



# Bureau of Justice Statistics Selected Findings

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# Indigent Defense

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Court-appointed legal representation for indigent criminal defendants plays a critical role in the Nation's criminal justice system. In 1991 about three-quarters of State prison inmates and half of Federal prison inmates reported that they had a court-appointed lawyer to represent them for the offense for which they were serving time. In 1989, nearly 80% of local jail inmates indicated that they were assigned an attorney to represent them for the charges on which they were being held. This report presents selected findings drawn from Bureau of Justice Statistics (BJS) surveys containing information related to indigent defense for criminal defendants.

## Types of delivery systems

Although the U.S. Supreme Court has mandated that the States must provide counsel for indigents accused of crime, the implementation of how such services are to be provided has not been specified. The States have devised various systems, rules for organizing, and funding mechanisms for indigent defense programs. As a consequence, each State has adopted its own approach for providing counsel for poor defendants.

## Highlights

- States and localities use several methods for delivering indigent defense services: public defender programs, assigned counsel, and contract attorney systems.
- Twenty-eight percent of State court prosecutors reported that their jurisdictions used public defender programs exclusively to provide indigent counsel.
- In 1990 State and local governments spent approximately \$1.3 billion on public defenders services. In 1979 this figure was about \$300 million.
- About three-fourths of the inmates in State prisons and about half of those in Federal prisons received publicly-provided legal counsel for the offense for which they were serving time.
- In 1992 about 80% of defendants charged with felonies in the Nation's 75 largest counties relied on a public defender or on assigned counsel for legal representation.
- Little current information is available regarding the workload, staffing, procedures, or policies for indigent defense services across the Nation.

Three systems have emerged throughout the country as the primary means to provide defense services for indigent defendants.

*Public defender programs* are public or private nonprofit organizations with full- or part-time salaried staff. Local public defenders operate autonomously and do not have a central administrator.

By contrast, under a statewide system, an individual appointed by the governor, a commission, council, or board is

charged with developing and maintaining a system of representation for each county of the State. In 30 States a public defender system is the primary method used to provide indigent counsel for criminal defendants. (For a more detailed description see *State-wide Defender Programs: The Lay of the Land*, National Legal Aid and Defender Association, 1992.)

*Assigned counsel systems* involve the appointment by the courts of private attorneys as needed from a list of

available attorneys. Assigned counsel systems consist of two types. Ad hoc assigned counsel systems are those in which individual private attorneys are appointed by an individual judge to provide representation on a case-by-case basis. Coordinated assigned counsel systems employ an administrator to oversee the appointment of counsel and to develop a set of standards and guidelines for program administration.

*Contract attorney systems* involve governmental units that reach agreements with private attorneys, bar associations, or private law firms to provide indigent services for a specified dollar amount and for a specified time period.

### Legal mandate

The sixth amendment to the U.S. Constitution establishes the right to counsel in Federal criminal prosecution. Through a series of cases, the U.S. Supreme Court has extended the right to counsel for indigent defendants to State criminal prosecution. A landmark decision was made in 1963 when the Court held in *Gideon v. Wainwright*<sup>1</sup> that a defendant charged with a felony, including state crimes, had the right to counsel. Almost ten years later, *Argersinger v. Hamlin*<sup>2</sup> extended an indigent's right to counsel to all criminal prosecutions, felony or misdemeanor, which carry a sentence of imprisonment.

<sup>1</sup>Gideon v. Wainwright 372 U.S. 335 (1963).  
<sup>2</sup>Argersinger v. Hamlin 407 U.S. 25 (1972).

### Federal Defender Services

The Federal justice system provides indigent defense to eligible defendants through the Federal Defender Services, community defender organizations, and private attorneys as established by the Criminal Justice Act of 1964, as amended. For more detailed information see, *Federal Defender Services: A Status Report*, Administrative Office of the U.S. Courts, 1993.

### Use of different types of counsel for indigent defense

Traditionally, assigned counsel systems and public defenders have been the primary means to provide legal representation to the poor. In 1992, 64% of State court prosecutors' offices nationwide reported a public defender program in their jurisdiction and 58% indicated an assigned counsel system. In 1992, 25% of prosecutors' offices indicated that their district contracted with law firms, private attorneys, or local bar associations to provide services to indigent offenders.

In 1992 virtually all of the State court prosecutors' offices nationwide (98%) had some felony cases in which an indigent defendant was provided an attorney. A majority of prosecutors' offices (59%) reported only one method was used in their jurisdiction to provide services to poor offenders (table 1).

Among all prosecutorial districts, a public defender program was used exclusively in 28%, an assigned counsel system in 23%, and a contract attorney system in 8%. Forty-one percent of the prosecutors' offices reported a combination of methods were used in their jurisdiction. The most prevalent was a combination of an assigned counsel system and a public defender program reported by 23% of the offices.

In the Nation's 75 largest counties, 43% of the State court prosecutors' offices reported both an assigned counsel system and a public defender program operating in their jurisdiction.

### State and local expenditures for public defense

In 1979 State and local governments spent more than \$350 million to provide legal counsel to indigent defendants (table 2). This included expenditures for civil litigation. In

1990, State and local governments spent an estimated \$1.3 billion for these services. In constant 1990 dollars, the State and local expenditures doubled for public defense from 1979 to 1990. In 1979, State-level expenditures represented about 36% of the overall spending for public defense. In 1990, State contribution accounted for 45% of the State and local total.

### Type of legal representation reported by prison and jail inmates

#### State prison inmates

Ninety-seven percent of inmates in State correctional facilities reported that they had an attorney to represent them for the offense for which they were incarcerated. Seventy-six percent of those who had an attorney were represented by a public defender or assigned counsel. Counsel assigned by the court may include legal representation provided by a public agency or by private attorneys whom the court pays (table 3).

Among those represented by counsel, 79% of black State prison inmates re-

**Table 1. Indigent defense delivery systems used by local jurisdictions, 1992**

Type of system	Percent of prosecutors' offices indicating the type of counsel provided by their jurisdiction
Total	100%
Public defender program only	28
Assigned counsel system only	23
Assigned counsel and public defender	23
Contract attorney system only	8
Public defender and contract	8
Assigned counsel, public defender and contract	6
Assigned counsel and contract	3
Other	1
<b>Number of offices</b>	<b>2,352</b>

Note: Data on type of counsel provided were reported by 98.2% of the prosecutors' offices. Data source: National Prosecutors Survey, 1992.

ported they had been represented by an assigned attorney. Among white State prison inmates, 73% said they had been represented by an assigned attorney.

Among State prison inmates incarcerated for property offenses, 85% had an assigned counsel; for violent offenses, 74%; and for drug offenses, 70% (table 4).

*Federal prison inmates*

Ninety-nine percent of Federal inmates reported that they were represented by counsel. Forty-three percent of those who had an attorney, hired private counsel (table 3). Nearly 50% of white Federal inmates hired private counsel, as did 33% of black Federal inmates. Almost two-thirds of black Federal

inmates were assigned counsel by the court.

Overall, among those Federal inmates serving time for violent offenses, 72% had court assigned counsel; for property offenses, 53%; and for drug offenses, 48% (table 4).

*Local jail inmates*

Eighty-three percent of jail inmates said they had a lawyer to represent them for the offense for which they were being held. Among those who had legal representation, about three-fourths had assigned counsel (table 5). About three-fourths of those in jail for a drug or violent offense relied on assigned counsel. Among those charged with property offenses, 85% had assigned counsel (table 6).

About two-thirds of those jail inmates with hired counsel said they first met with their attorney either before admission or during the first week after admission (table 7).

**Table 5. Type of counsel representing inmates in local jails, 1989**

Inmates	Percent of local jail inmates with counsel		
	All*	White	Black
Counsel			
Hired	22%	25%	19%
Assigned	78	75	81
<b>Number of inmates</b>	308,976	169,219	130,341

Note: Data on type of counsel were reported for 99.9% of inmates who had some type of legal representation.  
\*Includes all races.

Data source: 1989 Survey of Inmates in Local Jails.

**Table 2. State and local expenditures (in thousands) for public defense,\* 1979-1990**

	1979	1985	1988	1990
Total	\$357,030	\$711,243	\$1,012,831	\$1,336,266
State	127,892	297,555	427,788	603,674
Local	239,159	433,068	617,910	788,437
Counties	196,296	350,603	480,515	605,708
Municipalities	44,638	85,782	142,946	189,362

Note: Expenditures presented are not adjusted for inflation.  
\*Public defense includes legal counsel and representation in either criminal or civil proceedings as provided by public defenders and other government programs. Detail may not add to total because of rounding.

Sources: *Justice Expenditure and Employment in the U.S., 1979* (table 40); 1985 (table 35); 1988 (table 35); 1990 (tables 2 and 4).

**Table 3. Type of counsel representing inmates in Federal and State correctional facilities, 1991**

	State			Federal		
	Percent with lawyers			Percent with lawyers		
	All*	White	Black	All*	White	Black
Counsel						
Hired	22%	25%	19%	43%	49%	33%
Assigned	76	73	79	54	48	64
Both hired and assigned	2	2	2	3	3	3
<b>Number of inmates</b>	679,590	336,492	319,324	52,645	33,299	16,578

Note: Data on type of legal representation available for 99.8% of State prison inmates and 99.7% for Federal. Totals do not include 3.1% State prison inmates and 1.2% of Federal who did not have legal representation.  
\*Includes all races.

Data sources: 1991 Survey of Inmates in State Correctional Facilities and 1991 Survey of Inmates in Federal Correctional Facilities.

**Table 4. State and Federal inmates assigned counsel, by race and type of offense, 1991**

Most serious offense	Percent of inmates with court assigned counsel					
	State			Federal		
	All*	White	Black	All*	White	Black
<b>Violent offenses</b>	74%	71%	77%	72%	67%	75%
Murder	66	65	67	74	66	70
Negligent manslaughter	64	59	67	--	--	--
Rape	73	67	80	--	--	--
Robbery	81	80	82	82	83	81
Assault	78	73	82	63	--	--
<b>Property offenses</b>	85%	83%	88%	53%	44%	70%
Burglary	86	84	89	80	--	--
Larceny	85	82	88	62	--	--
Motor vehicle theft	89	87	93	--	--	--
<b>Drug offenses</b>	70%	65%	74%	48%	43%	60%
Drug possession	73	71	75	49	47	53
Drug trafficking	68	62	73	49	42	61
Other drug	73	52	83	45	36	59
<b>Public-order offenses</b>	75%	72%	78%	55%	50%	63%
Weapon	72	65	78	60	53	65
Other	75	74	79	49	47	57
<b>Other offenses</b>	83%	81%	84%	45%	39%	--
<b>Number of inmates</b>	675,659	334,165	317,889	52,485	33,228	16,508

Note: Current offense data were available for 99.4% of State prison inmate and 99.7% of Federal prison inmates who had legal representation. Does not include 2% of State and 3% of Federal inmates with counsel who used a combination of assigned and private counsel. Also excludes those inmates who said they did not have counsel. Table does not present all individual offense categories.  
\*Includes all races.

--Sample size was too small to yield statistically reliable results.

Data sources: 1991 Survey of Inmates in State Correctional Facilities and 1991 Survey of Inmates in Federal Correctional Facilities.

## Felony defendants

The BJS State Court Processing Statistics program collects data on a sample of felony defendants in State courts in the Nation's 75 largest counties. Data from 1992 indicated that

**Table 6. Jail inmates assigned counsel, by race and offense, 1989**

Most serious offense	Percent of jail inmates with court assigned counsel		
	All*	White	Black
<b>Violent offenses</b>	77%	76%	78%
Murder	70	74	68
Negligent manslaughter	52	54	--
Rape	86	87	--
Robbery	82	84	81
Assault	77	77	77
<b>Property offenses</b>	85%	83%	87%
Burglary	86	84	88
Larceny	86	84	88
Motor vehicle theft	88	84	93
<b>Drug offenses</b>	74%	70%	78%
Drug possession	74	72	76
Drug trafficking	74	69	79
Other drug	79	75	89
<b>Public-order offenses</b>	71%	68%	78%
Weapon	64	55	78
Other	71	69	78
<b>Other offenses</b>	77%	82%	73%
<b>Number of inmates</b>	308,486	168,812	130,258

Note: Current offense data were available for 99.8% of local jail inmates with representation. Table does not present all individual offense categories.  
 \*Includes all races.  
 --Sample size was too small to yield statistically reliable results.  
 Data source: 1989 Survey of Inmates in Local Jails.

about 80% of the felony defendants relied on a public defender or on assigned counsel for legal representation (table 8).

**Table 7. When jail inmates first talked with lawyer by type of counsel, 1989**

First met with lawyer	Percent of jail inmates	
	Hired counsel	Assigned counsel
Before admission	28%	13%
During 1st week after admission	41	34
During 2nd week after admission	10	15
More than 2 weeks after admission	19	34
Don't know	3	4
<b>Number of inmates</b>	68,409	230,599

Note: Data available on when first met with lawyer for 98.9% of those with hired counsel and 96.3% of those with assigned counsel. Detail may not sum to 100% because of rounding.

Data source: 1989 Survey of Inmates in Local Jails.

**Table 8. Type of counsel at adjudication for felony defendants in the Nation's 75 largest counties, 1992**

Counsel	Percent of felony defendants
Public defender	59%
Assigned counsel	22
Hired counsel	18
Pro se	1
Other	1
<b>Number of defendants</b>	33,017

Note: Data available for 59.8% of the 55,246 cases. Detail may not sum to 100% because of rounding.

Data source: State Court Processing Statistics program: *National Pretrial Reporting Program, 1992*.

The Bureau of Justice Statistics is the statistical arm of the U.S. Department of Justice. Jan M. Chaiken, Ph.D., is director. BJS Selected Findings summarize statistics about a topic of current concern from both BJS and non-BJS datasets. Priscilla Middleton and Tom Hester edited the report. Tracy Snell provided statistical review.

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### Sources and methodological notes

Findings are drawn from BJS surveys: the Survey of Inmates in Local Jails, 1989; the Survey of Inmates in State Correctional Facilities, 1991; and the Survey of Inmates in Federal Correctional Facilities, 1991.

Respondents in State and Federal correctional facilities and in local jails were asked "Did you have a lawyer for any of the offenses?" and if so, "Did you hire your own lawyer or was one assigned by the court?" Respondents in local jails were asked "When did you first talk to a lawyer about the charge?"

Data on felony defendants in the Nation's 75 largest counties in table 8 were obtained from the State Court Processing Statistics program. This series tracks felony defendants through the criminal justice system including type of legal representation the defendant had at adjudication.

In 1992 National Survey of State Court Prosecutors asked "Were any felony defendants in your districts provided an attorney on grounds of indigency?" and if so, "Which type of defense delivery system was used?"

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