whether holistic defenders are better than traditional defenders at, for example, identifying potential collateral consequences, making the appropriate level of investigation into the facts of the case and the client's circumstances, and ensuring the client has the information necessary to make an informed decision regarding the case and proposed course of defense. Such issues are partially addressed in a complementary study undertaken in Hennepin and Ramsey counties, drawing on client interviews to assess the extent to which the aspirations of holistic defense result in enhanced client-centered representation.[98] The findings suggest that clients in Hennepin County were more likely to report that involvement by a defense team (e.g., attorneys and social workers) increased client satisfaction, sense of procedural justice, and, in some cases, improved case outcomes. The most stated reason for greater satisfaction was the presence of social workers in Hennepin County, who enhanced clients' experiences and whose interventions led to better fulfillment of clients' legal and social service needs. While these results are promising, other clients did not perceive that they were provided with robust holistic support, implying that there remains room in Hennepin County to more fully apply the holistic model.

[98] Brian J. Ostrom & Jordan Bowman, *Examining the Effectiveness of Indigent Defense Team Services: A Multisite Evaluation of Holistic Defense in Practice* (Nat'l Ctr. St. Courts, Working Paper No. 254549, 2019).

The current research identifies many strengths of public defense in the sites examined and raises new questions for our understanding of holistic defense in practice. With growing interest in empirical research on indigent defense and the factors that distinguish alternative models of defense representation, the time is right for holistic defenders to gather empirical evidence on an expanded set of processes and outcomes showing how holistic practice can play an integral role in continuing to improve the delivery of indigent defense services in the United States.