

THE IMPACT OF NEGLECTING INDIGENT DEFENSE ON THE ECONOMICS OF CRIMINAL JUSTICE

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INTRODUCTION

Criminal justice decisionmaking does not begin with a police officer, a prosecutor, or even a judge; rather, it begins with an appropriator—the legislator or legislators who determine how much funding should be dedicated and for what purpose. At the most basic level, the appropriator can be described as pushing the equivalent of a shopping cart through the criminal justice store, up and down aisles lined with an ever-increasing array of options: prison beds, police officers, drug courts, probation and parole officers, electronic monitoring devices, victim advocates, mental health services, and yes, even public defenders. The appropriator has to decide precisely how much funding to dedicate to each specific function in order to achieve the overarching goals of enhancing public safety and preserving an equitable system of justice.

These options are each represented by constituency groups with varying degrees of influence over the budgetary process. Police officers and prosecutors traditionally have considerable sway, and perhaps rightfully so, with public safety providing a compelling case for funding that translates into a simple and resonant message to voters. Conversely, and if history is any indication, criminal defense lawyers for the poor have very little clout when it comes to attracting resources. Adding to the complexity of the process, these groups—each a spoke in the criminal justice wheel—make their case to appropriators who are often not well-versed on effective public safety strategies or emerging best practices, or even how to scale funding decisions to achieve the aforementioned public safety and criminal justice goals.

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tracked how much time was being dedicated to meeting with clients, investigating a case, performing motion practice, attending court appearances, and so forth.

This data was then juxtaposed with similar data provided by private defense attorneys. Using the Delphi methodology, a business forecasting tool, RubinBrown used these two data sets to establish thresholds that detail precisely how much time an attorney should be spending on a given task for a given case type.¹⁶ Then it applied the MSPD's existing resources (i.e., the number of attorneys) to the number of cases assigned by case type, which revealed precisely how many additional attorneys the MSPD needed to provide competent representation. Using the number of cases assigned to the MSPD when the report was released in 2014, this calculation resulted in a need for 290 additional attorneys two years later, when caseloads increased about twelve percent, that number rose to more than 330 additional attorneys.¹⁷ Nonetheless, in the few years since the release of the Missouri Project, the MSPD has not received funding for a single additional attorney.

Missouri's informed neglect for the rights of the poor has been met with stark criticism. In July of 2015, the Civil Rights Division of the U.S. Department of Justice issued a report detailing the repeated denial of due process for poor children, particularly children of color, in St. Louis County, pointing to the "staggering caseload of the sole public defender assigned to handle all indigent juvenile delinquency cases."¹⁸ This finding comes on the heels of a 2013 study by the National Juvenile Defender Center that described Missouri's indigent defense system as being in crisis after having "endured at

Miss. Code Ann. § 17-2-107(a)(4) and 1-2-305(d)(4)(b). 17-2-107(a)(4) and 1-2-305(d)(4)(b) are both subject to the provisions of the Missouri Constitution, Article V, Section 2, which provides that the General Assembly shall have the power to change or repeal any law enacted by it.

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offenses increased by 11.2%.³⁰ According to the same report, about 47.6% of Missouri's prison population was comprised of inmates incarcerated for a non-violent offense.³¹

The average length of sentences changed during this time as well, with a slight -0.4% decrease in the length of prison sentences for violent offenders but a 4.3% increase in sentence length among violent offenders, including a 17% increase in sentence length for DWI offenders.³² As a result, the profile of the Missouri prison population is growing increasingly non-violent, which means that there are fewer resources to cope with the state's violent crime rate.

Even using the low end of cost estimates, incarcerating roughly 15,195 non-violent inmates cost taxpayers \$6.1 million.³³

spent. Only then will Missouri, and other states, come to decrease their reliance on costly programs, such as incarceration, and improve public safety outcomes.

