

# Barriers to Record Clearing: Responses from the Field

*Presented by Community Legal Services through the National Record Clearing Project, with funding from the WK Kellogg Foundation.*



# Barriers to Record Clearing

- Overview of preliminary survey findings
- Experiences and insight from panelists
- Focus on
  - Obtaining Necessary Records
  - Inefficiencies and Delays
  - Prosecutor Objections, Judicial Discretion and Providing Your Client “Deserves” Record-Clearing
  - Fees, Fines & Costs



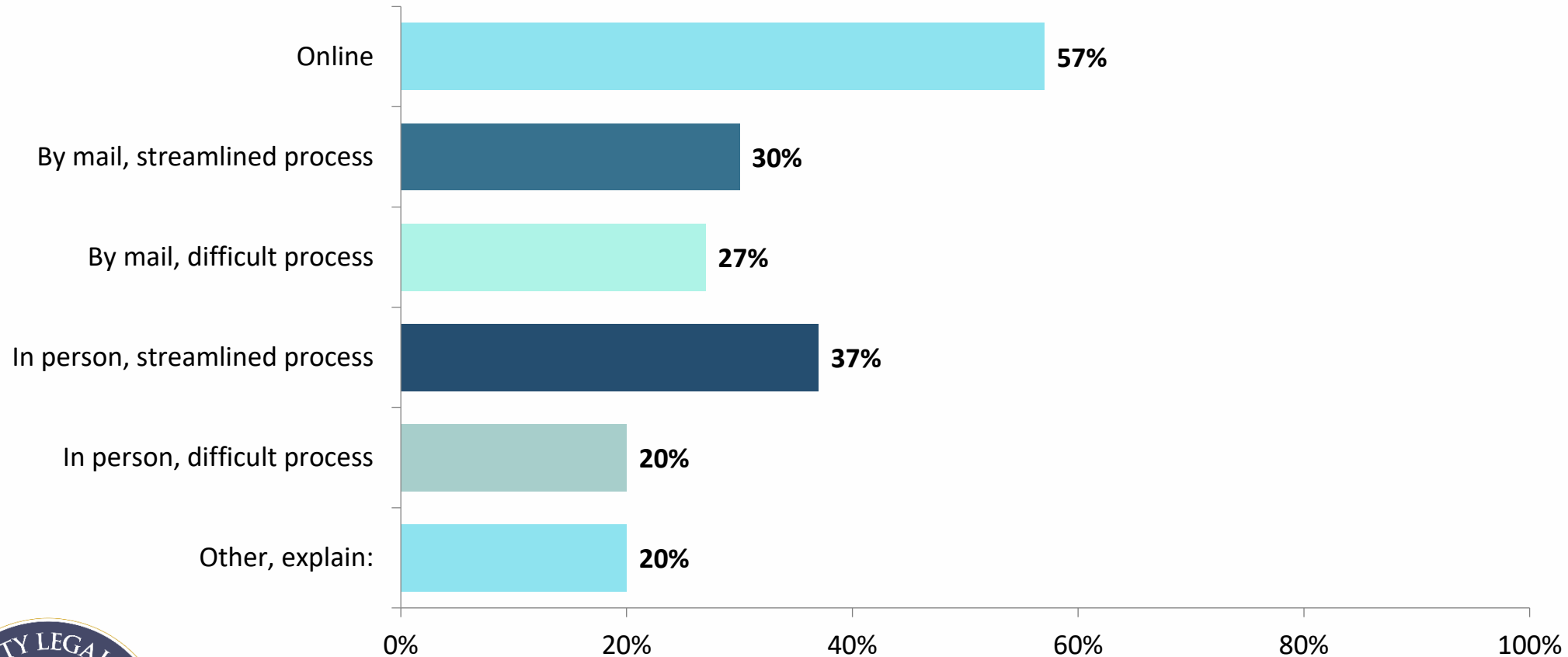
# Obtaining Necessary Records



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# How do you obtain criminal record documents in your area?



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# Easy, free and instant access to complete records?

- 27% - no online records at all
- 53% - sometimes online records or incomplete online records
- 20% - most criminal records publicly available online



# Even with online records, issues persist...

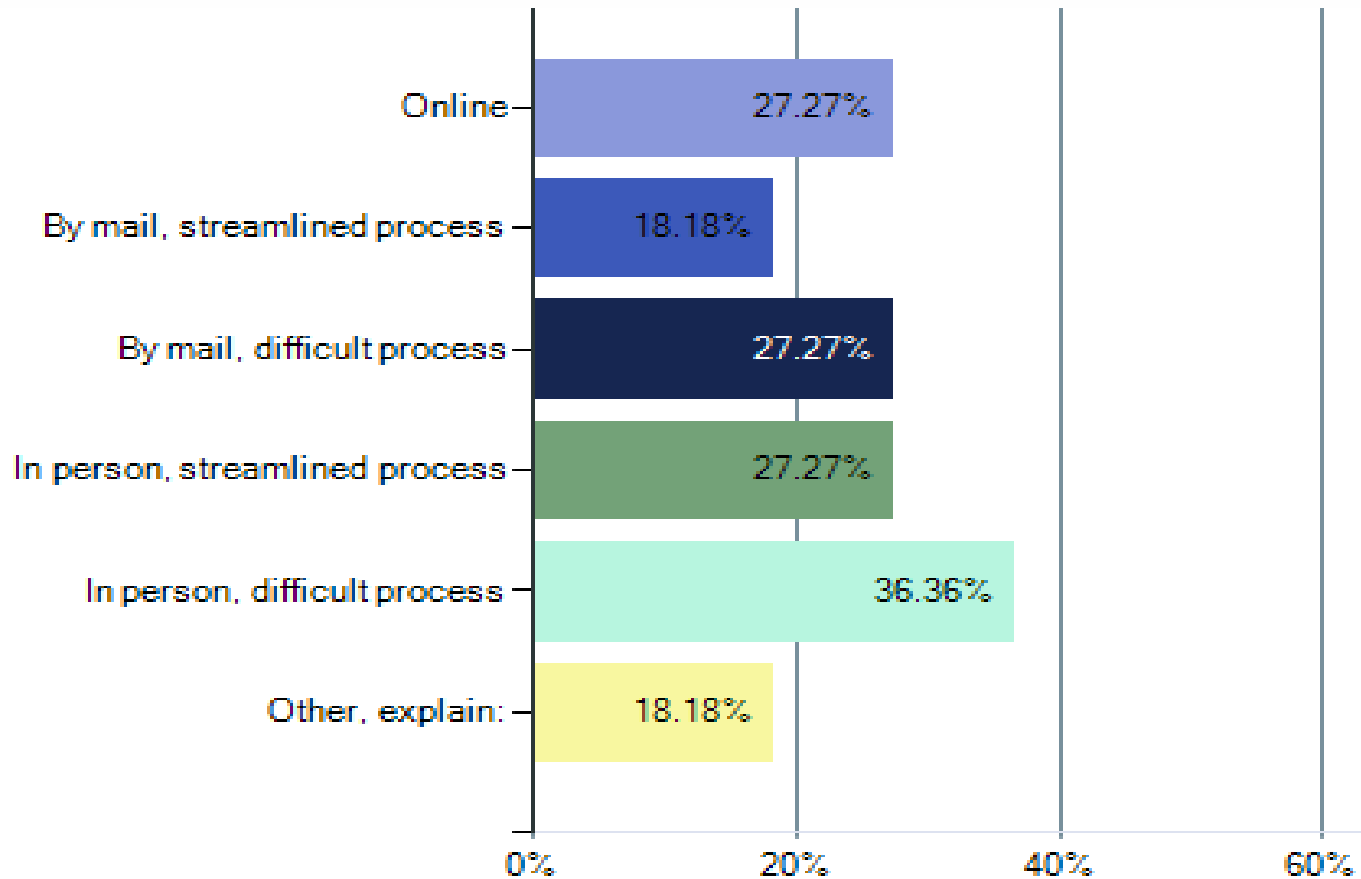
Online records are often only a starting point, because ...

- Reliability issues
- Incomplete information, required information only in paper records
- Only recent records are online (last 3 years, 5 years, 10 years, 20 years)
- Need a more official version/certified copy of the record



# A Closer Look: Record Documents Always Required

How do you obtain criminal record documents in your area?



37% said that they are always required to include criminal record documents in their petitions. In that group, only 9% said that most criminal records are available online.



# Inefficiency and Delays



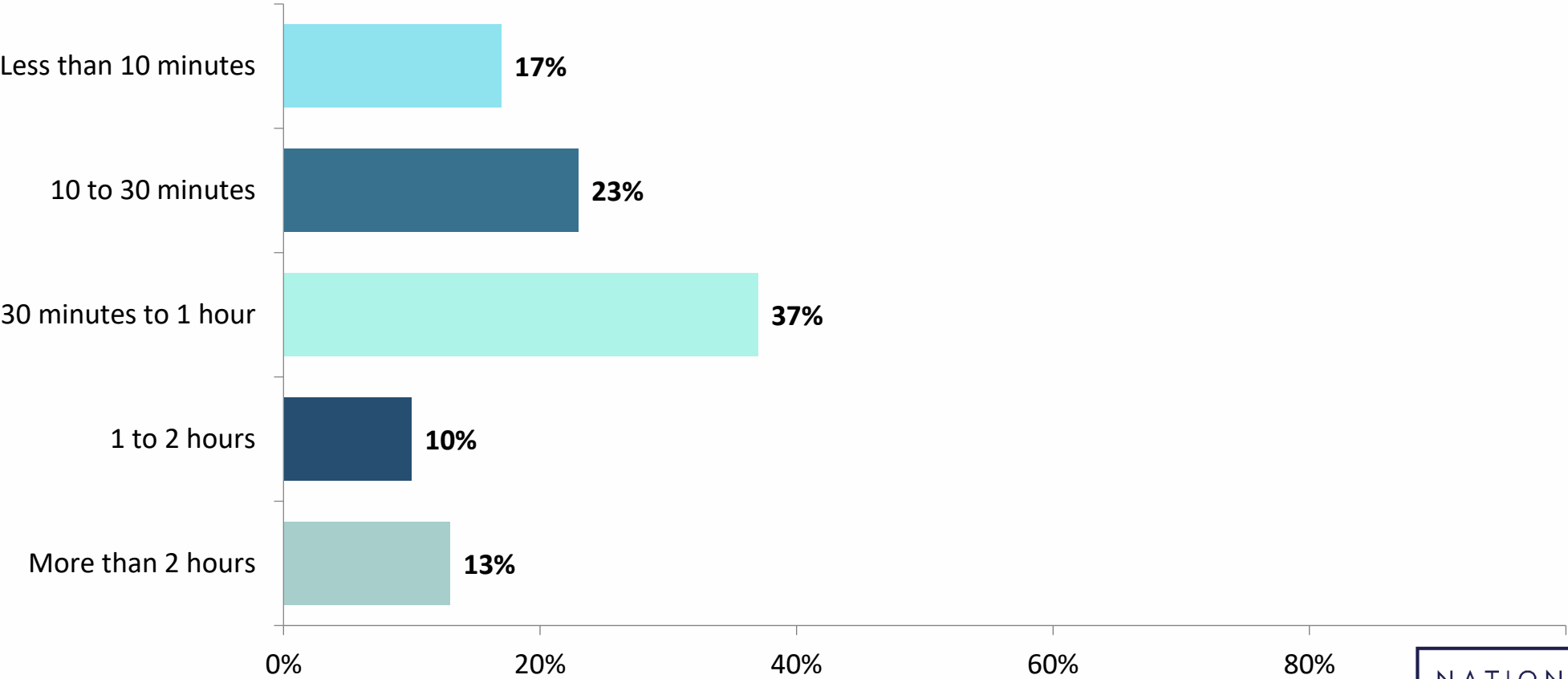
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# Writing the Petition

On average, how long does it take to prepare one record-clearing petition after the necessary documents are obtained?



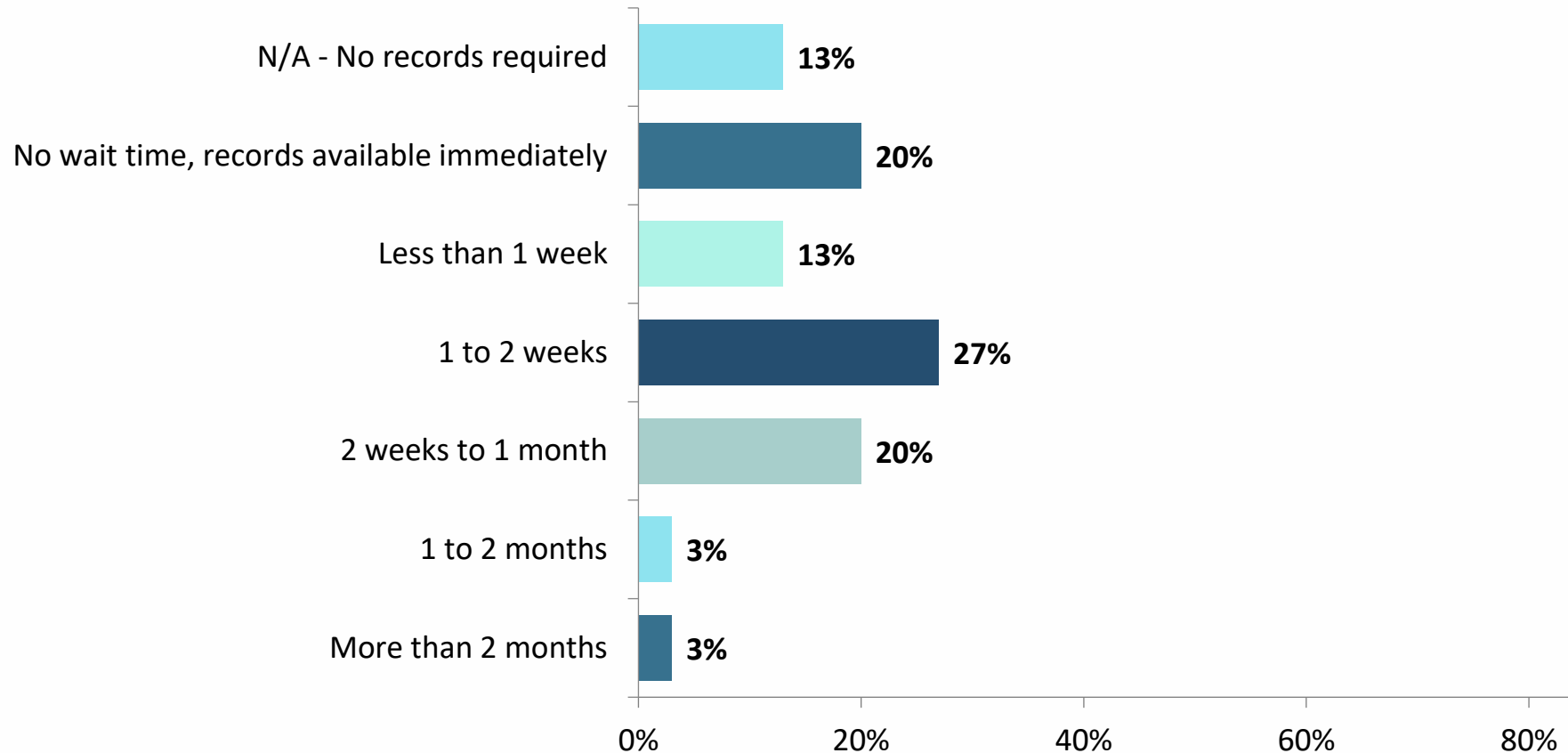
# A Closer Look: More than 1 Hour to Prepare Petition

- Have to include personal information about the client at least some of the time (86%)
- Not utilizing technology to write motions (86%)
- Have to include official court documents with the motion (71%)



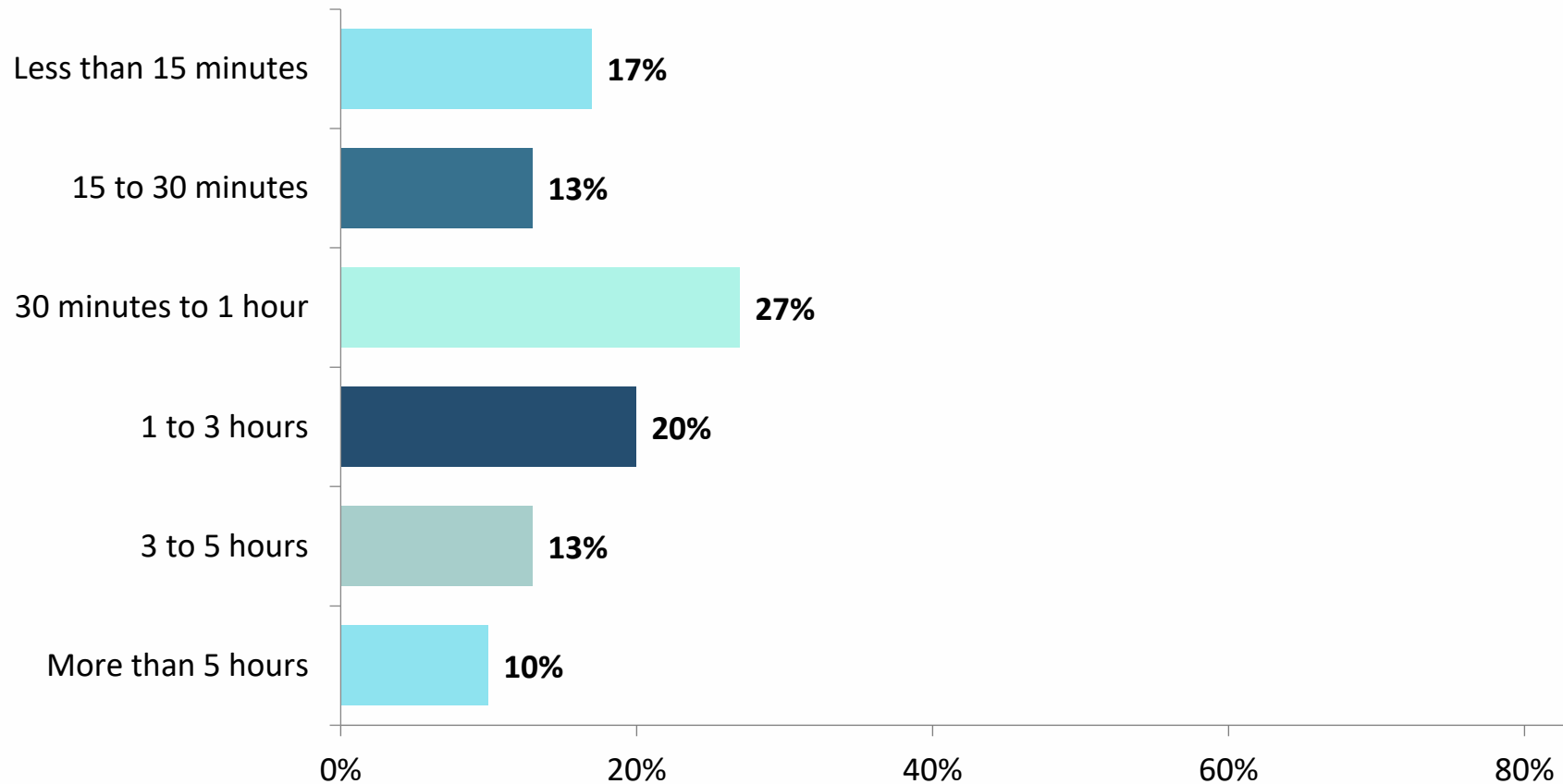
# Delays: Obtaining Necessary Records

What is the approximate wait time for the required documents?



# Delays: Obtaining Necessary Records

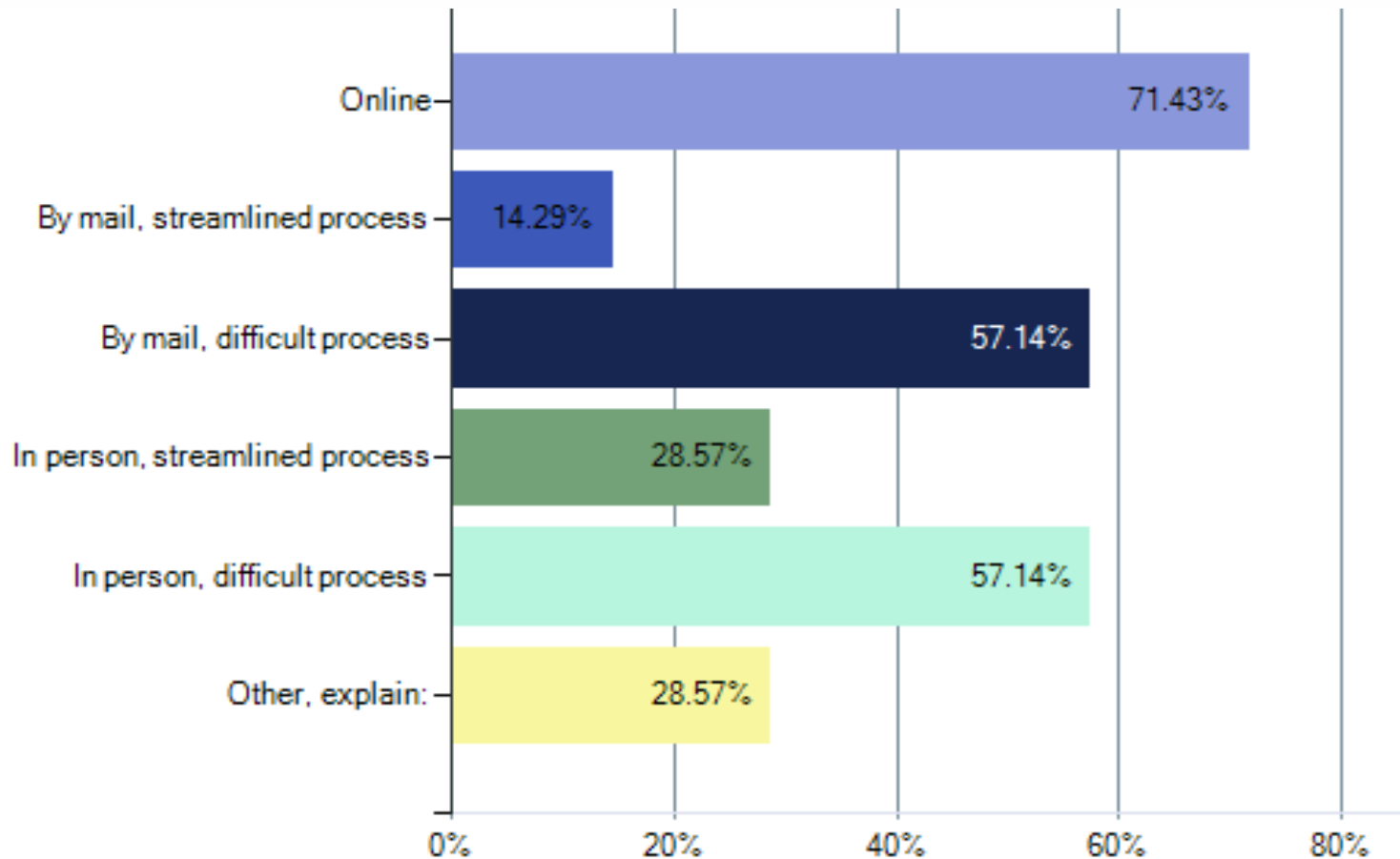
On average, how long do you spend gathering required records and information for one record-clearing petition?



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# A Closer Look: 3 Hours of More to Collect Documents/Information

How do you obtain criminal record documents in your area?

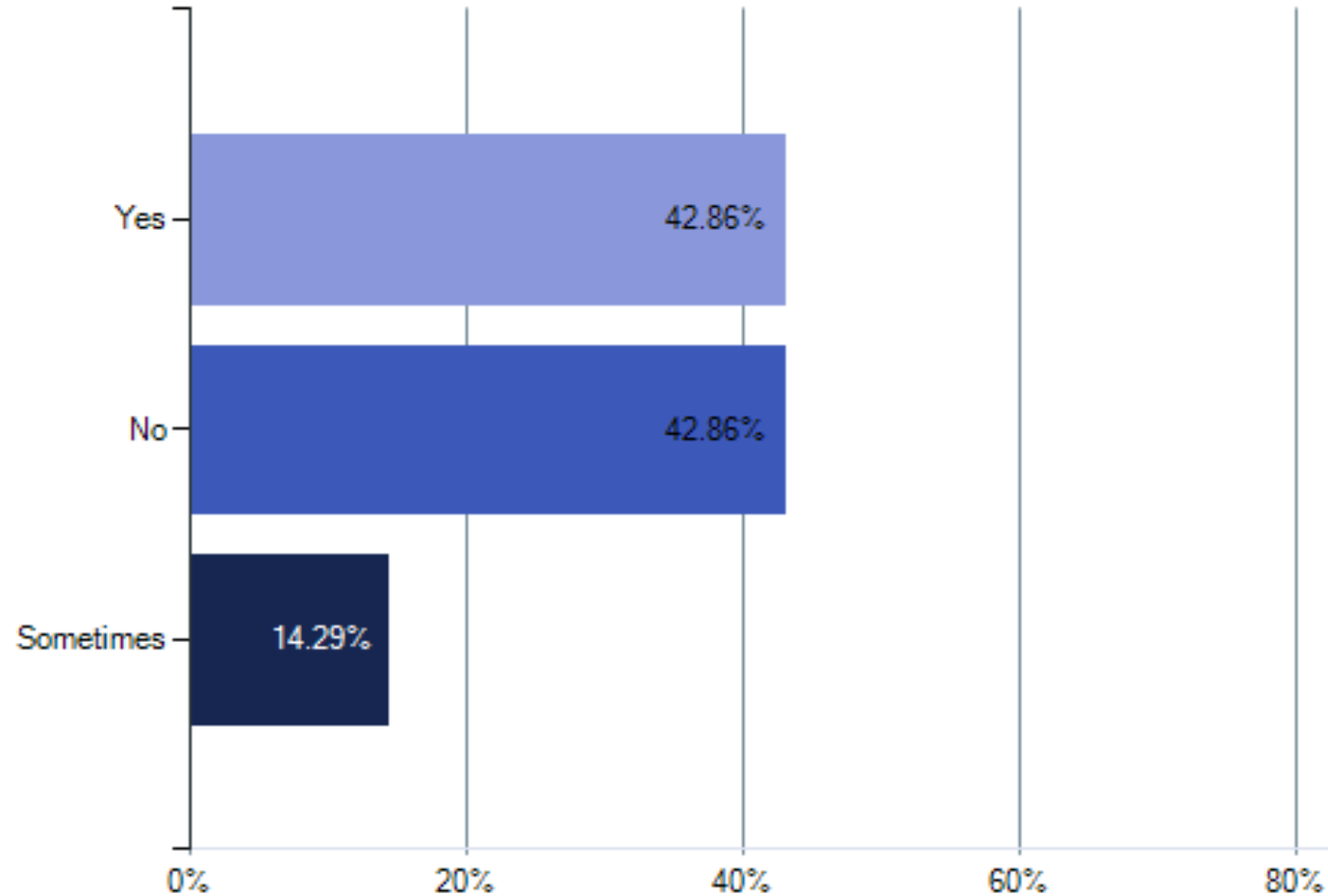


Only 14% said that most criminal records are available online



# A Closer Look: 3 Hours of More to Collect Documents/Information

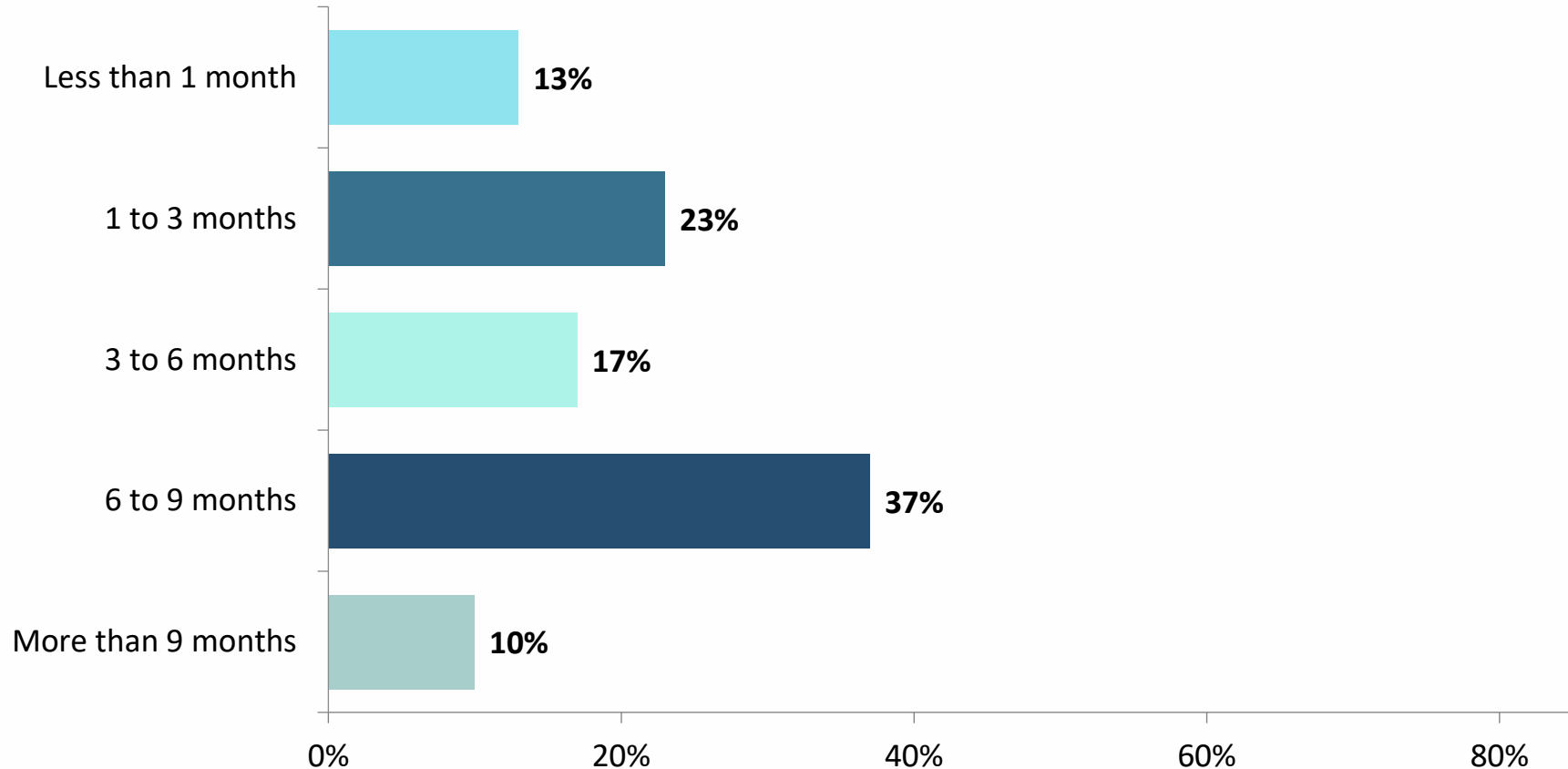
Are you required to include detailed facts about your client (e.g. to show rehabilitation) in record-clearing petitions?



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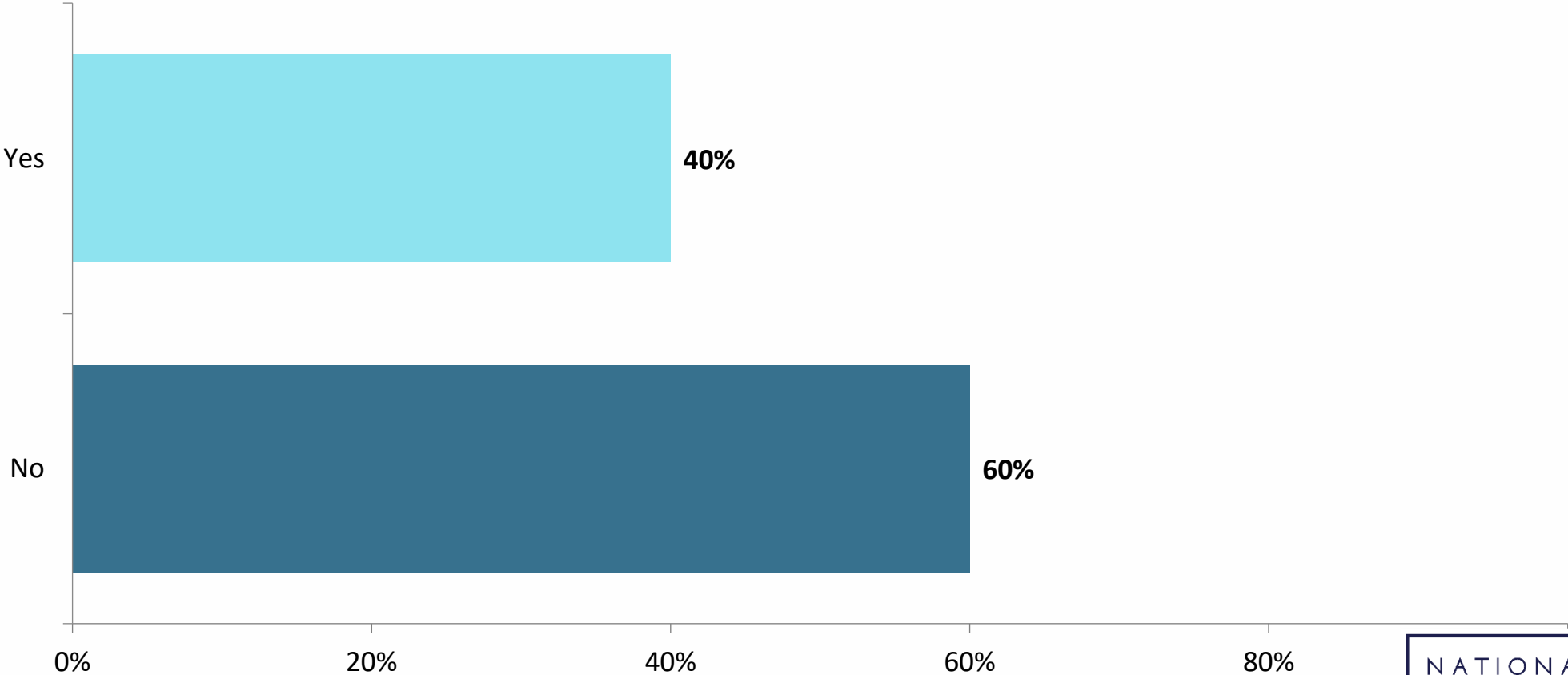
# Delays: After the Petition is Filed

On average, how long does the record clearing process take, counting from the time the motion is filed to the time that the record is cleared from the relevant database(s)?



# Judicial Efficiency

Do the courts in your area employ any practices to process record-clearing petitions in an efficient, streamlined way?



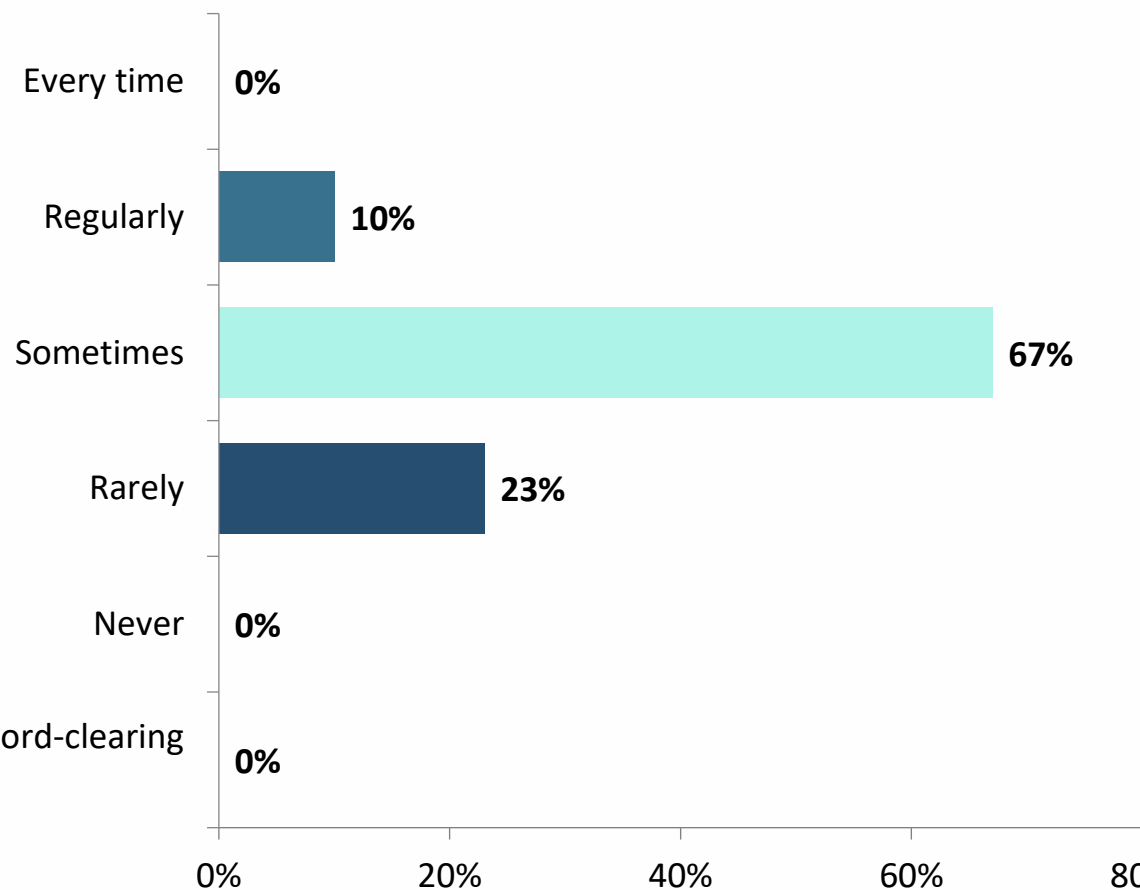


# Prosecutor Objections, Judicial Discretion, and Proving Rehabilitation



# Prosecutor Objections are Common

How often do prosecutors object to your record-clearing petitions?

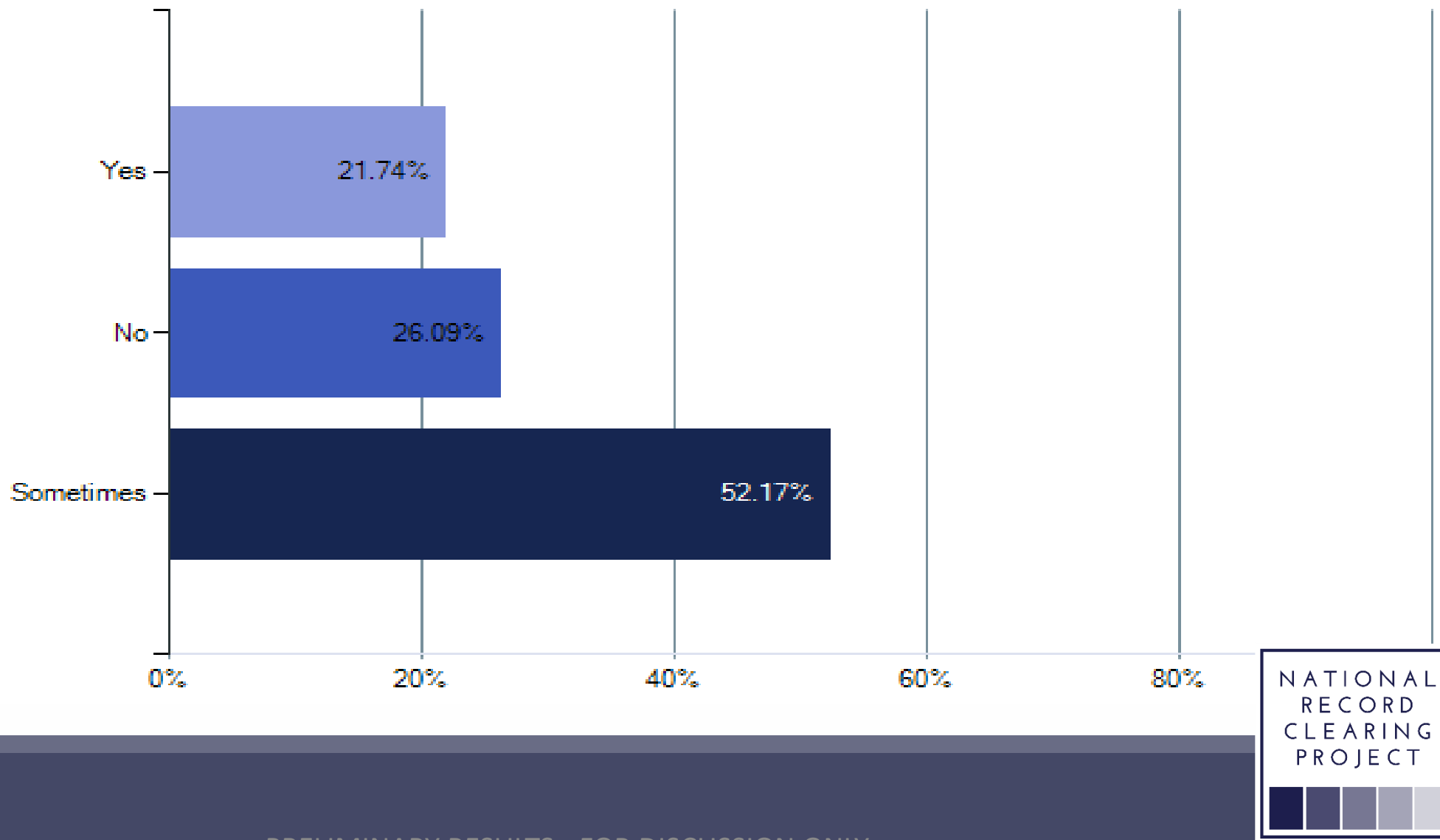


Never, Prosecutors are not allowed to object to record-clearing petitions



# A Closer Look: Prosecutors Sometimes or Regularly Object

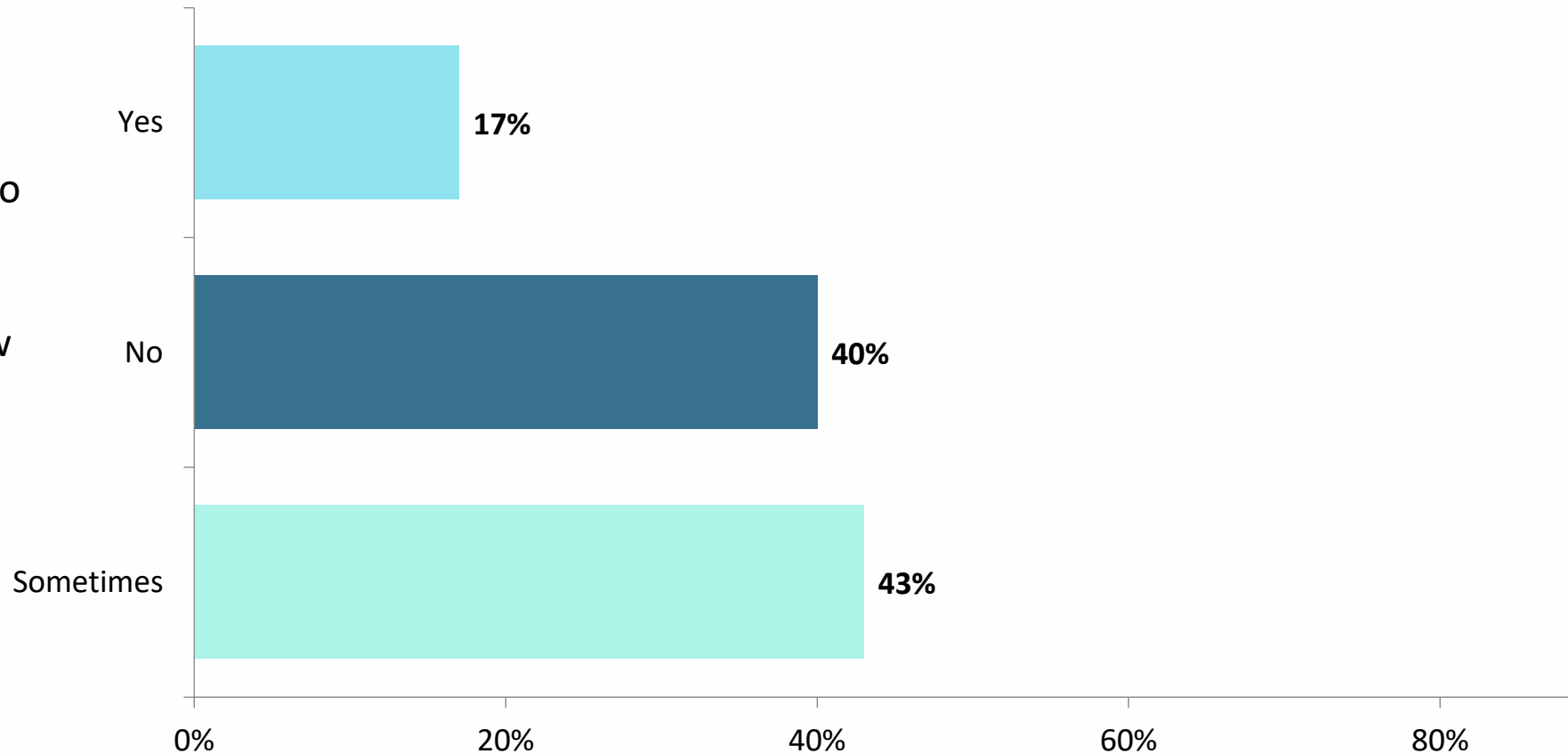
Are you required to include detailed facts about your client (e.g. to show rehabilitation) in record-clearing petitions?



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# Proving Your Client “Deserves” Record Clearing

Are you required to include detailed facts about your client (e.g. to show rehabilitation) in record-clearing petitions?



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# A Closer Look: Always Includes Personal Facts

- 100% said prosecutors “Sometimes” object
- 80% don’t utilize technology to help them write motions
- 60% say it takes longer than 3 hours to collect information for a petition
  - 40% say it takes longer than 5 hours
- 40% are always required to attend court for the motion
- 40% say their clients are also required to attend court for the motion



# Other Burdens and Requirements



# Most Significant Procedural Barriers

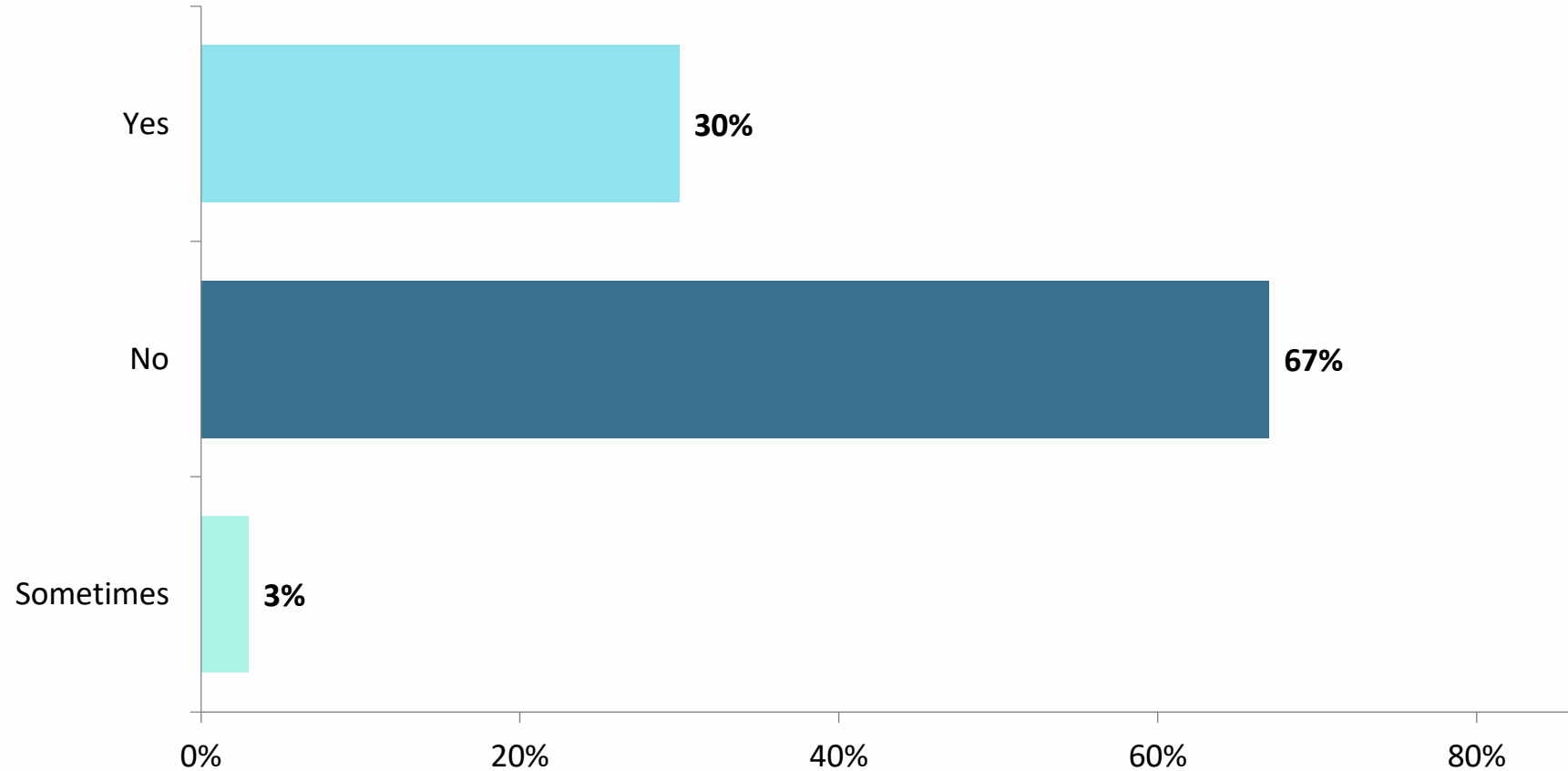
**In your view, what are the biggest obstacles or flaws in your area's record-clearing procedure?**

- 43% mentioned the complexity of the law
- 37% mentioned money (costs, fines and/or fees)
- 23% mentioned the limited application of their record-clearing laws
- 10% mentioned the waiting period for record-clearing
- 10% mentioned the difficulty of obtaining records
- 6% mentioned the lack of public awareness



# Administrative / Pre-Hearing Review

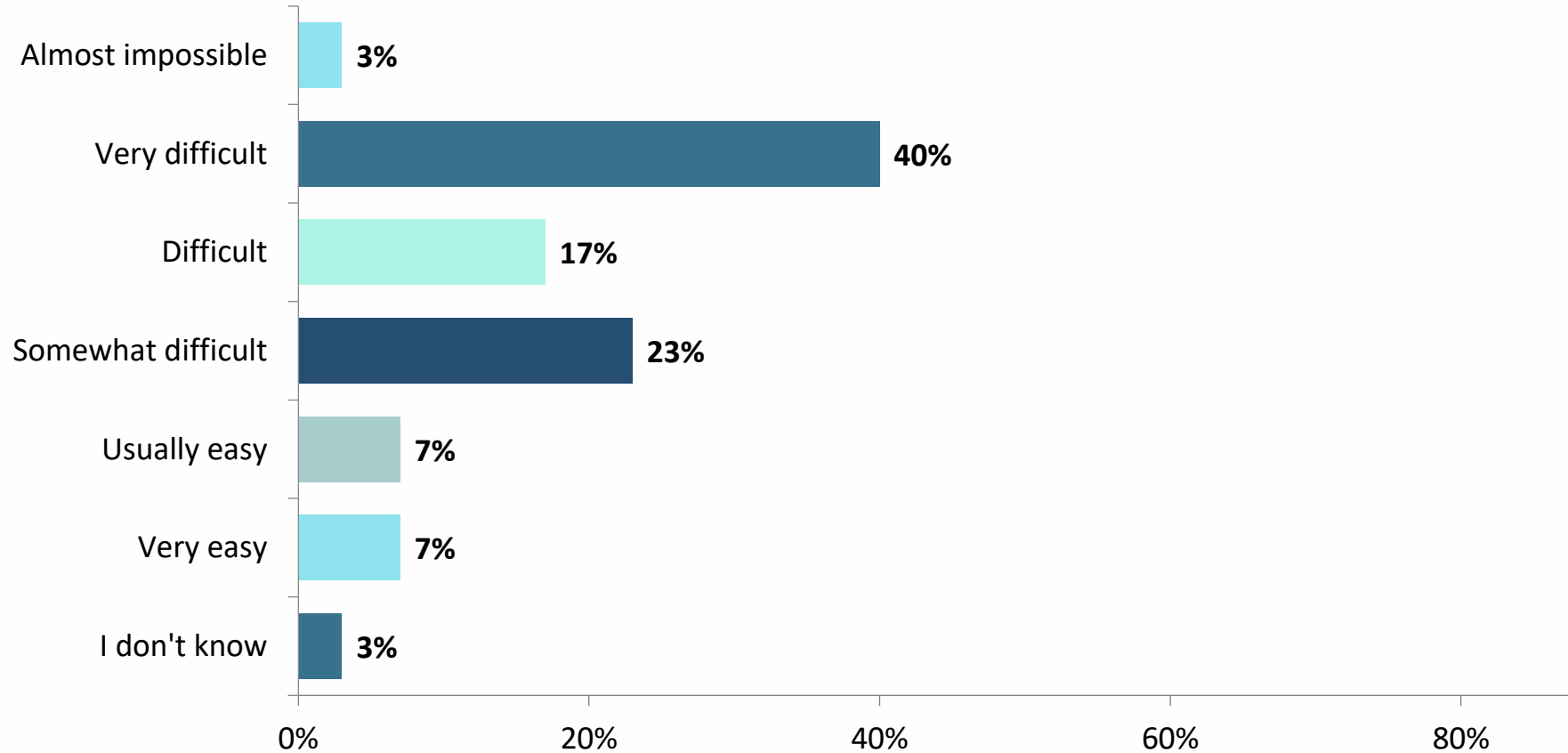
Are there administrative procedures that must be completed before a court petition may be filed in your area (e.g. application approval by the police or other agency)?





# Pro Se Petitions

In your opinion, filing a record-clearing petition pro se in your area is:



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# Service Requirements

- 70% of respondents must serve at least the prosecutor
- Most use mail or in-person delivery to do so
- This puts an additional burden on pro se filers



# Effectiveness – Getting the Record Removed

- Only 20% are required to notify other parties that a record-clearing petition was granted in order to remove the record from the relevant databases
  - But even when this is not required, it is often recommended
- 37% still regularly see cleared cases on background checks – most commonly on commercial background checks
  - 91% of those who regularly see cleared cases on background checks say they appear on commercial/private background checks
  - Only one state has a mechanism for notifying private CRAs of record-clearing
  - CRAs use old data
  - Necessary to monitor and challenge these records individually



# Fees, Fines and Costs

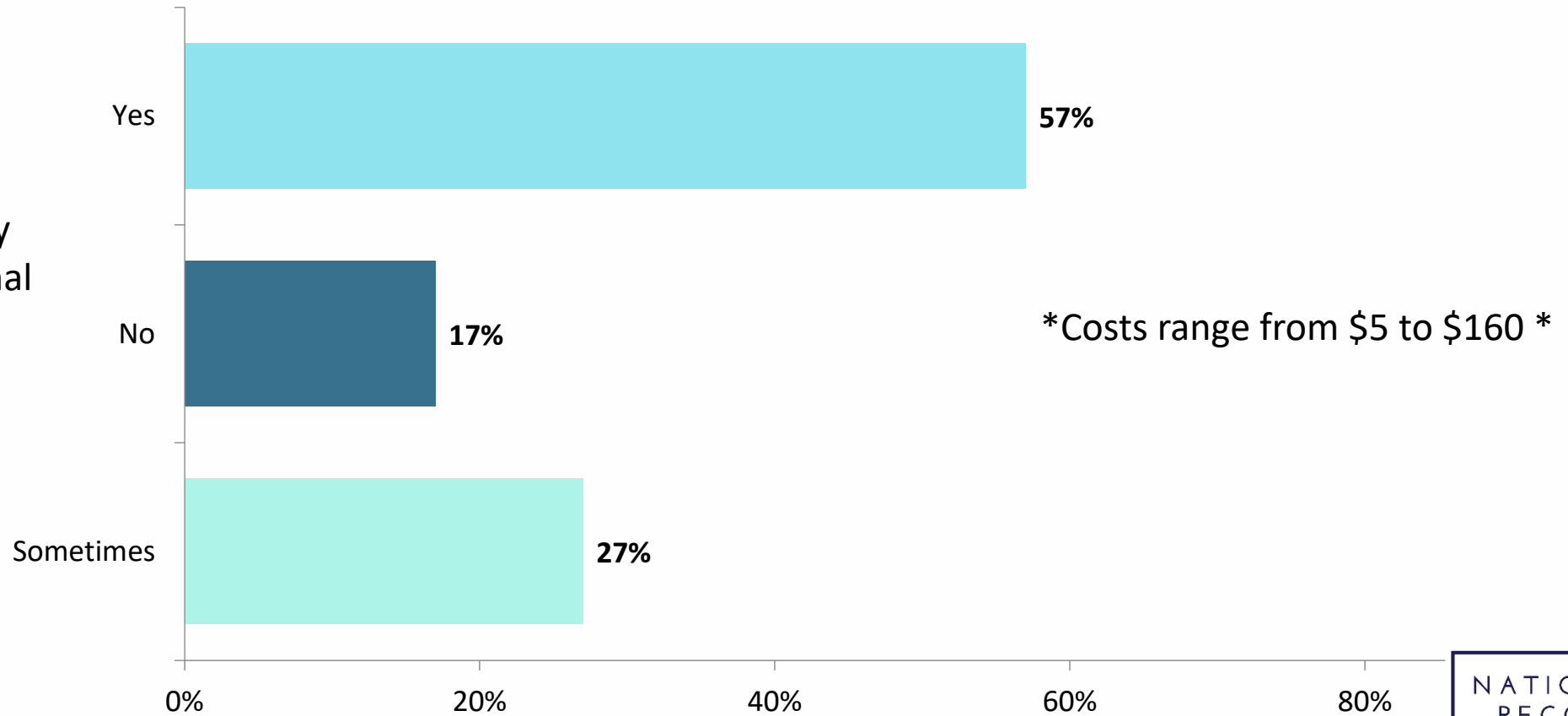


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# Fees for Records

Are there mandatory fees to obtain criminal records that are required for record-clearing petitions?



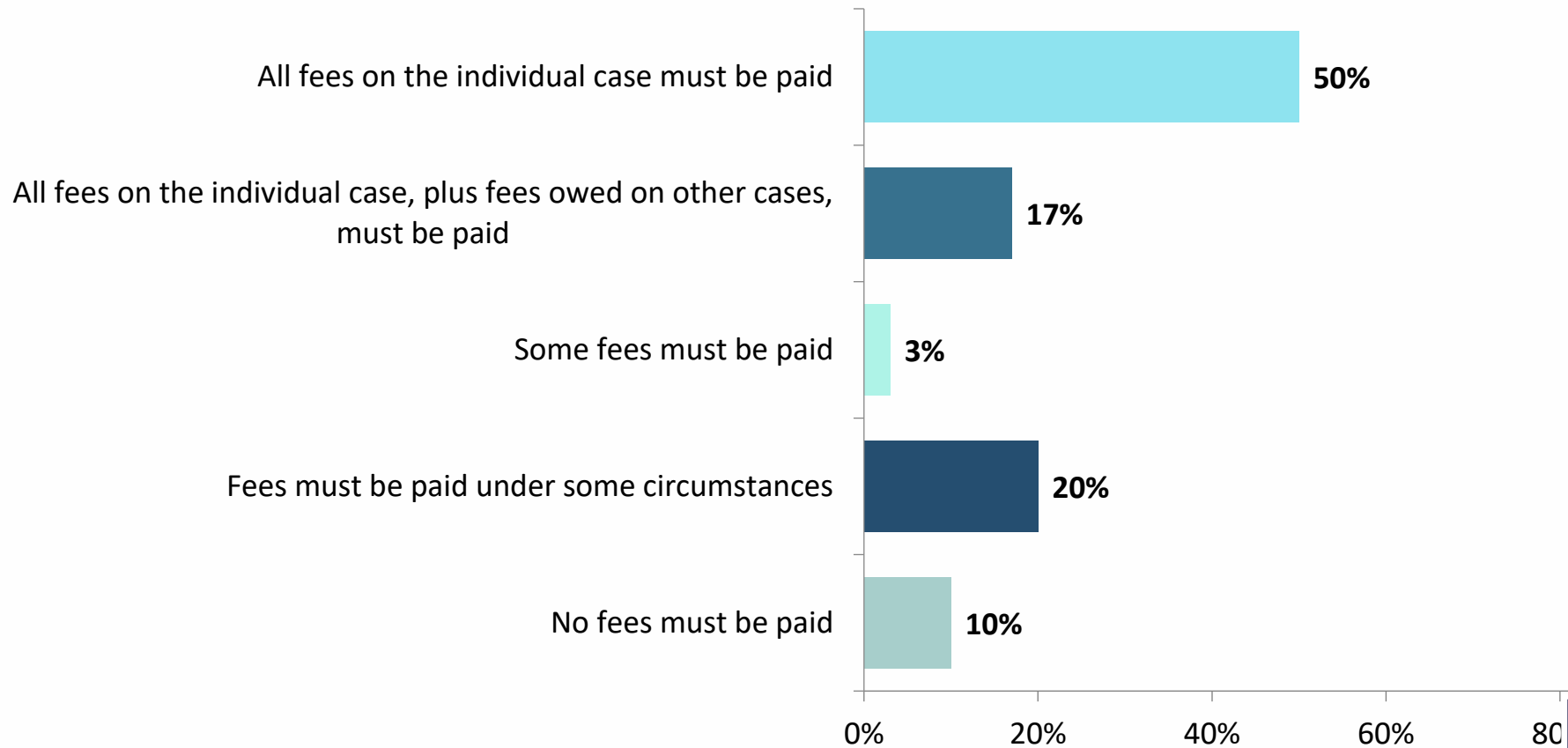
# Filing Fees

- 60% said there were always or sometimes filing fees
  - Cost ranges from \$30 to \$650
- 70% said filing fees were routinely waived for indigent filers
- Other fees:
  - Administrative process
  - Copies
  - Service
  - Effectuating the record-clearing after it is granted



# Court Fines and Costs

Which court fines and costs must be paid before a record-clearing petition is granted?



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# Some Good News!



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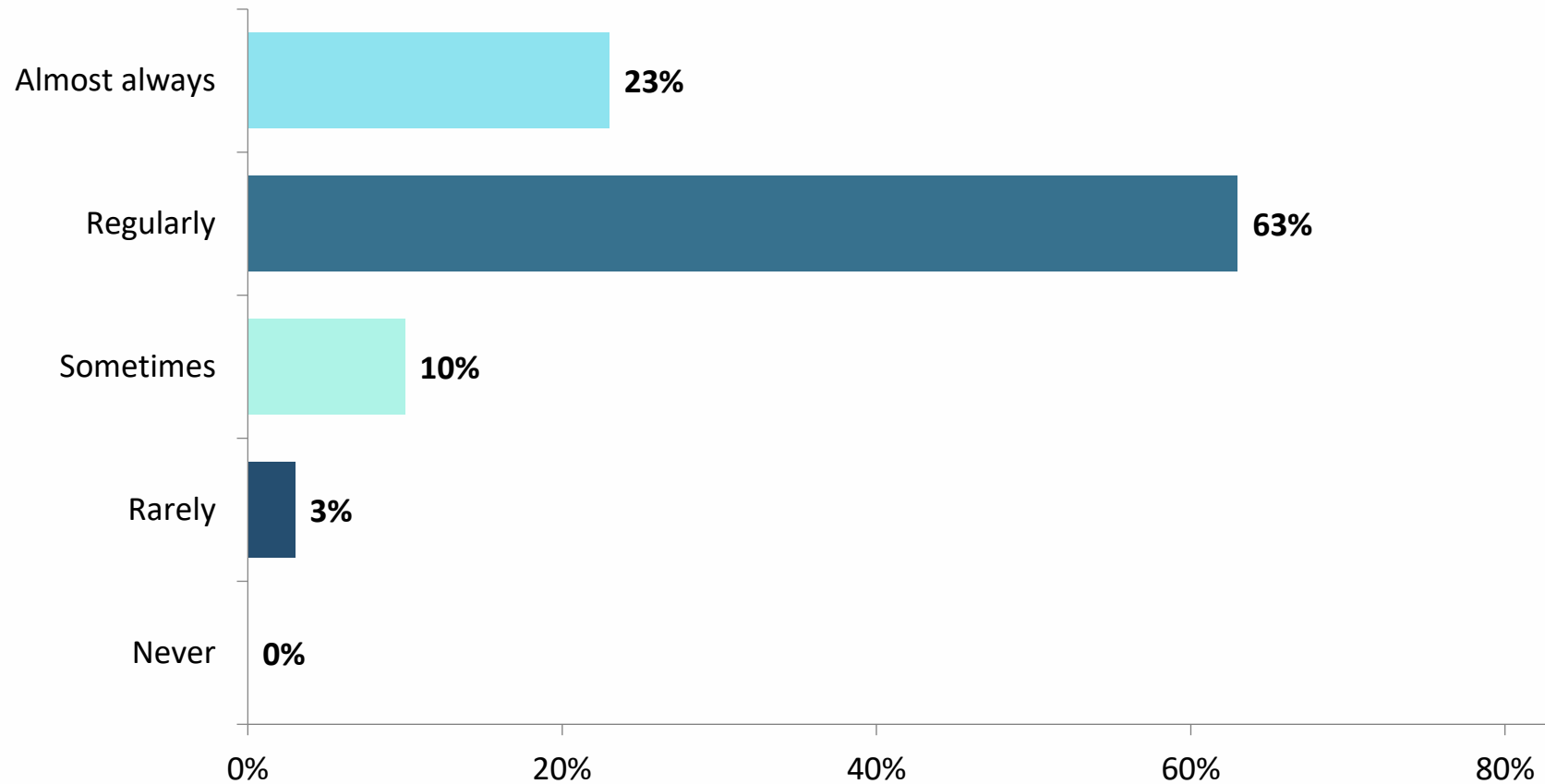
# Some bits of good news...

- More expansive or liberal application (Wisconsin, Rhode Island, Louisiana, Massachusetts)
- Discretion to grant record-clearing more quickly than the statutory waiting period (Indiana)
- Expungements are granted without fines being paid and without filing fees (New Jersey)
- Online tools and automation are making it easier to file petitions and find records in some states (Maryland, Oklahoma, Illinois, Kansas)
- Lawyers are made available at the courts or by the County to assist pro se individuals (Texas, North Carolina)



# Success!

How often are record-clearing petitions granted in your area?



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