

Supplement to Montgomery County Monitoring Report (2021): Additional Observations on Attorney Qualifications

Part I. Performance Indicators

TIDC has historically monitored how counties admit attorneys to lists, but not how counties review their 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 is relying on counties’ expenditure reports and indigent defense plans, interviews and surveys, and additional sources as available.

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 Montgomery County’s indigent defense plans and interviewed local officials and staff and defense attorneys to learn about procedures for performance review. For misdemeanor and felony appeal appointments, attorneys reapply biennially to appointment lists, and judges review whether they remain or are placed on lists.² For trial-level felony and juvenile cases, attorneys apply to the Office of Indigent Defense for a contract, and Commissioners Court approves the contract.³

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 County court indigent defense plan, available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=266>; district court indigent defense plan, available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=360>.

³ According to the Indigent Defense Expenditure Report and 2019-2020 Contract Attorney List (provided by the county), about 49% of all cases in FY2019 were handled by 44 contract attorneys, with 11 attorneys per district court. About 39% of attorneys (44 of 113) who were paid for appointments in FY2019 were contract attorneys. Some felony cases were reportedly disposed by assigned counsel; presumably, these were assigned in previous years, before the contracts were in place.

Caseloads

Attorneys need to spend enough time on each case to perform their basic duties.⁴ TIDC, in partnership with the Public Policy Research Institute at Texas A&M University, studied the maximum number of cases an attorney could carry in a year while providing ethical representation.⁵ The study found that, in Texas, an attorney should carry no more than 226 misdemeanors, 128 felonies, 31 appeals, or a weighted combination of these cases.

Montgomery County has caseload limits for contract attorneys: 119 defendants per 15-month term.⁶ The plan states that district court judges receive an overall monthly caseload report to keep attorneys within Texas guidelines. Attorneys on misdemeanor appointment lists do not have caseload limits.

According to data reported by Montgomery County and local attorneys, in FY2019:

- Thirty percent of attorneys (33 of 111) who were paid for felony, misdemeanor, or appellate cases in Montgomery County had statewide indigent defense caseloads above the Texas caseload guidelines.⁷
- Twenty-five attorneys had indigent defense caseloads in Montgomery County that were above the guidelines. Twenty-three of these were contract attorneys.
- The median caseload was 38% of the guidelines.
- Including non-indigent-defense cases, 25 attorneys had statewide total caseloads more than twice the guidelines.⁸
- Ten attorneys who were paid for Montgomery County appointments did not file practice time reports for Montgomery County.⁹

⁴ 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.")

⁵ <http://tidc.texas.gov/caseloads>

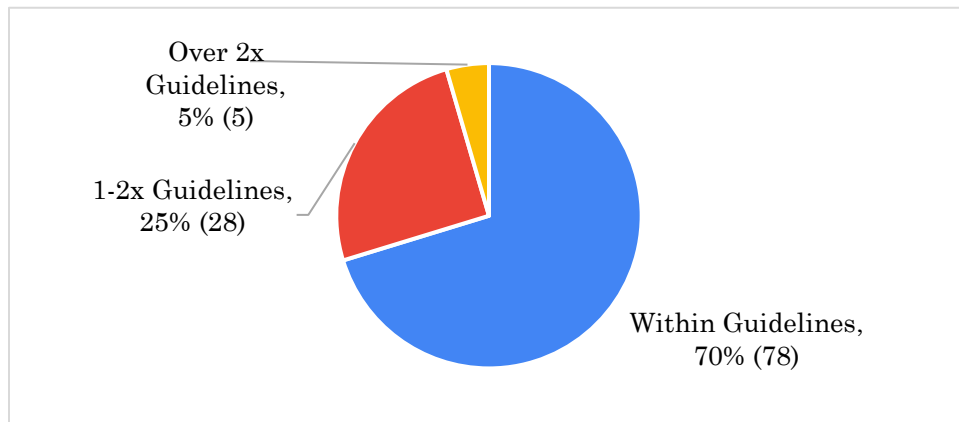
⁶ Contract defenders must have caseload limits. 1 TEX. ADMIN. CODE § 174.21.

⁷ This estimate is from county auditor data, available at <http://tidc.tamu.edu/Public.Net/Reports/CountyFinancialReport.aspx?cid=170&fy=2019>. This estimate does not include capital or juvenile indigent defense cases, civil appointments, or retained cases.

⁸ This estimate combines county auditor data with data from attorneys on the percent of their practice time dedicated to indigent defense, also available at <http://tidc.tamu.edu/public.net/>. For this estimate, TIDC divides attorneys' statewide indigent defense caseload (excluding juvenile and capital cases) by their reported percent of practice time devoted to appointed criminal cases. The total of 79 attorneys does not include those who did not file a practice time report.

⁹ The County's plans require attorneys to file these reports with TIDC to remain on the appointment list. It is also a requirement of Tex. Code Crim. Proc. art. 26.04(j)(4). Attorneys may not have filed reports if they finished work in FY18 and were paid in FY19.

Figure 1: Montgomery County FY19 Attorney Caseloads vs. Texas Guidelines¹⁰



Use of Investigators

Attorneys have a duty to investigate the facts of each case.¹¹ Some investigation can be performed by attorneys. Other investigation requires an investigator, because, for instance, attorneys cannot testify to facts that the attorney has investigated, or because of the need for added capacity or specialization.¹² TIDC's caseload guidelines recommend that, on average, for misdemeanors, 13.8% of case time (60 minutes) is spent on attorney investigation and 5.3% of case time (28.5 minutes) is spent on investigator investigation; for felonies, the guidelines are 12.3% (122.8 minutes) of case time on attorney investigation and 7.7% (85.3 minutes) on investigator investigation.¹³

The county court plan does not address expectations for investigation beyond pay. The district court plan and felony contracts require attorneys to perform duties to clients according to ethical rules, but do not address investigation specifically. Judges review individual fee vouchers, but do not systematically review attorneys' investigation of cases.

According to data reported by the County, in Montgomery County, in FY2019:¹⁴

- Less than one percent of total misdemeanor expenditures (\$1,843 of \$1,063,062, or 0.17%) and about six and a half percent of total felony expenditures (\$253,306 of \$3,911,697, or 6.48%) were for investigators.
- For felony cases, assigned counsel had 7.37% of cases and 63.45% of investigation spending, compared to contract counsel. Assigned counsel also had a higher rate

¹⁰ Statewide indigent defense appointments. See note 9 and accompanying text.

¹¹ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01.

¹² TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 3.08.

¹³ These recommendations are for cases that do not go to trial. More investigation time is recommended for cases that go to trial.

¹⁴ <http://tidc.tamu.edu/Public.Net/Reports/CountyFinancialReport.aspx?cid=170&fy=2019>

of investigation spending (21% of their total felony expenses) than did contract counsel (3%).

Client Contact

Attorneys have a duty to communicate with defendants about their case.¹⁵ Attorneys should be in regular contact, especially with clients who are in custody.¹⁶ They should also attempt to contact out-of-custody clients and discuss their cases out-of-court to ensure confidentiality¹⁷ and time to prepare.¹⁸ 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.¹⁹

The county court plan does not address client contact. The district court plan and felony contracts require attorneys to perform duties to clients according to ethical rules, but do not address client contact specifically. Judges review individual fee vouchers, but do not systematically review attorneys' client contact. There were not data about client contact tracked by the county or available to TIDC.

Summary

Montgomery County requires attorneys to meet duties to clients but does not have a method of systemically reviewing total caseloads, investigation, or client communication. Attorneys who had felony caseloads within Texas guidelines and local contract guidelines had overall caseloads—including Montgomery County misdemeanors and cases in other counties—that exceeded Texas guidelines. The County should consider tracking annual statewide caseloads, use of investigators, and client communication.

¹⁵ 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.

¹⁶ *Id.*

¹⁷ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.05.

¹⁸ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01.

¹⁹ These recommendations are for cases that do not go to trial. More communication time is recommended for cases that go to trial.

Part II. Attorney Survey

In October 2020, with assistance from the Office of Indigent Defense, TIDC distributed an online survey to Montgomery County indigent defense attorneys and received 49 responses.²⁰ TIDC conducted follow-up interviews with five attorneys. Respondents were self-selected and may not be representative of local views.

Attorneys were asked about Montgomery County indigent defense practices, especially related to performance review, caseloads, investigators, and client contact, as well as how COVID-19 and online courts have affected their representation. Full responses are listed below, alphabetized, and unedited, with identical responses collapsed in lists.

Notable observations included:

- **Performance Review.** Most attorneys (19 contract attorneys and 34 court-appointed attorneys) did not know how their performance is reviewed. Some stated that there are no performance review procedures.
- **Caseloads.** Attorneys' estimates of their caseloads were consistent with county data reported to TIDC. Most attorneys have caseloads in other counties (78%) and other areas of law (80%). (Interviewed attorneys agreed with most survey respondents (66%) that caseloads are reasonable.)
- **Investigators.** Attorneys most often stated that they "rarely" request investigators for misdemeanors (57%) and "sometimes" request investigators for felonies (44%). Most reported no difficulties with getting approval for an investigator. (Interviewed attorneys agreed that investigators and experts are rarely needed in misdemeanors, and are accessible when needed.)
- **Client Contact.** Attorneys most often stated that they "often" can communicate effectively with clients since the pandemic began (41%). Some recommended more videoconferencing capability at the jail.
- **COVID-19 and Remote Courts.** When asked to comment on the shift to remote courts, attorneys noted both upsides (e.g., fewer unnecessary in-person court settings) and downsides (e.g., no trials, slower pace).
- **Montgomery County.** When asked what is working well in Montgomery County, attorneys noted the Office of Indigent Defense. When asked what is not working well, they noted low pay and favoritism in awarding contracts. (Some interviewed attorneys thought the new contract system was effective for monitoring quality. Others found it inappropriate to put attorneys under control of one judge and thought the contract selection and removal process could be more transparent.)

²⁰ There are 113 attorneys who were paid for appointed cases in Montgomery in FY19, and 44 of these were contract attorneys. See note 3. Contract attorneys were overrepresented among survey respondents. See Question 1, p.8.

Survey Responses

Performance Review

1. How do you receive appointed cases? Select all that apply. [Provided answers: Through a contract; Through the appointment list; Other] 8
2. If you have a contract, do you know how your performance is reviewed for those cases? [Provided answers: Yes; No; Not Applicable; Other] 8
3. If you [receive] appointments from the list/wheel, do you know how your performance is reviewed for those cases? [Provided answers: Yes; No; Not Applicable; Other] 9
4. Do you have additional comments on attorney performance review procedures? 9

Caseloads

5. About how many indigent defense cases do you have per year in Montgomery County? [Provided answers: Fewer than 50; 50-100; 100-150; 150-200; More than 200; I don't know; Other] 11
6. Do you practice in other areas of law besides indigent defense? [Provided answers: Yes; No; Other] 11
7. Do you practice in other places besides Montgomery County? [Provided answers: Yes; No; Other] 12
8. From your observations, do attorneys' caseloads allow them enough time to provide quality representation to indigent defense clients in Montgomery County? [Provided answers: Yes; No; I don't know; Other] 12
9. Are Montgomery County indigent defense contracts fairly awarded to attorneys? [Provided answers: Yes; No; I don't know; Other] 13
10. Are Montgomery County indigent defense cases fairly distributed among attorneys? [Provided answers: Yes; No; I don't know; Other] 13
11. Are you aware of TIDC's caseload guidelines? [Provided answers: Yes; No; Other] 14
12. Do you have additional comments on measuring caseloads or assigning cases? 14

Investigation

13. How often do you request an investigator for a misdemeanor case? [Provided answers: Always (every case); Often; Sometimes; Rarely; Never (no cases); Not applicable] 15
14. About how many times in the past year did you request an investigator for a misdemeanor case? [Provided answers: 0 Times; 1-3 Times; 4-10 Times; More than 10 Times; Not Applicable] 15
15. How often do you request an investigator for a felony case? [Provided answers: Always (every case); Often; Sometimes; Rarely; Never (no cases); Not applicable] 16
16. About how many times in the past year did you request an investigator for a felony case? [Provided answers: 0 Times; 1-3 Times; 4-10 Times; 11-20 Times; More than 20 Times; Not Applicable] 16
17. What types of cases almost always require an investigator? 16

18. What types of cases almost never require an investigator?.....	18
19. Have you had any difficulties getting approval for investigation expenses in Montgomery County?	19
20. From your observations, do attorneys adequately investigate indigent defense cases in Montgomery County? [Provided answers: Yes; No; I don't know; Other]	20
21. Do you have additional comments on investigation?	20

Client Communication

22. Before the COVID-19 pandemic, where did you mostly meet with clients? Select all that apply. [Provided answers: My office; Courthouse; Jail; Online or on the phone; Not applicable; Other].....	21
23. Since COVID-19 pandemic began, where have you mostly meet with clients? Select all that apply. [Provided answers: My office; Courthouse; Jail; Online or on the phone; Not applicable; Other].....	21
24. Since the COVID-19 pandemic began, how often have you been able to effectively communicate with clients? [Provided answers: Always (every case); Often; Sometimes; Rarely; Never (no cases); Not applicable; Other].....	22
25. Since the COVID-19 pandemic began, at what times have you been able to confidentially communicate with clients? [Responses redacted because question was incorrectly coded.].....	22
26. What are your biggest barriers to communicating with clients, either in-person or remotely?.....	22
27. Do you have additional comments on client communication?	24

COVID-19 and Remote Courts

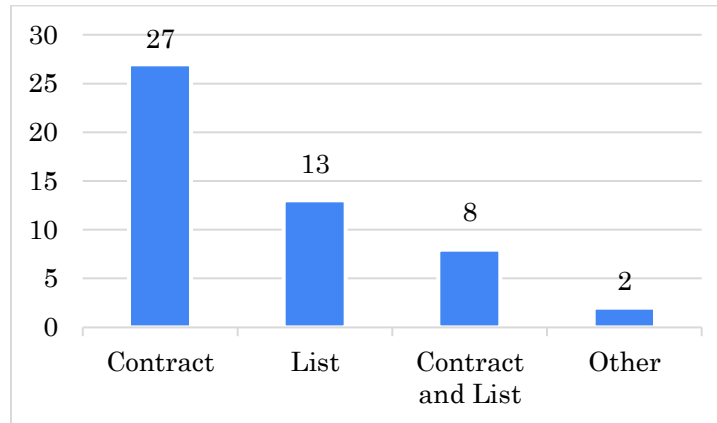
28. How have remote court proceedings and other changes from the COVID-19 pandemic affected your ability to provide quality representation?	25
29. Do you have additional comments on procedural changes from COVID-19 and remote courts?	26

Montgomery County

30. What is working well in Montgomery County's indigent defense system?	28
31. What is not working well in Montgomery County's indigent defense system?	29
32. Do you have comments on representation at magistrations in Montgomery County? ..	30
33. Do you have comments on mental health resources for indigent defendants in Montgomery County?	31
34. How could TIDC help improve indigent defense in Montgomery County?	32
35. If you would like TIDC to follow up with you, please provide your name and contact information: [Answers redacted to preserve anonymity.].....	33

Performance Review

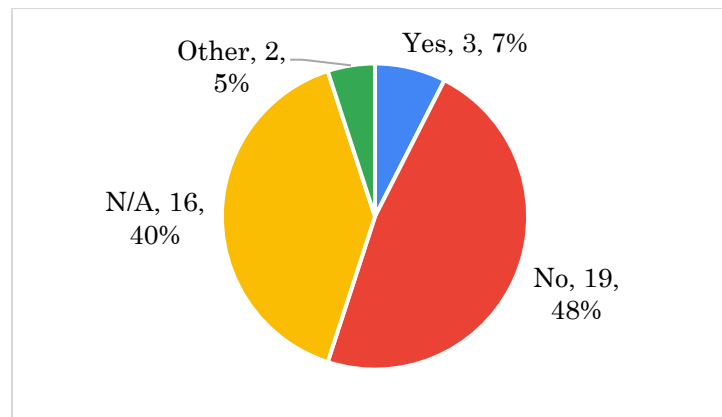
- 1. How do you receive appointed cases? Select all that apply.** [Provided answers: Through a contract; Through the appointment list; Other]



Other responses:

1	no longer on a contract
2	remaining appeals appointment from 2019

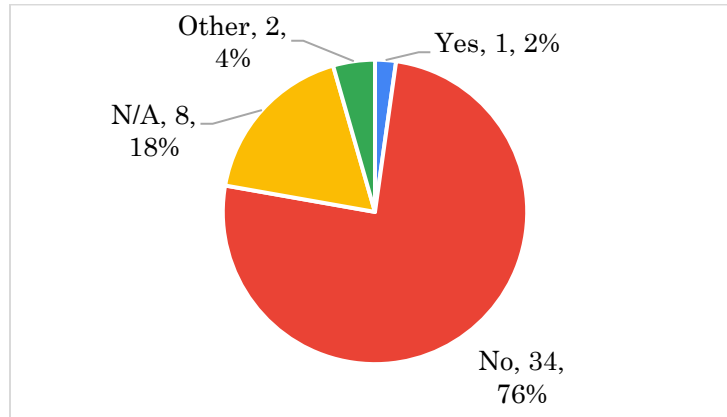
- 2. If you have a contract, do you know how your performance is reviewed for those cases?** [Provided answers: Yes; No; Not Applicable; Other]



Other responses:

1	Copies delivered to all necessary parties
2	There are no performance reviews.

3. If you [receive] appointments from the list/wheel, do you know how your performance is reviewed for those cases? [Provided answers: Yes; No; Not Applicable; Other]



Other responses:

1	I am approved by a board of Judges and I must certify competence.
2	I'm unaware of any complaints

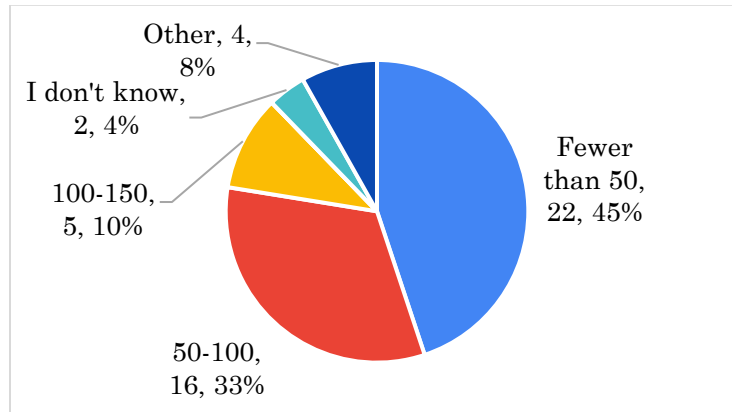
4. Do you have additional comments on attorney performance review procedures?

1	Appeals only.
2	I assume that if I am renewed on the contract and/or wheel, my performance was reviewed and found to be adequate.
3	I do not for the list/wheel situation. I do not apply for the contract situation. The contract situation is somewhat political, however it has increased attorney competence from what I have seen, and the Judges have seemed very even handed in their handling of the situation.
4	I dont even know who reviews our performance nor what the parameters are.
5	I have never been informed of any objective review procedure.
6	I was not aware that performance was reviewed. If it is could we get more information and have a panel that would include members of the defense bar and DA's office.
7	No
8	No
9	NO
10	No
11	no
12	Other than the basics of showing up for court, I don't think our performance should be reviewed. It's nearly impossible to set up performance metrics when so much of criminal depends on the specifics of an individual case and client.
13	Performance reviews are likely based on the opinion of the judges involved
14	Selection to felony contracts in Montgomery County are not based on ability or experience but on friendships and campaign contributions. When an attorney is on the contract but not

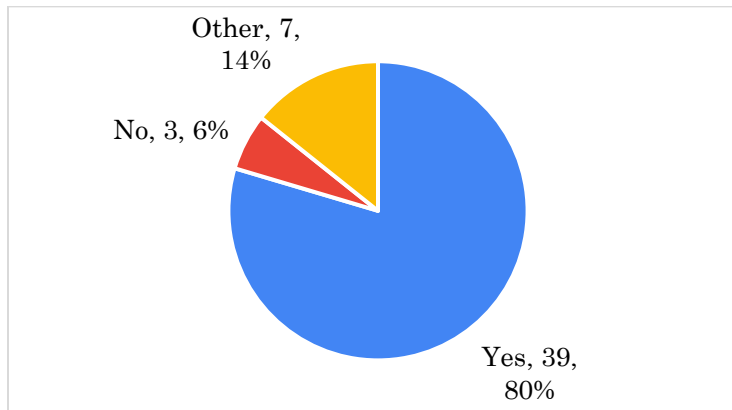
	renewed, there is no information given to the attorney as to why he or she was not renewed. There is no review or feedback. New attorneys with no trial experience are selected over experienced trial attorneys. It seems you can buy your way onto the contract.
15	The appointment contract is a positive because it produces a steady stream of income, the downside of this type of contract is the huge incentive to plea cases, especially completed cases. A 7 day aggravated 25-life case pays the exact same as a SJF PCS.
16	The contract system works very well. I am happy to be a part of it. It is clear that it has raised the quality of felony indigent defense in Montgomery County. Also, I think that, as a sort of by-product, it creates efficiencies that were unexpected.
17	To my knowledge, performance review procedures do not exist in Montgomery County, Texas
18	Too many people with many out of county attorneys on list

Caseloads

5. About how many indigent defense cases do you have per year in Montgomery County? [Provided answers: Fewer than 50; 50-100; 100-150; 150-200; More than 200; I don't know; Other]



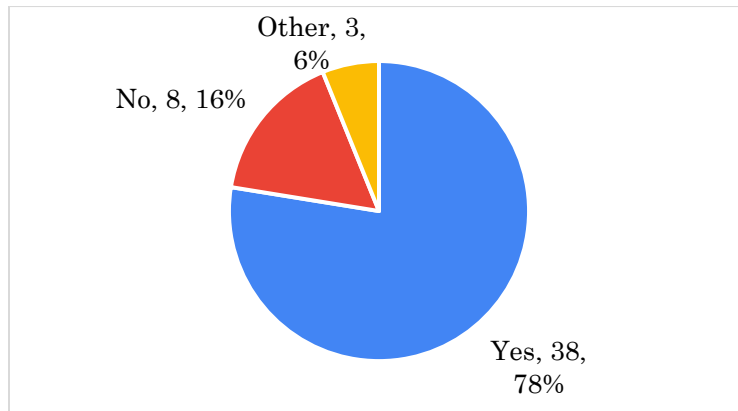
6. Do you practice in other areas of law besides indigent defense? [Provided answers: Yes; No; Other]



Other responses:

1	15%
2	Hired defense
3	I also do retained criminal defense
4	I take retained criminal cases
5	retained cases
6	retained criminal cases
7	Retained criminal defense

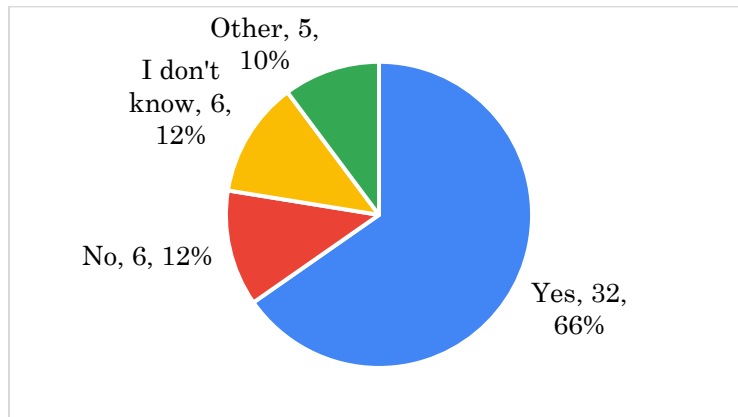
7. Do you practice in other places besides Montgomery County? [Provided answers: Yes; No; Other]



Other responses:

1	Harris
2	Harris County
3	Sometimes, case by case basis

8. From your observations, do attorneys' caseloads allow them enough time to provide quality representation to indigent defense clients in Montgomery County? [Provided answers: Yes; No; I don't know; Other]

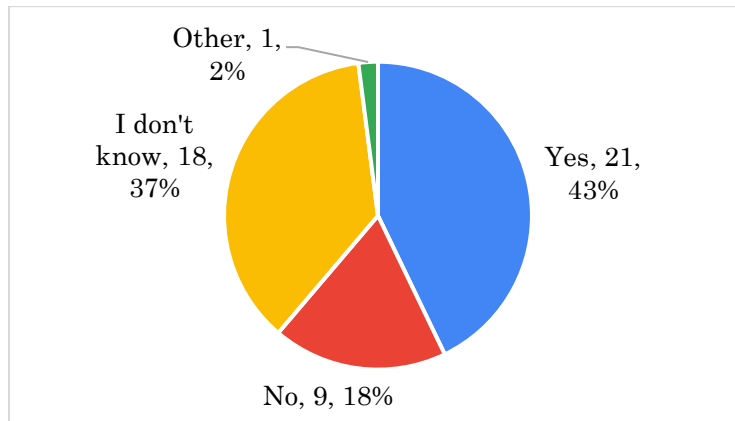


Other responses:

1	Because of Covid it is hard to determine the answer to this question. Everything is slower and taking longer.
2	It depends on the attorney. For me personally, yes.
3	My partner is one of the contract attorneys. Thankfully, we have a solid staff consisting of a clerk, paralegals and in house investigator that Judge appoints openly for this very reason. I have also assisted my partner with these case. In this situation, the quality of representation is quite high. I can imagine a like scenario for a solo practitioner who dedicates a large

	section of there practice to this situation. I can imagine other attorneys finding it challenging to deal with the case load.
4	Some. I think sometimes, the attorneys on the appointment list have a bunch on their plate.
5	Yes but I've often covered for other lawyers

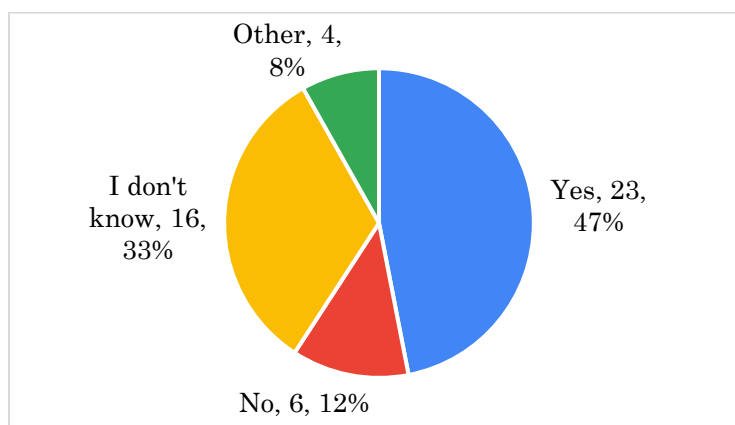
9. Are Montgomery County indigent defense contracts fairly awarded to attorneys? [Provided answers: Yes; No; I don't know; Other]



Other response:

1	Fair is such an ambiguous word. From what I have seen, yes. They balance the contracts as a tool for betterment of the bar, as well as to ensure both quick and quality representation.
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10. Are Montgomery County indigent defense cases fairly distributed among attorneys? [Provided answers: Yes; No; I don't know; Other]

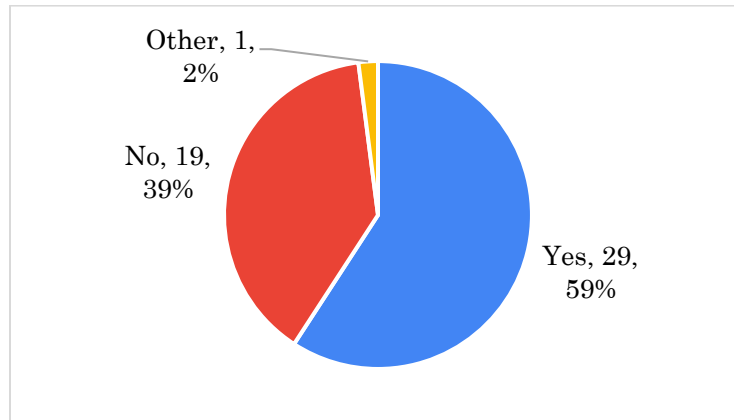


Other responses:

1	Depends on what you mean by "fairly"
2	I assume they are distributed by the wheel within the contract. However, I don't know if the inexperienced attorneys on the contract get the higher level charges.

3	On the surface they appear to be distributed fairly. However, when distributing cases, there is no way to evaluate criminal history. Therefore, in my experience, the majority of 3rd degree cases I am appointed are enhanced, frequently habitual.
4	Yes for misdemeanors.

11. Are you aware of TIDC's caseload guidelines? [Provided answers: Yes; No; Other]



Other response:

1	I'm not on contract for felonies so I haven't looked further into it
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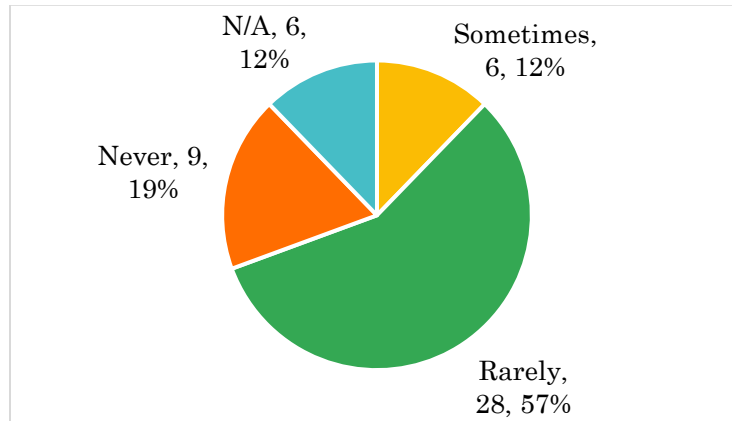
12. Do you have additional comments on measuring caseloads or assigning cases?

1	First degree and habitual offenders cases should be spread out on their own case load sequence.
2	I have a very light case area as it is appeals only
3	I think the caseload is managed well.
4	I think the felony contract lawyers are surely overburdened, but what do I know?
5	It is unfair to expect a solo practitioner to work for only one judge for a salary or not at all if they desire to participate in felony appointments.
6	No
7	No
8	NO
9	No
10	no
11	Not at this time.
12	Seems like certain attorneys get more appointed cases than others
13	Too many cases; not enough money to support the practice nor trial support.

Investigation

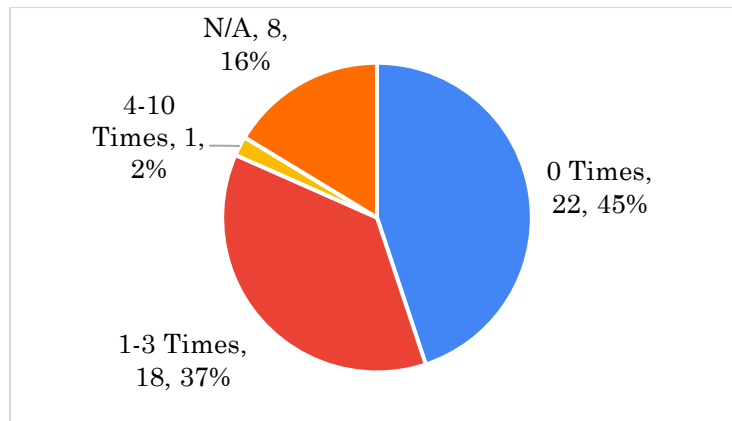
13. How often do you request an investigator for a misdemeanor case?

[Provided answers: Always (every case); Often; Sometimes; Rarely; Never (no cases); Not applicable]

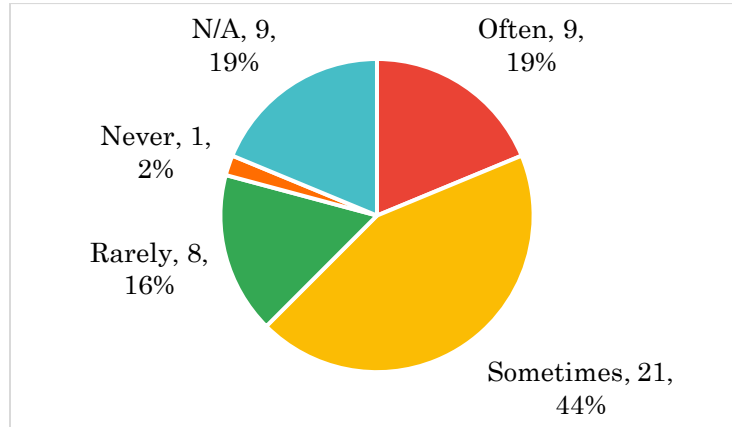


14. About how many times in the past year did you request an investigator for a misdemeanor case?

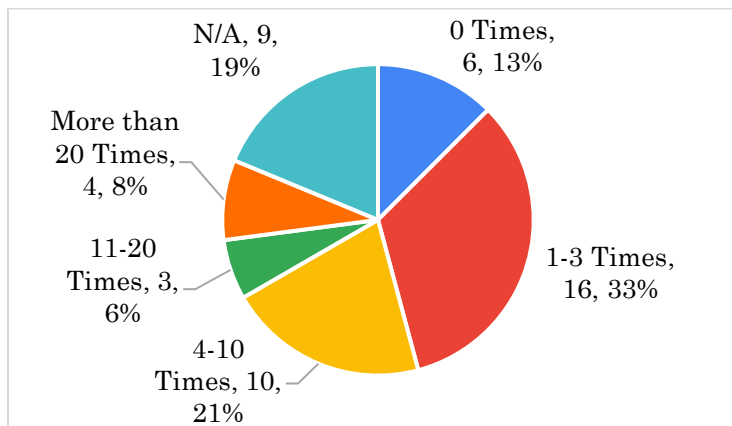
[Provided answers: 0 Times; 1-3 Times; 4-10 Times; More than 10 Times; Not Applicable]



15. How often do you request an investigator for a felony case? [Provided answers: Always (every case); Often; Sometimes; Rarely; Never (no cases); Not applicable]



16. About how many times in the past year did you request an investigator for a felony case? [Provided answers: 0 Times; 1-3 Times; 4-10 Times; 11-20 Times; More than 20 Times; Not Applicable]



17. What types of cases almost always require an investigator?

1	A case involving lots of witnesses
2	Any case that has a victim.
3	Anything in which the facts are not evident
4	Assault type cases
5	Assaultive cases (injury and sexual)
6	Assaultive offenses
7	Assaults
8	Assaults

9	ASSAULTS, MURDERS
10	Capital Murders; Murder; Enhanced felonies; Agg. Sexual assault; Child Sexual Abuse; Family Violence
11	Cases that need more investigation on the defense side that will more that likely go to trial
12	Cases that will possibly go to trial and require witness location and interviews, interviews and prep of Defendant, other field work, and protection against potential claims of ineffective assistance.
13	Cases with a victim.
14	cases with DNA or conflicting statements
15	Child sex cases
16	Crimes involving victims or witnesses.
17	Felony
18	Felony cases involving witnesses
19	Felony cases with complainants.
20	First - I was hired, then proceeded pro-bono, I asked for an appointed investigator, and received one - thus my answers above. Any fact intensive case, assaults and DWI's with weird or strange stops.
21	High level felonies
22	Higher degree felonies, although I think some misdemeanors might, such as assault family violence
23	murder
24	MURDER HOMICIDE DRUGS ARSON
25	murder, aggravated assault, aggravated sexual assault
26	Murder, Robbery, Sexual Assault (including of a Child), any trial case, cases with numerous witnesses
27	Murder, sexual assault, robbery
28	N/A
29	Neglect and child injury/abuse.
30	Sex Assault
31	Sex Assault, Homicide, Robbery
32	sex cases
33	Sexual abuse allegations
34	sexual allegations, assaults, any case that involves mostly non-law enforcement witnesses
35	Sexual Assault
36	sexual assault
37	sexual assault of children
38	Sexual Assault, Aggravated Assault, Murder, Robbery
39	Sexual Assault, Murder, and potentially DWI
40	Sexual Assault cases
41	The very serious ones that require the most time and effort.
42	theft

43	Victim cases
44	violent crimes

18. What types of cases almost never require an investigator?

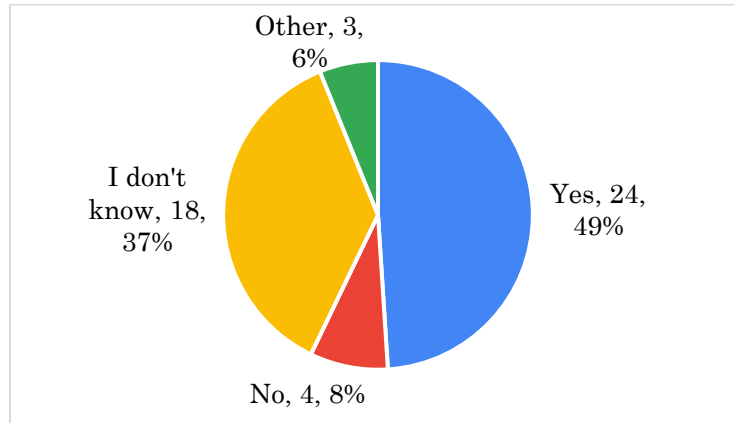
1	PCS
2	Almost all misdemeanors.
3	Appeals
4	AUTO THEFT
5	Cases that, for any number of many possible reasons, will not go to trial and the above-mentioned work is not necessary.
6	controlled substance cases
7	Driving While Intoxicated
8	Driving while license invalid....
9	drug
10	drug cases
11	Drug cases
12	Drug cases
13	Drug cases
14	Drug cases because of video of the stop.
15	Drug cases, many Theft cases
16	Drug possession
17	Drug Possession
18	dwi
19	dwi
20	DWI
21	DWI
22	DWI
23	dwi
24	DWI & PCS
25	DWI, generally. Otherwise, it all depends.
26	DWI's
27	evading in a motor vehicle, most drug cases
28	ILLEGAL DRUGS
29	low level drug cases
30	Minor drug cases;
31	murder, sexual assault, possession
32	N/a
33	POCS

34	POCS
35	Possession
36	Possession cases.
37	Possession Controlled Substance
38	Possession of a Controlled Substance
39	Possession of a Controlled Substance (unless there are numerous witnesses)
40	Possession of a controlled substance SJF, 3rd degree and 2nd degree
41	possession of controlled substance
42	Possession of Marijuana
43	Theft and drug cases.
44	Theft, Criminal Trespass, Possession of Controlled Substance
45	theft, dwi, pcs
46	traffic stops that turn into arrests

19. Have you had any difficulties getting approval for investigation expenses in Montgomery County?

1	Haven't tried
2	Minimum funding
3	Never
4	No
-	
31	
32	No, but my investigator likes to complain - but he also just likes to complain.
33	No.
34	No.
35	No.
36	No.
37	No.
38	NONE
39	Not applicable
40	Not recently
41	Seldom
42	some

20. From your observations, do attorneys adequately investigate indigent defense cases in Montgomery County? [Provided answers: Yes; No; I don't know; Other]



Other responses:

1	Again, it depends on the attorney. Some do, some certainly don't.
2	I adequately investigate cases and that's all I can speak about.
3	I do

21. Do you have additional comments on investigation?

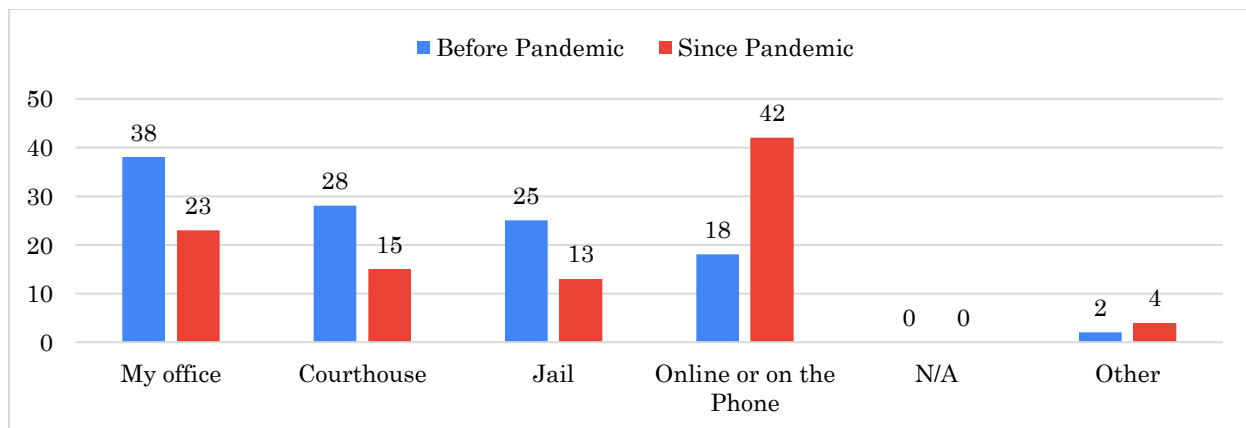
1	As long as the Judges keep appointing investigators, we are good to go.
2	I am new to defense, and I have not yet had the need to request an investigator. Though, I see that as a necessity in certain cases
3	I am new to the appointment list. There has been one case that I seriously considered asking for one. It ended as a pretrial diversion so I did not request it. The other attorneys I office with seem to request them only for their felony cases.
4	It would be nice to have an investigator on contract that the defense bar could utilize.
5	Montgomery county has very good investigators
6	NA
7	No
8	no
9	No
10	No
11	NO
12	No
13	No
14	no
15	No!

Client Communication

22. Before the COVID-19 pandemic, where did you mostly meet with clients?

Select all that apply. [Provided answers: My office; Courthouse; Jail; Online or on the phone; Not applicable; Other]

23. Since COVID-19 pandemic began, where have you mostly meet with clients? Select all that apply. [Provided answers: My office; Courthouse; Jail; Online or on the phone; Not applicable; Other]



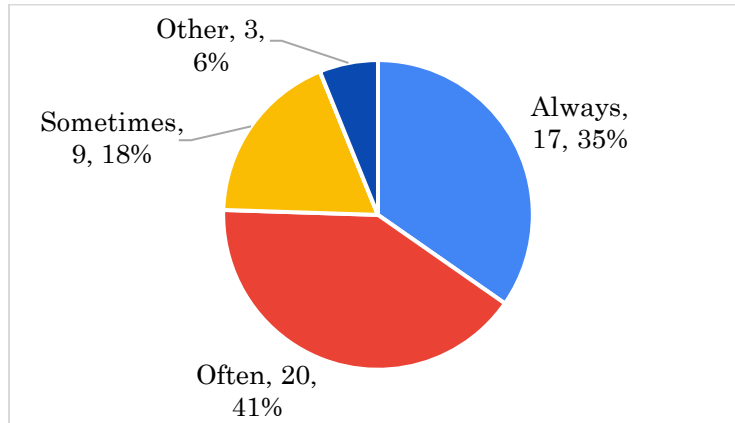
Other responses to Question 22 (before pandemic):

1	Law Library
2	Really all of the above depending on the case and client's location.

Other responses to Question 23 (since pandemic):

1	Anywhere that's convenient: parking lot, outside seats of a Starbucks, etc.
2	I have Zoom conferences with clients at the jail, which is technically online.
3	rare jail visits nowadays
4	Zoom

24. Since the COVID-19 pandemic began, how often have you been able to effectively communicate with clients? [Provided answers: Always (every case); Often; Sometimes; Rarely; Never (no cases); Not applicable; Other]



Other responses:

1	Almost Always
2	Almost always, unless there is a barrier that is independent of COVID, like my client doesn't have a phone or regular residence.
3	I won't resolve a case without effective communication. However, in some cases this is difficult and time consuming to achieve.

25. Since the COVID-19 pandemic began, at what times have you been able to confidentially communicate with clients? [Responses redacted because question was incorrectly coded.]

26. What are your biggest barriers to communicating with clients, either in-person or remotely?

1	A lot of my clients turn their phones off and do not check their e-mails.
2	A mask
3	Accessibility. Phone service issues, Zoom accessibility issues, jail scheduling issues.
4	Accurate contact information when assigned a case and client availability.
5	Availability of equipment/personnel at the jail for Zoom conferences.
6	availability of remote access at jails
7	availability of zoom times for clients in custody
8	cannot visit them in jail, zoom does not work for jail visits, cannot contact client
9	Client don't update their info/change phones
10	Client willingness / communicativeness and client technology limitations
11	Client's having their phone disconnected or changing their numbers without notifying me.
12	clients out on bond who are difficult to reach

13	Covid-19 in person, Video
14	custody and non working phone numbers
15	Getting the offense reports and investigative reports to see what they are against
16	Getting them on the phone, text or email.
17	I find a way
18	If incarcerated
19	In person it is difficult to speak through a mask, while socially distanced, so it makes it a lot more difficult to communicate.
20	Internet issues with the jail; not enough time slots available during business hours
21	Jail procedures
22	lack of return calls
23	Limited jail videoconferencing appointment times
24	mental health issues
25	More computers needed at jail for Zoom calls with clients.
26	n/a
27	NONE
28	none
29	None at this time
30	Not enough time slots for Jail Zooms
31	Reliable contact info
32	SCHEDULING
33	Scheduling with Jail
34	scheduling, same issue as before, and clients not being reliable after they schedule
35	Setting up zoom calls with clients in jail
36	Some clients have unreliable phones.
37	Technical difficulties at the jail.
38	The jail. Zoom meeting times are all taken up days in advance. And then when you do get scheduled there are persistent issues. Rarely do they go off without a hitch.
39	Them not responding to my calls.
40	There are not enough ZOOM facilities within the jail. Its very hard to get a slot.
41	They don't always have good phone numbers
42	Trying to see clients through Zoom is currently limited. However, the jail is trying to get more tablets so that there are more time slots available.
43	Understanding the law and procedures.
44	working contact information
45	Zoom to jail no fun

27. Do you have additional comments on client communication?

1	Also, the contact info bonded clients give to indigent defense rarely ever actually works, so it can be difficult to get in contact with bonded clients.
2	Commissioners should approve funding to expand ZOOM capacity.
3	Due to their indigent status, they were not adequately prepared for the ABRUPT SHIFT to heavy telecommunication.
4	no
5	No
6	no
7	no
8	NO
9	No
10	no
11	Repeat offenders can be difficult to communicate with.
12	The ability to meet with clients at the jail via Zoom is incredibly efficient and hopefully is here to stay. I meet with my clients more frequently because there is more time to do so. Previously, it was not unusual for me to schedule time to go see them at the jail and to arrive and have to wait an hour to see them or to be turned away. Now, that doesn't happen. If there IS a delay, I am able to work on other cases and complete other work while I wait, which you cannot do from an attorney booth at the jail. Also, it is easier to share media and other evidence with them because I can do that directly from my computer, rather than needing to book a special attorney room at the jail, etc.
13	The phone numbers that the attorney gets after appointment are usually wrong we need for the clients to make sure they contact the appointed attorneys within 3 days after appointment so we can get their correct contact numbers.

COVID-19 and Remote Courts

28. How have remote court proceedings and other changes from the COVID-19 pandemic affected your ability to provide quality representation?

1	At times
2	By far, the biggest issue is access to prosecutors. Most are unavailable by phone. There is a large gap between the 20% who are accessible, and the 80% who are not.
3	Clirnt/AWitness consultation
4	DAs have no incentive to maek good offers and clients have no incentive to accept so things drag
5	each case takes a lot more time because of communication and meeting issues
6	For daily, routine matters like approaching about a bond or pleas, it has not affected it. Obviously, trials have slowed tremendously.
7	has not affected
8	Helped
9	I can't Zoom, so its been a pain
10	I develop a stronger relationship with the client because cases go on much longer. However, I am forced to take fewer cases because cases go on much longer and grow more complicated before resolution.
11	I do not believe it has affected my ability to provide quality representation, it has just slowed down the process.
12	I don't see a fiffERENCE
13	I still have an open line of communication to my clients.
14	It has been very helpful. It at least allows us to accomplish some work.
15	It hasn't.
16	Just been slower
17	Lack of dockets over the summer really prolonged certain cases and DA's working remotely was difficult in some situations.
18	No
19	No
20	no
21	no
22	no
23	No
24	No significant change
25	none
26	None that I have experienced.
27	Not at all.
28	Other than the lack of jury trials, I don't believe that it has. Obviously, there are some barriers, but I think we've been able to adapt and overcome remarkably well.
29	Probably makes it easier.
30	Process has been greatly complicated

31	Reassuring my clients through my presence of standing next to them when addressing the court.
32	Remote hearing do not allow much communication with clients or prosecutors
33	Remote proceedings have actually helped me manage my day better, it allows me to be "present" in multiple counties at once.
34	remote works well for simple matters, (plea, resets, etc...)
35	The ability to get a speedy jury trial - unfortunately unavoidable in the current situation
36	The Courts have been mostly excellent. It's been a 'challenge' to adapt to new methods, and been clunky, but most folks have been quite understanding. The lack of Jury trials has been a problem, but that's getting fixed.
37	The plea dockets work great through Zoom. Trials have not occurred yet.
38	they have not in my opinion, however I have not done any contested matters other than bond hearings
39	They make it significantly more difficult to effectively negotiate with prosecutors and get prosecutors moving on evidence and evaluations of cases. This is particularly true when the prosecutors are not in the office or in person at court
40	They save a tremendous amount of time for small issues and help prevent the spread of the virus.
41	VERY LITTLE
42	YES
43	Yes, for the better. Having the paperwork for pleas ahead of time helps to effectively go over the paperwork instead of rushing to go through it int he courtroom with no privacy.
44	Yes. They have increased my ability to provide quality representation.
45	zoom does not adequately allow in depth conversations

29. Do you have additional comments on procedural changes from COVID-19 and remote courts?

1	every court has a variation of how they will run the court based on COVID. Montgomery County is an extremely conservative county and with that, the COVID issue cuts down party lines. COVID and a contentious election in the same year has really hampered judges to rationally think about procedures.
2	Extremely time consuming
3	I have better been able to work on client's cases since the needless monthly court dates have been fewer.
4	I prefer remote court accessibility, however, more consideration for potential risk of exposure to defense attorneys would go a long way. We are also people who are at risk of exposure, and have families that might end up in quarantine or ill. Unforgiving courts make it very difficult to effectively manage our case loads while also being subject to the pressures of the pandemic.
5	I think everyone is trying their best to continue the justice process.
6	I think we've overreacted
7	In-person dockets still are foolish and dangerous, exposing court staff, attorneys and defendants to unnecessary risk. Courts must be more creative in establishing protocols that assure defense attorneys and prosecutors are making progress working on cases without unnecessarily bringing bodies together in courtrooms. As I write, the news today is of an outbreak of Covid-19 in the MoCo DA'S Office.

8	It should continue
9	It's 'Good Enough', which is about all we can hope for right now.
10	largely very good work by all staff involved
11	Limitations based on bandwidth
12	No
13	No
14	No
15	NO
16	No
17	no
18	No.
19	None.
20	Please keep the Zoom pleas. It has made things so much easier for the clients. We would like to have a set day that you can plea cases remotely. Let's say on Wednesday's you can plea both felony and misdemeanor cases remotely. That way we don't have to fight with the individual court's schedule. Especially, when we have clients with multiple offenses in felony and misdemeanor court. And when the attorney's have 3 places to be at once.
21	The option to do court hearings via zoom is extremely helpful, and the ability to get remote resets (via email) is helpful too. It's ridiculous to force the client and attorney into court when nothing other than a simple reset is going to take place.
22	Zoom can be used going forward for uncontested matters
23	ZOOM should remain after the pandemic.

Montgomery County

30. What is working well in Montgomery County's indigent defense system?

1	ACCESS
2	all levels
3	Appointment notification
4	appointment, discovery, hearing and billing systems
5	appointments
6	Appointments
7	Being assigned to one court works well.
8	Communication between all necessary parties is very effective
9	Defendants do get lawyers
10	Defense discovery through the DA's Portal
11	Everything
12	Everything but gathering MULTIPLE PHONE NUMBERS and E-MAILS
13	Everything works well.
14	Expert appointments
15	FELONY CONTRACT CASES
16	I do not know.
17	In my limited area-Fine
18	In person and bonded court appearances. Appointment notifications.
19	indigent defense office i very helpful
20	Initial info to attorneys
21	it seems to work well.
22	Notification when you have a new appointment.
23	PC Court representation has been effective in achieving fair bonds for new arrestees.
24	Rapid assignment and sharing files by the DA.
25	Reasonableness of ADAs
26	seems to have quality attorneys
27	The admin team is great and very responsive
28	the appointment list
29	the contract for felonies is providing a higher overall quality of representation for indigent defendants
30	The employees are helpful
31	The felony contract system.
32	The OID is diligent and easy to reach and helpful at resolving any issues. They do a phenomenal job in that office. The court's work to make sure the defense bar needs are at least taken into consideration, generally which is nice.
33	The prosecutors are still available and the communication is very good.

34	The wheel based system.
35	Zoom is making scheduling more effective.
36	Zoom video with jail inmates/court hearings

31. What is not working well in Montgomery County's indigent defense system?

1	ALL GOOD
2	Although not popular, defense attorney compensation should be significantly increased to assure effective assistance by qualified attorneys.
3	attorney/client meetings
4	Case distribution as noted above.
5	Discovery process, Zoom scheduling
6	don't know
7	Fairness
8	Felony "owned by a judge" system
9	Felony appointed lawyers not adequately compensated to justify taking cases to trial or contested hearings
10	Felony Contract Attorney Selection/Program
11	I believe that the felony contract attorneys are assigned too many cases, and not compensated for trials, which disincentivizes trials.
12	I do not know.
13	I'm not sure the serious cases are spread out evenly among the attorneys who work in each court, leaving some with more difficult cases than others.
14	It works pretty well.
15	jail accommodation of remote hearings / conference with client
16	Jail sockets are cumbersome now with covid
17	Jail zoom capabilities
18	Lack of jury trial is slowing case clearance rate
19	limited indigent opportunities in felony court
20	MINORITY REPRESENTATION
21	n/a
22	None that I can think of.
23	Not enough money for attorney's to maintain a defense practice.
24	nothing
25	Nothing at this time.
26	Nothing.
27	pay is quite low
28	Qualified Attorneys who requested appointment have not been appointed.

29	Sometimes difficult to contact your defendants and get them to sign a reset and turn it in without being in court. The resets could be longer so we don't have to try to find and locate the defendant and give us more time to solve the case.
30	the appointment list for appellate cases, I fight hard in trial to have have an appellate lawyer who doesn't do their job
31	the felony contracts seem unfair. Donations to judges, prior law partners and social factors seem to influence the selection process
32	The gatekeeping - it is very frustrating to be appointed to clients who have well-paying jobs.
33	The lack of MULTIPLE PHONE NUMBERS and E-MAILS
34	The stagnant pay structure
35	The stuff I previously mentioned.
36	ZOOM access.
37	Zoom calls with clients at jail

32. Do you have comments on representation at magistration in Montgomery County?

1	Adequate
2	Commented above. This has been a good proactive approach by Montgomery County.
3	doing good job
4	I heard of it happening, I think I could have applied for it, but I let it go.
5	I think it is a good idea.
6	I'm glad it is now a thing
7	I'm not part of that process, but glad that clients have a lawyer for them at magistration.
8	In Montgomery County there is a defense attorney provided at magistration/pc court.
9	N/A
10	no
-	
20	
21	No.
22	No.
23	No.
24	No.
25	NONE
26	Until recently, there's been none. I understand there is now.
27	Usually we get representation of the client after the client has been given his/her rights after the arrest.

33. Do you have comments on mental health resources for indigent defendants in Montgomery County?

1	Adequate
2	Availability of mental health for our clients is excellent. Never had a judge turn down mental health that is needed for a client.
3	Good resources, but DA frequently uncooperative when I seek mental health court as a ptd
4	I believe mental health resources are difficult to come by but don't think that is specific to Montgomery County.
5	I don't like the fact that the D.A. has to agree to put someone into Mental Health Court.
6	I think the resources are very good
7	I would like to see more resources for people with mental health issues with anxiety and depression that don't qualify for MHTC.
8	It's tough. Resources exist, the the folks try hard.
9	jail needs to have a dr who can diagnose and prescribe on staff as the waitlist is months long, otherwise same issues as indigent people not charged with offenses in terms of resources
10	Montgomery County does not have adequate options to help non-violent defendants with real mental health issues.
11	More is needed
12	Needs to increase
13	No
14	No
15	No
16	No
17	no
18	no
19	no
20	no
21	No.
22	NONE
23	Resources are excellent and I use them regularly with success.
24	Surprisingly good for such a conservative county. It's been more challenging with COVID. There was an excellent grant which allowed for Tri-County to be more involved and help with the process from intake to
25	the indigent services group is great; efforts to marginalize or dismantle this group blunt their effectiveness and cost the county more than it saves
26	There are still too many mentally ill defendants being denied access to mental health court. The criteria allows the District Attorney to reject too many defendants
27	THEY ARE ADEQUATE
28	We are getting better.
29	we have a mental health department, but it doesn't really do anything helpful
30	We need more resident treatment options.
31	Wish there were better ones but that's kind of a state-wide issue.

32	Works well
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34. How could TIDC help improve indigent defense in Montgomery County?

1	Audit the number of felony appointed cases that go to trial
2	can't think of anything
3	Continue to set concrete guidelines and convey expectations
4	Create a program that would spread the most difficult cases out among the attorneys.
5	Expand mental health treatment access and dockets.
6	Free CLE opportunities. Support healthcare for all. (No, I'm not kidding). Perhaps help appointed clients understand all the methods of communication, and the best way to reach out to their lawyers is the communication the lawyer is best at (e-mail, phone, text, letters..).
7	Have a neutral party appoint attorneys/select contract attorneys...not the judges. If you look at one district court in Montgomery County, you will see that contract attorneys who have gone to trial, are not selected for the contract the next year.
8	Having a system that is fair to all the attorneys seeking felony appointments
9	I do not know.
10	I don't know what the TDIC authority is, so could only speculate.
11	I think the system works well.
12	INCREASE MINORITY REPRESENTATION PER COURT
13	It seems that the question of who is eligible for indigent representation is a statewide problem. It would be great if TIDC would allocate resources to the indigent defense offices to ensure that those who are receiving services are actually indigent.
14	Maintain forms of electronic court, visits, ect.
15	MAKE REVIEW OF HANDLING OUR CASES AVAILABLE TO LAWYERS ON REGULAR ANNUAL BASIS
16	More funds for investigation/less questioning of vouchers
17	Not sure, there seems to be many layers of red tape. I am not sure who does what and what the purpose of each group is
18	Not sure.
19	Place discretion for placement in Mental Health Court, Veteran's Court, Drug Court, DWI Court with the trial court after review and consultation with the District Attorney. District Attorneys are denying these courts to many defendants for which these courts were designed and funded.
20	Possibly more time especially on appeals.
21	Reduce the case load and increase fees. Not uncommon to receive a 25 to life case and notice of 15 to 25 other pending felony cases under investigation involving the client (slave labor for \$750.00 for trial and investigation).
22	review process needs to be clarified
23	The current OID staffers are phenomenal, and provide a lot of assistance to attorneys with issues in the technical programs. However, additional Administrative staff would be helpful to help with maintaining updated contact information, and handling administrative court resets in a uniform manner
24	Unsure



35. If you would like TIDC to follow up with you, please provide your name and contact information: [Answers redacted to preserve anonymity.]