



MICHIGAN INDIGENT
DEFENSE COMMISSION

DELIVERY SYSTEM REFORM MODELS

PLANNING IMPROVEMENTS IN PUBLIC DEFENSE

December 2016

Delivery System Reform Models

The Michigan Indigent Defense Commission (MIDC) was created by legislation in 2013¹ after an advisory commission recommended improvements to the state's legal system.² The MIDC's mission is to develop and oversee the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure that criminal defense services are delivered to all indigent adults in this state consistent with the safeguards of the United States constitution, the Michigan constitution of 1963, and with the MIDC Act.

The MIDC has been contacted by several systems interested in improving their models for delivering indigent defense. The MIDC's role is not to require a particular manner of delivering services. Each county will select its desired indigent defense delivery method, and multiple models ranging from a defender office, an assigned counsel list, contract attorneys, or a mix of systems will be available. The MIDC's responsibility and authority is to work with the counties and courts to ensure compliance with minimum standards, not to select a particular system.

Every system must submit a plan for indigent defense delivery.³ In some areas, more than one delivery method will need to be in place to comply with the minimum standards and to provide the highest quality of indigent defense to people who are poor and accused of crimes. The MIDC Act states that if an indigent caseload is sufficiently high, then a mixed system combining a public defender office and an appointment system may be used.⁴ The Ten Principles of a Public Defense Delivery System of the American Bar Association require that, "[w]here the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar."⁵

This guide is offered to consider various models of public defense that may be implemented depending on the needs of the delivery system. It is not meant to be an all-inclusive list – the focus here is on public defender offices and assigned counsel systems, delivery system reform models about which local stakeholders have specifically requested information. Another indigent defense model is contracting. Contracts have a wide range of potential provisions and they can be designed to meet the American Bar Association Ten Principles of a Public Defense Delivery System and the MIDC minimum standards. The MIDC intends to publish a best practices guide to indigent defense contracts in 2017.

The MIDC welcomes feedback on this guide from all members of the criminal justice community.

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Michigan's Current System

Background

The MIDC was created in large part as a direct response to the 2008 study by the National Legal Aid and Defender Association entitled: *A Race to the Bottom Speed & Savings Over Due Process: A Constitutional Crisis*.⁶ The NLADA study involved an evaluation of trial-level indigent defense delivery systems across ten representative counties in Michigan.⁷ The evaluation process undertook an analysis of Michigan's compliance with the ABA Ten Principles of a Public Defense Delivery System.⁸ "The Principles were created as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney."⁹

At the conclusion of the year-long study, the NLADA found that none of the counties studied in Michigan were constitutionally adequate and that Michigan ranked 44th out of all 50 states in per capita indigent defense spending.¹⁰

Importantly, the counties studied in Michigan were composed of all three basic models of indigent defense delivery systems: assigned counsel, contract defenders and public defender offices.

Facts and Figures

All 83 counties in Michigan select their own model and maintain their local share for funding trial-level indigent defense.¹¹ The majority of counties either use an assigned counsel system or a contract model for indigent defense. Eight counties have public defender offices. The models are defined as follows:

- **Assigned Counsel:** Refers to one or more private attorneys who are not salaried by the court and are paid (a) per hour, (b) per each case, or (c) per each event in a case.
- **Contract Defender:** Refers to one or more private attorneys who are paid a set amount of money to handle all or a negotiated percentage of indigent criminal representation. These attorneys are not full-time salaried public defenders. Contracts may be with (a) "affiliated" lawyers (two or more lawyers affiliated with a private law firm); or (b) individual lawyers with no affiliation to other contract defenders.
- **Public Defender Office:** A "public defender office" is defined as two or more salaried attorneys representing indigent clients full-time. Attorneys may either be government employees or be provided by a contract with a nonprofit organization.

The counties that use a public defender office model are: Bay, Berrien, Chippewa, Kent, Lenawee, Muskegon, Washtenaw and Wayne. The Kent and Wayne county offices are not-for-profit corporation defender offices. All eight take some portion of cases from a county, ranging from 25 to 100 percent of the assignments for indigent defendants charged with crimes in the adult system.¹² The offices that take 100 percent of cases have a policy for referring conflicts to a list of qualified attorneys when ethical issues arise.

Setting aside the counties with a public defender office, slightly more than half use an assigned counsel system to appoint an attorney to indigent defendants, and the remaining use a “contract” system for appointing counsel. These systems contemplate a variety of methods of paying defense attorneys, including rates per hour, per case, per event, flat contract fees and other forms of payment.¹³ Most of those systems have some mechanism by which attorneys can petition for extraordinary fees beyond that which is provided by contract or rate schedule.¹⁴ In assessing the delivery method of indigent defense with the possibility of making changes to the system, it is important to know the total amount spent on indigent defense each year, including expenses for investigations and experts for the defense, as well as extraordinary fees if any have been awarded. From there, the various pros and cons of system reform can be weighed.

Public Defender Office Model

National studies generally report more favorable outcomes for indigent clients represented by a public defender¹⁵, but like those in Michigan most have high caseloads, unequal access to resources, and lack of independence from the judiciary.¹⁶ The ideal public defender office will comply with all of the Principles of a Public Defense Delivery System, as well as the minimum standards and best practices established by the MIDC. Without proper funding, a public defense delivery model will fail as readily as other systems.

Compliance Plan

This guide has been created to address questions that the MIDC has received from delivery systems around the state considering improvements to indigent defense. Several funding units are exploring the idea of creating a public defender office in response to the MIDC Act, or, more specifically, to comply with the standards enacted by the Commission for delivering indigent defense services.

A strong, client-centered public defender office is a very good way to comply with the MIDC standards and best practices. A public defender office can be an optimal model for compliance in jurisdictions with significant caseloads, for reasons involving cost, quality, and resource sharing. Beyond that, a public defender office in most cases will inherently comply with the standards

enacted by the MIDC. To illustrate how the first four proposed standards of the MIDC can be met through a public defender office model, consider the following:

- Public defender offices train attorneys to work on assigned cases either through formal or informal programming;
- Public defenders make case assignments quickly and have accesses to resources to ensure prompt meetings with clients;
- Public defender offices typically have investigators on staff – whether full- or part-time – and reserve portions of the budget for expert witness fees;
- Public defenders also have the institutional resources to staff counsel at first appearance, even if that case is not ultimately assigned to the defender office, allowing for efficient administration of cases at the earliest stages of the proceedings without costly contract systems in place for high volume courthouses.

These examples illustrate compliance with the first four standards alone. A public defender office could also comply with many future standards including qualifications and evaluations of assigned counsel by having a framework for evaluating the attorneys within an office. Public defenders have enforceable caseload limitations and independence from the judiciary, particularly where the hiring and firing of the public defender is done through the county executive. A defender office eliminates financial disincentives to representing clients by paying comparatively to a matching county prosecutor’s office. Finally, a defender office also creates a culture where best practices for indigent defense are shared in a collaborative and supportive setting.

Reasons to Establish a Public Defender Office

In 2001, Texas enacted legislation calling for improvements to indigent defense statewide.¹⁷ Texas has several public defender offices and had requests for information on how to start new offices. In response, the Texas Task Force on Indigent Defense offered a Blueprint for Creating a Public Defender Office.¹⁸ The Texas Indigent Defense Commission shared this resource (hereafter the “*Texas Blueprint*”) with the MIDC and many ideas are offered here.

The *Texas Blueprint* observes that stakeholders choose to create a public defender office “for a mix of three basic reasons: to be more cost-effective, to improve the reliability of indigent defense services, and to create an institutional resource that is valuable to the bench, the bar, county officials, and the community.”¹⁹ Berrien County recently elected to transition to a public defender office for many of these reasons.²⁰

Quality

“An adequately funded public defender system should result in the same or better quality representation, better dependability, and less cost for the same scope of indigent defense representation. This improvement results from the economies of scale and institutional nature

of public defender institutions, not because public defenders are better attorneys than private assigned counsel.”²¹

Specifically:

- In house training, supervision, and qualification requirements provide quality control over client representation.
- The institutional nature of a public defender office often allows for full-time investigation and social work support, advocacy that is very difficult for a sole practitioner to accomplish.
- Public defender offices provide a single point of contact with a supervisor for complaints about an attorney’s representation.
- Because of readily available data on caseloads and qualifications, it is much easier to assess and oversee the quality of an attorney’s work.
- Assistant public defenders are salaried employees so it is less likely that a payment scheme will create a conflict of interest between a client’s needs and an attorney’s livelihood. There are no financial incentives for assistant defenders to avoid trials or motion practice to take on extra clients.
- Assistant public defenders have immediate access to “team members” and a peer group to improve the quality of representation.

Recent research suggests that these characteristics generate measurable benefits for clients. Compared to other forms of public representation, some studies have concluded that public defender offices deliver lower conviction rates and shorter sentences:

Rate of Conviction

- In a recent study of the 75 most populated counties in the nation, defendants represented by a public defender office experienced a decreased likelihood of conviction for violent (19% decrease), property (22% decrease), and drug (30% decrease) related crime in comparison to defendants represented by assigned counsel.²²
- In a federal study, defendants represented by the public defender were .28% less likely to be found guilty than defendants represented by panel attorneys.²³ Although the difference appears small, it is noteworthy considering that the overall probability of being found guilty at the federal level is 97%. Of the 3% found not guilty, 90% were represented by public defenders.
- In a smaller study in Philadelphia, the murder conviction rate for the public defender office was 11% lower than the rate for assigned counsel.²⁴

Sentence Length

- Other studies have shown that defendants represented by public defender offices receive sentences that are significantly shorter than defendants represented by assigned counsel.

This has amounted to an average reduction in sentence length of 12 months at the state and local levels²⁵ and five months at the federal level.²⁶

- In the examination of murder convictions in Philadelphia, attorneys at the public defender office obtained sentences that were nearly three years shorter than those obtained by assigned counsel. In addition, public defenders reduced the probability that their clients received a life sentence by 62% and reduced the overall expected time served in prison by 24%.²⁷

Cost

Courts usually understand the efficiency and convenience of having a public defender office, but perceive the startup as cost-prohibitive. There are two general responses to that reaction in Michigan. First: if an indigent defense delivery system decides to create a public defender office as a compliance plan for the minimum standards required by the MIDC, those offices will be the subject of a request for grant funds from the State of Michigan.²⁸ Second, there can be significant savings realized over time when a new office is created.

In undertaking any cost analysis, systems are encouraged to think about long-term compliance with current and future minimum standards for indigent defense delivery systems.²⁹

1. Efficiencies

As a practical matter, it is far more efficient to run a single office rather than have a series of individual practitioners working separately but doing the same exact thing. “Consider a small public defender office consisting of five attorneys. These attorneys share an office in or near the courthouse, which eliminates inefficient travel expenses. They also share support staff who quickly gain experience in working on specific types of cases. They divide their work on cases so that the work done by each attorney best matches that attorney’s experience and abilities. Over time, the staff of a PDO learns to efficiently provide quality indigent defense services, to systematically train and supervise newer attorneys and staff, to implement new technology that improves quality and efficiency, and to share information and skills among more experienced attorneys and staff. They develop model forms, pleadings, and briefs that can be shared and reused by other attorneys.

By contrast, if these same five attorneys worked on the same cases as individual private attorneys, the county would have to fund part of the overhead of five smaller offices. Also, the individual attorneys would not reap the benefits of division of labor, as each attorney must handle every type of case to which he is appointed. Further, should a private attorney build up a retained practice and stop accepting indigent defense cases, all benefit of institutional knowledge regarding how to efficiently perform this work is lost. Thus, counties that primarily rely on private attorneys under an appointment system expend a lot of resources paying new attorneys to reinvent the same wheel time and time again.”³⁰

2. Institutionalization

Organized offices not only save money, but they also will be recognized in the community as a prestigious resource to be a part of, and a critical member of the criminal justice community. “Public defenders are... much more likely to attract free or low-cost assistance from law students, paralegal students, and retiree volunteers. Another critical institutional cost advantage of public defenders is that they reliably help find efficiencies in each county’s criminal justice process. Over time, officials who establish PDOs usually choose to explore a range of new cost-saving measures, including evaluation of incarceration alternatives for non-violent misdemeanor defendants, periodic case review of jailed defendants [and other alternatives]. Defense counsel may be assigned an appropriate role in implementing these ideas, and the standardization that is available through public defenders makes them the most reliable and cost-effective choice for doing so. Public defenders often present judges and county officials with new ideas for promoting efficiency throughout the criminal justice system. For example, public defenders may make attorneys dependably available at the time that they are most needed in court, whether on the court’s schedule or whenever a need for emergency coverage arises (e.g., an unrepresented indigent defendant walks into court on a warrant). Public defenders may also staff a full docket, such as arraignments, as opposed to multiple private attorneys who are more likely to have conflicting schedules, which can lead to greater court efficiency.”³¹ **Such a model may be particularly suited to MIDC Standard 4, regarding counsel at first appearance.**

3. Decreased Administrative Costs

The primary reason that courts understand the efficiency and convenience of having a public defender office is because it reduces the time that court staff needs to spend on a variety of tasks that can – and should – be handled by an independent department. “For example, having a public defender dramatically reduces the number of decisions judges have to make about attorney appointments, training and experience qualifications, caseload management, and fee vouchers. It reduces the time court personnel have to spend notifying individual attorneys of their appointment, following up on attorneys who fail to appear, and dealing with attorney scheduling conflicts. The number of individual checks that must be prepared and tracked by the county auditor is reduced. This translates into cost savings for the county.”³²

4. Budget Predictability

Local systems will know exactly how much of the local share that they need to maintain each year, regardless of whether a public defender office is created in response to the MIDC Act.³³ And with the creation of a public defender office, any factors that vary from year to year can become more predictable over time and can make the request for grant funds from the MIDC easier to project. “Public defender budgeting becomes easier over time as a performance and cost history develops, and the matters to be decided concern adjustments to an existing system.”³⁴

5. Early Advocacy

MIDC Standard 4 requires counsel at the defendant's first appearance before a magistrate or judge, even though in many cases the determination of indigency will not have occurred by the time of that hearing. The purpose of having counsel there is multifaceted, with a primary goal of having counsel make appropriate bond arguments and ensure that people are not unnecessarily awaiting the assignment of counsel while sitting in jail. Having an attorney from a public defender office that can be regularly present in court for arraignments will be an efficient way to comply with this minimum standard. "Public defenders are often able to dispose of cases faster than the private bar by having an active presence at the jail. Quick disposition of incarcerated persons' cases then directly lowers the local jail population."³⁵ This model worked in a Michigan pilot program in Kent County for offering counsel at first appearance.³⁶

6. Cost Studies

According to three separate studies in Texas, public defender offices benefit taxpayers by producing quality outputs often times at a lower cost than assigned counsel. In Wichita County, the cost per case is approximately \$345.26 (\$656,000/1900) compared to \$359.49 (\$683,031/1900) for assigned counsel.³⁷ A second study demonstrated significant differences between the cost per case of assigned counsel and regional public defender offices in two additional counties, Bowie and Red River. The regional public defender office is consistently less costly while achieving similar outcomes.³⁸ A combined study of Colorado, Dallas, El Paso, Webb, and Wichita counties found that the cost per case savings of public defender offices compared to assigned counsel range from 23% to 31% for misdemeanors and from 8% to 22% for felonies.³⁹ This study also calculated a theoretical estimation of the differential between public defender offices and assigned counsel and concluded that, had 100% of Fiscal Year 2005 cases in Texas been assigned to the public defender office, there would have been a savings of \$13.7 million.⁴⁰

Similar findings have been made outside of Texas. A 2014 study in upstate New York shows that public defender offices cost \$127.31 less per case than assigned counsel.⁴¹ For Fiscal Year 2007, the State of Iowa reported that the trial-level public defender office cost \$227 per case compared to \$427 per case for court-appointed private counsel.⁴²

Institutional Resource

In 2002, the State Bar of Michigan Representative Assembly adopted the "Eleven Principles of a Public Defense Delivery System," which adds an additional principle beyond the American Bar Association's principles:

When there is a defender office, one function of the office will be to explore and advocate for programs that improve the system and reduce recidivism. The defense attorney is in a unique place to assist clients, communities and the system

by becoming involved in the design, implementation and review of local programs suited to both repairing the harm and restoring the defendant to a productive, crime free life in society.⁴³

Public defender offices “provide new attorneys a place to gain the mentoring and experience needed before joining or beginning a private practice. They develop and make available to the private bar forms, pleadings, and substantive briefs. Public defenders often make available free CLE to members of the private bar. They consult with the private bar on special issues as they arise in cases, even to the point of second-chairing complex trials. They are reliable sources of up-to-date general courthouse information. Generally, the institutional knowledge that is gained by a PDO is available to private appointed counsel, which improves the cost efficiency of private counsel and the quality of justice. For judges, commissioners, and the community at large, a PDO provides a unique institutional advice for indigent defense that is comparable to the necessary voice that a district attorney provides for the prosecution. Through the public defender, judges, commissioners, and the community may learn of specific facts that they seek, of criminal justice trends and their impact on various members of the community, of ideas for procedural improvements, and of the many ways in which the criminal justice system interacts with other government functions.”⁴⁴

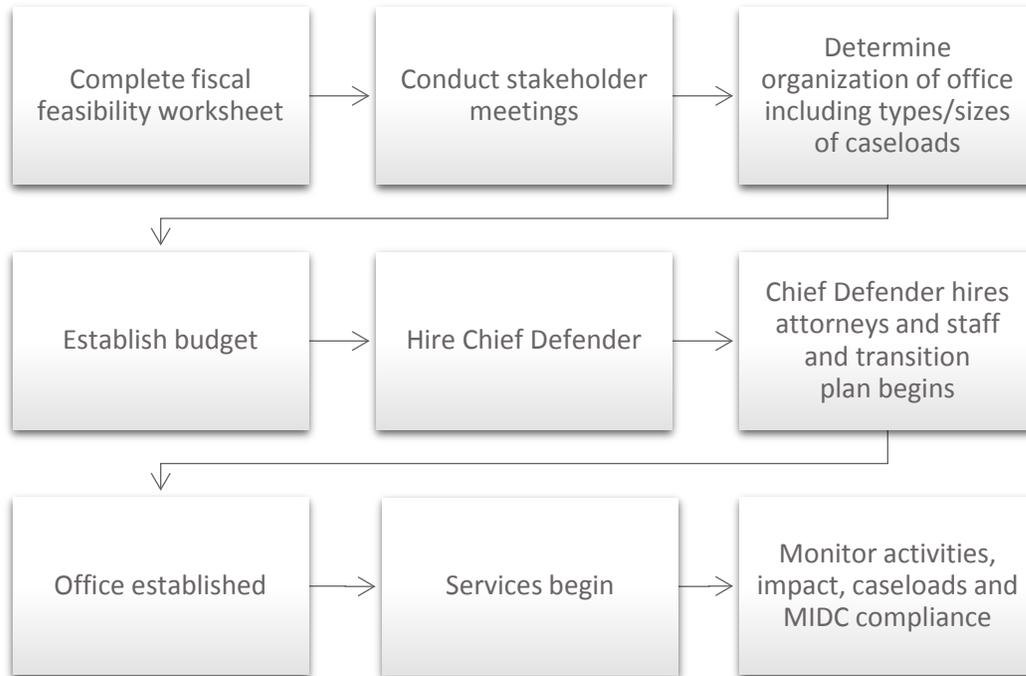
Disadvantages of Switching to a Public Defender Office

There are at least three reasons that there could be real disadvantages to creating a public defender office: “1) natural resistance to change; 2) startup costs; and 3) absence of the caseloads large enough to make a public defender cost effective.”⁴⁵

Resistance can come from the local bar or from other system stakeholders who are legitimately unwilling to remodel the local indigent defense delivery system. If all members of the criminal justice community are satisfied with the current model, there is very little reason to change. Start-up costs will need to be assessed in terms of the fiscal feasibility sheet, which is appended here. The strongest reason against creating a public defender office is the absence of caseload numbers to support the model. A feasibility study will be crucial in this analysis as well, particularly if a regional defender model is also under consideration.

Steps to Create a Public Defender Office

The basic, minimum framework for implementing a public defender office is as follows⁴⁶:



Feasibility Study⁴⁷

The first step in deciding whether a public defender office is right for the clients and community is to complete a fiscal feasibility study. If the numbers reveal that a public defender office makes financial sense or is necessary to comply with the standards enacted by the MIDC, then stakeholders should discuss the remaining considerations.

A sample feasibility worksheet is included in the appendix and offered to consider whether the public defender office model is best for the local system. “Once the cost study is complete, it should be discussed with stakeholders as part of a deeper discussion about whether to invest more effort in exploring the public defender option. As this discussion proceeds, the cost figures may be refined either to reduce costs or to expand coverage or quality, as each individual circumstance indicates is appropriate. The initial cost figures are only necessary to begin the discussion.”⁴⁸

Salaries, bar dues, training and rent are among the largest expenditures to be considered each year. There are some costs unique to starting an office that will not be part of an ongoing or annual consideration, such as furniture and many supplies. Public defender offices should think

in terms of long range goals when purchasing any computer equipment, to ensure capabilities of scanning to store and access files and file materials electronically whenever possible. Cloud based storage systems are highly economical and can often be a good choice for a law practice, but security issues must be scrutinized before agreeing on any off site solution.⁴⁹ Case management software should also be considered. For new offices with a combination of experienced attorneys and younger lawyers, this can be an opportunity to implement efficient practices that emphasize collaboration and resource sharing within the office over antiquated models of siloed information storage.

These additional expenses can be modified and a range of options should be considered. Offices with large enough caseloads should consider a staff investigator, a legal researcher, and a social worker.⁵⁰ There are also many choices for training to be considered by the public defender office, and any training menu should be developed by the office training director or the person who coordinates and oversees the training for staff attorneys, pursuant to NLADA Defender training and development standards.⁵¹

Training Director and Staff - The leadership of the organization must ensure that the training efforts are administered and overseen by a person or persons who have training as a specific job duty, and whose other work duties are adjusted to ensure that the training responsibilities can be competently directed. That such person(s) should be provided with resources and staff to accomplish these responsibilities.⁵²

Stakeholder Meetings

If it is determined that creating a defender office is feasible, the next step will be a meeting of stakeholders in the criminal justice community. These stakeholders will, at a minimum, include: judges, defense attorneys, court administrators at the district and circuit level, the current indigent defense coordinators, and local funding units. Representatives from the Michigan Indigent Defense Commission or staff/consultants in the county or region should also be invited, particularly if the creation of the office is part of a compliance plan with the MIDC's standards or best practices. Other stakeholders could include county clerks, community groups, local bar associations, members of the sheriff's department, jail or corrections staff, prosecutors and even local providers of civil legal services to the poor if applicable. "The object of involving all of these stakeholders is not to find consensus on every issue that needs to be decided, but to provide a forum to be heard so that they may make constructive suggestions and criticisms that will improve the end product. Also, by participating in the planning process all stakeholders may gain a better understanding of how a public defender may impact the efficiency and effectiveness of their work."⁵³ These meetings should discuss the service provider – whether county based or a contract with a non-profit organization, or some other model. The MIDC takes no position or preference on the provider; it is for the local system to decide.

Organization of the Office

When a new office is created, the ultimate goal is to provide the most effective legal representation and advocacy through an independent, well-trained, responsible, and efficient public defender system. There are several different models of public defender offices that can be created, based on the needs and budget capabilities of the delivery system. One typical model involves a county-based and funded office that accepts 100% of all cases except where there is a conflict of interest.⁵⁴ Large counties may instead opt to contract with a non-profit association to accept some percentage of the cases in the jurisdiction, with a substantial list of assigned attorneys from the private bar taking assigned cases as well.⁵⁵ In other areas, it may make sense for a collection of counties or courts with some commonality to create a regional defender office with many shared resources while also maintaining a healthy list of assigned counsel in multiple communities.⁵⁶ Other alternatives include the creation of public defender offices that specialize in particular types of cases, including capital cases or misdemeanors only.⁵⁷ Any configuration should employ the ABA principles of a public defense delivery system.

The American Bar Association's first principle describes independence (with commentary):

The public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.⁵⁸

The MIDC strongly recommends that a public defender agency or office be overseen by the county commission or other executive department if a county office, and overseen by an Independent board if a non-profit. A board or committee of directors dedicated to supervising the public defender should be created to serve in an advisory capacity to the county, and shall be the exclusive body to handle the hiring and firing of the chief public defender. It must be clear in the articles of incorporation that the board overseeing the public defender will not interfere in any way with the relationships between the public defender and their clients, or be involved in any way in the management, representation or disposition of any particular cases.⁵⁹

The feasibility worksheet is designed to allow for office scale and will also address types of caseloads. The MIDC Act states that “[i]f the caseload is sufficiently high, indigent defense

criminal defense services may consist of both an indigent criminal defender office and the active participation of other members of the state bar.”⁶⁰ There is no one-size-fits all approach. In some counties, the best model will be an office that takes 100% of cases except for conflict cases; in other areas, the clients and community may be better served with an office that only takes 25% of cases while maintaining a large assigned counsel list.

The budget framework for the new office is also established through the feasibility worksheet.

Transition to a Public Defender Model

Indigent defense delivery systems established in response to the MIDC Act will need to have a plan in place to facilitate a smooth transition away from the current model, particularly if it involves a shift from court administrator or the Chief Judge’s control over the assignment process to a completely independent system. Communication is critical. The transition plan should assume that the public defender will take over all aspects of running the office. At the beginning of the process, the court administrator (or primary person involved in the assignment process) should provide all key information about indigent defense spending in the local delivery system. The portion of the court budget dedicated to indigent defense delivery (the “local share”) should be transferred to the public defender, who will seek additional grant funding from the MIDC if necessary to comply with the minimum standards for assigned counsel. Roles and responsibilities will be defined by the public defender after learning the process from the court administrator. The public defender should assume all responsibilities of running the office as soon as possible.

Hiring the Public Defender and Staff

As indicated above, a board or committee should be organized and dedicated to supervising the public defender. This group will be the exclusive body to handle the hiring and firing of the chief defender. It is advisable and considered the best practice to have experienced stakeholders in the criminal justice community participate in the application, screening and interviewing process for the chief defender. This hiring committee can include local judges, but as a general rule will have criminal defense practitioners as a significant component of the group. The MIDC Executive Director has participated in screening and interviewing of at least one new public defender chief from a new office in Michigan, and the Commission and MIDC staff remains widely available for that purpose statewide.

The chief public defender is responsible for the hiring and firing of all attorneys and staff for the office, subject to the policies of the office established by the overseeing board or committee. In a new office, the staffing goals will be to strike a balance between experienced practitioners and

new attorneys who can manage lower level cases while training through mentorship and observation of senior staff.

The general policies governing the office will come from the board overseeing the public defender, but when starting an office, it is a good idea to also establish internal operating procedures in the following areas: intake and pre-assignment, assignment and representation, case closings and file retention, and general process topics including but not limited to training, client conflict resolution, expenses, and communication with media.

Monitor Office Activities, Impact, and Caseloads

Once services begin, supervisors and staff in a public defender office must track information about client progress, case dispositions, and time spent during the representation.⁶¹ Regular employee evaluations should be conducted of both managers, staff attorneys and support team members. Successes are to be recorded and can be broadly defined to capture all favorable relief for clients. Caseloads should be limited for staff attorneys for now within the national recommendation of no more than 150 felonies per year, and later within Michigan specific caseload limits set by the MIDC after a statewide caseload study.⁶² The best public defender offices have enforceable caseload limits that enable management to shut down to intake when capacity has been reached.⁶³



Whether operating an office that accepts 100% of assignments, or an office of a smaller scale, the services should be provided in coordination with a supplemental system. This can include maintaining a list of alternate counsel for conflicts⁶⁴ or a normal rotation of assignments. The following pages describe the components of such systems and best practices when considering improvements that can be made to new or existing models.

Regional Defender Office Model

Some systems will collaborate regionally and provide indigent defense services across multiple counties in an effort to best serve the communities. A regional defender office might operate through a non-profit or county cooperation structure.⁶⁵ The regional defender office may be most feasible in smaller counties that share a common pool of attorneys who want to reduce overhead expenses by having a central base-location and/or administration through a Chief Regional Public Defender. This model would be implemented to obtain all of the benefits of a defender office described above: quality, cost efficiencies, institutional resource, and MIDC compliance. The Regional Defender will most optimally be a scaled office (50% of cases or less) and supplemented with a list of assigned attorneys equal to or greater than the attorneys on staff in the Defender Office.

Managed Assigned Counsel Model

A managed assigned counsel system (hereafter, “MAC”) is a model that can be used either in coordination with the public defender office or alone to provide indigent defense services in communities at the trial level. This system has independence with oversight by a government-appointed or non-profit agency commission, or by the Executive Branch. MAC is an ideal system to guarantee participation of a vibrant private bar in the delivery of indigent defense.

As with a public defender office, a county or regional MAC can be a very good way to comply with the MIDC standards and best practices:

- MAC can coordinate a program to train attorneys to work on assigned cases;
- MAC can provide resources for prompt meetings with clients and condition participation on these meetings;
- MAC can coordinate contracting of investigators or experts, and even retain investigators on staff;
- MAC can specifically assign counsel at first appearance.

MAC could also comply with many future standards including qualifications and evaluations of assigned counsel by having a framework for evaluating the attorneys on the roster and setting requirements for different sorts of cases. MAC can enforce caseload limitations on roster attorneys and establish fair compensation if properly resourced.

There are at least two comparable delivery systems already in operation in Michigan.

The [Michigan Appellate Assigned Counsel System](#) (MAACS) operates with an administrator and staff in coordination with the State Appellate Defender Office (SADO) under the direction of the Appellate Defender and with oversight by the Appellate Defender Commission.⁶⁶ MAACS

administers the system for appointing criminal appellate counsel in all Michigan circuit courts from a roster of private attorneys and SADO. Approximately 75% of indigent felony appeals are assigned to the MAACS roster, while approximately 25% of cases are assigned to one of SADO's full-time public defenders, pursuant to the Appellate Defender Act.⁶⁷

MAACS maintains a roster of attorneys who practice statewide. These attorneys must meet qualification standards set by MAACS – which includes an annual continuing legal education requirement – and attorneys are reviewed at regular intervals by the MAACS Administrator to maintain eligibility to accept assignments.⁶⁸ SADO's Criminal Defense Resource Center coordinates training for SADO's staff and for MAACS roster attorneys, and provides online resources including legal research tools (such as Westlaw) for a nominal fee to MAACS roster attorneys as well.⁶⁹ MAACS also received grant funding for a pilot program to assist roster attorneys with investigation and expert resources.⁷⁰

In most Michigan counties, the assignment of appellate counsel is done locally and payment to assigned private counsel is provided from the county budget.⁷¹ However, MAACS has undertaken a pilot project to offer administrative support to select counties in a process that centralizes the assignment of attorneys, approves payment vouchers and provides other related functions previously handled by the trial court.⁷² The project has reportedly been popular, and has been expanded to accumulate additional data prior to implementing permanent reforms.⁷³

Another model in Michigan comparable to a managed assigned counsel system is the **Criminal Justice Attorney (CJA) Panel**, administered by the Federal Defender Office (FDO) for the Eastern District of Michigan.⁷⁴ The FDO takes a large percentage of the assigned cases in the Eastern District of Michigan, but when conflicts arise or a co-defendant needs counsel, the assignment will be made to a CJA from a panel of private, qualified federal criminal law practitioners approved by the U.S. District Court to handle court-appointed cases.⁷⁵ Panel attorneys are screened by the Panel Selection Committee, a panel of experienced federal court practitioners nominated by various bar associations in the Eastern District of Michigan, and the recommendations are forwarded to the Chief Judge of the U.S. District Court for final approval.⁷⁶ Panel attorneys must reapply every three years, they must attend training provided each year by the FDO, and they must accept a minimum number of assignments to maintain eligibility on the panel.⁷⁷

Outside of Michigan, a strong MAC model can be found in Austin, Texas, through the **Capital Area Private Defender Service (CAPDS)** – a joint venture nonprofit corporation.⁷⁸ CAPDS provides consulting and management services to ensure delivery of high quality defense representation to those facing criminal charges in Travis County, Texas.⁷⁹

The mission of CAPDS is to enhance the quality of representation provided indigent adult defendants in Travis County. We achieve this by establishing

meaningful standards for quality representation, ensuring appointed counsel exceeds these standards, overseeing the work of appointed counsel and by providing educational and mentoring services to support those appointed to represent indigent clients.⁸⁰

CAPDS provides a high quality model for reform in counties choosing to use the MAC model. This particular system saw its first full year of operation in 2015, and implements all of the hallmarks of best practices for the process⁸¹ of overseeing a roster of private counsel accepting assignments through a Managed Assigned Counsel System:

- **Independent Administration:** The CAPDS has an Executive Director and full-time staff who oversee the screening, review and management of a roster of eligible attorneys. CAPDS also approves the payment vouchers to attorneys and handles minor complaints received from clients about assigned counsel.
- **Resources:** Assigned counsel requests investigative and expert witness assistance directly from CAPDS, and the administration works with attorneys to ensure that the correct experts are used in a particular case. Immigration attorneys are made available for consultation when appropriate. Significant training opportunities are offered to assigned counsel to fulfil annual training requirements.
- **Support:** Mentorship and second chair programs are available through CAPDS, and innovative technology allows counsel to access a wide range of information about cases including online vouchering and mobile alerts of new assignments.⁸²

Public Defender Administrator

As an alternative to an independently managed assigned counsel system, counties may choose to employ a Public Defender Administrator or Indigent Defense Administrator who is responsible for overseeing assignments to a roster of private attorneys. Ideally, in order to comply with the MIDC standards, the Administrator will function independently from the Court by assuming the following functions:

- Screening defendants for eligibility for assigned counsel;
- Identifying attorneys who are qualified to accept assignments for placement on a roster;
- Ensuring that the attorneys meet the MIDC Standards established for providers, including all basic skills and annual training requirements;
- Approving the use of investigators or experts for use by assigned counsel;
- Approving vouchers for payment to assigned counsel;

- Resolving non-grievable matters between defendants and assigned counsel and the courts, including administratively reassigning counsel when appropriate;
- Assisting with the coordination of compliance with the MIDC Standards, including annual grant requests for funding compliance plans.

An example of a Public Defender Administrator model in Michigan with many of the components detailed above can be found in Genesee County.⁸³



The MAC or Administrator models would ensure compliance with the standards and best practices established by the MIDC. While providing fewer services, these alternatives will have significantly less staff and resources than a public defender office, and will require less “steps” to implement, but should in other ways mirror the independence and oversight functions to ensure high quality representation to defendants and access to resources and training for the attorneys serving as indigent defense delivery providers.

Defender Office Feasibility Worksheet

Caseload

Case type (felony, misdemeanor, juvenile, mental, complex, etc)	
A. Total annual cases paid (include all expenses, including investigative and expert costs, preferably average the previous two or three years if possible)	
B. Share of Indigent Defense Cases for a Public Defender (choose a number from 100%, for example in rural areas, to 75%, 50% or even 25% in urban areas)	
C. Public Defender Caseload	
$C = A \times B$	

Staff

A. Public defender caseload	
B. Attorney Staff Ratio (i.e., national standards of 400 misdemeanor cases per attorney per year; 150 felonies per attorney per year, until replaced by statewide numbers set by the MIDC. Consult national and/or established caseload standards)	
C. Number of attorneys needed	
$C = A \div B$	
D. Number of support staff needed (approx. 1 investigator and 1 staff assistant for every 5 attorneys, round up)	
$D = C \div 2.5$	

Approximate Budget

A. Total Staff Salaries	
B. Fringe Benefits	
$B = A \times .50$ (approx./depends on County)	
C. Operating (rent, supplies, postage, copies, etc)	
$C = (A + B) \times .2$	
D. Additional expenses (memberships, dues, training, travel, etc)	
E. Approximate PD costs	
$E = A + B + C + D$	

Michigan Public Defender Office Spending

The most recent figures reported for spending by Public Defender offices in Michigan are as follows. These amounts are not necessarily sufficient to meet MIDC minimum standards, and it is expected that state-funded grants will supplement these budgets through the MIDC process. Note that in most cases, the reimbursement of services by partially indigent defendants is not necessarily included in the budget approved:

County	\$ spent on indigent defense	% indigent defense cases taken	Source
Bay ⁸⁴	\$482,891	100	http://baycountymi.gov/Docs/2016BdCommAdoptedBudgetNYCurYrWithoutText.pdf FY 2016 projected budget. Information begins on page 53.
Berrien ⁸⁵	\$1,500,000	TBD	From news sources. New office to open January 2017. http://www.heraldpalladium.com/news/local/commissioners-approve-public-defender-s-office/article_bd65e46b-3005-5932-920b-cea372fce570.html
Chippewa ⁸⁶	\$295,423	100	http://www.chippewacountymi.gov/Resolutions/15-28%20FY2016%20Budget%20Resolution%20and%20General%20Appropriations%20Act.pdf
Kent ⁸⁷	\$1,431,000	50	Office of the Public Defender handles a portion of cases. Costs are in the public defender's contract. 1850 felony cases at \$700 flat fee = \$1.295 million 10 homicides at \$3600 flat fee = \$36,000 All probation violations, orders to show cause are \$110 per appearance. These are billed quarterly. Rough estimate is \$100,000 but the amount varies.
Lenawee	\$613,000	100	From news sources. New office opened January 1, 2016.

			http://www.lenconnect.com/article/20150513/news/150519677
Muskegon ⁸⁸	\$1,640,126	100	FY 2017 adopted budget: http://www.co.muskegon.mi.us/budget/2015/line_item_a2015.pdf
Washtenaw ⁸⁹	\$2,945,241	100	FY 2017 budget. http://www.ewashtenaw.org/government/departments/finance/budget/final-budget-2014-2017 information on page 30, business plan on page 233.
Wayne ⁹⁰	\$1,980,000	25	Communication with Chief Defender Donald Johnson

Endnotes

¹ Act 93 of 2013, M.C.L. §780.981 *et. seq.*

² The Report of the Advisory Commission can be found on the Michigan Indigent Defense Commission's website, at <http://michiganidc.gov/wp-content/uploads/2015/05/Final-Report-Advisory-Commission.pdf>.

³ M.C.L. §780.993(3) (“[E]ach indigent criminal defense system shall submit a plan to the MIDC for the provision of indigent criminal defense services....A plan submitted under this subsection shall specifically address how the minimum standards established by the MIDC under this act shall be met....”).

⁴ M.C.L. §780.991(1)(b). *See also* American Bar Association Ten Principles of a Public Defense Delivery System, principle #2 “Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.”

⁵ ABA Ten Principles of a Public Defense Delivery System with commentary (2002) can be found online at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenp_rinciplesbooklet.authcheckdam.pdf (accessed Dec 2016).

⁶ National Legal Aid & Defender Association, *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis* (June 2008) available at http://www.mynlada.org/michigan/michigan_report.pdf (accessed Dec 2016).

⁷ The counties studied were Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa, Shiawassee and Wayne.

⁸ *Ten Principles*, *supra* n.5.

⁹ *Id.* at Introduction p. 4.

¹⁰ *A Race to the Bottom*, *supra* n.6 at p. iii.

¹¹ “‘Local share’ or ‘share’ means an indigent criminal defense system's average annual expenditure for indigent criminal defense services in the 3 fiscal years immediately preceding the creation of the MIDC under this act,

excluding money reimbursed to the system by individuals determined to be partially indigent.” See definitions in M.C.L. §780.983.

¹² Some offices also provide representation in probate, juvenile and friend of the court matters.

¹³ The MIDC conducted a survey of all court systems in 2015 including how assigned counsel is paid. See Siegel, J., *Snapshot of Indigent Defense Representation in Michigan’s Adult Criminal Courts: The MIDC’S First Survey of Local Court Systems* (February 2016), available on the MIDC’s website, at <http://michiganidc.gov/wp-content/uploads/2015/04/MIDC-Court-Survey-Report-Feb-16.pdf>.

¹⁴ *Id.*

¹⁵ See, e.g. *Measuring the Effect of Defense Counsel on Homicide Case Outcomes*, by James M. Anderson & Paul Heaton, (National Institute of Justice (OJP), 2012) citing three explanations as to why Public Defender Offices outperform appointed counsel: Public defender Offices tend to have greater access to resources such as investigators and expert witnesses, attorneys in Public Defender Offices are generally compensated in such a way as not to introduce a conflict of interest, and unlike appointed counsel who may operate in relative isolation, attorneys practicing in Public Defender Offices have access to team members that can provide assistance as needed. As the study concludes, these “institutional differences lead to the more immediate cause of the difference in outcomes— less preparation on the part of appointed counsel.”; See also *Who’s better at defending criminals? Does type of defense attorney matter in terms of producing favorable case outcomes* By Thomas H. Cohen (Bureau of Justice Statistics, 2011). For a list of federally funded studies on indigent defense publications, including links to these titles, see the Department of Justice website at <http://www.justice.gov/atj/idp> (accessed Dec 2016).

¹⁶ See Cohen, *supra* n.15 at p. 5-6.

¹⁷ The Texas Fair Defense Act of 2001.

¹⁸ *Blueprint for Creating a Public Defender Office in Texas*, Texas Task Force on Indigent Defense and The Spangenberg Group, Robert Spangenberg, President, Second Edition, June 2008 (hereafter “Texas Blueprint”, available from the MIDC).

¹⁹ *Texas Blueprint* at 5.

²⁰ *Berrien County Indigent Defense Implementation Proposal*, September 6, 2016, available online at https://www.berriencounty.org/uploaded/indigentdefense/final_idip_report.pdf (accessed Dec 2016).

²¹ *Texas Blueprint* at 8-9.

²² Cohen, *supra* n.15 at 25(1), 29-58. All values reflect percentage points.

²³ Iyengar, R. *An Analysis of the Performance of Federal Indigent Defense Counsel* (Nat’l Bureau of Econ. Research, Working Paper No. 13187, 2007). The figure provided is significant at the p<.10 significance level.

²⁴ Anderson and Heaton, *supra* n.15. Value reflects percentage points.

²⁵ Cohen, *supra* n.15 at 25(1), 29-58.

²⁶ Iyengar, *supra* n.23.

²⁷ Anderson and Heaton, *supra* n.15.

²⁸ Grant funds supplement compliance costs beyond the local share, which the system is required to maintain. M.C.L. §780.993.

²⁹ M.C.L. §780.991

³⁰ *Texas Blueprint* at 6.

³¹ *Texas Blueprint* at 6.

³² *Texas Blueprint* at 7.

³³ M.C.L. §780.983.

³⁴ *Texas Blueprint* at 7.

³⁵ *Texas Blueprint* at 8.

³⁶ For more information about the Kent County project, see Comment on Administrative Matters (MIDC Standards) from 63rd District Court Judges at http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Most%20Recent%20Comments%20%202014/2015-27_2016-03-02_Judges%20Sara%20J%20Smolenski%20and%20Jeffrey%20J%20O%27Hara--63rd%20Dist%20Court.pdf (accessed Dec 2016).

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- ³⁷ Carmichael, D., Marchbanks III, M.P. Public Policy Research Institute, Texas A&M University, *Wichita County Public Defender Office: An evaluation of case processing, client outcomes, and cost.* (2012).
- ³⁸ Public Defender Initiative, *Bowie & Red River County Discretionary Grant Closeout Evaluation.* (2013).
- ³⁹ Texas Task Force on Indigent Defense, *Evidence for the Feasibility of Public Defender Offices in Texas.* (2011).
- ⁴⁰ *Id.*
- ⁴¹ "Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York - 2014 Update" (2015).
- ⁴² Office of the State Public Defender. State Public Defender's Efficiency Report. State of Iowa. (2009).
- ⁴³ "The Representative Assembly of the State Bar of Michigan adopted the bold letters of the "Eleven Principles" (i.e., not including commentary) on April 27, 2002."
<http://madcp.dreamhosters.com/sites/default/files/5G%20Implem%20an%20Effective%20Public%20Def%20Syst%20Eleven%20Principles.PDF> (accessed Dec 2016).
- ⁴⁴ *Texas Blueprint* at 10.
- ⁴⁵ *Texas Blueprint* at 10.
- ⁴⁶ Modified from the *Texas Blueprint* at 15.
- ⁴⁷ Modified from the *Texas Blueprint* at 46.
- ⁴⁸ *Texas Blueprint* at 14.
- ⁴⁹ See e.g. Nelson, S. and Simek, J. *Selecting a Law Firm Cloud Provider, Questions to Ask and Ethical/Security Concerns*, Mich. Bar J. (March 2014) <http://www.michbar.org/file/journal/pdf/pdf4article2353.pdf> (accessed Dec 2016).
- ⁵⁰ The State Appellate Defender Office, Federal Defender Offices in Michigan, and the new Berrien County Public Defender have staff investigators. SADO also has a staff social worker and a grant program through the MIDC will provide a staff investigator to the Kent County Office. The Muskegon Public Defender and Federal Defenders have researchers on staff.
- ⁵¹ The NLADA Training and Development Standards are available at http://www.nlada.net/sites/default/files/nlada_defendertrainingstandards_1997.pdf (blackletter only, accessed Dec 2016)
- ⁵² NLADA Defender Training and Development Standard 1.4.
- ⁵³ *Texas Blueprint* at 16.
- ⁵⁴ Muskegon, Washtenaw, Lenawee and Chippewa counties use this model.
- ⁵⁵ Kent and Wayne counties use this model.
- ⁵⁶ The statutory authority for multiple counties cooperating in a regional defender office model can be found in the Urban Cooperation Act of 1967, found at M.C.L. § 124.501 *et. seq.*
- ⁵⁷ See, e.g., Michigan's State Appellate Defender Office, which handles 25% of appointed appeals statewide and created pursuant to M.C.L. §780.711 *et. seq.*
- ⁵⁸ See ABA Ten Principles, *supra* n.5, principle #1 with commentary.
- ⁵⁹ Sample articles of incorporation are available from the MIDC.
- ⁶⁰ M.C.L. §780.991(1)(b).
- ⁶¹ For example, the North Carolina Systems Evaluation Project has information online detailing the thorough analysis undertaken by the Office of Indigent Defense Services, <http://www.ncids.org/Systems%20Evaluation%20Project/index.html> (accessed Dec 2016).
- ⁶² The MIDC anticipates conducting a study beginning in 2017.
- ⁶³ See, e.g., description of New Hampshire's public defender system, <http://nhpr.org/post/amidst-nationwide-crisis-public-defense-nh-public-defender-thrives> (accessed Dec 2016).
- ⁶⁴ When conflicts of interest are identified by a defender office, the best practice is to have an independent assignment process and payments to conflict counsel from a funding unit line item rather than and separate from the defender office budget.
- ⁶⁵ The statutory authority for multiple counties cooperating in a regional defender office model can be found in the Urban Cooperation Act of 1967, found at M.C.L. § 124.501 *et. seq.*

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- ⁶⁶ The Michigan Supreme Court consolidated MAACS and SADO for management purposes. See Administrative Order 2014-18 (September 17, 2014) which can be found on SADO's website: http://www.sado.org/content/pub/10664_MAACS-Admin-Orders.pdf (accessed Dec 2016).
- ⁶⁷ The Appellate Defender Act is found at M.C.L. §780.711 *et. seq.*
- ⁶⁸ <http://www.sado.org/Page/80/MAACS-Resources-Overview> (accessed Dec 2016).
- ⁶⁹ <http://www.sado.org/Page/82/MAACS-Resources-Training-and-Resources> (accessed Dec 2016).
- ⁷⁰ SADO / CDRC Criminal Defense Newsletter, November – December, 2015, *Appellate Investigation Project: Making Investigations More Accessible for MAACS Appeals.*
- ⁷¹ SADO attorneys are salaried state employees, within the department of the Judiciary.
- ⁷² The Michigan Supreme Court's Administrative Order authorizing the pilot project can be found on SADO's website, at http://www.sado.org/content/pub/10643_MSC-Admin-Order-2015-9.pdf (accessed Dec 2016).
- ⁷³ MAACS Regional Pilot Project First-Year Report and Call for Expansion (October 2016) found on SADO's website at http://www.sado.org/content/pub/10775_MAACSPilotReport.pdf (accessed Dec 2016).
- ⁷⁴ The Western District of Michigan has a similar model.
- ⁷⁵ Information about the Federal Defender Office can be found at <http://www.miefdo.org/about-us.html#About> (accessed Dec 2016).
- ⁷⁶ Information about the CJA panel can be found at <http://www.miefdo.org/CJA.html> (accessed Dec 2016).
- ⁷⁷ *Id.*
- ⁷⁸ The Capital Area Private Defender Service website is found at <http://www.capds.org/home.html> (accessed Dec 2016).
- ⁷⁹ <http://www.capds.org/what-we-do.html> (accessed Dec 2016).
- ⁸⁰ *Id.*
- ⁸¹ Process aside, the CAPDS recognizes that substantial reforms are still needed in terms of fees paid to assigned counsel. These challenges are addressed in their 2015 Annual Report: https://assets.adobe.com/link/d1b1b70a-4a44-474e-64b3-247893a13829?section=activity_public&page=28 (accessed Dec 2016).
- ⁸² These features are detailed in the CAPDS 2015 Annual Report, found at: https://assets.adobe.com/link/d1b1b70a-4a44-474e-64b3-247893a13829?section=activity_public&page=1 (accessed Dec 2016).
- ⁸³ Information about the Genesee County Public Defender Program, overseen by the Court Administrator, is found on the Court's website: <http://7thcircuitcourt.com/public-defender-program/> (accessed Dec 2016).
- ⁸⁴ <http://www.baycounty-mi.gov/PublicDefender/> (accessed Dec 2016).
- ⁸⁵ <https://www.berriencounty.org/PublicDefender> (accessed Dec 2016).
- ⁸⁶ http://www.chippewacountymi.gov/public_defender.html (accessed Dec 2016).
- ⁸⁷ <http://www.kcod.org/> (accessed Dec 2016).
- ⁸⁸ <http://www.co.muskegon.mi.us/publicdefender/> (accessed Dec 2016).
- ⁸⁹ http://www.ewashtenaw.org/government/departments/public_defender (accessed Dec 2016).
- ⁹⁰ <http://www.ladadetroit.org/> (accessed Dec 2016).