

Three-Minute Justice:

Haste and Waste in Florida's Misdemeanor Courts



NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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Three-Minute Justice:

Haste and Waste in Florida's Misdemeanor Courts

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ABOUT THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

The National Association of Criminal Defense Lawyers (NACDL) is the preeminent organization in the United States advancing the goal of the criminal defense bar to ensure justice and due process for persons charged with a crime or wrongdoing. NACDL's core mission is to: *Ensure justice and due process for persons accused of crime ... Foster the integrity, independence and expertise of the criminal defense profession ... Promote the proper and fair administration of criminal justice.*

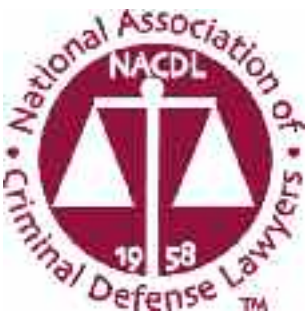
Founded in 1958, NACDL has a rich history of promoting education and reform through steadfast support of America's criminal defense bar, *amicus* advocacy, and myriad projects designed to safeguard due process rights and promote a rational and humane criminal justice system. NACDL's 10,000 direct members — and more than 90 state, local and international affiliates with an additional 40,000 members — include private criminal defense lawyers, public defenders, active U.S. military defense counsel, and law professors committed to preserving fairness in America's criminal justice system. Representing thousands of criminal defense attorneys who know firsthand the inadequacies of the current system, NACDL is recognized domestically and internationally for its expertise on criminal justice policies and best practices.

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ABOUT THE FOUNDATION FOR CRIMINAL JUSTICE

The Foundation for Criminal Justice (FCJ) is organized to preserve and promote the core values of America’s justice system guaranteed by the Constitution — among them due process, freedom from unreasonable search and seizure, fair sentencing, and assistance of effective counsel. The FCJ pursues this goal by seeking grants and supporting programs to educate the public and the legal profession on the role of these rights and values in a free society and assist in their preservation throughout the United States and abroad.

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Supreme Court justices rarely consider appeals of misdemeanor convictions. Nearly a half-million misdemeanor cases are filed in Florida’s county courts every year, and the vast majority of those cases are resolved by a plea of guilty, often in a matter of minutes. Advice of rights by the courts and the assistance of lawyers for the defendants, whether they can afford them or not, are exceptions, not the rule. It is as if our criminal and traffic courts operate as “constitution-free zones,” outside the law.

Many of these problems occur throughout the country. In a previous report on misdemeanor courts published by NACDL, *Minor Crimes, Massive Waste*, we learned that courts all across the country are clogged with victimless misdemeanor crimes that represent no threat to public safety. The defendants and the taxpayers would be much better served through reclassification of minor offenses (fine only), removing them from the criminal justice system, and the creation of effective pretrial diversion programs for more serious misdemeanors.

The earlier report reviewed the misdemeanor court system nationwide, while this report examines misdemeanor courts in 21 Florida counties. Although I am not terribly surprised, having read this report, I do find it outrageous that eight out of ten arraignments conclude in under three minutes – and nearly two out of three defendants plead guilty or no-contest at that first appearance. The “three-minute case” is not an achievement to be proud of, like a three-minute mile. Two out of three misdemeanor defendants do not have a lawyer by their side at that crucial first appearance.

The Florida Constitution guarantees the residents of our state a right to due process, a right to the assistance of counsel, and a *meaningful* day in court. Twenty years ago, a decade before the U.S. Supreme Court’s decision in *Shelton*, I dissented in a case¹ where a defendant’s misdemeanor DUI conviction was elevated to a felony based on an uncounseled prior conviction. The majority held, as a matter of federal constitutional law, the state was not required to appoint counsel in the prior case, because the defendant received no jail time. I firmly believed that, however narrowly the federal courts had interpreted the Sixth Amendment, Article I of our *state* constitution required the state to afford indigent defendants competent counsel in any case where there was any possibility of incarceration, however remote.

But even where no jail time is imposed, and the court and the prosecutor keep their promises and allow a defendant to pay his fine and return to his home and job the same day, there are real punishments attendant to a misdemeanor conviction that have not yet begun. To be constitutional, a plea of guilty must be voluntarily and intelligently made.

For example, spur-of-the-moment decisions to plead guilty to driving on a suspended license or under the influence can be used to charge a subsequent suspended license or DUI offense as a felony in Florida. Such decisions cannot be made in haste, with or without a lawyer, for the sake of a small fine. The future consequences of even a minor criminal conviction can change the course of a defendant's life. The collateral consequences of a subsequent felony conviction can be devastating, affecting employment opportunities, the ability to adopt a child, and legal residency and citizenship goals, to name just a few.

Yet there are signs of progress in my state. Last December, the State Attorney's Office for the 17th Judicial Circuit (Broward County), the second largest jurisdiction examined in this report, instituted a fairly comprehensive pretrial diversion program for many misdemeanor and serious traffic first-offenders. Defendants who enter a plea of not guilty may apply for diversion immediately after their first appearance. Defendants are advised of their rights to discovery and speedy trial and must sign a waiver of those rights as part of the application process, and the waiver must also be signed by defense counsel and an interpreter, if applicable. And as this report goes to press, the largest jurisdiction studied, Miami-Dade, announced its "Back on Track" program, a diversionary program for licensed first offenders arrested for driving under the influence of alcohol. Upon payment of a fine and successful completion of the program, first-time drunk drivers can get their DUI charge reduced to a charge of reckless driving and withholding of final adjudication, meaning there will be no conviction on their record. Orlando has a similar program. Such programs relieve the strain on the courts, reduce police officer overtime, and allow prosecutors to devote more resources to more serious criminal matters. By and large, the people of the State of Florida will benefit fiscally, socially, and in many cases, personally.

Reform should not be mistaken for mere ideology, expressed with words but not deeds. It is work. It needs to be a constant, continuous process. It is my hope that my fellow members of the bench and bar, and the public at large, read this report and reflect upon it. It is time to end the wasteful and harmful practices that have turned our misdemeanor courts into mindless conviction mills.

Chief Justice Gerald Kogan

Florida Supreme Court (1987-1998)

EXECUTIVE SUMMARY

Nearly a half million people, or approximately 3% of the state’s adults, pass through Florida’s misdemeanor courts each year. While the charges adjudicated in these courts are often viewed as minor, the consequences of conviction are significant. Not only are there direct, immediate costs of such a conviction (fines and/or imprisonment), but often there are also long-term, collateral consequences (employment barriers and possible deportation). Despite these serious stakes, an eight-month investigation of one-third of Florida’s counties reveals disturbing evidence that efficiency commonly trumps due process in Florida’s misdemeanor courts, particularly in the larger counties.

Most individuals accused of misdemeanors resolve their cases at the first hearing, the arraignment. A large percentage does so without a lawyer, notwithstanding the well-recognized importance of counsel to ensure the accused “may know precisely what he is doing, so that he is fully aware of the prospect of going to jail or prison, and so that he is treated fairly by the prosecution.”² The overwhelming majority plead guilty. Indeed, 94% of misdemeanor cases are resolved before trial.

On average, these arraignment proceedings lasted fewer than three minutes, even when defendants were pleading guilty at the hearing. Some defendants were informed of their rights by video or rights-waiver form, but in less than 50% of cases were the defendants who were pleading guilty directly advised by the trial judge of the rights they were forfeiting. Upon entering a plea, few were advised of their right to appeal or the immigration consequences of entering a plea.

In-custody defendants and defendants without counsel were most likely to enter a guilty plea at arraignment. Defendants who entered a plea at arraignment were three times more likely to be unrepresented. Pleading guilty without counsel occurred more often in larger, rather than small counties. Moreover, defendants who were less informed of their rights to counsel were also more likely to enter a plea at arraignment.

Based on this quantitative analysis of Florida’s misdemeanor courts, the following recommendations are offered to improve compliance with due process and ensure fundamental fairness:

1

Provide counsel to all accused persons facing misdemeanor charges.

Vital to this recommendation is the need to reduce impediments to the right to counsel including elimination of the \$50 application fee for the public defender’s office.

EXECUTIVE SUMMARY

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2 Ensure a level of due process that is compatible with the seriousness and consequences of a misdemeanor prosecution.

With 70% of misdemeanor cases resolved with a guilty plea at arraignment, trial judges should encourage smaller dockets and spend more time with defendants so that they understand their rights, the importance of the right to counsel, and the potential long-term and collateral consequences of entering a plea, including but not limited to deportation. Rights-waiver forms that inform defendants of their rights in the negative (i.e., the rights they are presumed to be forfeiting by entering a plea) should be revised to state those rights in the affirmative. Defendants also should be advised of their post-plea right to appeal.

3 Reduce fines for less-serious, non-violent offenses.

The primary punishments imposed in the county courts are costs and fines. A fine that, far beyond punishment, imposes an insurmountable hurdle for the defendant to overcome, serves the purposes of neither the state, nor the victim. Fines should be reduced to ensure that they appropriately reflect the nature and type of crime committed. Court costs, like the cost of a defense, should be subject to a waiver if the defendant cannot afford to pay.

4 Create citizen boards that provide oversight and review of county courts.

Misdemeanor courts should not process cases in isolation. With few lawyers representing defendants and few defendants notified of their right to appeal, many cases are not reviewed outside of the trial courtroom. Citizen boards with members who regularly watch the processing of cases in these courts can ensure that due process and the right to counsel are not thwarted for efficiency.

5 Conduct a systemic review of Florida's criminal code to identify misdemeanors that warrant reclassification or decriminalization.

Many offenses that carry potential prison sentences, and thus trigger a right to counsel, could be downgraded, thereby reducing court congestion and costs without impacting public safety.

INTRODUCTION

Florida courts, prosecutors and public defenders are burdened by tightening budgets, and as made clear in a recent report by the National Association of Criminal Defense Lawyers (NACDL), the “staggering” volume of misdemeanor cases is a major factor.³ The problems identified in misdemeanor courts by NACDL researchers included (1) the absence of counsel, (2) excessive caseloads, and (3) avoidable taxpayer costs associated with misdemeanor prosecutions.⁴ While inefficient use of taxpayer money is a policy decision, access to effective counsel is the bedrock of the American criminal justice system, and excessive caseloads and other impediments implicate deviations from well-established standards.⁵

Minor Crimes, Massive Waste sought to assess the national scope of the problem by examining misdemeanor courts in seven states. In Florida, that study’s observations were limited to the large, urban courts of Miami-Dade County. The present study was designed to build on this national work by examining in greater depth the practices in Florida misdemeanor courts and how those practices comport with established practice standards and due process principles.

Florida’s criminal county courts have jurisdiction over misdemeanor offenses, which range from minor traffic offenses and littering to driving under the influence and battery. Misdemeanor violations include violations for living in open adultery,⁶ transporting building materials at night in Leon County,⁷ littering on one’s own property in Broward County,⁸ and teasing animals in Marion County.⁹ In 2008 (the most recent year that statistics were available), the Florida State Court Administrator reported that almost half a

In 2008 (the most recent year that statistics were available), the Florida State Court Administrator reported that almost half a million (483,465) individuals were charged with non-felony crimes (misdemeanors, worthless checks, county and municipal ordinance violations) in Florida’s criminal county courts.

million (483,465) individuals were charged with non-felony crimes (misdemeanors, worthless checks, county and municipal ordinance violations) in Florida's criminal county courts, compared to only 225,967 defendants charged with felonies in criminal circuit court.

Some misdemeanor offenses carry fine-only punishments, while other offenses may result in up to one year in jail.¹⁰ Since trial judges may run sentences consecutively for separate offenses, some misdemeanor offenders face years of incarceration. In addition to fines, probation and incarceration, misdemeanor offenders are subject to a host of collateral consequences including loss of occupational licenses, state employment, drivers' license privileges and housing.

In light of the serious impact of misdemeanor prosecutions on the state's justice system, budget and residents, an in-depth examination of the operation of these courts is warranted. The purpose of this study and report was to gather concrete data about what occurs in misdemeanor courts across Florida, and analyze that data to discern factors affecting outcomes. The study examines the procedures used in criminal county courts to understand the degree to which the court procedures comply with constitutional norms, and, by looking at how different factors affect outcomes, the quality of justice administered.

The study of Florida's county courts was conducted over eight months in 2010. During that period, 1,649 arraignments were observed and follow-up archival research conducted in 21 of the 67 Florida counties.¹¹



Questions Examined

The Florida study expanded on the broader findings of *Minor Crimes, Massive Waste* by quantitatively examining the following questions in eight large and 13 small¹² Florida counties:

1. **Are defendants advised of their constitutional right to counsel during misdemeanor court arraignments?**
 - a. If advised, are they advised in writing, by video, or in open court by the judge?
 - b. What effect, if any, did advising defendants of their rights have on their decisions to enter a plea or request counsel, and was there any relationship between the advisement and the type of sentences imposed?
 - c. Is it more likely that judges advise defendants charged with more serious offenses (domestic violence and driving under the influence) of their rights than other defendants?
 - d. Is it more likely that judges advise in-custody defendants of their right to counsel than out-of-custody defendants?
 - e. Do larger and smaller counties vary on whether or how defendants are advised of their rights, and how do the counties compare on defendants' decisions about entering a plea or requesting counsel, and sentencing?
2. **Is due process (advising defendants of their rights to counsel, the rights waived by entering a plea of guilty or no contest, and the consequences of entering a plea) sacrificed for efficiency?**
 - a. How quickly are arraignments processed in open court?
 - b. Does the speed of arraignments affect defendants' decisions on the entry of their plea, counsel or sentence?
 - c. Do judges spend more time with defendants who are charged with serious crimes compared to those charged with less serious crimes?
 - d. Are defendants who are represented by counsel processed more slowly at arraignment than those who represent themselves?
 - e. Are in-custody defendants processed more slowly than out-of-custody defendants at arraignment?
 - f. Are arraignments processed more quickly in larger as compared to smaller counties?
3. **When defendants enter a plea of guilty or no contest at arraignment:**
 - a. Who is offering the plea?
 - b. Are defendants advised of the rights that are being waived?
 - c. What sanctions are imposed?
4. **After agreeing to enter a guilty plea, are defendants advised of their right to appeal or the immigration consequences of their plea?**
 - a. Are judges more likely to advise defendants of the rights and consequences of their plea in more serious as compared to less serious crimes?
 - b. Are judges more likely to advise in-custody defendants of their rights and consequences of entering a guilty plea than out-of-custody defendants?
 - c. Are judges more likely to advise unrepresented defendants of their rights and consequences of entering a guilty plea than those represented by counsel?
 - d. Are judges in small counties more likely than judges in large counties to advise defendants of the rights and consequences of their plea?
5. **What happens when defendants enter a plea of not guilty at arraignment?**
 - a. How many times are their cases postponed?
 - b. Which defendants – those represented by private counsel, public counsel or themselves – are most likely to go to trial?
 - c. Are defendants who are charged with more serious crimes more likely to opt for trial?
 - d. Are defendants who opt for trial and found guilty punished more harshly than those who enter a plea?
6. **Which variables had the greatest effect, controlling for other independent variables, on (1) the decision to enter a plea, (2) the decision to use counsel, and (3) the imposed sentence?**

In total, 1,649 defendants' cases were examined from 21 counties.

Methodology

During the spring and summer of 2010, undergraduate students were provided with instruction on the constitutional right to counsel in misdemeanor proceedings, empirical research on judicial decision-making, and the processing of criminal cases in Florida. Students observed arraignment proceedings, and, using a 16-page court-observation instrument, collected data on the courtroom workgroup (judge, prosecutor, defense counsel and defendant), the processing of cases at arraignments (e.g., whether defendants are afforded the right to counsel), and outcomes at arraignment and subsequent court proceedings (plea, trial, and sentencing) in 21 Florida counties.

Following this open-court observation and data collection, students conducted archival research and verified or added

Table 1. County Characteristics

Counties	Cases	Percent	County Size (Num. of Judges/Population) ¹⁴
Brevard	143	8.7	Large/537,357
Broward	80	4.9	Large/1,766,476
Charlotte	4	0.2	Small/156,952
Citrus	18	1.1	Small/140,357
Desoto	17	1.0	Small/35,297
Gadsden	4	0.2	Small/47,474
Hardee	15	0.9	Small/29,415
Hernando	43	2.6	Small/171,233
Hillsborough	396	24.0	Large/1,195,317
Indian River	15	0.9	Small/135,167
Leon	45	2.7	Large/265,714** ¹⁵
Manatee	51	3.1	Small//318, 361
Miami-Dade	127	7.7	Large/2,500,625
Orange	66	4.0	Large/1,086,480
Osceola	37	2.2	Small/270,618
Pasco	213	12.9	Small/471,709
Pinellas	156	9.5	Large/909,013
Polk	59	3.6	Small/583,403
Sarasota	47	2.9	Small/369,765
Sumter	19	1.2	Small/77,681
Volusia	95	5.7	Large/495,890
N	1,649	100%	

data from county clerk and jail websites including, but not limited to the defendants' demographic information, the number of days defendants spent in county jail, and the actual outcome at or after arraignment.¹³ Students downloaded the data to a single, secure website.

In analyzing the data for this study, crimes were collapsed into seven categories:

1. **Domestic Violence:** domestic violence crimes, violations of temporary restraining orders and harassing telephone calls
2. **Driving under the Influence**
3. **Non-domestic Violence**
4. **Property:** theft, trespass and worthless check cases
5. **Non-DUI Driving:** traffic, non-moving violations, and driving with a suspended license
6. **Disorderly Conduct:** Marijuana, alcohol, disorderly intoxication, disorderly conduct, open container violations and paraphernalia charges
7. **Other:** All other crimes, including but not limited to resisting an officer without violence and crimes related to animals.

Demographics of the County Courts

In total, 1,649 defendants' cases were examined from 21 counties. The majority of cases were collected in Hillsborough, Pasco, Pinellas, and Brevard counties (53%). Table 1 lists the counties, their size (based on the number of judges), and the percent of the total cases in the sample. (See Table 1).

Summary of Findings

For many of the nearly half million individuals who pass through Florida's misdemeanor courts each year, due process is illusory. Florida's county courts are consistently sacrificing due process for case-processing speed. This problem is pervasive but particularly evident in larger counties. Many defendants waive their right to counsel, and enter pleas of guilty or no contest at arraignment. Most receive little or no notice of the possible collateral consequences of entering a plea. Given these shortcuts, it is not surprising that arraignments are quick proceedings. Defendants who interact with the criminal justice system spend a great deal of time driving to the courthouse, parking, and sitting in court waiting for the judge to take the bench in exchange for three-minute hearings.

The Impact of Overcrowded Dockets

In most counties, judges control their arraignment dockets or limit the number of days arraignments are held. In some counties, judges rotate arraignments, and a single judge hears all arraignments for that county. In either case, arraignment dockets are large, resulting in pressures to process cases quickly.

Most arraignments (82%) lasted three minutes or less, and 91% were completed within five minutes. (Table 12). The average arraignment proceeding lasted only 2.93 minutes. In this time, the trial judge ascertains whether the defendant will proceed with or without counsel and the plea to be entered, and many times accepts a plea of guilty or no contest. Little difference emerged between the speed of processing arraignments in small and large counties. (Table 14).

Representation by Counsel: The Prevalence and Indicators of Waiver

Sixty-six percent of defendants appeared at arraignment without counsel. Only 13% hired private counsel before the arraignment and 21% had been appointed public counsel at first appearance. (Table 2, 6). Private lawyers were retained more often in smaller counties. (Table 2).

For those without lawyers, information regarding the proceedings and their options was limited to generic explanations of court protocols generally communicated en masse. Before arraignment proceedings in many counties, assistant public defenders or judges advised defendants about the arraignment process. Defendants were advised to arrive in court 30 minutes to an hour before the trial judge took the bench to give assistant public defenders the opportunity to inform defendants — even if not yet appointed to their cases — about the proceedings, plea options, and costs. In a couple of county courts, defendants were informed of their rights and the arraignment process by video (16.7%). Video advisement was more common in larger counties. (Table 8).

While group advisements are inadequate to ensure the rights of uncounseled defendants, another method of advisement is even more problematic. In some counties, defendants (15.9%) were advised of their rights when they were handed a written form by the bailiff as they walked into court. (Table 7). The forms, which are written in the negative, presume defendants will waive their right to counsel and enter pleas of guilty or no contest. For example, one sample form (attached as Appendix A) is titled “Agreement to give up (waive) legal services”

Half of the individuals who appeared at arraignment without counsel wholly waived their right to counsel.

An examination of court practices sheds some light on this figure. Trial judges failed to advise the unrepresented defendants of their right to counsel in open court (i.e., not by way of an announcement by the public defenders, written waiver form, or video-recorded information) only 27% of the time. Judges asked defendants if they wanted to hire a lawyer or if they wanted counsel less than half of the time. And only about one-third of the time did the trial judge discuss the importance and benefits of counsel or disadvantages of proceeding without counsel. (Table 6).

When Defendants Waive Counsel

The most significant predictor of waiving counsel at arraignment was the custody status of the defendant. (Table 26). In-custody defendants were 10 times more likely than released defendants to obtain counsel.

The seriousness of the offense charged also had an impact on whether the defendant appeared with counsel. Individuals charged with more serious offenses or two or more crimes were more likely to be represented by counsel. (Table 26)

Pleading Guilty at Arraignment

Almost 70% of defendants observed entered a guilty or no contest plea at arraignment. Defendants who hired counsel or were appointed counsel were less likely than non-represented defendants to enter a plea of guilty or no contest at arraignment. (Table 9). Defendants charged with the most serious misdemeanors — domestic violence, driving under the influence and non-domestic violence charges — were most likely to enter a plea of not guilty. (Table 10).

The most significant predictor of defendants entering a plea of guilty or no contest at arraignment was their custody status. (Table 24). In-custody defendants were more likely to enter a guilty plea than released defendants.²⁰

Florida’s county courts are consistently sacrificing due process for case-processing speed.

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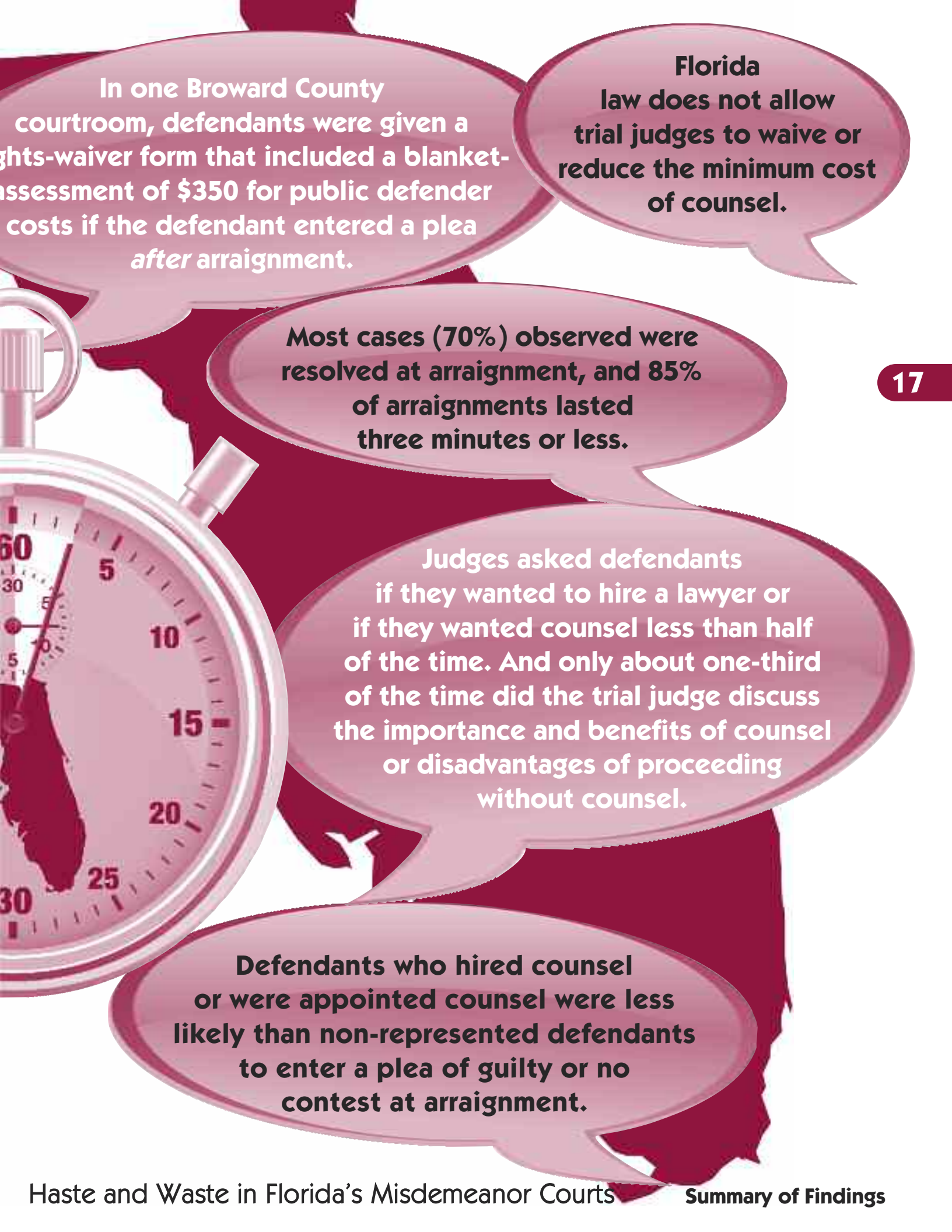
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Three-Minute Justice:



In one Broward County courtroom, defendants were given a rights-waiver form that included a blanket-assessment of \$350 for public defender costs if the defendant entered a plea *after* arraignment.

Florida law does not allow trial judges to waive or reduce the minimum cost of counsel.

Most cases (70%) observed were resolved at arraignment, and 85% of arraignments lasted three minutes or less.

Judges asked defendants if they wanted to hire a lawyer or if they wanted counsel less than half of the time. And only about one-third of the time did the trial judge discuss the importance and benefits of counsel or disadvantages of proceeding without counsel.

Defendants who hired counsel or were appointed counsel were less likely than non-represented defendants to enter a plea of guilty or no contest at arraignment.

Defendants who were not in custody at the time of their arraignment were much more likely to forgo counsel. (Table 26). Defendants without counsel were more likely to plead guilty or no contest at arraignment than those with counsel. (Table 9). Defendants pleading guilty at arraignment were three times more likely to be unrepresented.²¹ (Table 24). Defendants who were less informed about their right to counsel were also more likely to plead guilty. (Table 24). These findings raise significant concerns that unrepresented defendants, particularly those not subject to pre-arraignment custody, underestimate the non-immediate yet serious and long-term consequences of misdemeanor convictions. Without information on the potential long-term and collateral consequences (e.g., loss of job, housing or driving privilege), defendants underestimate the importance of counsel and the collateral consequences to their post-plea quality-of-life.

The Real Cost of Appointed Counsel

Compounding the lack of meaningful information about the right to counsel is the fact that in Florida, public lawyers are not free. Before arraignment, defendants are advised of their responsibility to pay mandatory costs for appointed counsel, and this may help explain the high rate of defendants who waive counsel.¹⁶

By statute, defendants who wish to use the services of public counsel must execute the application and pay a statutorily required fee of \$50 for the processing of that application. In addition, there is a minimum fee for the use of public counsel. In misdemeanor cases that fee is \$50.¹⁷ Most often the public defenders or trial judges at the beginning of arraignment proceedings announced the costs associated with choosing public counsel. In many counties, defendants at arraignment are handed two forms: (1) a rights-waiver form and (2) an application for criminal indigent status form. (Appendix B).

In one Broward County courtroom, defendants were given a rights-waiver form that included a blanket-assessment of \$350 for public defender costs if the defendant entered a plea *after* arraignment:

I understand that an Attorney fee/cost lien will be assessed against me if I have received the services of a court appointed attorney. Unless I request a hearing in writing within thirty (30) days, the amount of the lien will be (\$50.00) for a plea at arraignment and three hundred and fifty (\$350.00) for a plea after arraignment.

(Appendix C). Essentially, defendants are charged more for failing to plead guilty at the outset of the case.

Unpaid application and public defender fees are added to their costs at the conclusion of their case, imposed as special conditions of probation or reduced to a lien on their property.¹⁸ Florida law does not allow trial judges to waive or reduce the minimum cost of counsel (currently \$50 in misdemeanor cases). According to a report by the Brennan Center for Justice, imposed and mandatory fees discourage defendants from exercising their fundamental right to counsel, “leading to wrongful convictions, over incarceration, and significant burdens on the operations of courts.”¹⁹

As noted above, most cases (70%) observed were resolved at arraignment, and 85% of arraignments lasted three minutes or less. Assuming an additional two-minute consultation about the possible plea (5 minutes total), defendants who obtain public counsel are paying, in effect, \$20 per minute or \$1200 per hour for representation by a young lawyer from the public defender’s office (\$50 affidavit fee and \$50 public defender fee).

Sanctions for Misdemeanor Offenses

Misdemeanor convictions can result in incarceration. A first-degree misdemeanor carries a possible jail term of one year in the county jail. For more than one charge, consecutive sentences can result in several years in jail. Third offenses for DUI, petit theft and driving with a suspended license subject defendants to felony prosecution. Defendants who plead guilty in exchange for probation and who later violate their probation may be sentenced to jail.

Eighteen percent of observed defendants were sentenced to jail time, with an average sentence of 31 days. Defendants who were sentenced to jail were primarily out of custody at the time of arraignment. Of the 135 defendants who entered pleas of guilty or no contest at arraignment and received jail sentences, only 54 (40%) were in custody.

The most common form of punishment in misdemeanor court is not jail time, but rather the assessment of financial punishments including fines, court costs, and restitution. The assessment of fines and fees can have a serious impact on defendants, including long-term debt consequences with compounding interest or a lien placed on defendants’ property. Most defendants who entered pleas at arraignment

Defendants who were not in custody at the time of their arraignment were much more likely to forgo counsel.

were ordered to pay costs (83%) or fines (55%). (Table 18). Court costs and fines ranged from \$25 to \$1,623. Only 27% of defendants were placed on probation— for an average of 192 days. Less than 10% were ordered to pay restitution, and the range of restitution was from \$30 to \$2,000.

The most significant predictor of defendants who were sanctioned most severely (jail or probation) was the seriousness of offense. (Table 25). Offenders charged with domestic violence or DUI were over five times more likely to receive jail or probation. In-custody defendants were more likely to receive jail or probation than an order to pay court costs, a fine or restitution. Defendants in smaller counties were more likely to be sentenced to jail or probation than defendants in larger counties.

In predicting the sanction, the type of counsel was significant. Defendants using public counsel were more likely to be sentenced to jail or probation than those without counsel. (Table 25). There was no significant difference between defendants who hired private counsel as compared to those who were self-represented. Defendants who were less informed about their right to counsel were more likely to receive jail or probation. (Table 25). Defendants who were more informed about the rights forfeited by entering the plea were more likely to receive jail or probation. (Table 25).

One finding in particular deserves discussion. Defendants represented by public defenders were more likely than those without counsel to receive sentences of jail or probation. One possible explanation involves the defendants' prior criminal records. Defendants with prior records, or multiple offenses (e.g., someone prosecuted for their third marijuana charge) are more likely to receive a jail sentence than a monetary sanction. Defendants offered jail or probation at arraignment are less likely to plead guilty, and more likely to get counsel because of the seriousness of the sanction. Without access to defendants' criminal histories, this variable was not controlled.

Collateral Consequences of Misdemeanor Convictions

The collateral consequences of a misdemeanor conviction can be severe. Illegal immigrants may be deported for misdemeanor convictions.²² Adjudications for misdemeanor crimes become part of defendants' criminal records, and these convictions may impede housing, educational and job prospects. Some crimes trigger driver's license suspension and increases in car insurance rates.²³ Domestic violence convictions may preclude gun ownership and affect shared-parenting orders in divorce cases.²⁴ Some misdemeanor convictions subject offenders to long-term consequences, such as requiring offenders to submit DNA for the statewide database and prohibiting court-ordered sealing of criminal records.²⁵

Only 40% of defendants²⁶ were advised of the possible immigration and deportation consequences of entering a guilty plea to misdemeanor offenses. In-custody defendants were more likely to be advised of the possible deportation consequences. (Table 21).

The Right to Appeal

The Florida Rules of Criminal Procedure require trial judges to inform defendants of their right to appeal.²⁷ Despite this requirement, few county court judges advised defendants of this right. (Tables 19, 20, and 21). After sentencing at arraignment, only 23.7% of defendants were advised of their right to an appeal,²⁸ and only 23.2% the right to an attorney for that appeal. In-custody defendants were less likely to be advised of their right to appeal than released defendants. (Table 19). Defendants in larger counties, as compared to those in smaller counties, were less likely to be informed of their right to appeal. (Table 20).

The High Costs of Misdemeanor Prosecutions

While this study did not examine the full costs of prosecuting and punishing misdemeanors in Florida, it did shed light on one aspect of this issue. Although few defendants were in custody at the time of arraignment, many spent between one and 30 days in jail prior to their release with an average stay of 3.49 days in jail. (Table 4). With an estimated cost of jailing misdemeanor arrestees of \$50 per day, the short-term detention of misdemeanor defendants is costly.²⁹ Here, the estimated cost of jailing approximately 500 defendants, who were eventually released from jail (most after only one to three days, but some after three months) and who served a total of 1,901 days in jail, was \$95,000.

Defendants pleading guilty at arraignment were three times more likely to be unrepresented.

Recommendations

Based on the foregoing findings, the following recommendations are suggested for Florida's county courts:

1. *Provide counsel to all defendants in misdemeanor prosecutions. The courts' pursuit of efficiency must yield to greater emphasis on due process, and providing counsel to all defendants is the surest way to achieve this goal.*
2. *Eliminate the \$50 fee associated with applying for the services of the public defender and the costs of public counsel. These costs may impede defendants' constitutional right to counsel. The costs also may discourage counseled, not-guilty pleas at arraignment, particularly when the fee increases sharply for defendants who enter a plea after arraignment. Alternatively, trial judges should be permitted to waive costs for individual defendants who cannot afford those fees.*
3. *Defendants should be individually advised of their rights by judges, not by prehearing announcements, written forms or video recordings. Defendants should not be advised of their rights as formalities that are being forfeited, but as valuable protections that might be invoked for their benefit. The results of this study show that most defendants (70%) enter a guilty plea at arraignment, and they are being processed in three to five minutes without counsel. In that timespan, it is impossible to advise defendants of their constitutional rights, explain the consequences of entering a plea of not guilty, guilty or no contest and the advantages of counsel.*
4. *After accepting pleas, trial judges should be more vigilant in advising defendants of their right to appeal and the possible immigration consequences of entering a plea. This is particularly true in larger counties. Moreover, trial judges should advise misdemeanor defendants of the potential collateral, yet long-term, consequences of forgoing an attorney or entering a plea of guilty or no contest. It is unlikely that most defendants know the breadth of such consequences.*
5. *Trial judges should be more dedicated to advising out-of-custody defendants of their rights to counsel, rights forfeited by entering pleas, the right to appeal, and the consequences of entering pleas.*
6. *Fines for less-serious, non-violent offenses should be reduced, and court costs should be subject to waiver on the basis of indigency. Monetary sanctions are the most prevalent punishments imposed in Florida's county courts. Without due process, counsel or investigation, most defendants are entering pleas of guilty or no contest in exchange for monetary sanctions. Compared to their five-minute use of the court system during arraignments and the extent of costs (up to \$1600) imposed, impoverished defendants are disproportionately supporting the criminal justice system.*
7. *With staggering caseloads, Florida should consider decriminalizing less serious offenses, treating petty crime more like traffic tickets with little possible future consequence.*
8. *Case information, dockets and court records (with the exception of private information, e.g., social security numbers) should be open and accessible in every county. Courts should not operate in secret. In Florida, each county clerk provided varying degrees of information from nearly open access in Pinellas County to no access in Hardee County. Some counties provided access to court records for free (e.g., Hillsborough County), while others charged a fee for the same access (e.g., Broward County).*
9. *Finally, although courts are open to the public, non-accused citizens rarely visit and observe the courts. With few appeals from the county courts, they operate in a vacuum with little oversight. Non-lawyer, undergraduate students who collected data for this research were unpleasantly surprised by the quick and un-counseled processing of misdemeanor offenders and the lack of trials. Developing citizen review boards that observe and report on court proceedings might improve due process or, at a minimum, provide much needed oversight in the courts.*

DATA

The purpose of this study was to collect data relevant to six key questions concerning the fundamental fairness of misdemeanor court proceedings:

1. *Are defendants advised of their constitutional right to counsel during misdemeanor court arraignments?*
2. *Is due process (advising defendants of their rights to counsel, rights waived by entering a plea, and the consequences of entering a plea) sacrificed for efficiency?*
3. *When defendants enter a plea of guilty or no contest at arraignment: (1) who is offering the plea, (2) are defendants advised of the rights being waived, and (3) what sanctions are imposed?*
4. *After entering a plea, are defendants advised of their right to appeal or the immigration consequences of their plea?*
5. *When defendants entered not guilty pleas at arraignment: (1) how many times are their cases postponed, (2) which defendants are most likely to go to trial, and (3) are defendants who opt for a trial sanctioned more harshly if found guilty?*
6. *Which variables had the greatest effect, controlling for other independent variables on (1) the decision to enter a plea, (2) the imposed sentence, and (3) the decision to use counsel.*

Only 13% of defendants had a private lawyer at arraignment, 37% were appointed the services of the public defender, and 49% of defendants opted to represent themselves. In some instances, particularly where defendants were in custody, the Public Defender’s office had been appointed at first appearance.³⁰

Table 2 shows that at arraignments private lawyers were more likely to be hired in small counties than larger ones, and defendants were more likely to proceed without a lawyer in large counties as compared to smaller counties. The relationship was statistically significant ($r=-0.201$; $p<0.05$).

Table 2. County Size by Type of Counsel

	Small	Large	Total
No Counsel	136 (24.9%)	480 (43.6%)	616 (37.4%)
Public Defender	302 (55.2%)	512 (46.5%)	814 (49.4%)
Private Attorney	109 (19.9%)	110 (9.9%)	219 (13.2%)
Total	547 (100%)	1102 (100%)	1649 (100%)

Table 3 identifies the most serious misdemeanor crimes charged for each defendant. The relative seriousness of crimes was determined based on Florida law. Florida law punishes domestic violence and driving under the influence more harshly than other misdemeanor crimes; thus, those

two crimes comprised the most serious misdemeanor offenses. In cases involving both domestic violence and DUI charges, domestic violence was categorized as the most serious offense. Otherwise, crimes were categorized by seriousness as follows: (1) violent crimes were more serious than theft crimes; (2) theft crimes were more serious than driving crimes; (3) disorderly conduct crimes were more serious than driving or property offenses; and (4) all other crimes were more serious than the “other” category.

Table 3. Most Serious Misdemeanors Charged

Charge	Percent
Domestic Violence	6.1
DUI	5.9
Non-Domestic Violence	5.7
Property	17.3
Driving Crimes (Non-DUI)	28.5
Disorderly Conduct (Alcohol/Marijuana)	22.2
Other	14.1
N = 1,649	100%

Table 4 shows demographic information of the defendants and (1) whether the defendant was charged with one or more misdemeanor crimes, (2) their custody status at the time of arraignment, and (3) if released, the form of release.

Table 4. Key Defendant Demographics

Variable	Coding	Percent	Mean
Arraigned on More than One Charge	Yes	17.2	
	No	82.1	
Defendant in Custody at time of arraignment	Yes	7.8*	
	No	85.3	
Type of Release	Released on Recognizance	23.0	
	Out on Bond	11.3	
	Surety	6.7	
	Cash Bond	4.3	
	Other	4.7	
	Unknown/Missing	42.2	
Sex	Male	71.6	
	Female	28.4	
Race	White	62.8	
	Non-White	36.2	
Ethnicity	Hispanic	16.2	
	Non-Hispanic	81.0	
Age			33.42

N = 1,649

***695 defendants had been in jail, but they were released before arraignment**

As shown in Table 4, the majority of defendants faced a single charge (82%). Likewise, very few defendants (7.8% or 129 defendants) were in custody at the time of their arraignments. Forty-four of the defendants were in custody for more than 30 days (some were held on felony charges) and up to 210 days in jail. The remaining defendants were in custody for 1 to 30 days before arraignment. Most defendants had been released on their own recognizance or bond by the time of arraignment. Defendants released from jail before arraignment spent an average of 3.49 days in jail, with most spending only a single day in jail; this figure was high due to outliers, or a few people who remained in jail for a longer period. The median number of days spent in jail was one.

Table 5 shows that defendants in larger counties were more likely to be in custody at the time of arraignment than defendants in smaller counties, and that relationship was statistically significant ($r=-0.059$; $p<0.05$).

Table 5. County Size by Custody Status

	Small	Large	Total
In Custody	30 (5.9%)	98 (9.4%)	128 (8.3%)
Out of Custody	471 (94.1%)	936 (90.6%)	1407 (91.6%)
Total	501 (100%)	1034 (100%)	1535 (100%)

1. Are defendants advised of their constitutional right to counsel during misdemeanor court arraignments?

Key to this research was examining what happened in open court regarding due process of law. Fundamental to due process is advising defendants of their constitutional right to counsel. Thirteen percent of defendants hired counsel before arraignment, obviating the need for the trial judge to inform those defendants of their right to counsel. Twenty-one percent of defendants were appointed counsel at first appearance.³¹ This left 66% of the defendants without representation at the time of arraignment. Table 6 reports what occurred in open court with the remaining 66% of unrepresented defendants.

Table 6. Open Court and the Right to Counsel

Open Court Variables	Coding	Percent
Defendants asked if they wanted to hire a lawyer (N = 686)	Yes	49.3
	No	49.7
Defendants asked if they wanted counsel (N = 697)	Yes	52.1
	No	47.9
Defendant advised of right to counsel (N = 702)	Yes	72.6
	No	27.4
Defendant advised of the importance of counsel (N = 700)	Yes	33.4
	No	66.6
Defendant advised of the benefit of counsel (N = 696)	Yes	37.5
	No	62.5

Defendant advised of the disadvantages of no counsel (N = 693)	Yes	34.8
	No	65.2
Defendant hired counsel (N = 813)	Yes	13.3
	No	86.7
Defendant appointed counsel (N = 700)	Yes	28.1
	No	71.9
Defendant waived right to counsel (self-representation; N = 835)	Yes	42.3
	No	57.7
Defendant asked if able to afford counsel (N = 691)	Yes	37.8
	No	62.2
Defendant asked about income (N = 696)	Yes	11.8
	No	88.2
Defendant asked about assets (N = 667)	Yes	0.3
	No	99.7
Defendant owns home (N = 693)	Yes	4.0
	No	96.0
Defendant told they will not receive jail time (N = 690)	Yes	13.0
	No	87.0

Trial judges failed to advise defendants of their right to counsel almost 28% of the time, and neglected to ask defendants if they wanted appointed or hired counsel in half of the cases. Fewer were told about the benefit of counsel (38%), the importance of counsel (33%), and the disadvantages of proceeding without counsel (35%), or asked whether they could afford an attorney (38%). Thirteen percent stated that they hired counsel, 28% opted for appointed counsel, and 42% chose to represent themselves.³²

Defendants were seldom asked about their income (12%), assets (0.3%), or home ownership (4%). In Florida, however, defendants must submit financial affidavits to the clerk, and the clerks determine whether defendants qualify for appointed counsel. Florida charges a mandatory \$50 fee for the clerk to determine whether defendants are poor enough for the appointment of counsel.³³ If appointed counsel, the minimum and mandatory legal cost, if convicted, is an additional \$50 in misdemeanor cases.³⁴

For a few defendants (7.6%), video or written form was the only way that defendants were advised of their constitutional rights. Table 7 shows the percent of defendants informed of their rights by video or written form.

Table 7. Advisement of Rights by Form or Video

Video played in open court	Yes	16.2
	No	26.3
Written form outlining rights provided	Yes	15.9
	No	20
	Unknown	10.4
Video or written form only manner of informing rights	Yes	7
	No	31.4
	Unknown	38.4

Table 8 shows that defendants in smaller counties were less likely to be informed of their constitutional rights by video than defendants in larger counties, and this relationship was statistically significant ($r=-0.431$; $p<0.05$). A statistically significant relationship between county size and informing defendants of their rights by written form did not emerge.

Table 8. Use of Due Process Rights Video by County Size

	Small	Large	Total
Yes	37 (12.9%)	239 (57.7%)	267 (38.1%)
No	249 (87.1%)	184 (42.3%)	433 (61.9%)
Total	286 (100%)	414 (100%)	700 (100%)

Table 9 shows that a statistically significant relationship exists between counsel and no counsel and the likelihood of entering a plea at arraignment ($r=0.230$; $p<0.05$).

Table 9. Type of Counsel by Entered Plea

	No Counsel	Public Counsel	Private Counsel	Total
Not Guilty	113 (19.8%)	288 (35.8%)	83 (39.1%)	484 (30.5%)
Guilty	159 (27.9%)	169 (21.0%)	32 (15.1%)	360 (22.7%)
No Contest	297 (52.3%)	347 (43.2%)	97 (45.8%)	741 (46.8%)
Total	569 (100%)	804 (100%)	212 (100%)	1585 (100%)

Table 10 shows that defendants who were charged with more serious crimes were more likely to enter not guilty pleas at arraignment, and that relationship was statistically significant ($r=0.073$; $p<0.05$).

Offense Charge	Not Guilty	Guilty	No Contest	Total
Domestic Violence	48 (48.5%)	36 (36.4%)	15 (15.2%)	99 (100%)
DUI	28 (30.1%)	23 (24.7%)	42 (45.2%)	93 (100%)
Non-Domestic Violence	43 (46.7%)	15 (16.3%)	34 (37.0%)	92 (100%)
Property	75 (26.9%)	61 (21.9%)	143 (51.3%)	279 (100%)
Driving (Non-DUI)	117 (25.3%)	114 (24.6%)	232 (50.1%)	463 (100%)
Alcohol / Marijuana / Disorderly	94 (26%)	76 (21.1%)	191 (52.9%)	361 (100%)
Other	79 (40.9%)	32 (16.6%)	82 (47.3%)	193 (100%)
Total	484 (30.6%)	357 (22.6%)	739 (46.8%)	1580 (100%)

Table 11 shows that defendants who are prosecuted in larger counties compared to those prosecuted in smaller counties were more likely to enter pleas of guilty or no contest at arraignment, and this relationship was statistically significant ($r=0.061$; $p<0.05$).

Table 11. County Size by Plea

	Small	Large	Total
Not Guilty	182 (34.5%)	302 (28.5%)	484 (30.5%)
Guilty/No Contest	345 (65.5%)	756 (71.5%)	1101 (69.5%)
Total	527 (100%)	1058 (100%)	1585 (100%)

2. *Is due process (advising defendants of their right to counsel, rights waived by entering a plea, and the consequences of entering a plea) sacrificed for efficiency?*

In most courts, defendants arrive in court 30 minutes to an hour before the trial judge takes the bench. During this time, assistant public defenders speak to the defendants usually as a group. Once the trial judge takes the bench, individual cases proceed quickly. Most arraignment proceedings (82%) last three minutes or less, and 91% are completed within five minutes. The average arraignment proceeding lasted only 2.93 minutes. The time of arraignment proceedings is shown in Table 12.

Table 12. Arraignment Length of Time³⁵

Time Length	Percent
One Minute	35.2
Two Minutes	17.0
Three Minutes	29.6
Four Minutes	5.2
Five Minutes	4.3
Six Minutes	1.8
Seven Minutes	1.0
Eight Minutes	1.6
Nine Minutes	0.6
Ten Minutes	1.4
More than 10 Minutes	2.3
N = 1.029	100%

Table 13 shows that more than 50% of defendants who entered guilty or no contest pleas were processed in three minutes or less.³⁶

Table 13. Plea by Time of Arraignment

Time of Arraignment	Not Guilty	Guilty	No Contest	Total
3 Mins or less	191 (39.2%)	86 (17.7%)	210 (43.1%)	487 (100%)
4 Mins	7 (20.6%)	7 (20.6%)	20 (58.8%)	34 (100%)
5 Mins	5 (31.3%)	3 (18.8%)	8 (50.0%)	16 (100%)
6 Mins	1 (16.7%)	3 (50.0%)	2 (33.3%)	6 (100%)
7 Mins	1 (33.3%)	—	2 (66.7%)	3 (100%)
8 Mins	1 (33.3%)	1 (33.3%)	1 (33.3%)	3 (100%)
9 Mins	—	1 (33.3%)	2 (66.7%)	3 (100%)
10 Mins	1 (14.3%)	2 (28.6%)	4 (57.1%)	7 (100%)
11 Mins	—	1 (50.0%)	1 (50.0%)	2 (100%)
12 Mins	2 (66.7%)	—	—	3 (100%)
15 or More Mins	2 (100%)	—	—	2 (100%)

Table 14 shows little difference in the quickness of hearings in small and large counties. Almost 90% of cases in small counties and 81% of cases in large counties were processed in three minutes or less.

Table 14. County Size by Length of Arraignment

	Small	Large	Total
3 Mins or less	202 (89.0%)	285 (81.4%)	487 (84.4%)
4 Mins	13 (5.7%)	24 (6.9%)	37 (6.4%)
5 Mins	4 (1.8%)	16 (4.6%)	30 (3.5%)
6 Mins	3 (1.3%)	3 (0.9%)	6 (1.0%)
7 Mins	1 (0.4%)	2 (0.6%)	3 (0.5%)
8 Mins	—	3 (0.9%)	3 (0.5%)
9 Mins	—	3 (0.9%)	7 (1.2%)
10 Mins	3 (1.3%)	4 (1.1%)	2 (0.3%)
11 Mins	1 (0.4%)	1 (0.3%)	4 (0.7%)
12 Mins	—	4 (1.1%)	2 (0.3%)
15 or More Mins	—	2 (0.6%)	1 (0.2%)
Total	227 (100%)	350 (100%)	577 (100%)

3. *When defendants enter a plea of guilty or no contest at arraignment: (1) who is offering the plea, (2) are defendants advised of the rights being waived, and (3) what sanctions are imposed?*

Table 15 shows the percent of cases resolved by plea at arraignment, and the mean number of times cases are postponed after pleas of not guilty at arraignment. Only 3% of cases (50) were resolved by pretrial intervention. Pretrial intervention programs provide alternatives to prosecution for individuals who are first-time offenders, or those previously convicted of not more than one non-violent misdemeanor offense. After successfully completing the programs, prosecutors dismiss the criminal charges.³⁷

Table 15. Defendant Plea

Plea Variables	Coding	Percent	Mean
Defendant plea entered	Not Guilty	29.4	
	Guilty	21.6	
	No Contest	44.9	
	PTI	3.0	
Number of postponements			1.23
N = 1,649			

Most cases (66.5%) were resolved by a plea of guilty or no contest at arraignment. Postponing cases beyond arraignment was rare, and no statistically significant relationship emerged between the type of plea entered at arraignment and use of counsel.

Table 16 depicts the role of the prosecutor in offering pleas, dismissing or reducing charges, and providing factual bases to support pleas. Prosecutors offered pleas in 45% of cases, but rarely reduced (8%) or dismissed (14%) charges. Factual bases to support pleas were provided in 29% of cases.

Table 16 The Prosecutor and Charges

Prosecutor Plea Variables	Coding	Percent
Prosecutor offered plea (N = 1,137)	Yes	44.8
	No	55.2
Prosecutor dismissed charge(s) (N = 1,041)	Yes	14.1
	No	85.9
Prosecutor reduced charge(s) (N = 1,011)	Yes	7.7
	No	92.3
Prosecutor provided a factual basis for plea (N = 964)	Yes	28.5
	No	71.5

Judges offered pleas to defendants in 55% of the cases at arraignment. In 43% of cases, trial judges referred to written rights-waiver forms and asked whether defendants understood the rights outlined in the form. In 67% of cases, judges asked defendants if they entered their pleas voluntarily, in 60% of cases, judges asked whether they understood that they were giving up their right to trial, and in 52% of cases, the trial judges asked if defendants understood that they were giving up their right to counsel at trial. Less often, judges asked defendants if they understood that they waived the right to confront witnesses (37%), for the state to prove its case (39%), and to present a defense (42%).

Table 17. The Trial Judge and the Defendant³⁸

Rights Waiver Variables	Coding	Percent
Trial judge offered a plea (N = 993)	Yes	55.2
	No	44.8
Trial judge referred to a written plea waiver form (N = 1126)	Yes	42.8
	No	57.2
Trial judge asked if the plea was entered voluntarily (N = 1026)	Yes	66.8
	No	33.2
Trial judge asked if defendant understood he/she was giving up the right to a trial (N = 1024)	Yes	60.4
	No	39.6
Trial judge asked if defendant understood he/she was giving up the right to counsel (N = 1003)	Yes	52.4
	No	47.6
Trial judge asked if defendant understood he/she was giving up the right to confront witnesses (N = 1003)	Yes	36.5
	No	63.5
Trial judge asked if defendant understood he/she was giving up the right for State to prove case (N = 1001)	Yes	38.8
	No	61.2
Trial judge asked if defendant understood he/she was giving up the right to present a defense (N = 997)	Yes	41.7
	No	58.3

Table 18 shows the sanctions imposed on those defendants who entered pleas at arraignment.

Table 18. Arraignment Sanctions

Plea Sanction Variables	Percent
Fine	54.8
Probation	27.1
Costs	83.2
Restitution	8.9
Jail	17.8
N = 775	

4. *After entering a plea, are defendants advised of their right to appeal or the immigration consequences of their plea?*

Table 19 shows that trial judges informed released defendants of their right to appeal more often than in-custody defendants (i.e., notice of the right to appeal was significantly related to defendants' custody status) ($r=0.741$; $p<0.05$).

Table 19. Advised of Right to Appeal by Whether the Offender is in Custody

	Yes	No	Total
In Custody	13 (21.3%)	48 (78.7%)	61 (100%)
Not in Custody	205 (31.4%)	447 (68.6%)	652 (100%)
Total	218 (30.6%)	495 (69.4%)	713 (100%)

Table 20 reports that offenders prosecuted in larger counties as compared to smaller counties were significantly less likely to be informed of their right to appeal ($r=0.118^*$; $p<0.05$). No statistically significant differences emerged for seriousness of offense or counsel (self-representation, private counsel, public defender) and whether the trial judge advised defendants of their right to appeal.

Table 20. Advised of Right to Appeal by County Size

	Yes	No	Total
Small	117 (52.9%)	104 (47.1%)	221 (100%)
Large	106 (20.7%)	407 (79.3%)	513 (100%)
Total	223 (30.4%)	511 (69.6%)	734 (100%)

There was a statistically significant relationship between whether trial judges advised defendants of the possibility of deportation and their custody status ($r=-0.039$; $p<0.05$). Table 21 shows that defendants who were in custody were more likely to be advised of the possibility of deportation.

Table 21. Advised of Possible Deportation by Whether the Offender is in Custody

	Yes	No	N/A No Sentence	Total
In Custody	41 (18.1%)	12 (3.6%)	35 (25.4%)	88 (12.6%)
Not in Custody	181 (78.9%)	321 (96.4%)	103 (74.6%)	610 (87.4%)
Total	227 (100%)	333 (100%)	138 (100%)	698 (100%)

The seriousness of the defendants' charges, whether the defendant was represented by counsel, and the size of the county did not have statistically significant relationships with whether trial judges advised defendants of the possible immigration consequences in misdemeanor cases.

5. *When defendants enter not guilty pleas at arraignment: (1) how many times are their cases postponed, (2) which defendants are most likely to go to trial, and (3) are defendants who opt for a trial sanctioned more harshly if found guilty?*

Table 22 provides general information about those defendants who entered not guilty pleas at arraignment.

Table 22. Trial Information

Trial Variables	Coding	Percent
Defendant entered not guilty plea (N = 1,649)	Yes	29.4
Outcome/verdict (N = 485)	Guilty	17.0
	Not Guilty	14.0
	Entered Plea	69.0
N = 353		

Twenty-nine percent of defendants (N=485) entered a not guilty plea at arraignment. Ultimately 69% of those defendants entered a plea. Of the remaining defendants, 17% were found guilty on some or all charges after a trial, and 14% were found not guilty. The data collected did not show any dismissals at trial. Before sentencing, few victims or defendants provided information to trial court judges about the appropriate sentence.

Table 23 shows the sanctions imposed after trial and plea. After trial, most defendants (33%) were punished by some monetary penalty (e.g., fines or costs). In fact, defendants who entered not guilty pleas at arraignment and resolved their cases later or after trial were more likely than defendants who entered pleas at arraignment to get monetary sanctions rather than sentences of jail or probation, and this relationship was statistically significant ($r=0.066$; $p<0.05$).

Table 23. Jail-Probation and Monetary Sanction by Trial and Plea

	Monetary	Jail/Probation	Total
Trial	299 (32.6%)	54 (24.9%)	353 (31.2%)
Plea	617 (67.4%)	163 (75.1%)	780 (68.8%)
Total	916 (100%)	217 (100%)	1133 (100%)

Sixteen defendants who went to trial on their misdemeanor charges were found guilty and sentenced to jail; only one of those defendants was in custody at the time of trial and sentencing.

6. *Which variables had the greatest effect, controlling for other independent variables, on (1) the decision to enter a plea, (2) the imposed sentence, and (3) the decision to use counsel.*

This section examines the multivariate statistics of this research. Multivariate statistics allow researchers to explore relationships between dependent variables and relevant independent or predictive variables. Here, three multivariate analyses were examined: (1) which factors predicted whether defendants chose to enter pleas of guilty/no contest compared to not guilty at arraignment, (2) which factors predicted whether defendants received jail or probation sanctions rather than other less-punitive sanctions (fines, costs, or restitution), and (3) which factors predicted whether defendants opted to use counsel or not.

The first dependent variable was examined against nine independent variables: (1) offense seriousness, (2) number of charges, (3) if the defendant was in custody, (4) size of county, (5) public/private/no counsel (divided into two variables), (6) defendant gender, (7) defendant race, and (8) an index serving as a proxy for due process. The second dependent variable used the same nine variables but included an additional index variable to examine another facet of due process. The third dependent variable was examined against eight independent variables: (1) type of plea, (2) offense seriousness, (3) more than one charge, (4) custody status, (5) county size, (6) due process I (right to counsel), (7) gender, and (8) race.

Offense seriousness was separated into two categories: (1) domestic violence or driving under the influence or (2) all other charges. County size is determined by the number of county court judges in each county: Counties with more than four judges are considered large, and four or fewer is small. The counsel variable was coded into two categorical variables examining private counsel, public counsel and no counsel. No counsel is the omitted category, and it serves as the comparison group.

Two indices were created comprising measures of due process. The first due process variable (due process I) combines the measures concerning whether the trial judge asked defendants about their right to counsel (desire for counsel, right to counsel, desire to hire counsel, the importance and benefits of counsel, and the disadvantages of not having counsel). The second due process variable (due process II) combines the adequacy of the plea colloquy, reference to written plea agreements, voluntary entry of the plea, understanding the rights forfeited including the right to counsel and trial, the State's burden of proving the case, cross examining witnesses, and presenting a defense. For both due process variables, the lower the score, the more due process was afforded the defendant. The higher the score, the less due process was received.

Table 24 provides the logistic regression analysis for the analytic model predicting whether the defendant entered a

guilty or no contest plea. Table 24 illustrates that the model explained 8% of the variance (i.e., predicting the outcome beyond random chance), and therefore it was only somewhat predictive of defendants who entered guilty pleas at arraignment. The significant predictors were custody status, appointment of public counsel, hiring private counsel, and the advisement of rights to counsel by the trial judge.

Table 24. Logit Regression for Plea of Guilty/No Contest

Variables	b	Odds
Offense Seriousness (Yes = 1)	-0.301	0.740
More than 1 Charge (Yes = 1)	-0.081	0.922
In Custody (Out = 1)	-0.857*	0.425
County Size (Large = 1)	0.005	1.005
Public Counsel (Yes = 1)	-0.893*	0.410
Private Counsel (Yes = 1)	-1.769*	0.171
Due Process 1	0.049*	1.050
Defendant Gender (Female = 1)	-0.240	0.787
Defendant Race (Non-White = 1)	-0.120	0.887
-2 Log Likelihood	1615.010	
X ²	81.745*	
Nagelkerke R ²	0.081	
N = 1,028; *p<0.05		

Table 25 provides the logistic regression results for the dependent variable of sanction. Again, the overall model was statistically significant explaining 22% of the variance (i.e., predicting the outcome beyond random chance) in predicting defendants' sanction. By knowing information about each of the variables, average court outcomes can be predicted 22% of the time. The significant predictors were offense seriousness, custody status, county size, appointment of public counsel, advising defendants of their right to counsel by the trial judge, and the adequacy of the plea colloquy between the trial judge and defendant.

Table 25. Logit Regression for Sanction

Variables	b	Odds
Offense Seriousness (Yes = 1)	1.699*	5.466
More than 1 Charge (Yes = 1)	0.390	1.477
In Custody (Out = 1)	-1.426*	0.240
County Size (Large = 1)	-1.331*	0.246
Public Counsel (Yes = 1)	0.519*	1.680
Private Counsel (Yes = 1)	-20.135	0.000
Due Process 1	0.129*	1.138
Due Process 2	-0.062*	0.940
Defendant Gender (Female = 1)	-0.214	0.808
Defendant Race (Non-White = 1)	0.110	1.117
-2 Log Likelihood	802.932	
X ²	131.592*	
Nagelkerke R ²	0.215	
N = 1,028; *p<0.05		

Table 26 provides the logistic regression analysis for the counsel/self-represented dependent variable. The model of variables helps us explain the average court outcome in 32% of all cases. The model explained 32% of the variance (i.e., predicting the outcome beyond random chance) with the type of plea, offense seriousness, more than one charge, custody status, and the size of the county as significant predictors.

Table 26. Logit Regression for Counsel/Self-Represented

Variables	b	Odds
Plea Type (Guilty = 1)	1.038*	2.823
Offense Seriousness (Yes = 1)	-0.693*	0.500
More than 1 Charge (Yes = 1)	-0.956*	0.384
In Custody (Out = 1)	2.392*	10.31
County Size (Large = 1)	1.345*	3.837
Due Process 1	0.061	1.062
Defendant Gender (Female = 1)	0.284	1.328
Defendant Race (Non-White = 1)	-0.095	0.909
-2 Log Likelihood	757.099	
X ²	187.497*	
Nagelkerke R ²	0.317	

N = 1,028; *p<0.05

Appendix A

Agreement to give up (waive) the legal services of a private and/or court-appointed attorney for purposes of a guilty or no contest plea or trial.

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Page 1

STATE OF NEW YORK COUNTY OF _____

IN SENATE

AND

IN THE SUPREME COURT OF THE STATE OF NEW YORK

IN AND FOR THE COUNTY OF _____

vs.

DEFENDANT

AGREEMENT TO GIVE UP (WAIVE) THE LEGAL SERVICES OF A PRIVATE AND/OR COURT-APPOINTED ATTORNEY FOR PURPOSES OF A GUILTY OR NO CONTEST PLEA OR TRIAL

(READ CAREFULLY AND ASK THE JUDGE TO EXPLAIN IF YOU HAVE ANY QUESTIONS OR IF THERE IS ANYTHING YOU DO NOT UNDERSTAND)

I, the undersigned, have been informed that I have been charged with a criminal offense punishable by imprisonment in the state jail and/or probation, and that I am permitted to plead guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged.

I understand that my right to be represented by an attorney will be waived if I plead guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and that I will be represented by the court-appointed attorney for the purpose of the plea and trial.

ADVANTAGES

BEFORE TRIAL: I know when I accept this agreement my guilty or no contest plea will be entered in the court records and I will be able to plead guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I will be able to avoid the expense and delay of a trial.

AT TRIAL AND AFTER TRIAL: I understand that I will be waiving my right to be represented by an attorney. However, if I plead guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, I will be able to avoid the expense and delay of a trial. I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial. I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial. I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

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I understand that there may be disadvantages to accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial. I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial. I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

DISADVANTAGES

I understand that there may be disadvantages to accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial. I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial. I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

I understand that there may be disadvantages to accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial. I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial. I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

READ AND COMPLETE THE FOLLOWING QUESTIONS:

(Place a check (✓) in the appropriate space below if applicable.)

I have thoroughly read the entire contents of this agreement and I understand the advantages and disadvantages of accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

I have read this agreement and I understand the advantages and disadvantages of accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

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PLEASE CHECK OFF THE APPROPRIATE ANSWERS TO THESE QUESTIONS:

1. I have read and I understand the contents of this agreement and I understand the advantages and disadvantages of accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

2. I have read and I understand the contents of this agreement and I understand the advantages and disadvantages of accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

3. I have read and I understand the contents of this agreement and I understand the advantages and disadvantages of accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

4. I have read and I understand the contents of this agreement and I understand the advantages and disadvantages of accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

5. I have read and I understand the contents of this agreement and I understand the advantages and disadvantages of accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

6. I have read and I understand the contents of this agreement and I understand the advantages and disadvantages of accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

7. I have read and I understand the contents of this agreement and I understand the advantages and disadvantages of accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

8. I have read and I understand the contents of this agreement and I understand the advantages and disadvantages of accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

9. I have read and I understand the contents of this agreement and I understand the advantages and disadvantages of accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

10. I have read and I understand the contents of this agreement and I understand the advantages and disadvantages of accepting my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

DATE: _____

BY: _____

After reviewing the facts of the case and the Court has accepted my plea of guilty or no contest to the crime charged, to be tried and adjudged guilty or found not responsible for the crime charged, and I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial. I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial. I understand that I will be waiving my right to be represented by an attorney for the purpose of the plea and trial.

CLERK OF COURT
COUNTY OF _____

Endnotes

1. *Hlad v. State*, 585 So.2d 928, 932 (Fla. 1991).
2. *Argersinger v. Hamlin*, 407 U.S. 25, 34 (1972).
3. Robert C. Borchowitz, Malia N. Brink and Maureen Dimino, Nat'l Ass'n of Criminal Def. Lawyers, *Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts* (2009), available at <http://www.nacdl.org/misdemeanor>.
4. *Id.*
5. American Bar Association, *Eight Guidelines of Public Defense Related to Excessive Caseloads* (2009); American Bar Association, *Ten Principles of the Public Defense Delivery System* (1992), Principle 5; American Bar Association Standards for Criminal Justice, *Prosecution and Defense Function* (3rd ed. 1993), Standard 4-1.3(e); American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992), Standards 5-5.3;
National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts, Chapter 13, The Defense* (1973), Standards 13.12; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976), Guidelines 5.1, 5.3; National Legal Aid & Defender Association, *Performance Guidelines for Criminal Defense Representation* (1995), Guidelines 1.3; National Legal Aid & Defender Association, *Guidelines for Negotiating and Awarding Government Contracts for Criminal Defense Services*, (1984), Guidelines III-12; National Legal Aid & Defender Association, *Standards for the Administration of Assigned Counsel Systems* (1989), Standard 4.1.2.
6. Fla. Stat. § 798.01 (2011) criminalizes adultery: “Whoever lives in an open state of adultery shall be guilty of a misdemeanor of the second degree”
7. In Leon County, Article 1, section 12-4 prohibits transporting building materials and appliances between the hours of 11 PM and 6 AM without documents establishing ownership. Leon, Fla., Code art. 1, §12-4 (2011).
8. In Broward County, Article V, section 21.76 prohibits the throwing or depositing of litter on any occupied private property in the county whether owned by such person or not. Broward, Fla., Code Ch. 21, art. V, § 21-76 (2001).
9. In Marion County, Chapter 4, section 4-17(b) makes it unlawful for any person to “tease an animal.” Marion, Fla., Code Ch. 4, § 4-17(b) (2010).
10. No cases in this study involved exclusively fine-only charges.
11. An arraignment is a court appearance – the first court appearance unless the defendant is in custody – at which the defendant must enter a plea to the charges. Prior to arraignment, defendants taken into custody are entitled to a presentment hearing, at which the judicial officer determines whether to release the defendant on bail or other conditions, within 24 hours of arrest. Fla. R. of Crim. P. 3.130.
12. Large and small counties were differentiated by the number of assigned county court judges. Counties with fewer than four county court judges were categorized as small, and those with four or more were categorized as large.
13. There was some variation in the availability of information from the clerks and jails, which explains some of the missing data. For example, Pinellas County has a very open system with docket information posted and available on their website, while other counties were less accessible. Even in person, some students were not permitted to look at the dockets. One bailiff read the information to a student, but refused to hand over the docket itself.
14. Jail information was available in most counties, but not all. For example, Orange County removes its jail data on inmates within 30 minutes of their release. So, no data was captured by students on the number of days in jail or release in Orange County. Although not a primary purpose of this report, it is recommended that uniform and accessible information about the courts be made available by county clerks.
14. Population based on U.S. Census data for 2009.
15. Although its population would warrant a “small” county designation, Leon County houses the state capital, and is therefore the forum for litigation involving the state. This explains its larger than normal judicial system.
16. While requiring poor defendants to pay a fee in order to access counsel would seem to chill the right to appointed counsel under *Gideon v. Wainwright* and its progeny, the practice is not unique to Florida. Alicia Bannon, Mitali Nagrecha and Rebekah Diller, Brennan Center for Justice at N.Y.U. School of Law, *Criminal Justice Debt: A Barrier to Reentry* 12 (2010) [hereinafter *Criminal Justice Debt*] (noting that 13 of the 15 states studied charged fees to indigent defendants who invoked their right to counsel).
17. See Fla. Stat. § 938.29 (2009).
18. See Fla. Stat. § 27.52 (2009).
19. Bannon, *supra* note 16, at 12.
20. County size, race, and gender were not statistically significant in predicting whether the offender would plead guilty at arraignment.

21. This concern is especially relevant to larger counties, where defendants were four times more likely to forgo the right to counsel than defendants prosecuted in smaller counties.

22. E.g., 8 U.S.C. §§ 1227 (2)(A)(i)(1) (crimes of moral turpitude), (2)(C) (firearms offenses), (E)(i) (crimes of domestic violence), and (E)(ii) (protection order violations).

23. Misdemeanor convictions may result in the suspension or refusal to grant medical, nursing, and dental licensing (e.g., Fla. Stat. §§ 466.0067, 456.074, and 456.039), loss or denial of state, public or municipal employment (e.g., Fla. Stat. §§ 943.13, 110.1127, 110.127, 166.0442, and 30.29), denial of employment involving, investigating or fostering children (e.g., Fla. Stat. §§ 39.001, 39.0121, 39.821, and 985.66), loss of driver's license or commercial driving privileges (e.g., Fla. Stat. §§ 322.03, and 316.302), and loss of housing for some misdemeanor convictions (e.g., Fla. Stat. § 60.05).

24. See Fla. Stat. §§ 790.06 and 61.13 (2009).

25. Fla. Stat. §§ 943.059, 943.0585, and 943.25 (2009).

26. This is a subsample because the question was added after much of the data had been collected, and after *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010), was decided.

27. Fla. R. Crim. P. 3.670.

28. Florida law provides convicted (whether by plea or trial) defendants with the right to appeal when preserved, prejudicial error is alleged. Fla. Stat. §§ 924.05 and 924.02 (2009).

29. This was the cost estimated by a recent study for the Leon County Jail by Rebekah Diller, Brennan Center for Justice at N.Y.U. School of Law, *The Hidden Costs of Florida's Criminal Justice Fees* (2010).

30. When in custody, defendants are required by Florida law to appear before a judicial officer within 24 hours of arrest. Fla. R. Crim. P. 3.130(a). Florida law encourages, but does not require, first-appearance judges to determine whether defendants qualify for appointed counsel and to appoint counsel. The Broward County Public Defender began an early representation program in 2005 resulting in the appointment of that office at first appearance.

31. Some public defender offices, especially Broward County, were appointed at first appearance.

32. The percentage difference between those who ultimately represented themselves (37%) and those who stated during the initial inquiry that they would represent themselves (42%) can be attributed to dismissals and diversion to pretrial intervention programs.

33. Fla. Stat. §27.52 (2010).

34. Fla. Stat. §938.29(1)(a) (2010).

35. The amount of time for an arraignment was captured in 1,029 cases. Due to a coding error, data was lost in the remaining cases for use in the cross-tabulation tables that follow. Comparing the data recovered to the total sample plus the qualitative observations of the data collectors, the reduced sample mirrors the larger sample with arraignment proceedings occurring very quickly. The data captured reflected information from both large and small counties.

36. One data collector reported that a trial judge was very proud of his record in processing so many cases so quickly.

37. Fla. Stat. § 948.08 (2009).

38. Twenty-two percent of the original 1,649 cases are not included in Table 20 because those defendants entered not guilty pleas, and an additional 10% are not included because the information was not known.

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