



# POLICY BRIEF

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## Are Public Defenders Better at Indigent Defense than Court-Appointed Attorneys?

US courts provide constitutionally mandated legal services to low-income criminal defendants via private court-appointed attorneys and public defenders. This study finds that defendants in multiple-defendant cases experience better case outcomes when they are represented by a public defender compared with those appointed a private attorney. In San Francisco, they are 3.8 percentage points (6%) less likely to be convicted and 1.8 percentage points (22%) less likely to receive a prison sentence. These differences are more pronounced in more serious cases and for individuals with longer criminal histories. This study compared the outcomes of codefendants who are assigned separate counsel to avoid conflicts of interest. It suggests that public defenders may provide better representation than court-appointed attorneys, especially when the stakes are higher.

### Context

Access to criminal defense is a constitutional right guaranteed by the Sixth Amendment. The majority of defendants facing criminal charges cannot afford their own attorney, and this share is growing. While legal counsel is guaranteed, localities determine how it is provided. Though most jurisdictions provide counsel through public defender agencies, some use court-appointed private attorneys in addition to or instead of public defenders. One instance in which both types of counsel are used is to avoid conflicts of interest when there are multiple codefendants in a given case.

Any systematic differences in the quality of criminal defense provided by public defenders and private court-appointed attorneys raise important concerns around fairness. While

criminal justice outcomes naturally differ based on case specifics, any differences deriving from the quality of publicly provided legal counsel threaten to violate the Sixth Amendment. These concerns are particularly salient given that a disproportionate share of indigent criminal defendants in the US are Black and Latino. Inadequate criminal defense therefore not only disadvantages the poor, but could also exacerbate existing racial disparities in the criminal justice system.

### Methodology

Evaluating the quality of legal representation is usually difficult. No cases or defendants are exactly alike, and it is often hard if not impossible to attribute differences in case outcomes to the quality of legal representation rather than other

factors related to the case or defendant. There is one situation, however, where the assignment of a certain type of attorney is plausibly as good as random, which allows for an evaluation of differences in case outcomes.

In cases with multiple codefendants, public defender agencies are restricted to representing just one defendant to eliminate potential conflicts of interest between the defendants. Usually, private attorneys are appointed by the court to represent the remaining defendants on a case. In San Francisco, the process of assigning defendants to public defenders or private attorneys is plausibly as good as random. Therefore, after controlling for certain important case and defendant characteristics that affect outcomes, any remaining differences in outcomes between codefendants can be attributed to the effect of being represented by a public defendant versus a court-appointed private attorney.

## Findings

**Case Outcomes.** In San Francisco, criminal defendants represented by public defenders experience better case outcomes than their codefendants represented by private court-appointed attorneys. Defendants appointed a public defender are 6% less likely to be convicted of any crime (57% likelihood of conviction compared to 61% of defendants represented by a court-appointed attorney). They are also 22% less likely to receive a prison sentence (6% likelihood versus 8%), and on average receive 10% shorter prison terms on average.

Those represented by public defenders in SF were...

- 6%** less likely to be convicted
- 22%** less likely to be sentenced to prison
- 10%** shorter prison sentence

have longer criminal histories, indicating that as the likelihood of sentencing is higher, the effect of having a public defender will be larger.

**Possible Explanations.** One explanation for these observed differences in outcomes is that the individuals who elect to work as public defenders are different from those who work as court-appointed private attorneys. In San Francisco, public defenders are more diverse, younger, and hold degrees from higher-ranked colleges and law schools than court-appointed private attorneys. Controlling for attorney characteristics in the study explains the majority of the difference in outcomes between codefendants, which suggests that characteristics of individual attorneys may be driving disparities in outcomes.

Another more structural explanation is that institutional differences between public defender offices and privately appointed attorneys may drive some of the observed differences in case outcomes. The San Francisco Public Defender's Office is a large and well-resourced organization, with several specialized programs at its disposal, and there is no analog for court-appointed attorneys. As a result, public defenders automatically have access to many resources that are not as readily available to court-appointed attorneys, and these may allow public defenders to reach better outcomes for their clients. These resource disparities are difficult to measure, and may be related to differences in attorney characteristics.

**Federal Cases.** A similar trend is evident in federal criminal cases, though the magnitude of the difference between public defenders and court-appointed private attorneys is smaller: defendants in federal cases have a 1% lower chance of receiving a prison sentence and 5% shorter sentences on average when represented by a public defender versus a court-appointed attorney, but there is no difference in the likelihood of conviction. The smaller effects could be due to the fact that federal criminal cases have

The impacts on sentencing are more pronounced for defendants who face more severe charges or

higher overall rates of conviction and sentencing (94% of federal defendants in this study are convicted and 86% are sentenced to incarceration, versus 61% and 15% respectively in San Francisco),<sup>i</sup> meaning that federal prosecutors may bring more “slam-dunk” cases where there is less opportunity for the differences between public defenders and court-appointed attorneys to emerge. Alternatively, it may be due to the fact that at the federal level, there are fewer differences in the attorneys who serve as public defenders and private court-appointed attorneys.

## Further Research

This study finds that public defenders provide better legal representation than court-appointed attorneys to indigent co-defendants in San Francisco and to a lesser extent in federal criminal cases. There are good reasons to believe that this finding for multiple-defendant cases

extrapolates to single-defendant cases, but this study does not address that question.

In San Francisco, characteristics of the attorneys who elect to work as public defenders compared with court-appointed private attorneys seem to account for some of the difference in case outcomes, although structural resources may also be a factor. Further research in other jurisdictions where the public defender agency is not as well-resourced or the position is not as prestigious as in San Francisco is needed to determine whether these trends persist outside of San Francisco.

Regardless of what drives the differences in outcomes across public defenders and court-appointed attorneys, these findings raise important issues around the quality of representation provided for indigent defendants. If there are systematic differences in the quality of publicly provided counsel, jurisdictions should consider policies that minimize those disparities.

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<sup>i</sup> In federal cases, all sentencing is to prison. In San Francisco defendants can be sentenced to prison or jail.

This brief was written by Elsa Augustine.

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