



Supplement to Tom Green County Monitoring Report (2022): Additional Observations on Attorney Qualifications

Part I. Performance Indicators

TIDC has historically monitored how counties admit attorneys to lists, but not how counties review attorneys' 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 Tom Green County's District Court and County Court indigent defense plan² and interviewed local officials and staff to learn about procedures for performance review. The plan begins by stating that criminal court judges in Tom Green County (and other counties joining in the regional plan) "are committed to providing quality legal representation to indigent criminal defendants." The plan lists the minimum qualifications for appointment lists, and states that they meet semi-annually and annually to review whether attorneys are eligible to be on lists.

Staff noted that the attorney pool is small, so judges know attorneys personally and see them on an almost daily basis, making quality issues apparent when present. Judges discuss client complaints about attorneys at monthly meetings and meet with

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=191>

attorneys if corrective action is needed. Corrective action has included reducing an attorney's caseload, referring them to a medical professional, and finding them a mentor. Attorneys can be sanctioned, downgraded, removed, or put on probation for failing to contact clients on time, violating rules of professional responsibility, or other listed factors. They can later reapply.

Caseloads

Attorneys need to spend enough time on each case to perform their basic duties.³ TIDC, in partnership with the Public Policy Research Institute at Texas A&M University, 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 no more than 226 misdemeanors, 128 felonies, 31 appeals, or a weighted combination of these cases. Tom Green County does not have caseload limits. In FY2019:

- Four percent (2 of 47) attorneys who were paid for felony, misdemeanor, or appellate cases in Tom Green County had statewide indigent defense caseloads above the Texas caseload guidelines.⁵
- Their median statewide indigent defense caseload was 32% of the guidelines.
- Including non-indigent-defense cases, 3 attorneys had total caseloads more than twice the guidelines.⁶
- Twenty-five attorneys who were paid for Tom Green County appointments did not file practice time reports for Tom Green County.⁷

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.")

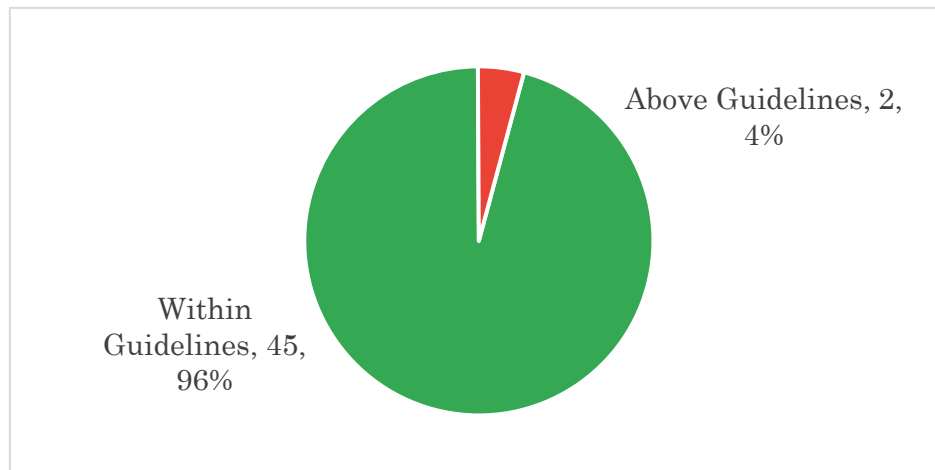
⁴ Case Loads, TEX. INDIGENT DEF. COMM'N, <http://tidc.texas.gov/caseloads>.

⁵ This estimate is from county auditor data, available at <http://tidc.tamu.edu/public.net/Reports/AttorneyCaseLoad.aspx>. This estimate does not include capital or juvenile indigent defense cases, civil appointments, or retained cases.

⁶ This estimate combines county auditor data with data from attorneys on the percent of their practice time dedicated to indigent defense. 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.

⁷ The local plan requires attorneys to file these reports to stay on appointment lists. Code of Criminal Procedure Article 26.04(j)(4) also requires attorneys to file these reports. Attorneys may not have filed reports if they finished work in FY18 and were paid in FY19.

Tom Green County FY19 Attorney Statewide Caseloads vs. Texas Guidelines



Use of Investigators

Attorneys have a duty to investigate the facts of each case.⁸ 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.⁹ TIDC's caseload guidelines recommend that, on average, for misdemeanors, 5.3% of case time (28.5 minutes) is spent on investigator investigation and, for felonies, 7.7% (85.3 minutes) of case time.¹⁰

The Tom Green County plan provides for payment for investigators but does not address when they should be used. According to interviews with staff, use of investigators in felonies has only recently been a regular occurrence and is rare in misdemeanors. Courts do not track investigator usage. In FY2019:¹¹

- Less than 1% of total misdemeanor expenditures (0.42%, \$1,021 of \$245,975) was for investigators.
- Around 2% of total felony expenditures (1.84%, \$24,435 of \$1,329,311) was for investigators.

⁸ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01.

⁹ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 3.08.

¹⁰ These recommendations are for cases that do not go to trial. More investigation time is recommended for cases that go to trial.

¹¹ Tom Green County Expenditure Report Summary, Fiscal Year 2019, Tex. Indigent Def. Comm'n,

<http://tidc.tamu.edu/public.net/Reports/CountyFinancialReport.aspx?cid=226&fy=2019>

Client Contact

Attorneys have a duty to communicate with defendants about their case.¹² Attorneys should be in regular contact, especially with clients who are in custody.¹³ They should also attempt to contact out-of-custody clients and discuss their cases out-of-court to ensure confidentiality¹⁴ and time to prepare.¹⁵ 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.¹⁶

The Tom Green County plan requires attorneys to contact clients by the first working day after appointment (as required by Code of Criminal Procedure Art. 26.04(j)(4)(1)) and timely inform clients of matters related to case preparation. Courts ask attorneys to report client meetings on payment vouchers, but do not systematically track client communication. No data were available to TIDC.

Summary

Tom Green County judges observe attorneys' in-court performance, review client complaints, and take corrective action if performance issues arise. The courts do not have a method for tracking attorneys' total caseloads, investigation, or client communication.

¹² 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.

¹³ *Id.*

¹⁴ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.05.

¹⁵ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01.

¹⁶ These recommendations are for cases that do not go to trial. More communication time is recommended for cases that go to trial.

Part II. Indigent Defense Attorney Survey and Interview Results

In April 2021, with assistance from local courts, TIDC distributed an online survey to Tom Green County indigent defense attorneys and received 13 responses.¹⁷ Respondents were self-selected and may not be representative. Full responses are below, alphabetized and numbered. Notable observations included:

- **Oversight.** All but one attorney says there is adequate oversight of attorneys in Tom Green County.
- **Caseloads.** Attorneys said that they have too many cases, and the pandemic has made the situation worse.
- **Investigation.** Attorneys most often said they “rarely” request an investigator for a misdemeanor case and “sometimes” do for a felony. Attorneys noted that, while prosecutors have in-house investigators and police to rely on for investigation, it is difficult to get court approval for defense investigators, and there are few local investigators available for defense investigation.
- **Client Communication.** Attorneys most often said they can “often” communicate effectively with clients. Some noted that the new jail is far away and has not set up a video visitation system during the pandemic.
- **COVID-19 and Online Courts.** Attorneys all reported appearing in online courts. They found online courts appropriate for some hearings but not others.
- **Tom Green County.** When asked about what is working well and not working well in Tom Green County, some attorneys said that court appointments and cases are processed quickly, while others said there are too few local attorneys taking too many cases.

¹⁷ In FY2019, 47 attorneys had indigent defense cases in Tom Green County.

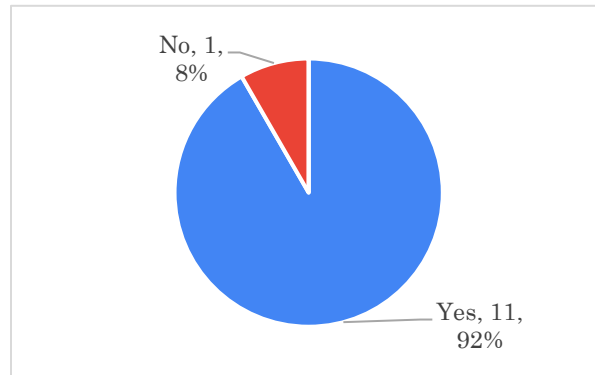


Survey Responses

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Oversight

1. Is there adequate oversight of appointed attorneys in Tom Green County?
[Provided answers: Yes; No; I don't know; Other]



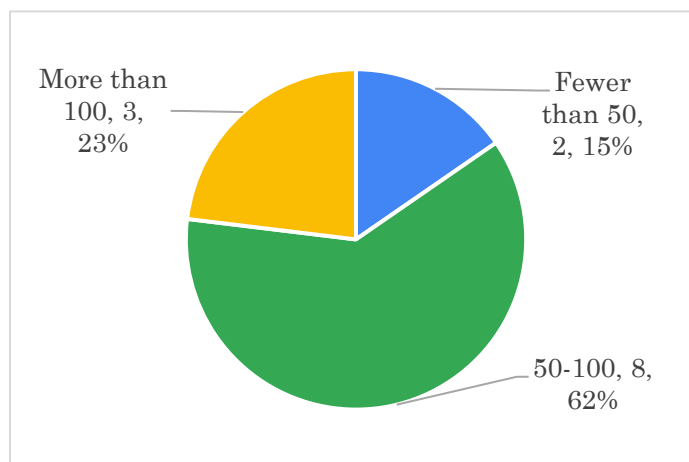
2. If you have other comments on oversight, please share them here:

	Responses listed alphabetically:
•	The Judge's do a sufficient job overseeing the activities of the attorney's and identifying potential issues

Caseloads

3. About how many indigent defense cases do you have per year in Tom Green County?

[Provided answers: Fewer than 50; 50-100, More than 100; I don't know; Other]



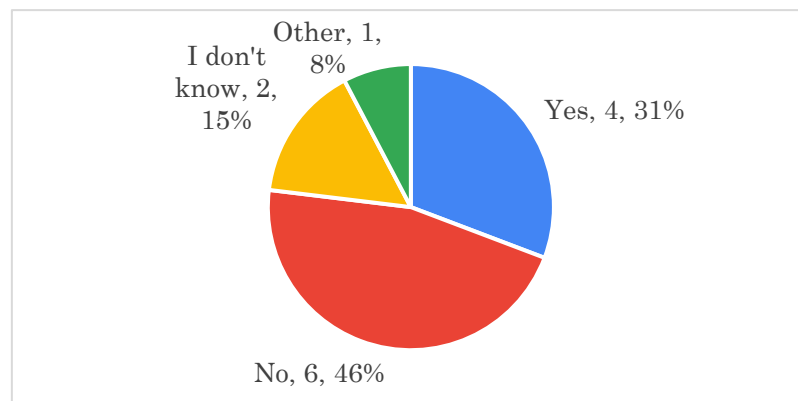
4. What types of work do you do beside indigent defense, if any?

	Responses listed alphabetically:
•	Civil

•	CIVIL CASES
•	Corporate Law, Civil litigation, family law
•	CPS, Probate
•	Criminal Defense
•	family cps
•	Family Law, CPS, Personal Injury, Estates, Civil Litigation
•	Family, CPS & indigent defense in outlying counties
•	personal injury
•	probate domestic relations
•	Retained criminal cases.
•	retained criminal defense & family law
•	Retained Criminal work

5. Do attorneys taking appointments in Tom Green County have manageable caseloads?

[Provided answers: Yes; No; I don't know; Other



	“Other” responses listed alphabetically:
•	the pandemic has caused a rise in the number of pending cases and it is unmanageable at the moment.

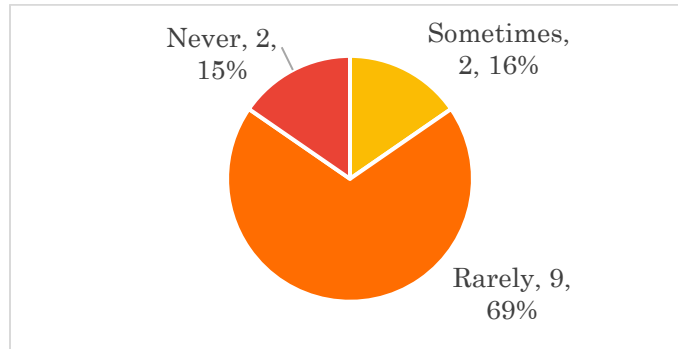
6. If you have other comments on caseloads, please share them here:

	Responses listed alphabetically:
•	It takes a commitment to mega-efficiency in order to maintain properly and to provide proper service to the clients
•	Not enough atty's practicing. Too many cases filed.
•	The caseloads for this county and surrounding counties are very demanding. I practiced many years in Houston, Texas before moving here and have found the number somewhat overwhelming at times. The slow-down during Covid-19 hasn't helped.
•	There are too many "cases" per an attorney. Is a "case" considered a charge or a Defendant. Either way, too many.

Investigation

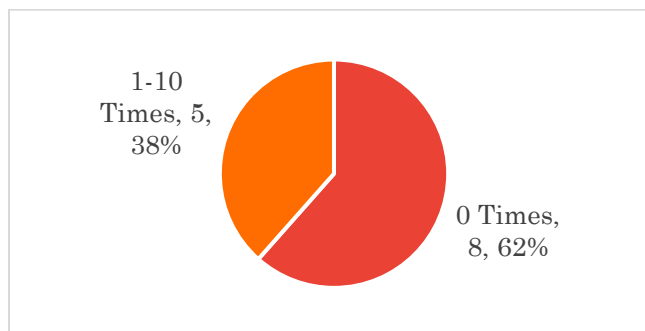
7. How often do you request an investigator for a misdemeanor case?

[Provided answers: Always (Every Case); Often; Sometimes; Rarely; Never (No Cases); Not Applicable]



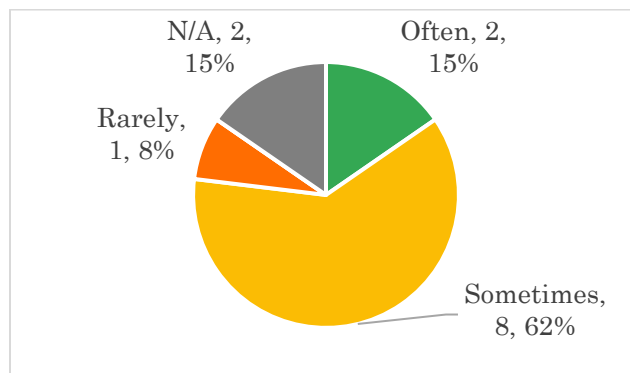
8. [About how] many times per year do you request an investigator for a misdemeanor case?

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



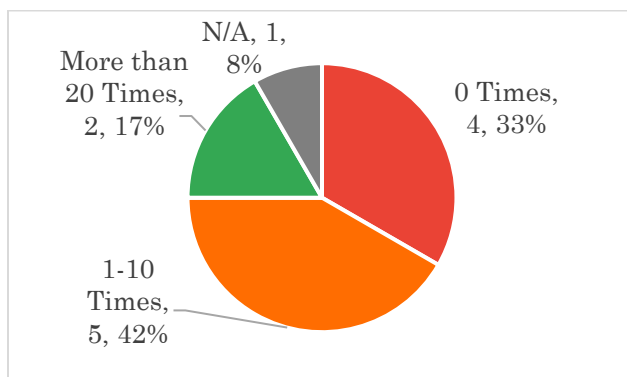
9. How often do you request an investigator for a felony case?

[Provided answers: Always (Every Case); Often; Sometimes; Rarely; Never (No Cases); Not Applicable]



10. [About how] many times per year do you request an investigator for a [felony] case?

[Provided answers: 0 Times; 1-10 Times; 11-20 Times; More than 20 Times; Not Applicable]



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

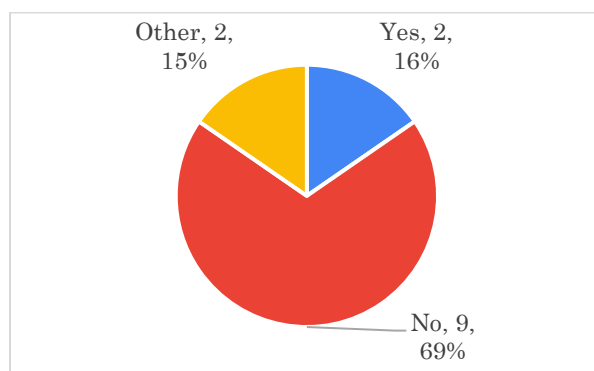
	Responses listed alphabetically:
•	assault
•	Child abuse, sex assault, higher level felonies
•	CRIMINAL
•	Felony-
•	First, Second, Third degree cases that are something besides simple drug possession.
•	Murder
•	Murder, Sex Assault, Aggravated assault, Complex theft case,
•	Murder, Sex Asslt. Child,
•	None
•	Sexual Assault, Murder, some White Collar crimes, etc...

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

	Responses listed alphabetically:
•	DWIs
•	hard to say - maybe a DWI
•	Misdemeanor cases
•	Most
•	Possession of a Controlled Substance
•	simple drug possession, assault family violence (single county)
•	uncomplicated ones

13. Have you had any difficulties receiving adequate funding for investigation in Tom Green County?

[Provided answers: Yes; No; Other]



	“Other” responses listed alphabetically:
•	I have been told through the grapevine that receiving money for this is rare. I investigate my own cases.
•	On Occasion - yes

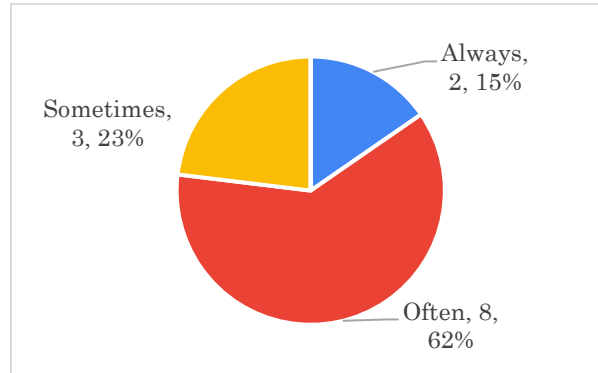
14. If you have other comments on investigation, please share them here:

	Responses listed alphabetically:
•	difficult to find qualified investigator in this area
•	Too few available.
•	You usually have to beg the District Court for it and provide a "reason" for it. That does not seem appropriate or fair considering the prosecutors in this county have multiple investigators on top of the investigative might provided by the various local policing agencies.

Client Communication

15. How often are you currently able to communicate effectively with clients?

[Provided answers: Always (Every Case); Often; Sometimes; Rarely; Never (No Cases); Not Applicable]



16. What are your biggest barriers to communicating with clients?

	Responses listed alphabetically:
•	Can't find them
•	Changing their phone numbers
•	client failure to show or answer my calls
•	GETTING THEM TO CALL OR COME INTO OFFICE
•	inmates being housed in other counties because the jail has not been properly staffed here in Tom Green County.
•	Mental issues
•	Not having enough Contact information
•	Out of custody clients have not been forced to communicate with us due to the pandemic, therefore, they do not make the effort and are difficult to find (mostly the court-appointed ones). Visiting in-custody clients at our new jail is extremely cumbersome and overly time-consuming. They have not implemented a proper video conferencing system at the new jail despite having well over a year to do so (even with the pandemic).
•	Spending the time going to the new jail
•	the jail is slow, far away now, video doesn't work, somehow can't get zoom or skype to work - yet the inmates have access to internet and tablets
•	understaffed jail, lack of preparedness and training for video conferencing
•	zoom. pleas and court appearances need to be in person

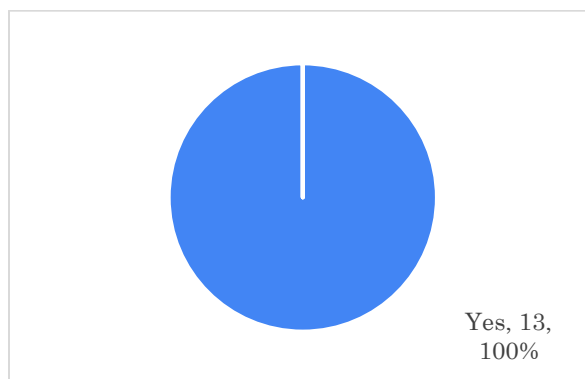
17. If you have other comments on client communication, please share them here:

	Responses listed alphabetically:
•	the clients out on bond - can somehow make a 100,000 bond and are gone at work all the time, we can never reach them, then they complain they never talk to us

COVID-19 and Online Courts

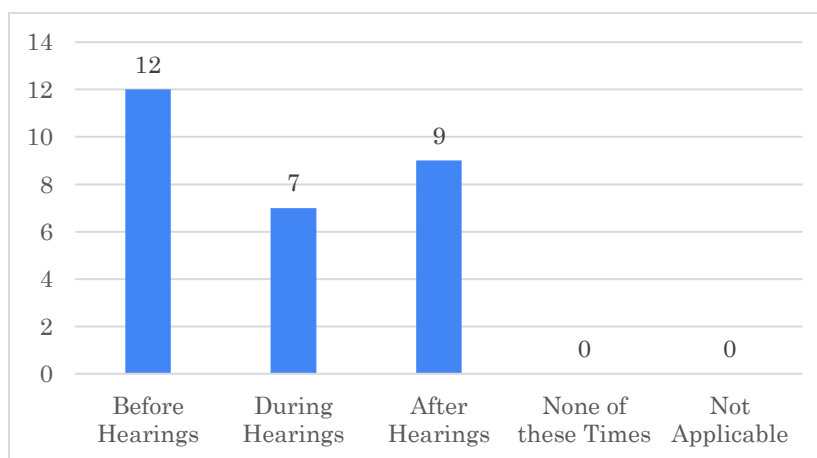
18. Have you appeared in online courts?

[Provided answers: Yes; No; Other]



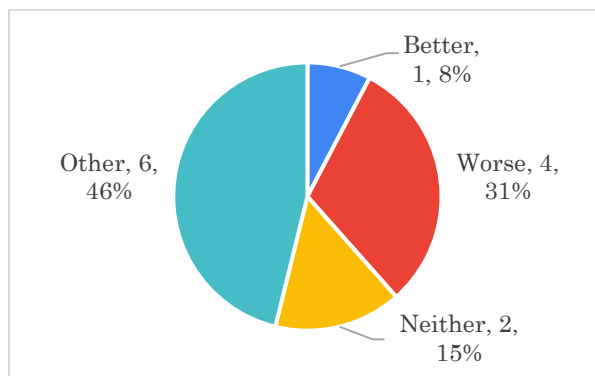
19. Since the COVID-19 pandemic began, at what times have you been able to confidentially communicate with clients? Select all that apply.

[Provided answers: Before Hearings; During Hearings; After Hearings; None of these times; Not Applicable]



20. Overall, do you think that online courts are better or worse for clients than in-person courts?

[Provided answers: Better than in-person; Worse than in-person; Neither better nor worse; No opinion; Not applicable; Option 6 {survey error}; Other]



	“Other” responses listed alphabetically:
•	better in 90% of cases - they need to be in person for contested cases only in my opinion
•	Better in some ways, worse in other ways.
•	Depends on what is happening in court. For routine or procedural hearings, it's great. For jury trials or lengthy motion hearings, not so much.
•	For "check-in " dockets they are better. For substantive matters, worse.
•	Guilty pleas seem to make no difference.
•	It depends on the type of hearing you are having. Overall it's more difficult.

21.If you have other comments on COVID-19 and online courts, please share them here:

	Responses listed alphabetically:
•	Judges are very accommodating and helpful.
•	the Courts have done well with all the limitations. It is way more efficient to continue to use the inline court systems
•	They seriously deprive citizens of important rights. I represent real people and our constitutional system has historically valued the in person contact between lawyers, judges, clients and jury members. Without that, I fear my client may become simply a faceless problem to be disposed of by a stressed system, without regard for the client's humanity.

Tom Green County

22. What is working well in Tom Green County's indigent defense system?

	Responses listed alphabetically:
•	cases are resolved promptly cooperative district and conty attorney
•	Court/ Admin get attorneys notice of appointments very quickly
•	Indigent defendants are able to receive representation from some very effective private-practice attorneys.
•	Nothing
•	Processing Cases
•	The court-appointed system works fine.
•	The entire system is overburdened.
•	The pay and the judge's understanding of the burden that Court appointed attorney's are currently under seeing as the first and second degree wheel are sparse

23. What is not working well in Tom Green County's indigent defense system?

	Responses listed alphabetically:
•	bail system
•	Having trouble locating Clients
•	Not enough attorneys want to take court appointments
•	Notification of Assigned cases.
•	Pleas could be set quicker; bonds could be lowered, so that people were out working - make them come back semi weekly before indictment to see how they are doing on hiring an attorney BEFORE indictment
•	See above.
•	the caseload. Too much
•	The courts do not properly determine if a defendant is truly indigent before appointing counsel.
•	TOO MANY CASES/DEFENDANTS
•	Too many court appointed cases, judges pushing their individual dockets In spite of overwhelming caseloads by appointed attorneys. Thinking that by pushing hard, the cases will work out when all that happens is that quality of work suffers & attorneys quit taking appointed cases Which compounds the problem.

24. How could TIDC help improve indigent defense in Tom Green County?

	Responses listed alphabetically:
•	Actual indigence as a true requirement for an appointment.
•	Do not grant the funds for a public defenders office to be established.
•	Have adequate number of attys & sufficient support services available like the DA office. We are presently at a huge disadvantage.
•	Have them check in more often

•	make more training available for lawyers and experts - re blood, dna, crime scene analysis, etc., the State has way more resources than the defense ever does
•	more attorneys?
•	Public Defender office well staffed and compensated.

25.If you would like TIDC to follow up with you, please provide your name and contact information:

[Answers redacted.]