

State of Indiana

Justice Reinvestment Advisory Council



Report on Indigency Determinations in Criminal Cases

July 1, 2025

Table of Contents

Table of Contents.....	1
Executive Summary	1
Workgroup Members.....	1
Overview of Statutory Charge	2
Overview of Indigency Determinations	2
Overview of Statutory Duties of State Entities Establishing Standards and Guidelines for Indigency Determinations.....	3
Survey to Judicial Officers Making Indigency Determinations	7
Statutory scope	7
Survey Development and Methodology	7
Summary of Survey Results	8
Trial Court Survey Results	8
City and Town Court Survey Results.....	10
Recommendations	12
Conclusion	13
Appendices	14
APPENDIX A Indiana Code – Indigency.....	14
APPENDIX B Indiana Caselaw - Indigency	22
APPENDIX C Supplemental Materials	26
APPENDIX D Trial Court Survey on Process for Determining Indigency for the Appointment of Counsel	28
APPENDIX E City and Town Court Survey on Process for Determining Indigency for the Appointment of Counsel.....	48

Executive Summary

The General Assembly, in adopting S.E.A. 179-2024, directed the Justice Reinvestment Advisory Council to conduct a comprehensive survey of all Indiana trial courts that make indigency determinations for the purpose of appointing counsel in criminal cases. The statute outlined key areas to include within the survey as well as a list of information requested for the report along with comprehensive recommendations. To conduct this work, the Justice Reinvestment Advisory Council established a multidisciplinary workgroup.

The workgroup held meetings on June 28, 2024, August 30, 2024, February 7, 2025, April 11, 2025, and June 20, 2025. Throughout these meetings, the workgroup developed the required survey of judicial officers making indigency determinations in criminal cases; reviewed the survey results, current case law and statutes; discussed suggestions for improvements to develop the recommendations included within this report; and reviewed and finalized recommendations for approval by the Justice Reinvestment Advisory Council. On June 27, 2025, the Justice Reinvestment Advisory Council reviewed this report and approved its submission to the Legislative Council as required by statute.

The Justice Reinvestment Advisory Council and the workgroup are grateful to the Indiana Office of Court Services for providing staff support to the workgroup, specifically Jenny Bauer, Bobbi Carter, Jim Diller, Diane Mains, Patrick Joyce, Noora Al-Nadheri, and Michelle Goodman for their time and effort in supporting this study.

Workgroup Members

The [Justice Reinvestment Advisory Council](#) established a workgroup to conduct this study. The following workgroup members and interested stakeholders provided their knowledge and experience regarding appointing counsel in criminal cases:

Hon. Christopher Goff, Chair
Indiana Supreme Court

Christine Blessinger
Indiana Department of Correction

Therese Brown
Association of Indiana Counties

Bernice Corley
Indiana Public Defender Council

Sen. Aaron Freeman
Indiana General Assembly

Scott Hohl
Indiana Association of Community
Corrections Act Counties

Steve Luce
Indiana Sheriffs' Association

Derrick Mason
Indiana Commission on Court Appointed
Attorneys

Steve McCaffrey
Mental Health America of Indiana

Jim Oliver
Indiana Prosecuting Attorneys Council

Lindsey Villalpando
Probation Officers Professional Association
of Indiana

Howard Simms
Division of Mental Health and Addiction

Hon. Mark Spitzer
Indiana Judges Association

Overview of Statutory Charge

Senate Enrolled Act 179, Section 4, (P.L.111-2024) added a new statute, Ind. Code § 33-38-9.5-2.2, that directed the Justice Reinvestment Advisory Council to conduct a study of all Indiana Trial Courts regarding indigency determinations for the purpose of appointing counsel in criminal cases and submit a report to the Legislative Council before July 1, 2025.

Overview of Indigency Determinations

The right to counsel is guaranteed by both the 6th Amendment of the United States Constitution and Article 1, Section 13 of the Indiana Constitution. The Indiana Constitution provides greater protection than the federal constitution because the right to counsel in Indiana attaches upon arrest rather than when formal proceedings have been initiated, as with the federal right. See *State v. Taylor*, 49 N.E.3d 1019, 1024 (Ind. 2016). When a defendant requests the appointment of counsel, the court is then required to assess whether the defendant is indigent prior to making the appointment.

Indigency is generally understood to mean that a defendant lacks the financial resources to hire an attorney without imposing substantial hardship on the defendant or the defendant's family. See *Moore v. State*, 401 N.E.2d 676, 678 (Ind. 1980). In making an indigency determination,¹ the court, in its discretion, can find the person (1) fully indigent and appoint counsel, (2) partially indigent, appoint counsel, and assess the Supplemental Public Defender Fee,² or (3) not indigent.

In assessing indigency, Indiana Code and case law provide the court must review the defendant's complete financial situation, balance income versus liabilities, and consider a list of factors outlined in statute, case law, and additional information deemed relevant by the court. The court's inquiry must be adequate to explore these factors beyond mere superficial examination.

¹ The indigency determination discussed throughout this report is for the sole purpose of appointing counsel in a criminal case. There are other opportunities in which a court will assess for indigency regarding the ability to pay fines, fees, costs, etc., which are not covered by this material.

² The Supplemental Public Defender Fees in statute are set based on offense level (felony vs. misdemeanor) and half of these fees are deposited in the county's supplemental public defender services fund under IC 33-40-3-1 and the remaining half is deposited in the state public defense fund under IC 33-40-6-1.

The first opportunity for a court to assess whether a defendant is indigent and eligible for court-appointed counsel is at the initial hearing³ required by IC 35-33-7-6⁴ and shall consider the person's assets, income, and necessary expenses according to IC 35-33-7-6.5(a). In addition, the court may consider a person's eligibility for public assistance as sufficient evidence of indigency. See: IC 35-33-7-6.5(b). The court is permitted to make an initial determination pending receipt of supporting documentation under IC 35-33-7-6.5(c).

Frequently, the court receives testimony, under oath, from a defendant to gather the necessary information to make the indigency determination when there is a request to appoint counsel. The court may also use forms to gather the financial information from the defendant either at a hearing or by a written motion. The court can ask follow-up questions of the defendant at a hearing on the motion or request the defendant provide additional information or documentation. Depending on the situation, the court may also provide the defendant with time to attempt to hire counsel and address the final decision on indigency and appointment of counsel at a subsequent hearing.

A finding of indigency may be reviewed at any time if the court receives evidence of a material change in the defendant's circumstances or if the defendant fails to submit additional evidence as ordered by the court. See IC 35-33-7-6(g) and *Moore v. State*, 401 N.E.2d 676 (Ind. 1980). The defendant can file a written motion with the court or make a request in court on the record for an indigency determination and appointment of counsel at any time during the case. In addition, if the court finds the defendant has some ability to pay at any time during the case, the Supplemental Public Defender Fee must be assessed.⁵

A list of relevant statutes, case law, and key factors judicial officers should consider in making indigency determinations can be found in the appendix.

Overview of Statutory Duties of State Entities Establishing Standards and Guidelines for Indigency Determinations

The [Indiana Commission on Court Appointed Attorneys](#)⁶ is the only state entity which publishes standards and guidelines for indigency determinations. These standards are only applicable to

³ One of the purposes of the initial hearing is inform the defendant of their right to counsel and if the defendant is found indigent, appoint counsel. The initial hearing is held promptly after an arrest is made. If a defendant was arrested without a warrant and released on bail, the initial hearing is held within 10 days if the person was arrested for operating under the influence offense, or within 20 days if the person was arrested for any other offense. IC 35-33-7-1. If the defendant was arrested on a warrant and release by its terms, the initial hearing is held within 20 days of the defendant's arrest. IC 35-33-7-4 If the defendant was issued a summons, the initial hearing occurs on the date stated in the summons to appear. IC 35-33-7-3.5.

⁴ Indiana Rule of Criminal Procedure 2.3(D) permits counsel for a defendant to waive the initial hearing, effective January 1, 2024.

⁵ If the court's bail agreement provides for the deposited funds to be used to pay publicly paid costs of representation (as defined in IC 35-33-8-1.5), these costs may be collected when the bond is released. See IC 35-33-8-3.2.

⁶ The Commission, formerly known as the Indiana Public Defender Commission, is made up of eleven members as outlined in IC 33-40-5-2.

counties that voluntarily comply with the Commissions standards and guidelines in exchange for partial reimbursement of the county's indigent defense expenses. IC 33-40-5-4 states the Commission's duties:

(a) The commission shall do the following:

(1) Make recommendations to the supreme court⁷ concerning standards for indigent defense services provided for defendants against whom the state has sought the death sentence under IC 35-50-2-9, including the following:

- (A) Determining indigency and eligibility for legal representation.
- (B) Selection and qualifications of attorneys to represent indigent defendants at public expense.
- (C) Determining conflicts of interest.
- (D) Investigative, clerical, and other support services necessary to provide adequate legal representation.

(2) Adopt guidelines and standards for indigent defense services under which the counties will be eligible for reimbursement under IC 33-40-6, including the following:

- (A) Determining indigency and the eligibility for legal representation.
- (B) The issuance and enforcement of orders requiring the defendant to pay for the costs of court appointed legal representation under IC 33-40-3.
- (C) The use and expenditure of funds in the county supplemental public defender services fund established under IC 33-40-3-1.
- (D) Qualifications of attorneys to represent indigent defendants at public expense.
- (E) Compensation rates for salaried, contractual, and assigned counsel.
- (F) Minimum and maximum caseloads of public defender offices and contract attorneys.
- (G) Requirements concerning the creation and operation of a multicounty public defender's office created under an interlocal agreement as described in IC 33-40-7-3.5.

(3) Make recommendations concerning the delivery of indigent defense services in Indiana, including the funding and delivery of indigent defense services for juveniles.

⁷ See Criminal Rule 6.1 regarding these topics for capital cases. The Commission also publishes [reimbursement guidelines](#) for capital cases.

(4) Make an annual report to the governor, the general assembly, and the supreme court on the operation of the public defense fund.

(5) Make a report not later than December 1, 2029, to the legislative council and the budget committee concerning the up to forty percent (40%) reimbursement from the public defense fund for indigent defense services for misdemeanor cases under IC 33-40-6-4(d), IC 33-40-6-5(c), and IC 33-40-7-11(d).

(b) The commission must provide data and statistics concerning how the reimbursement has impacted attorney appointment rates, jail population, trial rates, and case outcomes in the report under subsection (a)(5).

(c) The report to the general assembly under subsection (a)(4) and to the legislative council under subsection (a)(5) must be in an electronic format under IC 5-14-6.

(d) The commission shall not:

(1) receive any additional appropriations from the general assembly for misdemeanor reimbursement; or

(2) reimburse a county other than a county described in IC 33-40-6-4(d) for misdemeanor reimbursement;

before July 1, 2029.

In carrying out these duties, the Commission publishes the [Standards for Indigent Defense Services in Non-Capital Cases](#) and [Guidelines Related to Non-Capital Cases](#) required for [participating counties](#) in order to qualify for a 40% reimbursement of public defense expenses in non-capital cases.⁸ The Commission's Standards for Indigent Defense Services in Non-Capital Cases outlines the considerations for determining eligibility for the appointment of counsel in Standard C. This standard provides:

ELIGIBILITY FOR APPOINTMENT OF COUNSEL. The comprehensive plan shall include the applicable rules and procedures for the determination of eligibility for the appointment of counsel at public expense, and shall contain the following provisions:

1. Substantial Hardship. Counsel will be provided to all persons who are financially unable to obtain adequate representation without substantial hardship to themselves or their families.

a. Ability to Post Bail. Counsel will not be denied to any person merely because the person is able to obtain pretrial release through a surety bond, property bond, or a cash deposit.

⁸ While these standards are required, the Commission has limited staff to fully review the counties' adherence to these provisions beyond reviewing submitted reports and required data to support claims for reimbursement. In addition, these standards are not enforceable by the Commission in counties which are not participating in the state reimbursement program.

b. Employment. Counsel will not be denied to any person merely because the person is employed.

2. Determining Eligibility. The determination of eligibility for the appointment of counsel will include an estimation as to the costs of retaining private counsel and a determination as to whether the person's disposable income and liquid assets are adequate to cover the costs of retaining private counsel.

a. Costs of Private Counsel. The determination of the costs of retaining private counsel shall be based upon the nature of the criminal charge, the anticipated complexity of the defense, the estimated cost of presenting a legal defense, and the fees charged by lawyers in the community for providing defense services in similar cases.

b. Income. Income shall include all salaries and wages after taxes, including interest, dividends, social security, unemployment compensation workers' compensation, pension, annuities, and contributions from other family members.

c. Expenses. Expenses shall include, but are not limited to, all living expenses, business or farm expenses, including food, utilities, housing, child support and alimony obligations, education or employment expenses, child care, medical expenses, and transportation.

d. Disposable Income. Disposable income shall be determined by assessing monthly income and subtracting monthly expenses.

e. Liquid Assets. Liquid assets shall include, but are not limited to, cash, savings and checking accounts, stocks, bonds, certificates of deposits, and equity in real and personal property exceeding the statutory allowances in I.C. 34-2-28-1 that can be readily converted to cash.

3. Confidentiality. If the accused is questioned about indigency in circumstances where the attorney-client privilege does not apply, the accused shall be advised that any statements made or information given may be used against him or her.

The Commission's Standards include commentary with guidance from relevant case law to assist with implementation of these provisions.

In addition to the above requirements, IC 33-40-6-4(d) permits the Commission to operate a pilot program⁹ for reimbursement of public defense expenditures in misdemeanor cases. Counties participating in the pilot program must use the [uniform form](#) created by the Office of Judicial Administration¹⁰ to assist them in making indigency determinations.

⁹ This program commences July 1, 2025, and is scheduled to end on June 30, 2029.

¹⁰ IC 33-24-6-3(a)(17) requires the Office of Judicial Administration to create this required form for the pilot counties.

Survey to Judicial Officers Making Indigency Determinations

Statutory scope

IC 33-38-9.5-2.2(a) requires the Justice Reinvestment Advisory Council to conduct a comprehensive survey of all trial courts that make indigency determinations for the purpose of appointing counsel in criminal cases and requires the following information to be gathered:

- procedures used in making indigency determinations when appointing counsel in criminal cases
- procedures used to verify the information provided to the court by a defendant, including income, assets, expenses, and employment status
- materials, forms, scales, income thresholds, written policies, and similar materials used in the determination of indigency
- methodology used to determine the cost to a defendant to retain private counsel in the community for a particular case level or type.

Survey Development and Methodology

The workgroup established a subcommittee to develop the survey questions and recommended that in addition to trial court judicial officers, city and town court judges should receive the survey to have more complete information regarding indigency determinations for criminal cases. The survey questions and the recommendation to expand the group of survey recipients were approved by the workgroup as well as the Justice Reinvestment Advisory Council. The survey responses were designed to be anonymous, based on the individual judicial officer's experience in making these determinations. In addition, responders were able to skip questions throughout the survey and were permitted to provide multiple responses when indicated. Also, the survey had additional logic built in so if a particular response required additional follow-up questions, it would only be presented as needed.

The survey was emailed to 514 trial court judicial officers (judges, magistrates, commissioners, and referees)¹¹ and forty-five city and town court judges on January 17, 2025, with a submission deadline of February 17, 2025. In addition to this direct communication a general message was sent on January 22, 2025, and three general reminders were sent in advance of the submission deadline.

¹¹ Judges and Magistrates are state-paid judicial officers and Commissioners and Referees are locally paid judicial officers.

Summary of Survey Results

After closing the survey, there were responses from 344 trial court judicial officers (67%) and twenty-two city and town court judges (49%).¹² The results are general in nature and should not be considered to account for every conceivable circumstance. When reporting percentages for survey responses, the calculation was based on the total number of responses to that survey question and not the total number of survey responses, since individuals were permitted to skip questions and provide multiple responses when appropriate. The full survey instruments provided to judicial officers are included in the Appendix along with the compilation of survey responses.

Trial Court Survey Results

There were 261 trial court judicial officers who indicated that they preside over criminal cases and would have been presented with the full list of survey questions, which included 74% trial court judges, 24% magistrates, and 2% commissioners and referees.¹³ The majority of respondents represent counties with six or less circuit and superior courts and indicated their county participates in the Commission on Court Appointed Attorneys' reimbursement program.

In summary, the majority of respondents reported the following:

- The policy for making indigency determinations is set by the individual judicial officer and is often unwritten,
- Initial hearings are conducted in a high percentage of criminal cases; misdemeanor cases had higher number of waivers of initial hearings,
- A majority of cases with initial hearings include the assessment of indigency for the appointment of counsel,¹⁴
- A majority of cases where indigency determination is made at the initial hearing resulted in the appointment of a public defender, and
- The information for indigency determinations is gathered under oath and subject to the penalties for perjury.¹⁵

All respondents reported using a dialogue to gather the necessary information to make an indigency determination. The dialogues include judicially developed whether by that judicial officer

¹²Some judicial officers may not have responded to the survey since it was focused on the appointment of counsel for criminal cases, even though the first survey question would have allowed them to exit the survey if they did not hear criminal cases. In addition, some city and town courts do not hear criminal cases.

¹³ In reviewing the complete results, note that counties with multiple trial courts establish which cases are heard by specific courts through a caseload allocation plan and some counties with multiple judicial officers may designate specific officers to conduct all initial hearings. Awareness of these factors can help in understanding some of the variations in responses.

¹⁴ Such assessment may not be conducted at the initial hearing in instances where private counsel appears at the initial hearing and files an appearance or the defendant indicates they are working to hire private counsel.

¹⁵ Note: The Code of Judicial Conduct Rule 2.9(C) provides that judicial officers "shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed." The provisions of the Code of Judicial Conduct also apply to all court employees. To maintain compliance with ethical obligations, the use of a dialogue is critical to ensuring information is fully presented, and requested forms or documentation are fully discussed in court on the record.

or borrowed from another judicial officer, provided in the criminal benchbook for judges, or county developed. Over half of the respondents reported using forms, poverty scales,¹⁶ income thresholds, or standards in their process. The use of a court dialogue to receive testimony under oath, along with any forms and other documentation, serve as the foundation to the court processes for receiving and reviewing requests for appointment of counsel in criminal cases.

The complexity of these decisions involves the evaluation of numerous criteria related to a defendant's financial situation. The survey listed twelve financial criteria and allowed respondents to include any other items¹⁷. The top six selected criteria include the defendant's income, employment status, liquid assets, housing status, equity in real estate, and monthly expenses/financial obligations. In addition to financial criteria, approximately 22% of respondents indicated that the shortage of attorneys in their area is a contributing factor when making determinations on the appointment of counsel.

The survey also inquired as to whether employment status or ability to post bail were alone sufficient to be found not indigent and an overwhelming majority of respondents report these were not sufficient alone. While some respondents said these factors alone were sufficient to deem someone not indigent, some explained that a defendant's status as unemployed would support an indigency finding, other responses indicated the determination could depend on the amount of bail posted.

When a defendant attempts to hire counsel or the court does not initially find a defendant indigent, the court will address the need for counsel at the next scheduled hearing. Some courts will refer to these as "status of counsel hearings" where defendants will report to the court if they are not successful in hiring an attorney. When this occurs, a vast majority of courts do not verify the information received from the defendant and many courts will set additional status of counsel hearings depending on the information provided. When defendants are seeking counsel, courts can provide information, such as a reference to the local bar association, reference to on-line resources, or reference to a list of attorneys accessible in the courthouse.

The survey also gathered information on Odyssey event codes used when documenting case activity.¹⁸ The "Indigent Counsel Appointed at Court Expense" event is configured at the state level for all courts. This event populates required reporting to the Office of Judicial Administration

¹⁶ Some examples include the Federal Income Guidelines for Legal Services Corporation, the Federal Poverty Guidelines determined by the Department of Health and Human Services, and the SNAP Income limits provide by Indiana's Family and Social Services Administration.

¹⁷ See page 40 of this report for the list of other factors trial court judicial officers provided in their survey responses.

¹⁸ Odyssey is the case management system used in Indiana Courts. In addition to general event codes, there can be specific event codes related to motions, orders, and statistical reporting. Event codes are configured, depending on the purpose of the code, at the state, county, or local court level. Local configuration provides the ability to ensure local procedures and processes are accounted for within the system. If any event code changes are requested there must be a systemic review to ensure local courts and parties are not negatively affected by any changes.

pursuant to Administrative Rule 1 for the [Annual Judicial Service Report](#) to provide a total number of counsel appointments by case type over a nine-year period.¹⁹

The last topic of the survey was to gather information on how courts identified the cost of private counsel as a part of the indigency evaluation process. A majority of respondents indicated they do not have a process to identify these costs in their community and a vast majority of respondents indicated they do not have compiled information on rates local attorneys generally charge for criminal cases. For respondents that indicated they have a process to identify costs of private counsel, a majority reported those costs are based on the level of offense (e.g., Level 1, 2, 3, etc.) while many others reported it was based on the type of offenses (e.g., theft, OWI, etc.).

City and Town Court Survey Results

There were 14 city and town court judges who indicated that they preside over criminal cases and were presented with the full list of survey questions.²⁰ The majority of respondents represent counties with three or more circuit and superior courts and indicated their county participates in the Commission on Court Appointed Attorneys' reimbursement program. It is important to note that city and town courts are not eligible for Commission reimbursement and, therefore, are not required to follow its standards.

In summary, the majority of respondents reported the following:

- The policy for making indigency determinations is set by the individual judicial officer and is often unwritten,
- Initial hearings are conducted in a high percentage of misdemeanor cases with a smaller percentage of waived cases,
- A lower percentage of cases with initial hearings included the assessment of indigency for the appointment of counsel,²¹
- In approximately 60% or less of the cases where an indigency determination is made at the initial hearing, a public defender is appointed, and
- The information for indigency determinations is gathered under oath and subject to the penalties for perjury.²²

¹⁹ For an example, see the [2023 Judicial Service Report](#), page 70. The chart displays by case type the number of appointments made and provides the current year's total case filings to evaluate the current year's data. The appointment of counsel is counted when it is entered on the case, which may differ from the year in which a case is filed.

²⁰ In reviewing the complete results, note that only a portion of city and town courts handle misdemeanor cases.

²¹ Such assessment may not be conducted at the initial hearing in instances where private counsel appears at the initial hearing and files an appearance or the defendant indicates they are working to hire private counsel.

²² Note: The Code of Judicial Conduct Rule 2.9(C) provides that judicial officers "shall not investigate fact in a matter independently, and shall only consider the evidence presented and any facts that may properly be judicially noticed." The provisions of the Code of Judicial Conduct also apply to all court employees. To maintain compliance with ethical obligations, the use of a dialogue is critical to ensuring information is fully presented, and requested forms or documentation are fully discussed in court on the record.

All respondents reported using a dialogue to gather the necessary information to make an indigency determination. They reported the sources for their dialogue included judicially developed by that judicial officer or borrowed from another judicial officer. Over half of the respondents reported using forms, poverty scales, or income thresholds in their process. The use of a court dialogue to receive testimony under oath, along with any forms and other documentation, serves as the foundation to the city or town court processes for receiving and reviewing requests for the appointment of counsel in criminal cases.

In examining the numerous criteria evaluated for this decision, the top seven selected criteria include the defendant's income, employment status, housing status, equity in real estate, monthly expenses/financial obligations, liquid assets, and defendant's vehicle.²³ The respondents indicated that the shortage of attorneys in their area is not a contributing factor when making determinations on the appointment of counsel, which differs from the trial court responses.

The survey also inquired whether employment status or ability to post bail were alone sufficient to be found not indigent and a majority of respondents reported these were not sufficient alone. Some respondents said that these factors alone were sufficient to deem someone not indigent. Examples of when it was sufficient to find indigency included if the defendant is unemployed, the amount of bail, and if attorney will accept bond assignment.

When defendants attempt to hire counsel or the court does not initially find defendants indigent, courts will address the need for counsel at the next scheduled hearing. Some courts will refer to these as status of counsel hearings where defendants will report to the court if they are not successful in hiring an attorney. When this occurs, a vast majority of courts do not verify the information received from the defendant and a few courts will set additional status of counsel hearings depending on the information provided. When defendants look for counsel, courts can provide information, such as referring them to the local bar association and directing them to on-line resources.

The survey also gathered information on Odyssey event codes used when documenting case activity.²⁴ The "Indigent Counsel Appointed at Court Expense" event is configured at the state level for all courts. This event populates required reporting to the Office of Judicial Administration pursuant to Administrative Rule 1 for the [Annual Judicial Service Report](#) to provide a total number of appointments of counsel by case type over a nine-year period.²⁵

²³ See page 55 of this report for the list of other factors city and town court judges provided in their survey responses.

²⁴ Odyssey is the case management system used in Indiana Courts. In addition to general event codes, there can be specific event codes related to motions, orders, and statistical reporting. Event codes are configured, depending on the purpose of the code, at the state, county, or local court level. Local configuration provides the ability to ensure local procedures and processes are accounted for within the system. If any event code changes are requested there must be a systemic review to ensure local courts and parties are not negatively affected by any changes.

²⁵ For an example, see the [2023 Judicial Service Report](#), page 70. The chart displays by case type the number of appointments made and provides the current year's total case filings to evaluate the current year's data. The appointment of counsel is counted when it is entered on the case, which may differ from the year in which a case is filed.

The survey also gathered information on how courts identified the cost of private counsel as a part of the indigency evaluation process. There was a split among respondents on having a process to identify these costs in their community and a vast majority of respondents indicated they do not have compiled information on rates local attorneys generally charge for criminal cases. For respondents that indicated they have a process to identify costs of private counsel, the respondents were split as to those costs being based on the level of offense (e.g., Level 1, 2, 3, etc.) compared to the type of offenses (e.g., theft, OWI, etc.).

Recommendations

The Justice Reinvestment Advisory Council, based on this comprehensive review of Indiana law, finds that courts have a significant role in evaluating defendants indigency status to ensure the Constitutional right to counsel is preserved. With these complex, individualized decisions, courts must consider statutory factors and case law as well as other relevant factors for a thorough assessment to determine indigency. As a result of this study, the Justice Reinvestment Advisory Council makes the following recommendations:

Short-term recommendations:

1. Education:

- The Office of Judicial Administration must continue training for judicial officers regarding indigency determinations that includes:
 - a. Constitutional obligations to provide counsel if a defendant is found indigent
 - b. Current resources available (including standard dialogue, Office of Judicial Administration form, Commission on Court Appointed Attorneys Standard C)
 - c. Current statutes and case law
 - d. Substantial hardship standard for assessing indigency
 - e. Processes and steps to ensure judicial officers are conducting a full review of a defendant's financial circumstances on the record
 - f. Emphasis that single factors are not treated as dispositive (e.g., employment status, posting bond, poverty scales), unless otherwise provided in statutes (e.g., IC 35-33-7-6.5(b)), providing the court may consider eligibility for public assistance as sufficient evidence to establish indigency)
 - g. Methods to provide general information to defendants to assist them with finding counsel consistent with the Code of Judicial Conduct
 - h. Information on Odyssey codes for Chronological Case Summaries and statistical reporting to the Office of Judicial Administration

2. Enhance defendants' access to list of available attorneys and provided range of private attorney costs in criminal cases:

- Bar associations should develop directories of area attorneys, including those from surrounding counties, who practice criminal law and make this directory available (e.g., online, at the courthouse, etc.) to more effectively facilitate defendants' ability to locate an

attorney to represent them. Access to attorney resources can reduce delays in finding an attorney and permit cases to proceed more efficiently.

- Bar associations should publish and maintain a report on the range of private attorney costs for criminal cases (e.g., by case type, offense type, or both) for courts to use along with other information in making indigency determinations.

Long-term recommendation:

1. Consider data and outcomes from the Commission on Court Appointed Attorneys' misdemeanor pilot program for future substantive changes.

The Commission on Court Appointed Attorneys is conducting a four-year misdemeanor reimbursement pilot program. Any future substantive changes to the process for making indigency determinations should be considered after the Commission's pilot is completed and the corresponding data is available. The pilot program timeframe is July 1, 2025 to June 30, 2029.

Conclusion

The Justice Reinvestment Advisory Council is grateful for the opportunity to study and review the legal framework for indigency determinations for the appointment of counsel in criminal cases and the practices of Indiana courts in making these determinations. These recommendations are designed to achieve the directive of this study and support the courts in Indiana with properly assessing individuals' indigency status prior to appointing counsel in criminal cases. The Council is willing to assist the General Assembly as needed to implement the recommendations contained in this report.

Appendices

APPENDIX A Indiana Code – Indigency

IC 33-37-2-3 Imposition, suspension, and reduction of costs; indigency hearing; time for payment; default

Sec. 3. (a) Except as provided in subsection (b), when the court imposes costs, it shall conduct a hearing to determine whether the convicted person is indigent. If the person is not indigent, the court shall order the person to pay:

- (1) the entire amount of the costs at the time sentence is pronounced;
- (2) the entire amount of the costs at some later date;
- (3) specified parts of the costs at designated intervals; or
- (4) the entire amount of the costs at some later date, less any amount credited under subsections (g) through (i) for the performance of:
 - (A) allowable community service work ordered by the court as part of the person's sentence or as part of the person's probation; or
 - (B) uncompensated volunteer work approved by the court at a nonprofit or municipal corporation that benefits the community, even if the volunteer work is not ordered by the court.

(b) A court may impose costs and suspend payment of all or part of the costs until the convicted person has completed all or part of the sentence. If the court suspends payment of the costs, the court shall conduct a hearing at the time the costs are due to determine whether the convicted person is indigent. If the convicted person is not indigent, the court shall order the convicted person to pay the costs:

- (1) at the time the costs are due; or
- (2) in a manner set forth in subsection (a)(2) through (a)(4).

(c) If a court suspends payment of costs under subsection (b), the court retains jurisdiction over the convicted person until the convicted person has paid the entire amount of the costs.

(d) Upon any default in the payment of the costs:

- (1) an attorney representing the county may bring an action on a debt for the unpaid amount;
- (2) the court may direct that the person, if the person is not indigent, be committed to the county jail and credited toward payment at the rate of twenty dollars (\$20) for each twenty-four (24) hour period the person is confined, until the amount paid plus the amount credited equals the entire amount due; or
- (3) the court may institute contempt proceedings to enforce the court's order for payment of the costs.

(e) If, after a hearing under subsection (a) or (b), the court determines that a convicted person is able to pay part of the costs of representation, the court shall order the person to pay an amount of not more than the cost of the defense services rendered on behalf of the person. The clerk shall deposit the amount paid by a convicted person under this subsection in the county's supplemental public defender services fund established under [IC 33-40-3-1](#).

(f) A person ordered to pay part of the cost of representation under subsection (e) has the same rights and protections as those of other judgment debtors under the Constitution of the State of Indiana and Indiana law.

(g) Subject to subsection (h), a court may reduce some or all of the costs owed by a person who:

- (1) has satisfactorily performed court ordered community service work ordered as part of the person's:
 - (A) sentence; or
 - (B) probation; or
 - (2) regularly performed uncompensated volunteer work approved by the court at a nonprofit or municipal corporation that benefits the community, even if the volunteer work is not ordered by the court.
 - (h) If the person is sentenced pursuant to a plea agreement that requires the person to perform:
 - (1) a specific number of hours of community service work; or
 - (2) at least a specific number of hours of community service work;
- for purposes of subsections (g) and (i), the court may consider only those hours of community service work that exceed the minimum requirements of the plea agreement, if any.
- (i) The maximum reduction under subsection (g) shall be determined as follows:
 - STEP ONE: Determine the number of hours of community service work satisfactorily performed by the person that exceeds the minimum requirements under subsection (h), if applicable, and the number of hours of court approved uncompensated volunteer work regularly performed by the person.
 - STEP TWO: Multiply the number determined in STEP ONE by the amount of the Indiana minimum wage established under [IC 22-2-2](#).
 - STEP THREE: Subtract the product determined under STEP TWO from the costs owed by the person.
- A person's costs may not be reduced below zero (0).
- (j) For purposes of subsections (g) and (i), work is "regularly performed" if all of the following requirements are met:
 - (1) The person works for at least twenty (20) hours in a sixty (60) day period.
 - (2) The person works at least two (2) hours per week.
- [Pre-2004 Recodification Citation: 33-19-2-3.]
- As added by P.L.98-2004, SEC.16. Amended by P.L.156-2007, SEC.2; P.L.77-2019, SEC.1.*

IC 33-40-3-1 Supplemental public defender services fund; establishment

Sec. 1. A supplemental public defender services fund is established in each county. The fund consists of amounts deposited under:

- (1) section 9 of this chapter; and
- (2) [IC 35-33-8-3.3](#).

[Pre-2004 Recodification Citation: 33-9-11.5-1.]

As added by P.L.98-2004, SEC.19. Amended by P.L.173-2006, SEC.41.

IC 33-40-3-6 Payment by defendant for cost of public defender services; deposit of payments collected; maximum costs

Sec. 6. (a) Subject to subsection (e), if at any stage of a prosecution for a felony or a misdemeanor the court makes a finding of ability to pay the costs of representation under section 7 of this chapter, the court shall require payment by the person of the following costs in addition to other costs assessed against the person:

- (1) Reasonable attorney's fees if an attorney has been appointed for the person by the court.
- (2) Costs incurred by the county as a result of court appointed legal services rendered to the person.

(b) The clerk of the court shall deposit costs collected under this section into the supplemental public defender services fund established under section 1 of this chapter.

(c) A person ordered to pay any part of the costs of representation under subsection (a) has the same rights and protections as those of other judgment debtors under the Constitution of the State of Indiana and under Indiana law.

(d) The sum of:

- (1) the fee collected under [IC 35-33-7-6](#);
- (2) any amount assessed by the court under this section; and
- (3) any amount ordered to be paid under [IC 33-37-2-3](#);

may not exceed the cost of defense services rendered to the person.

(e) A court may not require payment for costs or fees under this section for a child alleged to be a delinquent child.

[Pre-2004 Recodification Citation: 33-9-11.5-6.]

As added by P.L.98-2004, SEC.19. Amended by P.L.151-2023, SEC.5.

IC 33-40-3-7 Payment by defendant for cost of public defender services; considerations

Sec. 7. (a) If a defendant is receiving publicly paid representation, the court shall consider:

- (1) the person's independently held assets and assets available to the spouse of the person or the person's parent if the person is unemancipated;
- (2) the person's income;
- (3) the person's liabilities; and
- (4) the extent of the burden that payment of costs assessed under section 6 of this chapter would impose on the person and the dependents of the person.

(b) If, after considering the factors described in subsection (a), the court determines that the person is able to pay the costs of representation, the court shall enter a finding that the person is able to pay those additional costs.

[Pre-2004 Recodification Citation: 33-9-11.5-7.]

As added by P.L.98-2004, SEC.19. Amended by P.L.151-2023, SEC.6.

IC 33-40-6-1 Purpose; administration; use of funds

Sec. 1. The public defense fund is established to receive court costs or other revenues for county reimbursement and administrative expenses. The fund shall be administered by the Indiana commission on court appointed attorneys (established by [IC 33-40-5-2](#)). Money in the fund may be used to pay the expenses incurred by the justice reinvestment advisory council under [IC 33-38-9.5-2.2](#).

[Pre-2004 Recodification Citation: 33-9-14-1.]

As added by P.L.98-2004, SEC.19. Amended by P.L.161-2018, SEC.105; P.L.111-2024, SEC.8.

IC 33-40-6-4 Certified request for reimbursement for indigent defense services

Note: This version of section effective 7-1-2025. See also preceding version of this section, effective until 7-1-2025.

Sec. 4. (a) For purposes of this section, the term "county auditor" includes a person who:

- (1) is the auditor of a county that is a member of a multicounty public defender's office; and
- (2) is responsible for the receipt, disbursement, and accounting of all monies distributed to the multicounty public defender's office.

(b) A county auditor may submit on a quarterly basis a certified request to the Indiana commission on court appointed attorneys for reimbursement from the public defense fund for an amount equal to fifty percent (50%) of the county's expenditures for indigent defense services provided to a defendant against whom the death sentence is sought under [IC 35-50-2-9](#).

(c) Except as provided in subsection (d), a county auditor may submit on a quarterly basis a certified request to the Indiana commission on court appointed attorneys for reimbursement from the public defense fund for an amount equal to forty percent (40%) of the county's or multicounty public defender's office's expenditures for indigent defense services provided in all noncapital cases except misdemeanors.

(d) This subsection applies to a county that is one (1) of up to twelve (12) counties that shall be selected by the Indiana commission on court appointed attorneys based on population and geographic diversity. A county auditor may submit on a quarterly basis a certified request to the Indiana commission on court appointed attorneys for reimbursement from the public defense fund for an amount that is up to forty percent (40%) of the county's or multicounty public defender's office's expenditures for indigent defense services provided in misdemeanor cases. This subsection expires June 30, 2029.

(e) The Indiana commission on court appointed attorneys may substitute a county described in subsection (d) with a county with similar population and geographic characteristics if the county described in subsection (d) declines to participate in the misdemeanor reimbursement. If a county is substituted under this subsection, the Indiana commission on court appointed attorneys shall publish on its website the replacement county.

(f) A request under this section from a county described in [IC 33-40-7-1\(5\)](#) may be limited to expenditures for indigent defense services provided by a particular division of a court.

(g) A county auditor shall submit quarterly to the Indiana commission on court appointed attorneys information to be included in the report under [IC 33-40-5-4\(a\)\(5\)](#) regarding reimbursements requested and received from the public defense fund for the county's expenditures for indigent defense services provided under subsections (b), (c), and (d).

[Pre-2004 Recodification Citation: 33-9-14-4.]

As added by P.L.98-2004, SEC.19. Amended by P.L.69-2019, SEC.2; P.L.104-2022, SEC.137; P.L.111-2024, SEC.9.

IC 33-40-6-5 Commission; amount of reimbursement for indigent defense services; disbursement

Note: This version of section effective 7-1-2025. See also preceding version of this section, effective until 7-1-2025.

Sec. 5. (a) As used in this section, "commission" means the Indiana commission on court appointed attorneys established by [IC 33-40-5-2](#).

(b) Except as provided under section 6 of this chapter, upon certification by a county auditor and a determination by the commission that the request is in compliance with the guidelines and standards set by the commission, the commission shall quarterly authorize an amount of reimbursement due the county or multicounty public defender's office:

(1) that is equal to fifty percent (50%) of the county's or multicounty public defender's office's certified expenditures for indigent defense services provided for a defendant against whom the death sentence is sought under [IC 35-50-2-9](#); and

(2) except as provided in subsection (c), that is equal to forty percent (40%) of the county's or multicounty public defender's office's certified expenditures for defense services provided in noncapital cases except misdemeanors.

The commission shall then certify to the state comptroller the amount of reimbursement owed to a county or multicounty public defender's office under this chapter.

(c) This subsection applies to a county that is one (1) of up to twelve (12) counties that shall be selected by the Indiana commission on court appointed attorneys based on population and geographic diversity. Upon certification by a county auditor and a determination by the commission that the request is in compliance with the guidelines and standards set by the commission, the commission may quarterly authorize an amount of reimbursement due the county or multicounty public defender's office that is up to forty percent (40%) of the county's or multicounty public defender's office's certified expenditures for defense services provided in misdemeanor cases. This subsection expires June 30, 2029.

(d) The Indiana commission on court appointed attorneys may substitute a county described in subsection (c) with a county with similar population and geographic characteristics if the county described in subsection (c) declines to participate in the misdemeanor reimbursement. If a county is substituted under this subsection, the commission shall publish on its website the replacement county.

(e) Upon receiving certification from the commission, the state comptroller shall issue a warrant to the treasurer of state for disbursement to the county or multicounty public defender's office of the amount certified.

(f) The commission shall include in its report under [IC 33-40-5-4\(a\)\(5\)](#) information regarding requested reimbursements and amounts certified for reimbursements to each county or multicounty public defender's office under subsections (b) and (c).

[Pre-2004 Recodification Citation: 33-9-14-5.]

As added by P.L.98-2004, SEC.19. Amended by P.L.161-2018, SEC.106; P.L.69-2019, SEC.3; P.L.9-2024, SEC.522; P.L.111-2024, SEC.10.

IC 33-40-6-6 Certified claims in capital cases given priority

Sec. 6. The commission shall give priority to certified claims for reimbursement in capital cases. If the balance in the public defense fund is not adequate to fully reimburse all certified claims in noncapital cases, the commission shall prorate reimbursement of certified claims in noncapital cases.

[Pre-2004 Recodification Citation: 33-9-14-6.]

As added by P.L.98-2004, SEC.19. Amended by P.L.85-2004, SEC.29.

IC 35-33-7-6 Indigent defendant; assignment of counsel; transfer of fees

Sec. 6. (a) Prior to the completion of the initial hearing, the judicial officer shall determine whether a person who requests assigned counsel is indigent under section 6.5 of this chapter. If the person is found to be indigent, the judicial officer shall assign counsel to the person.

(b) If jurisdiction over an indigent defendant is transferred to another court, the receiving court shall assign counsel immediately upon acquiring jurisdiction over the defendant.

(c) If the court finds that the person is able to pay part of the cost of representation by the assigned counsel, the court shall order the person to pay the following:

(1) For a felony action, a fee of two hundred dollars (\$200).

(2) For a misdemeanor action, a fee of one hundred dollars (\$100).

(d) If the court orders the person to pay an amount described in subsection (c)(1) or (c)(2), the court shall inquire at sentencing whether the person has paid the required amount.

(e) The clerk of the court shall deposit the first one hundred dollars (\$100) in a felony case and the first fifty dollars (\$50) in a misdemeanor case of the fees described in subsection (c) in the county's supplemental public defender services fund established by [IC 33-40-3-1](#).

(f) The clerk of the court shall transfer the remaining one hundred dollars (\$100) in a felony case and the remaining fifty dollars (\$50) in a misdemeanor case of the fees described in subsection (c) to the state comptroller for deposit in the public defense fund established by [IC 33-40-6-1](#).

(g) The court may review the finding of indigency at any time during the proceedings if:

- (1) the court receives evidence of a material change in the person's income or assets; or
- (2) the person has failed to provide the court with sufficient evidence, including documentary evidence, to sustain the court's initial indigency determination.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.216-1996, SEC.11; P.L.98-2004, SEC.139; P.L.140-2020, SEC.1; P.L.111-2024, SEC.16.

IC 35-33-7-6.5 Procedure to determine indigency; submission of uniform form, prorated payments

Sec. 6.5. (a) In determining whether a person is indigent, the court shall consider the following:

- (1) The person's assets.
- (2) The person's income.
- (3) The person's necessary expenses.

(b) The court may consider that a person's eligibility for:

- (1) the federal Supplemental Nutrition Assistance Program (SNAP) (except for 21 U.S.C. 862a(a));
- (2) the federal and Indiana TANF (Temporary Assistance for Needy Families) program (except for 21 U.S.C. 862a(a)); or
- (3) another need based public assistance program;

constitutes sufficient evidence to establish that a person is indigent.

(c) The court may issue an initial indigency determination pending receipt of documentary or other evidence from the person concerning the person's income, assets, expenses, or welfare eligibility.

(d) Each court in a county receiving reimbursement under [IC 33-40-6-5\(c\)](#) shall require a person claiming indigency to submit a uniform form, prescribed by the office of judicial administration, to assist the court in determining whether the person is indigent. The court shall review or designate a staff member to review the form submitted to ensure the accuracy of the information contained in the form before issuing an indigency determination under this section. The court may request any additional information needed from the person to verify the accuracy of the information submitted in the form.

(e) If the court finds that the person is able to pay some of the fines, fees, and court costs, the court may prorate the person's fine, fee, and court costs, and require the person to pay an amount that the person can reasonably afford.

As added by P.L.140-2020, SEC.2. Amended by P.L.111-2024, SEC.17.

IC 35-33-8-1.5 "Publicly paid costs of representation" defined

Sec. 1.5. As used in this chapter, "publicly paid costs of representation" means the portion of all attorney's fees, expenses, or wages incurred by the county that are:

- (1) directly attributable to the defendant's defense; and
- (2) not overhead expenditures made in connection with the maintenance or operation of a governmental agency.

As added by P.L.167-1987, SEC.8.

IC 35-33-8-3.2 Pretrial risk assessment; conditions to assure appearance; remittance of deposit; collection of fees *(relevant portion)*

Sec. 3.2. (a) After considering the results of the Indiana pretrial risk assessment system (if available), other relevant factors, and bail guidelines described in section 3.8 of this chapter, a court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

(1) Require the defendant to:

- (A) execute a bail bond with sufficient solvent sureties;
- (B) deposit cash or securities in an amount equal to the bail;
- (C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail;
- (D) post a real estate bond; or
- (E) perform any combination of the requirements described in clauses (A) through (D).

If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. Before execution of the agreement, the defendant or person who makes the deposit on behalf of the defendant shall be advised that, upon conviction of the defendant, the court may retain from the cash deposited as bail all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. The defendant must also pay the fee required by subsection (d).

(2) Require the defendant to execute:

- (A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; and
- (B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation that shall be disposed of in accordance with subsection (b), and the fee required by subsection (d). In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution. The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

...

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the person who made the deposit. The portion of the deposit that is not remitted to the person who made the deposit shall be deposited by the clerk in the supplemental public defender services fund established under [IC 33-40-3](#).

...

As added by P.L. 107-1998, SEC.2. Amended by P.L. 1-2001, SEC.36; P.L. 1-2003, SEC.91; P.L.98-2004, SEC.140; P.L.10-2005, SEC.4; P.L.1-2006, SEC.528; P.L.97-2006, SEC.1; P.L.173-2006, SEC.42; P.L.1-2007, SEC.226; P.L.104-2008, SEC.6; P.L.111-2009, SEC.7; P.L.94-2010, SEC.9; P.L.35-2012, SEC.107; P.L.187-2017, SEC.5; P.L.161-2018, SEC.115; P.L.147-2022, SEC.6; P.L.205-2023, SEC.30.

Other statutes of interest:

IC 12-10-7-2. “Indigent adult” defined. (Adult Guardianship Services)

As used in this chapter, “indigent adult” means an individual who:

- (1) Is at least eighteen (18) years of age;
- (2) Has no appropriate person to serve as guardian; and
- (3) Either:
 - (A) Has an annual gross income of not more than one hundred twenty-five percent (125%) of the federal income poverty level as determined annually by the federal Office of Management and Budget under [42 U.S.C. 9902](#); or
 - (B) Demonstrates the inability to obtain privately provided guardianship services.

P.L.2-1992, Sec. 4

IC 33-24-12-2. “Indigent” defined. (Civil Legal Aid Fund)

As used in this chapter, “indigent” means an individual whose income is not more than one hundred twenty-five percent (125%) of the federal income poverty level as determined annually by the federal Office of Management and Budget under [42 U.S.C.S. 9902](#).

P.L.98-2004, Sec. 3

APPENDIX B

Indiana Caselaw - Indigency

- I. **Moore v. State**, 401 N.E.2d 676 (Ind. 1980) – We find that the record does not show an adequate determination of the factual question of defendant's ability to afford counsel prior to trial. There is nothing in the record to show a balancing of defendant's assets against his liabilities and a consideration of the amount of defendant's disposable income or other resources reasonably available to him.
- A defendant charged with a crime is guaranteed the right to be represented by counsel by Ind. Const. article 1, § 13 and the Sixth and Fourteenth Amendments to the Constitution of the United States.
 - A failure to permit a defendant to have counsel amounts to a denial of due process, and there can be no valid criminal trial unless a defendant is represented by counsel if he desires counsel.
 - It is a judicial function to determine whether counsel shall be appointed at public expense, **Fulks v. State**, (1970) 255 Ind. 81, 262 N.E. 2d 651, and this determination is within the sound discretion of the trial judge. **Hendryx v. State**, (1892) 130 Ind. 265, 29 N.E. 1131.
 - Because it is such a fundamental constitutional right, the record in each case must show that careful consideration commensurate with the right at stake has been given to the defendant
 - The determination as to the defendant's indigency is not to be made on a superficial examination of income and ownership of property but must be based on as thorough an examination of the defendant's total financial picture as is practical. The record must show that the determination of ability to pay includes a balancing of assets against liabilities and a consideration of the amount of defendant's disposable income or other resources reasonably available to him after payment of fixed obligations. **People v. Castile**, (1979) 71 Ill. App. 3d 728, 390 N.E. 2d 426; **Minniefield v. State**, (1972) 47 Ala. App. 699, 260 So. 2d 607; **Morgan v. Rhay**, (1970) 78 Wash. 2d 116, 470 P. 2d 180. (p. 678-679)
 - The fact that the defendant was able to post a bond is not determinative of his non-indigency but is only a factor to be considered. **People v. Castile**, *supra*; **Perryman v. State**, (Tx. Crim. App. 1975) 519 S.W. 2d 438.
 - [T]he defendant does not have to be totally without means to be entitled to counsel. If he legitimately lacks financial resources to employ an attorney, without imposing substantial hardship on himself or his family, the court must appoint counsel to defend him." p. 679
 - A defendant's status at the time of his appeal is not relevant to the consideration of his indigency prior to trial because a determination of indigency must be made at any stage of the proceedings upon the defendant's request for counsel. **State ex rel. Grecco v. Allen Circuit Court**, (1958) 238 Ind. 571, 153 N.E. 2d 914; **State ex rel. Shorter v. Allen Superior Court**, (1973) 155 Ind. App. 269, 292 N.E. 2d 286.
 - Liquid assets discussed in the dissenting opinion

- II. **Graves v. State**, 503 N.E.2d 1258 (Ind. App. 1987) – The court found that the only issue that it needed to decide was whether defendant was denied his constitutional right to counsel. The court reversed defendant's conviction. The trial court did not adequately discharge its responsibility to determine defendant's indigency. Also, it did not determine whether defendant's election of self-representation was done knowingly, voluntarily, and intelligently. The trial court had made no thorough inquiry into defendant's financial condition. The conclusion from the record was inescapable that defendant was denied counsel merely because he posted bond, yet the record was uncontroverted that defendant was an unemployed student attending school on borrowed money, and his cousin had posted his bail. The record showed the court that defendant was entitled to appointment of counsel. Defendant's self-representation was coerced by his financial inability to hire counsel and the trial court's denial of appointed counsel, not due to a choice made by defendant.
- III. **Redmond v. State**, 518 N.E.2d 1095 (Ind. 1988) – Defendant was charged with rape and criminal deviate conduct. For a period of over ten months, defendant appeared in court on several occasions and clearly indicated that he did not wish to go to trial without being represented by counsel. Each time the defendant appeared in court he would again state his intention to employ counsel but advise the trial court that he was unable to raise the money to pay the fees quoted to him by attorneys. The matter proceeded to trial with defendant remaining unrepresented. The trial court convicted defendant as charged, and defendant sought review of the trial court's judgment, claiming that the trial court's refusal to appoint counsel violated his constitutional rights. On appeal, the court reversed the trial court's decision and remanded the matter for a new trial, finding that although the trial court showed great patience in allowing defendant time to appoint counsel, the likelihood that defendant could ever employ counsel was remote. The court ruled that the trial court should have appointed counsel on defendant's behalf because his expectation of being able to employ counsel of his own choosing was unrealistic.
- IV. **Vestal v. State**, 745 N.E.2d 249 (Ind. Ct. App. 2001), aff'd in part, vacated in part, 773 N.E.2d 805, 2002 Ind. LEXIS 667 (Ind. 2002) - Defendant was entitled to an indigency hearing regarding the order to reimburse the public defender fund for his appellate costs because a finding of indigency for appointing appellate counsel was not conclusive as to a defendant's ability to pay costs.
- V. **Turner v. State**, 755 N.E.2d 194 (Ind. Ct. App. 2001) - The trial court ordered the defendant to pay a \$1,000 public defender reimbursement fee. On appeal, the defendant argued that such a reimbursement fee "exceeded statutory limits." Id. at 199. In concluding that the trial court abused its discretion in ordering Turner to reimburse the public defender in the amount of \$1000, the appellate court considered the provisions of Indiana Code § 35-33-7-6(c):
- If the court finds that the person is able to pay part of the cost of representation by the assigned counsel, the court shall order the person to pay the following:
- (1) For a felony action, a fee of one hundred dollars (\$ 100).
- VI. **Dunkley v. State**, 787 N.E.2d 962, (Ind. Ct. App. 2003), limited, **Dorsett v. State**, 921 N.E.2d 529, (Ind. Ct. App. 2010) - Trial court met the indigency-hearing requirement for imposing fines and

costs as part of the sentence when it found defendant to be indigent, for purposes of appointing pauper counsel, prior to trial; a separate indigency hearing was not required.

- VII. **Hall v. State**, 826 N.E.2d 99 (Ind. Ct. App. 2005) - Defendant argued that the trial court abused its discretion when it appointed appellate counsel for him but ordered him to pay one-half of his appellate attorney fees and all of the costs of preparing the transcript. The court agreed, noting that a significant percentage of defendant's income was needed for his modest mortgage payment and there was no equity in his residence. Further, the court noted that defendant's income was well below the poverty guidelines for a family of two. Thus, defendant was indigent, and the trial court abused its discretion when it found that he was partially able to pay the costs associated with prosecuting his appeal.
- VIII. **Lamonte v. State**, 839 N.E.2d 172 (Ind. Ct. App. 2005) -At an initial hearing, the defendant was found indigent and a public defender was appointed to represent him. Following a bench trial, the defendant was convicted. Thereafter, the trial court held a hearing to determine if the defendant was indigent for purposes of appeal. At that hearing, the defendant submitted an affidavit attesting to his homelessness and that he was seeking disability due to symptoms of a disease. Additional hearings did not refute the defendant's claim of indigency. However, the trial court found him only partially indigent and ordered him to pay a portion of his appellate attorney fees. The appellate court found the trial court erred in ordering the defendant to pay \$400 to the Supplemental Public Service Fund, as nothing in the record indicated that the defendant's financial status had changed following the initial hearing.
- IX. **Davis v. State**, 843 N.E.2d 65 (Ind. Ct. App. 2006) - Trial court did not have the authority to order a presently indigent defendant to pay restitution based on possible future earnings or other speculative prospective wealth; as a result, the trial court erred in prospectively ordering the defendant to reimburse the public defender's fund \$16,350.
- X. **Banks v. State**, 847 N.E.2d 1050 (Ind. Ct. App. 2006) - A court must explicitly find a defendant can pay fees imposed as reimbursement to a county for counsel provided to the defendant at public expense, and if the defendant is indigent, the court may not impose public defender fees. Thus, where a trial court found the defendant to be indigent when it assigned a public defender to the defendant's case, and there was no further finding in the record regarding the defendant's indigency, imposition of a \$200 public defender fee against the defendant was an abuse of discretion.
- XI. **Rich v. State**, 890 N.E.2d 44 (Ind. Ct. App. 2008) – At sentencing, the trial court ordered the defendant to reimburse the public defender in the amount of \$200 as a condition of probation. The appellate court found that ordering reimbursement to the public defender was not an error under Ind. Code § 33-37-2-3(b) since the trial court did not have to consider the defendant's ability to pay until after he finished his sentence.
- XII. **Kimbrough v. State**, 911 N.E.2d 621 (Ind. Ct. App. 2009) - The trial court ordered the defendant to reimburse the public defender supplemental fund in the amount of \$500. The appellate court found no abuse of discretion in the order to reimburse the public defender without holding an indigency hearing because the defendant was not ordered to pay the fee immediately.

- XIII. Shively v. State**, 912 N.E.2d 427 (Ind. Ct. App. 2009) - At the initial hearing, the defendant requested the appointment of counsel at public expense. After receiving testimony on his financial situation, the trial court declined to appoint an attorney. When trial was scheduled to begin, the defendant moved for a continuance and reiterated his request for counsel. The trial court inquired about the defendant's ownership of real property, vehicles, and employment. The trial court erred in not appointing an attorney based on the defendant's income of \$34,000 in 2007 as a truck driver. The appellate court also found that Shively's financial situation had deteriorated as the proceedings progressed, noting that he was on track to make considerably less money in 2008 as he no longer had an income. The appellate court held that the trial court did not give careful consideration of the defendant's financial situation. There was no discussion about debt. The defendant had substantial financial obligations to his children. There was no indication that he had cash savings or equity in any non-cash assets he could liquidate to pay an attorney.
- XIV. Owens v. State**, 947 N.E.2d 482 (Ind. Ct. App. 2011) - Trial court did not err under Ind. Code § 33-37-2-3 in imposing the costs of representation without specifying in its sentencing order that the defendant would not be imprisoned for nonpayment thereof because the matter of the defendant's indigency was not yet ripe for appellate review where he had yet to complete his executed sentence. At the time of initial sentencing, the trial court was under no obligation to make a determination of defendant's ability to pay costs.
- XV. Spells v. State**, 225 N.E.3d 767 (Ind. 2024) - Under the new statutory standard, Ind. Code § 35-33-8-3.2, execution of a cash-bail agreement allows a trial court to retain the cash bail to cover public defender fees without an indigency hearing, but cash bail cannot be retained to pay fines or most fees/costs without an indigency hearing.
- XVI. Maze v. State**, No. 24A-CR-2596, 2025 Ind. App. LEXIS 173, __ N.E.3d __ (Ind. Ct. App., May 28, 2025) - The trial court failed to adequately inquire into Maze's necessary expenses, particularly in light of evidence that he needed his savings to support himself and his dependent son. Under the statutory framework, the court must consider a defendant's assets, income, and necessary expenses in determining indigency and eligibility for appointed counsel. When the record contains evidence demonstrating a defendant's inability to pay for counsel, the burden shifts to the State to rebut that evidence.

APPENDIX C

Supplemental Materials

Standards for Indigent Defense Services in Non-Capital Case ([Perma | www.in.gov](#))

Guidelines Related to Non-Capital Cases (<https://perma.cc/C4US-CA3E>)

Guidelines Related to Capital Cases ([Perma | www.in.gov](#))

Indiana Commission on Court Appointed Attorneys

Office of Judicial Administration – Petition for Appointment of Counsel ([Perma | www.in.gov](#))

List of Factors to Consider When Determining Indigency²⁶

While it is not possible to set specific monetary guidelines which would determine a defendant's indigency, there are several factors which must be considered:

1. Ability to post bond is one factor only. The fact that the defendant posted a bond does not determine that he is not indigent but is only a factor to be considered.
2. Employment
3. Property ownership and equity
4. Amount of income (gross, net and ultimately, disposable) [Caution: use of prior year's taxable income figure may be misleading. The most recent income information should be used.] *Shively v State*, 912 N.E.2d 427 (Ind. Ct. App. 2009)
5. Amount of other obligations
6. Expense for defense counsel
7. Hardship on family
8. Number of dependents
9. Dependents' incomes
10. Other kinds of hardship other than reduction of income
11. Child support obligations
12. Insurance payments for self and dependents
13. Attendance at school on borrowed money
14. Cash savings
15. Debt payments
16. Poverty guidelines (Poverty guidelines are a factor but not dispositive. *Hall v. State*, 826 N.E.2d 99 (Ind. Ct. App. 2005)).

²⁶ This is a non-exhaustive list provided to judicial officers by the Judicial Conference of Indiana's Criminal Benchbook Committee. This committee also provides a sample dialogue for courts.

Materials from surrounding states:

Illinois

- 725 Illinois Compiled Statutes 5/124A-20 – indigency statute ([725 Illinois Compiled Statutes 5/124A-20](#))
- Form: Application for Waiver of Criminal Court Assessments ([Application for Waiver of Criminal Court Assessments](#))
- Form: Order on Application for Waiver of Criminal Court Assessments ([Order on Application for Waiver of Criminal Court Assessments](#))

Kentucky

- Kentucky Revised Statutes § 31.110 Persons entitled to department representation and services – Extent of representation and services -- Rights of representation for persons subject to proceedings under KRS Chapter 202C. ([Kentucky Revised Statutes § 31.110](#))
- Kentucky Revised Statutes § 31.120 Determination of whether person needy -- Factors for determination -- Affidavit of indigency. ([Kentucky Revised Statutes § 31.120](#))

Michigan

- Michigan Compiled Laws 780.991 Michigan Indigent Defense Commission ([Michigan Compiled Laws 780.991](#))
- MIDC, Minimum Standards for Indigent Defense Services ([Minimum Standards for Indigent Defense Services](#))

Ohio

- Ohio Revised Code 120.05 Determination of Indigency ([Ohio Revised Code 120.05](#))
- Ohio Administrative Code, Rule 120-1-03 Standards of indigency ([Ohio Administrative Code, Rule 120-1-03](#))

APPENDIX D

Trial Court Survey on Process for Determining Indigency for the Appointment of Counsel

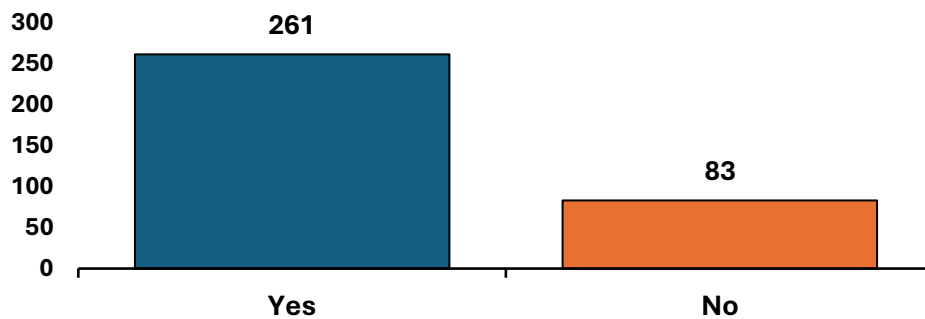
Introduction:

JRAC must conduct this survey regarding the process for determining indigency for appointing defense counsel pursuant to SEA 179-2024. The survey questions and results must be included within JRAC's report to the Legislative Council.

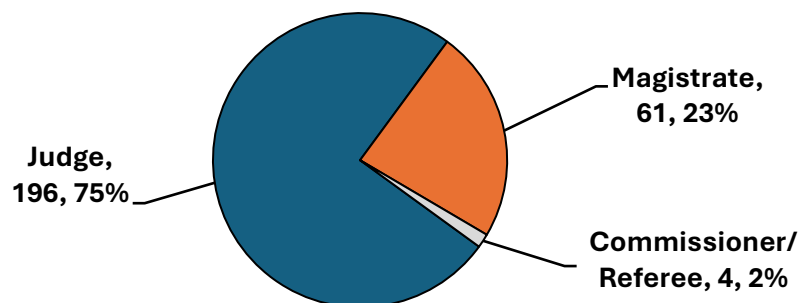
The survey focuses on the appointment of indigent counsel for criminal cases. Do not include information related to appointments of appellate counsel or non-criminal cases.

Questions:

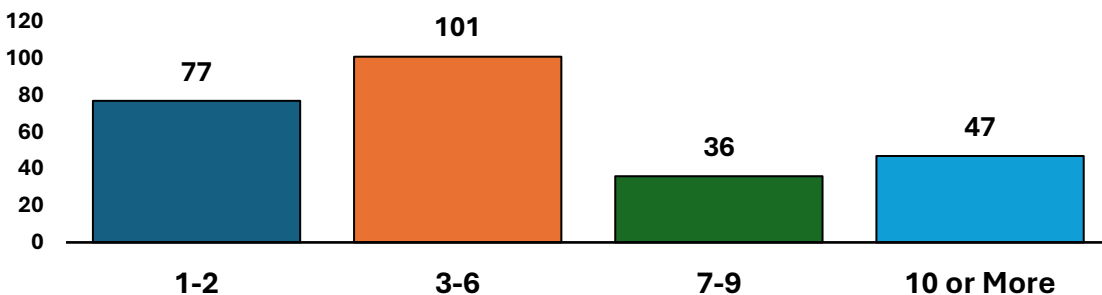
Do you preside over any criminal cases? *(If the answer to this question is "No" this will end the survey and take you to the review and submit page.)*



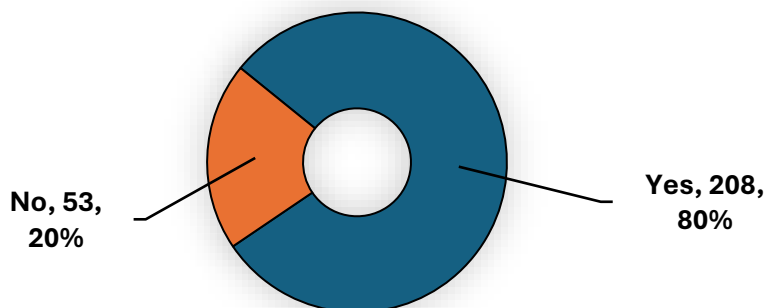
Current position:



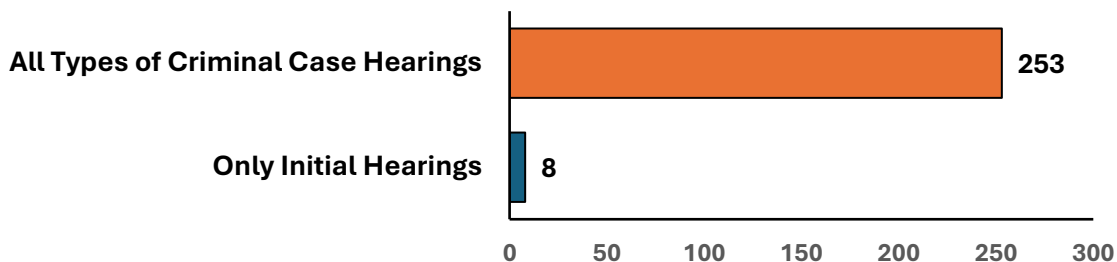
Number of Circuit and Superior Courts in your county:



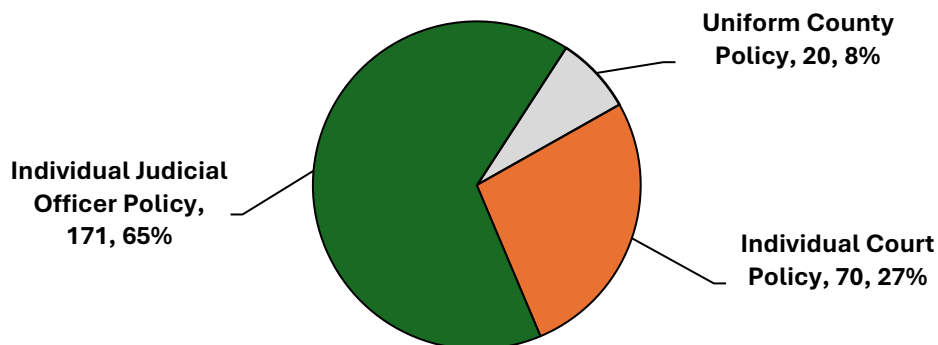
Does your county participate in the reimbursement program from the Commission on Court Appointed Attorneys (formerly the Public Defender Commission)?



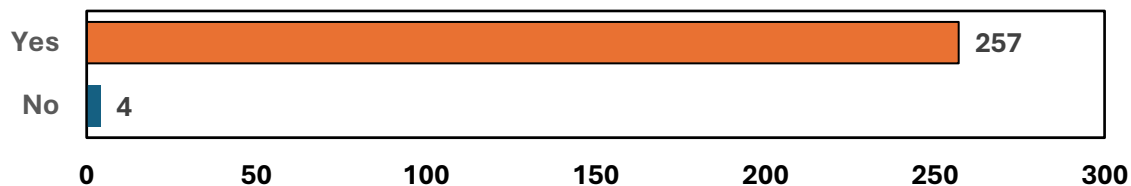
Do you preside over initial hearings only for criminal cases or do you preside over all types of criminal case hearings?



In reviewing indigency for the purposes of determining whether to appoint counsel, does your county have a uniform policy used county wide, a policy set in each court, or a policy set by the individual judicial officer?



In your role as a judicial officer, do you make indigency determinations for the purpose of appointing counsel? *(If the answer to this question is “No” there are two additional questions and then you will be directed to the review and submit page.)*



If no, who makes these determinations for the cases you hear? (Check all that apply.) *(This question is available if no is selected above.)*

- ☐ Judges
- ☐ Magistrates 1
- ☐ Commissioners/Referees
- ☐ Public Defender Office 3
- Other (describe below): None
- Describe other: None

If no, do you participate in setting a countywide policy for making these determinations?
(This question is available if no is selected above.)

☐ Yes **2**

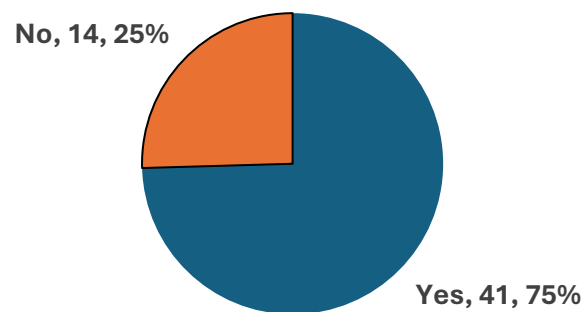
☐ If not, who does (describe below): **2**

Describe:

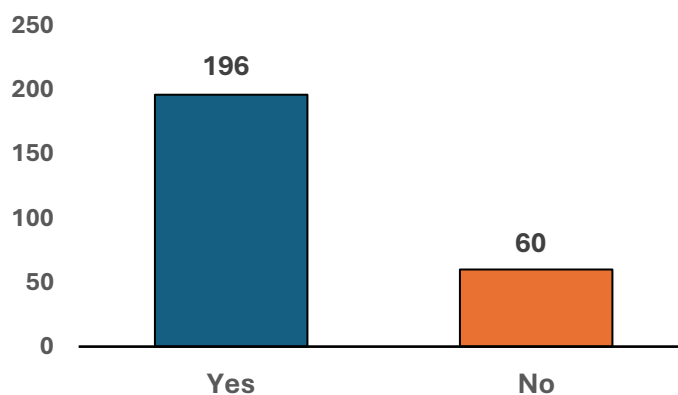
1 Public Defenders Office

1 Judicial Officers, Others

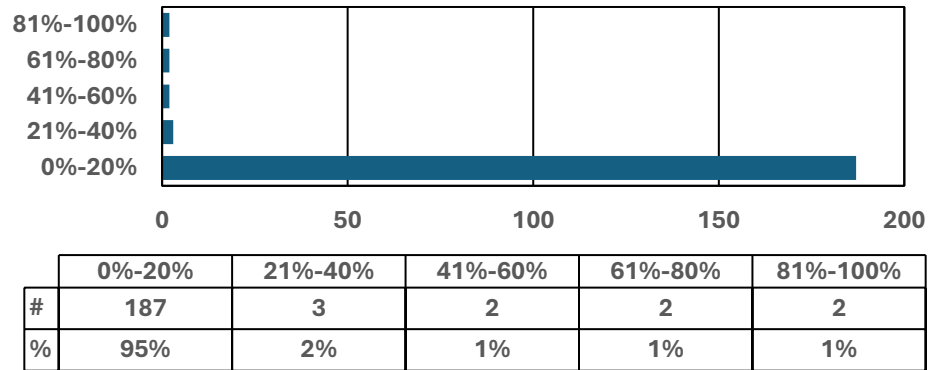
If you are a magistrate, commissioner, or referee, do you follow the same policy as your supervising judges in determining indigency for appointing counsel?



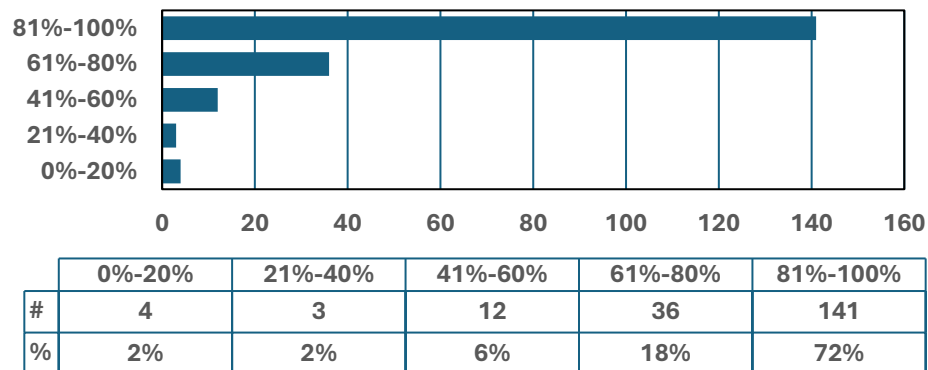
Do you determine indigency for the purpose of appointment of counsel of Major Felony – (MR, F1-4) cases? (If you answer yes, there are four additional questions related to percentage of cases.)



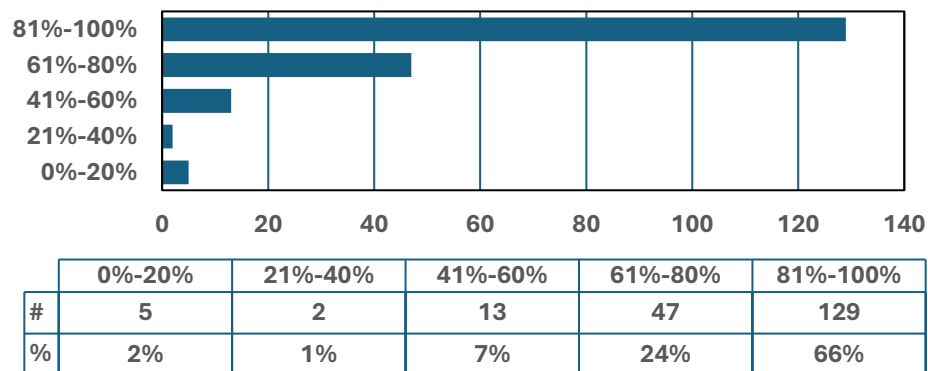
If yes, what percentage of cases have agreed to waive arraignment?



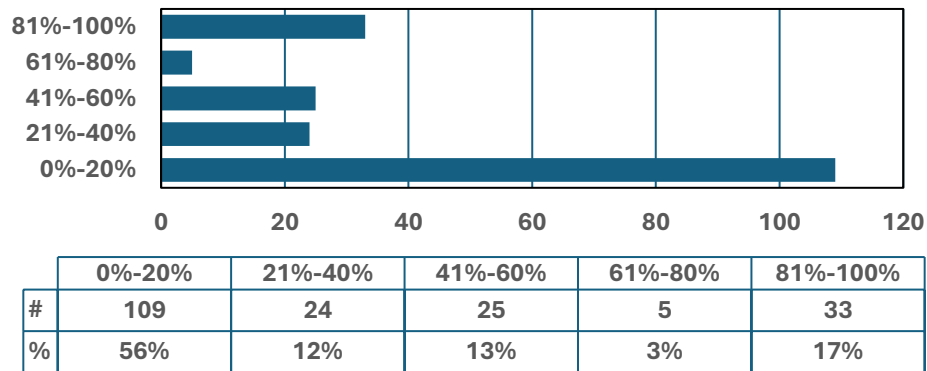
For cases of this type where arraignment is not waived, what percentage of defendants are assessed for indigency (for the purpose of appointment of counsel)?



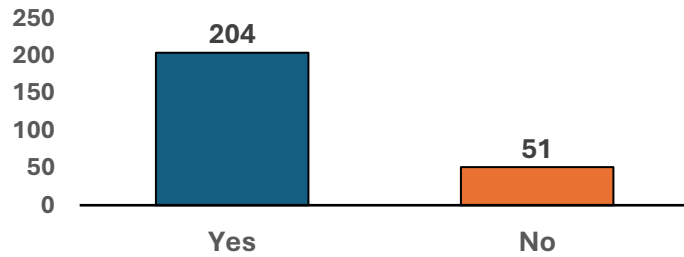
For cases of this type where arraignment is not waived, what percentage of defendants that are assessed for indigency do you appoint a public defender at the time of their first assessment?



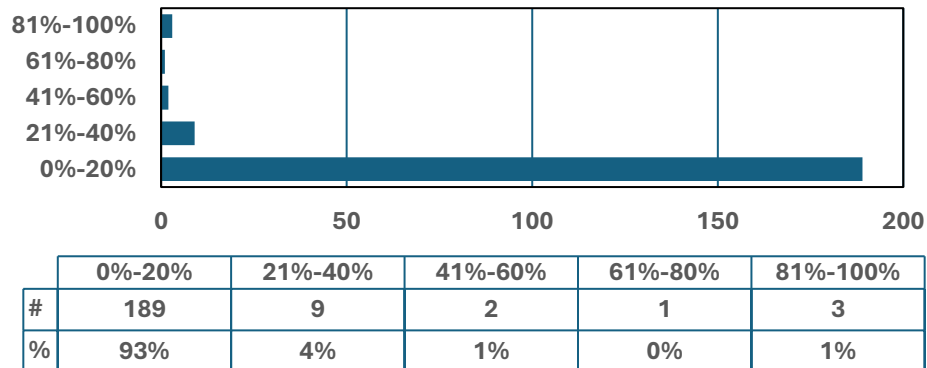
For cases of this type where arraignment is not waived, what percentage of defendants that are initially denied a public defender are appointed one at a later date?



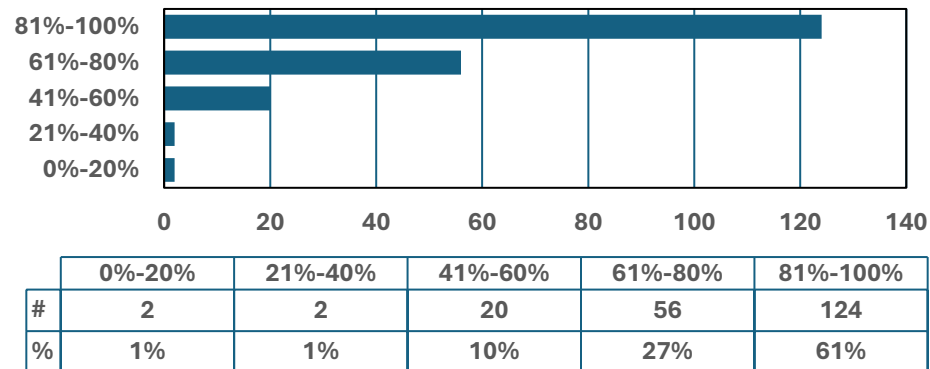
Do you determine indigency for the purpose of appointment of counsel of Felony 5 (F5) cases? *(If you answer yes, there are four additional questions related to percentage of cases.)*



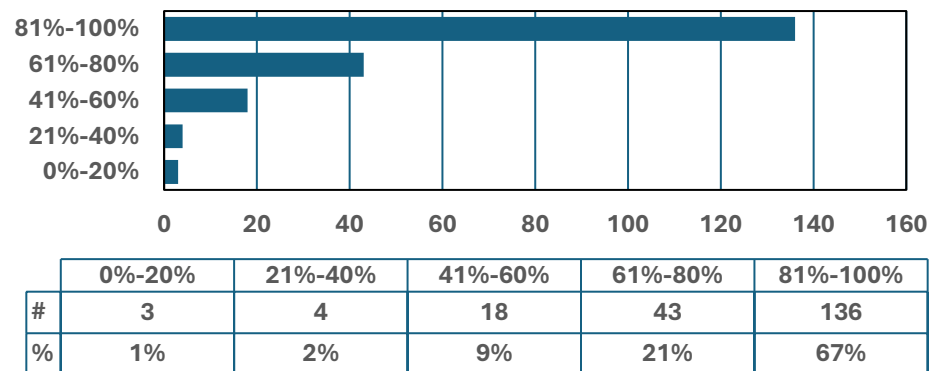
If yes, what percentage of cases have agreed to waive arraignment?



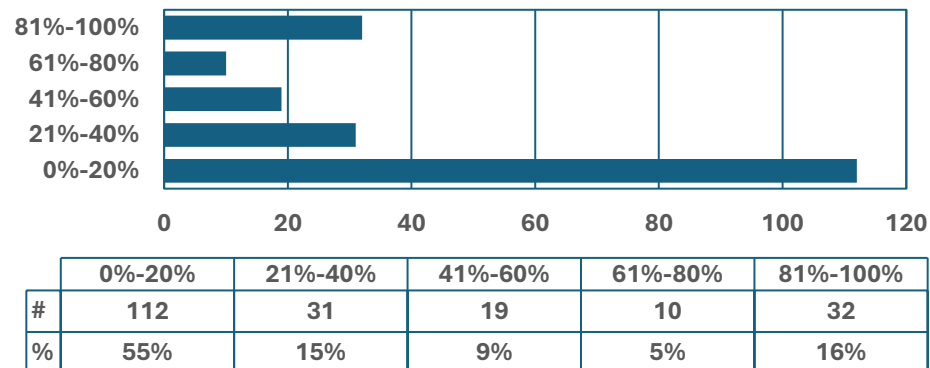
For cases of this case type where arraignment is not waived, what percentage of defendants are assessed for indigency (for the purpose of appointment of counsel)?



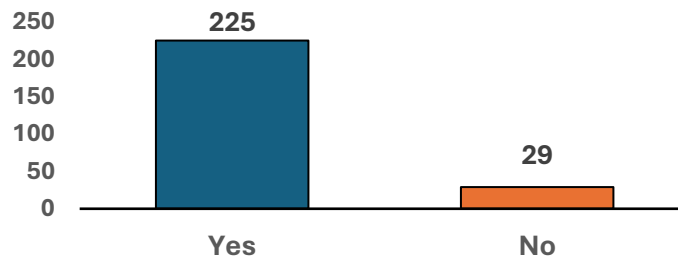
For cases of this case type where arraignment is not waived, what percentage of defendants that are assessed for indigency do you appoint a public defender at the time of their first assessment?



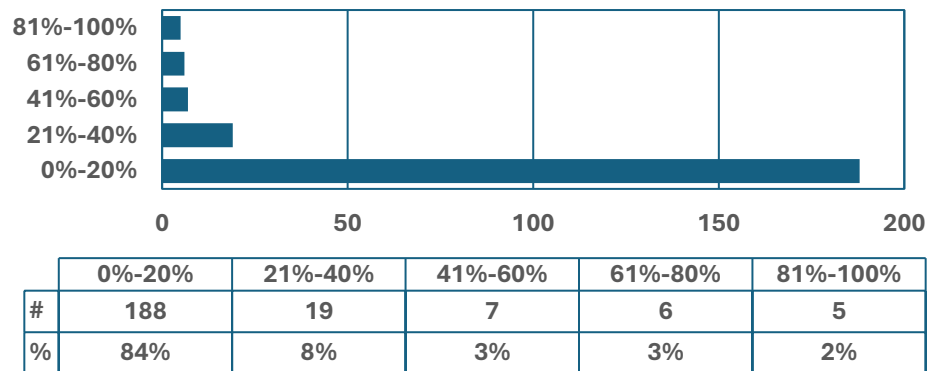
For cases of this type where arraignment is not waived, what percentage of defendants that are initially denied a public defender are appointed one at a later date?



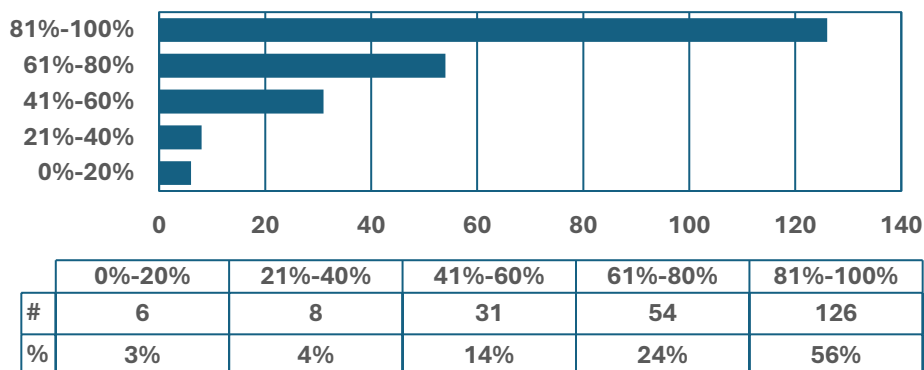
Do you determine indigency for the purpose of appointment of counsel of Felony 6 (F6) cases? (If you answer yes, there are four additional questions related to percentage of cases.)



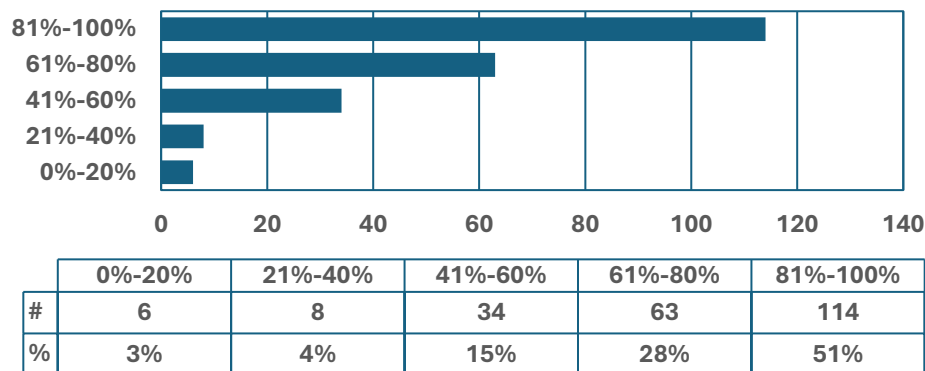
If yes, what percentage of cases have agreed to waive arraignment?



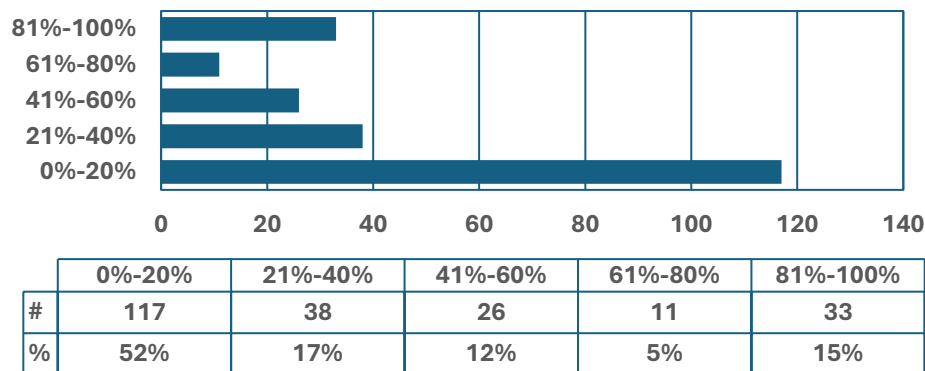
For cases of this type where arraignment is not waived, what percentage of defendants are assessed for indigency (for the purpose of appointment of counsel)?



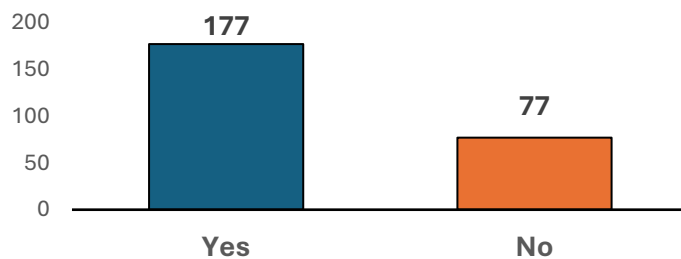
For cases of this type where arraignment is not waived, what percentage of defendants that are assessed for indigency do you appoint a public defender at the time of their first assessment?



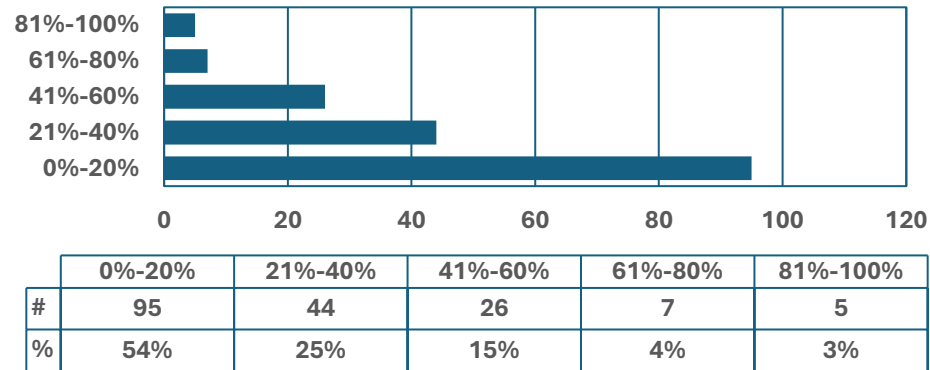
For cases of this type where arraignment is not waived, what percentage of defendants that are initially denied a public defender are appointed one at a later date?



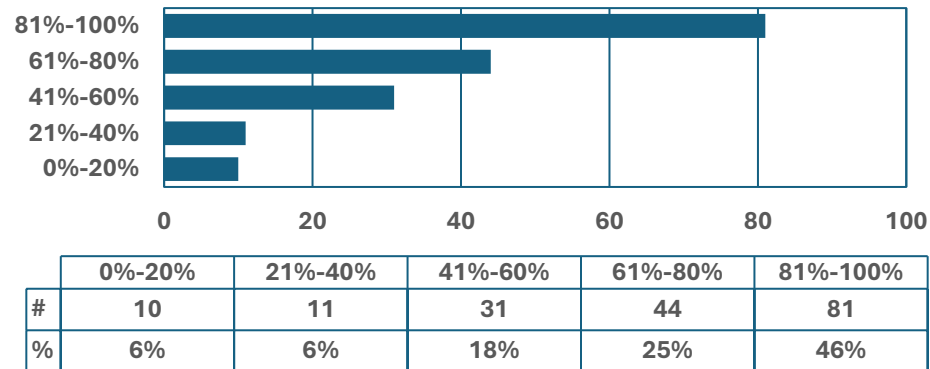
Do you determine indigency for the purpose of appointment of counsel of Criminal Misdemeanor (CM) cases? (If you answer yes, there are four additional questions related to percentage of cases.)



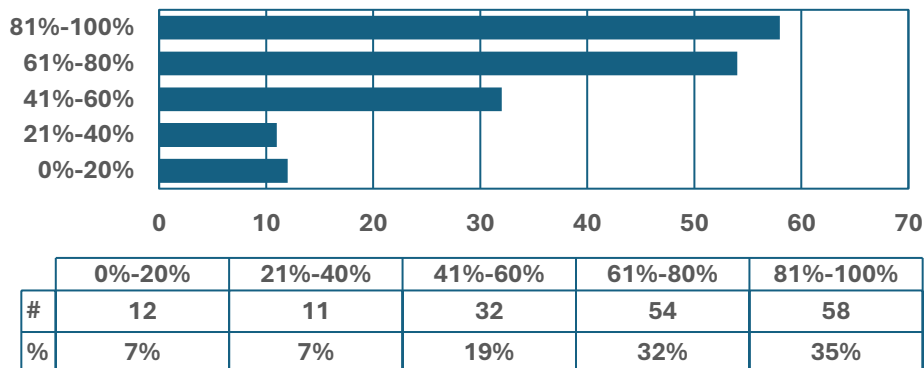
If yes, what percentage of cases have agreed to waive arraignment?



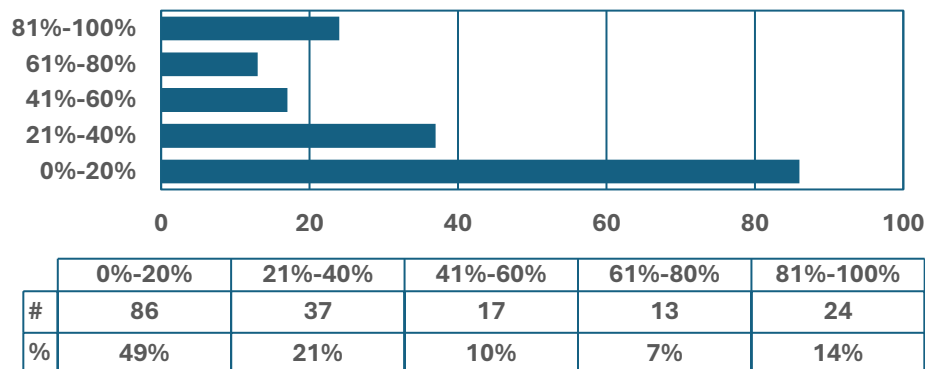
For cases of this type where arraignment is not waived, what percentage of defendants are assessed for indigency (for the purpose of appointment of counsel)?



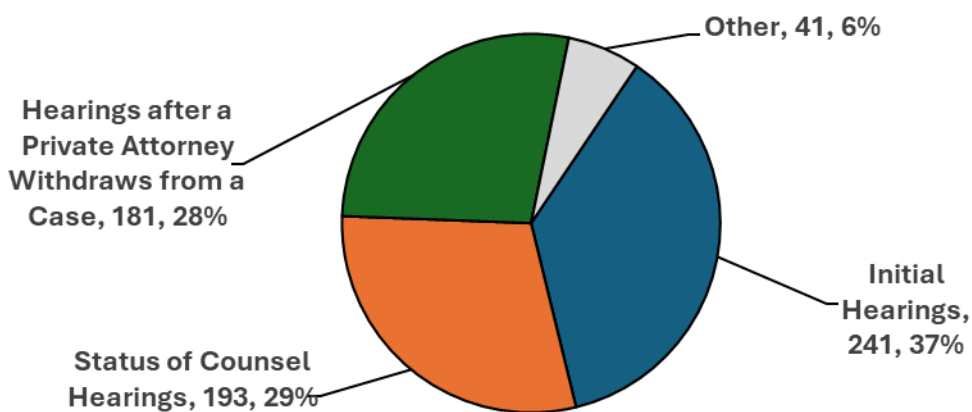
For cases of this type where arraignment is not waived, what percentage of defendants that are assessed for indigency do you appoint a public defender at the time of their first assessment?



For cases of this type where arraignment is not waived, what percentage of defendants that are initially denied a public defender are appointed one at a later date?



At what hearings do you assess for indigency to determine whether to appoint counsel? (Check all that apply.)



Explain Other:

20 = when requested at hearing, via motion or application; at any time in the case process

7 = pretrial conference

4= at hearing setting trial if pro se and prior to trial date to confirm

5= Petition to Revoke Probation; sentencing for appeal purposes; contempt citation; extradition; sentencing for fines/fees; Probable Cause hearing

5 = at specific hearing after initial hearing/first hearing with judge; hearing when increase in possible sentence due to petition or motion; when Public Defender withdraws; high bond is posted

What event codes in Odyssey do you (or your staff) use to document any of the following:

1. Appointment of counsel 2. Hearing to determine whether the defendant has obtained counsel or needs appointed counsel 3. The denial of appointment of counsel? (Check all that apply.)

<input type="checkbox"/> Motion for Public Defender Filed	75-29%
<input type="checkbox"/> Order Denying Motion for Public Defender	77-30%
<input type="checkbox"/> Order Granting Motion for Public Defender	79-31%
<input type="checkbox"/> Order Appointing Public Defender	123-48%
<input type="checkbox"/> Order Appointing Pauper Counsel	62-24%
<input type="checkbox"/> Indigent Counsel Appointed at Court Expense	172-67%
<input type="checkbox"/> Order Denying Pauper Counsel	45-18%
<input type="checkbox"/> Status of Counsel Hearing	125-49%
<input type="checkbox"/> Add Public Defender Flag to Odyssey Case	44-17%
<input type="checkbox"/> Other: (explain below)	24-9%

Explain other:

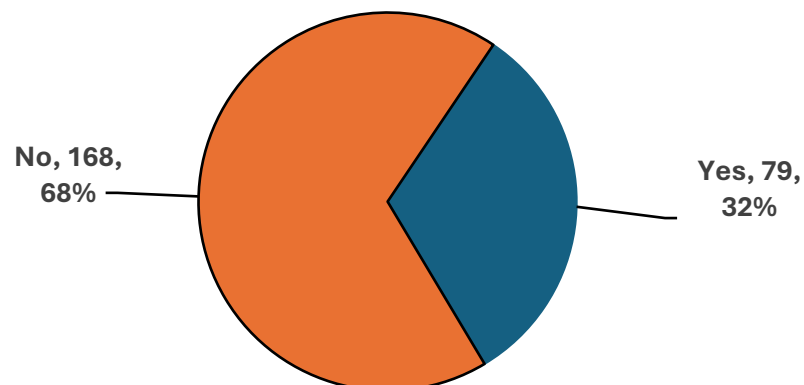
6 = Staff task/don't know

13 = Order issued / comment with entry; hearing event entry; CCS event

2 = Appointed for appeal

1 = Status code (seems similar to option above for status of counsel hearing)

Regarding the procedures used to make indigency determination for appointing counsel, do you have written procedures?



If not, describe your process:

Generally, responses indicated asking questions under oath about assets and expenses; many occur during hearing, and some are by application/motion with the ability for additional questions at hearing

Within these responses: 31 mentioned a dialogue/list of questions being used; 5 referenced incorporating poverty guidelines or similar scales in the decision process, 19 reported using a form or affidavit; 1 reported the public defender office conducts the assessment

Do you routinely ask about the following (Check all that apply.): (Top 6 responses are in bold)

<input type="checkbox"/> Defendant's income	241-98%
<input type="checkbox"/> Defendant's employment status (<i>Explain below</i>)	239-97%
<input type="checkbox"/> Defendant's monthly expenses/financial obligations	188-76%
<input type="checkbox"/> Defendant's liquid assets (e.g., cash, investments, bank accounts)	227-92%
<input type="checkbox"/> Defendant's housing status	208-84%
<input type="checkbox"/> Defendant's ability to pay bail (<i>Explain below</i>)	111-45%
<input type="checkbox"/> Defendant's vehicle	178-72%
<input type="checkbox"/> Defendant's equity in real estate	189-77%
<input type="checkbox"/> Defendant having previously been found indigent.	168-68%
<input type="checkbox"/> Defendant's receiving of federal or state benefits such as SNAP, Medicaid, TANF, or Disability	150-61%
<input type="checkbox"/> The cost to hire an attorney in your jurisdiction in general.	62-25%
<input type="checkbox"/> The cost to hire an attorney in your jurisdiction for this particular case type.	66-25%
<input type="checkbox"/> Other: (<i>explain below</i>)	35-14%

If you selected "Defendant's employment status" above, is this status alone sufficient to be found non indigent?

241 responses; 174 reported no; 4 reported yes, 5 reported rarely/not usually

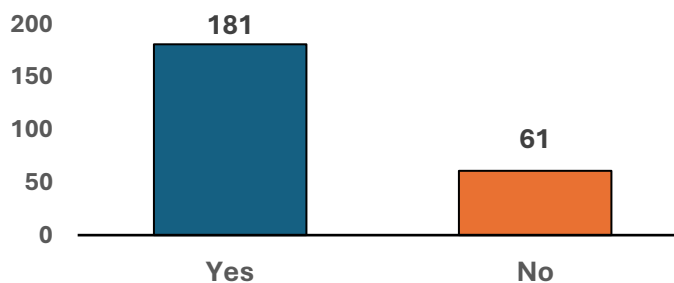
If you selected "Defendant's ability to pay bail" above, is this status alone sufficient to be found non indigent?

112 responses; 102 reported no; 5 reported yes, 5 sometimes

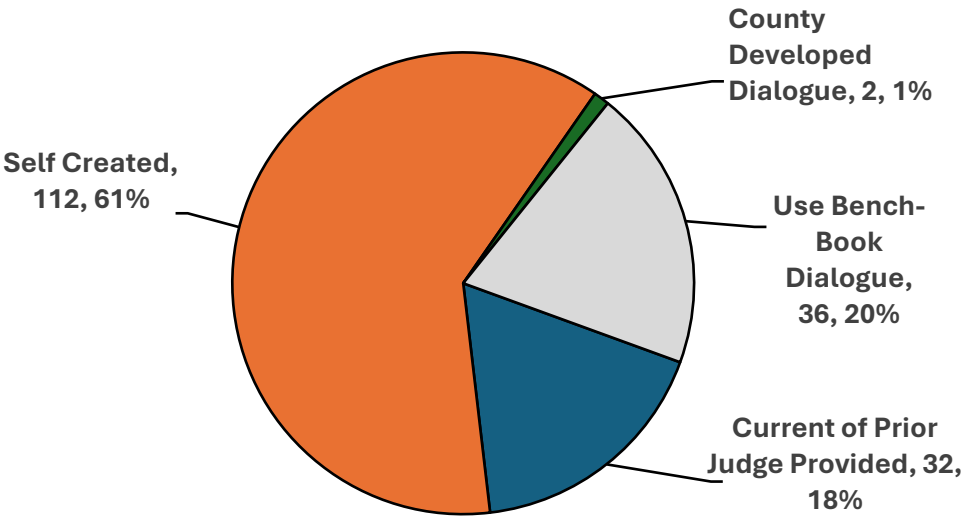
If you selected, “Other than listed above” explain:

- Valuable personal property (cash, tools, guns, coins, trading card)
- Spouse/partner income
- Child support order/arrearage
- Responsible for children/dependents/expenses related; number of children/dependents in family
- Efforts to hire counsel (who contacted, number of attorneys called, etc.) (responses include requiring a minimum of 3 quotes from attorneys)
- Other pending cases
- Presently represented by PD or previously appointed counsel
- Extraordinary expenses (e.g., medical)
- Family/friends willing to pay for attorney
- Unhoused due to no contact order
- If receiving a tax refund (if during tax season)
- Anyone owes the defendant money, commissary funds, bank accounts
- Two reported Public Defender Office does assessment
- Bond amount posted/ assignment (note: bond assignments have decreased since bond is asset of depositor)
- Duration of time between initial request and subsequent hearing without counsel
- Expenses paid if participating in other court supervision programs
- English proficiency
- Ability to partially pay for attorney
- Incarceration status and duration, along with level of offense

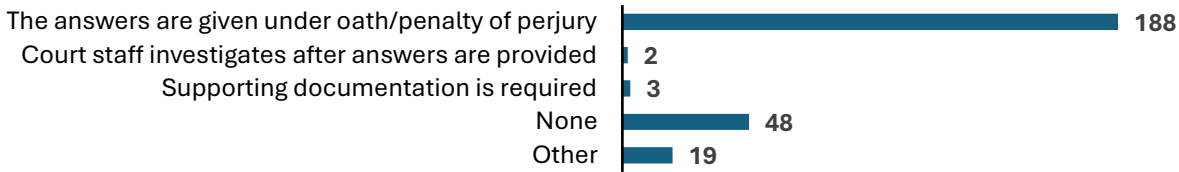
Do you use a standard dialogue for the hearing to determine indigency for appointing counsel?



What is the source of the dialogue? (Available if the answer is yes above.)



Does your court or other county entity verify the information provided by the defendant when requesting appointed counsel? (Check all that apply.)



If you selected “Supporting documentation is required” above, list what type of documentation:

I sometimes require supporting documentation depending on the circumstances. For example, if someone owns a residence but says they have no equity in the residence, I may require documentation regarding the assessed value or other valuation as well as a mortgage statement to confirm. If a person says they are unable to work due to an injury, I may require documentation regarding that issue.

The Court might ask for tax returns, pay stubs, or copies of documentation re: government assistance received, etc.

If you selected “Other” above, list what the court does to verify information provided by the defendant:

- 2 - Post decision updates/status re: employment/assets
- 4 - Public defender completes assessment
- 3 - Pretrial assessment by staff
- 2 - Question defendant
- 7 – Form used, request documents, county property records

Does your court regularly use any of the following materials or information to aid in making indigency determinations? (Check all that apply.)

- | | |
|---|---------|
| <input type="checkbox"/> Forms | 67-27% |
| <input type="checkbox"/> Poverty scales | 58-23% |
| <input type="checkbox"/> Income thresholds | 35-14% |
| <input type="checkbox"/> Written policies | 8-3% |
| <input type="checkbox"/> Commission on Court Appointed Attorney (formerly the Public Defender Commission) standards on determining eligibility of appointment of counsel. | 29-12% |
| <input type="checkbox"/> None of the above | 110-45% |
| <input type="checkbox"/> Other (describe below) | 11-4% |

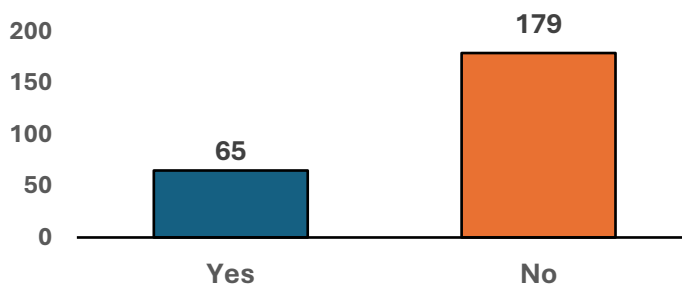
Describe other:

- 4- Forms/report
- 4 – Hearing discussion
- Benchbook/case law; public defender board; income threshold

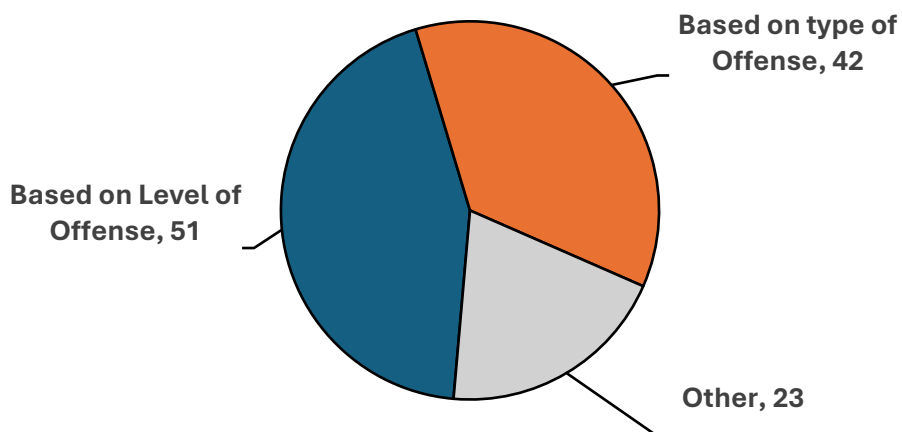
To what degree is a lack of local criminal defense attorneys a consideration in your decision to appoint an attorney?

- | | |
|--|---------|
| <input type="checkbox"/> There is no shortage of criminal defense attorneys in my community. | 104-42% |
| <input type="checkbox"/> The shortage is not a contributor to these decisions. | 87-36% |
| <input type="checkbox"/> The shortage is a minor contributor to these decisions. | 35-14% |
| <input type="checkbox"/> The shortage is a significant contributor to these decisions. | 14-6% |
| <input type="checkbox"/> The shortage is one of the primary contributing factors in these decisions. | 4-2% |

Do you have a method or process to identify the cost of private counsel in your community?



If yes, what do you use to determine the cost to a defendant to retain private counsel? *(This question is available when the answer to the question above is yes.)*
(Check all that apply.)

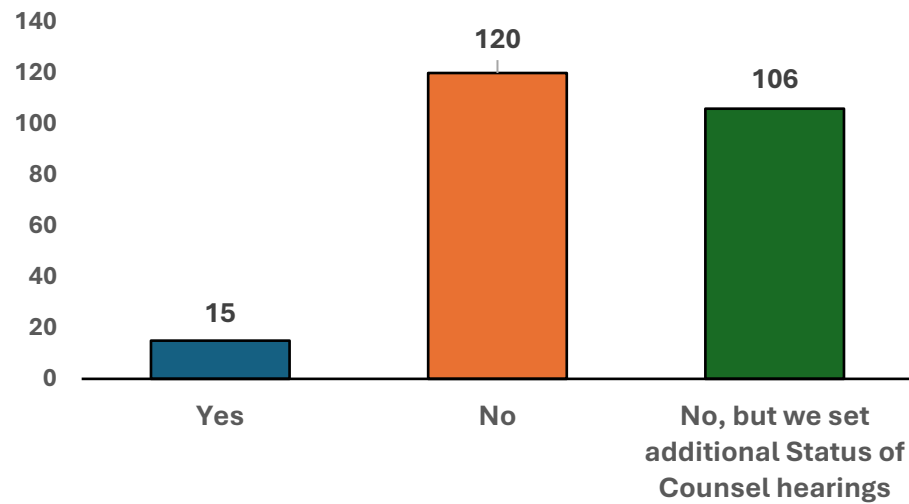


Explain Other:

15 - Ask attorney rates; knowledge of local bar

7 - Ask defendant prices quoted; require quotes and report back

If the defendant provides the court with information that no attorney will take the case as private counsel, do you verify this information?



If yes, by what process:

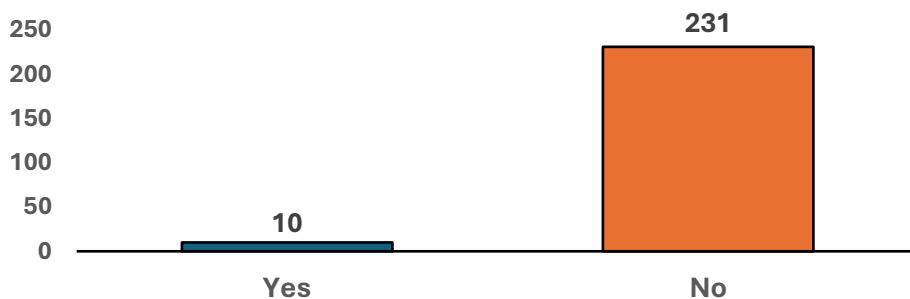
8- Ask defendants who they contacted

4 – Ask local attorney

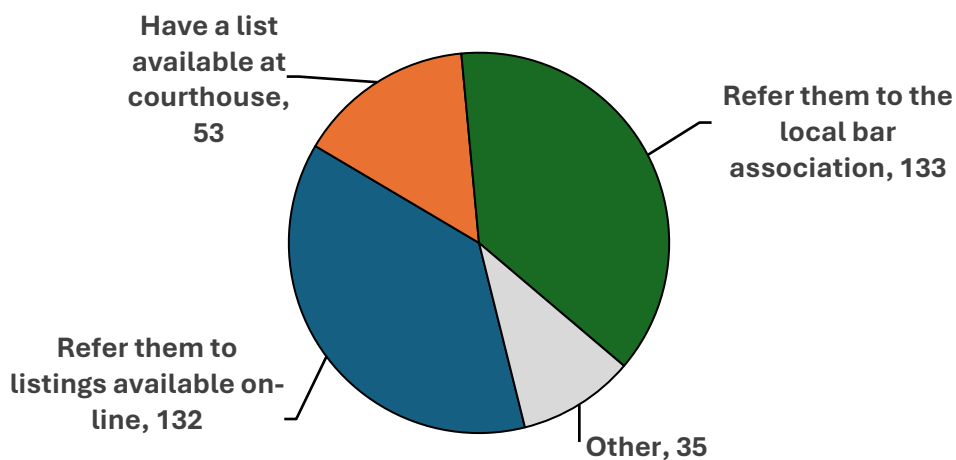
If no, but set Status of Counsel hearings from above, how many Status of Counsel hearings would you typically set before choosing to appoint counsel?

Number of Status of Counsel Hearings	Number of Responses
1	25
1-2	22
1-3	11
2	21
2+	1
2-3	9
3	5
3-4	1
4+	2
Depends/varies	8

Does your court have compiled information on the rates attorneys generally charge for criminal cases?



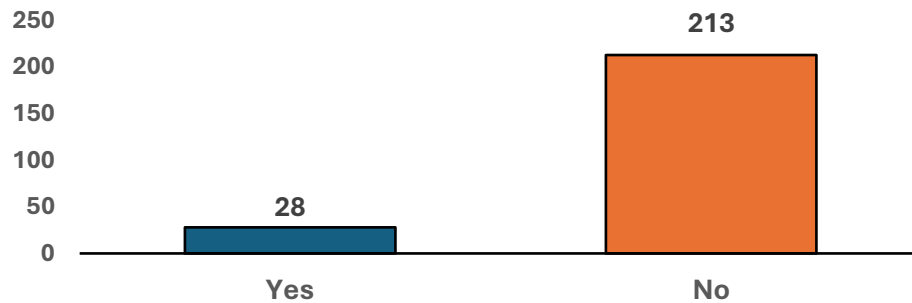
What resources do you provide to defendants for finding an attorney who is affordable for them?
(Check all that apply.)



Other Resources:

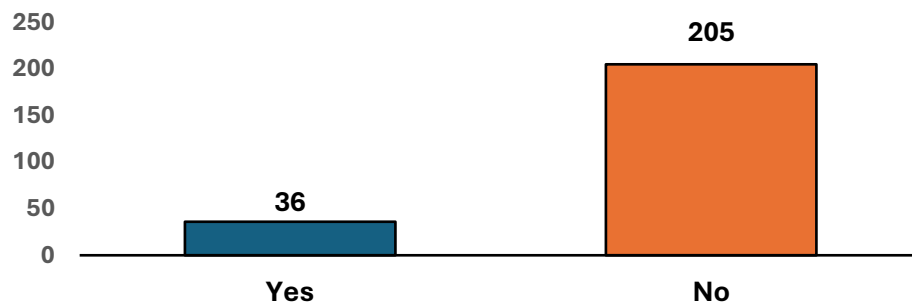
- 6- Internet
- 18- None/do not refer
- 1 – Court will release bond for attorneys
- 1 – Defendant already contacted attorney
- 3- Bar Association
- 2 – Legal aid/Indiana Legal Help, modest means program
- 3 – Attorney office near courthouse/or in courtroom
- 1- Phone book
- 3- Check with others/word of mouth

Are there any considerations or processes you use that are not captured in this survey?



If yes, list other considerations and processes here: *(Note these responses were incorporated above where relevant.)*

Do you have any materials, forms, scales, income thresholds, written policies, or similar materials used in the process to determine indigency for the appointment of counsel?



Please attach materials used to determine indigency for appointment of counsel in the online survey. If you have multiple documents to upload, select the “Add” button after each file upload. If you select “Add” and have no additional files to upload, select the red x to delete the additional file upload option.

Exit screen: Thank you for taking the time to respond to this important survey.

APPENDIX E

City and Town Court Survey on Process for Determining Indigency for the Appointment of Counsel

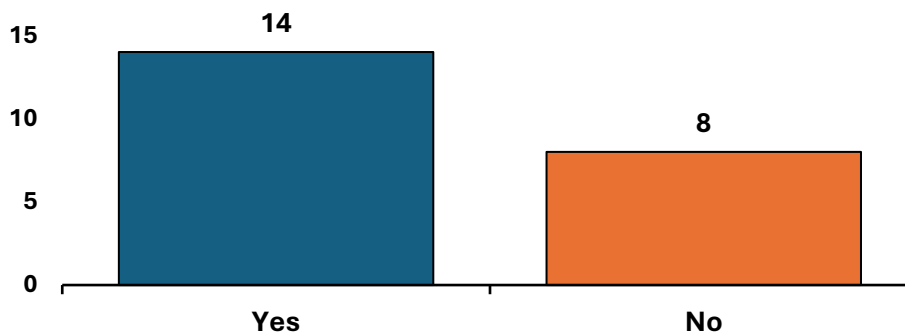
Introduction:

JRAC must conduct this survey regarding the process for determining indigency for appointing defense counsel pursuant to SEA 179-2024. The survey questions and results must be included within JRAC's report to the Legislative Council.

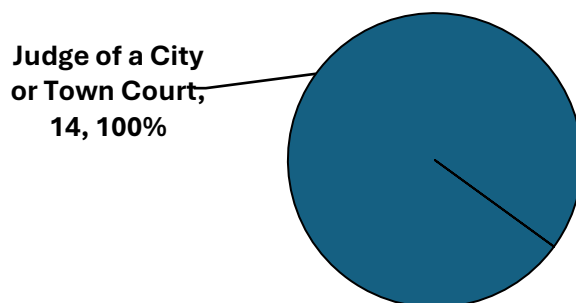
The survey focuses on the appointment of indigent counsel for criminal cases. Do not include information related to appointments of appellate counsel or non-criminal cases.

Questions:

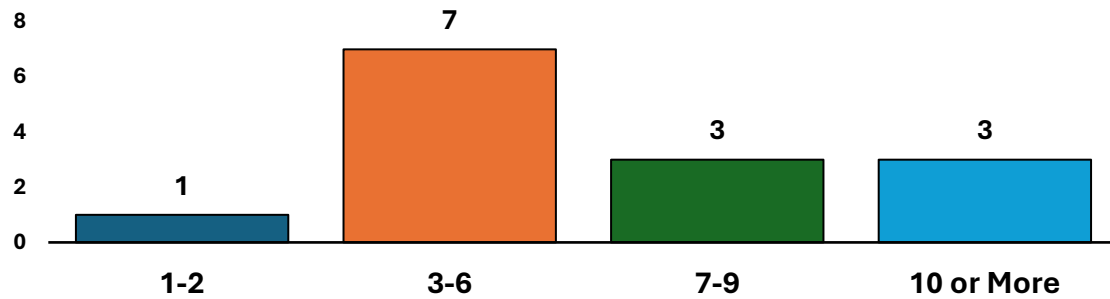
Do you preside over any criminal cases? *(If the answer to this question is "No" this will end the survey and take you to the review and submit page.)*



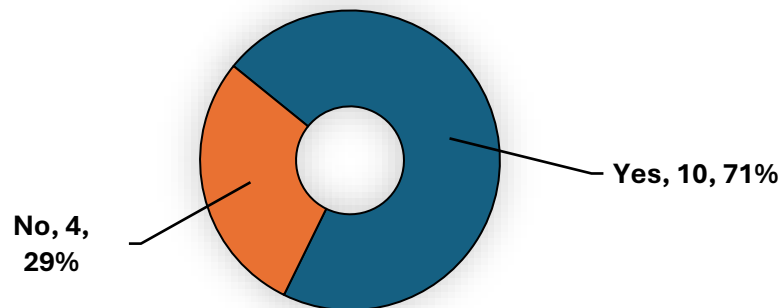
Current position:



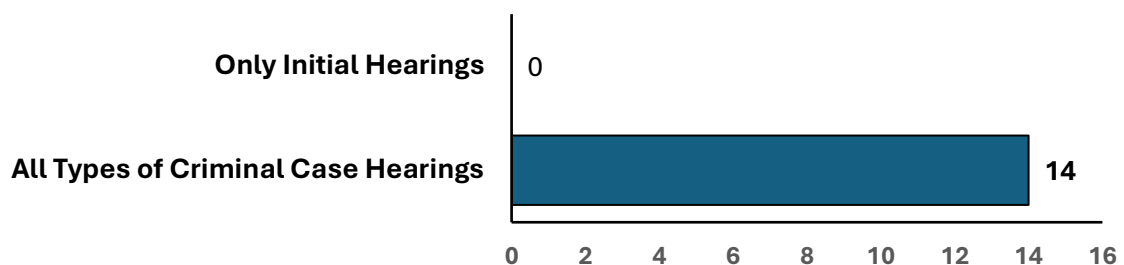
Number of Circuit and Superior Courts in your county:



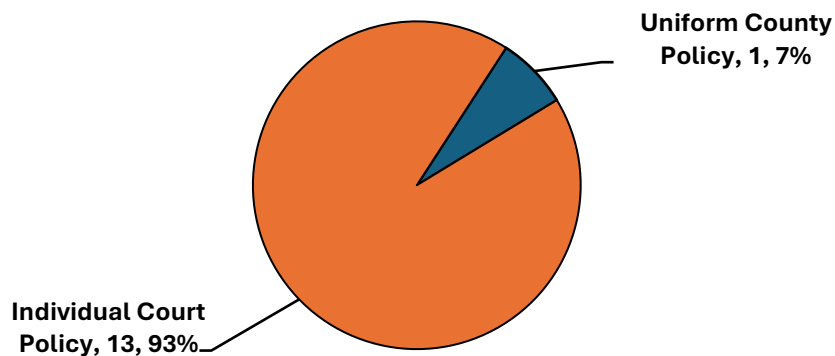
Does your county participate in the reimbursement program from the Commission on Court Appointed Attorneys (formerly the Public Defender Commission)?



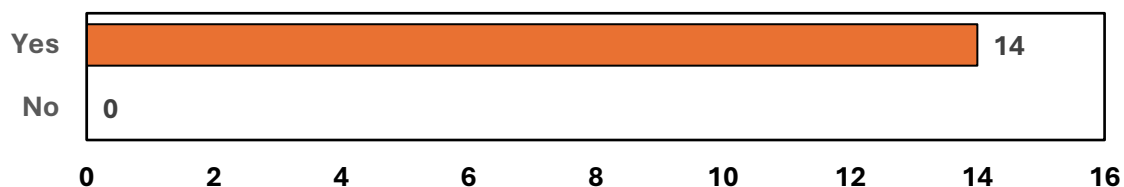
Do you preside over initial hearings only for criminal cases or do you preside over all types of criminal case hearings?



In reviewing indigency for the purposes of determining whether to appoint counsel, does your county have a uniform policy used county wide, a policy set in each court, or a policy set by the individual judicial officer?



In your role as a judicial officer, do you make indigency determinations for the purpose of appointing counsel? *(If the answer to this question is “No” there are two additional questions and then you will be directed to the review and submit page.)*



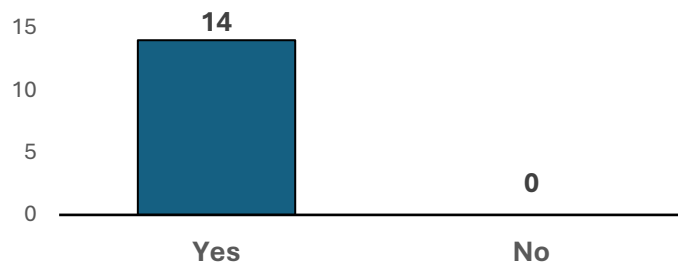
If no, who makes these determinations for the cases you hear (select all that apply)? *(This question is available if no is selected above.)*

- ☐ Public Defender Office
- ☐ Other (please describe):

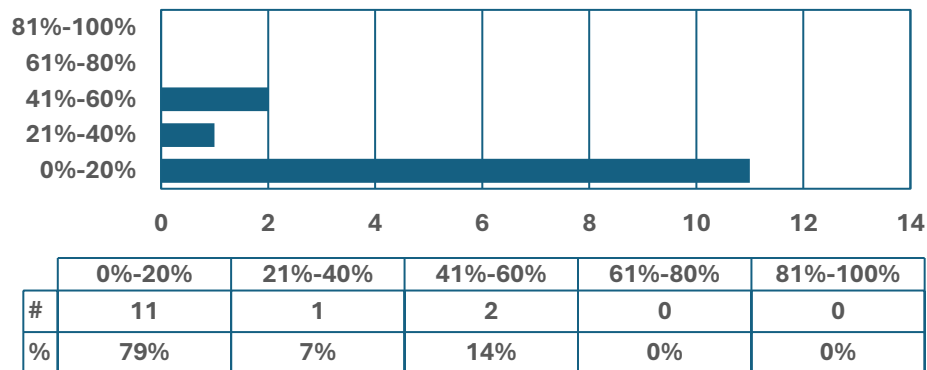
If no, do you participate in setting a policy for making these determinations? *(This question is available if no is selected above.)*

- ☐ Yes
- ☐ If not, who does (describe below):

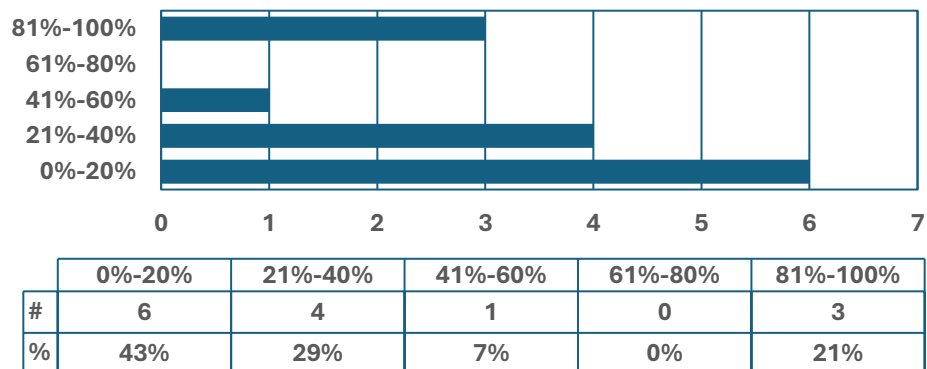
Do you determine indigency for the purpose of appointment of counsel of Criminal Misdemeanor (CM) cases? (If you answer yes, there are four additional questions related to percentage of cases.)



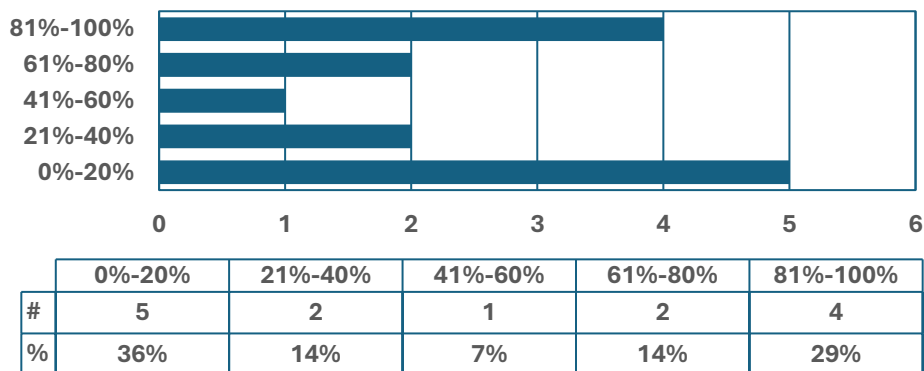
If yes, what percentage of cases have agreed to waive arraignment?



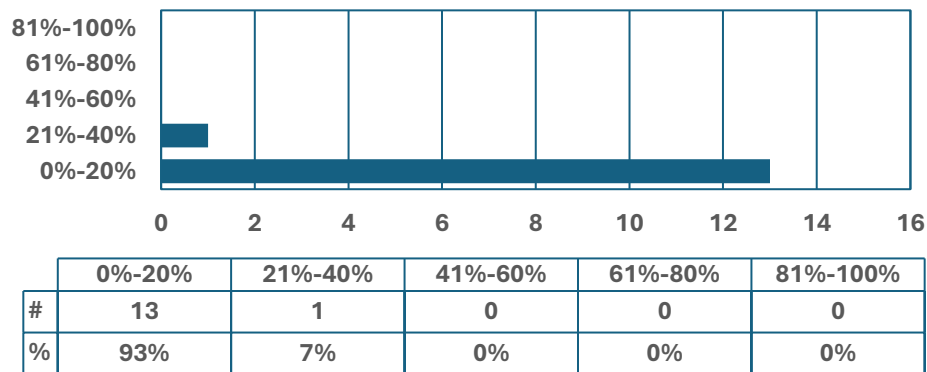
For cases of this type where arraignment is not waived, what percentage of defendants are assessed for indigency (for the purpose of appointment of counsel)?



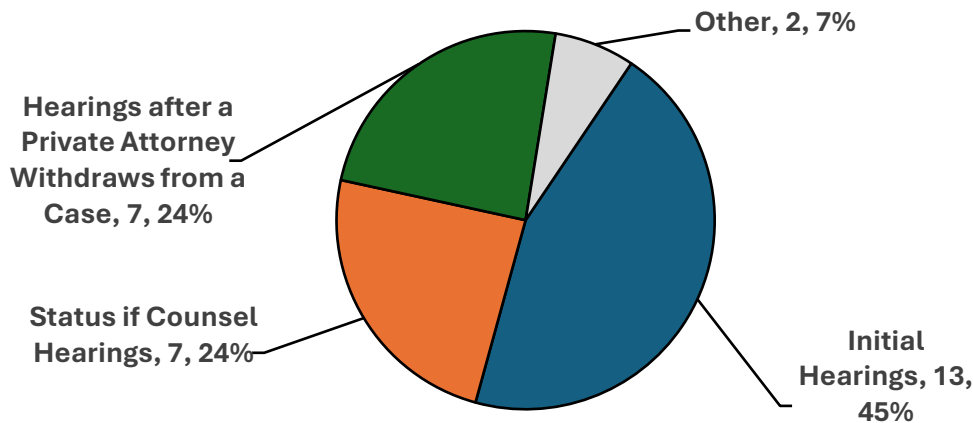
For cases of this type where arraignment is not waived, what percentage of defendants that are assessed for indigency do you appoint a public defender at the time of their first assessment?



For cases of this type where arraignment is not waived, what percentage of defendants that are initially denied a public defender are appointed one at a later date?



At what hearings do you assess for indigency to determine whether to appoint counsel? (Check all that apply.)



Explain Other:

2 - Any point in proceeding

What event codes in Odyssey do you (or your staff) use to document any of the following:

1. Appointment of counsel 2. Hearing to determine whether the defendant has obtained counsel or needs appointed counsel 3. The denial of appointment of counsel? (Check all that apply.)

- | | |
|--|-------|
| <input type="checkbox"/> Motion for Public Defender Filed | |
| <input type="checkbox"/> Order Denying Motion for Public Defender | 2-14% |
| <input type="checkbox"/> Order Granting Motion for Public Defender | 1-7% |
| <input type="checkbox"/> Order Appointing Public Defender | 3-21% |
| <input type="checkbox"/> Order Appointing Pauper Counsel | 2-14% |
| <input type="checkbox"/> Indigent Counsel Appointed at Court Expense | 1-7% |
| <input type="checkbox"/> Order Denying Pauper Counsel | |
| <input type="checkbox"/> Status of Counsel Hearing | 2-14% |
| <input type="checkbox"/> Add Public Defender Flag to Odyssey Case | |
| <input type="checkbox"/> Other: (explain below) | 6-43% |

Explain Other:

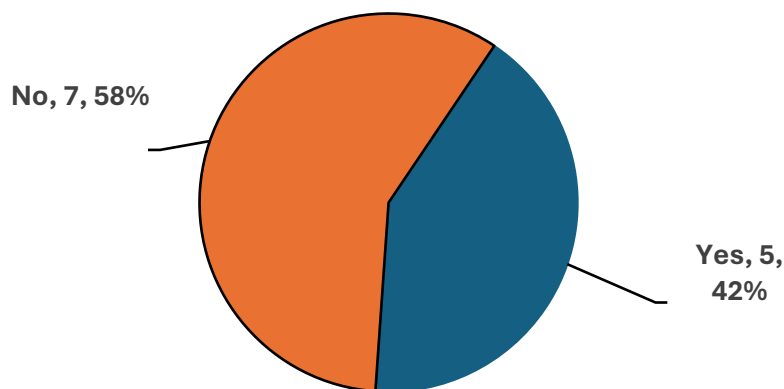
Hearing journal entry code

Not using codes when denied

Clerk event stating public defender granted; noted also in attorney type and public defender box in parties

Clerk enters information

Regarding the procedures used to make indigency determination for appointing counsel, do you have written procedures?



If no, describe your process:

7- Take testimony on assets/financial situation/employment, etc. and ability to pay or contribute

If qualified and refuse to have counsel, will appoint standby counsel

References to a minimum threshold to be deemed indigent

Do you routinely ask about the following (Check all that apply.): (Top 7 responses are bold)

- | | |
|---|----------------|
| <input type="checkbox"/> Defendant's income | 12-100% |
| <input type="checkbox"/> Defendant's employment status (Explain below) | 12-100% |
| <input type="checkbox"/> Defendant's monthly expenses/financial obligations | 10-83% |
| <input type="checkbox"/> Defendant's liquid assets (e.g., cash, investments, bank accounts) | 10-83% |
| <input type="checkbox"/> Defendant's housing status | 12-100% |
| <input type="checkbox"/> Defendant's ability to pay bail (Explain below) | 4-33% |
| <input type="checkbox"/> Defendant's vehicle | 10-83% |
| <input type="checkbox"/> Defendant's equity in real estate | 12-100% |
| <input type="checkbox"/> Defendant having previously been found indigent. | 2-17% |
| <input type="checkbox"/> Defendant's receiving of federal or state benefits such as SNAP, Medicaid, TANF, or Disability | 9-75% |
| <input type="checkbox"/> The cost to hire an attorney in your jurisdiction in general. | 3-25% |

- ☐ The cost to hire an attorney in your jurisdiction for this particular case type. 5-42%
- ☐ Other: (Explain below) 2-17%

If you selected “Defendant’s employment status” above, is this status alone sufficient to be found non indigent?

- 9- No
- 1 – Yes
- 2 – Depends on situation with other factors

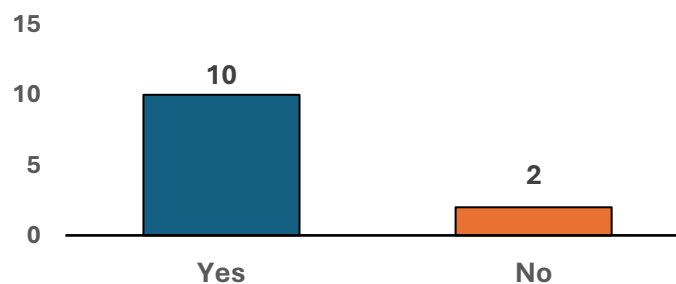
If you selected “Defendant’s ability to pay bail” above, is this status alone sufficient to be found non indigent?

- 4 – No
- 1 – Depends on amount if private attorney will accept bond assignment; if held without bond then public defender is appointed

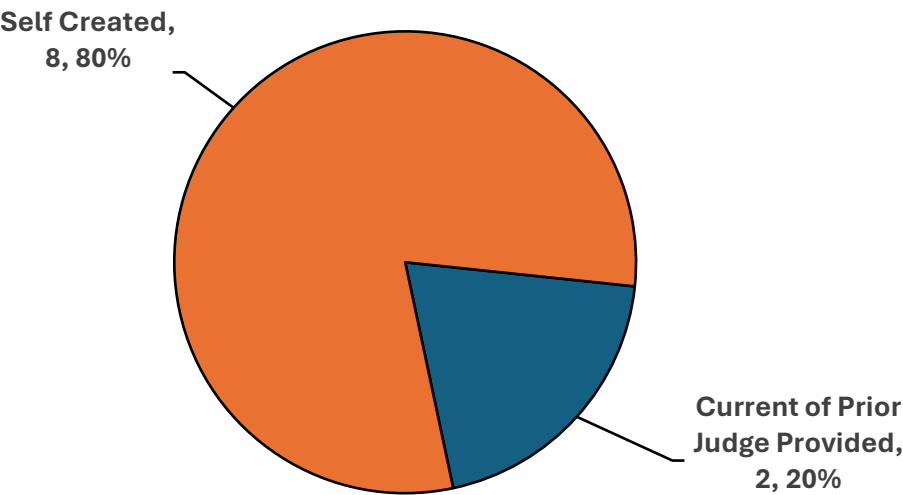
If you selected “Other than listed” above, explain:

- Number of dependents/children
- Lifestyle – smoking, drinking, ATV, Camper/RV
- Local economic conditions (e.g., factory layoffs/shutdowns)
- List of attorneys they contact and cost of retainers/payment plans
- Number of pending cases

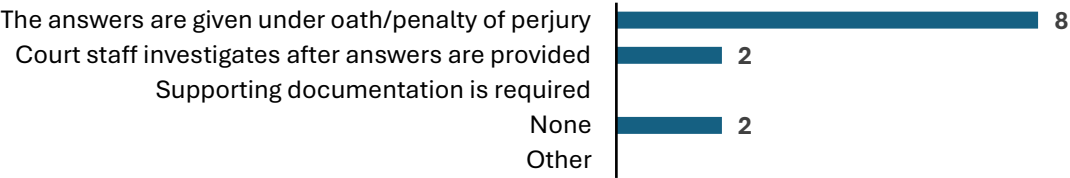
Do you use a standard dialogue for the hearing to determine indigency for appointing counsel?



What is the source of the dialogue? (Available if the answer is yes above.)



Does your court or other county entity verify the information provided by the defendant when requesting appointed counsel? (Check all that apply.)



If you selected “Supporting documentation is required” above, list what type of documentation:

If you selected “Other” above, list what the court does to verify information provided by the defendant:

Court staff investigates answers provided

Does your court regularly use any of the following materials or information to aid in making indigency determinations? (Check all that apply.)

- | | |
|---|-------|
| <input type="checkbox"/> Forms | 7-58% |
| <input type="checkbox"/> Poverty scales | 3-25% |
| <input type="checkbox"/> Income thresholds | 5-42% |
| <input type="checkbox"/> Written policies | |
| <input type="checkbox"/> Commission on Court Appointed Attorney (formerly the Public Defender Commission) standards on determining eligibility of appointment of counsel. | 1-8% |
| <input type="checkbox"/> None of the above | 2-17% |
| <input type="checkbox"/> Other (describe below) | 1-8% |

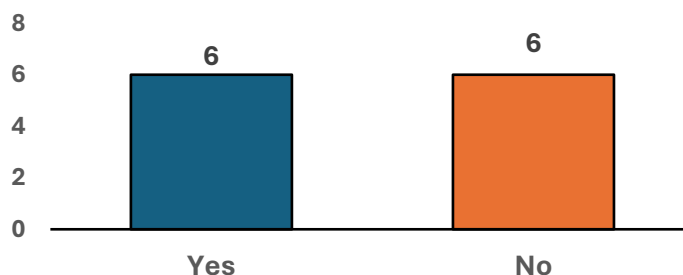
Describe Other:

Income scale when they have dependent children in household.

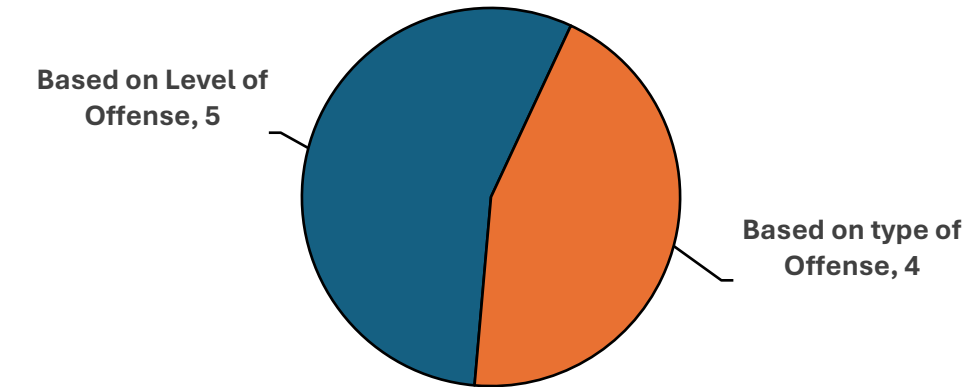
To what degree is a lack of local criminal defense attorneys a consideration in your decision to appoint an attorney?

- | | |
|--|--------|
| <input type="checkbox"/> There is no shortage of criminal defense attorneys in my community. | 10-83% |
| <input type="checkbox"/> The shortage is not a contributor to these decisions. | 2-17% |
| <input type="checkbox"/> The shortage is a minor contributor to these decisions. | |
| <input type="checkbox"/> The shortage is a significant contributor to these decisions. | |
| <input type="checkbox"/> The shortage is one of the primary contributing factors in these decisions. | |

Do you have a method or process to identify the cost of private counsel in your community?

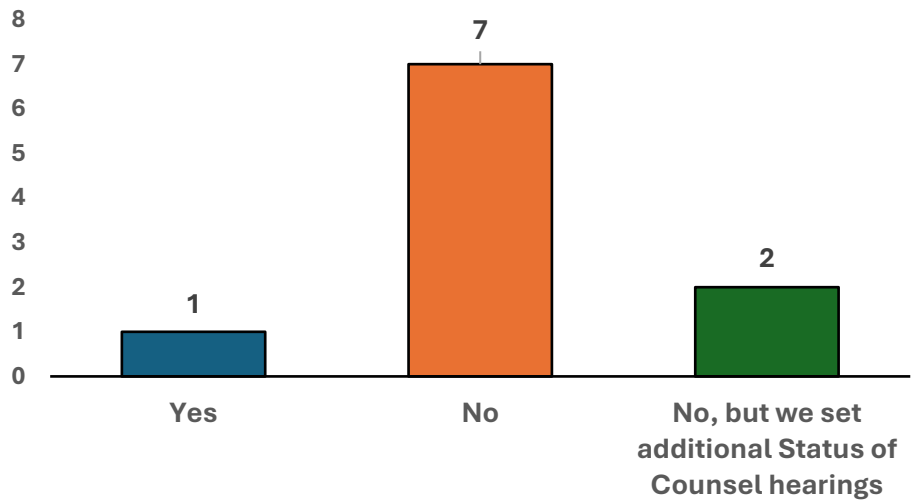


If yes, what do you use to determine the cost to a defendant to retain private counsel? *(This question is available when the answer to the question above is yes.)*
(Check all that apply.)



Explain Other: (No responses)

If the defendant provides the court with information that no attorney will take the case as private counsel, do you verify this information?



If yes, by what process?

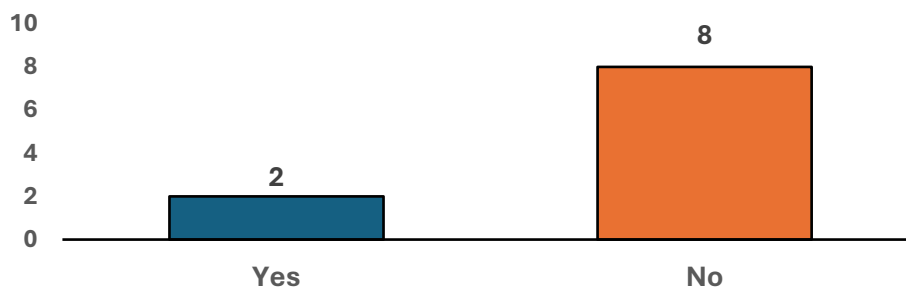
Must provide written documentation

If no, but set Status of Counsel hearings from above, how many Status of Counsel hearings would you typically set before choosing to appoint counsel?

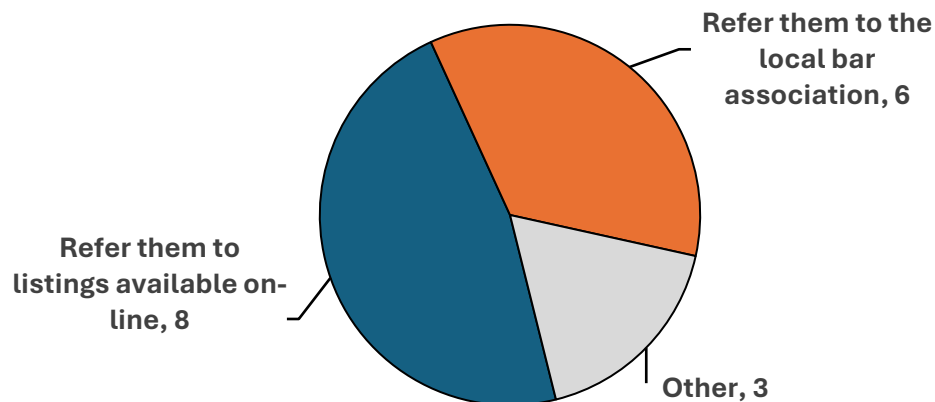
1 or 2

If not qualify, either hire counsel or proceed pro se, if close call will appoint

Does your court have compiled information on the rates attorneys generally charge for criminal cases?



What resources do you provide to defendants for finding an attorney who is affordable for them?
(Check all that apply.)



Other Resources:

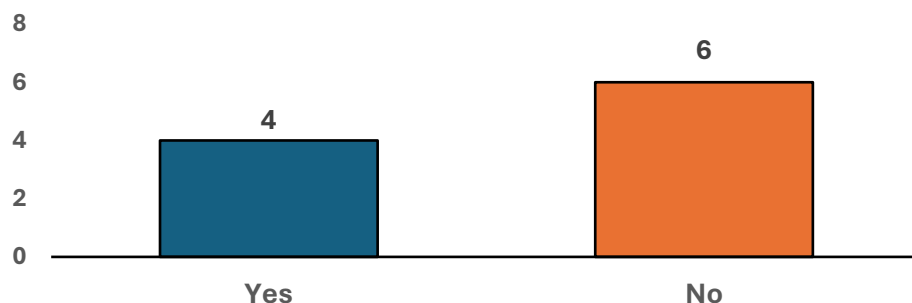
2 - Internet search

Local attorney offices are generally downtown

List of local (in-county) attorneys

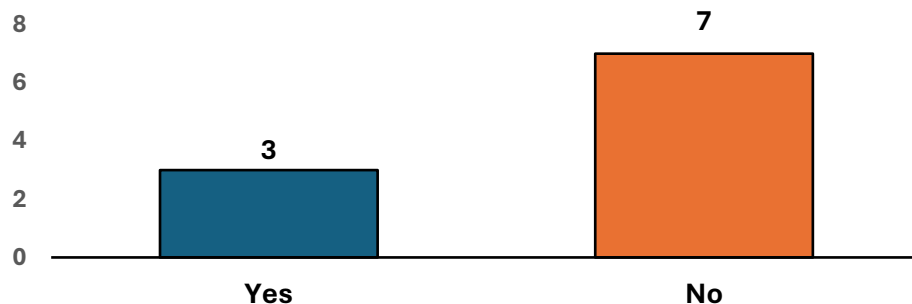
Contract legal aid attorney

Are there any considerations or processes you use that are not captured in this survey?



If yes, list other considerations and processes here: (note these responses were incorporated above where relevant.)

Do you have any materials, forms, scales, income thresholds, written policies, or similar materials used in the process to determine indigency for the appointment of counsel?



Please attach materials used to determine indigency for appointment of counsel in the online survey. If you have multiple documents to upload, select the “Add” button after each file upload. If you select “Add” and have no additional files to upload, select the red x to delete the additional file upload option

Exit screen: Thank you for taking the time to respond to this important survey.