

MISDEMEANOR DEFENDANTS:

Counsel Selection, and the
Consequences of Delayed
Representation

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*Misdemeanor Defendants, Counsel Selection,
and the Consequences of Delayed Representation*¹

Scholarly research has primarily examined the effect of counsel type on case outcomes.²

The present study reorients the focus to examine how case type and defendant demographics might impact whether a person is represented by counsel (Figure 1) and explores the effects, if any, of the procedural timing of obtaining counsel on misdemeanor case outcomes. Prior research highlights the real-world³ and systemic barriers⁴ to counsel, including lawyer deserts and court policies that dissuade the appointment of counsel.⁵ Even in communities with public

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The authors would also like to acknowledge *Sierra Bracewell* and thank her for her efforts in collecting the data for the sample examined here and conducting the historical and contextual background research for this (and other) reports.

² E.g., Amanda Agan, Matthew Freedman & Emily Owens, *Is Your Lawyer a Lemon? Incentives and Selection in the Public Provision of Criminal Defense*, 103(2) *The Rev. Econ. & Stat.* 294 (2021); Ronald Burns, Brie Diamond & Kendra N. Bowen, *Does Type of Counsel Matter? A Comparison of Outcomes in Cases Involving Retained- and Assigned Counsel*, 47(3) *J. of Crime & Just.* 376 (2023); Erin Y. Cornwell, *The Trials of Indigent Defense: Type of Counsel and Case Outcomes in Felony Jury Trials*, 78(3) *Albany L. Rev.* 1239 (2015); Richard D. Hartley, Holly Ventura Miller & Cassia Spohn, *Do You Get What You Pay For? Types of Counsel and Effect on Criminal Case Outcomes*, 38(5) *J. Crim. Just.* 1063 (2010); Alisa Smith & Sean Maddan, *Misdemeanor Courts, Due Process, and Case Outcomes*, 31(9) *Crim. Justice Pol'y Rev.* 1312 (2020); Alisa Smith & Sean Maddan, *The Interaction between Legal Representation and Extralegal Factors on Nonviolent Misdemeanor Case Outcomes*, 43(1) *Just. Syst. J.* 102, 107 (2022); Madhuri Sharma, Lisa Stolzenberg & Stewart J. D'Alessio, *Evaluating the Cumulative Impact of Indigent Defense Attorneys on Criminal Justice Outcomes*, 81 *J. Crim. Just.* (2022).

³ Erica Hashimoto, *The Problem with Misdemeanor Representation*, 70(2) *Wash. & Lee L. Rev.* 1019, 1032-38 (2013) (real-world obstacles include insufficient information to defendants about their rights to counsel, the costs associated with the appointment of counsel, and defendants' interest in quickly resolving their cases).

⁴ *Id.* at 1037-38 (high indigent counsel caseloads and judges not enforcing the right of representation present system barriers).

⁵ Andrew Davies, Shelby Sirivore & Victoria M. Smiegocki, *If You Cannot Afford an Attorney, None will be Appointed for You: Exploring Rates of Representation by Counsel in Texas Misdemeanor Court*, SMU Dedman School of Law (2024); Andrew Davies & Kirstin A. Morgan, *Providing Counsel for Defendants: Access, Quality, and Impact*, in *The Lower Criminal Courts in The Lower Criminal Courts* 45 (Alisa Smith & Sean Maddan eds., 2019); Alissa Pollitz Worden, Andrew Lucas Blaize Davies & Elizabeth K. Brown, *A Patchwork of Policies: Justice, Due Process, and Public Defense Across American States*, 74(3) *Albany L. Rev.* 1423 (2011).

defender offices, defendants might represent themselves ⁶ because of added representation fees,⁷ delays associated with having counsel appointed, or the perceptions that misdemeanors are less serious and lawyers, particularly public defenders, are unnecessary⁸ or not trusted.⁹ Although barriers to counsel access exist, and defendants' choices might be constrained, defendants in the present study were informed of their right to appointed counsel, and representatives from the public defender's office were in court at first appearance and arraignment. Private criminal defense attorneys were available in the communities under study. Given the circumstances, the present study was framed to examine whether there are patterned differences in misdemeanor defendant demographics, case characteristics, and the selection of self-representation rather than representation by court-appointed or private attorneys and the impact, if any, of delayed representation on case processing and outcomes. The present study¹⁰ joins several other reports examining what factors influence the admittedly constrained choice of self-representation by focusing on two related research questions: (1) *Who* selects self-represent rather than private

⁶ American Bar Association, *Gideon's Broken Promise: America's Continuing Quest for Equal Justice* (2004); Robert C. Boruchowitz, Malia N. Brink & Maureen Dimino, *Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts* (National Association of Criminal Defense Lawyers, 2009); Diane DePietropaolo Price, Collete Tvedt, Emma Andersson & Tanya Greene, *Summary Injustice: A Look at Constitutional Deficiencies in South Carolina's Summary Courts* (National Association of Criminal Defense Lawyers, 2016); Alisa Smith, Sean Maddan, Diane DePietropaolo Price & Collette Tvedt, *Rush to Judgment: How South Carolina's Summary Courts Fail to Protect Constitutional Rights* (National Association of Criminal Defense Lawyers, 2017).

⁷ Marea Beeman, Kellianne Elliott, Rosalie Joy, Elizabeth Allen & Michael Mrozinski, *At What Cost? Findings from an Examination into the Imposition of Public Defense System Fees* (National Legal Aid & Defender Association, July 2022).

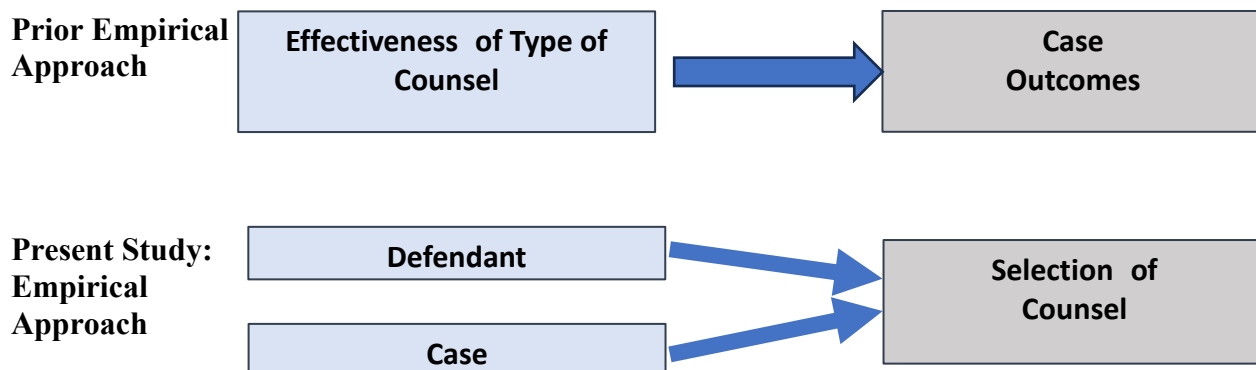
⁸ Alisa Smith, "*It Was Just a Little Situation.*" *A Research Note on Proceeding without Counsel by Misdemeanor Defendants*, 59(2) *Crim. L. Bull.* 173 (2023); Alisa Smith, *The Cost of (In)Justice: A Preliminary Study of the Chilling Effect of the \$50 Application Fee in Florida's Misdemeanor Courts*, 30(1) *U. Fl. J. Law & Pub. Pol'y* 59 (2019).

⁹ E.g., Matthew Clair, *Privilege and Punishment: How Race and Class Matter in Criminal Court* 29 (2020); Janet Moore, Vicki L. Plano Clark, Lori A. Foote & Jacinda K. Dariotis, *Attorney-Client Communication in Public Defense: A Qualitative Examination*, 31(6) *Crim. Just. Pol'y Rev.* 908, 926-30 (2019); Heather Pruss, M. Sandys & S. M. Walsh, "*Listen, Hear My Side, Back Me Up*": *What Clients Want from Public Defenders*, 43(1) *Just. Syst. J.* 6 (2022); Kelsey S. Henderson & Reveka V. Shteynberg, *Perceptions about Court-Appointed and Privately-Retained Defense Attorney Representation: (How) Do They Differ?* 23(3) *Crim., Crim. Just., L. & Soc'y* 45, 46 (2022).

¹⁰ The larger case study gathered data during in-court observations and participant interviews immediately after they resolved their misdemeanor cases and then again later, in telephone interviews over the next six months.

counsel or court-appointed counsel in misdemeanor cases, and (2) *When* do defendants obtain counsel in the criminal case process, and does the timing affect case outcomes?¹¹

Figure 1: Empirical Predictions



In the present study of 437 cases, counsel selection was influenced by location (large or small county), defendant demographics, and case characteristics. The data demonstrates that court-appointed representation was significantly more likely when defendants were charged with serious misdemeanor offenses and had prior criminal histories. Regarding the timing of obtaining counsel, delays in court-appointed representation resulted in more negative consequences for defendants, including lower rates of pretrial diversion and an increased chance of nonappearance. These differences, discussed below, also offer new perspectives in understanding how case outcomes for individuals represented by court-appointed attorneys might appear worse than for those who self-represent or hire private counsel and how changing the timing of the appointment of counsel is foundational to more equitable case outcomes.

Research Design and Methodology

The present study employs administrative misdemeanor data from two counties (one larger and one smaller) in a Southeastern state (n=437). Demographic and case characteristics

¹¹ Smith & Maddan, *Misdemeanor Courts*, *supra* note 2.

data were identified and gathered using publicly available sources to examine what, if any, defendant demographic traits and case characteristics influenced counsel type (i.e., private, court-appointed, or self-representation) and if the timing of counsel impacted case outcomes.¹²

The next section compares the sites and provides the studied courts' history, norms, and procedures. The data collection process, the sample description, analysis and findings, and policy implications are discussed in the subsequent sections.

A. Study Sites

The research sites are adjacent, employing lawyers from the same prosecutor and public defender offices but in geographic areas with contrasting economic and demographic communities. The larger county had more people, with a population of over one million, compared to the smaller county, with a population of less than 500,000. The median income in the large community was higher, with more college-educated and fewer Hispanic residents.

In this state, appointed counsel is not free. Defendants seeking representation must pay a \$50 application fee to apply and qualify for representation. If appointed, there is an additional minimum lawyer fee (\$50).¹³ Defendants who did not qualify for appointed counsel could hire private representation.

Access to private counsel differed in the two counties. According to the state bar association, more lawyers worked in the large county with 7,984 attorneys, and 292 specifying “criminal law” as their practice area compared to 375 attorneys listing the smaller county as their work address and only 25 specifying “criminal law” as their practice area. These numbers may

¹² Since procedures and norms in the lower criminal courts vary widely, generalizing findings from individual court studies is difficult.

¹³ Only those with incomes equal to or below 200 percent of the federal poverty guidelines for the size of their families or those qualifying for Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or supplemental security income (SSI) qualify for the appointment of the public defender.

both under and over-represent the number of criminal defense lawyers in the area because (1) the “criminal law” practice area designation is optional and thus may not include everyone who practices criminal law and (2) the designation included judges, prosecutors, and institutional public defenders.

Misdemeanor crimes and criminal traffic infractions handled by the courts range from petit theft, battery, and trespassing to driving with a suspended license or while intoxicated. In both jurisdictions, arrested defendants may bond out of jail before their first appearance (typically scheduled within 24 to 48 hours of an arrest). Those who cannot post a bond appear before a judge, who reviews the charges, addresses requests and determines eligibility for appointed counsel, makes decisions about release, including special conditions and monitoring, and sometimes accepts pleas.¹⁴ For defendants who are given citations or notices of appearance or are released on bond before their initial appearance, their first appearance occurs concurrently with their arraignment hearing, usually 3-4 weeks after their arrest. Prosecutors review and decide on filing for most misdemeanors, excluding non-DUI traffic charges that may continue on the police-officer-issued citation. In the small county, the clerk issued notices of arraignment only after the prosecutor decided to file, whereas in the large county, defendants were issued notices to appear for arraignment by the police (this meant that on occasion, defendants arrived at arraignment, the prosecutor had not made a filing decision, and defendants were issued a new arraignment date). At the arraignment, defendants are informed of their charges by the trial judge, and the arraignment also serves as a time when the court addresses requests for the appointment of counsel and waivers of counsel. Defendants with private representation and those

¹⁴ At the time of data collection, individual county courts had the discretion to craft bond schedules. Beginning in 2024, the state passed legislation to standardize bond schedules across the state, increasing bond amounts and requiring more defendants to remain in custody until their first appearance, when the trial judge could modify individual bond amounts.

appointed counsel at first appearance generally do not appear at arraignment; their lawyers file written pleas of not guilty and waive their appearance. Unrepresented defendants who appear at arraignment resolve their cases by plea.

B. Historical Background¹⁵

Given the differences in the sizes of the two counties, it is not surprising that more judges and lawyers are assigned to the lower criminal court cases in the large county (with ten assigned judges) than in the smaller county (with two assigned judges).¹⁶ All the judges received their law degrees in the state and nearly all from public institutions. Their judicial experience ranged from a couple of years to nearly twenty years. At the time of this study, fifteen public defenders and eighteen prosecutors were assigned to the large court, and seven public defenders and six prosecutors were assigned to the smaller court. Most attorneys had been recently admitted to practice law. Still, there were a couple of large-county public defenders with two-to-three years of experience and a small-county public defender with nearly nine years of experience. The prosecutors were most often recently admitted to practice law, with several exceptions in the smaller county where a few of the prosecutors had several years of experience.

C. Court Norms and Procedures¹⁷

To understand the norms and procedures of the courts, a public defender and prosecutor were interviewed, and additional information was drawn from their respective organization websites, courthouse websites, and news reports.¹⁸ In this state, misdemeanor cases can begin with an arrest, notice to appear, criminal traffic infraction ticket, or summons issued by the

¹⁵ Research Assistant Sierra Bracewell assisted by conducting research on the history of the studied courts. Errors or omissions are the faults of the first author, not Ms. Bracewell.

¹⁶ The number of judges and lawyers observed in court and bar association records does not proportionally reflect the population of the counties.

¹⁷ Interviews with a public defender and prosecutor were conducted to understand the procedures for misdemeanor case processing and local court norms.

¹⁸ The information was gathered during between Spring 2022 and Spring 2023.

prosecutor's office. In some instances, defendants may enter pleas at first appearance on the police arrest affidavit. For defendants who do not plea, prosecutors review the police affidavits and decide whether to file or decline to file charges formally.¹⁹ Misdemeanor defendants may resolve their cases with or without counsel and enter guilty and no contest pleas at nearly any stage in the proceedings. Defendants can elect to take their cases to trial. For some misdemeanor cases (e.g., battery), defendants are entitled to jury trials but non-jury or judge trials for other cases (e.g., traffic).²⁰ Trials are exceptionally rare, with less than 1% of filed cases resolved by a jury or bench trial.

Arrest and Initial Appearance

Individual law enforcement officers decide whether to arrest defendants. According to an interviewed prosecutor, officers make the arrest decision by assessing case facts (i.e., involving violence or not), the person's criminal history (i.e., lengthy or not), and their living situation (i.e., stable home or not). Officers may issue notices or citations for criminal traffic offenses. More recently, in cooperation with the prosecutor's office, police officers may issue a pre-arrest, civil citation for some non-violent misdemeanor offenses, allowing individuals to avoid arrest and, upon approval of the Prosecutor's Office, participate in a program (paying fees and completing educational courses and community service hours), resulting in the charges not being filed and the case closed upon successful completion.²¹

Individuals who are arrested and do not post bond²² will have a first appearance before a judge within 24 to 48 hours of their arrest. At the first appearance, several critical events can

¹⁹ As previously explained, non-DUI traffic cases may be resolved on the citation at first appearance or arraignment.

²⁰ Defendants are entitled to trials by jury when the punishment for the misdemeanor is more than six months.

²¹ The civil citation program had been agreed upon but not implemented at the time case administrative data was collected.

²² At the time of the study, the counties had bail schedules, allowing most defendants to post cash or surety bonds to gain release from custody before the first appearance.

occur. The first appearance judge determines bail or if the defendant is otherwise eligible for release from custody. Those charged with crimes not involving a victim, such as trespassing or driving while their license is suspended, may enter a guilty or no-contest plea at this stage.

Any individuals who do not resolve their case at first appearance may ask the court to appoint counsel. The process requires them to complete a financial affidavit for the judge to determine qualification and eligibility for counsel.²³ According to the interviewed public defender, they estimated that in 2020, people had to earn less than \$14,000 to qualify. The defender shared that many misdemeanor defendants want to hire an attorney because of the “stigma surrounding PDs ([calling them] Public Pretender [or] Interns trying to go to law school, etc.)” or they wait to see if the prosecutor files charges before deciding to apply for or retain counsel.

1. Arraignments

If the defendant did not plead guilty at their first appearance, the next step is for the prosecution to review arrest and notice-to-appear cases (except non-DUI criminal traffic charges) and decide whether to file formal charges. Prosecutors may decline to file charges (issue a “no information”), downgrade the initial charge(s), increase the charge(s), or maintain the charge as brought at arrest. Even if the prosecutor elects to proceed with the charge, they may later dismiss or nolle prosequi the charges. Prosecutors might decline to file charges (issuing a “no information”), or they may file and later dismiss (with prejudice) or nolle prosequi (without prejudice for refiling) the charges.²⁴ When interviewed, the prosecutor shared various reasons for

²³ As noted earlier, the eligibility threshold is that the defendant must earn no more than 200 percent of the applicable federal poverty guideline.

²⁴ The arrests and cases remain public record unless the defendant seeks to seal or expunge the records, and this is only available for some types of cases and defendants.

their decision not to file charges and dismiss charges later. Some of those reasons included victims not wanting to prosecute or defendants' participation in diversion programs.

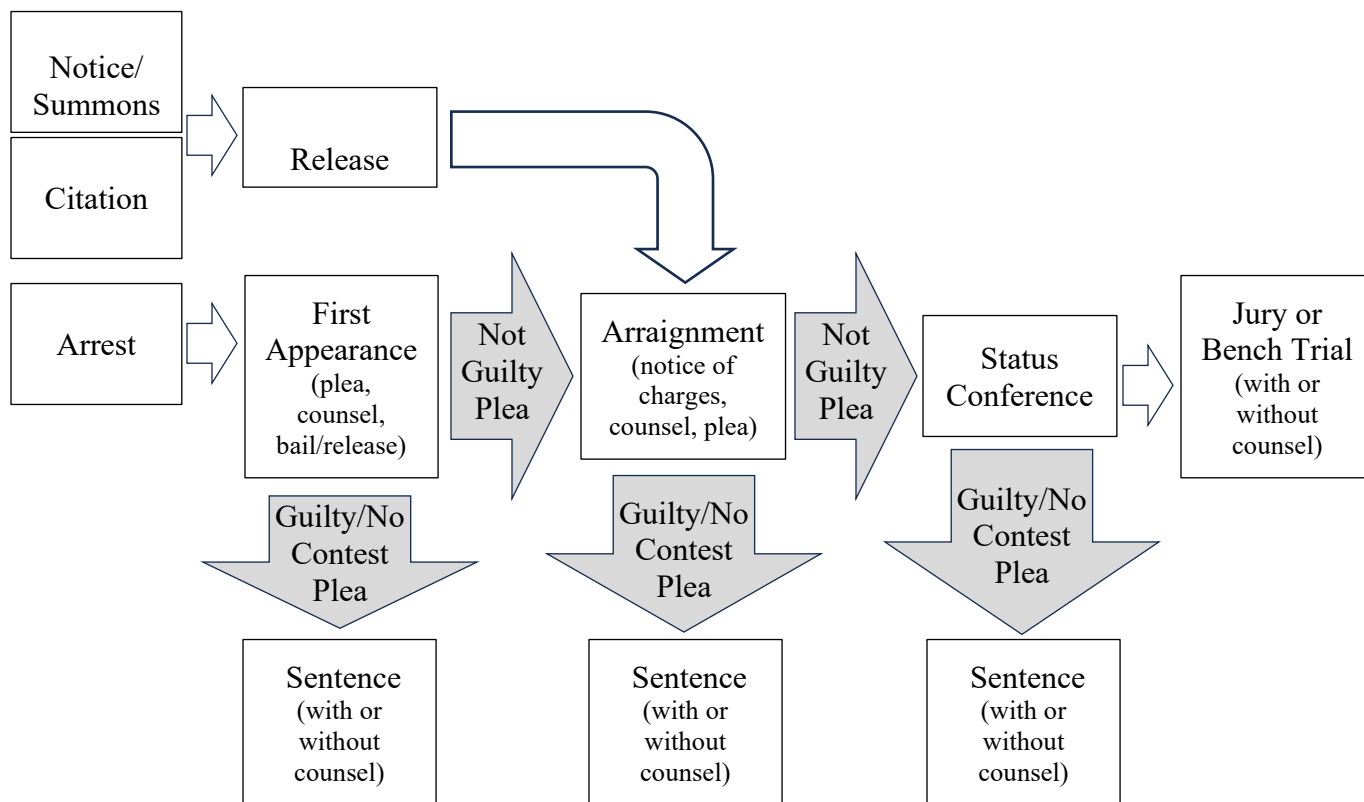
If charges are filed, the next step is an arraignment hearing. At this hearing, the defendants are advised of the charges. They are also provided another opportunity to apply for court-appointed counsel. The interviewed public defender described that the judge or prosecutor “will often make a quick offer to resolve” cases to defendants at their arraignment. They further explained that the “majority of people” choose to resolve their cases without any counsel. She explained that by proceeding without appointed counsel, “save[s] them about \$100 (\$50 application fee and \$50 PD lien).”

Defendants are notified of the arraignment in several ways. First, if they were issued a notice to appear or a traffic citation, the date and location for the arraignment are on the notice or ticket. Defendants released on a secured bond are notified of their arraignment date by their bail bondsmen. Those released without bail (for example, on their recognizance) are notified by mailing the notices to the address listed on the police report. In cases where the prosecutor and police are conducting investigations, the clerk’s office issues summons (or notices) when the prosecutor’s office files charges. Two noticeable anomalies were observed. In the large county, arraignment date notices were automatically provided to defendants by the police so that occasionally, defendants appeared for arraignment, but the prosecutor had not made a filing decision. In those cases, defendants were provided, in court, with another date for arraignment. In the small county, the clerk issued notices only when the prosecutor filed charges. The notices are mailed to the address listed on the police report. For transient defendants, the notices were addressed generally to “Transient, General Delivery” without an address (see Appendix

B–Example Notice). Obviously, those notices went unserved, and despite nonservice, warrants for failing to appear at arraignment were issued.

For those who are found financially eligible, a court-appointed lawyer is appointed after defendants complete and submit affidavits reporting their income and expenses (see Appendix A – Sample Affidavit). The county clerk determines that they qualify for public counsel based on their debts and assets. The interviewed public defender also explained that defendants who enter not-guilty pleas at arraignment usually have two additional court dates. The first is a pretrial conference, which gives the attorneys and defendant deadlines for offering pleas, exchanging evidence and discovery, and filing motions. The parties announce pleas or schedule trials. The second hearing, if needed, is for the jury or bench trial. Defendants may accept pleas at any point before verdicts are announced if the judges accept the pleas. See Figure 2, depicting the case processes and opportunities for misdemeanor case resolutions.

Figure 2. Misdemeanor Case Flow



Data Methods and Procedures for Collecting Administrative Data

Administrative data were collected during eight weeks of court observations in the smaller county (n=112) from June 1 to July 31, 2022, and two weeks in the large county (n=325) from March 29 to April 8, 2022.²⁵ Each case was identified through publicly available portals from the clerks' offices. The defendant demographics and case characteristics are examined specifically to identify *who* self-represented compared to *who* hired private counsel and *who* accepted court-appointed counsel in misdemeanor cases (Research Question 1). Thereafter, the timing of obtaining counsel and the effects, if any, on case outcomes are examined (Research Question 2). The final section discusses and draws conclusions from the research findings.

Sample Description

The vast majority (n=325) of cases in the sample were gathered from the large county, accounting for approximately 75% of the total cases evaluated in this study. The remainder (n=112) were collected in the smaller county, accounting for 25% of the total sample.²⁶ The case characteristics and defendant demographics of the sample are described next.

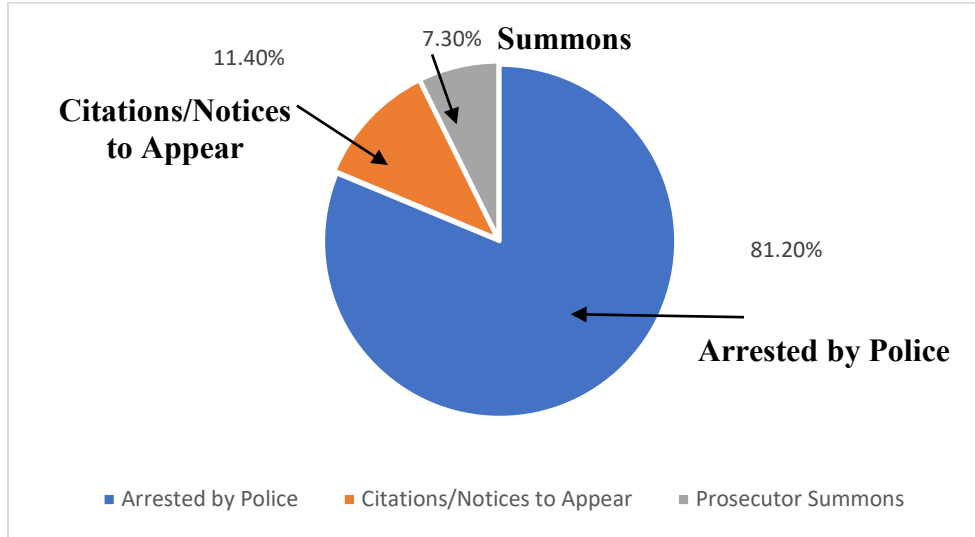
1. Case Characteristics

Most defendants in the data set were arrested by the police (81.2%). Of the remaining group, some were given citations or notices to appear in court (11.4%), and others were summoned to their court appearances by the prosecutor's office (7.3%). See Figure 3 displaying case initiations.

²⁵ Cases with missing information were removed from the analysis; the specific sample sizes are noted in the discussion and tables below.

²⁶ The sample size approximates the differences in the size of the county and the disparity in caseloads.

Figure 3. Misdemeanor Case Initiation



The initial police charges were wide-ranging, from crimes of violence (e.g., battery) to relatively minor traffic infractions. The most frequently occurring initial charges were for battery (34.5%), followed by petit theft (18%) and trespassing (12%), with the remainder scattered among a variety of offenses. After the first appearance, prosecutors evaluate most of the initial charges brought by police officers, except non-DUI traffic citations,²⁷ and decide whether to (1) file charges, (2) decline to charge, or (3) modify (up or down) the initial charges. For example, defendants charged with felony battery or grand theft might result in declinations (“no information filed”) or reduced charges to misdemeanors, like battery or petit theft. The data shows prosecutors declined to file nearly a third of police-initiated charges (29.1%). Like the initial police charges, the most common prosecutor-filed charges were for the offenses of battery, petit theft, and trespassing (64.2%). See Table 1, which shows the charges filed by the prosecutor.

Table 1. Prosecutor-Filed Charges

²⁷ Even for non-DUI traffic cases, if the judge or defense counsel raises an issue with the citation, the prosecutor reviews the matter and may change the charges by increasing, decreasing, or dismissing them.

	Large County ²⁸	Small County ²⁹
Charge Type	Percent	Percent
Alcoholic Beverages - Open Container	1.8	-
Allowing Livestock to Run at-large	0.3	-
Attempted Resisting Officer without Violence	0.3	-
Battery	7.7	9.9
Camping - Prohibited	0.3	-
Carrying Concealed Weapon/Firearm	1.2	-
Criminal Mischief	1.8	1.8
Disorderly Conduct	3.4	0.9
Driving While License Suspended	0.3	-
Hunting Deer Out of Season	-	0.9
Illegal Parking	1.2	-
Improper Exhibition of Dangerous Weapon	0.6	-
Loitering	0.6	-
Misuse of 9-1-1	0.3	-
Open Carry of Weapons/Firearms	1.2	0.9
Open Container	0.3	-
Operating a Vessel without Displaying Hull ID Number	0.3	-
Petit Theft	18.9	50.1
Possession of Drugs	0.3	-
Possession of Drug Paraphernalia	0.6	-
Practicing Massage without State License	0.3	-
Prostitution	0.3	0.9
Providing False ID to Law Enforcement	0.9	2.7
Personal Watercraft Violation	0.3	-
Resisting Arrest without Violence	3.7	11.6
Sell, Give, Serve Alcohol to Someone under 21	-	1.8
State Misdemeanors	0.3	-
Taking Game During Closed Season	0.3	-
Theft of Utilities	-	2.7
Threat to Public Officials	0.3	-
Trespassing	11.3	7.2
Unlawful Contracting	0.9	-
Unlawful Possession of Alligator(s)	-	0.9
Urinating or Defecating in Public	0.6	-
Violation of Injunction for Protection (Domestic Violence)	0.6	0.9
Violation of PTR Conditions (DV)	1.2	1.8

N=325

(*37.2% = No information was filed)

N=112

(*5.4% = No information was filed)

²⁸ Twenty-five defendants had more than one charge.

²⁹ Eight defendants had more than one charge.

Offense seriousness is a common metric used in court research, especially at the felony level, where this variable is incorporated into sentencing guidelines. Unfortunately, there are no standardized measures of offense seriousness in the lower courts; the lower criminal courts do not utilize sentencing guidelines. In this state, misdemeanors are categorized as first- and second-degree, but the distinctions were not captured in this data set. For example, petty theft is a second- and first-degree misdemeanor, depending on the amount of the theft or second offense. Without this distinction, we were unable to categorize offenses on this basis. Some researchers have distinguished between violent and nonviolent misdemeanor crimes,³⁰ and others measured seriousness by crime types, including drug offenses, property crimes, and crimes of violence.³¹ Here, we defined “seriousness” by selecting the most commonly occurring misdemeanors: battery (a violent offense), petit theft, and trespass (property crimes) and those that are comparatively more serious than the vast majority of crimes prosecuted in these lower criminal courts. The sample data on how cases were initiated, offense seriousness, prosecutor-filed charges, and charge seriousness are shown in Table 2.

³⁰ Ed A. Muñoz, Barbara J. McMorris & Matt J. DeLisi, *Misdemeanor Criminal Justice: Contextualizing Effects of Latino Ethnicity, Gender, and Immigrant Status*, 11(4) *Race, Gender & Class* 112 (2004).

³¹ Katherine M. Jamieson & Anita Neuberger Blowers, *A Structural Examination of Misdemeanor Court Disposition Patterns*, 31(2) *Criminology* 243 (1993).

Table 2. Arrests, Citations, Summons, and Charges

Variable	Coding	Percent
Law Enforcement Action	Arrest	81.2
	Citation	11.4
	Summons	7.3
Arrest Seriousness	Other	34.1
	Battery, Petit Theft, Trespass	65.9
Prosecutor Filed	No	29.1
	Yes	70.9
Charge Seriousness (N=310)	Other	35.8
	Battery, Petit Theft, Trespass	64.2

N=437

According to the data, most defendants selected representation by counsel (77%), with court-appointed counsel being the most common type of representation (60.2%). Roughly two-thirds of the defendants had at least one previous criminal charge (66.5%). Few were in custody when their case was disposed of (12.8%), and a similarly low number of individuals had failed to appear (12.8%). Table 3 illustrates the sample case characteristics.

Table 3. Case Characteristics

Variable	Coding	Percent
Attorney Type	Pro Se	22.9
	Private	16.9
	Public	60.2
County	Small	25.6
	Large	74.4
Prior Charges	No	33.5
	Yes	66.5
Release Status	Bail/Bond	43.0
	Custody	12.8
	Pretrial Release	43.9
	- (Release order, ROR)	
	Unknown	0.3
Failure to Appear	No	87.2
	Yes	12.8

N=437

2. Defendant Characteristics

Defendants were largely male (69%) and non-transient (76.9%).³² Most defendants were white (60.2%) and non-Hispanic (53.8%). Table 4 describes the defendants' demographic characteristics.

³² Non-transient status was determined from the police arrest affidavit, identifying the person as transient with no home address.

Table 4. Defendant Characteristics

Variable	Coding	Percent
Sex	Male	69.1
	Female	30.9
Race	White	60.2
	Non-White	38.2
	Unknown	1.6
Ethnicity	Non-Hispanic	53.8
	Hispanic	27.2
	Unknown	19.0
Transient	No	76.9
	Yes	16.5
	Unknown	6.6

N=437

Findings

Two unexplored questions by the extant scholarly literature are (1) whether certain types of people or people with certain types of misdemeanor cases are more likely to use private or court-appointed counsel rather than proceed without counsel and (2) whether the timing of obtaining counsel matters. The next section examines the patterns, if any, among misdemeanants and case characteristics linked to selecting counsel. The section thereafter explores the effects of *when* counsel is hired or appointed.

1. Who selects self-representation rather than private or appointed counsel? (Research Question 1)³³

Although personal and systemic barriers might constrain the decision about legal representation,³⁴ misdemeanor defendants in these two counties had access to court-appointed

³³ These analyses employ the full sample (n=437) except when noted.

³⁴ Defendants' reasons for proceeding without counsel are more thoroughly explored in our other report, which examines interviews with misdemeanor defendants who represented themselves.

counsel (present at first appearance and arraignment) and even private criminal defense lawyers practicing in their communities. Representation by a court-appointed lawyer was common in the present study, but some demographic and case characteristic differences emerged. In general, only a small percentage of people retained counsel, and those hiring lawyers were predominantly the white defendants. Transient defendants were most often associated with representing themselves. However, case characteristic differences, not defendant demographics, were most predictive of who selected counsel. In fact, the seriousness of the charged offense and the defendant's prior criminal history were most predictive for selecting court-appointed representation rather than self-representation.

Demographic Characteristics and Selection of Counsel

Some demographic differences materialized in who selected private counsel, court-appointed counsel, or self-representation. Minor differences emerged in male defendants' selection of counsel, with most choosing court-appointed representation (70.7%), followed by self-representation (68.4%), and then private counsel (63.5%). Meanwhile, female defendants selected private counsel (36.5%) over self-representation (31.6%) and court-appointed counsel (29.3%). More pronounced differences emerged in race and ethnicity. White defendants hired private counsel (70.3%) or represented themselves (64%) more often than using court-appointed counsel (55.5%). Non-white defendants, however, selected court-appointed counsel (44.5%) over representing themselves (31.1%) or hiring private counsel (25.7%). Hispanic defendants hired private counsel (31.1%), used appointed counsel (26.1%), and represented themselves (26.5%) at similar rates. Transient defendants represented themselves (37.7%) rather than using appointed counsel (14.8%) or hiring private counsel (1.4%). Table 5 presents counsel type (self-representation, public defender, and private) by defendant demographics.

Table 5. Demographics by Counsel Type

Variable	Coding	Pro Se	Appointed	Private
		Percent	Percent	Percent
Sex	Male	68.4	70.7	63.5
	Female	31.6	29.3	36.5
Race	White	64.3	55.5	70.3
	Non-White	31.6	44.5	25.7
Ethnicity	Non-Hispanic	49.0	60.1	39.2
	Hispanic	26.5	26.2	31.1
Transient	No	60.2	78.3	93.2
	Yes	37.7	14.8	1.4
N		98/100%	263/100%	74/100%

In further exploring the relationships between defendant demographics and counsel decisions, bivariate correlations (Pearson's r) provided some support for the univariate patterns. Significant correlations emerged between defendant ethnicity and race and the type of representation. Non-Hispanic (-0.106^*) and non-white defendants (0.146^*) were associated with selecting court-appointed representation. Hispanic (0.120^*), white (-0.117^*), and non-transient (-0.202^*) defendants were associated with hiring private counsel. Finally, transient (0.245^*) defendants were associated with *not* using counsel.

B. Case Characteristics and Selection of Counsel

Case characteristics were more influential than demographics in selecting counsel. Although representation was generally common, small-county defendants selected court-appointed representation (70.5%) more often than large-county defendants (56.3%). Private representation was the least common type of representation in this sample of lower court cases, even less than self-representation. Differences in legal representation by county type are shown in Table 6.

Table 6. Legal Representation by Geographic Location

Variable	Coding	Percent
Large County	Pro Se	25.5
	Private	18.2
	Appointed	56.3
Small County	Pro Se	15.2
	Private	14.3
	Appointed	70.5

N=435

The seriousness of the charges also affected representation selection. Comparing the most common and serious charges (battery, theft, and trespass) to other charges, misdemeanor defendants charged with the more serious offenses selected legal representation more often, and the difference was more pronounced for selecting court-appointed counsel (72.2%) rather than private counsel (62.2%) based on the initial police charges. Table 7 illustrates the differences in the selection of counsel by police and prosecutor charges.

Table 7: Police and Prosecutor Charging by Legal Representation

Variable	Coding	Pro Se Percent	Appointed Percent	Private Percent
Police Charge	Other	48.0	27.8	37.8
	Batt/Theft/Trespass	52.0	72.2	62.2
N		98/100%	263/100%	74/100%
Prosecutor Charge	Other	50.8	32.8	37.9
	Batt/Theft/Trespass	49.2	67.2	62.1
N		65/100%	125/100%	58/100%

Arrested defendants employed private counsel (88.6%) or represented themselves (73.5%) more often than relied on court-appointed representation. Defendants issued citations to appear typically represented themselves (18.4%), and those who received a prosecutor summons

selected court-appointed representation (20.3%). Table 8 shows the cross-tabulation relationships between the types of police-initiated charges and counsel type.

Table 8. Arrests, Citations, and Summons by Counsel*

	Pro Se	Private	Appointed
Arrest	73.5	88.6	66.2
Citations	18.4	8.4	13.5
Summons	8.2	3.0	20.3
Total (N/%)	98/100%	263/100%	74/100%

*2 Missing Cases

Although few defendants in the sample were held in custody beyond the first appearance, they represented themselves (16.3%) more often. Defendants with criminal histories used appointed counsel (71.9%) or represented themselves (61.2%) at high percentages. Bivariate correlation analysis (Pearson's r) showed that defendants who received summons or citations rather than being arrested were significantly associated with hiring private attorneys (0.188*). Table 9 shows the cross-tabulation relationships between release and criminal history status with legal representation status.

Table 9. Case Characteristics by Legal Representation

Variable	Coding	Pro Se	Appointed	Private
		Percent	Percent	Percent
Release Status	Released	82.7	87.8	98.6
	In Custody	16.3	12.2	1.4
Criminal History	No	37.8	28.1	47.3
	Yes	61.2	71.9	52.7
N = 435		98/100%	263/100%	74/100%

Bivariate correlation analyses supported the univariate findings that defendants arrested on more serious offenses were associated with selecting counsel (over self-representation;

0.159*). Defendants with prior criminal histories (0.131*) and those arrested for more serious crimes (battery, petit theft, and trespassing) (0.169*) were associated with using court-appointed lawyers.

C. Multivariate Analysis and Legal Representation

A multivariate analysis of demographic and case characteristics on counsel selection was employed to explore the above relationships further.³⁵ The first model on selecting counsel (rather than self-representing) was statistically significant and explained almost 12 percent of the variance in counsel choice. Offense seriousness was the most predictive variable for using counsel, increasing the odds over twofold when charged with serious rather than less serious crimes. Non-transient defendants had slightly greater odds of using counsel than transient defendants. No other factors (criminal history, county, sex, race, and ethnicity) were statistically significant in predicting the use of counsel. The multivariate findings are shown in Table 10.

Table 10. Logistic Regression for Counsel

Variable	b	Std Error	Odds
Arrest Type (Serious=1)	0.783*	0.298	2.189
Criminal History	0.245	0.315	1.278
County Type (Large=1)	-0.749	0.412	0.473
Sex (Female=1)	-0.221	0.341	0.802
Race (Non-White=1)	0.125	0.350	1.133
Ethnicity (Hispanic=1)	-0.395	0.366	0.674
Transient (Yes=1)	-1.632*	0.318	0.196
Constant	1.884*	0.560	6.577
Cox & Snell R ²	0.115		
-2 Log Likelihood	306.194		
Chi-Square	41.294*		

*p < 0.05

³⁵ For the reported models, there are no multicollinearity issues identified by tolerance, variance inflation factor, or the condition index test.

The second model refined the analysis by distinguishing the predictors for selecting private counsel compared to court-appointed attorneys. Both models, shown in Table 11, are statistically significant but explain little overall variance. Non-transient status was the only statistically significant predictor for hiring private counsel, whereas more serious charges, prior criminal histories, and non-transient status significantly predicted using court-appointed counsel. Offense seriousness increased the odds of using court-appointed lawyers by twofold compared to those charged with less serious offenses. Likewise, defendants with prior criminal histories had almost twice the odds of using court-appointed lawyers than defendants without criminal histories. Non-transient defendants had slightly higher odds of using court-appointed lawyers than transient defendants. The results are provided in Table 11.

Table 11. Regression Selection of Private and Court-Appointed Representation

Variable	Private Attorney		Appointed	
	b	Odds	b	Odds
Offense Type (Serious=1)	-0.321	0.726	0.706*	2.026
Criminal History (Yes=1)	-0.528	0.559	0.507*	1.660
County Type (Large=1)	-0.363	0.695	-0.221	0.802
Sex (Female=1)	0.121	1.129	-0.206	0.914
Race (Non-White=1)	-0.851	0.422	0.516	1.675
Ethnicity (Hispanic=1)	0.135	1.144	-0.353	0.702
Transient (Yes=1)	-2.814*	0.600	-0.607*	0.545
Constant	-0.347	0.700	0.010	1.010
Cox & Snell R ²	0.093		0.071	
-2 Log Likelihood	264.096		420.363	
Chi-Square	32.856*		25.207*	

*p < 0.05

Discussion

Before discussing the findings, it is important to identify several limitations of this research. First, the study was conducted on a small sample from two non-representative counties. The data was gathered over a short period of time and over two slightly different time periods. Although the counties operated under the same elected prosecutor and public defender, the clerk was not the same and employed different procedures, particularly regarding how defendants were notified of their prosecutor-filed charges. We had access only to post-filed cases in the small county. Finally, we could not access the defendants' financial information or their ability to hire private counsel, and as with any administrative study, we could not capture the nuanced reasons and lived experiences that might explain the defendants' counsel decisions.³⁶

Despite these limitations, patterned differences emerged in who selected representation or not and who selected representation by court-appointed counsel. Some demographic differences in selecting representation emerged. Private counsel representation was the least common in our misdemeanor case sample, yet white defendants were the most likely to hire representation³⁷ (Table 4). Whereas, transient defendants, who are likely the poorest in our sample, most often opted to represent themselves (Table 4). White and non-transient defendants might have more access to financial resources and the ability to hire private representation. The decisions of transient defendants to self-represent might reflect their desire for early release (by entering pleas at first appearance) and reduced additional costs of public representation. Both findings suggest that access to financial resources, or lack thereof, and extra-legal factors (like race and distrust)

³⁶ Another report focusing on interviews with self-represented defendants begins to uncover the more complex reasons for proceeding without counsel.

³⁷ Matthew Clair's ethnographic study (2020) provides some context for understanding the decision to proceed without counsel in misdemeanor cases which might be born from the racialized and classed inequalities that shape attorney-client relationships and engender distrust of public defense lawyers.

might drive decisions about counsel. Qualitative research is needed to answer these questions and deepen our understanding of defendant decision-making on counsel in the misdemeanor courts.

Bivariate and multivariate analyses emphasized case characteristics as influencing decisions about representation. Small-county defendants, defendants charged with more serious misdemeanor offenses (battery, petit theft, and trespass), and defendants with prior criminal histories were associated with court-appointed representation rather than self- or private representation (Tables 6, 7, & 8). Similar patterns emerged in the multivariate analyses. Crime seriousness and non-transient status significantly predicted using, rather than not using, counsel, and more specifically, offense seriousness, prior criminal history, and non-transience predicted court-appointed representation. These findings shed some light on factors influencing the decision to select or not counsel in misdemeanor cases, revealing that prior criminal histories and more serious charges were associated with selecting court-appointed representation (Figure 4).

Figure 4. Future Empirical Approach



More research, using larger, more diverse samples and qualitative methodologies, is necessary to understand the counsel decision. Future research should focus on the constrained choice of self-representation, examining a lack of options, including financial resources, private lawyer deserts (with fewer private criminal defense attorneys in the small county), and variation in court-appointment policies.³⁸ Our findings also suggest the possibility that severe punishments (including incarceration) for more serious offenses and prior criminal histories might factor into

³⁸ See, e.g., Davies, Sirivore & Smiegocki, *supra* note 5.

defendants' cost-benefit calculus, increasing the chances of court-appointed representation rather than court-appointed representation, causing the more severe punishments.³⁹ The complexities of defendant decision making is worthy of more study.

2. When do defendants obtain counsel in the criminal case process, and does the timing affect case outcomes? (Research Question 2)⁴⁰

Research on the effectiveness of counsel and type of legal representation is mixed,⁴¹ and one possible and unexplored factor in explaining the differences in representation and case outcomes might relate to *when* counsel is hired or appointed. Like the scholarly research that shows the benefits of early representation in improving bail decisions,⁴² the timing of counsel might affect upstream procedural events and case outcomes. Here, we examine variations in the procedural timing of private counsel and court-appointed representation, revealing differences in when lawyers become involved and how delayed appointments of court-appointed lawyers result in several negative outcomes.

A. Timing of Obtaining Counsel and Correlations with Demographics, Case Characteristics, Procedural Events, and Case Outcomes.

The mean number of days between initial charges (i.e., arrest, citations, or summons) and defendants obtaining counsel was 14. On average, defendants were either appointed or hired counsel within two weeks of their arrest or notice to appear, within two days of the prosecutor

³⁹ See generally Smith & Maddan, *Interaction*, *supra* note 2; Burns, Diamond & Bowen, *supra* note 2.

⁴⁰ Self-represented defendants are excluded from the analyses in this section.

⁴¹ Agan, Freedman & Owens, *supra* note 2; Burns, Diamond & Bowen, *supra* note 2; Cornwell, *supra* note 2; Hartley, Miller & Spohn, *supra* note 2; Smith & Maddan, *Misdemeanor Courts*, *supra* note 2; Smith & Maddan, *Interaction*, *supra* note 2; Sharma, Stolzenberg & D'Alessio, *supra* note 2.

⁴² Douglas L. Colbert, Raymond Paternoster & Shawn Bushway, *Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail*, 23 Cardozo L. Rev. 1719 (2002); Paul Heaton, Sandra Mayson & Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69(3) Stan. L. Rev. 711 (2017); Rod V. Hissong & Gerald Wheeler, *The Role of Private Legal Representation and the Implicit Effect of Defendants' Demographic Characteristics in Setting Bail and Obtaining Pretrial Release*, 30(5) Crim. Just. Pol'y Rev. 708 (2019); Alissa Pollitz Worden, Kirstin A. Morgan, Reveka V. Shteynberg & Andrew L.B. Davies, *What Difference Does a Lawyer Make? Impacts of Early Counsel on Misdemeanor Bail Decisions and Outcomes in Rural and Small Town Courts* 29(6-7) Cim. Just. Pol'y Rev. 710 (2018).

filing formal charges, and before arraignments. Defendants were represented by counsel on average for 63 days before resolving their cases. Table 12 reports on when counsel was obtained for key procedural events.

Table 12. Number of Days to Counsel⁴³

Variable	N	Min	Max	Mean
Initial Charges to Counsel	324	0	137	14.12
Arraignment to Counsel	293	-99	98	-16.91
Counsel to Prosecutor Filing	209	91	-244	2.09
Counsel to Resolution	313	-13	253	63.00

1. Timing of Obtaining Counsel, Defendant Demographics, and Case Characteristics

Examining the preliminary, bivariate relationships (Pearson's r) of the timing of counsel on defendant demographics and case characteristics resulted in only a few significant relationships. Only two demographic traits (Hispanic and Transient) were significant. Hispanic defendants delayed representation for more days between arrest and counsel (0.151*) but experienced longer representation periods until resolving their cases (0.131*). Transient defendants had fewer days between obtaining counsel and case resolution (0.126*).

⁴³ The average times exclude extreme outliers. These outlying cases were the result of unusual circumstances including failures to appear, or revocations of pretrial diversions and refiling of charges. For the initial charges and obtaining counsel, four defendants' cases were excluded because they hired counsel more than 200 days after their case was initiated by arrest, citation, or summons. In calculating the average time between obtaining counsel and arraignment, 10 cases were omitted because the time was 100 days before and after arraignment (some of these defendants had failed to appear). In examining obtaining counsel and the filing of formal charges by prosecutors, three defendants' cases were omitted because counsel was hired 900 days before or 200 days after filing. Finally, in reporting the average time that counsel represented defendants before resolving their cases, three cases were omitted because representation was longer than 300 days. By removing these few cases, the findings approached normality, permitting higher level statistical analyses.

There were several additional relationships with case characteristics. Small-county defendants delayed obtaining counsel after their arrest (-0.298*), but they were represented longer too, with more days from obtaining counsel to case resolution (-0.257*). Defendants who were charged by the police with less serious offenses had longer delays before obtaining counsel (-0.140*), but once counsel was obtained, they were represented for more days before resolving their cases (-0.126*). Defendants charged with more serious charges by the prosecutor had longer gaps between arrest and obtaining counsel (0.163*).

2. Timing of Counsel on Procedural Events (Pretrial Release, Custody, and FTA) and Case Outcomes (Diversion, Plea, Probation, and Fines)

Three procedural events – pretrial release, days in jail, and nonappearance –were associated with longer periods of representation and delays in obtaining counsel. Released defendants had longer periods between obtaining counsel and case resolution (-0.149*). In-custody defendants were represented longer (i.e., more days between obtaining counsel and case resolution), but this relationship was also associated with longer jail stays (0.305*). Finally, defendants with longer delays between arrest and obtaining counsel had higher nonappearance rates (0.152*).

Four outcomes: pleas, pretrial diversion, probation, and fines were significantly associated with delayed representation and longer periods of representation. Delaying counsel (from the time of arrest) was associated with entering pleas (0.146*) and resolving cases by pretrial diversion (0.175*). Longer representation periods by counsel and case resolution were associated with pretrial diversion (0.384*). Defendants who had more days between arrest and obtaining counsel (0.256*) were also associated with receiving probation. Finally, defendants with more days between arrest and obtaining counsel (0.169*) and obtaining counsel and case resolution (0.123*) were associated with receiving financial penalties (i.e., fines and costs).

B. Comparing the Timing of Obtaining Private and Public Representation.

The preceding findings did not distinguish between court-appointed and private representation. Here, we compare the differences by the type of counsel and how the timing of representation affects key case processing and outcomes by the date of appointment or hiring of counsel.

1. Differences in the timing of private and public counsel representation

Generally, there are fewer days between the initial charges by the police and the appointment of counsel (12.73 days) compared to the hiring of private counsel (19.23 days). Private attorneys, however, represent defendants for a longer period, an average of 91 days between hiring and case resolution, compared to 57 days for clients with court-appointed representation. The comparisons of the number of days between key case events (arrest, arraignment, filing decision, and case resolution) and counsel type are shown in Table 13.

Table 13. Number of Days between Key Case Events by Counsel Type

Variable	Court-Appointed				Private			
	N	Min	Max	Mean	N	Min	Max	Mean
Arrest/Summons/Citation to Counsel	252	0	137	12.73	71	0	133	19.23
Arraignment to Counsel	221	-99	98	-22.97	62	-70	98	-7.85
Counsel to Prosecutor Filing	148	-231	-244	3.97	61	-244	95	-2.46
Counsel to Case Resolution	236	-13	253	56.7	69	0	253	91.39

Bivariate correlations (Pearson's r) also show an association between the initial police charge and obtaining counsel was longer for private attorneys than appointed counsel (0.132*) and between arraignment and hiring private counsel (0.165*) than court-appointed counsel

(- 0.325*). However, the length of representation (i.e., from appointment to case resolution) was longer for private attorney clients (0.280*) than for those represented by court-appointed counsel (-0.202*).

2. Delayed representation and case outcomes

Table 14 illustrates the statistically significant differences between key procedural and case outcomes and delays in obtaining counsel after arrest. Two differences emerged in the timing of obtaining private counsel, but more differences were associated with the timing of the appointment of court-appointed representation. Longer delays between arrest and hiring a private lawyer or appointing counsel were significant in the small county. Also, longer delays between arrest and hiring private counsel or appointing counsel were associated with increased rates of defendants receiving probation. Several positive relationships emerged between delayed court-appointed representation and case processing and outcomes: entering pleas and defendants receiving pretrial diversion. Several negative relationships also emerged for delayed appointment of counsel, including larger fines and costs and increased nonappearances. Delays in obtaining court-appointed representation result in more significant case processing and outcomes differences than for defendants hiring counsel.

Table 14. Correlations for Counsel Timing and Arrest by Counsel Type and Case Processing and Outcomes

Variable	Private	Appointed
Plea	-	0.220*
Pretrial Diversion	-	0.186*
Fine/Cost (Yes/No)	-	0.174*
Fine/Cost Amount	-	0.213*
Probation	0.443*	0.229*
Failure to Appear	-	0.209*
County	-0.453*	-0.272*
p<0.05		

In terms of prosecutor filing decisions, shorter periods between appointed counsel and the filing of charges resulted in improved case outcomes: receiving smaller fines and costs and lower non-appearance rates. The relationship for hiring private counsel was mixed. Longer delays between prosecutors filing charges and hiring private counsel were associated with the representation of white defendants, and longer periods were associated with defendants being sentenced to jail time. Table 15 illustrates the relationships between counsel types and prosecutor filing decisions.

Table 15. Correlations for Counsel Timing and Prosecutor Filing by Counsel Type and Case Processing and Outcomes

Variable	Private	Appointed
Plea	-	-0.170*
Probation	-	-0.285*
Fine/Cost Amount	-	-0.166*
Jail Time (Yes/No)	0.334*	-
Failure to Appear	-	-0.235*
Race	-0.293*	-
p<0.05		

Delay in hiring or appointing counsel is one part of the analysis. The other concerns the length of representation. *Longer* periods of private attorney representation were associated with Hispanic defendants, and defendants benefitted from pretrial diversion but also received jail terms and larger fines and court costs. *Shorter* periods of representation by court-appointed lawyers were associated with small county and transient defendants, defendants being held in pretrial detention, and defendants getting longer jail terms. Longer periods of court-appointed representation were associated with pretrial diversion. Table 16 illustrates the differences between private and public representation for shorter and longer periods.

Table 16. Correlations for Counsel Timing and Case Resolution by Counsel Type and Case Processing and Outcomes

Variable	Private	Appointed
Pretrial Release	-	-0.156*
Pretrial Diversion	0.368*	0.296*
Jail Time (Yes/No)	0.317*	-
Jail Time (Days)	-	0.433*
Fine/Cost Amount	0.249*	-
County	-	-0.373*
Ethnicity	0.393*	-
Transient	-	-0.174*
p<0.05		

3. Discussion

The same limitations are present for answering the second research question. The timing variables represent *preliminary* findings because the small sample size precluded more sophisticated analyses. The bivariate correlation findings suggest timely representation affected key case processing and outcomes, particularly for court-appointed-lawyer clients. Delayed representation had more negative consequences, particularly for court-appointed clients. Finally, the preliminary findings support the interviewed public defender's observations that defendants may wait until the prosecutor makes a filing decision before obtaining counsel, which may be to their detriment. The average time between arrest and counsel was 14 days, but only two days after the prosecutor filed charges.

Demographic traits were largely unrelated to the timing of obtaining counsel, with several exceptions. Hispanic and small-county defendants had longer delays between arrest and obtaining counsel, but both were represented longer. Less serious police charges and more serious prosecutor charges resulted in longer delays between initial charges and representation. The delays may reflect the desire to wait on the decision of the prosecutor to file or not before obtaining counsel, the lack of access to private counsel, or distrust of lawyers, particularly public defenders. More research is necessary to explore what underpinned these differences.

Counsel was appointed more often (71% of cases), faster (13 days from arrest), and processed cases quicker (57 days) than private attorneys (19 days and 91 days, respectively). The efficiency of appointment and resolution may result from the dynamics of the courtroom workgroup and shorter delays between prosecutor filing and court-appointed representation related to improved outcomes, i.e., smaller fines and lowered nonappearance rates for public defender clients (Table 14), as shown in Figure 5.

Figure 5. Case Outcomes as a Function of Shorter PD Appointment and Filing Delays

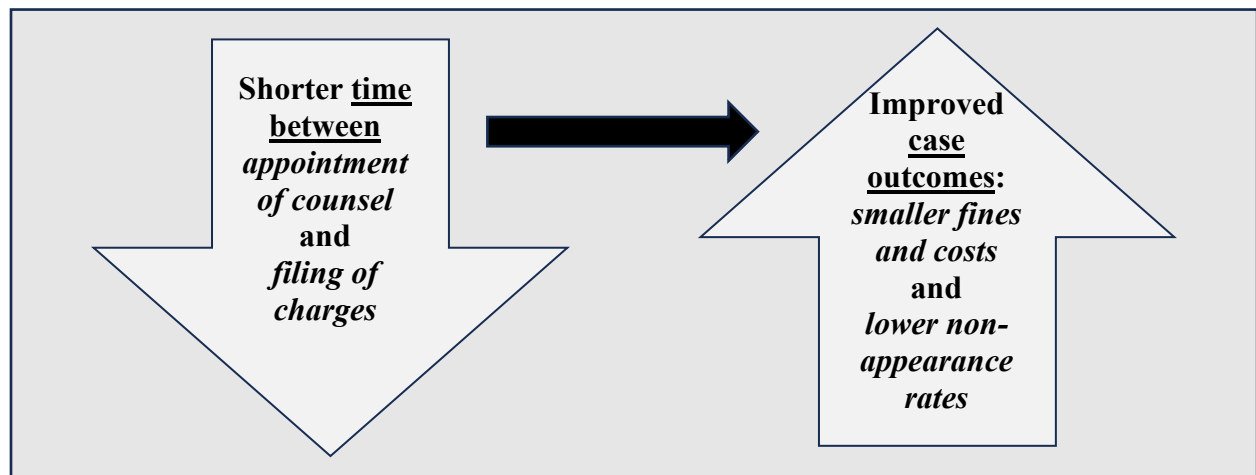
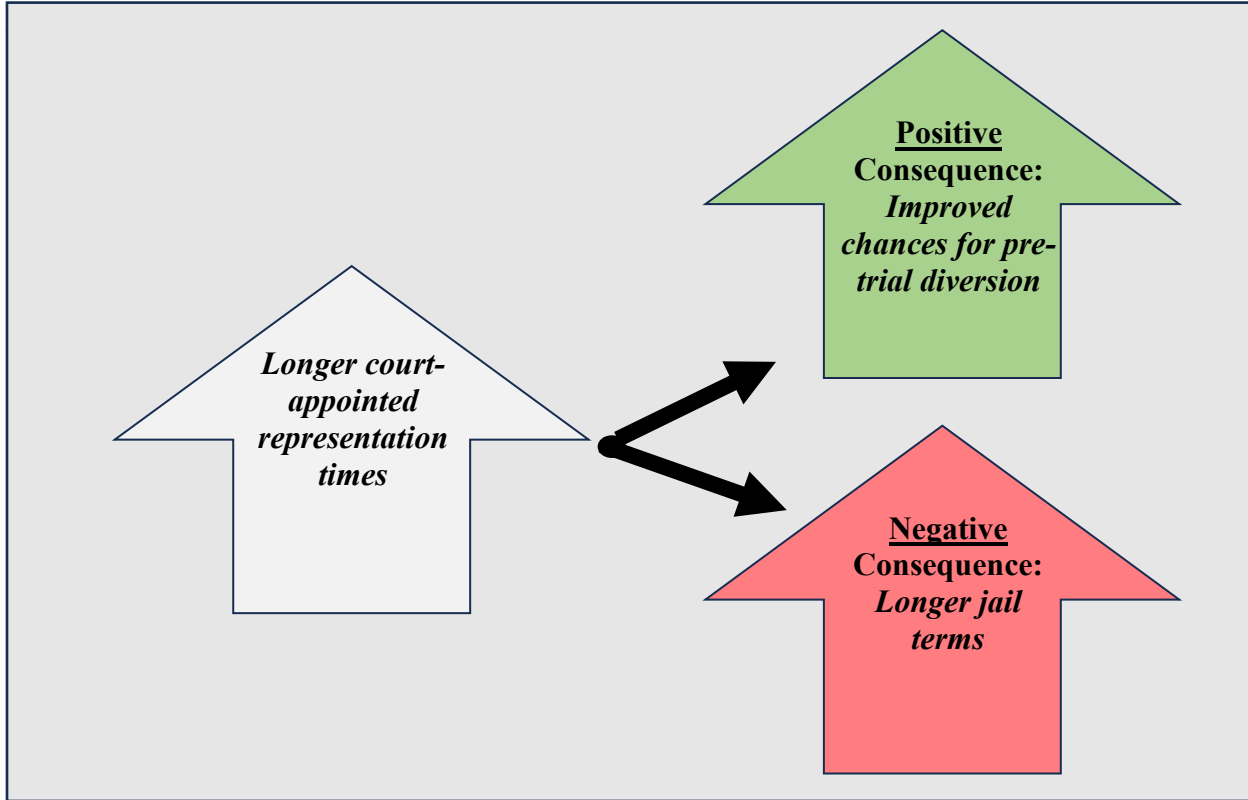


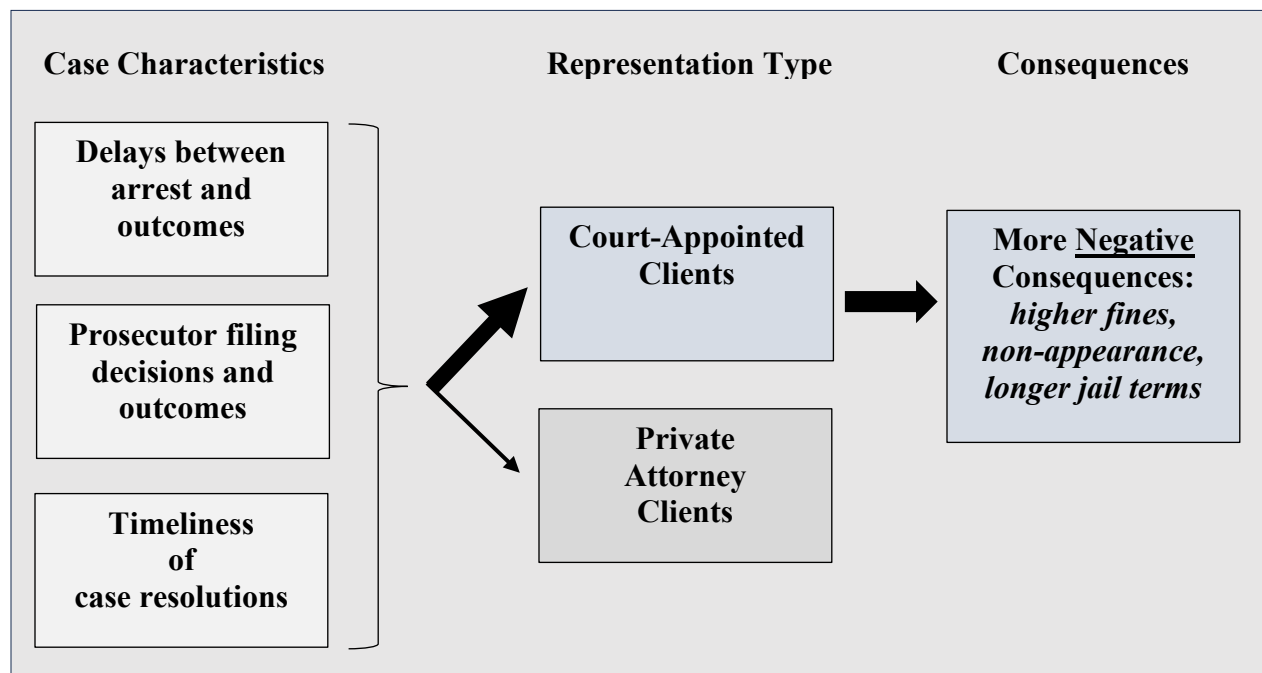
Figure 6 shows that longer court-appointed representation times had mixed results. Improved chances for pretrial diversion were positive, but longer jail terms were negative (Table 16).

Figure 6. Consequences Associated with Longer PD Representation Times



Delays in obtaining representation from the time of arrest were linked to defendants in the small county, defendants with a criminal history, and defendants in custody. Delays between arrest and obtaining counsel were correlated with longer jail terms, larger fines, nonappearance, and pretrial diversion opportunities. As shown in Figure 7, the delays between arrest and outcomes, prosecutor filing decisions and outcomes, and timeliness of case resolutions were more consequential for court-appointed counsel clients, with more negative consequences of higher fines, nonappearance, and jail terms (Tables 14, 15, & 16).

Figure 7. Representation Type as a Mediator between Case Characteristics and Consequences



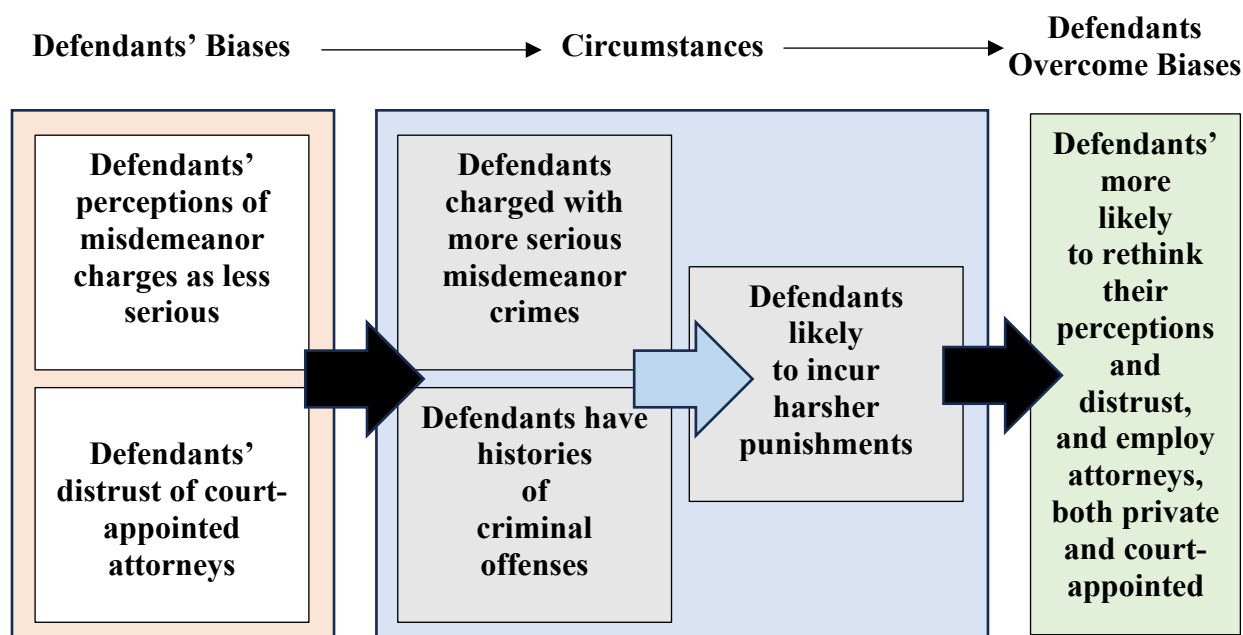
Conclusions

Two important, if tentative, conclusions are drawn from this study. First, the seriousness of misdemeanors and defendants' prior criminal history likely influence defendants' decisions on hiring private counsel or using court-appointed counsel. Defendants' perceptions of misdemeanor charges as being less serious⁴⁴ and their distrust of attorneys,⁴⁵ particularly public defenders, may be eclipsed when charged with more serious misdemeanor crimes or histories of criminal offenses, which may increase the chance of harsher punishments, as shown in Figure 8.

⁴⁴ Smith, *Little Situation*, *supra* note 8.

⁴⁵ Clair, *supra* note 9; Moore, Plano Clark, Foote & Dariotis, *supra* note 9 at 908; Pruss, Sandys & Walsh, *supra* note 9.

Figure 8. Defendants Overcome Their Perceptions of Misdemeanors and Distrust of Court-Appointed Attorneys



Selecting counsel when there are increased chances for more severe penalties might better explain the mixed results in prior scholarly studies examining the impact of representation on case outcomes. Future studies should more deeply and qualitatively examine the factors influencing misdemeanor defendants' decisions to proceed with counsel (or not), the decision to hire counsel or accept court-appointed representation beyond the potential influence of cost and financial ability⁴⁶ to systemic and personal barriers and complex experiences and interactions with the police and court-appointed attorneys, shaping legal orientations that might suppress rights assertion.⁴⁷ These effects might be more evident in the decision to self-represent, which is far more common in misdemeanors than in felony cases.

Second, the preliminary bivariate findings on the timing of hiring and appointing counsel show promise for a deeper understanding of the importance of when counsel is made available

⁴⁶ Beeman, Elliott, Joy, Allen & Mrozinski, *supra* note 7.

⁴⁷ Other reports in this series explore these factors using observation and interview data.

and the upstream effects on key case processes and outcomes, particularly on resolving cases, nonappearance rates, and jail terms. Here, the timely and early appointment of counsel shows promise for improved processing and case outcomes, and delays have the opposite effects. In the small county, defendants had fewer private lawyer options and an increased reliance on the public defender's office.⁴⁸ Delays in representation might be linked to "private lawyer" deserts, delayed issuing of notices of arraignment hearings in the small community, or disparities in distrust of lawyers that result in more negative case outcomes. Further, the benefits of timely court-appointed representation support the early appointment of counsel at first appearance and, concomitantly, encourage the elimination of representation costs and improvement of relations with and trust of court-appointed lawyers to encourage more defendants to accept that assistance. More funding for these offices might be necessary with increased reliance on court-appointed lawyers. Still, the benefits of early representation will reduce the costs associated with nonappearance and, perhaps, fewer jail sentences for misdemeanor crimes. Future scholarly work with larger sample sizes should explore access to counsel issues, the impact of delayed representation, and the costs and benefits of early representation on misdemeanor case processes and outcomes.

⁴⁸ See generally Nick Devine, *Equality Before the Law: Ending Legal Deserts in Rural Counties*, Georgetown Journal on Law & Policy (November 3, 2020), <https://www.law.georgetown.edu/poverty-journal/blog/equality-before-the-law-ending-legal-deserts-in-rural-counties/>; Andrew Davies & Alyssa Clark, *Gideon in the Desert: An Empirical Study of Providing Counsel to Criminal Defendants in Rural Places*, 71(2) Me. L. Rev. 245 (2019); Lisa R. Pruitt & Beth A. Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 Ariz. L. Rev. 219 (2010).