

The Disparity Among Prosecution and Public Defense

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Public defense services are integral to ensuring fairness in our courts. However, prosecutorial funding generally dwarfs public defense spending. This lack of fiscal parity in our adversarial justice system often results in inequitable outcomes that do not serve the interest of justice. Disparities in funding directly result in disparities in time, energy, and resources.

If you are able to retain private counsel—do so! **If you or a loved one requires legal representation in a criminal matter**, call [Wasatch Defense Lawyers](https://wasatchdefenselawyers.com) today. We are a consortium of experienced private criminal defense attorneys who are willing and able to achieve the best possible outcome for our clientele.

Historical Background

In England and the early American colonies, prosecution was primarily conducted by privately retained attorneys throughout the seventeenth and eighteenth centuries. Although the local justice of the peace would sometimes assume the prosecutorial role, public officials were typically not designated as prosecutors.

The attorney general of England had the power to bring cases on behalf of the Crown, and would occasionally dismiss private prosecutorial actions by filing a writ of nolle prosequi. The American colonies emulated the English system, and each colony appointed an attorney general on behalf of the Crown (the first colonial attorney general was appointed in Virginia in 1643). Like their English counterparts, American colonial attorneys general represented the Crown in both civil and criminal matters— however, crimes not committed against the Crown were prosecuted by attorneys privately

retained by the victim. The English system proved to be poorly suited for the colonies where the distances between settlements and the colonial capital were significant, and both transportation and communication were rudimentary.

As the colonial population increased, so did the crime rate. Eventually, the English system of a sole attorney general presiding over a singular criminal court proved to be too inaccessible and unresponsive to provide justice in the colonies. Accordingly, the responsibilities once held solely by the attorneys general were disseminated to county courts and their respective county prosecutors. This occurred as early as 1704 in Connecticut; and by the time of the American Revolution, each colony had some form of public prosecution.

Today, most states have elected county prosecutors with broad powers to bring and dismiss criminal cases and to appoint deputy prosecutors. Although the state attorney general still technically retains the right to prosecute or to supervise or displace local prosecutors, that authority is so rarely exercised so as to render the practice defunct. Modern prosecutions are handled almost exclusively by local deputy prosecutors who exercise broad power on behalf of the state.

The right to an attorney in criminal proceedings is provided by the sixth amendment of the United States Constitution. Defendants may retain their own private counsel, or the court may appoint an attorney to represent an indigent defendant at public expense. Some jurisdictions have established public defense offices, while others maintain a roster of attorneys and legal consortiums willing to accept court-appointed cases. Generally, these public defense programs lack adequate staff and are typically underfunded.

Notwithstanding the sixth amendment, not everyone can afford legal representation. And for nearly two centuries, the United States lacked any manner of public defense services. It was not until Clara Shortridge Foltz (the first-ever female attorney to practice on the West Coast) helped establish the first public defense office in California in 1921. The “Foltz Defender Bill” came to be a seminal piece of legislation that would ultimately be emulated by 32 other states. Today, the federal government, and most states and counties, have publicly funded defense programs.

Unequal Funding

It is no secret that public defenders nationwide are overworked and underpaid. Recent research—published by the Constitutional Project, National Association of Criminal Defense Lawyers, and the Brennan Center— found that “sometimes the [public] defenders have well over 100 clients at a time... [and] counsel is unable to spend sufficient time on each of their cases.” High caseloads regularly result in severe delays in the judicial process— often prompting guilty pleas from folks who are merely desperate to get home and get back to their lives. Moreover, the reports suggest that “frequently, judges and prosecutors are complicit” in fostering delays as a method for pressuring defendants to plea guilty.

Due primarily to the political popularity of “tough on crime” platforms among legislatures, prosecutors enjoy greater resources, higher pay, and lighter workloads than their public defense counterparts. This creates an unequal situation wherein indigent defendants are represented by counselors that lack the time, money, and energy to adequately defend against well-funded state prosecutors. ***Over the past five years, annual nationwide spending on public defense is down 4.3 percent. The United States currently spends approximately \$2.2 billion annually on indigent defense services.*** By comparison, annual national prosecutorial funding typically exceeds \$6 billion in any given year.

These gross disparities often result in inequitable and unjust outcomes in court!

Issues of Non-Parity

Money can buy a great defense team— but what if a defendant cannot afford privately retained counsel? More than eighty percent of criminal defendants are indigent, and must consequently rely on public defense services.

Public defenders are undoubtedly among the hardest working sect of the legal bar. However, limited funding and excessive caseloads plague these social justice warriors. In Utah, an experienced public defender will annually handle more than 250 felonies or as many as 1,500 misdemeanor cases. While Florida public defenders routinely handle more than 500 felonies per attorney. Furthermore, Louisiana’s public defense program is so overburdened the attorneys invest an average of only seven minutes per misdemeanor defendant. All told, according to the US Department of Justice, approximately seventy-three percent of United States public defense offices exceed the maximum recommended caseload.

This state of affairs not only results in inequitable trial outcomes but also causes exorbitant delays prior to trial. Consequently, approximately five-hundred thousand pre-trial detainees are awaiting trial nationwide at any given time— making a mockery of the treasured American maxim of “innocent-until-proven-guilty.”

Do not get caught up with the broken public defense system! Many public defenders are hardworking and passionate about justice, but the cruel reality is that more than passion is needed to achieve the best possible outcome in a court of law. [Wasatch Defense Lawyers](#) is a consortium of experienced private criminal defense attorneys that are willing, eager, and able to assist in navigating the complexities of the judicial system. If you or a loved one requires legal representation—go with professionals that have the time and energy to achieve the best possible outcome!

[Call Wasatch Defense Lawyers Today!](#)
