

PROSECUTOR SURVEY RESULTS
THE STATUS OF INDIGENT CRIMINAL DEFENSE IN TEXAS

Note: When answering questions in this survey, please refer to typical criminal law experiences in the jurisdiction in which you currently practice, even though these may vary from court to court. Please exclude any experience with capital cases.

(n= valid number of responses)

1. How do defense lawyers typically receive their court appointed assignments in your jurisdiction? (Check one)

- 72.3% A judge makes the appointment
- 18.6% A clerk, coordinator, or other administrative personnel of the court makes the appointment
- 0.6% Affirmatively volunteer
- 8.5% Other (Please specify) (n=1074)

2. What influence does each of the following actors exert in the decision to appoint defense counsel? (Check all that apply)

a. Court Reporter	87.4%	None	10.8%	Some	1.3%	Moderate	0.6%	Substantial (n=1031)
b. Individual Court Clerks	78.3%	None	16.1%	Some	4.4%	Moderate	1.3%	Substantial (n=1030)
c. District Attorney	68.0%	None	24.2%	Some	6.0%	Moderate	1.7%	Substantial (n=1044)
d. Court Coordinator	32.2%	None	21.8%	Some	14.4%	Moderate	31.6%	Substantial (n=1047)

3. What influence does each of the following have in the appointment decision? (Check all that apply)

a. Attorneys reputation for moving cases, but consistent with a quality defense	10.6%	None	17.9%	Some	27.8%	Moderate	43.8%	Substantial (n=1033)
b. Being friends with the judge	26.4%	None	26.0%	Some	23.9%	Moderate	23.7%	Substantial (n=1023)
c. Being a political supporter of the judge	37.2%	None	25.4%	Some	19.6%	Moderate	17.8%	Substantial (n=1006)
d. Attorneys reputation for moving cases, regardless of the quality of defense	37.4%	None	39.3%	Some	17.4%	Moderate	5.9%	Substantial (n=1003)
e. Being a campaign contributor	45.3%	None	25.2%	Some	16.9%	Moderate	12.7%	Substantial (n=972)

4. Does the court maintain a list of lawyers who accept court appointed assignments? (Check one)

- 77.4% Yes
- 7.3% No → Please skip to question 6
- 15.3% Don't Know → Please skip to question 6 (n=1075)

5. How does a lawyer become included on this list? (Check one)

- 12.4% All lawyers are included
- 32.6% Affirmatively volunteer
- 39.5% Volunteer and be determined qualified by the court
- 1.9% Volunteer and participate in continuing legal education
- 13.4% Don't Know (n=858)

6. Are there formal criteria for selecting court appointed counsel in more complex, serious or special cases (e.g., mentally ill)? (Check one)

- 29.2% Yes
- 37.9% No
- 32.8% Don't Know (n=1082)

7. What provisions, if any, exist for monitoring the quality of representation provided by attorneys serving as court appointed counsel? (Check one)

- 39.2% None exist
- 2.2% Formal provisions exist
- 28.1% Informal provisions exist
- 30.4% Don't Know (n=1080)

Please elaborate on the formal or informal provisions that exist in your jurisdiction: (n=268)

Comments not yet available.

8. How satisfied are you with the current method of appointing counsel in indigent criminal cases in your jurisdiction? (Check one)

- 22.4% Very Satisfied
- 31.0% Somewhat Satisfied
- 25.9% Neither Satisfied nor Dissatisfied
- 16.3% Somewhat Dissatisfied
- 4.4% Very Dissatisfied (n=1072)

9. On a daily basis, who typically determines indigent status in your jurisdiction? (Check one)

- 72.3% A Judge
- 19.5% A clerk or other administrator of the court (n=1070)
- 8.2% Other (Please specify)

10. Does the county in which you primarily practice have formal written criteria used in determining indigent status? (Check one)

- 36.9% Yes
- 32.9% No → Please skip to question 12
- 30.3% Don't Know → Please skip to question 12 (n=1071)

11. If formal criteria for determining indigent status exist, are the criteria adhered to on a regular basis? (Check one)

- 75.3% Yes
- 24.7% No (n=405)

12. In your opinion, what criteria are typically used for determining indigent status in your jurisdiction (e.g., in jail, bond status, employment, etc.)? (n=991)

Comments not yet available

13. What criteria do you believe should be used to determine indigent status? (n=891)

Comments not yet available

14. How satisfied are you with the current method of determining the defendant's indigent status in your jurisdiction ? (Check one)

- 16.2% Very Satisfied
- 31.0% Somewhat Satisfied
- 22.9% Neither Satisfied nor Dissatisfied
- 19.7% Somewhat Dissatisfied
- 10.3% Very Dissatisfied (n=1072)

Now we would like your thoughts on the compensation and support services the court provides defense counsel in indigent criminal cases in your jurisdiction.

15. What is your best guess as to the average amount of compensation judges in your jurisdiction pay defense counsel for the following services in indigent cases:

- a. per court appearance (e.g. announcement) mean = \$105.32, median = \$100.00, s.d. = 79.30 (n=492)
- b. per day of trial (e.g. actual testimony) mean = \$358.18, median = \$300.00, s.d. = 451.16 (n = 475)
- c. per hourly fee for out of court work mean = \$58.41, median = \$ 50.00, s.d. = 70.68 (n=466)
- d. per hour fee for in-court work mean = \$71.91, median = \$60.00, s.d. = 72.09 (n=416)
- e. flat fee per case (e.g. a plea) \$ mean = \$254.91, median = \$250.00, s.d. = 165.68 (n=607)

16. How often do you believe that a judge's personal relationship with the appointed attorney affects the amount of compensation provided?

- 25.4% Never
- 41.3% Sometimes
- 17.1% Often
- 3.9% Always
- 12.3% Don't Know (volunteered) (n=1080)

17. Do judges in your jurisdiction vary the fees you noted in question 15 according to the complexity of the case?

- 54.7% Yes
- 12.2% No
- 33.0% Don't Know (n=1064)

If "Yes," please provide an example (n=327)

Comments not yet available.

18. Do you believe that current rates of compensation for court appointed counsel are sufficient to attract qualified private counsel for court appointed indigent cases? (Check one)

- 49.2% Yes
- 37.6% No
- 13.2% Don't Know (n=1075)

19. Based on your observations, does the level of compensation paid to assigned counsel in any way affect the quality of representation they provide to defendants in your county? (Check one)

- 38.4% Yes
- 46.9% No
- 14.6% Don't Know (n=1076)

20. Do you believe that defense counsel generally receive the support services they need to represent their indigent client? (Circle one)

60.0% Yes
22.5% No
17.4% Don't Know (n=1080)

21. Based on your observations, how often are defense counsel required to obtain prior approval before using special services (e.g., investigator, criminalist, forensic experts)? (Check one)

1.6% Never
8.7% Sometimes
22.1% Often
66.7% Always
0.9% Don't Know (Volunteered) (n=1046)

22. Based on your observations, how often does denial of special services (e.g., investigator, criminalist, forensic expert) adversely affect the quality of representation provided by court appointed defense counsel?

1.2% Always
5.7% Most of the time
25.9% Some of the time
48.3% Rarely
18.0% Never
0.8% Don't Know (Volunteered) (n=976)

If possible, please provide an example (n=231)

This next section contains questions which ask for your overall evaluation of the current indigent criminal defense system in Texas.

23. When thinking of the criminal defense attorneys in your jurisdiction, are the attorneys who provide court appointed representation generally more experienced or less experienced than the typical criminal defense attorney? (Check one)

0.9% Court appointed attorneys are always more experienced
17.1% Court appointed attorneys are usually more experienced
54.4% Court appointed attorneys and retained attorneys are about equally experienced
25.4% Retained attorneys are usually more experienced
2.2% Retained attorneys are always more experienced (n=1078)

24. In similar cases, is there a difference between pleas offered to clients with retained counsel compared to those with court appointed counsel? (Check one)

6.7% Plea offers are usually better for clients with retained counsel
89.1% Plea offers are about the same for clients with retained and appointed counsel (n=1067)
1.9% Plea offers are usually better for clients with appointed counsel
2.3% Other (Please specify)

25. In general, do you believe that clients with retained counsel receive better representation than clients who have received court appointed attorneys? (Check one)

2.0% Retained counsel always provide better representation
36.8% Retained counsel usually provide better representation
57.1% Retained and court appointed counsel typically provide the same quality of representation
4.0% Court appointed counsel usually provide better representation
0.1% Court appointed counsel always provide better presentation (n=1075)

26. What action, if any, do you take if you observe defense counsel providing less than adequate representation? (n=742)

Comments not yet available.

27. Assuming similar cases, what is your perception about the amount of time that retained and court appointed counsel devote to preparation? (Check one)

- 6.7% Retained counsel always spend more time preparing
- 49.8% Retained counsel usually spend more time preparing
- 40.9% Retained and court appointed counsel spend equal amounts time preparing
- 2.1% Court appointed counsel usually spend more time preparing
- 0.5% Court appointed counsel always spend more time preparing (n=1056)

28. Based on your observations, how does the judge treat retained counsel and appointed counsel in the courtroom? (Check one)

- 0.2% Appointed counsel is always treated more favorably than retained counsel
- 3.7% Appointed counsel is usually treated more favorably than retained counsel
- 89.0% Both retained and appointed counsel are treated equally
- 6.6% Retained counsel is usually treated more favorably than appointed counsel
- 0.5% Retained counsel is always treated more favorably than appointed counsel (n=1072)

29. In sentencing decisions, how does the judge treat clients with retained counsel and appointed counsel? (Check one)

- 0.4% Clients with appointed counsel always receive more favorable sentencing decisions
- 2.5% Clients with appointed counsel usually receive more favorable sentencing decisions
- 89.6% Clients with appointed and retained counsel receive similar sentencing decisions
- 7.4% Clients with retained counsel usually receive more favorable sentencing decisions
- 0.2% Clients with retained counsel always receive more favorable sentencing decisions (n=1060)

If you have observed differences in the disposition of cases with retained and appointed counsel, please provide an example: (n=108)

Comments not yet available.

30. Have you ever observed individual defense counsel who behave differently depending on whether he or she is representing a retained or indigent client?

- 60.7% Yes
- 39.3% No → Please skip to question 33 (n=1065)

31. Thinking of the defense attorneys you have noticed behaving differently depending on the nature of their client

- a. do these attorneys devote less time to their indigent clients? 90.3% Yes 9.7% No (n=618)
- b. are these attorneys less prepared to defend their indigent clients? 76.0% Yes 24.0% No (n=596)
- c. do these attorneys put on a less vigorous defense of their indigent clients? 65.6% Yes 34.4% No (n=596)
- d. what other differences have you observed? (Please elaborate) (n=228)

Comments not yet available

32. What do you believe is motivating these attorneys to behave differently in retained and appointed cases? (n=585)

Comments not yet available

33. Which of the following changes in the present system of representation would you favor, if any? Please rank all that apply by importance, number one being the change that you favor the most.

Rank

Development of a county based public defender system (n=491)

- Rank 1 29.7%
- Rank 2 29.1%
- Rank 3 16.5%
- Rank 4 9.4%
- Rank 5 11.8%
- Rank 6 2.6%
- Rank 7 0.8%

Development of a statewide public defender system (n=442)

- Rank 1 26.2%
- Rank 2 16.5%
- Rank 3 15.1%
- Rank 4 15.6%
- Rank 5 11.8%
- Rank 6 12.4%
- Rank 7 2.3%

Development of a centrally coordinated and regulated assigned counsel system to replace an ad hoc judge appointed system (n=532)

- Rank 1 33.3%
- Rank 2 21.2%
- Rank 3 21.4%
- Rank 4 11.3%
- Rank 5 8.5%
- Rank 6 3.8%
- Rank 7 0.6%

Contracting with private attorney to provide representation in all types of criminal cases (n=416)

- Rank 1 12.7%
- Rank 2 20.7%
- Rank 3 20.9%
- Rank 4 22.8%
- Rank 5 15.9%
- Rank 6 6.7%
- Rank 7 0.2%

Increased fees for county-appointed counsel. Please specify the suggested hourly rate(s) _____ (n=554)

- Rank 1 40.4%
- Rank 2 21.1%
- Rank 3 13.5%
- Rank 4 10.8%
- Rank 5 10.6%
- Rank 6 3.1%
- Rank 7 0.4%

No changes necessary (n=396)
 Rank 1 61.9%
 Rank 2 12.4%
 Rank 3 5.6%
 Rank 4 4.3%
 Rank 5 5.8%
 Rank 6 9.6%
 Rank 7 0.5%

Other (Please specify) (n=97)
 Rank 1 61.9%
 Rank 2 17.5%
 Rank 3 9.3%
 Rank 4 5.2%
 Rank 5 1.0%
 Rank 6 3.1%
 Rank 7 2.1%

Finally, we would like some information about your background and your experience with the indigent criminal defense system in Texas.

34. How many years have you been practicing law? mean = 10.39, median = 8.0, s.d. = 7.96 (n=1095)

35. How many years have you been practicing *criminal* law (defense and/or prosecution)? mean = 9.18, median = 7.00, s.d. = 7.52 (n=1094)

36. How many years have you been a prosecutor? mean = 7.37, median = 6.00, s.d. = 5.87 (n=1082)

37. Are you permitted to engage in the private practice of law? (Check one)

28.9% Yes
 71.1% No (n=1079)

If "Yes," what percent of your time is spent doing private legal work? mean = 7.70, median = 0.00, s.d. = 17.70 (n=528)

38. How many prosecutors work in your office? mean = 65.27, median = 20.00, s.d. = 78.97 (n=1066)

39. On average, how many state trial court level cases do you handle each year? mean = 482.96, median = 200.00, s.d. = 951.86 (n=912)

Approximately what percent of these cases involve indigent defendants? mean = 54.39, median = 60.0, s.d. = 28.77 (n=866)

40. On average, how many appellate cases do you handle each year? mean = 7.49, median = 0.00, s.d. = 20.79 (n=997)

Approximately what percent of these cases involve indigent defendants? mean = 35.24%, median = 1.00, s.d. = 40.38 (n=722)

41. Please check all of the following that apply to you:

66.4% I attend continuing criminal legal education courses sponsored by the State Bar of Texas (n=740)
 89.2% I attend continuing criminal legal education courses sponsored by TCDA (n=995)
 27.2% I subscribe to *Criminal Law Digest* (n=303)
 6.5% I am Board certified in criminal law (n=72)

42. What is your gender? (Check one)

36.7% Female
63.3% Male (n=1073)

43. What is your ethnicity? (Check one)

2.8% Black
86.0% White
9.6% Hispanic
0.7% Native American
0.8% Pacific Islander
0.1% Other (please specify) (n=1055)

Please use the space below to offer any comments you feel would be helpful in providing an understanding of the status of indigent criminal defense in Texas:

Comments not yet available

Please use the space below to off any suggestions for ways to improve the system of indigent criminal defense in Texas.

Comments not yet available.