Flat Fee Compensation, Lawyer Incentives, and Case Outcomes in Indigent Criminal Defense

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Abstract

The majority of criminal defendants in the United States are in poverty and receive publicly financed legal defense from court-appointed attorneys, who are professionally obligated to provide zealous representation for their clients. This paper assesses whether paying court-appointed attorneys a flat fee per case instead of an hourly rate impacts the quality of legal representation for poor criminal defendants. I study this question in the context of a pilot program in North Carolina where six counties were mandated to change compensation for assigned counsel from statewide hourly rates to a flat fee for each case disposed. For my empirical analysis, I link two detailed administrative datasets containing the universe of criminal case records in North Carolina, as well as the universe of pay records of lawyers that accepted indigent cases as assigned counsel. Using a difference-in-differences strategy, I find that defendants represented by lawyers paid under flat fees were 4.3 percentage points (10%) more likely to be convicted, 4.2 percentage points (10%) more likely to resolve a case through a guilty plea before trial, and 4.6 percentage points (35%) more likely to be incarcerated. I explore two potential mechanisms for this result: an intensive margin response on lawyer effort and selection of lawyers on the extensive margin. On the intensive margin, lawyers in the treated counties reported spending 11% fewer hours on indigent cases, disposed cases 42% sooner on average, and were 3.8 percentage points (34%) more likely to dispose a case on the same day as their first meeting with the defendant. I do not find evidence of changes in lawyer composition or migration following the switch to flat fee pay. This paper informs policy questions on funding and compensation for the provision of publicly financed criminal defense.

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