

Type of Defense Counsel and its Effect on Defendants Pretrial Proceedings

by

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Dedication

To my friends and family who have supported and encouraged me throughout my education career. Your words of motivation and acts of love have shaped me into the person that I am today and has inspired me significantly throughout the duration of my studies.

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Abstract

This research explores what effect having a court appointed counsel as opposed to private counsel has for a defendant being granted pretrial release. To investigate the influence further, data was collected from a non-random sample population from a Midwestern mid-sized city (2024). The primary variables in this study include counsel type, race, gender, initial bond type, release type, court appearance, number of days incarcerated, and whether defendants get re-arrested while their case is pending. It was concluded that there was a relationship between type of counsel and factors such as race and number of days incarcerated, but no significant relationship with gender, initial bond type, release from incarceration, court appearance, and remaining arrest free.

TABLE OF CONTENTS

Dedications	3
Acknowledgements	3
Abstract	4
Chapter 1	7
Introduction	7
Youngstown, Ohio.....	9
Conflict Theory	12
Economic Disparities	15
Chapter 2.....	19
Literature Review.....	19
An Overview	19
Right to Counsel	20
Supreme Court Landmark Cases	21
Ohio Appellate Cases	23
Type of Defense Counsel and its Effects	29
Pretrial Release	33
Purpose of Pretrial Release	33
Validated Risk Assessments	37
Public Safety Assessment.....	38
Pretrial Supervision	39
Indigency	40
Ohio Eligibility Standards	41

Federal Eligibility Standards	42
National Eligibility Standards	42
Chapter 3	43
Methodology	43
Research Design	44
Data Context	44
Data Collection Process	45
Chapter 4	47
Findings.....	47
Profile of Sample	47
Measures	51
Analytic Strategy	52
Results	52
Major Findings	57
Chapter 5	60
Discussion	60
Conclusion	60
Limitations	61
Recommendations for Future Research	62
Contributions	63
Appendices	65
References	75

Introduction

According to the United States Census Bureau, in 2021, 35.3 percent of the population of Youngstown, Ohio was deemed to be low income. Considering that Youngstown's poverty rate is nearly triple the national average of 12.6 percent, it is important to consider how low-income individuals may be impacted by the Criminal Justice system (2021). The Sixth Amendment of the United States Constitution guarantees defendants who are being charged with a criminal offense, the assistance of counsel for their defense (U.S. Const. Amend. 6). Additionally, defendants have the right to hire and retain their own private attorney to further represent them throughout their legal proceedings. However, if a defendant cannot afford to retain their own attorney and a judge finds them indigent, they have the right to a court appointed attorney to represent them at the states expense. There are two types of attorneys that the court can assign to represent indigent individuals, court appointed counsel and public defender. Court appointed counsel are private attorneys who also take court appointments, whereas public defenders are county, state, and federal employees. According to the Bureau of Justice Statistics, 85 percent of defendants in the United States are represented by court appointed counsel (*Defense Counsel in Criminal Cases*). Although low-income individuals have the right to receive court appointed counsel, a significant factor to consider is the amount of experience and skills that these attorneys have as opposed to private retained attorneys. Considering that the poverty rate in Youngstown is significantly high, it's important to examine whether low-income individuals are at a disadvantage compared to other individuals who may have access to attorneys who have more experience and skills and can possibly provide better terms of pretrial release. Furthermore, the problem that is being explored in this thesis is how income inequality poses a significant problem to individuals who are involved in the Criminal Custice system. Individuals who are

living in poverty do not have the same resources available to them as others, and society has created a perception that individuals with money can often buy their way out of legal situations. However, in order for the Criminal Justice system to be fair, lack of money and resources should not be a reason that individuals have different pretrial outcomes, thus the importance of this thesis is to seek the possible effects that different counsel types may have.

The overall important goal of defense counsel is to ensure that defendants are given adequate due process throughout the Criminal Justice system. It is important to understand the differences and effects of the type of counsel a defendant receives, to fully understand how counsel may impact the outcomes of court proceedings for that individual. At the conclusion of many trials, many defendants believe that they were not given a fair trial due to them not being able to afford their own attorney. However, if this is the case, a defendant should not be penalized and be treated unfairly just because they are indigent. In 2019, 80 percent of individuals who were involved in the Criminal Justice system were assessed to be legally indigent, meaning that they were unable to afford their own counsel (Preston & Eisenberg, 2022). With the high number of indigent individuals entering the Criminal Justice system, it is important to understand effects they may experience based on the type of counsel that they receive. Factors such as type of counsel, initial bond type, court appearance, and remaining arrest free will be analyzed in this thesis to further understand what effect, if any, does having a court appointed counsel as opposed to private retained counsel have for a defendant being granted pretrial release. More specifically, is a defendant more likely to appear for court, remain arrest free, and be released on their own recognizance when he or she has private counsel? To further understand the problem, discussions of the Sixth Amendment, federal and the state of Ohio case

laws, and the types of counsel available to defendants will be explored, followed by how these measures can affect defendants who are granted pretrial release.

The researcher chose to explore this topic for various reasons. With an education background in Criminal Justice, the researcher has increased their interest in conducting a study that involves a significant concern in the field. Additionally, the researcher is employed as a Pretrial Service Officer, and has experience with the assignment of defense counsel to defendants. With access to court data, the researcher chose to explore the type of defense counsel and its effects on individuals' pretrial proceedings.

Youngstown, Ohio

Youngstown, Ohio, is a midwestern city in Mahoning County that is located at the foothills of the Appalachian Mountains. The city is named after John Young, who purchased the 15,560-acre township in 1797, establishing "John Young's Town" (*The Founding of Youngstown Historical Marker* 2021). Young created the community's first sawmill and gristmill, and the city soon became known as the center of steel production. The completion of the Pennsylvania and Ohio Canal in 1840, followed by railroads in the 1850s, allowed Youngstown to grow as an industrial center. The first steel mills were created in the 1890s, leading to a significant increase of individuals coming to the area for work. By 1930, the city reached its peak population of 170,000 residents (*The Founding of Youngstown Historical Marker* 2021).

The Ohio Steel Company was organized in 1892 and was Mahoning Valley's first steel company. In 1900, local investors James Campbell and George Wick created the Youngstown Iron Sheet and Tube Company. The company quickly became a significant focus in Ohio and the largest steel company in the United States. Steel mills were important to the economy because

they supported ancillary businesses. These businesses are companies that provide limestone from mines, or construction equipment for the mills, such as furnaces, steel ladles, and slag cars (Jr., R. 1970). The steel mills were also heavily associated with the train and railroad industry. As the trains and the train tracks were made from steel, this provided transportation to the public (*The Second Industrial Revolution*). The city's steel production was so significant that during World War II, Mahoning Valley accounted for 10 percent of the national steel production, averaging ten million tons per year (Jr., R. 1970). Additionally, the growth of the industry attracted immigrants from Southern and Eastern Europe due to the availability of employment. By 1920, it was estimated that four out of five residents were immigrants who were residing in the Mahoning Valley (Guerrieri, 2022).

After World War II, demand for steel dropped dramatically, causing a significant impact on Youngstown's economy. Population declines and the collapse of the steel industry began in the 1960s (*The Founding of Youngstown Historical Marker* 2021). On September 19, 1977, also known as black Monday, thousands of individuals lost their job due to the sudden closing of the Youngstown Sheet and Tube Company. This major shutdown in the American steel industry displaced over 10,000 workers. Other shutdowns followed, causing 40,000 more individuals to be out of work over the next decade (Linkon & Russo, 2023). This impact led to the city being exemplary of the Rust Belt. The Rust Belt is an area that stretches from the Midwestern to the Northeastern United States. This area was once known to be the embodiment of American industrial prosperity but is characterized today by struggling cities that are attempting to redefine themselves in the wake of economic changes and declining populations (*The Youngstown-Warren Collection*).

These cities that are in the Rust Belt deal with poverty, unemployment, and lack of economic opportunities, and as a result, high crime rates occur. If an individual feels as if they have nothing to lose and believes the risk of committing a crime is greater than the risk of being caught, this may increase the likelihood of them committing a crime. Although crime can happen anywhere, there are several factors that may increase an area's crime rate. Some factors that are known to contribute to crime include cultural conditions, education, religious characteristics, economic conditions, and family conditions (*Variables Affecting Crime* 2012). A study was conducted that explored the influence of a city's location in the Rust Belt on crime. Crime data from 188 cities that were collected from the FBI's Uniform Crime Report was analyzed. Of these cities, 94 were Rust Belt cities and 94 were non-Rust Belt cities. The author concluded that although the location of a city was not shown to be statistically significantly related to crime, the percentage of married residents, percentage of adults with a high school education, and the percentage of the majority race were shown to be influential variables on crime (Orto, 2013).

Youngstown is the largest city within Mahoning County and is ranked the 11th most populous city in Ohio. The city has a total square mileage of 33.93, holding 1,770.6 residents per square mile (*United States Census Bureau* 2022). Additionally, as of 2024, the city's population is 59,082 individuals. Although Youngstown was forced to redefine itself when the steel industry declined, one thing that remained the same was the diversity among the inhabitants. According to the United States Census Bureau, residents of Youngstown are 44.1% white, 41.8% black, .06% American Indian, .06% Asian, two or more races 9.3%, Hispanic 11.2%, and white alone, not Hispanic are 41.3% (*Youngstown, Ohio population 2024*).

Since the city of Youngstown, Ohio, is within the perimeter of the Appalachian Mountains, the city is considered to be part of the Appalachian Ohio region. Appalachia is a

socio-economic region located in the central and southern sections of the Appalachian Mountains of the United States. The Appalachia regions consists of 423 counties across 13 states from southern New York to northern Mississippi. Poverty is an ongoing issue in the Appalachian region primarily due to its limited economic opportunities. The counties located in these regions often lack industries that are needed to generate strong job growth and high-income levels. Considering that these counties lack development, this leads to an increase of people living in poverty. Deficiencies in health care, lack of funding for education, housing quality, and transportation access are all factors that contribute to the low-income rate within the Appalachia regions (*About the Appalachian Region* 2023). Furthermore, the median household income across Appalachia tends to be significantly lower than in any other parts of the United States. According to the Appalachian Regional Commission, roughly 14.7 percent of Appalachian residents lived below the national poverty limit between 2016 and 2022. Additionally, during 2017-2021, the Appalachia's median household income was \$56,780 as compared to the United States median household income of \$69,021 (*Income and Poverty in Appalachia* 2023).

Conflict Theory

Conflict Theory is greatly attributed to German Philosopher Karl Marx. Marx believed that the weak must ward off exploitation by the strong or powerful in society (Marx, 19th century). The idea is that change in a power dynamic between groups does not happen as the result of a gradual adaption, rather it comes out as the symptom of conflict between these groups. Some individuals and groups inherently develop more power and reward than others (Hayes, 2024). "The conflict theory sees social control as the end result of the differential distribution of economic and political power in any society, and conflict theorists view laws as tools created by

the powerful for their own benefit” (Bartollas et al., 2019, p. 121). Moreover, this theory establishes that those who have power in higher social classes have more control as compared to those in lower social classes. This perspective further leads to the idea that crime can be explained by socioeconomic class, by power and authority relationships, and by group and cultural differences. Conflict theorists believe that competition is a constant factor in nearly every human relationship and interaction. Competition exists as a result of the scarcity of resources, including money, property, and commodities (Bartollas et al., 2019). Given theorists assumption that conflict occurs between social classes, one outcome of this conflict is a revolutionary event. When individuals are competing for resources, crime may be likely to occur. According to Courson and Nettle (2021), the prevalence of exploitation in the form of crime is related to the distribution of economic resources. Courson and Nettle explained that individuals perceive the magnitude of social differentials in the society around them, which affects their state of mind. This increases their competitiveness, anxiety, and self-serving individualism. When individuals are in this state of mind, they may do whatever it takes to secure the resources that they are competing for (Courson & Nettle, 2021).

Conflict Theory emphasizes that social inequality, competition for resources, and social class has an impact on the way individuals interact with each other (Wright, 2015). Relationships may be impacted due to individuals in society trying to maximize their power and increase their wealth. This theory states that there is a perpetual class conflict in society as a result of the unequal distribution of resources. The conflicts that occur between different social classes may trigger a change in society (Bartollas et al., 2019). To further explore this topic, a study was conducted that explored whether the distribution of race and class affect neighborhood crime rates. Data from 2000 includes census tracts in 19 cities. It was concluded that neighborhoods

with a high proportion of residents at or below 125 percent of the poverty level have higher crime rates. Additionally, neighborhoods with a higher percentage of African Americans and Latinos have high crime rates (Hipp, 2007). Overall, the authors concluded that not only does the composition of race and social class impact crime rates, but the distribution of race and class within neighborhoods also has important effects.

Over the years, the city of Youngstown has encountered several conflicts. From the closing of the steel mills to the recovery of the economy, residents of the city adapted in different ways. Social class, power, and resources had a significant impact on the ways Youngstown and its residents would adapt to society. Upon the closure of the steel mills and thousands of individuals losing their job, employment opportunities were limited. This led to an increase of competition in the work force industry. Alongside the steel mill, Youngstown being part of the Rust Belt and the Appalachia region also impacted the city and its residents. As previously discussed, cities that are part of the Rust Belt and the Appalachia region are known for high poverty rates and limited opportunities. As a result, individuals often compete for the limited resources that are available, such as education, employment, housing, and representation of counsel. Furthermore, as changes in the city cause individuals to compete for similar resources such as work, education, property, and commodities, it is common for conflict to occur. As a result, some individuals and groups inherently develop more power and reward than others. This often leads to economic disparities in the Criminal Justice system, in regard to pretrial release and the type of defense counsel an individual may receive.

Economic Disparities in the Criminal Justice System

A study was conducted that aimed to determine the effects of legal variables and status characteristics, such as occupation and race, on the length of prison sentences (Lizotte, 1978). For discrimination to occur, status characteristics must affect the length of prison sentence or making bail. Any paths which indicate labeling or economic effects would also indicate other forms of discrimination. The data of the study consist of a sample of 816 criminal cases that was processed by the Chicago trial courts in 1971. The first subsample of data includes 220 cases that were processed by the 15 Chicago trial courts during a one-week period. The second subsample is a random sample of 596 Chicago trial cases in which a grand jury returned an indictment. Data from the defendants' records were gathered for the dependent variable which is sentence length, two exogenous variables of occupation and race, and 6 endogenous variables of prior arrests, evidence, seriousness of the crime, not making bail, and legal counsels' degree of success in sentencing. The variable legal counsel's degree of success in sentencing is coded into four categories: (0) no attorney, (1) courtroom non-regular, (2) courtroom regular, (3) public defender. Courtroom regulars are private defense attorneys who score above the mean on the total number of cases in the initial sample for which they acted as legal counsel, while non-regulars are those who fell below the mean.

The authors of the study concluded several significant findings. Nardulli (1975) stated that a defendant would do well to have a private attorney and would do even better with a private attorney who is not a regular. He found that the preliminary hearing work groups are more inclined to pursue a conviction if the defendant is represented by a public defender or a regular private attorney than by a non-regular attorney. He also concluded that those defendants who are represented by attorneys, private non-regular attorneys have the highest dismissal rates, while

public defenders have the lowest. Data shows that those with no attorney or a private non-regular find it easier to raise the money for bail. This implies that public defenders are less likely to be able to help their clients raise money for bail. Additionally, if the defendant posts their bond, it can seriously hinder the ability of the state to bargain with the defendant for a plea. Therefore, this poses a significant advantage to those individuals who can afford to post their bond since they will be able to negotiate a plea with the state. Furthermore, there is a significant relationship between not making bail and bail amount, prior arrests, legal counsels' degree of success in sentencing, occupation, and race. In this relationship, occupation and race are indicators as a form of economic discrimination. Additionally, there is a tendency for more serious crimes to get longer prison sentencing. Those with no attorney get slightly shorter sentences than those with private non-regulars, while public defenders secure the longest sentences for the clients. Lastly, non-whites and those of lower occupational prestige find it economically more difficult to make bail. In turn, not making bail appears to lead to longer prison sentences (Lizotte, 1978).

Overall, the authors concluded that the data lends plausibility to the conflict model. Gross inequality in sentencing was found to be due to race and occupation and their indirect effects through not making bail. Equalizing differences between occupational strata and racial groups did not eradicate the sentencing disparity. However, most sentencing disparity was due to indirect paths through not making bail and legal counsels' degree of success in sentencing. This shows a form of income inequality considering that if an individual does not have the money to post their bond and retain a private counsel, the sentence they would receive would be different as compared to those who can afford to post their bond (Lizotte, 1978).

In the United States wealth, or lack thereof, is often a prime example of disparity among citizens. Individuals of different economic backgrounds often face inequalities in the Criminal

Justice system. These inequalities play a significant role in the differences that they may encounter. In areas with high crime rates and limited resources, low-income individuals often encounter numerous differences as compared to upper class individuals (De Courson & Nettle, 2021). “The potentially unfair manner in which the Criminal Justice system operates against offenders from deprived backgrounds, and their over-representation in the Criminal Justice system, has proven to be a complex problem” (Bagaric, 2015).

Within the Criminal Justice system, disparities may arise within the courts due to differences in an individual’s socioeconomic class. Their defense attorney, number of days spent in jail, and the type of sentence they receive, all can be impacted by the type of income that they have. Monetary bonds may be at a disadvantage to low-income individuals because it requires them to pay money to get released from jail (Matthews & Curiel, 2019). If an individual does not have the money to post their bond or pay a bondsperson, this could result in them sitting in jail from the time they are arrested to the time their case reaches a disposition. A study was conducted in 2016 that examined how bail perpetuates an endless cycle of poverty in the United States. It was concluded that there were more than 600,000 people incarcerated in local jails throughout the United States. Over 70 percent of these people are being held pretrial, meaning they have not yet been convicted of a crime and are still presumed innocent. The study revealed that the reason for the high number of pretrial detentions is due to monetary bonds being implemented, and individuals not having the adequate funds to post their bond (Rabuy & Kopf, 2016).

The type of bond individuals receive can be influenced by income-based disparities, which may be exacerbated by the type of defense attorney they are able to afford. A study was conducted in 2017 that examined misdemeanor offenses in Harris County, Texas. It was

concluded that having a private attorney triples a defendant's chance of receiving bail. The authors also concluded that a defendant who retained their own private counsel is 45 times more likely to be able to post their bond than those individuals who do not have a private attorney to represent them (Hissong & Wheeler, 2017). Additionally, this income-based disparity revolves around financial constraints, as low-income individuals with limited resources may struggle to pay the costs of hiring an attorney to represent them. Although the criminal justice system is premised on the notion that everyone is treated equal, access to fair and equal justice often depends on how much money an individual has.

There have been several studies that have concluded that there is a positive correlation between economic inequality and imprisonment rates. In 2015, an analysis was conducted that examined the relationship between income inequality and prison admission rates in the United States covering the period 1950-2010 (Kim 2015). The author of the study concluded that there was evidence of both short-term and long-term equilibrium relationships. Meaning, there is a correlation between income and those who get sentenced to prison. Individuals with lower income were more likely to get admitted into prison. Additional research has found that the rates of imprisonment are higher in more unequal countries, with the highest levels of income inequality and high rates of imprisonment being the United States (Wilkinson and Pickett, 2009).

Overall, economic disparities play a crucial role in shaping the outcomes of court cases within the criminal justice system, due to income-based disparities. Individual's encounters with law enforcement, their ability to afford defense counsel and pay their bond, and the potential disparities in sentencing all contribute to the unequal treatment of individuals based on their economic status. Addressing these disparities is essential for creating a more just and equitable

criminal justice system that upholds the principles of fairness and equality for all individuals, regardless of their socioeconomic status.

Chapter 2

Literature Review

An Overview

In the United States, every individual being charged with a jailable offense has the right to an attorney. Previous United States Supreme Court cases, *Powell v. Alabama* (1932), *Betts v. Brady* (1942), *Gideon v. Wainwright* (1963), *Argersinger v. Hamlin* (1972), have established this right to individuals within the Criminal Justice system. Various Supreme Court landmark cases, Ohio Appellate cases, and journal articles are now examined in this thesis that focus on the importance of defense counsel in representing defendants in court. The right to counsel has created a significant impact on pretrial proceedings in the Criminal Justice system. The Eighth Amendment of the United States Constitution prohibits excessive bail, which over time through case law and legislation, has come to mean that defendants should be released on the least restrictive conditions. These conditions may include being released on a personal own recognizance bond or having to pay a monetary bond to get pretrial release (U.S. Const. Amend, 8). However, the type of pretrial release an individual receives may be impacted by the type of counsel that they have.

Right to Counsel

The right to counsel is guaranteed through the Sixth Amendment to the United States Constitution. The Sixth Amendment secures the right to the assistance of counsel, by appointment, if necessary, in any criminal proceeding that can be punishable by incarceration (U.S. Const. Amend. 6). Counsel can be described as “to provide legal advice or guidance to someone on a specific matter” (*Counsel*). There are various types of counsel available to defendants, including court appointed counsel, retained counsel, and public defender. Court appointed counsel are private attorneys who accept appointments through the court. As described by the Ohio Public Defender Commission, court appointed counsel is “A lawyer who has applied to the court to accept cases where the defendant who is charged is unable to pay for their own lawyer” (*Appointed counsel | Ohio Public Defender Commission*). A public defender is an attorney who only handles public defender cases. These attorneys work for the public defender’s office and receives their caseload directly from the court. “A public defender is a lawyer who represents indigent criminal defendants. Public defenders are staff attorneys of the legislatively created public defender service. They are appointed by the court to represent defendants and are paid by the county, state, or federal government” (*Public defender*). Additionally, each county can decide whether they are going to utilize public defenders or court appointed counsel. If the county has a public defender’s office, the courts will offer public defenders to those who cannot afford to obtain their own counsel. County public defender offices are run by a director and overseen by the County Public Defender Commissioner, who further determines if a county will house a public defender’s office (*Appointed counsel | Ohio Public Defender Commission*). However, if a county does not have a public defender’s office, the courts will appoint counsel to

those who need representation in court. There have been several landmark court cases on the topic of court appointed counsel.

Supreme Court Landmark Cases

A landmark case that signifies the right to counsel is *Powell v. Alabama*. This landmark case established that counsel must be guaranteed to every individual who is charged with a capital offense. This case occurred in Alabama in 1932, and involves three individuals who were charged with rape, and were indicted in Alabama State Court. At their arraignment, the defendants entered pleas of not guilty. The record of the court recites that the defendants were represented by counsel, however, no counsel had been employed, and the record does not disclose when the appointment of counsel was made, or who had been appointed. Within a single day, a trial was held for each defendant, they were found guilty, and the death penalty was imposed. The trial court overruled motions for new trials for the defendants and sentenced the defendants in accordance with the verdicts of the trial. Judgments were affirmed by the State Supreme Court, to which the Chief Justice dissented. The issue in this case was whether the trials violated the Due Process clause of the 14th Amendment. It was concluded that the trial court did violate the Due Process clause of the 14th Amendment because the defendants were not given reasonable time and opportunity to secure counsel in their defense. The United States Supreme Court later reversed the decision of the Alabama State Court and established that state courts must provide counsel to all defendants charged with a capital felony (*Powell v. Alabama*, 287 U.S. 45 1932).

Betts v. Brady is vital to the Criminal Justice system because it changed the decision-making process of determining the right to counsel. Within this case, *Betts* was indicted for

robbery in the Circuit Court in Maryland. Betts was indigent and requested the Court to appoint him counsel. The court informed Betts that it is not the Courts practice to appoint counsel to indigent individuals, except in prosecutions that include rape and murder. Upon being sentenced to 8 years in prison, Betts filed several motions alleging he had been deprived of the right to counsel which is guaranteed by the 14th Amendment. While his motions continued to be rejected, Betts remained in custody while his cases were further examined. The case issue was whether denying a request for counsel for an indigent defendant violates the Constitution. The Court reasoned that while the 14th Amendment prohibits an unfair trial, the amendment does not embody “an inexorable command that no trial for any offense, or in any court, can be fairly conducted and justice accorded a defendant who is not represented by counsel” (Betts v. Brady, 316 U.S. 455 1942). This decision was later overruled in 1963 in the landmark case Gideon v. Wainwright.

Clarence Gideon was indicted in Florida State Court for breaking and entering. Gideon appeared in court without counsel and requested one to be appointed for him. The trial court denied him counsel, and he represented himself. Gideon was then convicted and sentenced to 5 years in prison. A series of court proceedings occurred which eventually led to Gideon's case being heard in the United States Supreme Court. The issue in Gideon: does the Sixth Amendment’s right to counsel extend to felony cases in state courts? The Supreme Court held that state courts must appoint counsel for defendants who could not afford to retain their own. The Court reasoned that the Sixth Amendment’s guarantee of counsel is a fundamental right that was made applicable to states by the Fourteenth Amendment which provides citizens of the United States equal protection. The Sixth Amendment guarantees the accused the right to the assistance of counsel in all criminal proceedings and requires courts to provide counsel for

defendants who are unable to retain their own, unless the defendant waives this right. The Supreme Court ruled unanimously in favor of Gideon, which guaranteed the right to counsel for defendants in federal and state courts (*Gideon v. Wainwright*, 372 U.S. 335 1963).

Argersinger v. Hamlin occurred in Florida in 1972 and expanded the Sixth Amendment right to counsel to all individuals who are charged with jailable offenses, regardless of whether they are petty, misdemeanors, or felony offenses. *Argersinger* involved an individual, Jon *Argersinger*, who was charged in a Florida Court for carrying a concealed weapon. *Argersinger* went to trial and did not have counsel to represent him as he was indigent. At trial, *Argersinger* was convicted and sentenced to 90 days in jail. *Argersinger* filed a Habeas Corpus petition in the Florida Supreme Court, and the case was granted certiorari and eventually reversed. The issue in the case; does the Sixth and Fourteenth Amendment's guarantee a right to counsel to individuals who are accused of committing misdemeanors? The United States Supreme court found that the Sixth and Fourteenth Amendments, required states to provide an attorney to indigent defendants in cases involving serious crimes, extended that right to also provide an attorney to defendants who are charged with any misdemeanor that could result in a potential penalty of incarceration (*Argersinger v. Hamlin*, 407 U.S. 25, 1972).

Ohio Appellate Cases

As the previous landmark cases discussed the importance of having counsel, there have been state level cases alleging the ineffectiveness of the counsel given to a defendant. In the Mahoning County Common Pleas Court, Tawhon Easterly was indicted on five charges, and he retained his own counsel. Easterly entered an Alford plea to count two, intimidation, in exchange for the State's dismissal of the remaining charges. A sentencing hearing was held, and Easterly

indicated that he only took a plea because he could not get a fair trial due to the ineffectiveness of trial counsel. Easterly appealed his case, and the Seventh District Court of Appeals in Mahoning County found that neither plain error nor ineffective assistance of trial counsel occurred, and they affirmed the sentencing judgment. The issue that emerged was whether Easterly's counsel demonstrated ineffective assistance of counsel that resulted in an unfair trial. Easterly claimed his counsel was ineffective for allowing him to enter his Alford plea when the record suggests he was not doing so knowingly, intelligently, or voluntarily. However, Easterly never requested to withdraw his Alford plea, and the trial court accepted the Alford plea because the record demonstrated that there is no evidence that Easterly did not understand the plea process or that his plea was not made in a knowing, intelligent, and voluntary manner. Additionally, Easterly answered all questions posed to him in a manner that demonstrated his understanding of the plea and sentence. The seven-year prison term imposed by the Mahoning County Court of Common Pleas for intimidation of a witness was affirmed (*State v. Easterly*, 2023-Ohio-4517.)

A second case alleging ineffectiveness assistance of counsel is *State v. Anderson*. Terry Anderson was indicted on five counts by the Lake County Grand Jury. Anderson plead guilty to one count of complicity to burglary, with a joint recommendation for an 18-month prison sentence. Anderson rejected the states offer and informed the court that his court appointed counsel was not adequately representing him and that he would like to retain his own attorney. The court assured him he could hire his own counsel and reminded him that his trial was set for June 20, 2023.

On August 9,2023, the court held a second change of plea hearing, in which Anderson rejected the offer and expressed his wish to proceed to trial. On the same day, Anderson filed a

motion to substitute counsel, and the court informed him that nothing precluded him from retaining private counsel, but he has discussed the matter since June 1, 2023, and that the court was not going to remove his appointed counsel until he had retained his own counsel. Trial court denied his motion for substitution of counsel. Upon the trial, the jury returned verdict of guilty on all five counts. The court sentenced Anderson to serve an indefinite prison term of six to nine years and ordered him to pay restitution to the victims. Anderson appealed his conviction and raised three assignments of error. First, the trial court violated the Sixth Amendment rights to the effective assistance of counsel when they failed to grant him a substitution of assigned counsel. Second, his counsel was ineffective for failing to object to three witnesses and to a hearsay statement. Thirdly, the guilty verdict cannot be upheld because the evidence and testimony presented at trial did not establish that he is guilty beyond a reasonable doubt.

First, Anderson failed to demonstrate a conflict of interest with his counsel. Therefore, he was not entitled to a substitution of appointed counsel, and the trial court did not abuse its discretion by denying his request. The court found that the request of a defendant to discharge their court appointed counsel will only be granted if they can “show a breakdown in the attorney-client relationship of such a magnitude as to jeopardize the defendant’s right to effective assistance of counsel”.

Secondly, Anderson failed to demonstrate that his counsel was ineffective for failing to object to a hearsay statement because there was no hearsay statement that would trigger an objection. The court found that first, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. Specifically, the defendant must show that counsel’s representation fell below an objective standard of

reasonableness. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. In other words, the defendant must show that there is a reasonable probability that the result of the proceeding would have been different if it wasn't for the counsel's unprofessional errors. The court concluded that they cannot find Anderson's counsel was ineffective for failing to raise a Sixth Amendment right to confrontation issue because any objection from defense counsel would be to the authenticity of the records.

Lastly, the court concluded that just because much of the state's evidence was circumstantial, does not mean the jury's verdicts are against the manifest weight of the evidence, and that circumstantial evidence and direct evidence inherently possessed the same probative value. Furthermore, there is no requirement for the state to identify the principal offender for Anderson to be found guilty of complicity. In order to satisfy the element of complicity, the state is only obligated to prove that a principal offender did commit the underlying offense, and that the defendant aided and abetted in the manner. Anderson's third assignment of error is without merit.

Upon review, the appellate court found that Anderson's assignments of error are without merit, and the judgment of the Lake County Court of Common Pleas is affirmed (State v. Anderson, 2024-Ohio-2505).

A third case regarding ineffectiveness of counsel is *State v. Honeycutt*. Steven Honeycutt was indicted by the Ashtabula County Grand Jury on three counts of rape. Honeycutt entered a not guilty plea, and his defense counsel filed a motion to determine the victim's competency and for a mental/psychological examination. The court stated that the victim was competent and overruled the request for a mental/psychological examination. The jury found Honeycutt guilty

of count one. Honeycutt appealed this conviction on the grounds of ineffective assistance of trial counsel. In order to successfully appeal on this matter, Honeycutt would need to prove two components; first, the defendant must show the counsel's performance was deficient. And second, Honeycutt must show that the deficient performance prejudiced the defense.

Honeycutt claims that trial counsel was ineffective for eliciting other-acts testimony. However, Honeycutt's counsel cross-examined the victim's friend and attempted to undermine the friend's credibility, so the defense counsel used other-acts testimony as part of his trial strategy. Therefore, Honeycutt has failed to demonstrate deficient performance. On the second element, Honeycutt has failed to demonstrate resulting prejudice. Considering that the jury found Honeycutt not guilty of two counts of rape, this suggests the jury's verdicts were not based on any impermissible other-acts evidence.

Additionally, Honeycutt claims that trial counsel was ineffective for failing to timely object to the date range alleged in the indictment. The Supreme Court of Ohio has held, ordinarily, precise times and dates are not essential elements of offenses. The failure to provide dates and times in an indictment will not alone provide a basis for dismissal of the charges. This court also held that when the victim is a child, an allowance for reasonableness and inexactitude must be made for such cases because many child victims are unable to remember exact dates and times. Since it is unlikely that defense counsel's timely objection would have been successful, Honeycutt has failed to demonstrate deficient performance or resulting prejudice on this matter as well.

The court found that Honeycutt's appeal on the grounds of ineffective assistance of trial counsel is without merit and affirmed the judgment of the Ashtabula County Court of Common Pleas (State v. Honeycutt, 2024-Ohio-2507).

The last case that raises the concern of ineffective assistance of counsel is *State v. McNair*. The Stark County Grand Jury indicted Tyler McNair in a three-count indictment with one count of Felonious Assault, one count of Attempted Murder, and one count of Aggravated Arson. McNair was convicted of Felonious Assault, the Attempted Murder was dismissed, and McNair was acquitted of Aggravated Arson. McNair was sentenced to an indefinite minimum prison term of eight years up to a maximum prison term of twelve years. McNair appeals his conviction and raises an error for review that he was denied effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution.

The appellate court found that to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate two factors. Deficient performance by counsel and that the counsel's error prejudiced the defendant. In this case, McNair argues that his counsel was ineffective in failing to challenge the composition of the jury pool, that his counsel failed to provide notice of intent to claim self-defense, and that his counsel failed to ask the defense witness additional questions on redirect. McNair, who is African American, argues that only one African American juror was on the venire, and that juror was excused for cause by both parties. The Sixth Amendment guarantee to a jury trial contemplates a jury drawn from a fair cross section of the community. To establish a violation of this requirement, the defendant must prove that the group alleged to be excluded is a distinctive group in the community, that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community, and that the representation is due to systematic exclusion of the group in the jury-selection process. In this case, other than defense counsel's personal observation that the venire appear imbalanced, McNair failed to produce any

evidence demonstrating that African Americans were underrepresented. Additionally, McNairs argument regarding the makeup of the venire based on race lacks merit.

In addition, McNair claims that his counsel was ineffective for failing to provide written notice of intent to present evidence of self-defense. The appellate court found that McNair had not presented sufficient evidence to support a self-defense instruction, and that he was not entitled to a self-defense instruction. McNair did not take the stand to assert self-defense or provide any evidence of self-defense at trial. The court concluded that although a defendant does not need to testify to be entitled to a self-defense instruction, there must be evidence to support it.

Furthermore, McNair argues that his trial counsel should have asked his mother questions on redirect with regards to the injuries that she observed on McNairs hands. Upon review, it was found that defense attorneys' decision at trial regarding whether to conduct redirect examination of a witness is a tactical choice. Further, speculation by a defendant as to what he would have said if called to testify, and how that would have been affected by the jury's verdict, is insufficient to establish ineffective assistance of counsel. The appellate court concluded that McNair has not met the burden of demonstrating that his trial counsel was ineffective or that he would prejudice by the alleged errors. McNairs assignment of error is denied. The decision of the Court of Common Pleas, Stark County, Ohio, is affirmed (State. McNair, 2024-Ohio-107).

Type of Defense Counsel and its Effects

Alongside exploring landmark cases regarding the right to counsel, numerous studies have been conducted that focus on the effects of different types of defense counsel. An article written by Cohen in 2012 explored the types of defense counsel (private, appointed, public

defender) that represented defendants in criminal cases and how each defense counsel performed in terms of securing favorable outcomes for their clients. This article examines whether differences in defense counsel representation matter in terms of the probability of conviction and severity of the sentence that gets imposed. To examine this matter, felony case-processing data from the State Court Processing Statistics Series sponsored by the Bureau of Justice Statistics were examined. The data sample collected includes cases that were filed in May in 2004 and 2006 and includes a data sample from 40 of the nation's 75 most populous counties. Counties who were selected to participate in this study provided a list of defendants charged with a felony on randomly selected days in May, and the cases were followed until the case was disposed of, or May 31st of the following year. Each data collection tracks approximately 15,000-16,000 felony defendants for up to one year. Information that was collected includes the types of arrest charges, conditions of pretrial release, and pretrial misconduct. The disposition outcomes include dismissal, diversion, guilty plea, and trial conviction rates. The study also obtained data on the defendants' demographic characteristics, criminal justice involvement at the time of arrest, and prior convictions. Lastly, information on the type of counsel representing each defendant was collected. Many of the defendants show that they filed for indigent representation. In 2004 and 2006, about 80 percent of defendants reported having public defenders or assigned counsel, while 20 percent retained their own counsel. In terms of conviction rates, this study discovered that the overall conviction rates were about the same for defendants who were represented by public defenders (73%) or private retained counsel (72%). However, defendants with assigned counsel faced a 78 percent chance of being convicted. Additionally, approximately 90 percent of defendants with assigned counsel or a public defender, and about 85 percent with private retained counsel were convicted of a felony offense. The remaining 10 to 15 percent of

defendants had their charges amended to a misdemeanor offense. Furthermore, in terms of incarceration, defendants who were represented by public defenders or assigned counsel were more likely than those represented by private counsel to be sentenced to incarceration. Cohen (2012) concluded that the percentage of defendants who were sentenced to incarceration did not differ significantly between defendants with public defenders or assigned counsel. An interesting point that the author made prior to conducting this study was that defendants who were represented by assigned counsel and public defenders have remarkably similar characteristics. These defendants were charged with comparable crimes and have similar criminal histories and demographic characteristics. As opposed to defendants who hire their own counsel, who were exemplified by different attributes. These individuals tend to have less serious criminal backgrounds and are charged with an array of offenses from more to the less serious. Overall, results show that private counsel and public defenders secure similar adjudication and sentencing outcomes for their clients. However, defendants with assigned counsel tend to receive less favorable outcomes compared to their counterparts with public defenders (Cohen, 2012).

To examine a more direct effect of counsel more specifically, a study was administered that explored the effect of defense counsel on the outcomes of murder cases. The sample included 3,412 defendants who were charged with murder between 1994 and 2005 in Philadelphia Municipal Court before the cases were bound over to the Court of Common Pleas. The data was provided by the First Judicial District of Philadelphia. Basic demographics of the defendant were collected, along with the charges, attorney of record, and the outcome of the case. As indicated by the Philadelphia court staff, every fifth defendant with a murder charge is assigned to a public defender as opposed to court appointed counsel. To sort the data, the authors of the study utilized logs that tracked the defendants. Cases were eliminated due to missing data

and ineligibility to receive a public defender, leaving the study with a total of 3,157 defendants. Anderson and Heaton (2011) discovered that of the 2,677 defendants who were originally appointed counsel, 80.1 percent were found guilty, while 79.2 percent of defendants originally assigned a public defender were found guilty. Anderson and Heaton (2011) explained that a potential explanation for the differences in these outcomes is that public defenders might use different strategies for determining whether to take a case to trial than court appointed counsel, considering that both have different financial incentives for trial. Additionally, when examining assigned counsel, defendants initially have an 80 percent chance of pleading or being found guilty of some charge. Whereas a public defender reduces the probability a defendant is found guilty of any charge by .02. Another finding from this study is that defendants who are represented by public defenders are expected to spend more than two and a half fewer years in prison than defendants who were represented by appointed counsel, which was measured to be a 24 percent reduction in sentencing. In addition, representation by a public defender reduces the probability of receiving a life sentence by 62 percent. The authors concluded a highly statistically significant impact of public defender representation on average sentence length. The causal impact of public defender on sentence length is a 6.4-year reduction which is a 31 percent decline relative to the mean sentence length for those appointed counsel of 20.9 years (Anderson & Heaton, 2011).

Overall, the right to counsel has been established in various court cases within the United States. As stated in the United States Constitution along with several landmark cases, the right to counsel is a significant legal requirement for all defendants. Without counsel, the Criminal Justice system would not be able to conduct the majority of court proceedings.

The right to counsel is a significant aspect of the Criminal Justice system, of which the previous landmark cases have established. Type of counsel can have an impact on defendants' pretrial proceedings and could have an effect on whether defendants are granted pretrial release. Additionally, the purpose of pretrial release, pretrial supervision, and risk assessments that are utilized within the pretrial process will be discussed to further understand the pretrial process.

Pretrial Release

The pretrial process is one of the early stages of the criminal justice process. If an individual gets released from jail during the pendency of their case, this can be referred to as pretrial release (*Pretrial Release*). According to the Bureau of Justice Statistics, pretrial release refers to the conditions of release from custody to which defendants must adhere during the time period between the filing of their charges and court adjudication. Pretrial release is usually granted to a defendant at their initial arraignment when their bond is set (*Pretrial release*). Defendants can be granted a release on own recognizance bond or a monetary bond to get pretrial release. An own recognizance bond is when an individual can be released from jail without having to pay any money. According to the Ohio Laws and Administrative Rules section 2937.29, "when from all the circumstances the court is of the opinion that the accused will appear as required, either before or after conviction, the accused may be released on his own recognizance" (Ohio Rev. Code Ann, 2937.29).

Purpose of Pretrial Release

There are various goals and purposes of pretrial release. The two main goals of pretrial release include: 1. to assure the appearance of the defendant, and 2: to assure community safety

(Frequently Asked Questions About Pretrial Release Decision Making). If an individual poses no threat that they will commit a new offense upon their release, or fail to appear for future court proceedings, this can increase their likelihood of being granted pretrial release. Additionally, everyone who encounters the Criminal Justice system is considered innocent until proven guilty, which is another important reason to consider pretrial release. “The purpose of pretrial release includes providing due process to those accused of a crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses, and the community from threat, danger or interference” (*Pretrial Release*).

It is important to understand the effect that pretrial release may have on the judicial legal decision-making process. To further understand this effect, a study that was conducted by Tartaro and Sedelmaier (2009) will be examined. This study focused on the utilization of pretrial release and its effect on processing decisions. To explore this topic, the authors conducted an analysis of felony cases in two Florida counties during 1998. The variables that are of focus include the type of sentence and the length of incarceration. The overall purpose was to explore whether pretrial release has an impact on the type and length of sentence an individual receives. The analysis also focused on whether a defendant’s race is more likely to receive pretrial release as compared to another race. Data for this study was obtained through the State Court Processing Statistics (SCPS) program, which is operated by the United States Bureau of Justice Statistics. SCPS monitors felony cases that are filed in 40 of the nation’s 75 most populated counties. For the purpose of this study, the authors only focused on the data set from Dade and Orange Counties.

Upon completing the study, several key factors were determined. Defendants who were held pending their trial faced significant disadvantages compared to those who were granted

pretrial release. Disadvantages include loss of employment, restricted access to their defense counsel, and longer incarceration sentences. Race and ethnicity did not have an impact on the pretrial release decision making process, but factors that did have an impact on sentencing decisions include gender, prior record, type of offense, employment status, and trial type. The prior record refers to if the defendant has any past criminal convictions. The type of offense refers to the classification of the alleged crime, whether it be a misdemeanor, felony, non-violent, or violent offense. Employment status is whether the defendant was currently employed or not at the time of the offense. Lastly, trial type is the type of court proceeding that occurred. Examples of trial type may include pre-trial, final pre-trial, and jury trial (Tartaro & Sedelmaier, 2009). Additionally, Dade County had 56.4 percent of detained individuals during the pendency of their trials, and Orange County had 44 percent detained. Of these detained defendants in Dade County, 29 percent were black, 18 percent were Hispanic, and 10 percent were white. Detained defendants in Orange County were 25 percent Black and 18 percent white. In addition, 12 percent of defendants in Dade County had other pending charges at the time of their arrest, and 21 percent of defendants in Orange County had pending charges at the time of their arrest.

When looking at the overall data in Dade County, the authors observed that pretrial release was a significant predictor for the judge when it came to sentencing a defendant to incarceration. The defendants who were held pending their trial were more than 4 times as likely to receive a sentence of incarceration compared to defendants who were granted pretrial release. When looking at the effects of race, Blacks and Hispanics who were detained during the pendency of their case were several times more likely to be sentenced to incarceration as opposed to detained white defendants. Additionally, defendants who were detained prior to their trial tended to receive longer sentences of incarceration than those who were granted pretrial

release. When looking at the overall data in Orange County, the authors concluded that pretrial release had a significant influence on the processing decisions. Detained defendants were 10 times more likely to receive a sentence of incarceration compared to individuals who were granted pretrial release. In terms of race, black defendants who were detained during their pretrial were less likely to be sentenced to incarceration, which contradicts Dade County results. However, black defendants tended to receive longer sentences of incarceration, and those who were detained prior to trial also tended to receive longer sentences. An interesting conclusion that was made while exploring the data is that defendants in Orange County varied in the type of counsel they had (public defender or private retained counsel), however most defendants in Dade County involved the use of public defenders. Additionally, Dade County defendants were more likely to go to trial rather than plea, whereas the majority of Orange County defendants were more likely to plea than go to trial.

Altogether, it was concluded that pretrial release is a significant predictor in the likelihood of a defendant being sentenced to incarceration. If defendants were not granted pretrial release, then they were more likely to be sentenced to incarceration. Although the outcomes were different for each location, the overall objective of examining two counties were to get a better understanding of how race and ethnicity can be factors in processing decisions in America Courts. In addition, Black and Hispanic defendants in Dade County who were subjected to pretrial detention were more likely to receive a period of incarceration. In Orange County, black defendants subject to pretrial detention were less likely to be sentenced to incarceration. However, blacks who were detained prior to trial in Orange County and who were sentenced to incarceration tended to have an advantage of receiving a shorter sentence (Tartaro & Sedelmaier, 2009).

Overall, it is important to ensure that accurate and informed decisions are being made when considering granting an individual pretrial release. By incorporating validated risk assessments into the pretrial release decision making process, the Criminal Justice system can ensure that the individual is not posing a risk to themselves or the community. The use of validated risk assessment tools can also ensure that individuals are not being detained pending their trial without a proper explanation. Additionally, the type of defense counsel an individual has may have an impact on the type of bond they get, which may result in them being granted pretrial release.

Validated Risk Assessments

To assist the court in making bond decisions, validated risk assessments can be utilized to ensure accurate bond recommendations are being made. The purpose of validated risk assessments is to provide information regarding the risk of failure to appear that a defendant may pose if they are granted pretrial release (Summers & Willis, 2010). The main factors that are of concern when determining pretrial release is whether the individual is going to appear for all court proceedings, and if the individual is going remain arrest free or be charged with a new offense prior to their court adjudication. Additionally, validated risk assessment tools can be used to determine an individual's flight risk and the risk they may pose to the community. Upon the completion of using a validated risk assessment tool, individuals may be grouped into a category based off the risk that they pose. Low risk individuals pose little to no risk to the community and have a high likelihood of appearing for court proceedings. Moderate risk individuals can be granted pretrial release with conditions implemented for them to abide by. These individuals also pose little to no risk to the community and have a reasonable assurance

that they will appear for court proceedings. High risk offenders, if granted pretrial release, should have significant conditions implemented for them to follow to ensure their court appearance and to decrease their chance of reoffending pending their trial (Summers & Willis, 2010). Validated risk assessment tools examine static and dynamic factors of an individual. These factors often include the seriousness of the current offense, pending charges at the time of arrest, prior criminal convictions, history of failure to appear, history of violence, employment status, and residence stability. Depending on the type of assessment being used, only either static or dynamic factors may be examined (Summers & Willis, 2010).

Public Safety Assessment

A common validated risk assessment tool is the Public Safety Assessment (PSA). The PSA was developed in 2013 by Laura and John Arnold and includes nine static factors to generate pretrial outcomes. Like most validated risk assessment tools, these factors estimate the likelihood that individuals will appear in court and remain arrest-free while their case is pending (*Implementing the PSA 2023*). Furthermore, a study was conducted that utilized a statewide dataset from Kentucky to assess the predictive validity and differential precision by race and gender using the Public Safety Assessment. The data that was provided are cases that are part of the Kentucky pretrial system and allowed the authors to analyze the PSA factors in conjunction with the risk factors of gender and race. The dataset contained a total of 240,219 cases. Based on the data provided, 164,597 individuals were granted pretrial release, and 75,662 individuals were detained pending their trial. Of those granted pretrial release, 81 percent of the individuals were white, nearly 17 percent were black, and nearly 70 percent were men. Of the overall dataset, it was concluded that 19 percent of individuals had a pending charge at the time of their arrest, 30

percent had one or more prior failure to appear within the past 2 years, and nearly 75 percent had at least one prior conviction. 13 percent of cases without a pending charge at the time of their arrest had a new failure to appear, and 22 percent of those with a pending charge at the time of their arrest had a new failure to appear. It was gathered that there was a positive relationship between the risk factors race and gender with the variables failure to appear, pending charges at the time of the arrest, and prior sentence to incarceration. A positive relationship signifies that race and gender did have an impact on the variables that were discussed. Furthermore, the authors of the study found no significant difference in the new criminal arrest scale to predict outcomes for black defendants or white defendants, with the scale being slightly more accurate for black individuals. Additionally, the new violent criminal arrest scale is more accurate at predicting violent arrests for white defendants. Lastly, male and females roughly have the same failure to appear rate, with it being slightly more predictive for females. Overall, the authors concluded that the PSA does have predictive validity in line with risk assessments used throughout the Criminal Justice system. The PSA scales are associated with increasing failure to appear rates, which was found across racial and gender subgroups. However, there were issues with predictive bias by race, but race does not moderate the relationship between new criminal arrest and new violent criminal arrest scales (DeMichele et al., 2020). (See figure nine)

Pretrial Supervision

If a defendant is let out of jail on an own recognizance bond, the judge may order that they abide by pretrial supervision. Pretrial supervision includes a pretrial service officer monitoring and staying in contact with defendants to help them follow court ordered conditions that the Judge may impose while their case is pending. Judges can impose these conditions based

on the defendant's prior history and their personal needs. Conditions may include checking in with a pretrial service officer, electronically monitored house arrest, or engaging in treatment (Mintz, 2020). According to the Ohio Laws and Administrative Rules section 2937.011, "the court shall release the defendant on the least restrictive conditions, that, in the discretion of the court, will reasonably assure the defendant's appearance in court, the protection or safety of any person or the community, and that the defendant will not obstruct the criminal justice process" (Ohio Rev. Code Ann, 2937.011).

Indigency

For individuals to be granted a public defender or a court appointed counsel, the court must find the individual to be indigent. Indigency is a state of financial hardship that poses a profound challenge to the administration of justice (Evans, 1972). Embedded into the Criminal Justice system is the principle that every individual, regardless of economic means, is entitled to fair representation in a court of law (U.S. Const. Amend 6). However, these provisions did not always provide guaranteed assurances to those who were unable to afford their own counsel. As previously discussed, *Gideon v. Wainwright* solidified this right for indigent individuals. However, this landmark case did not conclude the Supreme Court's examination of when or how the state must furnish counsel for those claiming financial inability (Neeley & Thompkins, 2007).

When it comes to how states will proceed with determining indigency, this matter lacks explicit mandates within constitutional and statutory laws. States have responded by developing various programs and procedures to further address this issue. The public defender model,

appointment of counsel, and contracts with practitioners have been established to fulfill the obligation of providing counsel to indigent individuals (Neeley & Thompkins, 2007).

Ohio Eligibility Standards

The state of Ohio utilizes specific criteria to determine if an individual is eligible for the court to provide legal representation. This criteria is outlined in Rule 120-1-03 of the Ohio Administrative Code. According to the Ohio Admin. Code 120-1-03 (2015), the primary criteria is not whether an individual could theoretically afford counsel but whether they can do so in reality. This Ohio rule establishes presumptive indigence for individuals with gross incomes at or below 187.5 percent of federally established poverty levels, ensuring their entitlement to appointed counsel. Even if the individuals' gross incomes surpass this threshold, they may still qualify for counsel if, after deducting basic living expenses, their net income falls at or below 125 percent of the federal poverty level (Ohio Rev. Code Ann, 120-1-03). Additionally, this rule addresses various factors, including wages, expenses, court-imposed obligations, and court fees to further assess whether an individual qualifies for court represented counsel (Ohio Rev. Code Ann, 120-1-03).

The Ohio Admin. Code 120-1-03 defines liquid assets and sets limits on their possession based on the severity of offenses that the individual is charged with. Individuals with income exceeding poverty levels or with assets of significant value, are not automatically excluded from being eligible, with consideration for the number of charges that they have, the complexity of their case, and seriousness of charges that they face. Additionally, the rule emphasizes that financial eligibility standards should be interpreted to safeguard individuals' constitutional rights

to counsel and prevent unintentional waiver due to the expense of retained counsel (Ohio Rev. Code Ann, 120-1-03).

Federal Eligibility Standards

An individual is considered financially eligible for the appointment of counsel as defined by 18 U.S.C. § 4109 if their net financial resources and income are insufficient to cover the costs of hiring qualified counsel. To determine this insufficiency, the expenses required for the individual and their dependents to meet basic life necessities must be considered. Additionally, the eligibility determination should not consider the financial capability of the individual's family, unless the family expressly indicates their willingness and financial ability to hire counsel. Any uncertainties about an individual's eligibility should be resolved in favor of the individual (United States Code 18 section 4109).

National Eligibility Standards

States employ various methods, including statutory provisions, to set guidelines for court appointed counsel decisions. These guidelines may include agency rules, regulations by judicial councils, and decisions from state trials and appellate courts (*Criminal justice act (CJA) guidelines*). Additionally, the legislation that creates government structures plays a crucial role in ensuring procedural fairness in the eligibility determination process. State statutes have been analyzed to evaluate the legislative parameters that govern eligibility decisions. These decisions include components such as timing, information sources, decision makers, sanctions for false information, and the nature of the eligibility (Wynne & Vaughn, 2016).

In a 2016 study that was conducted by Wynne and Vaughn, it was concluded that 38 states have statutes that outline a general standard for eligibility for counsel. These statutes include financial inability to afford counsel or an inability to retain legal representation without prejudicing an individual's financial ability to afford basic necessities (Wynne & Vaughn, 2016). Additionally, the authors of the study concluded that 12 states lacked general standards of eligibility. In addition, in five of these states, eligibility criteria were assigned to other agencies to further determine counsel eligibility. 30 states had statutes that specified factors for determining eligibility, which often related to the individuals' financial condition, nature of the offense, and various procedural aspects. 13 states considered the cost of bail or bond in eligibility determinations, and seven states included the income or assets of the individual's family. Lastly, six states considered the nature and complexity of the case, while three states addressed potential asset transfers by defendants (Wynne & Vaughn, 2016).

Chapter 3

Methodology

The data gathered and analyzed are from the time periods of June 1, 2022, through June 1, 2023. This thesis explores the potential effect that the type of defense counsel has on defendants' pretrial proceedings in the Youngstown Municipal Court within Youngstown, Ohio. This chapter will provide the insight to the methodology used in this thesis by describing the research design, data collection process, sample details, measurement, and analysis.

Research Design

The research design for this thesis is a secondary analysis of existing data from the time periods of 2022 and 2023. The non-random data was collected by three Pretrial Service Officers at the Youngstown Municipal Court. The Youngstown Municipal Court was selected for this research based on the access of data and the Court's cooperation to conduct a study. The Youngstown Municipal Court began utilizing the Public Safety Assessment and collecting the results of individuals pretrial success on June 1, 2022. Therefore, the one-year time period of 2022 and 2023 was chosen to explore the potential impact that the type of defense counsel had on a defendant's pretrial proceedings.

Data Context

The data studied includes a non-random sample of every individual who was arrested within the city of Youngstown for a jailable offense. The data includes 26 domains regarding the individuals' demographics, type of offense, information from arrest, court information, pretrial detainment and public safety assessment scores. The variable race has six categories including American Indian, Asian, Black or African American, Native Hawaiian, White, and Other. The variable gender has three categories including male, female, and other. The offense type has six categories including domestic violence, DUI/OVI, violent felony, non-violent felony, violent misdemeanor, and non-violent misdemeanor. Type of arrest has four categories including new arrest, on warrant, bench warrant, and other. An on warrant is issued when probable cause has been shown that a specific crime has been committed. Additionally, a bench warrant is issued when an individual failed to appear for a required court appearance (*Warrant types 2020*). The data sample includes a total number of 1,034 cases. Of these cases, 160 are domestic violence,

three are driving under the influence, 133 are violent felonies, 397 are non-violent felonies, 157 are violent misdemeanors, 177 are non-violent misdemeanors, and seven cases are classified as other.

The Pretrial Service Department at the Youngstown Municipal Court gathered and provided the necessary information used within this thesis. Approval from Youngstown State University's Institutional Review Board (IRB) was obtained and can be found in this thesis' Appendix. (See figure 11)

Data Collection Process

At the time of the arrest, pretrial service officers at the Youngstown Municipal Court conduct a public safety assessment to obtain the data provided. The initial data is collected on each individual when they are arrested and booked into the Mahoning County Jail. The data is then inputted and organized into a Microsoft Excel spreadsheet. The initial data includes the defendants name, date of birth, race, gender, type of offense, date of arrest, type of arrest, and their age at the time of the arrest. Pretrial service officers collect this information from the Mahoning County Sheriff's Office government access website and write it down on a public safety assessment assessor worksheet. When an individual is booked into the Mahoning County Jail, the intake deputies at the jail are responsible for collecting the individual's personal information and information regarding the offenses that the individual is charged with and entering it into the government access website. Upon obtaining this data, a public safety assessment is done on the defendant, which assesses the pretrial likelihood of failing to appear in court, being arrested for new criminal activity, and being arrested for new violent criminal activity. Upon completion of the PSA, the data on the assessor worksheet is then entered on the

Advancing Pretrial Policy and Research website by pretrial service officers. This online scoring tool will then generate scores of the individual's likelihoods of pretrial success. Pretrial service officers will then transfer the scores of the assessment into the Microsoft excel spreadsheet. This data includes whether an assessment was completed, along with the likelihood of the individual appearing for court, likelihood of them failing to appear, likelihood of a new criminal arrest and new violent criminal arrest, and their release level. To obtain additional information, a pretrial service officer will observe the defendant's arraignment. The officer will collect the date of each defendant's initial appearance, the judge who arraigned them, the type of counsel they received, their bond type, and any conditions the judge may have imposed. The officer will then enter this information into the Microsoft Excel spreadsheet for each defendant that is arraigned. As the defendant's case progresses, a pretrial officer will continue to input data into the spreadsheet. This data includes the defendants court appearance, whether they got re-arrested during the pendency of their pretrial, the date of disposition, whether they entered a specialty docket court, and the total number of days they were incarcerated while their case was pending.

To ensure that the data is valid and reliable, the chief probation officer frequently conducts quality assurance checks on the public safety assessments that the officers conduct. By doing these checks, it ensures that the pretrial officers are completing the assessments correctly and efficiently. The senior pretrial officer frequently reviews and updates the Microsoft Excel Spreadsheet to ensure accurate information is being entered into the spreadsheet. This officer is also responsible for ensuring everyone's data is fully entered into the spreadsheet and completed, from date of arrest to date of disposition. The Pretrial Service Department has collected data and utilized the Microsoft excel spreadsheet the same way for three years. The spreadsheet was first created in 2021 and is still being utilized the same way to this present day.

The data that is collected is significant for various reasons. By collecting the data, court personnel will be able to measure success rates of pretrial release. Measures of success rate include the total number of individuals who remained arrest free and appeared for all court proceedings. Collecting the data also allows judges to be able to compare the effectiveness of a cash bond compared to a release on own recognizance bond. This also allows the judges to see how the judgments they make on bond effect the community and the citizens they serve. It is important for the data to be shared with the judges so they can be made aware of success rates and decide on what areas need improvement or changes. Furthermore, besides sharing the data among the Youngstown Municipal Court, the data has also been presented at the Mahoning County Bar Association, the National Association of Pretrial Service Agencies conference, and with members of the Advancing Pretrial Policies and Research policy team. By sharing the data with other agencies, this can expand the knowledge to others regarding the pretrial process and can also help the Youngstown Municipal Court to increase their pretrial success.

Chapter 4

Findings

There are several factors, such as race and number of days incarcerated that determine a statistically significant relationship between these variables and counsel type. This chapter discusses the profile of data used and reveals the results of the analysis that determine the relationship between the dependent and independent variables.

Profile of Sample

To further explain the profile of data that was used and analyzed during this research, the variables that were examined are:

- **Court Appointed Counsel:** This variable is defined as whether the individual received court appointed counsel or if they retained their own private counsel. Court appointed counsel was defined as follows: 1.) received court appointed counsel, 2.) retained private counsel, 3.) Other.
 - Of the 1,034 individuals examined, 862 (83.4 %) received court appointed counsel, 106 (10.3%) retained private counsel, and 66 (6.4%) individuals either waved their right to counsel, or their case had prosecutorial review and no probable cause was found leaving their case to be dismissed.
- **Gender:** This variable can be defined as the sexual orientation of the individual. The gender for each individual was reported based upon self-identification. For the purpose of analyzing the data, if the individual self-identified as a male, a number 1 was used. If the individual self-reported as a female, a number 2 was used.
 - Of the 1,034 individuals examined, 813 (78.6%) identified themselves as males and 221 (21.4%) identified as females. (See figure six)
- **Race:** This variable can be defined as the racial background of the defendant. Race categories correspond to the definitions of race according to the United States Census Bureau. Race categories were defined as follows: 1.) American Indian or Alaska Native, 2.) Asian, 3.) Black or African American, 4.) Native Hawaiian or Pacific Islander, 5.) White, 6.) Other.
 - Of the 1,034 individuals examined, 1 (.1%) individual classified themselves as Asian, 677 (65.5%) individuals classified themselves as Black or African American, 288 (27.9%) individuals classified themselves as White, and 68 (6.6 %) individuals classified themselves as Other. (See figure two)

- **Initial Bond Type:** This variable can be defined as the type of bond the individual was given and are as follows: 1.) Own Recognizance/ Citation, 2.) Monetary bond, 3.) Supervised release, 4.) Other.
 - Of the 1,034 individuals examined, 28 (2.7%), individuals were released on an own recognizance bond, 696 (67.3%) received a monetary bond, 194 (18.8%) received supervised release, 53 (5.1%) received another bond, and 63 (6.1%) of individuals were released due to no probable cause being found for their arrest upon prosecutorial review. (See figure seven)
- **Days of Incarceration:** This variable can be defined as the number of days an individual spent in jail from the time of their arrest to the date of their case disposition.
 - Of the 1,034 individuals examined, 776 people spent between 1-10 days in jail, 133 people spent between 11-21 days in jail, 43 people spent between 22-32 days in jail, 20 people spent between 33-43 days in jail, 17 people spent between 44-54 days in jail, 13 people spent between 55-65 days in jail, 9 people spent between 66-76 days in jail, 17 people spent between 44-54 days in jail, and 6 people had this variable missing for their case. (See figure one)
- **Court Appearance:** This variable can be defined as whether the released individual appeared for all their pre-disposition court proceedings. Court appearance categories were defined as follows: 1.) appeared for all scheduled court hearings, 2.) failed to appear for at least one scheduled court hearing.
 - Of the 1,034 individuals examined, 850 (82.2%) individuals appeared for all of their scheduled court hearings, and 85 (8.2%) individuals failed to appear for their

scheduled court hearings. There was a total of 99 (9.6%) missing cases for this variable. (See figure five)

- **Arrest Free Rate:** This variable can be defined as the released individual being arrested for a different offense while their case was pending. Arrest free categories were defined as follows: 1.) remained arrest free, 2.) charged with a new violent offense, 3.) charged with a new non-violent offense, 4.) arrested on a warrant for failing to appear for court, and 5.) other.

- Of the 1,034 cases examined, 855 (82.7%) remained arrest free, 11 (1.1%) were charged with a new violent offense, 11 (1.1%) were charged with a new non-violent offense, 30 (3.3%) on a capias for failure to appear and 1(.1%) was other.

There was a total of 126 (12.2%) missing cases for this variable. (See figure four)

- **Release Type:** This variable can be defined as the reason why the individual is released from incarceration. Release type categories were defined as follows: 1.) released on citation, 2.) released on bail, 3.) released pre-arraignment, 4.) granted supervised release, 5.) in custody/ bond not posted, 6.) held without bail, 7.) own recognizance, and 8.) disposition.

- Of the 1,034 cases examined, 4 (.4%) were released on citation, 376 (36.4%) were released on bail, 65 (6.3%) were released pre-arraignment, 199 (19.2%) were granted supervised release, 349 (33.8%) did not post their bond, 19(1.8%) were held without bail, 11 (1.1%) were released on their own recognizance, and 5 (.5%) reached their case disposition. There was a total of 6 (.6%) missing cases for this variable. (See figure three)

Measures

Dependent Variable

For the analysis of this thesis, the dependent variable is court appointed counsel. The dependent variable was measured to analyze if type of defense counsel effects individual's pretrial proceedings.

Independent Variables

The independent variables used in this research include gender, race, initial bond type, release type, number of days incarcerated, court appearance, and if the release individual remained arrest free during the pendency of their case. Race and gender variables were reported upon self-identification upon being booked into the Mahoning County Jail. Gender categories measured are male, female, and other. Race categories include American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Pacific Islander, White, and other. Initial bond type refers to the type of bond an individual receives at their arraignment. These categories include release on own recognizance/ citation, monetary bond, supervised release, and other. Release type can be defined as the reason for the individual being released from custody. Release type categories include released on citation, released on bond, released pre-arraignment, granted supervised release, in custody/ bond not posted, held without bond, release on own recognition, and disposition. The number of days incarcerated is another variable considered and is defined as the total number of days an individual spent in jail from the time of their arrest to the disposition of the case. The court appearance variable is whether the individual appeared for all scheduled court proceedings. Remaining arrest free is also a variable that considers whether the individual did or did not get re-arrested for a new offense during the pendency of their case.

Analytic Strategy

The data gathered from June 1, 2022, through June 1, 2023, was analyzed using the Statistical Package for the Social Sciences software program. The first stage of the analysis was conducted by running descriptive statistics (i.e., counts, frequencies, and percentages) of the dependent and independent variables listed above. The second stage of the analysis tested the statistical significance by performing a bivariate Pearson Correlation test. A bivariate Pearson Correlation indicates whether a relationship occurs between two variables (*Libguides: SPSS tutorials: Pearson Correlation*).

Results:

Independent variable 1:

Gender

For the analysis of the first independent variable, 1,034 cases were examined. Of these cases, 675 (65%) males and 187 (18%) females received court appointed counsel as compared to 91 (9%) males and 15 (2%) females who retained private counsel. There were 66 (6%) incomplete datasets for this correlation because upon prosecutorial review, no probable cause was found for arrest and the individual was questioned and released resulting in the individual not needing counsel.

The two-tailed bivariate Pearson Correlation test produced a p-value score of .071. Since the p-value is greater than .05 and less than .1, this indicates a low statistical significance between gender and court appointed counsel.

Independent variable 2:

Race

For the analysis of the second independent variable, 1,034 cases were examined. Of these cases, there was 1 Asian (<1%), 586 (57%) Black or African Americans, 225 (22%) Whites, 50 (5%) others who received court appointed counsel. Additionally, 61 (6%) Black or African Americans, 36 (3%) White, 9 (< 1%) other retained their own private counsel. There were 66 (6%) incomplete datasets for this correlation because upon prosecutorial review, no probable cause was found for arrest and the individual was questioned and released resulting in the individual not needing counsel.

The two-tailed bivariate Pearson Correlation test produced a p-value score of .027. Considering that the p-value is greater than .01 and less than .05, this indicates a high statistical significance.

Independent variable 3:

Initial Bond Type

For the analysis of the third independent variable, 1,034 cases were examined. Individuals who received court appointed counsel were granted bond as follows: 21 (2%) individuals received an own recognizance bond, 628 (61%) received a monetary bond, 168(16%) got supervised release, and 45 (4%) had other factors apply. Additionally, of the individuals who retained their own counsel: 7 (< 1%) received an own recognizance bond, 68 (7%) received a monetary bond, 26 (3%) got supervised release, and 5 (< 1%) had other factors apply. There were 66 (6%) incomplete datasets for this correlation because upon prosecutorial review, no

probable cause was found for arrest and the individual was questioned and released resulting in the individual not needing counsel.

The two-tailed bivariate Pearson Correlation test produced a p-value score of .983. Considering that this score is greater than .1, this indicates a statistically very low significance.

Independent variable 4:

Court Appearance

For the analysis of the fourth independent variable, 1,034 cases were examined. In cases where individuals were represented by court appointed counsel: 757 (73%) appeared for all scheduled pre-disposition court proceedings and 76 (7%) failed to appear for at least one predisposition court proceeding. In addition, of the individuals who retained their own defense counsel: 90 (9%) appeared for all pre-disposition court proceedings and 11(1%) failed to appear for at least one pre-disposition court proceeding. There were 100 (10 %) incomplete datasets for this correlation because upon prosecutorial review, no probable cause was found for arrest and the individual was questioned and released resulting in the individual not needing counsel.

The two-tailed bivariate Pearson Correlation test produced a p-value score of .513. Considering that this score is greater than .1, this indicates a statistically very low significance.

Independent variable 5:

Arrest Free

For the analysis of the fifth independent variable, 1,034 cases were examined. Of these cases, the following individuals did not get arrested during the pendency of their case: 760 (74%) remained arrest free, 11 (1%) got charged with a new violent offense, 11 (1%) got charged with a

new non-violent offense, 27 (3%) got arrested on a failure to appear warrant, and 1 (< 1%) had other factors apply. Moreover, of the individuals who had retained their own counsel: 92 (9%) remained arrest free, and 3 (< 1%) got arrested on a failure to appear warrant. There were 129 (12%) incomplete datasets for this correlation because upon prosecutorial review, no probable cause was found for arrest and the individual was questioned and released resulting in the individual not needing counsel.

The two-tailed bivariate Pearson Correlation test produced a p-value score of .432. Considering that score is greater than .1, this indicates a statistically very low significance.

Independent variable 6:

Release Type

For the analysis of the sixth independent variable, 1,034 cases were examined. In cases involving court appointed counsel: 2 (<1%) released on citation, 329 (32%) released on monetary bond, 1 (<1%) released pre-arraignment, 174 (17%) granted supervised release, 321 (31%) were held in custody and did not post their bond, 19 (2%) were held without bond, 10 (<1%) received release on own recognizance, and 1 (<1%) was released due to their case reaching a disposition. In cases where private counsel was retained: 2 (<1%) were released on citation, 47 (5%) released on monetary bond, 1 (<1%) released pre-arraignment, 25 (2%) was granted supervised release, 28 (3%) were held in custody and did not post their bond, 0 were held without bond, 1 (<1%) was released on their own recognizance, and 2 (<1%) were released due to their case reaching a disposition. There were 71 (7%) incomplete datasets for this correlation because upon prosecutorial review, no probable cause was found for arrest and the individual was questioned and released resulting in the individual not needing counsel.

The two-tailed bivariate Pearson Correlation test produced a p-value score of .071. Considering that this score is greater than .05 and less than .1, this indicates that the variables have a statistically low significance.

Independent variable 7:

Number of days in Incarceration

For the analysis of the seventh independent variable, 1,034 cases were examined. Of these cases that were examined, 862 individuals were represented by court appointed counsel: 625 (72%) spent between 1-10 days in jail, 121 (14%) spent between 11-21 days in jail, 40 (4%) people spent between 22-32 days in jail, 19 (3%) people spent between 33-43 days in jail, 16 (2%) people spent between 44-54 days in jail, 13 (2%) people spent between 55-65 days in jail, 9 (1%) people spent between 66-76 days in jail, and 16 (2%) people spent between 77-209 days in jail. Furthermore, there were 106 individuals who were represented by private retained counsel: 88 (83%) people spent between 1-10 days in jail, 12 (11%) people spent between 11-21 days in jail, 3 (2%) people spent between 22-32 days in jail, 1 (<1%) person spent between 33-43 days in jail, 1 (<1%) person spent between 44-54 days in jail, 0 people spent between 55-76 days in jail, and 1 (<1%) person spent between 77-209 days in jail. There were 69 (7%) incomplete datasets for this correlation because upon prosecutorial review, no probable cause was found for arrest and the individual was questioned and released resulting in the individual not needing counsel

The two-tailed bivariate Pearson Correlation test produced a p-value score of .01. Considering this score is greater than or equal to .01, this indicates strong significance between the variables. Therefore, there is a correlation between defense counsel and the number of days an individual spends incarcerated.

Major Findings

Correlations between variables shows whether a pattern exists, and if the variables influence one another. Therefore, a correlation can indicate if two variables are related in some sort of way. Statistical significance indicates whether the two factors being compared are unlikely to happen by chance or randomly. In addition, if there is a low statistical significance, the two variables would have a random chance of having a relationship (Bhandari, 2023). A random chance of having a relationship signifies that the variables appear to be related, but there is no true underlying relationship. For variables to have a correlation by chance, this means no real relationships exist in the population that is being examined. However, they could have a relationship but without unaccounted influences. The most used values to determine statistical significance are .01, .05, and .1, which represent 1%, 5%, and 10% chance of an error occurring. A p-value less than .05 indicates strong evidence of variables being statistically significant, and p-values that are less than or equal to .01 indicate a very strong statistical significance of variables. P-values greater than .05 and less than or equal to .1 indicates variables having a low or weak statistical significance. Moreover, the p-value is a number that is calculated from a statistical test, that determines how likely variables are to either have a relationship or not. The P-value score is calculated to determine the significance of the variables as opposed to the null hypothesis, which states that there is no relationship (Bevans, 2023).

When reviewing the first independent variable, the most prevalent finding was the lack of statistical significance. The p-value .071 indicates that there was not a statistical significance between gender and court appointed counsel. Considering that significance occurs at the .05 level, this p-value score indicates that the two variables do not have a very high likelihood of

correlating. However, the p-value score suggest that these variables may have a random chance of having a relationship. It may be the result of random chance, where the variables appear to be related, but there is no true underlying relationship.

For independent variable two, the results show that there is statistical significance between race and court appointed counsel. The p-value of .027 is greater than .01 and less than .05, which indicates a high statistical significance. This indicates that these two variables are not happening by chance, and that they are positively correlated with one another. Therefore, the type of counsel an individual receives may be influenced by their race.

For the third independent variable, the results show that there is no statistical significance between the initial bond type and court appointed counsel. The p-value of .983 is greater than .1, which indicates a very low statistical significance, signifying that these two variables do not have a correlation, but will happen by chance. This suggests that the correlation may be the result of random chance, where the variables appear to be related, but there is no true underlying relationship.

For the fourth independent variable, the results show that there is no statistical significance between court appearance and court appointed counsel. The p-value of .513 is greater than .1, which statistically indicates a very low significance, signifying that these two variables do not have a correlation, but will happen by chance. This suggests that the correlation may be the result of random chance, where the variables appear to be related, but there is no true underlying relationship. Therefore, whether one has a court appointed counsel or hirers their own attorney, has no bearing on whether or not they will appear in court for future proceedings.

For the fifth independent variable, the results show that there is no statistical significance between the individual remaining arrest free and court appointed counsel. The p-value of .432 is

greater than .1, which statistically indicates a very low significance, demonstrating that these two variables do not have a correlation but will happen by chance. This suggests that the correlation may be the result of random chance, where the variables appear to be related, but there is no true underlying relationship. Type of defense counsel has no effect on whether or not a defendant will find themselves in trouble with the law again.

For the sixth independent variable, the results show that there is no statistical significance between the individuals release type from incarceration and court appointed counsel. The p-value of .071 is greater than .05 and less than .1, which indicates that the variables have a statistically low significance. Considering that significance occurs at the .05 level, this p-value score indicates that the two variables have a very low likelihood of correlating. However, the p-value score indicates that these variables may have a random chance of having a relationship. This suggests that the correlation may be the result of random chance, where the variables appear to be related, but there is no true underlying relationship.

For the seventh independent variable, the results show that there is statistical significance between the number of days an individual was incarcerated from the time of their arrest to the date of their disposition and court appointed counsel. The p-value of .01 indicates that these variables have a high statistical significance. This means that these two variables are not happening by chance, and that they are positively correlated with one another. Therefore, the type of defense counsel an individual has influences the number of days an individual spends incarcerated during the pretrial process. This is an important factor to understand considering that the poverty rate in Youngstown, Ohio is significantly high. Due to the poverty rate, some individuals may not be able to retain their own counsel or post their monetary bond, resulting in them spending more days in incarceration.

Chapter 5

Discussion

This thesis sought to examine if the type of defense counsel influenced an individual's pretrial proceedings. The results of this study encourage future research to be done to further examine what other factors may have an impact on the type of defense counsel individuals have. This research also shows that further research needs to be done to examine the long-term effects that the type of defense counsel may have on individuals after their court disposition. In this chapter, several limitations, recommendations, and contributions related to the present study will be discussed.

Conclusion

The overall objective of this thesis was to determine if the type of defense counsel influenced an individual's pretrial proceedings. The results tend to show that the type of defense counsel can affect an individual's pretrial proceedings in two ways. First, race has an effect on counsel type. Second, type of defense counsel impacts the number of days an individual spends in pretrial incarceration. This analysis resulted in two of the seven independent variables having a positive correlation with court appointed counsel. Independent variables two and seven were statistically significant. The type of defense counsel had the most statistical significance regarding race between Black/African American individuals and White individuals. The analysis shows that when an individual was appointed counsel there was a statistical significance of the number of days the individual spent incarcerated. 625 individuals who were appointed counsel spent 1-10 days incarcerated, while only 88 individuals who retained their own counseling spent

1-10 days incarcerated. As mentioned in the discussion of the conflict theory by Karl Marx, those who have power in higher social classes have more control as compared to those in lower social classes (Marx, 19th century). Due to those individuals being in a higher social class, they may be able to retain private counsel who are well experienced and have significant skills. Additionally, individuals who retained counsel spent fewer number of days incarcerated possibly due to them being in a higher social class. Independent variables one, gender, and independent variable six, the type of release the individual had from jail had a low statistical significance to the type of defense counsel. The remaining independent variables, court appearance, arrest free rate, and initial bond type, showed no statistical significance.

Limitations

One limitation of this study is the time period. The information gathered in this study was from June 1, 2022 - June 1, 2023, only one year. This information was used because it was the most complete data. Other time periods on the dataset may have included incomplete data due to the case not reaching its disposition yet. Another limitation is sample size. The information used was only gathered from Youngstown Municipal Court which limits the number of cases that were examined.

A significant limitation that was observed from this study is that only court appointed counsel and private counsel were examined. As previously discussed, each jurisdiction uses either court appointed counsel or a public defender to represent indigent individuals. The jurisdiction that was examined here used only court appointed counsel (not public defenders) which causes a limitation of the examination of the effect that the type of defense counsel has on individuals' pretrial proceedings, since public defender could not be explored.

As previously explained, there were numerous missing values from the data set examined. These missing values lead to the third limitation of this study, which involves human error. The Court that the data was collected from relies on Pretrial Service officers to collect and input the data into a Microsoft Excel spreadsheet. From the time of collection to inputting the information, some data could be erroneously inputted and overlooked which could cause skewed information to be interpreted during this study. However, since the pretrial service officers have other responsibilities, they may not have adequate time to ensure all of the data is up to date. In larger areas with more resources, a position may be implemented to specifically focus on the data.

Finally, another limitation that was observed from this study involves the location from which the data was collected. All the data was collected from the Youngstown Municipal Court. As discussed in the introduction of this thesis, Youngstown is known to have limited resources, causing an increase in low-income individuals. As a result of the data being collected from a low-income area, there is a far greater number of individuals represented by court appointed counsel as compared to private retained counsel.

Recommendations for Future Research

If this study were to be completed again, there are various things that could be changed to benefit this area of research. First, by expanding the sample size and time period, a broader area of data could be explored to get a better understanding of the effect of defense counsel. More cases could be examined to determine if there is a stronger or weaker correlation between type of defense counsel and pretrial proceedings.

A second recommendation for this research would be to examine a different jurisdiction that involves the utilization of public defenders. Since this study only examined court appointed counsel, it could be significant to compare a jurisdiction that used public defender and another jurisdiction that uses court appointed to explore how these types of defense counsel may impact cases differently.

The next recommendation for this research would be to examine a different jurisdiction that has more resources and a higher social class population. By exploring a jurisdiction that has more resources and a higher average income level, this could result in a greater number of individuals retaining private counsel. Therefore, it could be determined if economic disparities have an impact on individual's pretrial proceedings.

The last recommendation for future research would be to conduct a study on type of defense counsel and its effects on defendant's long-term success. Considering this study only focuses on the effects on individual's pretrial proceedings, it could be significant to analyze if the type of defense counsel has an effect on individual's recidivism rates and their long-term success.

Contributions

While the data did not show significance for all of the independent variables, this research still offers valuable information regarding the type of defense counsel and how it may affect individual's pretrial proceeding.

First, this study can create awareness of the possible effects that defense counsel could have on an individual's pretrial proceedings. Areas that are affected by poverty can be more informed on how they can prevent disparities from occurring during the pretrial process. As

previously discussed, areas with limited resources are more likely to be impoverished. Therefore, it is important to understand how these areas may be impacted differently from other jurisdictions.

Next, this study shows how important it is to understand the effects that counsel may have on the type of bond individuals may receive, the reason they get released from jail, and the number of days they have spent incarcerated. In addition, it is also important to examine factors such as race and gender to analyze if there are any disparities involving these factors.

Lastly, this thesis highlights the overall importance of how disparities may arise within the Criminal Justice system. Whether it is from the limited resources in their area, or the type of counsel they receive, individuals may face different obstacles and it is significant to understand how this may affect their pretrial proceedings. Overall, this thesis can help guide other researchers towards other variables that defense counsel could have an impact on.

Appendices

Figure 1- Days of Incarceration

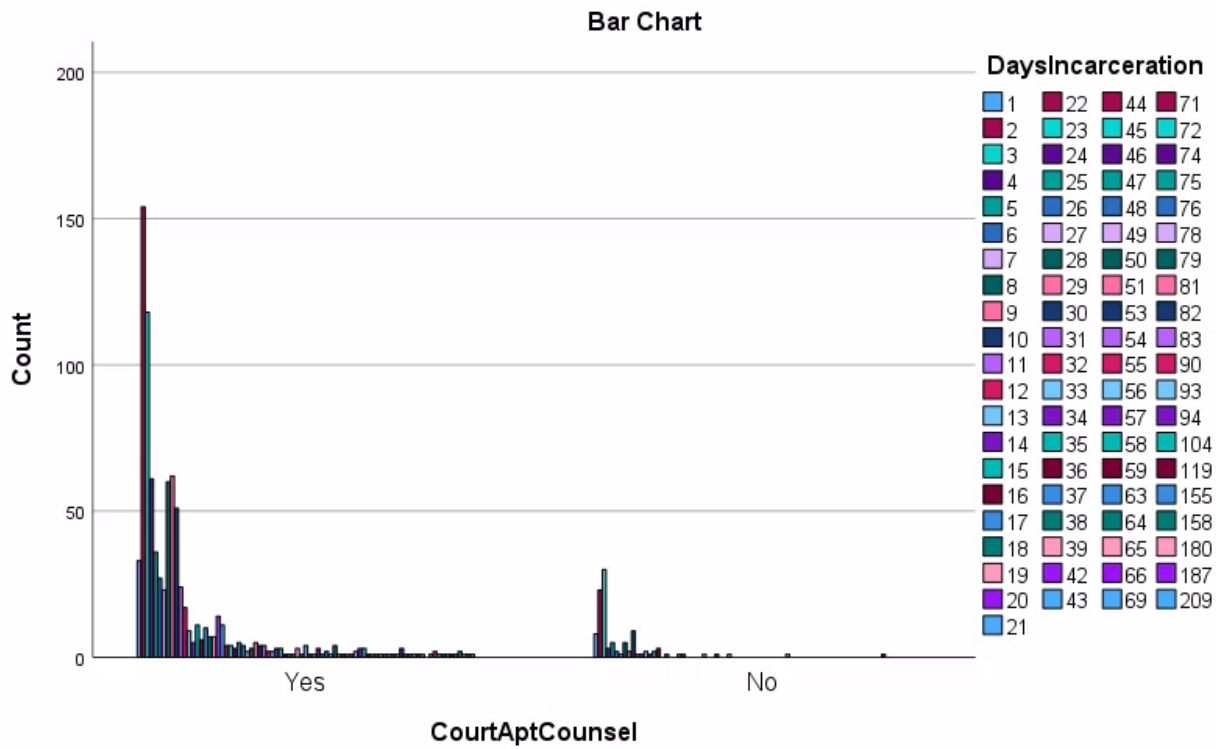


Figure 2- Race

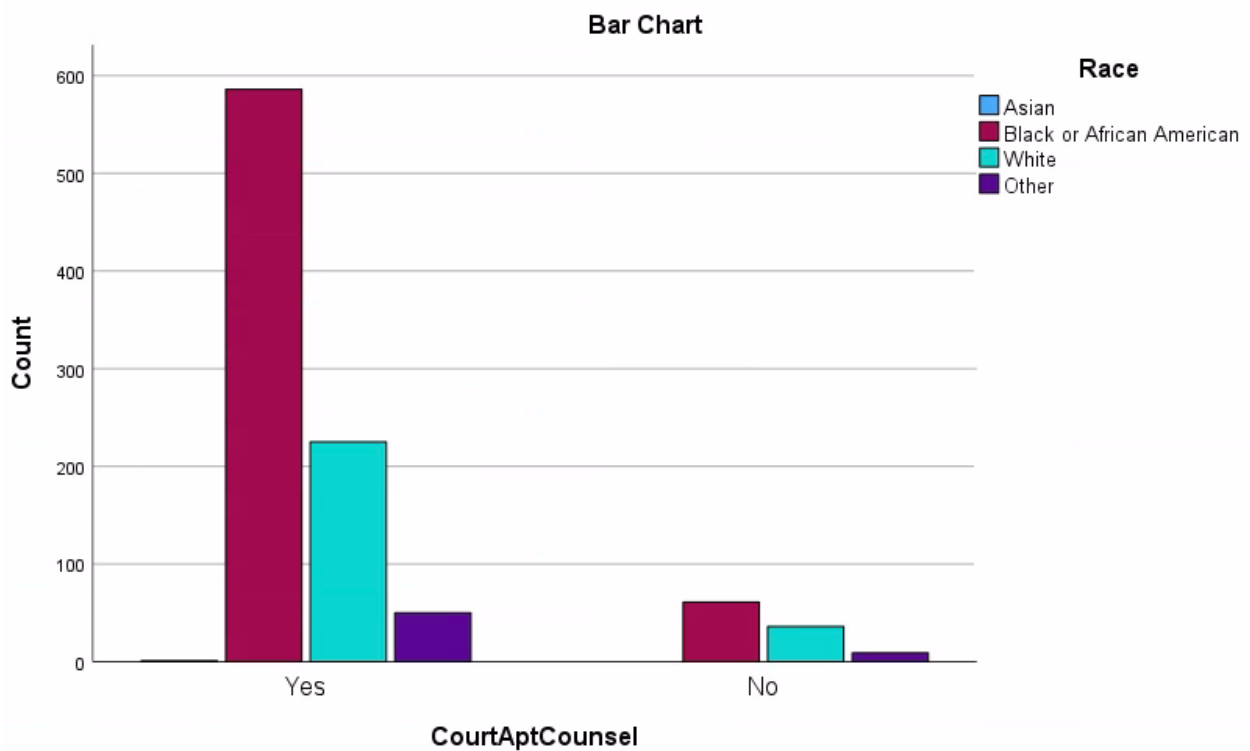


Figure 3- Release Type

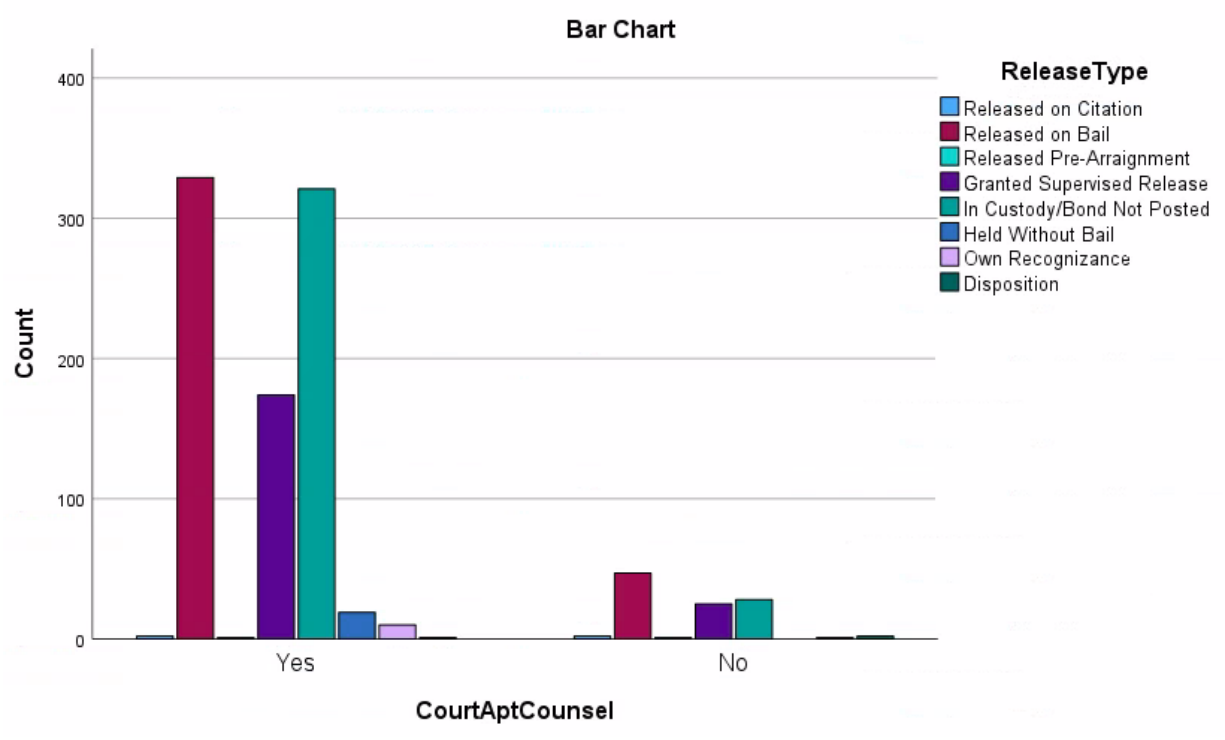


Figure 4- Arrest Free

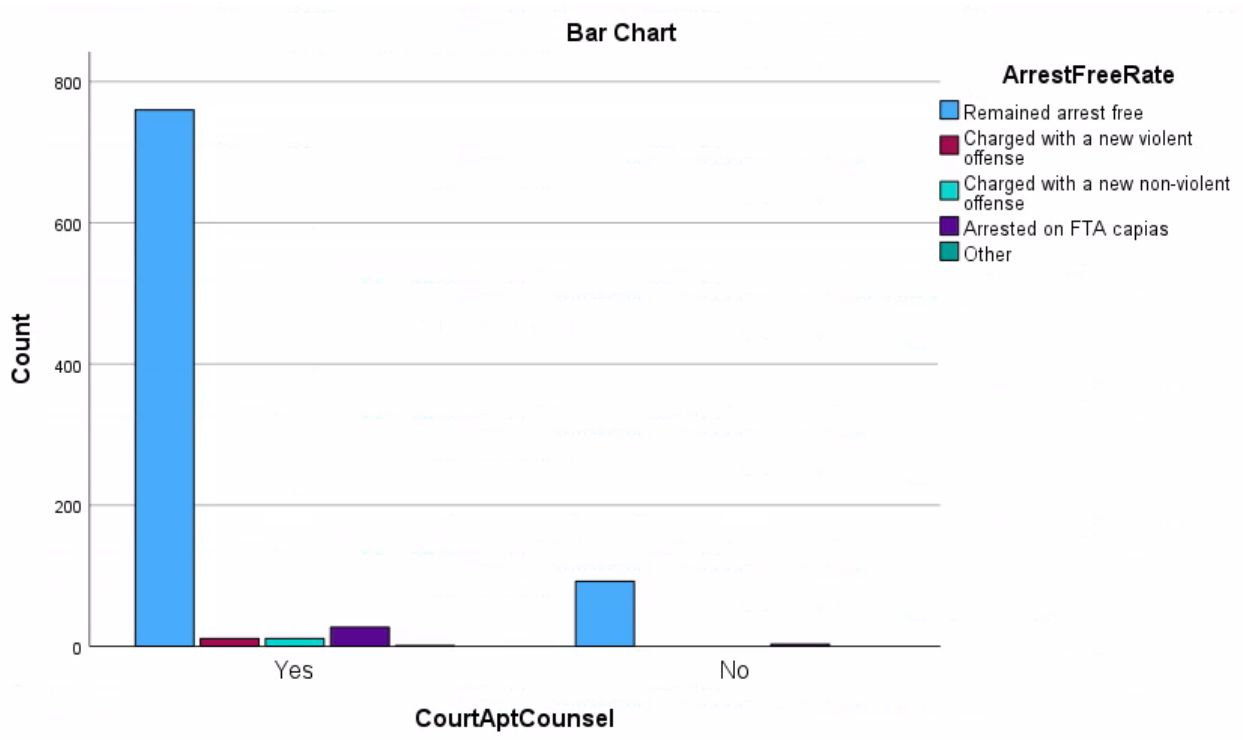


Figure 5- Court Appearance

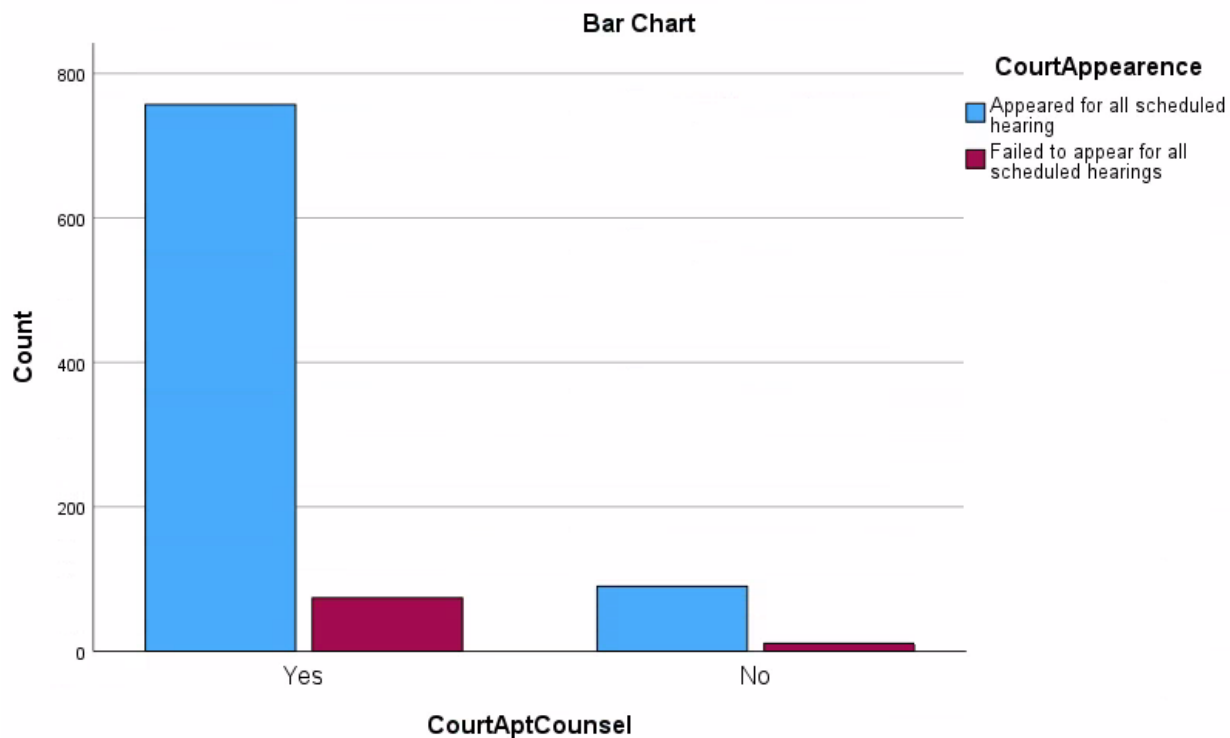


Figure 6- Gender

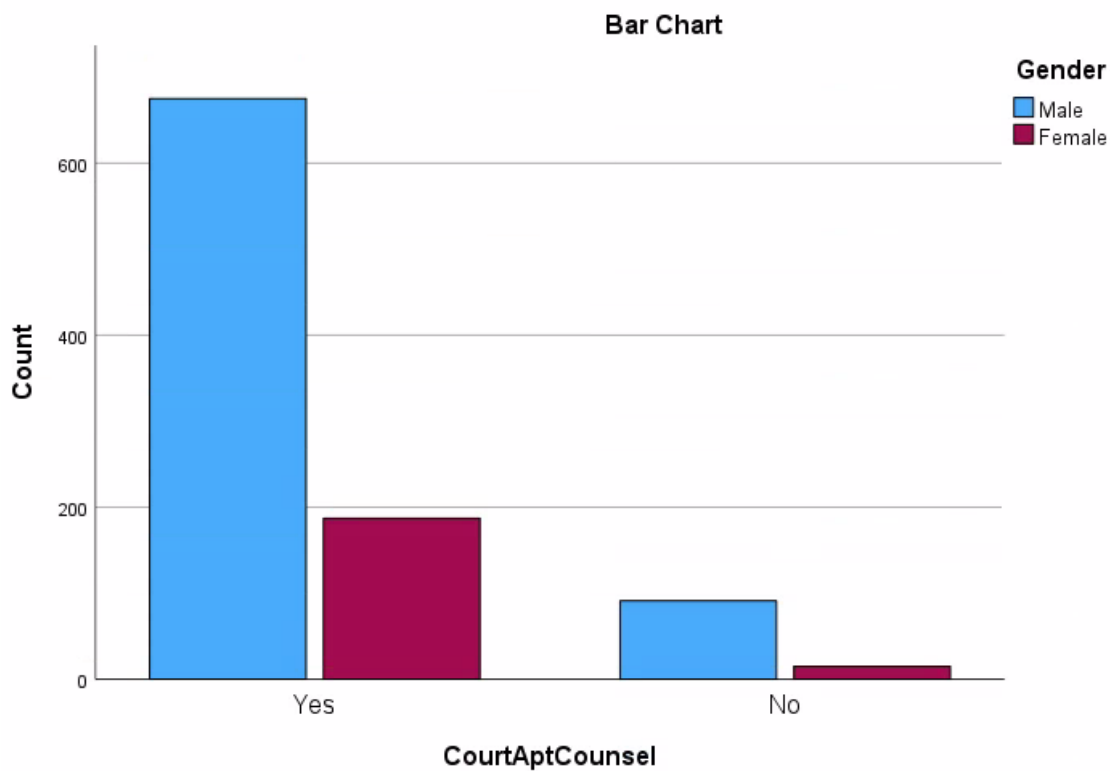


Figure 7- Initial Bond Type

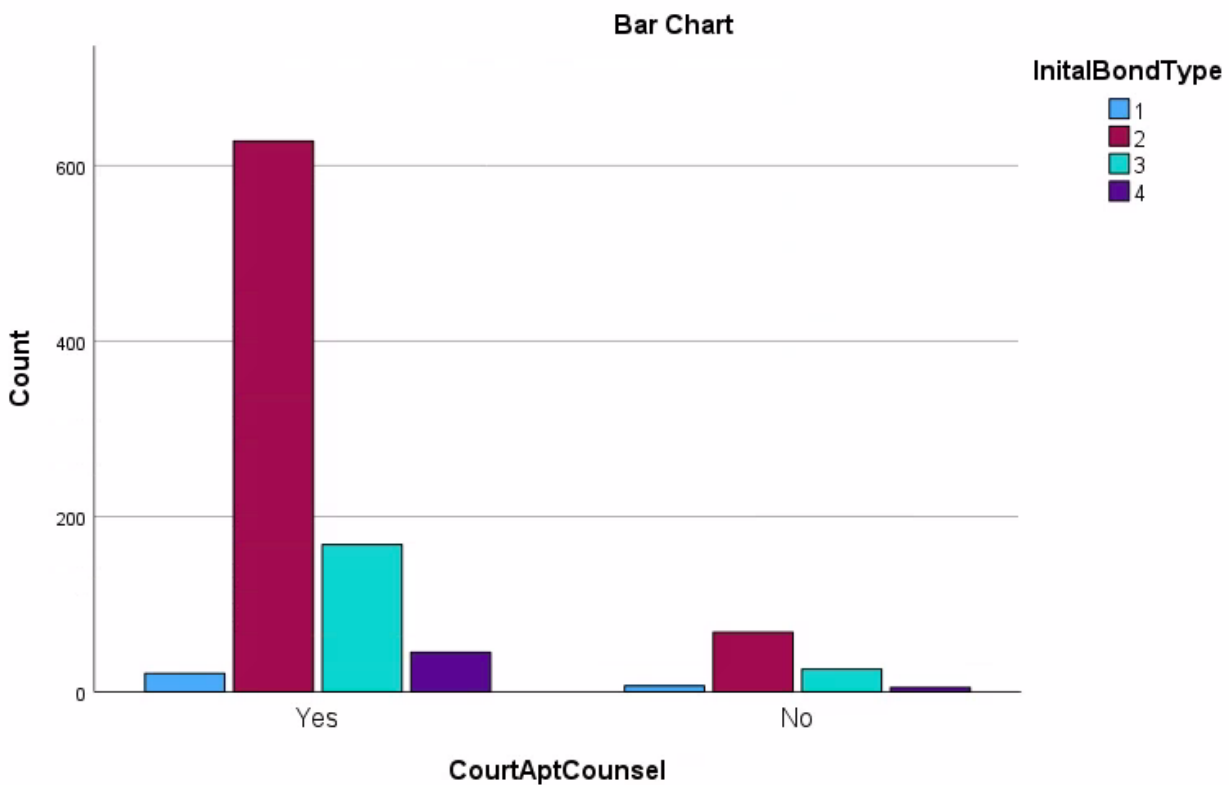


Figure 8- Financial Disclosure Form

FINANCIAL DISCLOSURE FORM						
(\$25.00 application fee may be assessed—see notice on reverse side)						
I. PERSONAL INFORMATION						
Applicant's Legal Name			Applicant's Preferred Name and Pronoun		D.O.B.	
Mailing Address				City		
State		Zip Code	Case No.	Phone	Cell Phone	
SSN Last 4	Gender	Race (double-click to de-select)				
		<input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Pacific Islander <input type="checkbox"/> Spanish or Latino <input type="checkbox"/> White <input type="checkbox"/> Other				
II. OTHER PERSONS LIVING IN HOUSEHOLD						
Name	D.O.B.	Relationship	Name	D.O.B.	Relationship	
1)			3)			
2)			4)			
III. PRESUMPTIVE ELIGIBILITY						
The appointment of counsel is presumed if the person represented meets any of the qualifications below. Please place an 'X'						
Ohio Works First / TANF: _____ SSI: _____ SSD: _____ Medicaid: _____ Poverty Related Veterans' Benefits: _____ Food Stamps: _____						
Refugee Settlement Benefits: _____ Incarcerated in state penitentiary: _____ Committed to a Public Mental Health Facility: _____						
Other (please describe): _____ Juvenile: _____ (If juvenile, please continue at Section VIII)						
IV. INCOME AND EMPLOYER						
	Applicant		Spouse (Do not include spouse's income if spouse is alleged victim)		Total Income	
Gross Monthly Employment Income	\$		\$		\$	
Unemployment, Worker's Compensation, Child Support, Other Types of Income	\$		\$		\$	
TOTAL INCOME					\$	
Employer's Name: _____ Phone Number: () _____						
Employer's Address: _____						
V. LIQUID ASSETS						
Type of Asset			Estimated Value			
Checking, Savings, Money Market Accounts			\$			
Stocks, Bonds, CDs			\$			
Other Liquid Assets or Cash on Hand			\$			
Total Liquid Assets			\$			
VI. MONTHLY EXPENSES						
Type of Expense		Amount	Type of Expense		Amount	
Child Support Paid Out		\$	Telephone		\$	
Child Care (if working only)		\$	Transportation / Fuel		\$	
Insurance (medical, dental, auto, etc.)		\$	Taxes Withheld or Owed		\$	
Medical / Dental Expenses or Associated Costs of Caring for Infirm Family Member		\$	Credit Card, Other Loans		\$	
Rent / Mortgage		\$	Utilities (Gas, Electric, Water / Sewer, Trash)		\$	
Food		\$	Other (Specify)		\$	
EXPENSES		\$	EXPENSES		\$	
VII. DETERMINATION OF INDIGENCY						
If applicant's Total Income in Section IV is at or below 187.5% of the Federal Poverty Guidelines, counsel must be appointed.						
For applicants whose Total Income in Section IV is above 125% of the Federal Poverty Guidelines, see recoupment notice in Section XI.						
If applicant's Liquid Assets in Section V exceed figures provided in OAC 120-1-03, appointment of counsel may be denied if applicant can employ counsel using those liquid assets.						
If applicant's Total Income falls above 187.5% of Federal Poverty Guidelines, but applicant is financially unable to employ counsel after paying monthly expenses in Section VI, counsel must be appointed.						

VIII. \$25.00 APPLICATION FEE NOTICE

By submitting this Financial Disclosure Form, you will be assessed a non-refundable \$25.00 application fee unless waived or reduced by the court. If assessed, the fee is to be paid to the clerk of courts within 7 days of submitting this form to the entity that will make a determination regarding your indigency. No applicant may be denied counsel based upon failure or inability to pay this fee.

IX. APPLICANT CERTIFICATION

I, _____ (applicant or alleged delinquent child) state:

1. I am financially unable to retain private counsel without substantial hardship to me or my family.
2. I understand that I must inform the public defender or appointed attorney if my financial situation should change before the disposition of the case(s) for which representation is being provided.
3. I understand that if it is determined by the county or the court that legal representation should not have been provided, I may be required to reimburse the county for the costs of representation provided. Any action filed by the county to collect legal fees hereunder must be brought within two years from the last date legal representation was provided.
4. I understand that I am subject to criminal charges for providing false financial information in connection with this application for legal representation, pursuant to Ohio Revised Code sections 120.05 and 2921.13.
5. I hereby certify that the information I have provided on this financial disclosure form is true to the best of my knowledge.

Signature

Date

X. JUDGE CERTIFICATION

I hereby certify that the above-noted applicant is unable to fill out and/or sign this financial disclosure for the following reason: _____, I have determined that the party represented meets the criteria for receiving court-appointed counsel.

Judge's Signature

Date

XI. NOTICE OF RECOUPMENT

ORC §120.03 allows for county recoupment programs. Any such program may not jeopardize the quality of defense provided or act to deny representation to qualified applicants. No payments, compensation, or in-kind services shall be required from an applicant or client whose income falls below 125% of the federal poverty guidelines. See OAC 120-1-05.

Through recoupment, an applicant or client may be required to pay for part of the cost of services rendered, if he or she can reasonably be expected to pay. See ORC §2941.51(D)

XII. JUVENILE'S PARENTS' INCOME* – FOR RECOUPMENT PURPOSES ONLY – NOT FOR APPOINTMENT OF COUNSEL

	Custodial Parents' Income (Do not include parents' income if parent or relative is alleged victim)	Total
Employment Income (Gross)	\$ _____	\$ _____
Unemployment, Workers Compensation, Child Support, Other Types of Income	\$ _____	\$ _____
	TOTAL INCOME	\$ _____

*Please complete Section VI on page 1 of this form if you would like the court to consider your monthly expenses when determining the amount of recoupment which you can reasonably be expected to pay.

Figure 9- Public Safety Assessment

Youngstown Municipal Court , Ohio Pretrial Assessment Report

REPORT DATE
6/11/2024

NAME
Jane Doe

DOB
05/07/1984

ARREST DATE
05/03/2024

COURT CASE NUMBER
24 CRB 1456

PSA COMPLETION DATE
05/03/2024

CREATED BY
Dave Magura on 05/03/2024

Statute	Charge	Number of Counts	Violent
2913.02	Theft	1	No

Failure to Appear Scale: Score = 1 2 3 **4** 5 6

73% Likely to Appear

27%

New Criminal Arrest Scale: Score = 1 2 **3** 4 5 6

78% Likely to Remain Arrest-Free

22%

New Violent Criminal Arrest Flag: NO

98% Likely to Remain Violent Arrest-Free

2%

Presumptive Pretrial Release Level: Level 1

Conditions:

Mandatory Statutory Conditions
Court Date Notifications
Criminal History Checks
Other Case-Specific Conditions

PSA Factors	Response
1. Age at Current Arrest	23 or older
2. Current Violent Offense	No
2a. Current Violent Offense & 20 Years Old or Younger	No
3. Pending Charge at the Time of the Arrest	No
4. Prior Misdemeanor Conviction	Yes
5. Prior Felony Conviction	No
5a. Prior Conviction	Yes
6. Prior Violent Conviction	0
7. Prior Pretrial Failure to Appear in the last 2 Year	1
8. Prior Pretrial Failure to Appear Older than 2 Years	No
9. Prior Sentences to Incarceration	Yes

Figure 10- Profile of Sample

Variable	06/01/2022 – 06/01/2023, N= 1,034	
	N	Percent
Court Appointed Counsel		
1 = Yes, received court appointed counsel	862	83.4%
2 = No, retained private counsel	106	10.3%
Missing datasets	66	6.4%
Gender		
1=Male	813	78.6%
2= Female	221	21.4%
Race		
1 = American Indian or Alaskan Native	0	0%
2 = Asian	1	.1%
3 = Black or African American	677	65.5%
4 = Native Hawaiian or Pacific Islander	0	0%
5= White	288	27.9%
6= Other	68	6.6 %
Initial Bond Type		
1 = Own recognizance / citation	28	2.7%
2 = Monetary	696	67.3%
3 = Supervised release	194	18.8%
4 = Other	53	5.1%
Missing datasets	63	6.1%
Release Type		
1= Released on citation	4	.4%
2= Released on bond	376	36.4%
3=Released pre-arraignment	65	6.3%
4= Granted supervised release	199	19.2%
5= In custody / bond not posted	349	33.8%
6= Held without bond	19	1.8%
7= Own recognizance	11	1.1%
8= Disposition	5	.5%
Missing cases	6	.6%

Days of Incarceration

1-10 days in jail	776	75%
11-21 days in jail	133	13%
22-32 days in jail	43	4%
33-43 days in jail	20	2%
44-54 days in jail	17	2%
55-65 days in jail	13	1%
66-76 days in jail	9	.8%
77-209 days in jail	17	2%
Missing datasets	6	.6%

Court Appearance

1= Appeared for all scheduled court hearings	850	82.2%
2= Failed to appear for a scheduled court hearing	85	8.2%
Missing datasets	99	9.6%

Arrest Free

1= Remained arrest free	855	82.7%
2= Charged with a new violent offense	11	1.1%
3= Charged with a new nonviolent offense	11	1.1%
4= Arrested on FTA capias	30	3.3%
5= Other	1	.1%
Missing datasets	126	12.2%

Figure 11- Internal Review Board

Apr 29, 2024 4:00:23 PM EDT

Christopher Bellas
Cr Just & Cons Sciences 141212

Re: Exempt - Initial - 2024-202 Type of Defense Counsel and its Effect on Defendants Pretrial Proceedings

Dear Dr. Christopher Bellas:

Youngstown State University Human Subjects Review Board has rendered the decision below for Type of Defense Counsel and its Effect on Defendants Pretrial Proceedings

Decision: Exempt

Selected Category: Category 4. Secondary research for which consent is not required: Secondary research uses of identifiable private information or identifiable biospecimens, if at least one of the following criteria is met:

- (i) The identifiable private information or identifiable biospecimens are publicly available;
- (ii) Information, which may include information about biospecimens, is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained directly or through identifiers linked to the subjects, the investigator does not contact the subjects, and the investigator will not re-identify subjects;
- (iii) The research involves only information collection and analysis involving the investigator's use of identifiable health information when that use is regulated under 45 CFR parts 160 and 164, subparts A and E, for the purposes of "health care operations" or "research" as those terms are defined at 45 CFR 164.501 or for "public health activities and purposes" as described under 45 CFR 164.512(b); or
- (iv) The research is conducted by, or on behalf of, a Federal department or agency using government-generated or government-collected information obtained for nonresearch activities, if the research generates identifiable private information that is or will be maintained on information technology that is subject to and in compliance with section 208(b) of the E-Government Act of 2002, 44 U.S.C. 3501 note, if all of the identifiable private information collected, used, or generated as part of the activity will be maintained in systems of records subject to the Privacy Act of 1974, 5 U.S.C. 552a, and, if applicable, the information used in the research was collected subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.

Any changes in your research activity should be promptly reported to the Institutional Review Board and may not be

Findings: This is a study using pre-existing data provided by the Mahoning County Municipal Court. No additional data will be collected by the researchers. The data will be used to examine the type of counsel and how that impacts pretrial proceedings. Therefore, this meets the criterial of an exempt protocol, category 4(i).

The IRB would like to extend its best wishes to you in the conduct of this study.

Sincerely,
Youngstown State University Human Subjects Review Board

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