

# MINNESOTA RESTITUTION WORKING GROUP

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Second Meeting

February 10, 2014

# Agenda

- Welcome, introductions, recap
- Data overview
- Themes
- Goals and principles
- Wrap-up and next steps

# COURT ADMINISTRATION SURVEY RESULTS

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Presentation for Restitution Working Group  
Monday, Feb. 10<sup>th</sup>, 2014

# Data Collection

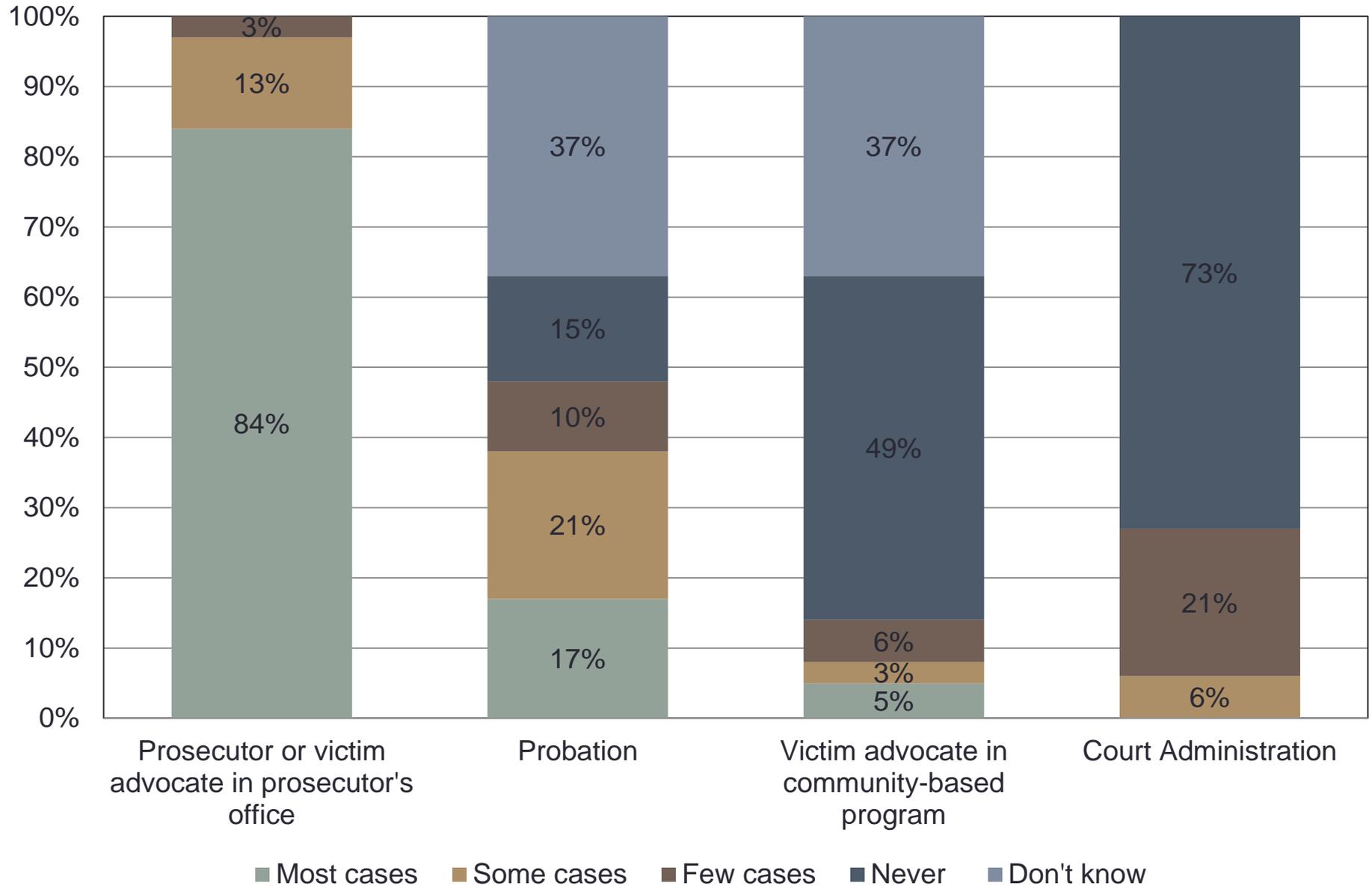
- Data was collected in between December 2013 and early January 2014
- A total of 69 surveys with court administrators was completed (79% response rate)
- Data was collected on-line and managed by SCAO
- The survey was pre-tested and revised accordingly

# ASSISTANCE TO VICTIMS

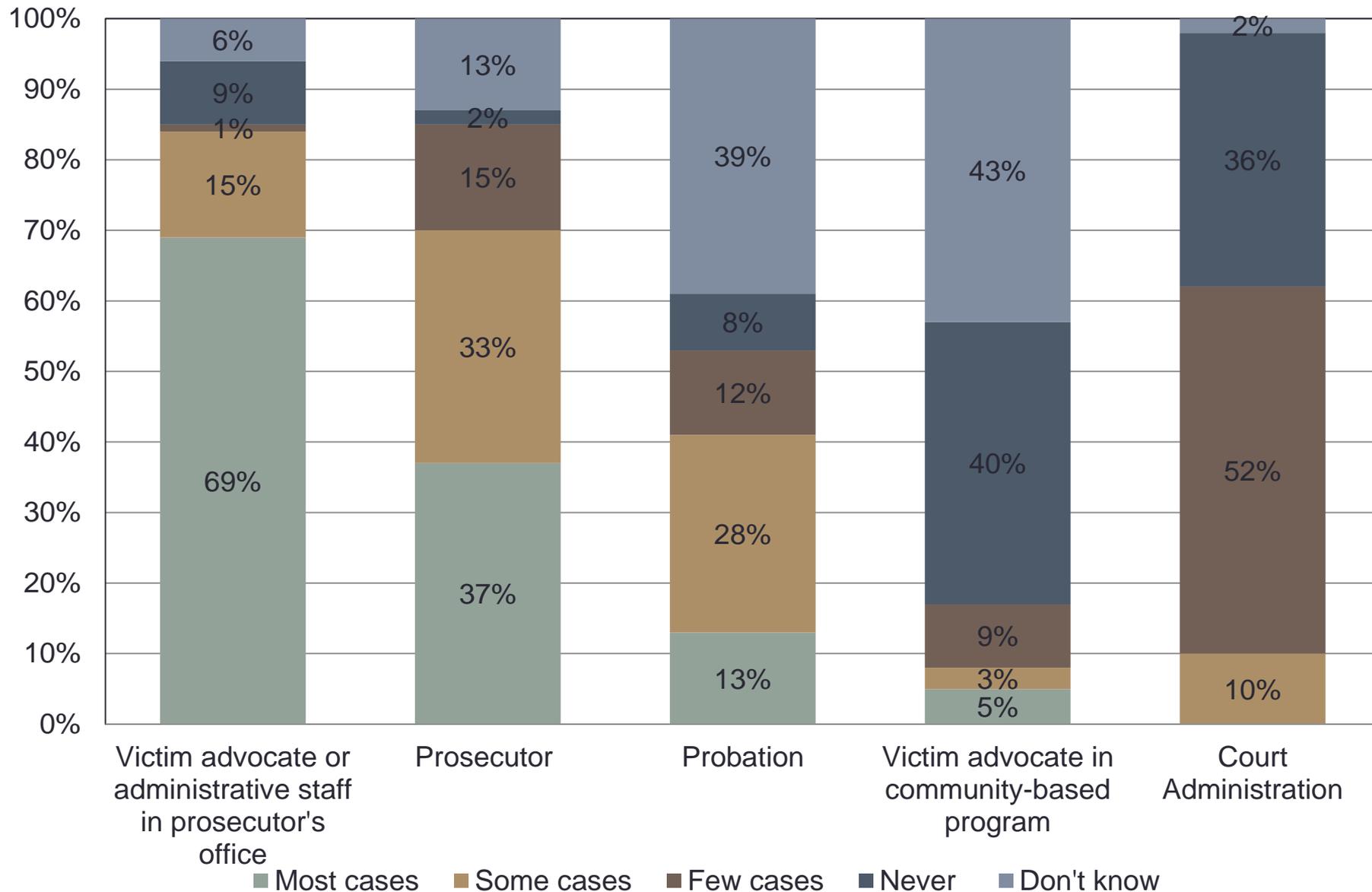
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Results

# Who in your county gives the victim the necessary forms to request restitution?



## Who primarily answers questions about requesting restitution or provides help to victims with completing the forms?

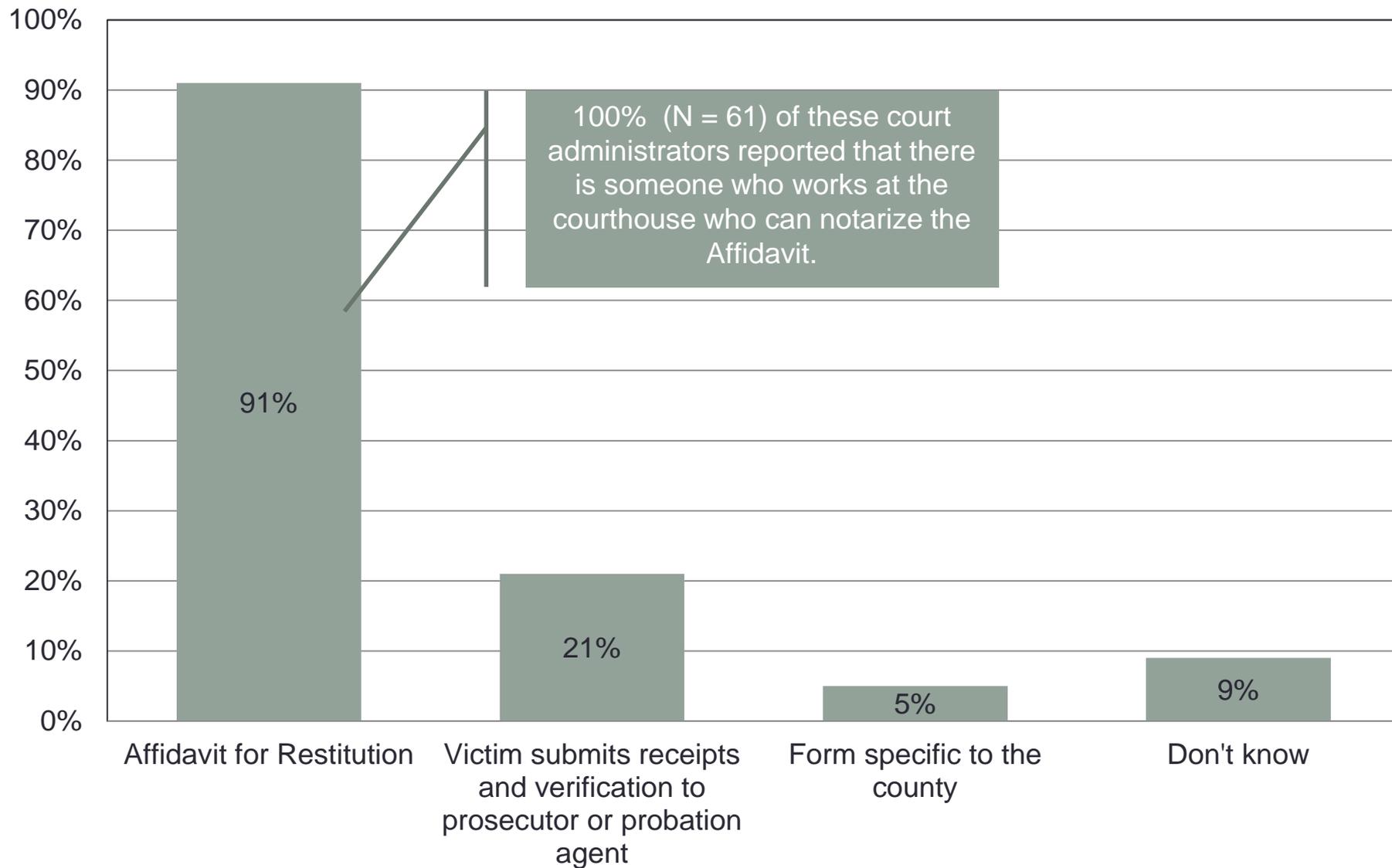


# REQUESTING RESTITUTION

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Results

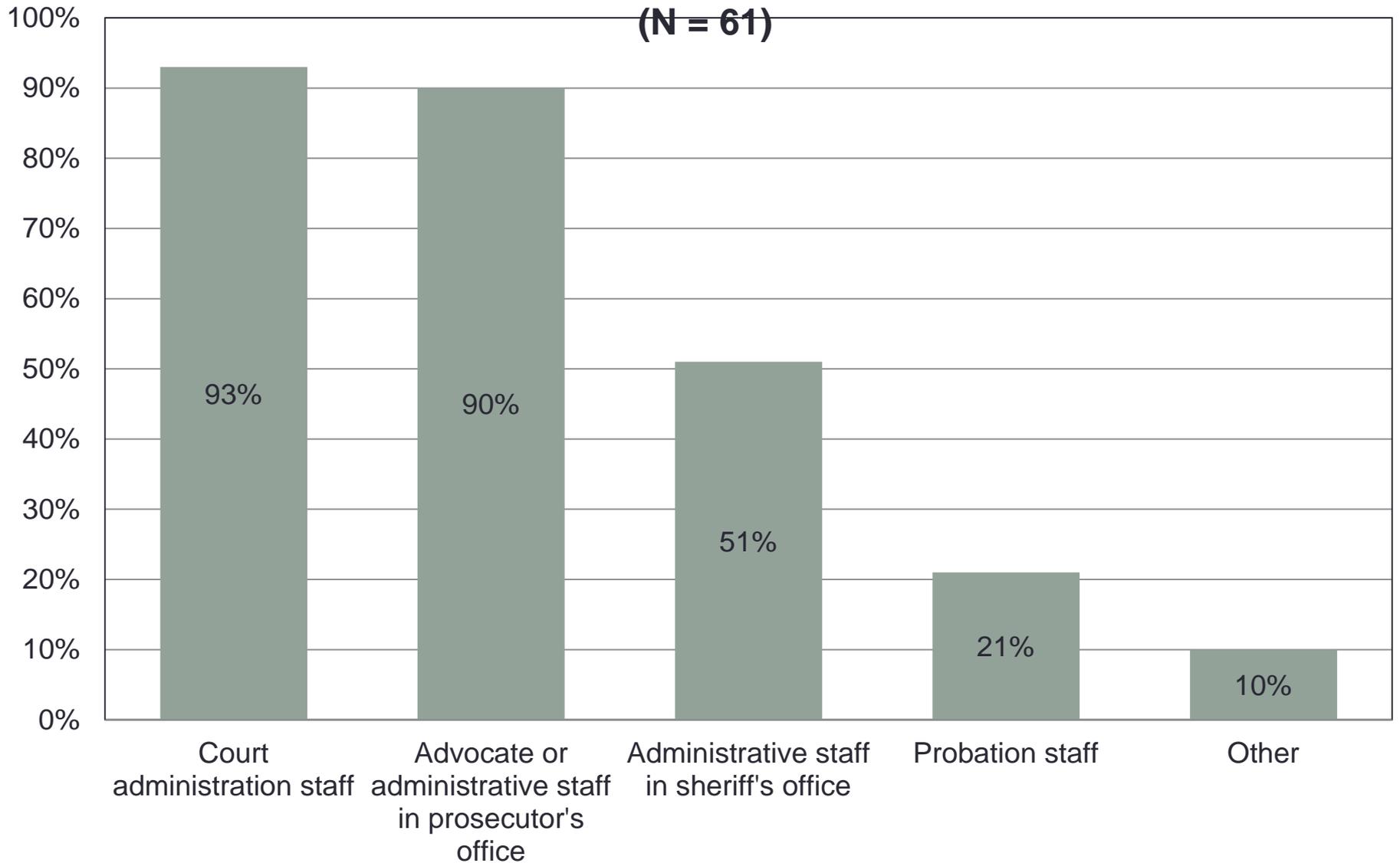
# What forms do victims complete to request restitution?



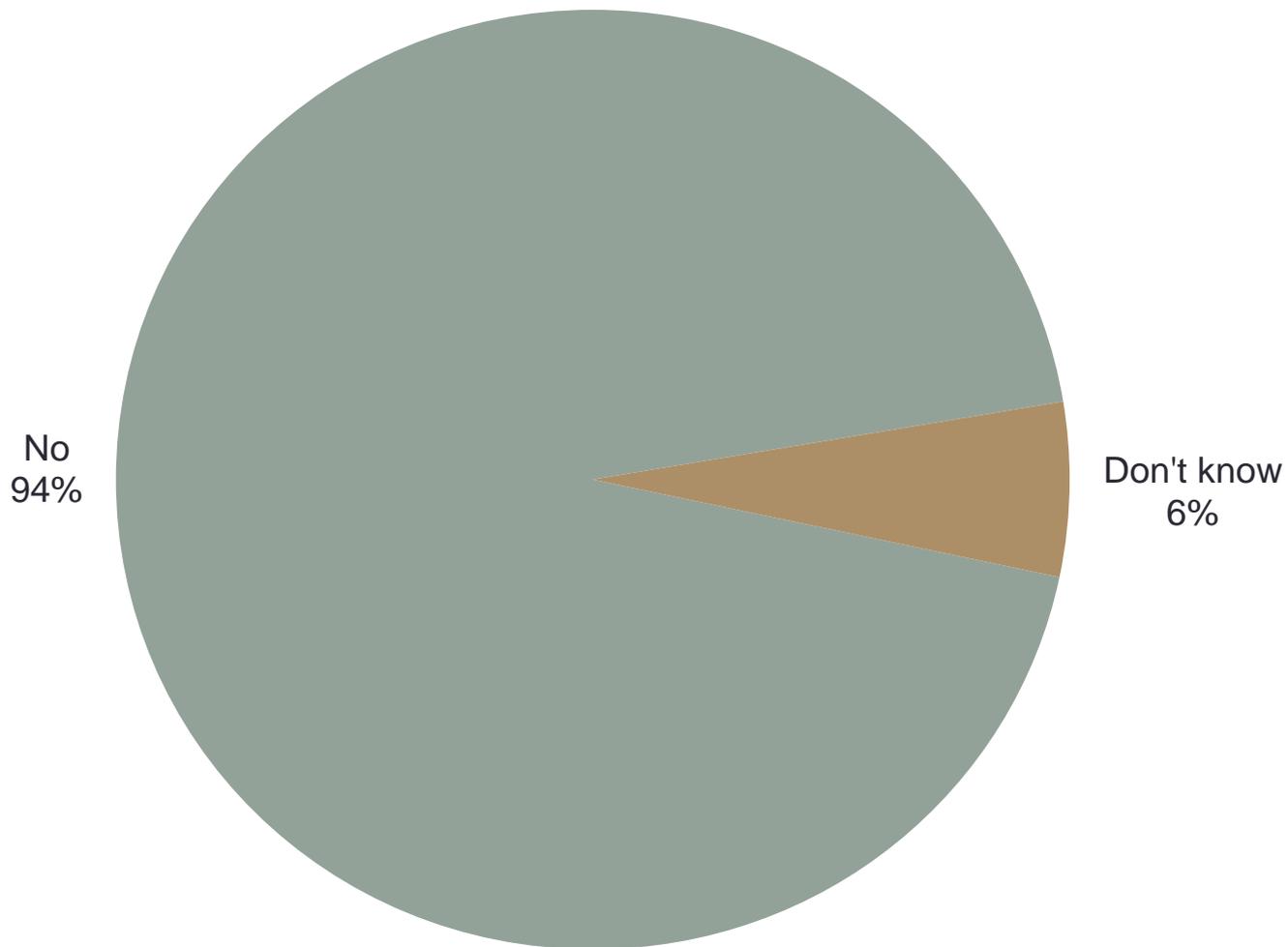


# Who can notarize an Affidavit for Restitution Form at your courthouse?

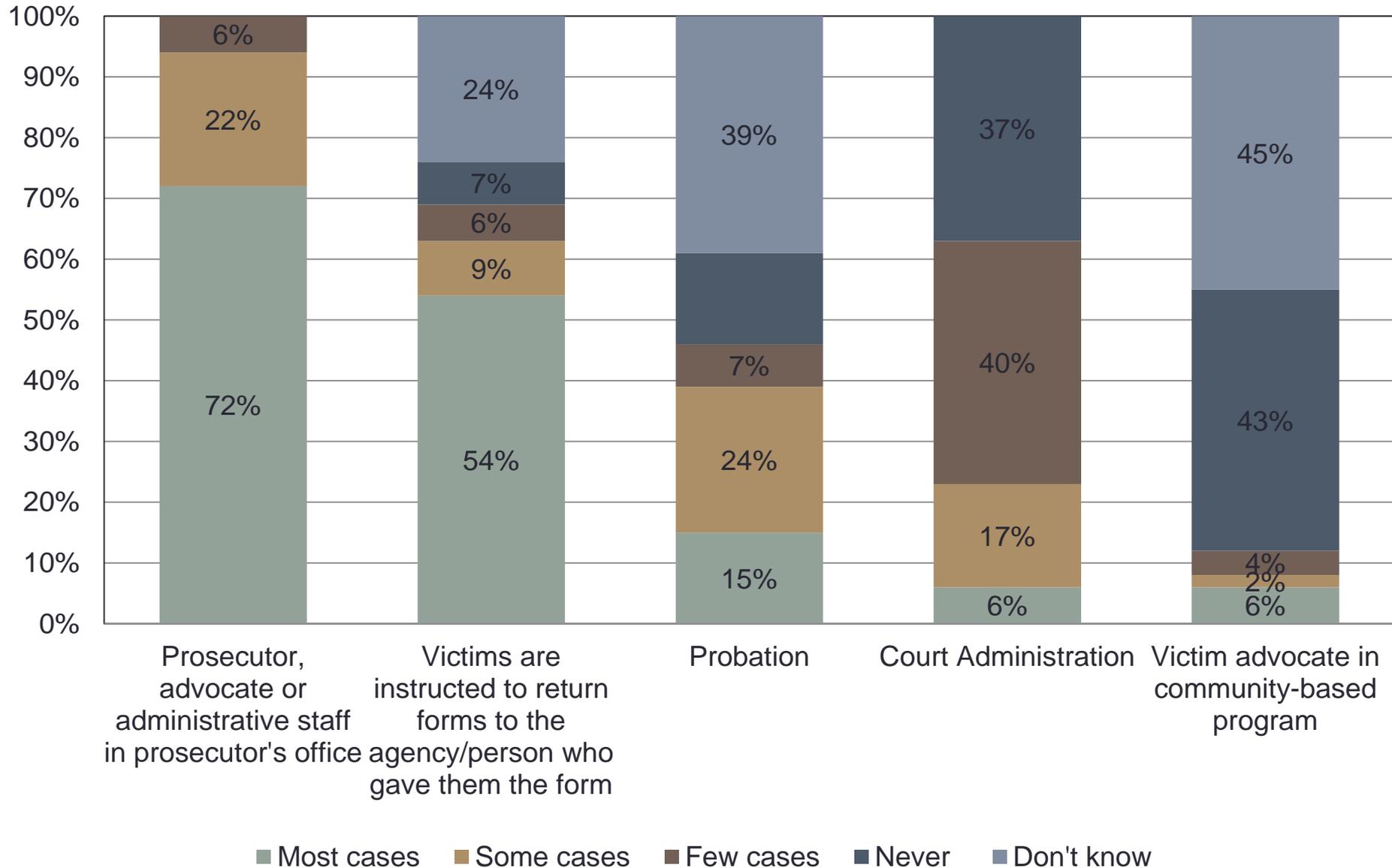
(N = 61)



**Is the victim charged a fee to have the form notarized by  
persons at the courthouse  
(N = 61)**



## To whom do victims give the restitution forms/information?

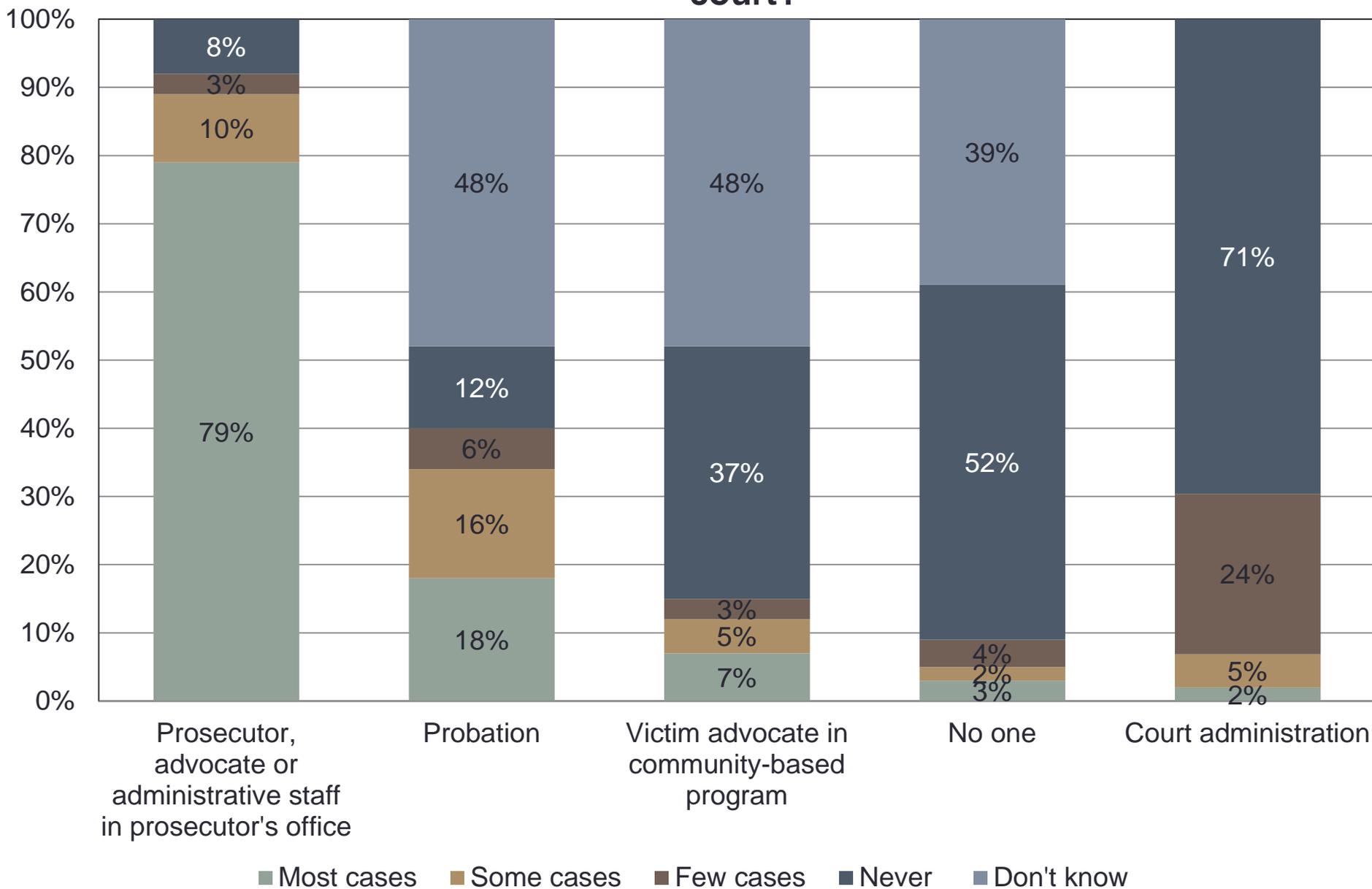


# PROCESSING RESTITUTION REQUESTS

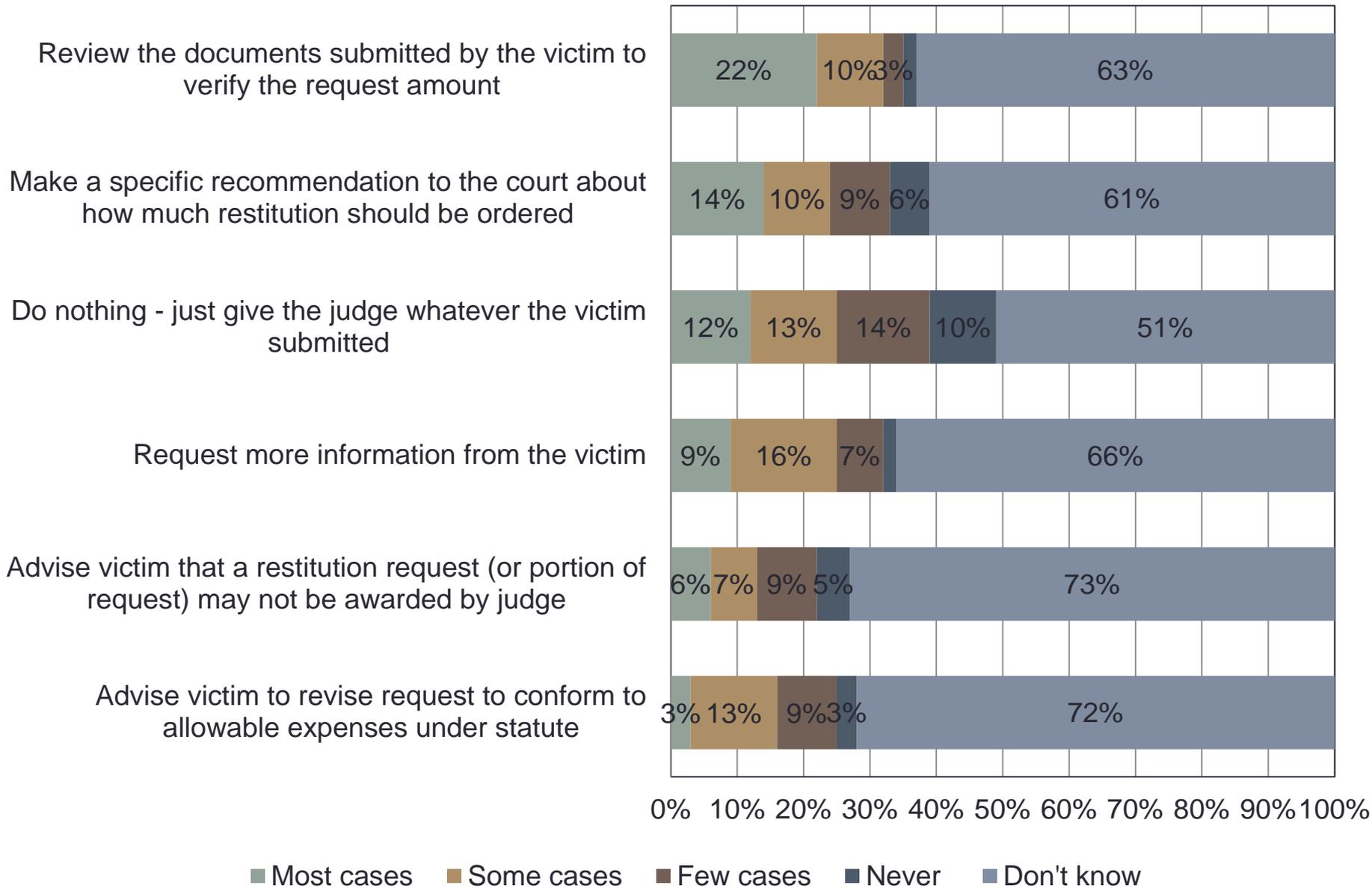
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Results

## Who reviews the restitution request prior to submitting it to the court?



## To what extent does the person/agency reviewing the restitution request do the following:



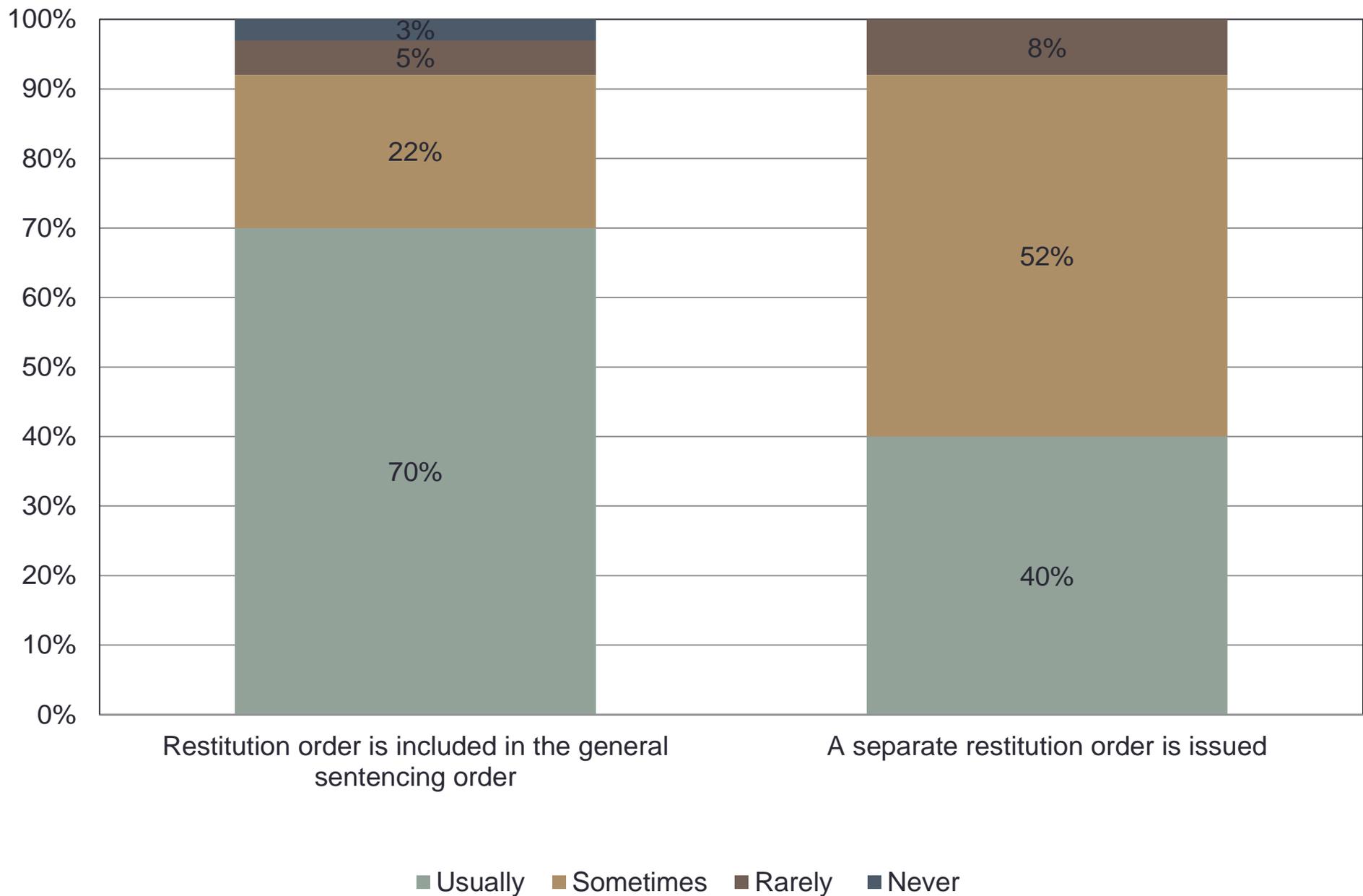
# ORDERING RESTITUTION

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Results



# In your county, how is restitution ordered in a criminal case?

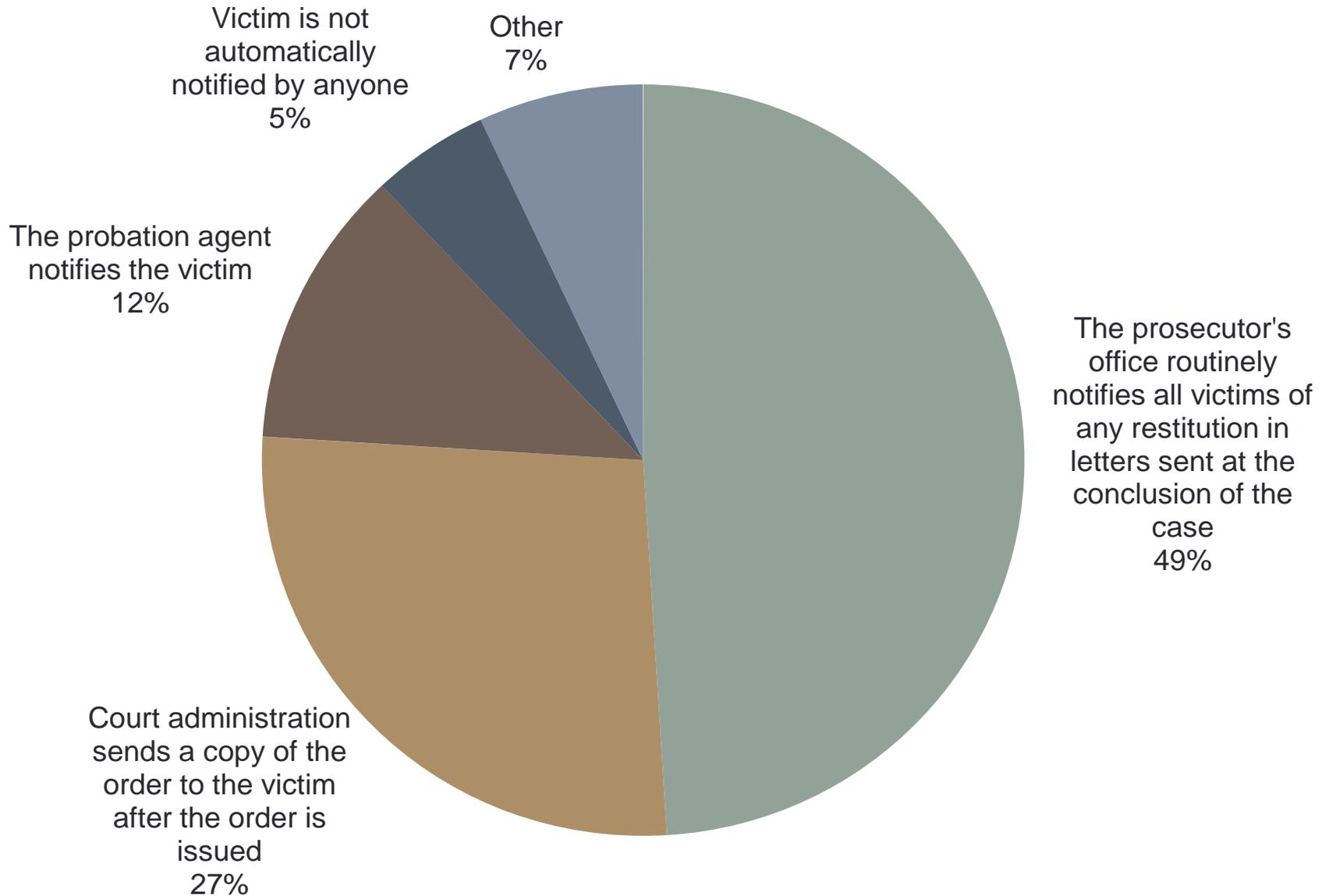


# NOTIFYING VICTIMS

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Results

# In your county, what is the primary method used to notify a victim of the restitution order?



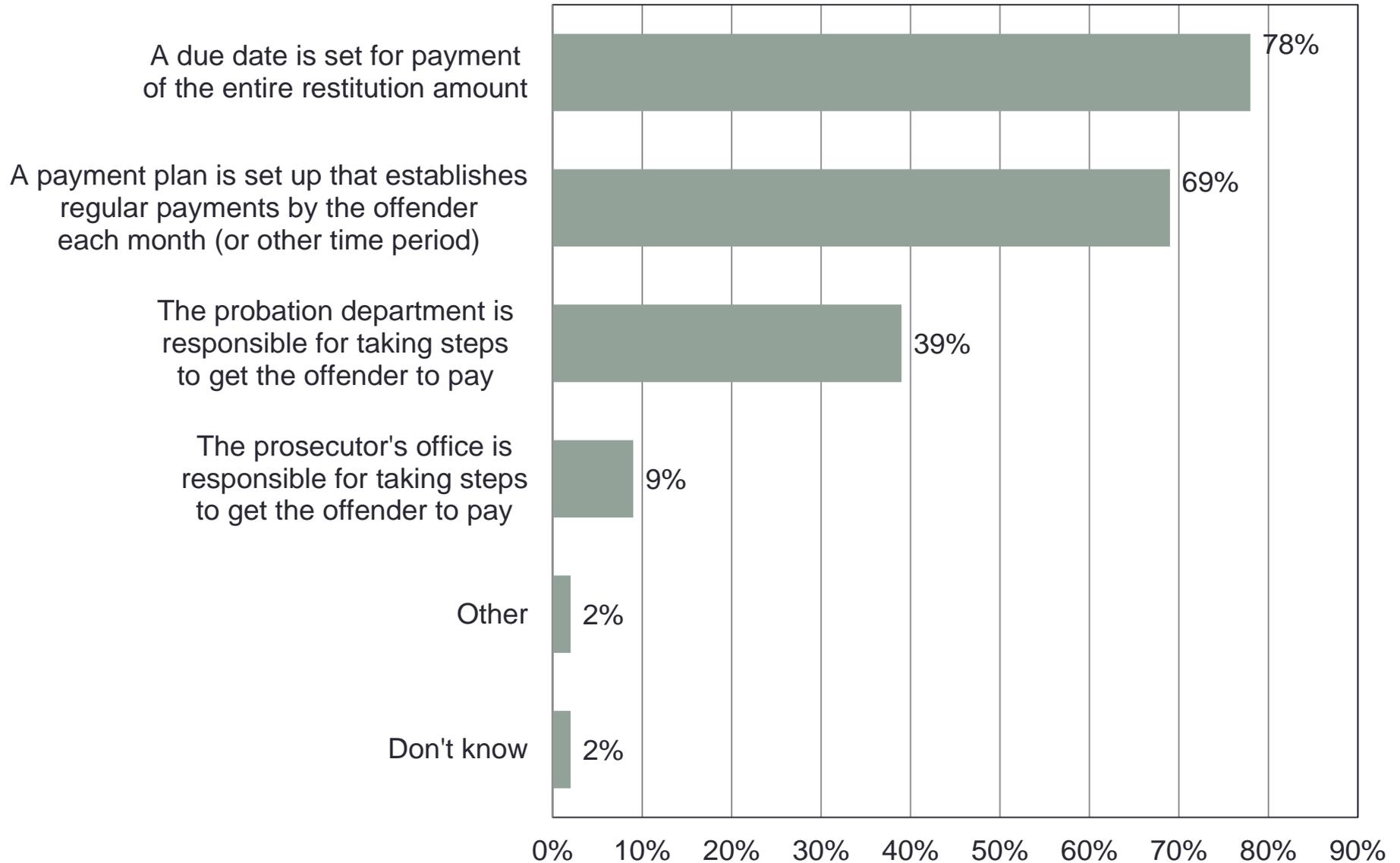
# RESTITUTION PAYMENTS & PAYMENT PLANS

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Results



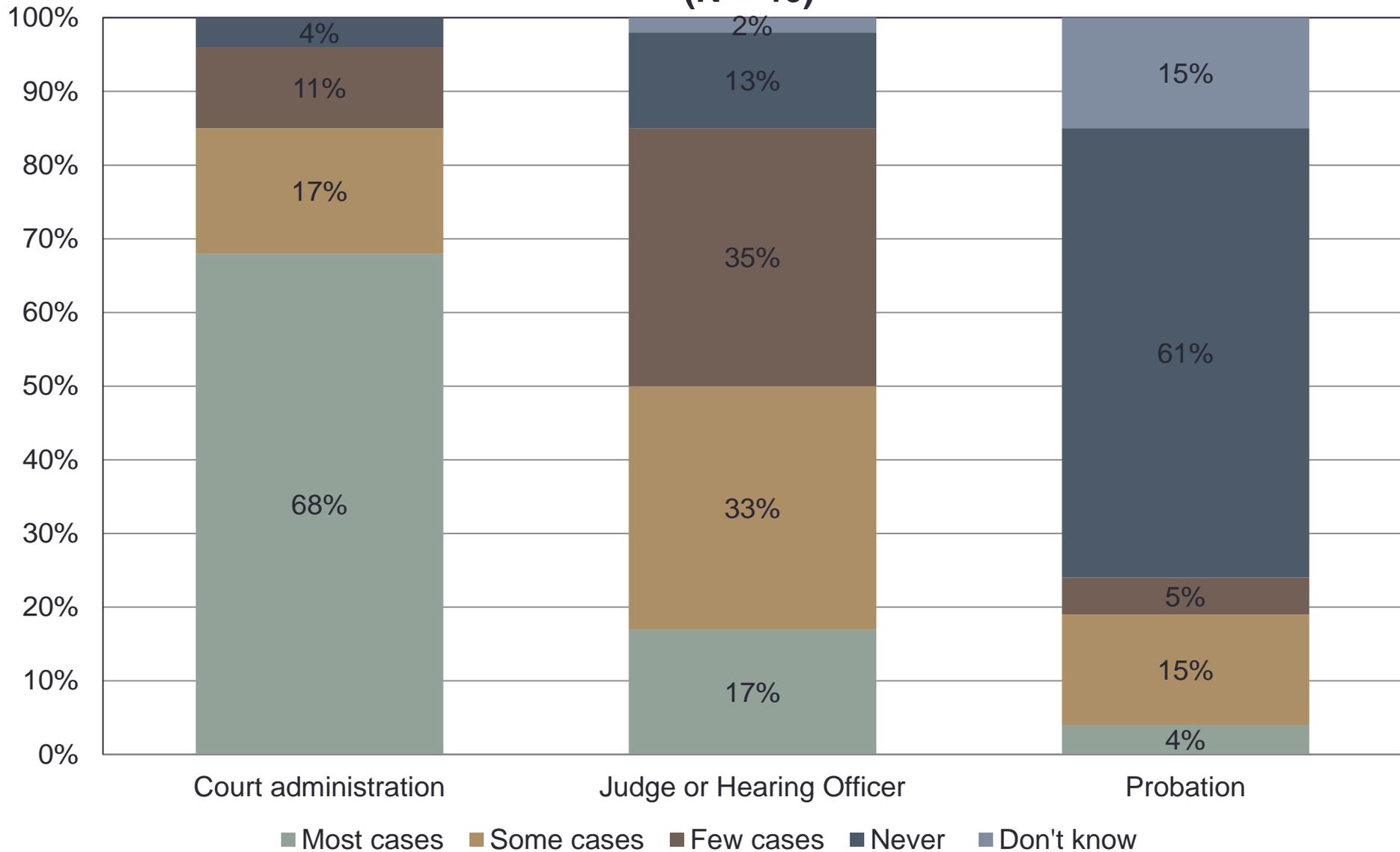
## Once restitution is ordered, what happens?





# Who sets up the payment plan?\*

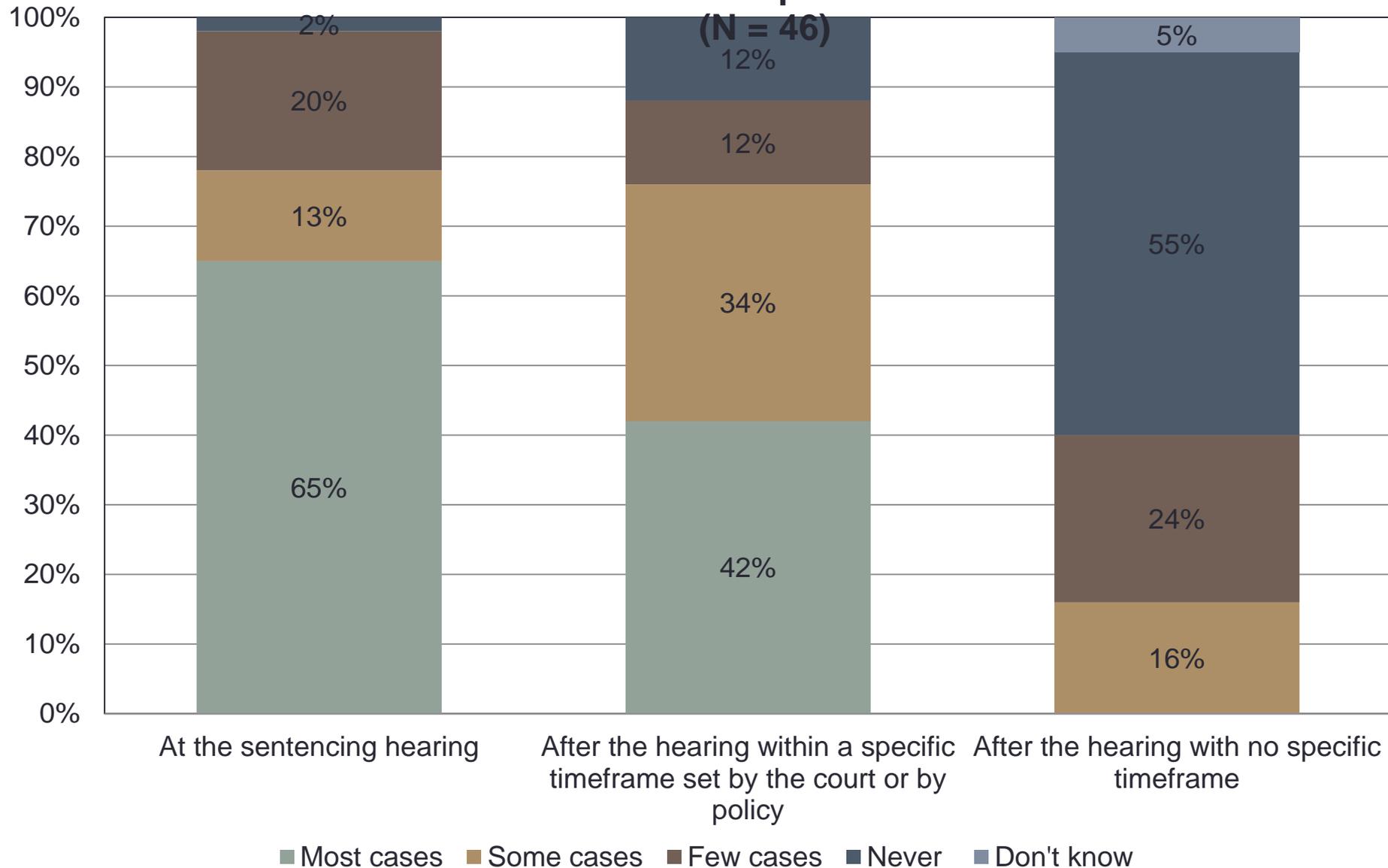
(N = 46)



\*Asked only of those respondents who indicated a payment plan is set up.



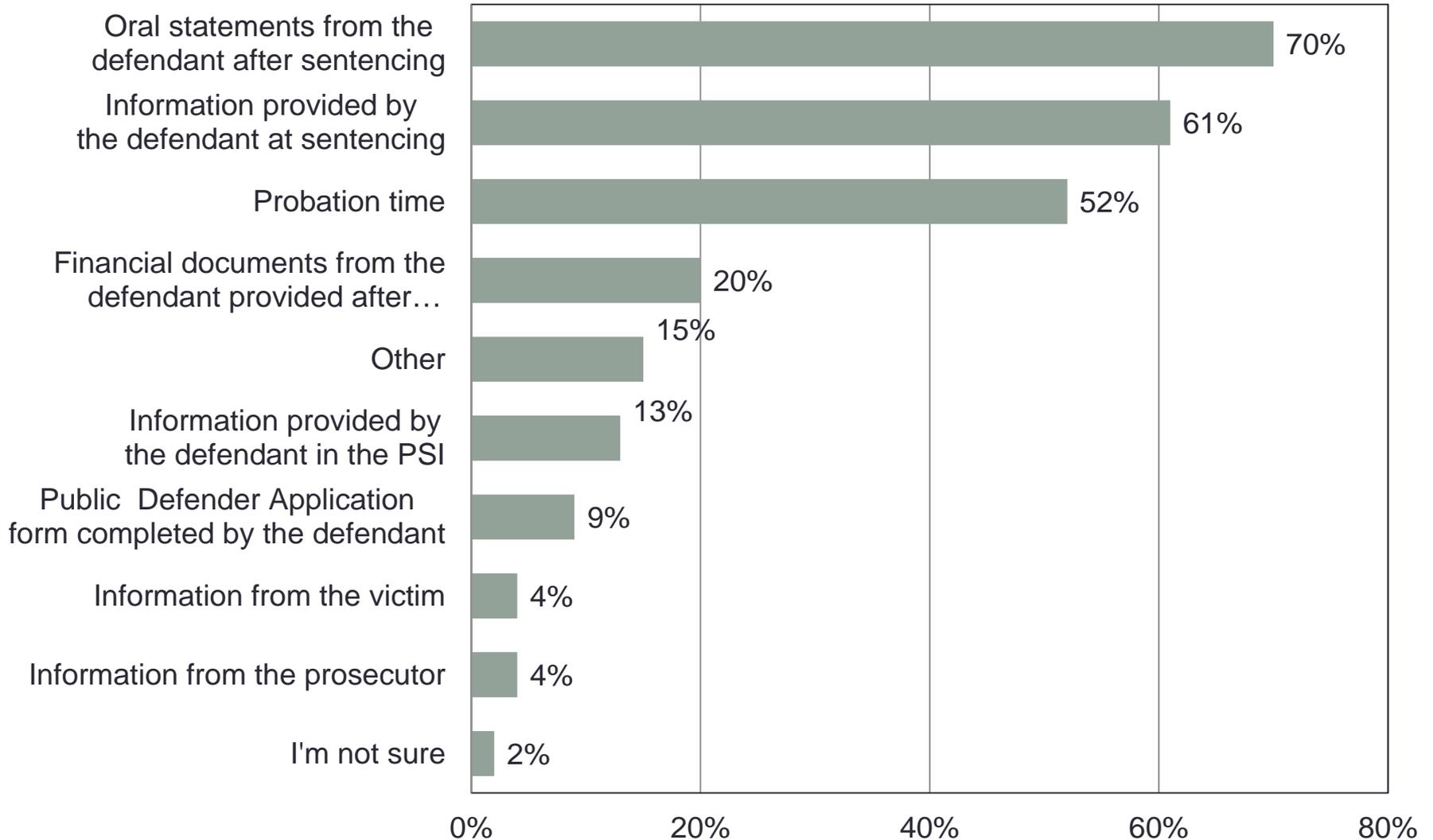
# In cases where a payment plan is established, when are they set up?\*



\*Asked only of those respondents who indicated a payment plan is set up.

## What kind of information is typically relied on when setting up a payment plan?\*

(N = 46)



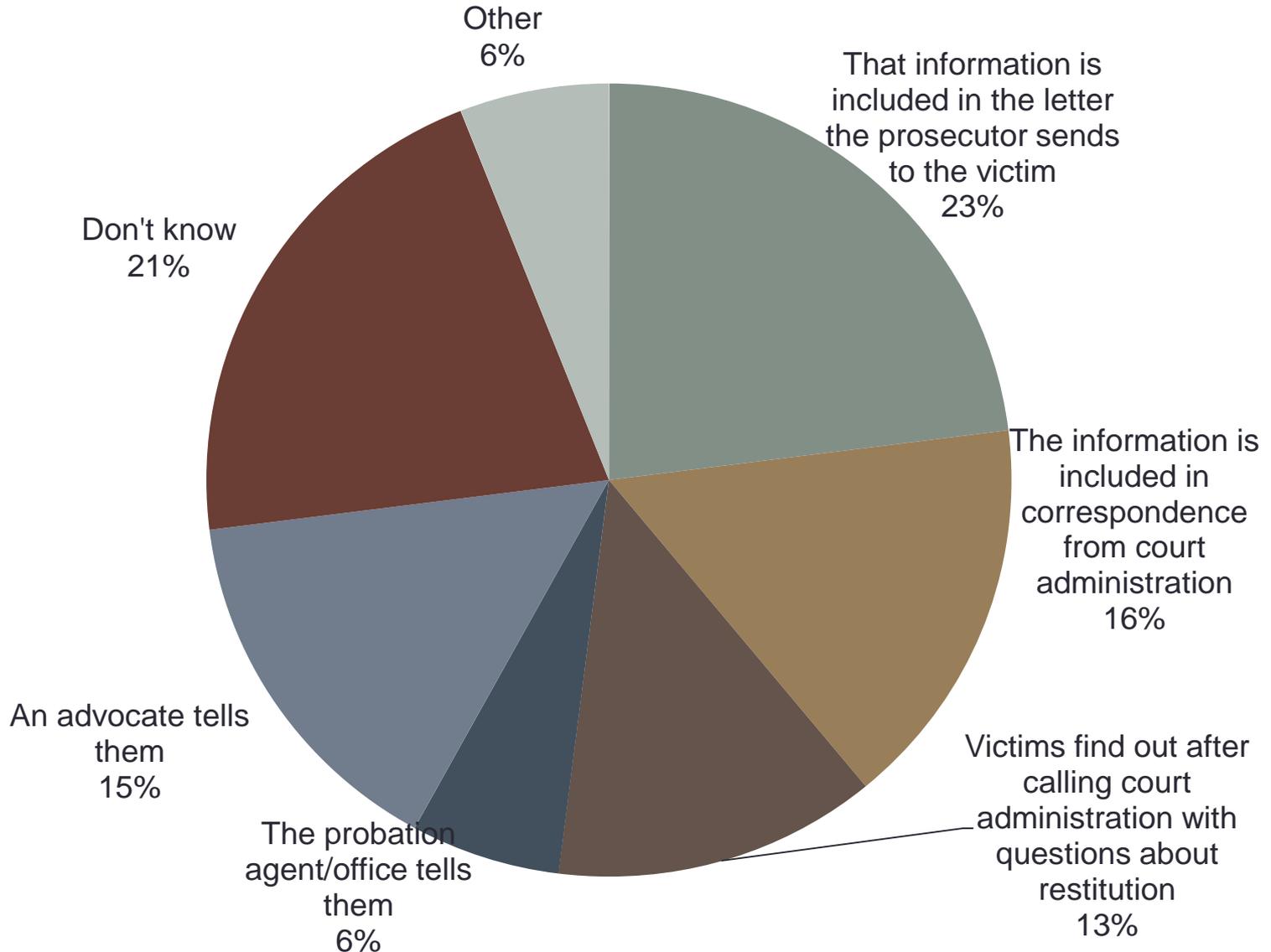
\*Asked only of those respondents who indicated a payment plan is set up.

# CIVIL JUDGMENT

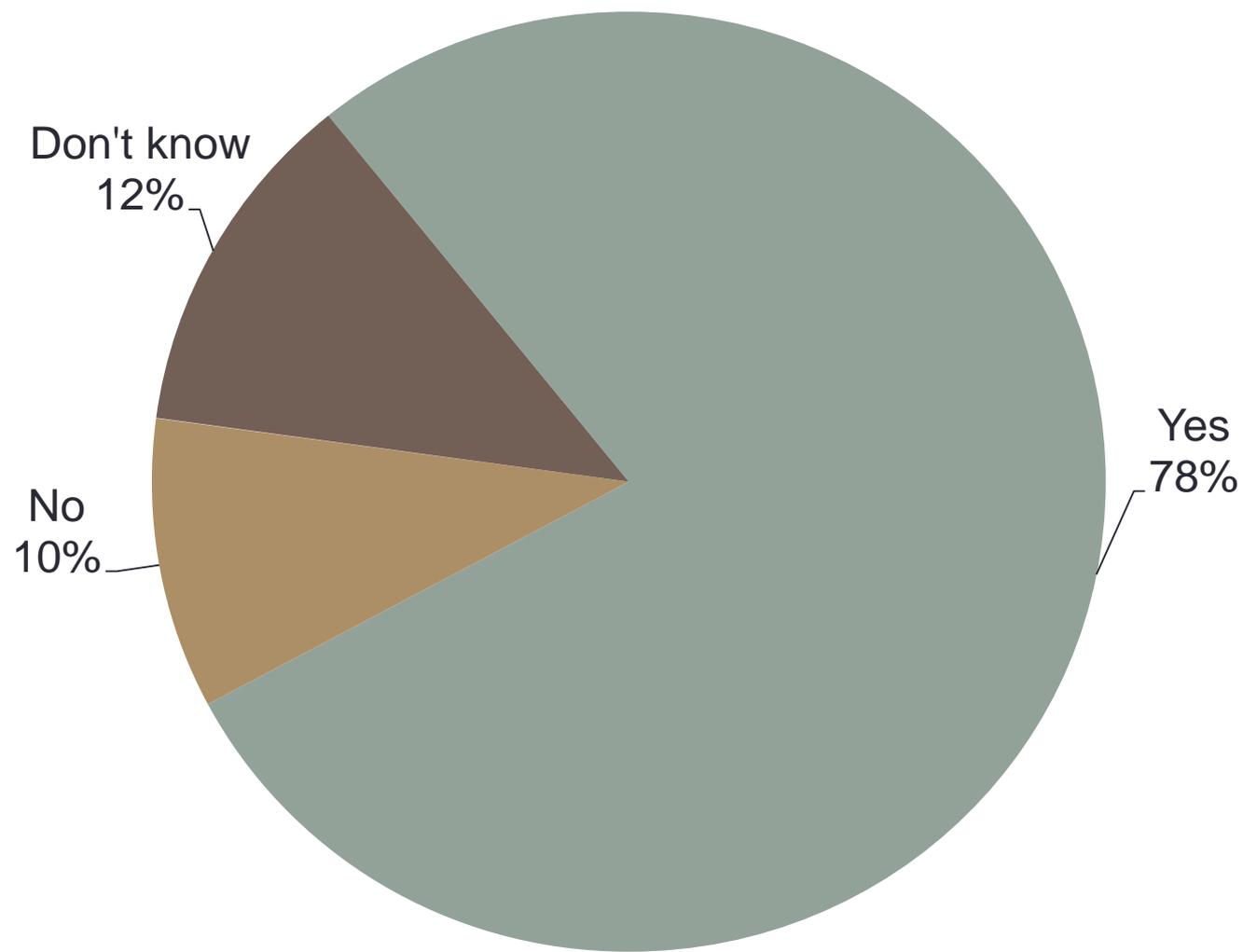
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Results

# In your county, how do victims primarily find out about the need to file an "Affidavit of Identification of Judgment Debtor" form?

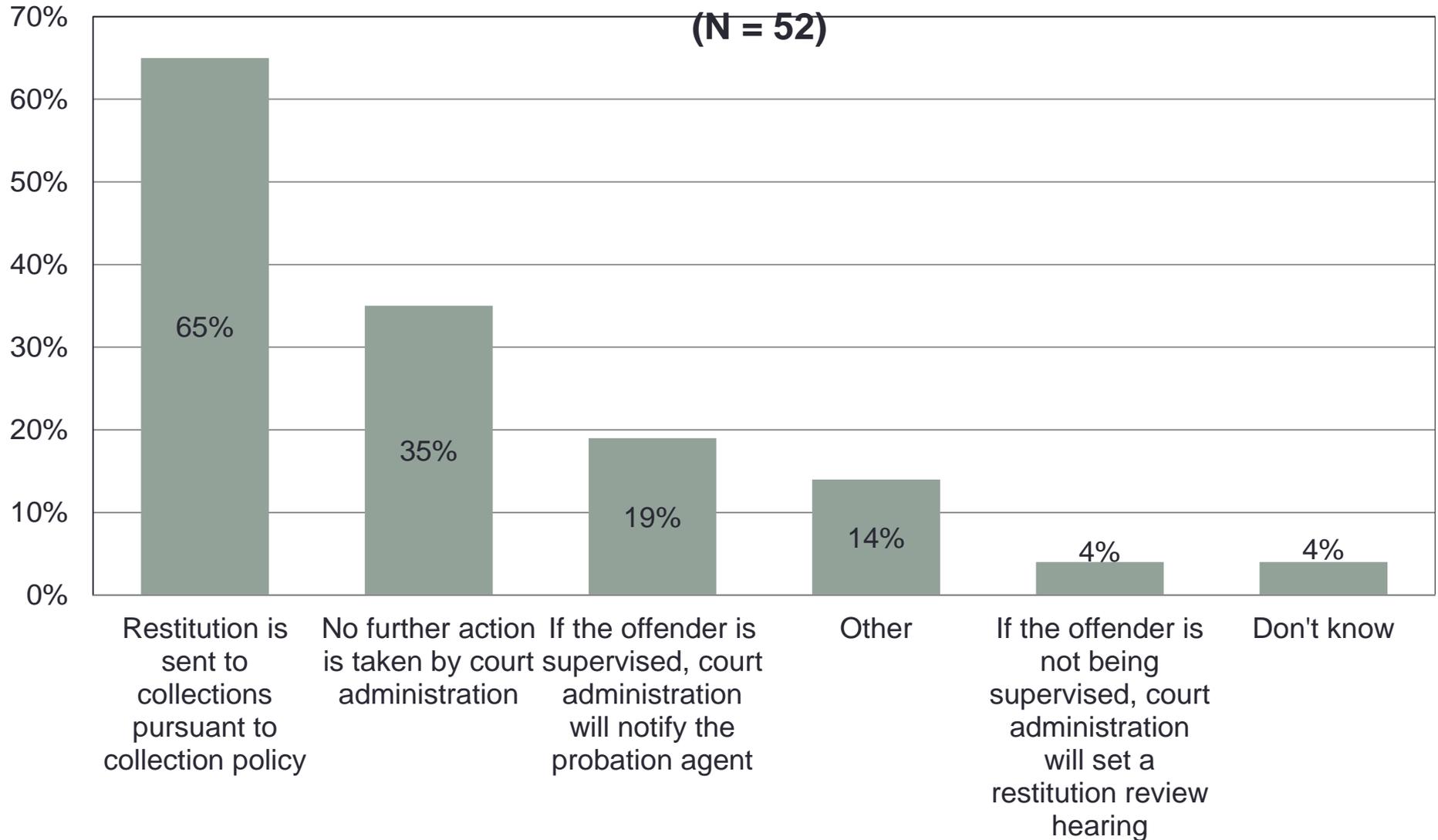


# Are restitution orders ever entered as a civil judgment prior to the expiration of probation?



# When a civil judgment for restitution has been docketed prior to the expiration of probation, what steps are taken by court administration?\*

(N = 52)



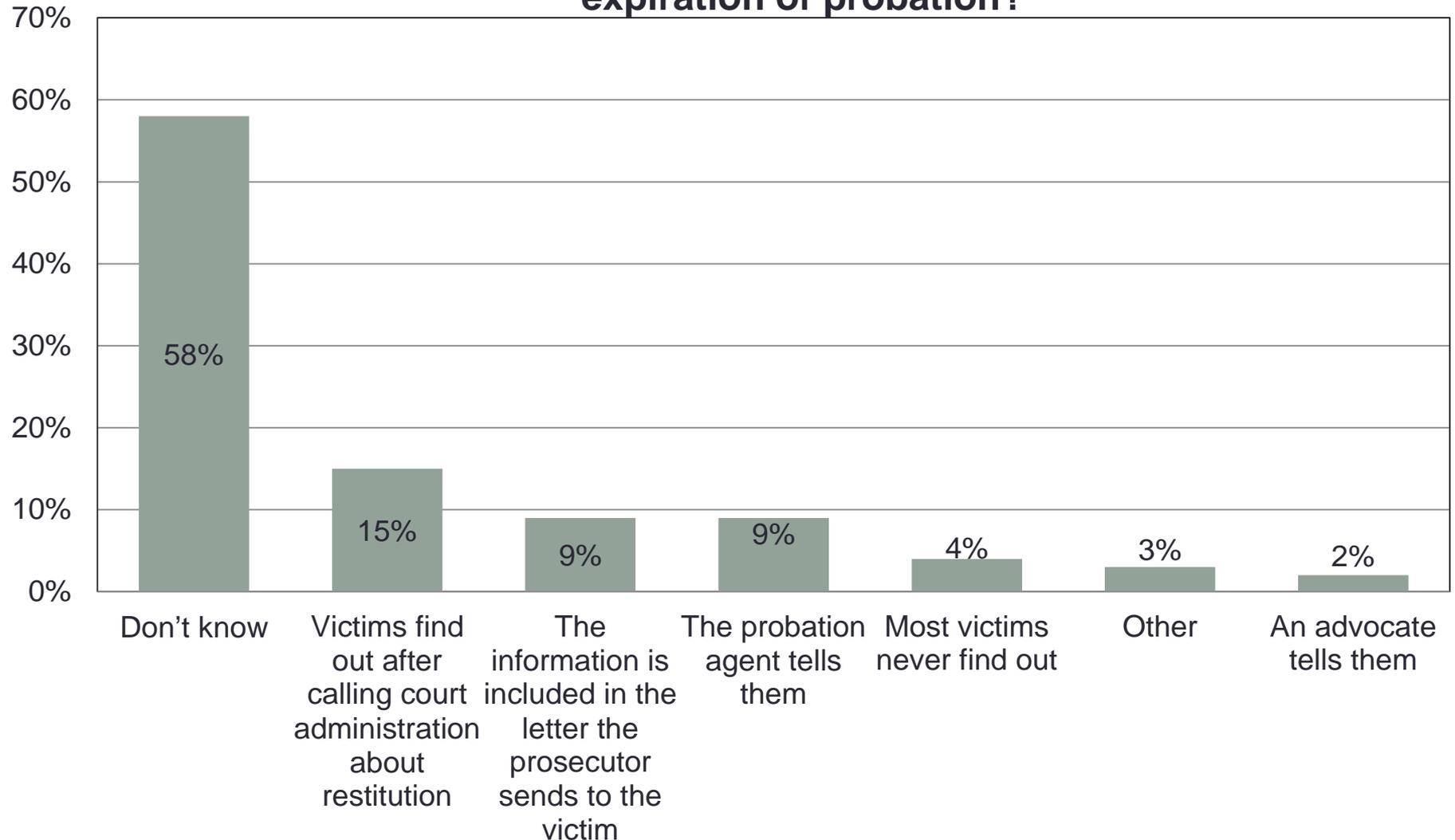
\*Asked only of those respondents who indicated that orders are entered as a civil judgment prior to the expiration of probation.

# RESTITUTION REVIEW HEARING

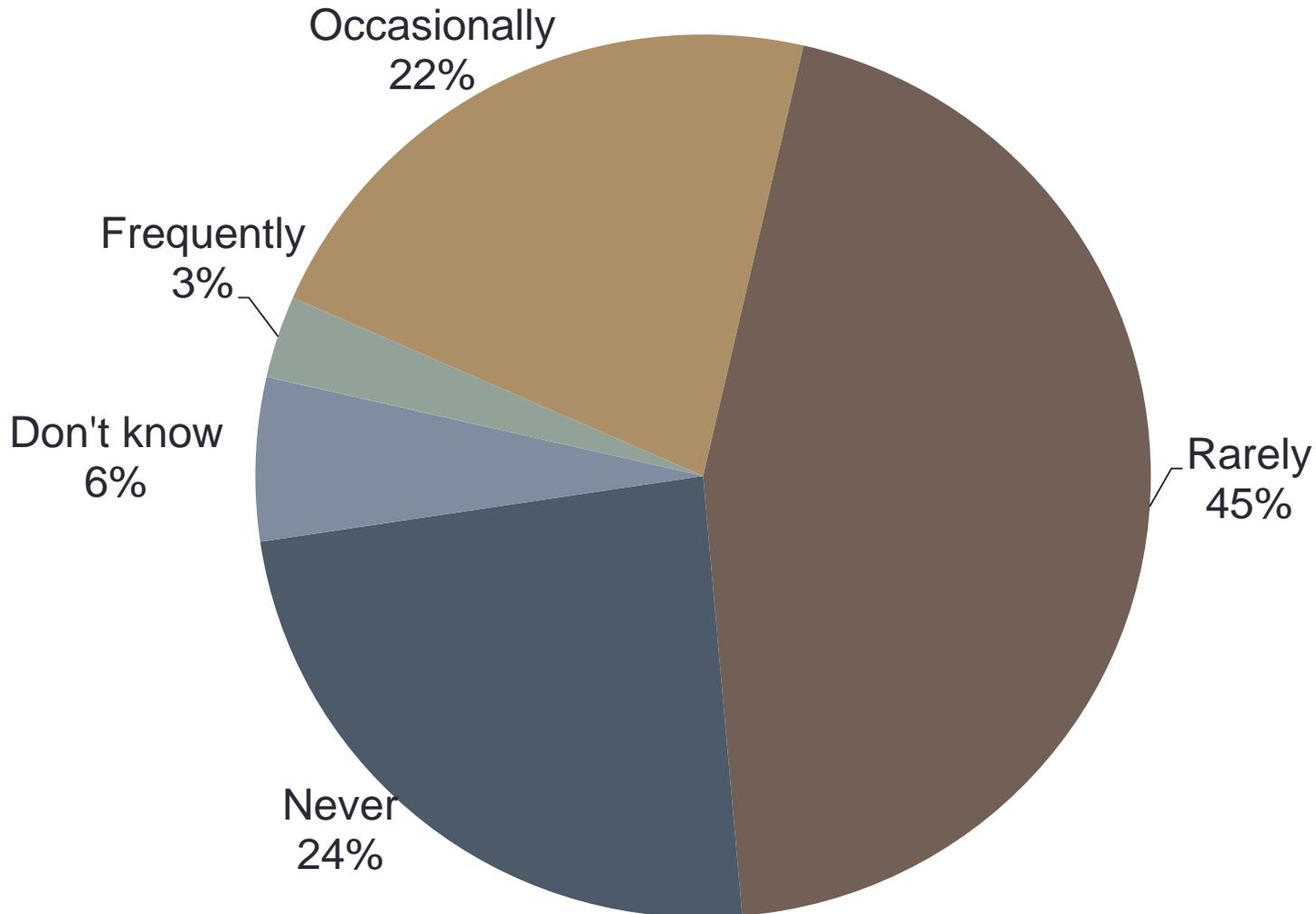
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Results

How do victims typically find out they have the right to ask the offender's probation officer to request a probation review hearing if the offender fails to pay restitution prior to the expiration of probation?



**How frequently in your county are restitution review hearings scheduled prior to the expiration of probation when the defendant has not paid restitution?**

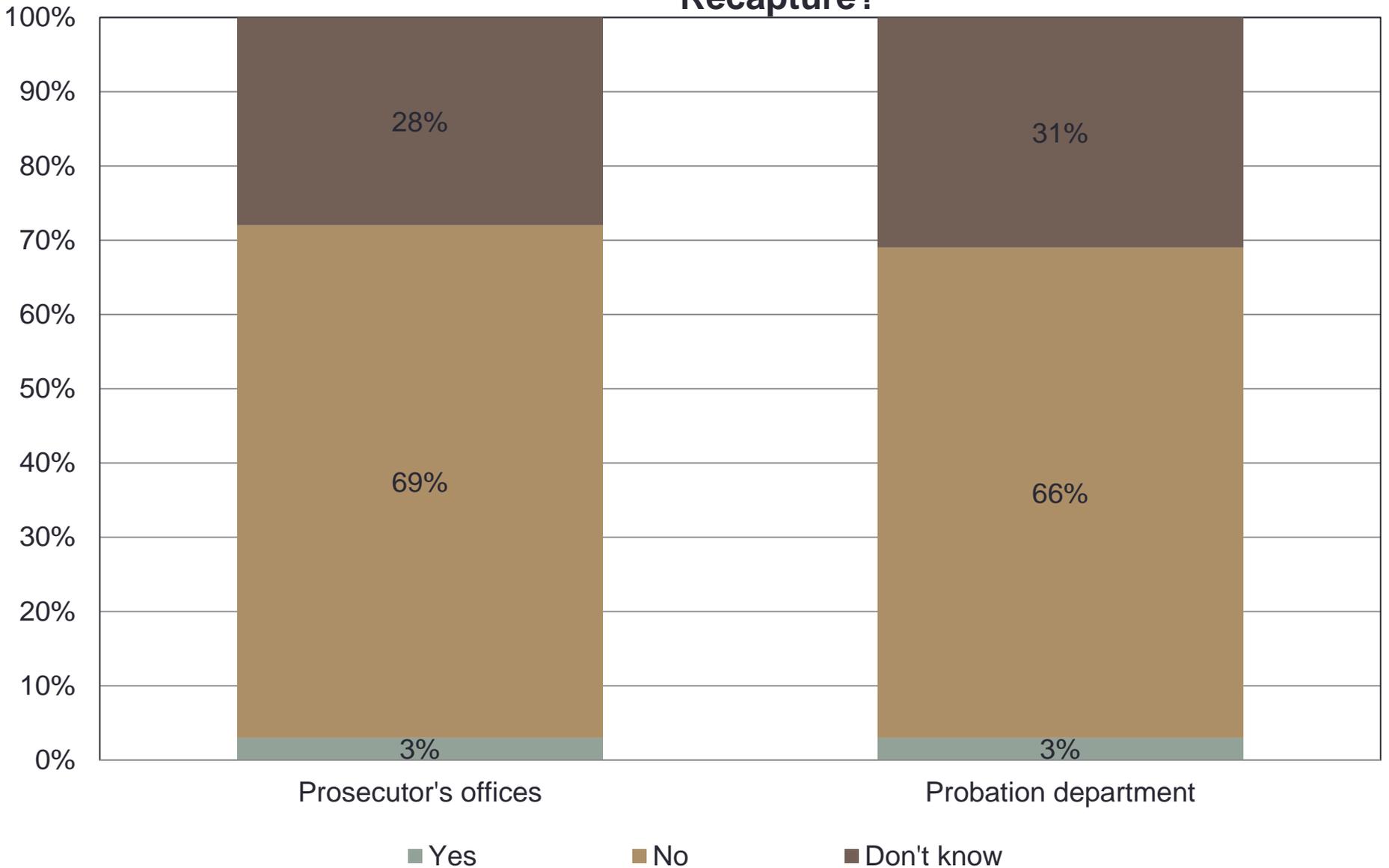


# OTHER COLLECTION EFFORTS

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Results

# To your knowledge, do the following organizations/agencies in your county ever submit a restitution claim for Revenue Recapture?



# To your knowledge, do these organizations/agencies in your county have organized restitution collection programs or efforts?



If the prosecutors offices or probation department in your county have organized restitution collection programs or efforts, please briefly describe them here.

- Prior to 1/1/12, the Ramsey County Corrections Department handled all restitution collections. This department used revenue recapture as its collection program. After 1/1/12, court administration took over restitution collection.
- Probation will put claims into revenue recapture.
- Probation will violation the defendant if restitution is not paid.
- The prosecutor's office has a restitution team that oversees these functions entirely.
- The Court is not involved after restitution has been ordered.

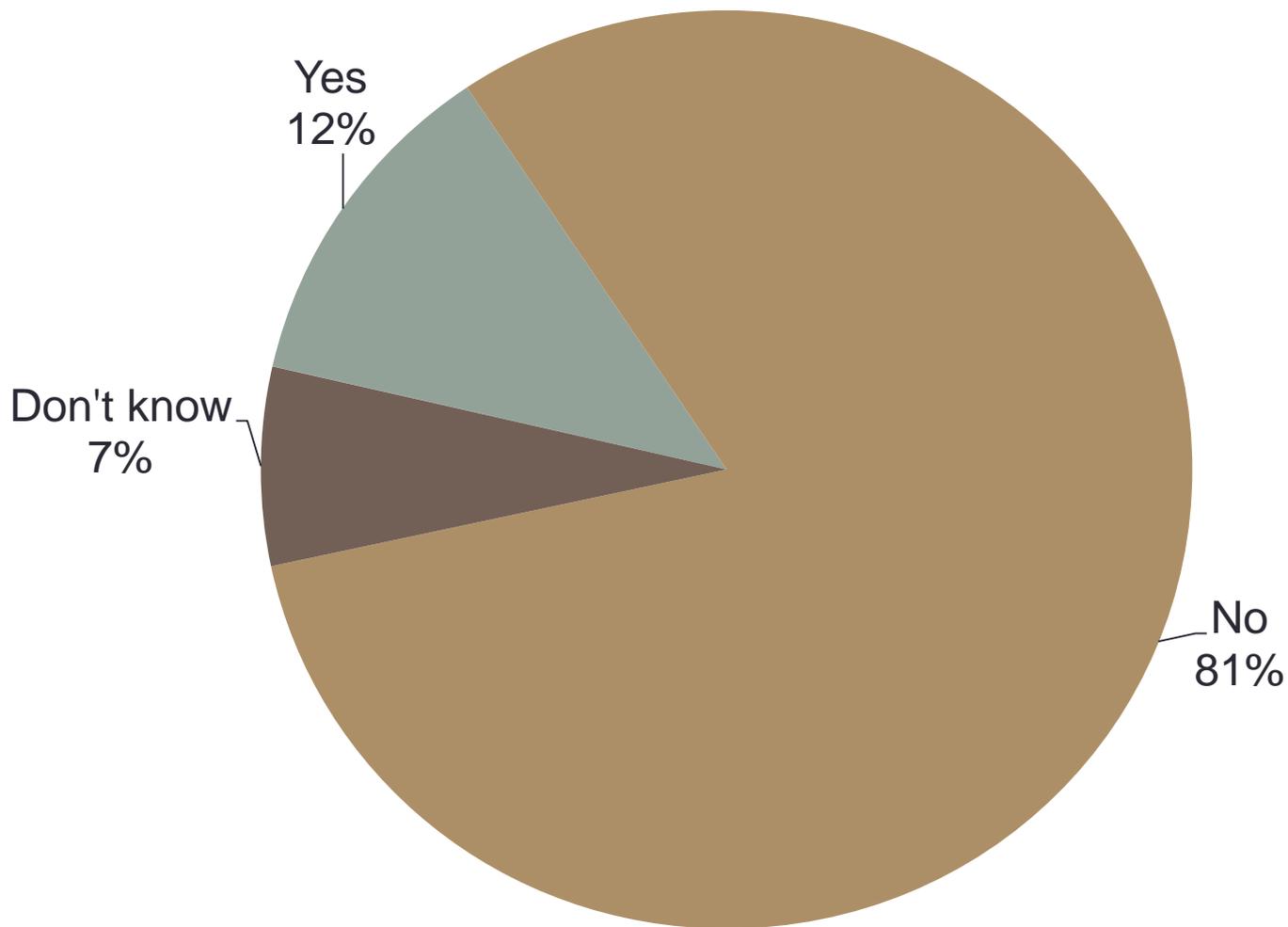
# RESTITUTION PAYMENT AND COLLECTIONS

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Results

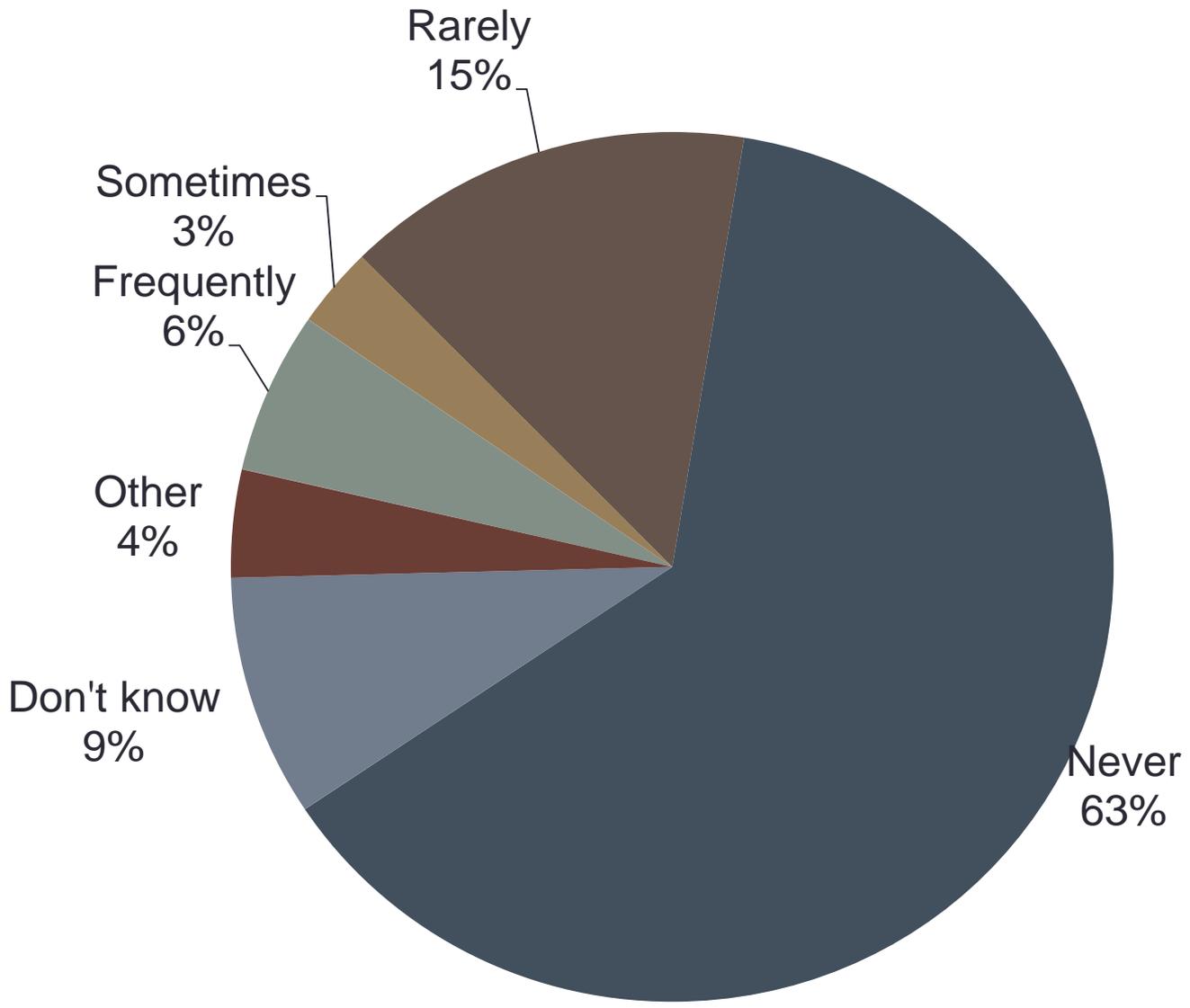


# Are there circumstances when restitution is not ordered as the first priority of payment?





# How frequently does your county exclude restitution from the auto referral process?

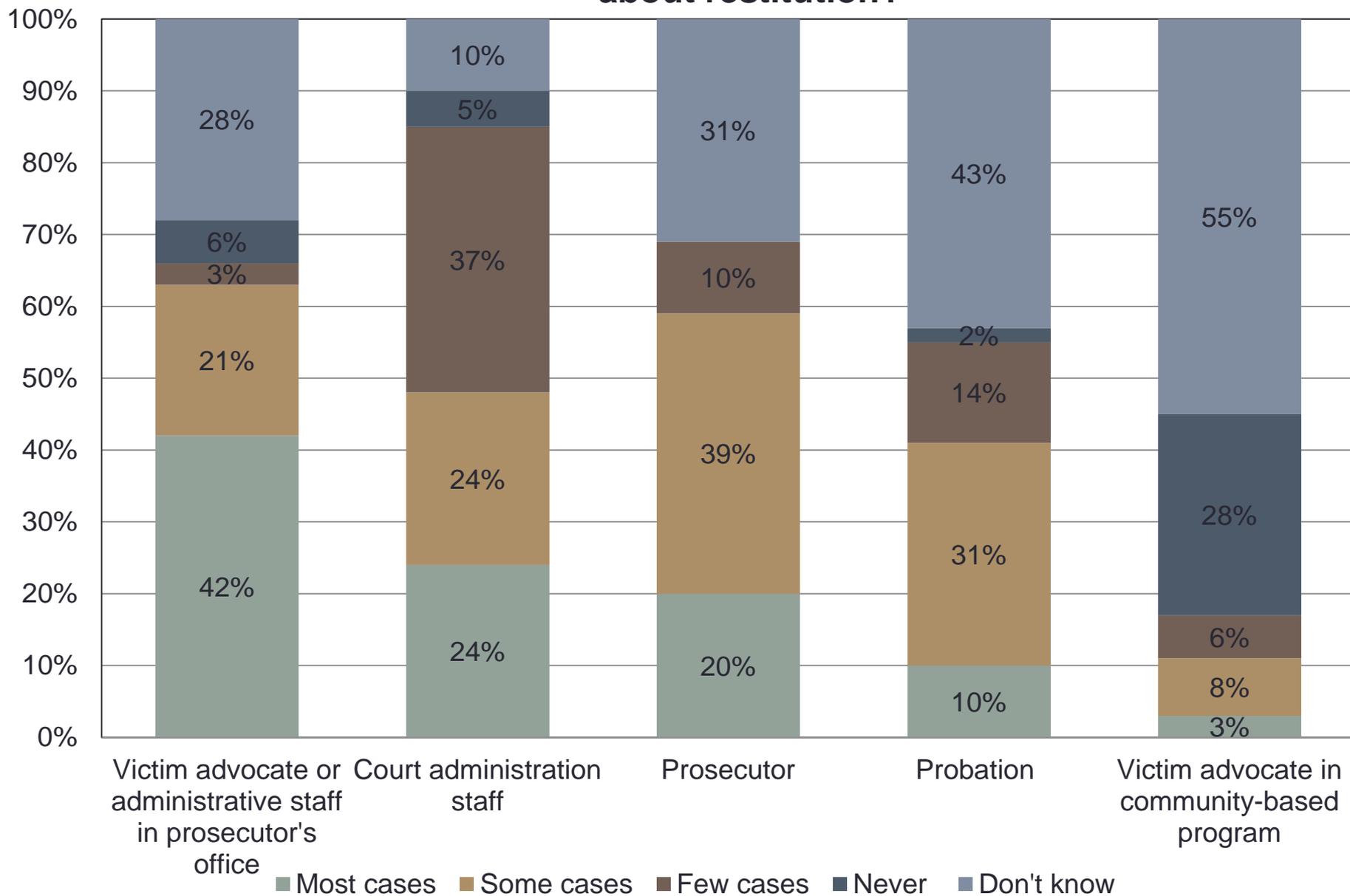


# ASSISTING VICTIMS

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Results

## After sentencing, who answers most questions from victims about restitution?



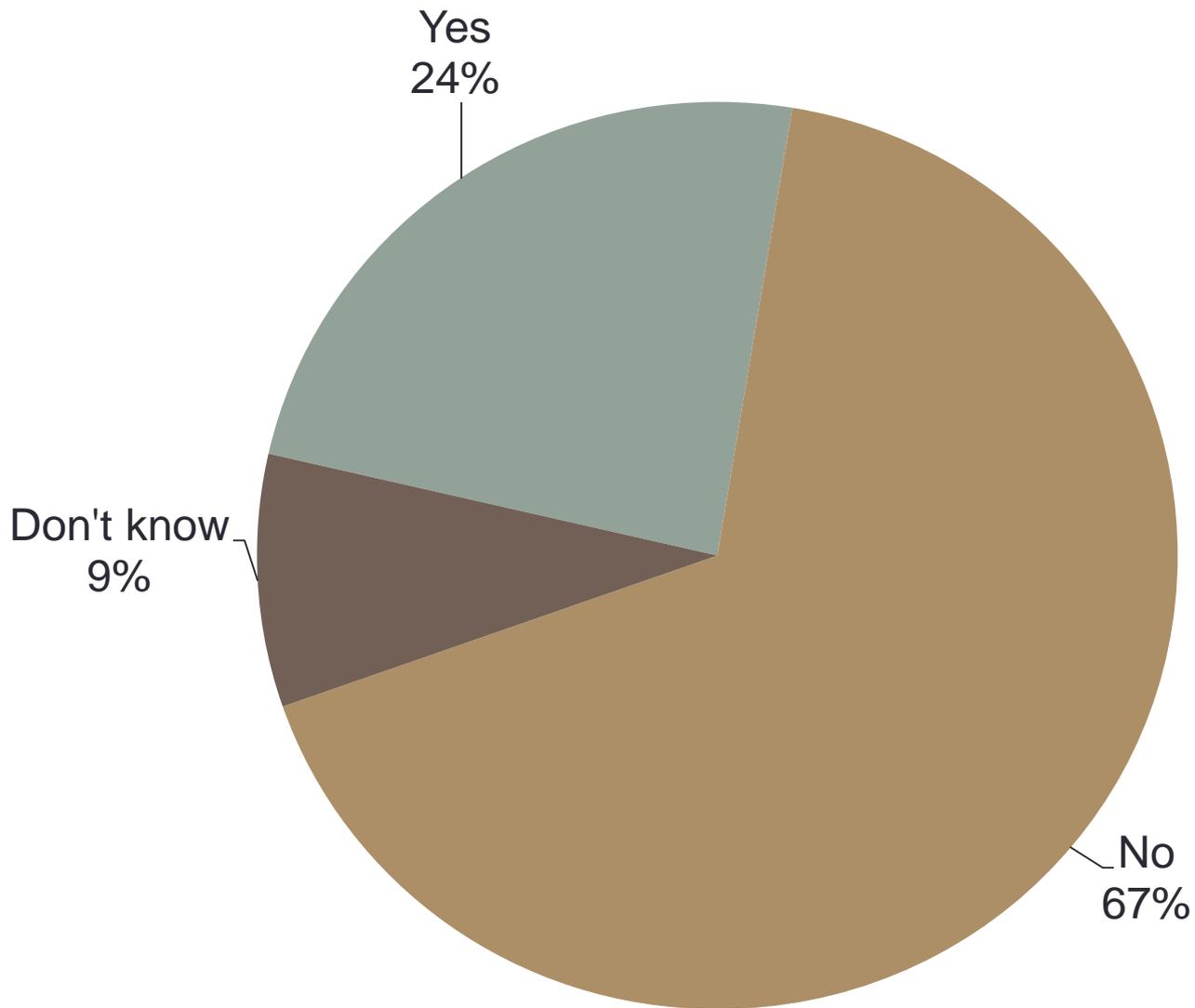
# RESTITUTION FOR OTHER OFFENDERS/OFFENSE LEVEL

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Results

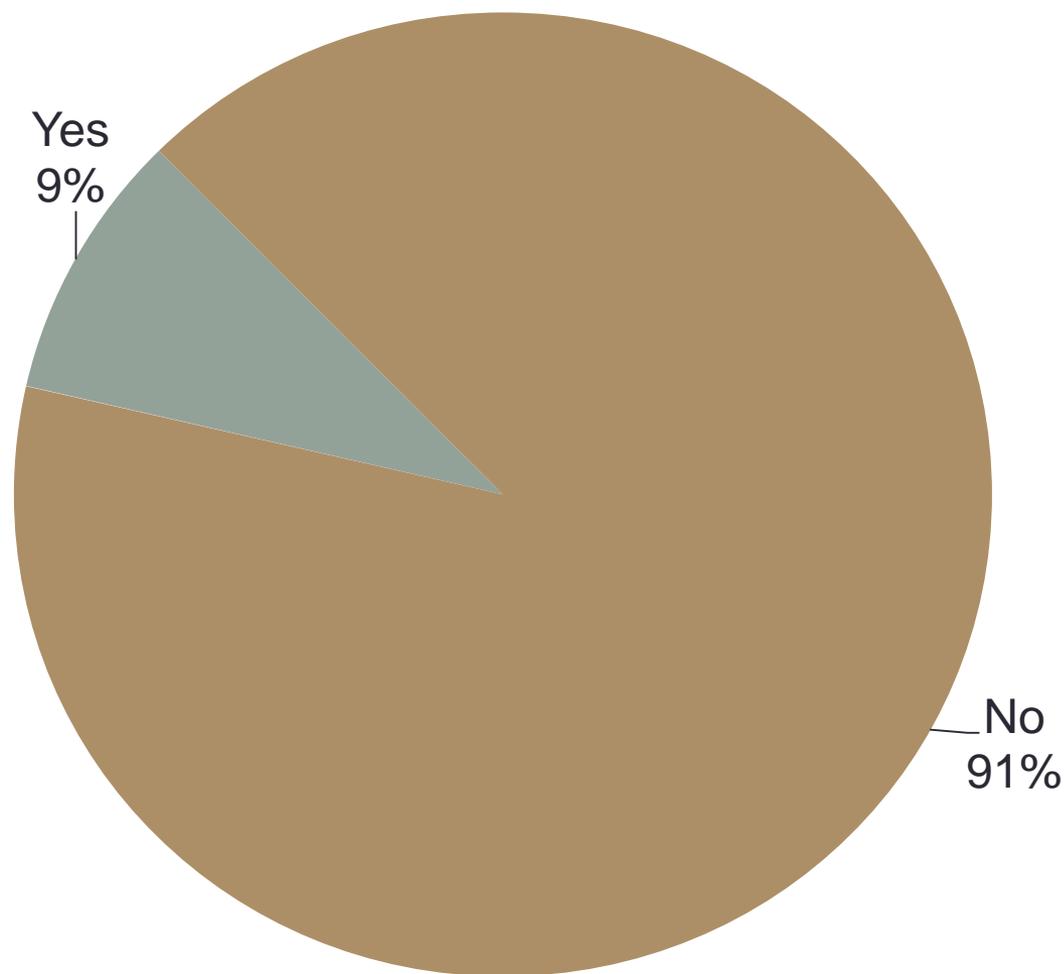


# Are the procedures for juvenile offenders significantly different than for adult offenders?

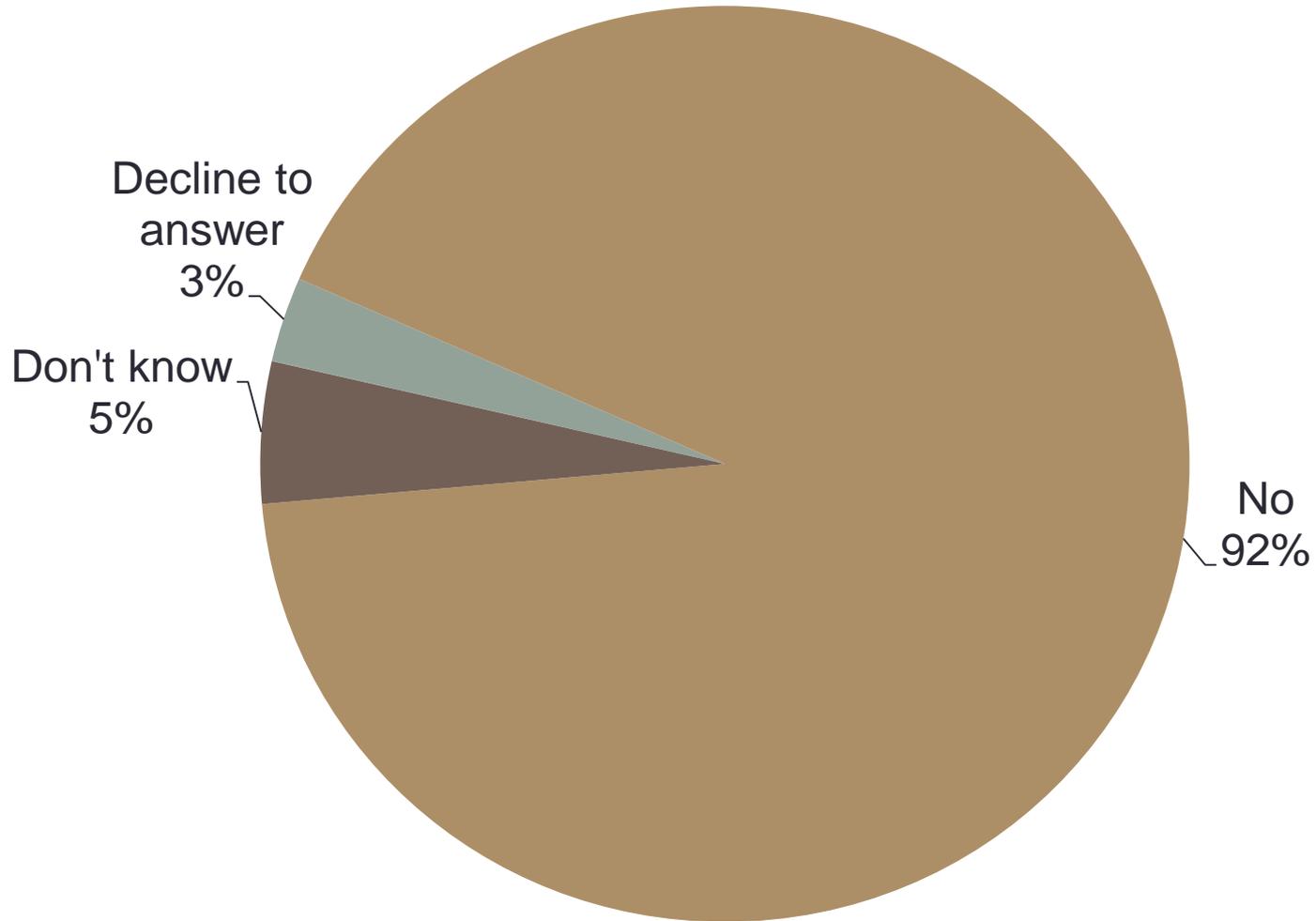




## Are the procedures significantly different for misdemeanor versus felony cases?



# Do you see significant differences in how restitution is handled depending on the judge assigned to the case?



# Additional Comments:

- Joint and several liability—a number of comments about these situations being problematic and the difficulty tracking
- Juvenile restitution—inability to refer to collections
- Order of payment—still an issue for some counties
- Affidavit of restitution—does it need to be notarized?
- Steps taken by probation—“our county does a good job,” and “our county needs to do more”
- Civil judgment—victims uncertain about this, and the impact of entry of civil judgment on application of restitution payments.

# THEMES

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Issues and “hot spots” that have emerged

# Overall Themes

- There is a desire for adherence to the statutes—people want to be in compliance.
- There are inconsistent practices across the state. Lack of clarity in some of the statutes.
- Unfamiliar and underutilized statutes

# Overall Themes

- The (relatively) new restitution process and referrals to MDOR (“Collections”) has shifted collection responsibility away from probation and has had an impact on how restitution is collected in Minnesota.
- There is a general feeling that if defendants can pay, they should pay.
- There is the outstanding question: What has been the impact of the auto-referral process to MDOR on victims?

# About the victim

- Who is the victim? (Are insurance companies victims?)
- Definition of victim
- Victim communication—not all victims getting good information

\* ***Outstanding question: What is the impact of the Borg decision (definition of victim)?***

# About the defendant

- Defendant's affidavit –inconsistent practices related to requirement when contesting restitution
- Inconsistent practice regarding informing defendant about referral to collections for nonpayment
- Defendant seeking/getting expungement when restitution still owed

***\*Hot topic: When should ability to pay be considered?***

# Restitution order

## *Process to request:*

- Who accepts only notarized affidavits and not “other competent evidence”
- What is “other competent evidence”

## *What can be ordered as restitution?*

- Replacement cost vs actual value
- Sick leave and lost wages
- Attending court
- Victim insured- what’s the impact?

# Restitution order

## *Ordering restitution*

- The fact that a victim has filed or has contemplated filing a civil law suit does impact willingness to order restitution (and may depend on type of case)

\* ***Statutory refinement needed:*** *Restitution in cases with stay of adjudication, stay of imposition, continued for dismissal situations*

# Restitution order

## *Revisiting restitution after sentencing*

- Restitution left open can be problematic.
- There is a general reluctance to amending the restitution order after sentencing.
- Changes are made in the restitution order without notice to the victim or prosecutor
- Offenders with outstanding restitution are being released early from probation (and without notice to victim)

# Payment plans

Much discussion on how established, what information is needed from defendant, criteria for setting installment or deadlines, notice to victims, and ability to challenge payment plan that has been established.

\* ***Statutory refinement identified: Payment plans***

\* ***Underutilized statute: Financial disclosure form***

# Payment to victim

- Multiple victims and multiple criminal cases—how is priority of payment handled (by specific court order, MNCIS protocols, MDOR collections policy)

\* ***Statutory refinement identified: Order of payment***

# Nonpayment

## *Referral to collections*

- Impact of referral on probation's collection actions
- Impact of auto-referral to collections on county's ability to use revenue recapture

# Nonpayment

## *Probation violation*

- Defendant's ability to pay is a factor at this point
- If the only issue is restitution, then probation violation will generally not be held.
- Probation review hearing can be prompted by probation agent, but more typically, by victim contacting office about nonpayment

\* ***Hot topic:*** *Identifying sanctions that work vs. sanctions that don't work (there is no consensus)*

# Entry of civil judgment

- When/how do judgments get entered – some counties have proactive process, others have reactive process
- Victims can face resistance when trying to use civil enforcement tools when the defendant still under jurisdiction of the court.
- Some issues if restitution has also gone to collections.

# Practice tips/pointers

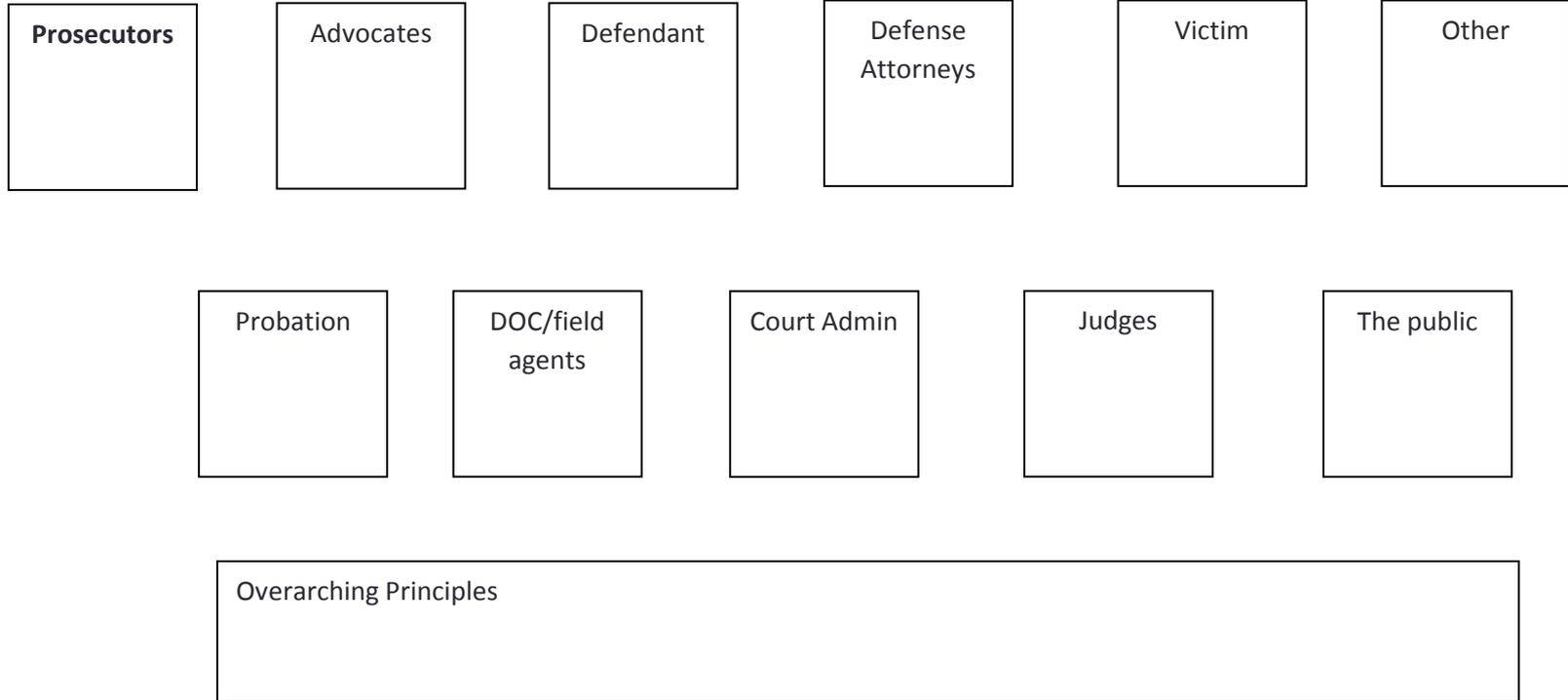
- Check the endangerment box on citations
- Restitution connected to charges dismissed as part of a plea agreement can/should be included in agreement
- Impact of civil case on determining restitution—prevent inadvertent preclusion of restitution claim because of outside settlement.

# GOALS AND PRINCIPLES

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Short exercise

# Categories



# WHAT'S NEXT

Juvenile Committee, February 24, 2014, 10:00-12:00, OJP  
(Bremer Tower Training Room)

DOC Brown Bag Webinar, Wednesday, March 12, Noon

March: Affinity group meetings:

April 11 and 25: Recommendations meetings

May: Large group meeting of RWG

Additional recommendations meetings as necessary

July: Large group meeting of RWG