



Supplement to Bell County Monitoring Report: Additional Observations on Attorney Qualifications

Part I. Performance Indicators

TIDC has historically monitored how counties admit attorneys to appointment lists, but not how counties review attorney performance.¹ TIDC is piloting key performance indicators related to attorney representation—caseloads, investigation, and client contact—to assess counties’ procedures for ensuring effective and ethical representation. For this supplemental report, TIDC relies on counties’ expenditure reports and indigent defense plans as well as interviews and surveys.

During this pilot period, the following observations about attorney performance are not policy monitoring findings and do not affect TIDC funding. No response is required, though TIDC welcomes feedback.

Since its passage, the Fair Defense Act has required local jurisdictions to review qualifications for attorneys on the appointment list. Under Article 26.04(b)(5) of the Code of Criminal Procedure, counties must adopt procedures that ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney’s duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics.

Performance Review

TIDC reviewed the indigent defense plan for the Bell County District Courts and County Courts² and interviewed local officials and staff to learn about procedures for performance review. The plan lists the minimum qualifications for appointment lists based on charge level, with increasing levels of skill and experience required for more serious cases.

The indigent defense plan also provides for attorneys to be removed from the appointment lists, moved to an appointment list for less serious offenses, or given an opportunity to take corrective action upon a finding of good cause by a majority of the district or county judges hearing criminal matters. The plan includes a non-exclusive list of grounds for removal:

¹ Attorney qualifications for appointment lists are one of six core Fair Defense Act requirements that TIDC monitors. 1 TEX. ADMIN. CODE § 174.28(c)(3).

² <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=271>

- Failing on two or more occasions to contact or interview clients in a timely manner;
- Submitting a claim for legal services not performed as specified in Article 26.05(e), Code of Criminal Procedure;
- Failing to comply with each of the appointment list qualifications;
- Having been found, by a Texas Appellate Court, to have provided ineffective assistance of counsel;
- Having been found to have violated a State Bar professional conduct rule;
- After having been placed on appointment list(s) has been convicted of or received a deferred adjudication for any offense, other than an offense punishable by a fine only;
- Being under indictment or charged with an offense, other than an offense punishable by a fine only;
- Misrepresenting or providing false or inaccurate information on the attorney's application for the appointment list;
- Failing to remit funds received on behalf of an investigator or expert within 14 days of receipt of said funds; or
- Failing to timely comply with Texas Indigent Defense Commission annual reporting requirements pursuant to Texas Government Code Section 79.036 and Texas Code of Criminal Procedure Article 26.04.

Bell County staff indicated that attorneys are required to document the date interviews with detained clients are performed in the TechShare indigent defense portal. According to the plan, the Indigent Defense Coordinator, housed in the Pretrial Services Office, monitors attorneys' compliance with the plan requirements and prepares monthly reports at the direction of the District and County judges hearing criminal cases on plan compliance.

Caseloads

Attorneys need to spend enough time on each case to perform their basic duties.³ In partnership with the Public Policy Research Institute at Texas A&M University, TIDC studied the maximum number of cases an attorney could handle in a year while providing ethical representation.⁴ The study found that, in Texas, a private attorney should dispose of no more than 226 misdemeanors, 128 felonies, 31 appeals, or a weighted combination of these cases annually.

Bell County's indigent defense plan does not list maximum caseloads for attorneys. Through the TechShare portal, panel attorneys can "pause" new appointments as necessary. Attorneys have 2 options for placing appointments on hold,

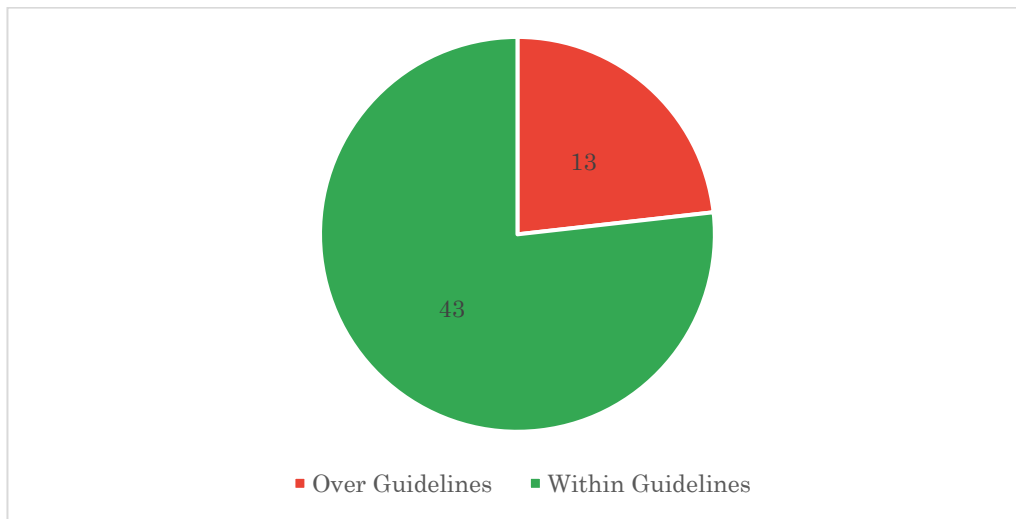
³ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01. (see commentary: "A lawyer's workload should be controlled so that each matter can be handled with diligence and competence.")

⁴ <http://tidc.texas.gov/caseloads>

either stop (1) all new appointments, or (2) receiving new clients while continuing to receive appointments for additional charges arising against current clients.

Reviewing Bell County's FY21 case data, 56 attorneys were appointed to felony, misdemeanor, juvenile, and appellate cases. Of these, 19.6% (11 of 56) had appointed caseloads in Bell County above TIDC's guidelines, ranging from 1.08 to 1.7 times the recommended maximum for a mixed caseload. When the attorneys' appointed work in other counties is included, 23.2% (13 of 56) had caseloads 1.08 to 2.9 times greater than TIDC's guidelines.

Bell County FY21 Attorney Statewide Caseloads vs. Texas Guidelines⁵



Use of Investigators

Attorneys have a duty to investigate the facts of each case.⁶ Regardless of the client's wish to admit guilt, that duty includes determining whether the charges and sentence are factually and legally correct and informing the client of potential defenses to the charges.⁷ Some investigation can be performed by attorneys.⁸ Other investigation requires an investigator. For example, an attorney cannot testify to facts that the attorney has investigated. Also, an attorney may need additional investigation capacity or specialization.

⁵ This chart reflects statewide appointments to attorneys taking Bell County appointments.

⁶ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01.

⁷ STATE BAR OF TEXAS PERFORMANCE GUIDELINES FOR NON-CAPITAL CRIMINAL DEFENSE REPRESENTATION GUIDELINE 4.1(A).

⁸ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 3.08.

TIDC's caseload guidelines recommend that, on average, 5.3% of misdemeanor case time (28.5 minutes) and 7.7% of felony case time (85.3 minutes) is spent on investigation.⁹ One measurement of investigator utilization is by the amount paid to investigators for indigent defense investigation.

In FY2021 Bell County's investigator expenses were:¹⁰

- Slightly less than .1% of misdemeanor costs (.09%, \$847 of \$901,837)
- Almost .8% of felony expenses (.76%, \$5,260 of \$691,762)
- Just over 1% of juvenile payments (1.2%, \$1,305 of \$109,176)

Client Contact

Attorneys have a duty to communicate with clients about their case.¹¹ Attorneys should be in regular contact, especially when clients are in custody.¹² They should also attempt to contact out-of-custody clients and discuss their cases outside of court to ensure confidentiality¹³ and time to prepare.¹⁴ TIDC's caseload guidelines recommend that, on average, 13.9% (75 minutes) of misdemeanor case time and 16.1% (168.8 minutes) of felony case time is spent on client communication.¹⁵

The Bell County plan requires attorneys make initial contact with clients within 24 hours of receiving notice of the appointment and personally interview locally detained clients within 10 business days of receiving the appointment. For clients detained out of Bell County, contact must still be made in 24 hours, and interviews must be personally conducted in a reasonable period of time. The visits are documented in Bell County's TechShare indigent defense portal.

Summary

Bell County's appointed counsel plans provide for oversight of appointed counsel and review of initial contact and interview with detained clients. The plan does not provide for maximum caseloads; however, attorneys can "pause" receiving new appointments as necessary. While caseload guidelines recommend between allocating between 5% and 7% of case work on investigation, the County currently spends less than 1% of its indigent defense budget for criminal defense investigation, and the plan's

⁹ These recommendations are for cases that do not go to trial. More investigation time is recommended for cases that go to trial.

¹⁰ <http://tidc.tamu.edu/public.net/Reports/CountyFinancialReport.aspx?cid=14&fy=2021>

¹¹ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.03. *See also* TEX. CODE CRIM. PROC. art. 26.04(j)(4)(1), requiring appointed attorneys to contact and interview clients as soon as practicable.

¹² *Id.*

¹³ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.05.

¹⁴ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01.

¹⁵ These recommendations are for cases that do not go to trial. More communication time is recommended for cases that go to trial.

attorney fee schedule does not include compensation for out of court work in cases less serious than the second-degree felony level.

Part II. Indigent Defense Attorney Survey and Interview Results

In October 2022, TIDC distributed an online survey to Bell County indigent defense attorneys and received 23 responses. Respondents were self-selected and may not be representative of local views. Full responses are below, alphabetized and numbered. Notable observations included:

- **Investigation.**

- **In misdemeanor cases**, the majority of attorneys (52.4%) reported never requesting an investigator on their cases.

% Attorneys responding	Request an investigator
52.4%	Never request an investigator
33.3%	1 to 10% of cases
9.5%	11 to 25% of cases
4.8%	26 to 50% of cases

- **In felony cases, the largest group of** attorneys (42.9%) reported requesting an investigator in 1 to 10% of their cases.

% Attorneys responding	Request an investigator
33.3%	Never request an investigator
42.9%	1 to 10% of cases
14.3%	11 to 25% of cases
9.5%	26 to 50% of cases

- **Caseloads.** Attorneys interviewed voiced concerns about the decreasing number of attorneys accepting appointed cases in Bell County. For example, the 1st and 2nd degree felony appointment wheel now only has around 8 attorneys taking cases, an insufficient number of attorneys to handle the current case volume.
- **Client Communication.** Most attorneys said they can “always” or “often” communicate effectively with clients. Responses varied between detained clients with 95.5% of responses indicating “always” or “often” compared to 86.3% for clients in the community. Attorneys interviewed identified difficulties contacting and visiting clients, particularly those detained in two out of county jails.

- **Online Courts.** Most attorneys responding to the survey have represented clients in virtual court hearings. The responses indicated many of the virtual hearings have been for arraignments, bond matters, and pretrials. Attorneys told TIDC staff they appreciated the increased access and efficiency of moving cases through virtual courts, especially when clients are detained in out of county jails.
- **Payment Vouchers.** Among attorneys submitting vouchers, the majority (59%) reported not billing for out-of-court time on misdemeanor cases. A number of attorneys expressed concerns with the County's appointed counsel fee schedules. Interviewed attorneys mentioned low flat fees and hourly rates compared to neighboring county rates was a negative factor for the quality of their legal practice and a significant reason why attorneys no longer take appointments in Bell County.

Survey Responses

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14. If you have other comments on online courts, and which hearings should or should not be held virtually, please share them here:16

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15. When submitting payment vouchers for misdemeanor cases, do you typically include out-of-court time?17
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Background

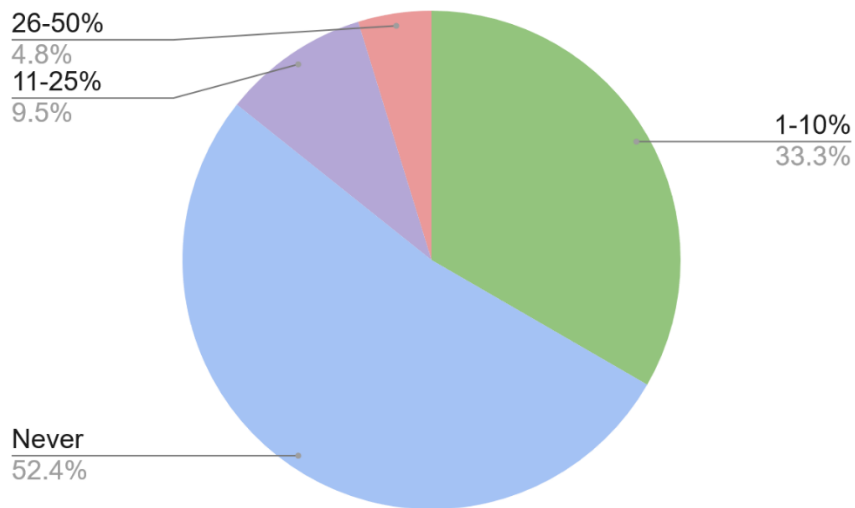
1. Which best describes your criminal defense practice?

[Provided answers: Private Practitioner; I don't handle criminal cases currently]

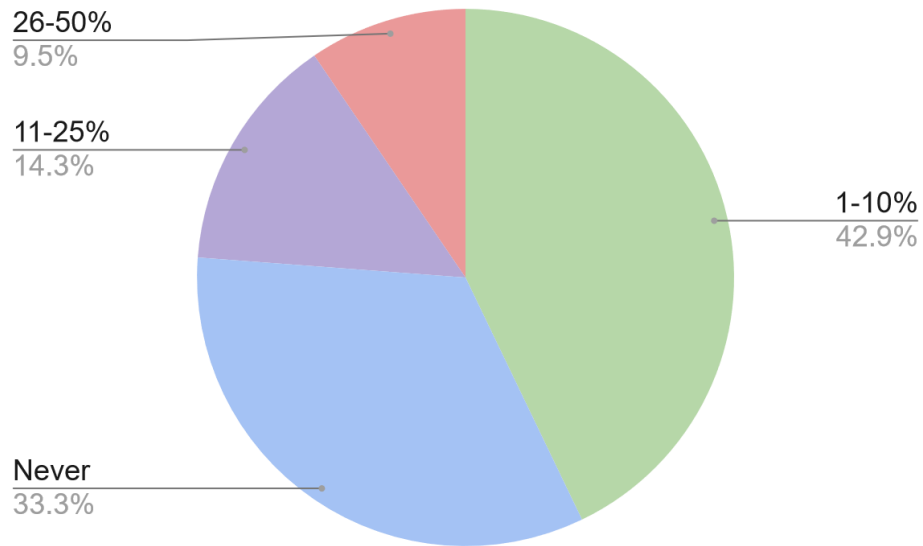
All 23 respondents indicated they are in private practice.

Investigation

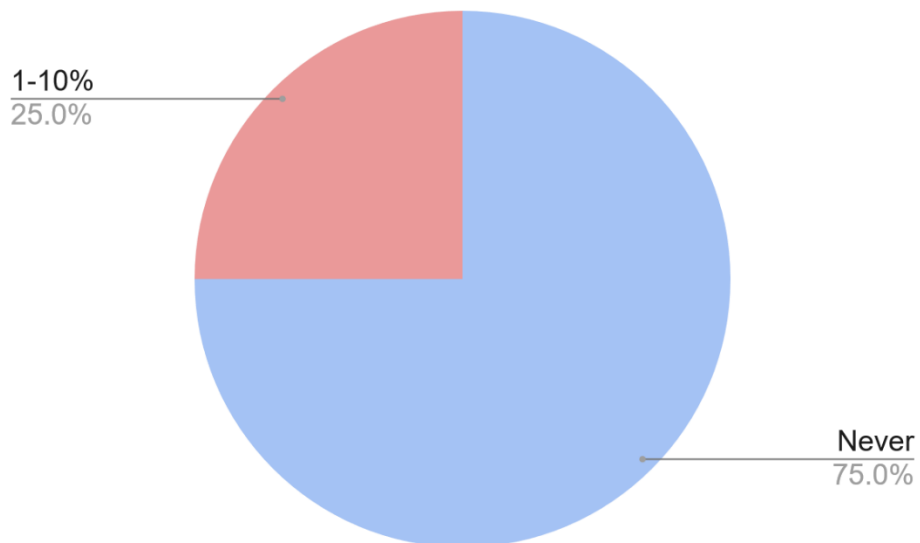
2. In what percentage of your misdemeanor cases do you request an investigator?



3. In what percentage of your felony cases do you request an investigator?



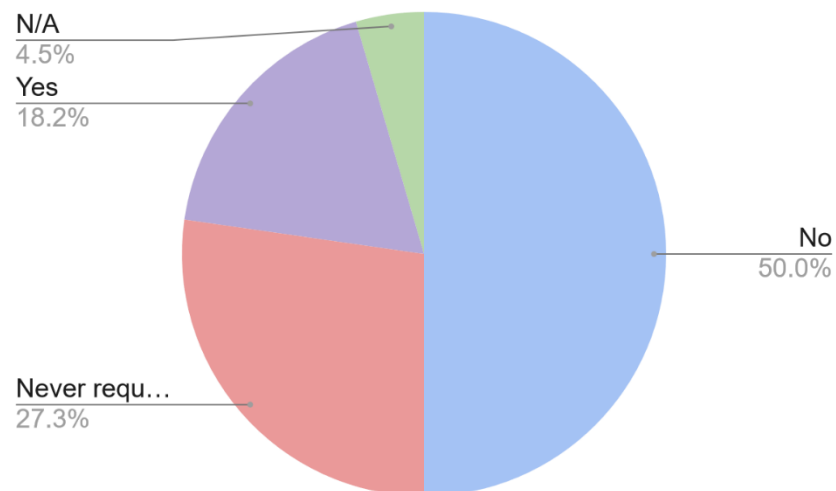
4. In what percentage of your juvenile cases do you request an investigator?



5. Have you had any difficulties being reimbursed for investigative expenses incurred without prior approval? If yes, please explain.

	Responses listed alphabetically:
•	A better question would be, “have you ever had a judge pay an expense without prior approval.”?
•	Doesn't apply to me. I only do appeals.
•	Have not requested any, as I do not accept court appointments.
•	I always get prior approval.
•	In certain courts, yes. Now, I will request approval for expenses prior to incurring any investigative expenses so as to not leave my investigator hanging out to dry or for fear of his voucher getting cut.
•	n/a
•	NA
•	Never had expenses without prior approval.
•	no
•	No
•	No
•	No
•	No
•	Yes, have dealt with vouchers being rejected without comment and reapplying just for no action for weeks and being unable to inform investigators of when to expect payment.

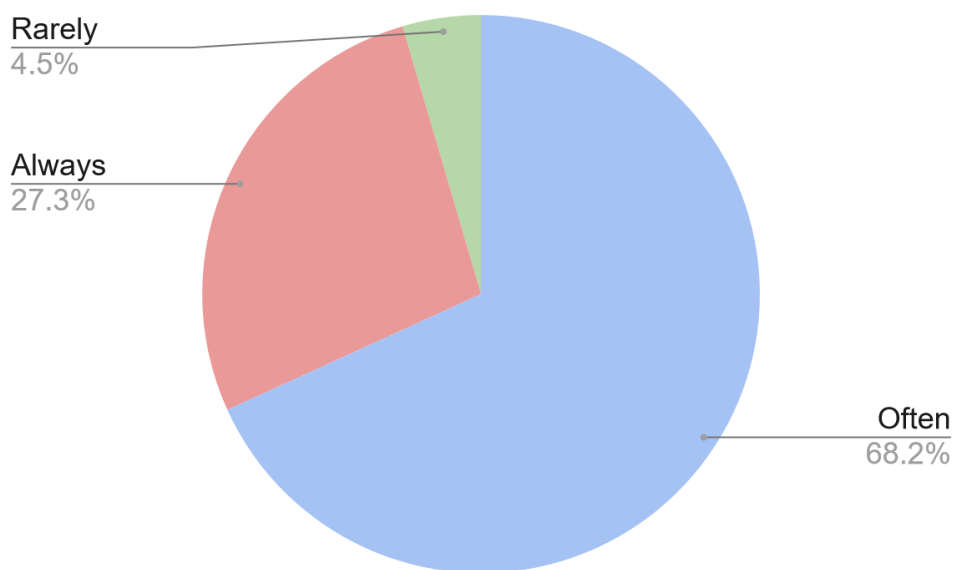
6. Have you had any difficulties receiving adequate funding for investigation? [Provided answers: Yes; No; Never requested; Other: Specify]



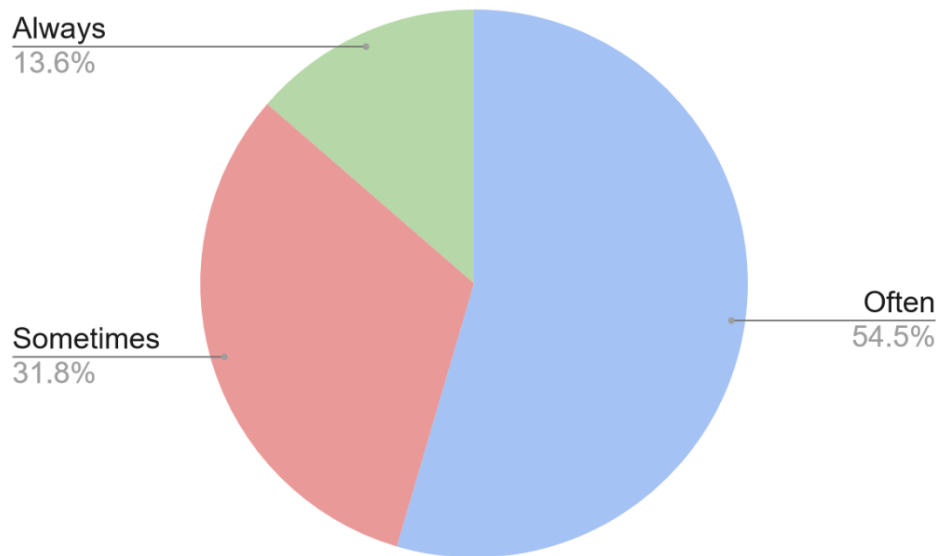
•	“Other” responses listed alphabetically:
•	Do you know any investigators who are actually licensed and are willing to work in bell county?
•	Doesn't apply to me. I only do appeals.
•	I can't find an investigator willing to work for the same \$75/hour that bell county attorneys are paid.
•	I do not do felony or misdemeanor court appointments for trial. I only do Court appointed appeals, felony or misdemeanor
•	I think more investigations would be valuable, when the facts warrant them.
•	In misdemeanor cases, it has been an issue before in CC2. A few years ago, I've had my approval fund capped at a rate lower than estimated, but it ended up being okay.
•	It is difficult obtaining necessary funds for experts and investigators and can often times highly depend on the particular judge and what they personally feel.
•	No problems at the present but finding competent investigators CAN BE DIFFICULT,

Client Communication

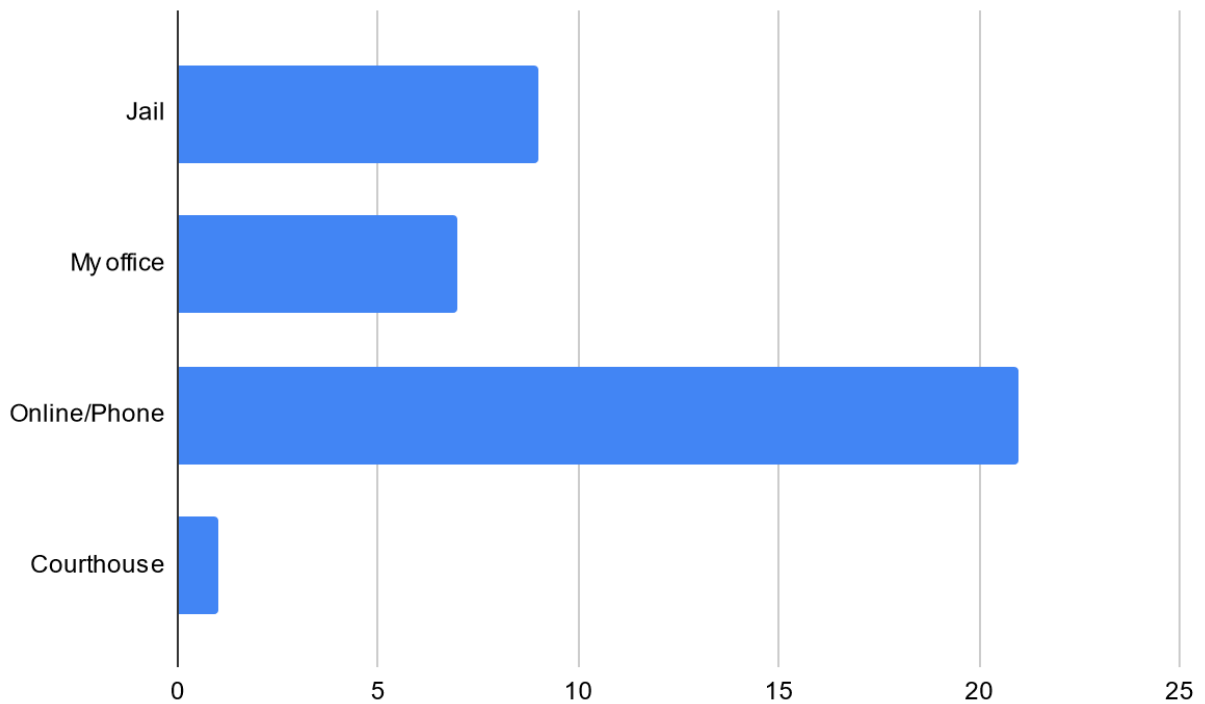
7. How often are you able to communicate effectively with detained clients? [Provided answers: Always (Every Case); Often; Sometimes; Rarely; Never (No Cases); Not Applicable]



8. How often are you able to communicate effectively with clients released in the community? [Provided answers: Always (Every Case); Often; Sometimes; Rarely; Never (No Cases); Not Applicable]



9. Where do you most often meet with clients? Select all that apply:



	Other Responses listed alphabetically:
•	SmartJail

10. What are your biggest barriers to meeting with clients (both detained and in the community)?

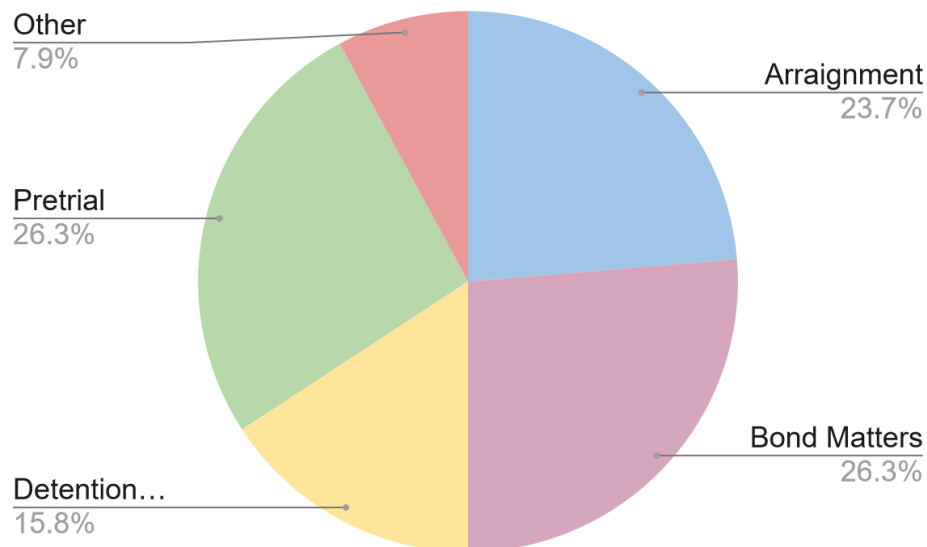
•	Responses listed alphabetically:
•	Bad contact info, client claiming they don't have good contact info for me
•	Because I only do appeals, I seldom meet with clients in person.
•	Clients housed out of county due to the pandemic - too far to drive and frequently without the same opportunities that exists with defendants housed with County jail.
•	Clients who are being housed out of county.
•	CONTACT INFORMATION NO CORRECT
•	CONTACTING CLIENTS THAT ARE ON BOND
•	For detained clients: Covid exposure - I depend on SmartJail for communication (which is excellent because it is nearly real-time, almost like text messaging, and I can cut and paste documents in my messages!) with local inmates and I avoid in-person jail visits. Other issues related to clients in prison are that these require prior prison approval and forms which may render communication unavailable or delayed. For clients in the community: Client's lack of adequate telephone service, failure to respond to my communication attempts (by telephone or letter or email), and failure to initiate any communication with me.
•	In the Bell County Jail, it's primarily having to wait so long to get inmates down to visit the attorney. Remote visits with the new video system help, but sometimes the inmates don't get brought to the phone before the video visit has ended, or there is a very short period of time left on the call. The jail dysfunction is one reason why I paused my court appointments last year.
•	no response from clients
•	Not being able to find my client.
•	Our county houses some inmates in other counties besides our own.
•	Smartinmate fails to connect to video. That leaves 3 visitation rooms at the loop for visitation.
•	Some clients are housed in other county jails rather in Bell County.
•	The time requirements for in-person meetings.
•	Time
•	UP TO DATE TELEPHONE NUMBERS

11. If you have other comments on client communication, please share them here:

•	Responses listed alphabetically:
	Again, I only see court appointed appeal clients when they are still in the local county jail. I do not go to TDCJ-ID, but contact by mail.
•	Get a video system into the jail that works.
•	The main reason I do not accept court appointments is because the majority of appointed defendants are rude and unappreciative. There are much easier ways to help people (as a lawyer) than working for almost nothing for people who don't appreciate it.
•	The only times that I am not able to effectively communicate with clients on bond is when they don't provide updated contact information to me or the bond company, or when there are issues with accessing those of them in the jail (caused by the jail or by a client refusing to come to the phone/visit, which is usually a mental health red flag).

Online Courts

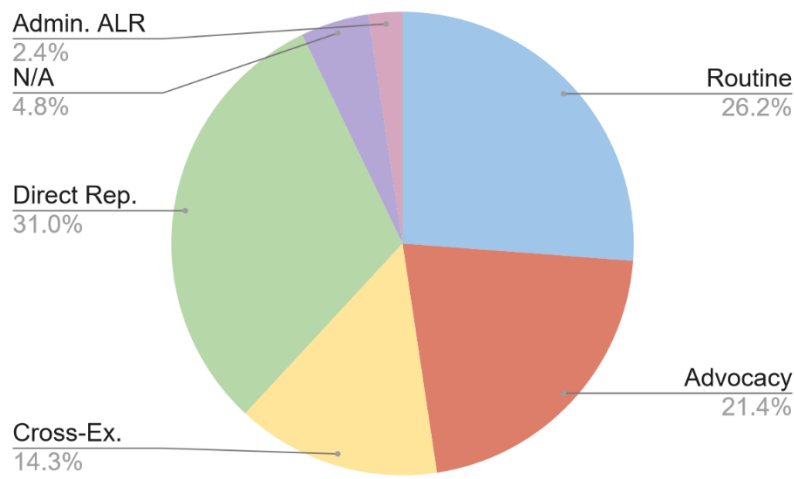
11. Please select the types of hearings in which you have had an online hearing in the last year: (Select all that apply)



Other includes:

- Oral argument at 5th Circuit; writ hearing in federal magistrate court
- Plea and/or sentencing hearings

12. Which aspects of client representation have you performed in one or more online hearings in the last year? (Select all that apply)

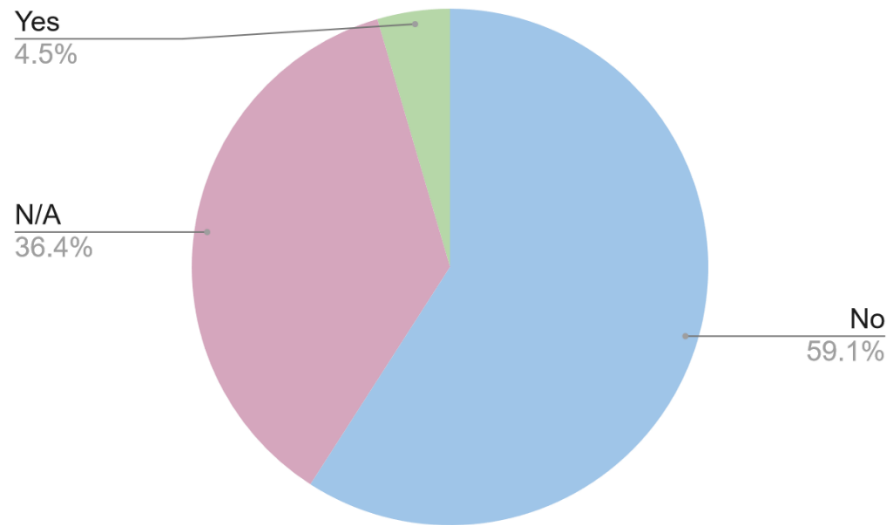


13. If you have other comments on online courts, and which hearings should or should not be held virtually, please share them here:

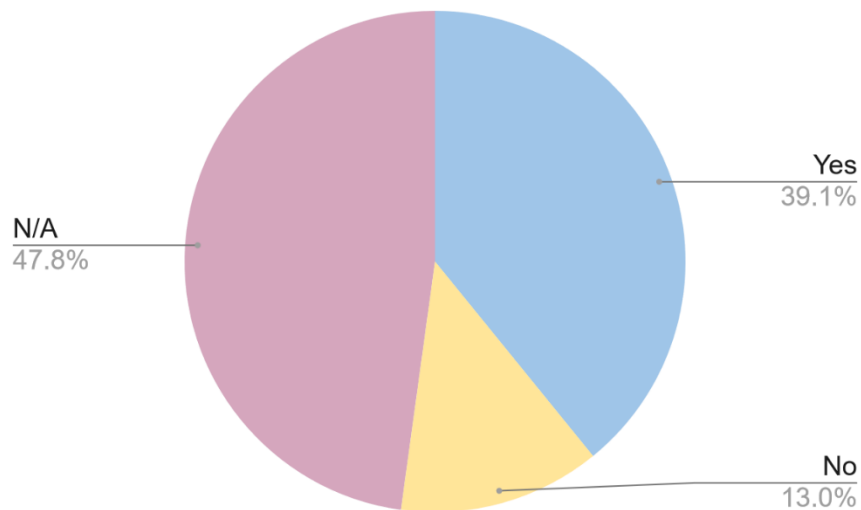
•	Responses listed alphabetically:
•	Go talk with Tracy and Lisa in judge DePew's court and do exactly what they tell you to do. Don't take any advice from anyone else.
•	Guilty Pleas
•	It is not possible to effectively cross examine an adverse witness online. Our system stands because the public has faith in the truth coming out; when we lose the ability to get to the truth, public confidence will go with it.
•	On retained pending cases I only do bond reduction hearings or amendments to bond or community supervision. Always retained.
•	Online courts make my job much easier and save my clients lots of money in legal fees. Clients are able to afford representation by their attorney of choice because when online options exist, geography doesn't create a barrier to legal representation.
•	Pleas, agreed sentencing hearings, pretrials, and other non-contested matters can be handled online appropriately, but trials, suppression hearings, cross-examinations, etc. lose efficacy in an online setting due to the inability to pick up on mannerisms of the witness. Just my opinion.

Vouchers

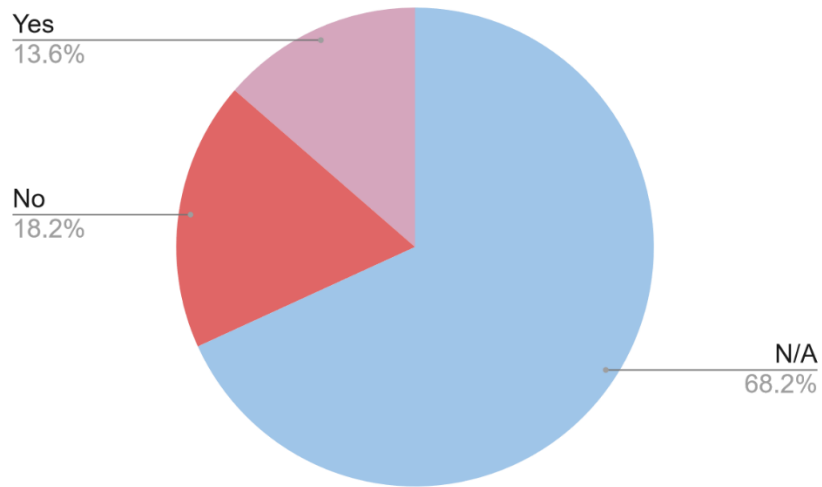
14. When submitting payment vouchers for misdemeanor cases, do you typically include out-of-court time? [Provided answers: Yes; No; Not Applicable]



15. When submitting payment vouchers for felony cases, do you typically include out-of-court time? [Provided answers: Yes; No; Not Applicable]



16. When submitting payment vouchers for juvenile cases, do you typically include out-of-court time? [Provided answers: Yes; No; Not Applicable]



17. If you don't typically include out-of-court time, why not?

Responses listed alphabetically:
• almost all of my cases result in set fee vouchers.
• An hourly rate is not approved for payment. Payment is a flat fee on each case.
• Because bell county is flat fee up to 3rd degree.
• Because it's flat fee!
• I wasn't aware I could ask for money for out of court time.
• Misd. cases are paid on a per case basis
• n/a
• not paid by the court
• There is not a mechanism to include out-of-court time on misdemeanors.
• WASN'T AWARE WE COULD.

18. If you have other comments on payment vouchers, please share them here:

Responses listed alphabetically:
• \$300 for a misdemeanor plea is insufficient
• Again, I submit time to review the record, research the law and write the brief on court appointed appeals
• I got off the court appointed wheel for criminal cases because a flat fee payment of \$300 for a misdemeanor or \$400 for a felony was not representative of the time

	that it took for me to adequately represent my clients. I ended up earning sometimes \$2 per hour. So, I was working as a volunteer or nearly pro bono.
•	Most of our payment vouchers are flat-fee on misdemeanor cases with the exception of trials. Accordingly, the out-of-court time isn't really applicable except in 1st and 2nd degree felony cases, which are typically the only ones billed hourly.
•	n/a
•	The rates have not changed in over a decade. It's getting to the point where I feel like I'm being ripped off and I will stop doing them. It's kind of outrageous and insulting.
•	the set fees for both misdemeanor and felony cases are woefully inadequate. have not been changed in over ten years and do not take into account the additional hearings i.e. bond condition hearings, etc. that have been established in recent years.

Bell County's Indigent Defense System

19.What is working well in the County's indigent defense system?

•	Responses listed alphabetically:
•	Appointment process
•	appointments
•	CCL3
•	I find that the Bell County indigent defense system works well
•	I only accept court appointments for appeals.
•	indigent defense office is very competent and efficient in dealing with the rather amazing caseload.
•	OVERALL WORKING WELL ALTHOUGH VERY HARD TO GET JURY TRIALS LISTED IN COUNTY COURT
•	PR Bond assistance
•	The actual appointments are swift and organized well and indigent defense staff are very accessible.
•	The wheel by which cases are assigned seems to work well and the defense portal does too.
•	Those on the court-appointed lists have plenty of cases. The staff of the indigent defense office does an excellent job communicating with attorneys when we have questions or comments.
•	Video appearances are allowed by attorneys for hearings and incarcerated clients can appear virtually to enter their pleas.

20.What is not working well in the County's indigent defense system?

	Responses listed alphabetically:
•	Bond is unnecessarily denied

•	fees are out of line with reality - out of date - no consideration as to proximity of defendant residence and location of assigned attorney office -
•	fees are too low in misdemeanor cases
•	For me, out of county lawyers taking court appointed appeals who do not practice in Bell County.
•	Issues of bond, obtaining experts and investigators, adequately representing clients due to the liberal continuances permitted to the State.
•	can't think of anything
•	THE COUNTY ATTORNEY'S OFFICE IS DYSFUNCTIONAL WITH A LARGE TURNOVER OF STAFF
•	The county's indigent defense system has not included an increase in attorney pay in about 20 years from what I understand. As such, many highly competent attorneys are inactive in the indigent defense system. Due to the lack of pay, in my opinion, the most at-risk clients, those charged with 1st or 2nd degree felonies, don't have very many attorneys on the list, and those on it probably have an extremely high volume of cases. \$75/hour for high-level felony work is far below what it should be.
•	The rates are offensively low and have not been changed in over a decade despite record inflation. It is unsustainable. We are at a point where the amount paid does not allow for effective assistance of counsel.
•	The remote jail visit/communication system
•	The rest of the courts.

21. What is working well in the County's juvenile justice system?

•	Responses listed alphabetically:
•	I don't do juvenile
•	I don't currently work in the juvenile justice system, but the juvenile court appears to be very well managed by the Judge and staff of CC3.
•	Judge DePew and her staff.
•	N/A
•	N/A
•	N/A
•	na
•	NOT APPLICABLE TO ME

22. What is not working well in the County's juvenile justice system?

•	Responses listed alphabetically:
•	Again, I don't work in the juvenile justice system currently, but it is my understanding that the juvenile detention facility has serious issues with staffing, but that is a larger post-covid issue that many places share, I'm sure.
•	N/A
•	N/A

•	NA
•	NA
•	NOT APPLICABLE TO ME
•	punishment is not serving as a deterrent. I have seen many juvenile court appointed clients (from a prior place of employment) come back through as adult offenders.

23. What suggestions do you have for improving the delivery of indigent defense services in the County?

	Responses listed alphabetically:
•	Additional funding for attorneys and defense-necessary expenses would likely improve delivery of indigent defense services. In 5 years, due to the aging population of a large faction of the defense bar, there will be a crisis and not enough defense attorneys to represent the volume of indigent clients in our county. If the rates were significantly increased, I can assure you that many current defense attorneys would get back on the court-appointed lists and address the need.
•	Get jim to force his assistant county attorneys to give plea offers. Seriously, they are misdemeanors. I shouldn't have to wait for over a YEAR to get a plea offer after I've asked for one. In fact, most counties send a plea offer with discovery. Greenwood and his one assistant over in lampasas do it, why can't bell?
•	higher standards for eligibility, so those who can afford a lawyer are made to employ one.
•	Increase fees
•	LESS BUREAUCRACY AND MORE STREAMLINED PROCEDURES IN COUNTY COURT AND A UNIFIED APPROACH WITH HOW TO HANDLE CASES BETWEEN THE TWO COUNTY COURTS - DISTRICT COURT WORKS WELL
•	Prosecution should be motivated to resolve cases in a more expeditious manner.
•	Reasonable rates. The current rates are unreasonable. If there is no increase then there is no point in talking about any other area of improvement worth taking. It's that simple.
•	To get qualified attorneys, an hourly payment system would be needed instead of a flat fee.
•	Unsure

24. TIDC provides programs to improve indigent defense. How could TIDC help improve indigent defense in the County?

	Responses listed alphabetically:
•	I am not aware of your programs
•	I DON'T KNOW

•	Mentorship program to help new lawyers learn the ins and outs of criminal defense with a requirement to accept X number of court appointed cases upon completion of the mentorship.
•	N/A
•	Point out that the pay rate encourages ineffective assistance of counsel. Bell County is not providing adequate indigent defense because the pay rates are unreasonably low. There is no logic or justification for how you can pay the same in 2022 that you paid in 2010.
•	see above
•	The collection of data around expert/investigator requests in cases, the requests being granted or denied, the amount of money being permitted and the gap in time between their vouchers being submitted and when they are approved. It is difficult to know what is unusual, normal or even happening locally when there is no body of data to look at on these issues.
•	Unsure what services they provide
•	What programs do you provide?