



The Huron County District Court's Counsel at First Appearance Pilot Program

Summer 2017

Introduction

In May of 2017, the Department of Licensing and Regulatory Affairs approved the Michigan Indigent Defense Commission's (MIDC) first set of standards. One of the standards addresses the representation of defendants at their first appearance in court. The standard requires that counsel be appointed and present as soon as a defendant's liberty is subject to restriction by a magistrate or judge, which includes but is not limited to the arraignment on the complaint and warrant. The standard also requires counsel to be present at all other critical stages, whether in court or out of court.¹

Although the presence of counsel at first appearance (CAFA) has been recognized as critical to ensuring adequate representation, few district courts in Michigan have provided counsel to indigent defendants to date. All defendants appear first in district court where they are provided with formal notice of the charges pending against him or her. Prior to this year, only two district courts – the 55th District Court in Ingham County and the 63rd District Court in Kent County – have provided counsel to criminal defendants at all arraignments. Although the 55th District

PROGRAM SUMMARY

- ✓ More comprehensive discussion resulting in lower bond
- ✓ Increased understanding of court process among clients
- ✓ Faster case resolution
- ✓ Relatively low cost
- ✓ Simple and straightforward design and implementation

Court's First Appearance Project is ongoing, the 63rd District Court was not able to continue their program due to lack of funding. Please see the MIDC's publication, *Counsel at First Appearance and Other Critical Stages: A Guide to Implementation of the Minimum Standards for Delivery Systems*, for more details on the importance of CAFA and the results of the pilot programs.²

Since the formation of the MIDC, two other courts implemented a CAFA program with the intention of taking a "proactive approach" to the MIDC's standards. Most recently, Berrien County started providing CAFA services through its new public defender office. The 73B District Court in Huron County also launched its CAFA program in August, 2016, and since then, has provided counsel to every defendant being arraigned before the judge or magistrate.³ The program represents an enormous shift for the court, which previously only had defense counsel present at arraignment in very rare instances. This brief report summarizes the program model implemented by the 73B District Court, relays the experiences of court stakeholders, and offers suggestions for implementation in other jurisdictions.

Program Model

The 73B District Court holds arraignments five days per week between 1:30pm and 4:00pm except for holidays. At the time of arrest, defendants are informed of a date and time to appear in court and the address of the courthouse. If a defendant walks in on a different day, they can typically be arraigned during this window of time. Arraignments are only occasionally conducted outside of this timeframe.

The court has implemented a number of steps to facilitate the provision of CAFA. After arrest, the court makes a copy of the ticket/complaint for the Prosecutor's Office so that they know which cases are on for arraignment each day. They also keep a checklist for each case that will be arraigned on a given day that outlines basic case information (such as whether it is a state or city case) and the steps that have been completed thus far (Appendix A). Finally, they fill out basic information on an intake form that they have created for each defendant (Appendix B).

The court fills out basic information on an intake form that they have created for each defendant.

At the time of publication, the panel of arraignment attorneys in Huron County was composed of eight attorneys, although the exact number has fluctuated over the last year. A single attorney is assigned to handle all of the arraignments each day with the exception of Mondays and days after a holiday when the size of the docket requires

the presence of two or three attorneys. The assigned attorneys are required to arrive at noon, although if they anticipate that it will be a light day, they can call in the morning and not come in if there are no arraignments. If they choose this option, they must stay within a reasonable distance from the courthouse in case a defendant walks in, similar to an “on call” model. When they arrive, they receive a list of clients, the intake form prepared by the court for each client, and a confidential discovery packet prepared by the prosecutor. This packet may contain more or less information depending on what documents have been made available to the prosecutor at this early stage.

Defendants also are instructed to arrive by noon. The arraignment attorney meets with each client who will be arraigned between noon and 1:30 although on busy days, pre-arraignment interviews may extend beyond 1:30. For meetings with walk-in clients, the court has assigned rooms to the attorneys near the courtroom. The meeting spaces are confidential and conversation in the room cannot be heard from the hallway. For in-custody clients, the attorneys go next door to the jail where they meet in a confidential space. At first, officers and other staff members would walk in and out of this room during client interviews, but the attorneys advocated for this space to be more private, and that practice has now stopped.

The meeting spaces are confidential and conversation in the room cannot be heard from the hallway.

During this pre-arraignment interview, clients are read and asked to sign the advice of rights form that has been adopted from the State Court Administrative Office (SCAO).⁴ Attorneys confirm with their clients that they understand their constitutional rights. The attorneys also fill out the remainder of the intake form started by the court, which consists of basic information

Eligibility is determined during the arraignment and so every defendant is provided with an attorney for the arraignment regardless of financial status.

pertaining to bond including employment status, transportation issues, and community support. If the client will be requesting a court-appointed attorney during arraignment, they also fill out an income and expense statement that details their financial status (Appendix C) as well as the request for court-appointed attorney form (Appendix D). Note that eligibility is determined during the arraignment and so every defendant is provided with an attorney for the arraignment regardless of financial status. The court attempts to provide the advice of rights form and the income and expense statement to every defendant to fill out while they wait for their pre-arraignment meeting so that the meetings can move efficiently.

After meeting with all of their clients, defense counsel then checks in with the court recorder and gives her all relevant documents including the advice of rights forms, the requests for court-appointed counsel, and any additional information about the defendants. The attorney and court recorder discuss whether a defendant is eligible for a deferral and/or whether the prosecutor has written an offer on the back of the ticket or pretrial summary that indicates no objection to a deferral or a particular offer. The attorney also indicates whether their client will be accepting the offer.

Arraignments typically begin on the record at 1:30. For arraignments of walk-in clients, attorneys and clients are in the courtroom together. For arraignments of in-custody clients, the clients usually appear by Polycom from the jail. Each attorney can choose whether they want to conduct the arraignment from the jail with their clients or return to the courtroom. The attorneys express varying preferences and it often depends on the needs of the particular client. If an attorney needs to speak privately with their client in the middle of the arraignment, they can request to either turn the Polycom off (if the attorney is still at the jail) or clear the courtroom to speak with their client via Polycom (if the attorney has returned to the court). At this time, prosecutors are present for arraignment in state cases but not in city cases.

Attorneys provide representation to clients on this day only.

a permanent attorney who is next on the panel list is appointed. The arraignment attorney will leave the file at the court for the new attorney. They may leave personalized notes in the file or may just include the relevant paperwork. The attorney then files an appearance and bill for compensation for arraignments held that day.⁵ Attorneys in Huron County are paid \$65 per hour, and they bill for a minimum of one hour for each day of arraignments even if there is only one arraignment to conduct.

Attorneys provide representation to clients on this day only. When appropriate, some clients accept plea bargain proposals at the arraignment, and a percentage of these are sentenced right at this time. For eligible clients who have requested counsel,

When appropriate, some clients accept plea bargain proposals at the arraignment, and a percentage of these are sentenced right at this time.

Impact

In focus groups with court administration and staff, defense attorneys, and prosecutors, the MIDC learned about the experiences of stakeholders as they designed, initiated, and implemented the new model. This section relies on our conversations with and observations of court stakeholders to describe their perspectives on common questions and concerns that we receive about CAFA. We also examined administrative data from the court and answers from a brief survey that defense attorneys filled out about each case. Our exploration suggests five major areas in which the provision of counsel at first appearance impacted client and court outcomes in Huron County: (1) bond, (2) client knowledge and satisfaction, (3) case resolution, (4) court efficiency, and (5) attorney competency.

In terms of shaping bond outcomes, the defense attorneys feel that CAFA has made a big difference for their in-custody clients, many of whom are now released on personal recognizance bonds. They also note that being present at arraignment has meant that

Among cases in which bond was issued for clients in custody at the time of the arraignment, the bond set by the court was the same as the bond recommended by the defense in 30% of cases and lower than the interim bond in 59% of cases.

they can make a big difference not just on the type or amount of bond but also on the conditions. The judge also expressed satisfaction that the bond conversation now *“feels more complete”* and, as a result, he feels much more confident in the bonds that he issues. Both the judge and magistrate agree that in cases where they do not believe the defendant will pose a threat to the community, access to more information means that they are able to more fully

consider all potential options. Even instances in which the bond conversation takes longer since the defense attorney has more information to present, all parties agree that the decision is now better informed. According to the defense attorney survey, among cases in which bond was issued for clients in custody at the time of the arraignment, the bond set by the court was the same as the bond recommended by the defense in 30% of cases and lower than the interim bond in 59% of cases.

Second – and perhaps most importantly – the defense attorneys and the court administration are adamant that clients have better experiences with the CAFA program in place. They are more comfortable, less nervous, and better prepared for not only the arraignment but also when and if they move ahead in the court process. Anecdotally, stakeholders report that clients are more likely to show up for future attorney meetings

and hearings, likely because they are less anxious. Having a lawyer present at arraignment and knowing all of the options allows them to assess plea bargain proposals with a better sense of all of their options. Defense attorneys argue that “*poor plea deals are less common*” with CAFA in place. Although the MIDC was not able to speak with any of the clients, future research will focus on their experiences with CAFA.

A third impact is that cases are also getting resolved more quickly thanks to the presence of CAFA. Prior to the implementation of the program, attorneys were present only 6% of the time and only 10% of arraignments resulted in an immediate plea or an immediate plea and sentence. With the CAFA program in place, an attorney is present 100% of the time and 18% of arraignments are resulting in an immediate plea or an immediate plea and sentence. A statistical analysis indicates that defendants arraigned in the post-CAFA period are significantly more likely to resolve their cases at first appearance than defendants who were arraigned prior to the implementation of CAFA.⁶ When cases are resolved at arraignment, the majority involve dropped or reduced charges, suggesting that the presence of an attorney may be helping defendants walk away with better outcomes. Also, the court has modified its sentencing procedures and is sentencing more from the bench, which has resulted in defendants needing to make fewer trips to the court for proceedings.

With the CAFA program in place, 23% of cases result in an immediate plea or plea and sentence at arraignment as compared to only 10% of cases before CAFA.

Fourth, the court administration, defense attorneys and prosecutors all report that once the program was up and running, having counsel at first appearance has improved the efficiency of the court. Defense attorneys explain that arraignments can move very quickly now because they have already spoken with clients beforehand. When defense attorneys check in with the court reporter before arraignments begin, the docket also moves more quickly. The court reporter provides information to the attorney about any other client issues that will be addressed that day on the cases in question, such as bench warrants, probation violations, or outstanding fees and costs. Efficiency has also increased because court clerks and the bailiff are not spending time answering questions that should be directed to defense attorneys. Prior to CAFA, the bailiff would frequently be approached by at least half of the defendants being arraigned on any given day, which took time away from her assigned responsibilities. Not being a lawyer, she also felt unqualified to answer defendants’ questions. Since the program started, she has not been approached by a

“It is working.”

single defendant. The prosecutors also report that since the implementation of CAFA, discovery is moving more quickly, their office has access to the files sooner, and the case is immediately placed on a faster track to resolution.

A final unanticipated benefit has been that defense attorneys are spending more time in court on the record practicing their skills and, as a result, the court administration believes that they have developed an even greater range of tools to utilize in court appearances throughout the court process.

One attorney summarized the effects of the new pilot program in the simple yet poignant statement, “It is working.”

Development and Implementation

In terms of the development and implementation of the CAFA program in Huron County, stakeholders feel that it moved quickly and smoothly. According to the court administration, the development occurred over the course of two to three months. The MIDC was available during this time to answer questions and offer guidance where appropriate, but the court largely developed the program on its own. They attribute much of this early success to involving all court stakeholders in the development and implementation of the program. Especially in the beginning, all stakeholders were required to attend meetings so that no information was missed and everyone was on the same page. Echoing the sentiment of all of the stakeholders with whom we spoke, one of the prosecutors explained, *“Having the cooperation between the prosecutors’ office, defense bar and court has been extremely important. We needed to come up with a system of ensuring that everyone has enough information at the first stage to allow something productive to be accomplished. It is really important to have the information to discuss things immediately. You have to get all three parties on board.”*

“You have to get all three parties on board.”

Overall, the stakeholders report that implementation was, in the words of one administrator, *“shockingly simple.”* Court administration, defense attorneys and prosecutors all explain that the biggest challenge was developing system procedures and paperwork and then learning new roles and responsibilities. They started by asking questions such as the following:

- What forms should the court fill out?
- What forms should prosecutors and defense attorneys fill out?

- How should defense attorneys access discovery packets?
- Who should manage the arraignment schedules for the judge and magistrate?
- Who should keep track of data on arraignments?
- How should arraignment attorneys pass their case files onto permanent attorneys?

Once the logistical details were determined, the program progressed with few obstacles. As one court administrator explained, *“The process itself is fine, it is now down to a science.”* The stakeholders continue to evaluate their procedures to determine whether aspects of the program can be refined to better serve their needs or the needs of defendants.

The materials utilized by defense attorneys in their pre-arraignment interviews with clients are one component of the program that is subject to continual reassessment. After refining these documents over the first few months of the program, the defense attorneys now feel that they are able to gather a large amount of information about their clients in a short period of time. As a result of the cooperation between all of the local stakeholders, they also have access to case-specific information in many instances. According to the questions answered by defense attorneys about each case, attorneys are spending between 15 and 30 minutes meeting with their client before the arraignment in the majority of cases (59%). The defense attorneys have access to the charging paperwork in 90% of cases, the criminal history of the defendant in 77% of cases, and the police report in 50% of cases. The defense attorneys feel strongly that they could be even more effective if they had access to this information more often, especially access to the LEIN.

At first, the prosecutors were displeased that they would have to attend all arraignments; although this was not a requirement, they *“would not miss the opportunity to be present”* now that the program is in place. At the outset, CAFA meant more administrative tasks, but like the other stakeholders, the prosecutors quickly designed an efficient and effective system. As one prosecutor explained, *“We get the information, we get the packets ready, get them over to the court, pull the files. Whoever is doing the arraignment grabs and goes. We have everything pretty organized and streamlined.”*

As described in the program model, the court has been using the Polycom to conduct arraignments for in-custody defendants from the beginning of the program. In the majority of cases in which the defendant was in custody at the time of the arraignment, the attorney met with the defendant at the jail for the pre-arraignment interview and then returned to the courthouse to conduct the arraignment by Polycom. Although the MIDC was not able to speak with any defendants about their perspectives on the use of the Polycom, all of the court stakeholders report that it is simple, effective, and saves time

for all parties involved. The defense attorneys do not feel that video arraignments have presented any concerns in terms of building trust with clients or gathering the necessary information to present a detailed bond argument. In the first month of the program, in-custody clients were having difficulty hearing the court proceedings over the Polycom. The administration figured out that the Polycom was located adjacent to the court reporter's keyboard, and the typing was creating too much background noise. The court ordered a quieter keyboard and have not faced any issues since that time.

Cost Statistics

Between the start of the program in August, 2016, and the beginning of the end of May, 2017, the court arraigned 608 defendants. In this time, the court spent a total of \$32,099.13 in attorney fees for arraignments, meaning that, on average, it cost the court \$52.79 per defendant to provide counsel at first appearance. Between pre-arraignment interviews, other preparation, and time in court, the attorneys spent an average of 50 minutes with each defendant. Not surprisingly, the amount of time that attorneys spend on each case varies considerably by attorney, with some attorneys spending as little as 35 minutes on each case and others spending more than an hour on each case.

It cost the court
\$53.77 per
defendant to
provide counsel at
first appearance.

Recommendations and Next Steps

From a development, implementation and impact standpoint, the CAFA program in Huron County has been highly successful. With that in mind, there are many ways for a CAFA program to operate effectively, and the decisions made in Huron County may not be the same as the decisions made elsewhere. Throughout the process of designing a new CAFA program, local systems will necessarily make a number of decisions about the particulars of their approaches that should be based on a combination of best practices as outlined in the MIDC's CAFA publication⁷ and unique local characteristics. For example, the checklist and intake forms that the Huron County court created (Appendices A and B) can be adopted by other courts but should also be adapted to best fit local practices. In other instances, local systems may choose to do something entirely different than Huron County. While Huron County has chosen to implement more of a horizontal representation model, where the arraignment attorney and the permanent attorney are different, other systems may implement vertical representation models, where arraignment attorneys stay with clients throughout the duration of their cases. Similarly,

while all pre-arraignment interviews in Huron County take place in a confidential room, other local systems may not have space available and – so long as only bond is being discussed and not a potential plea bargain – may choose to have their attorneys hold these meetings in a more public location. Finally, as mentioned earlier, prosecutors in Huron County are present at first appearance on state cases but not city cases, which will be consistent with some jurisdictions but not others. These and many other nuances will be left up to local systems to decide upon for themselves and will inevitably differ across systems. For guidance in making appropriate local determinations, please refer to the MIDC’s CAFA publication as well as consulting with an MIDC regional manager.

¹ The MIDC’s Standard 4 is detailed on the MIDC website: <http://michiganidc.gov/standards/#tab-id-4>.

² Michigan Indigent Defense Commission (2017). *Counsel at First Appearance and Other Critical Stages: A Guide to Implementation of the Minimum Standards for Delivery Systems*. Lansing, MI: MIDC.

³ If a defendant appears with retained counsel, the court does not provide an arraignment attorney; however, the court reports that this is extremely rare.

⁴ SCAO, DC 213: <http://courts.mi.gov/Administration/SCAO/Forms/courtforms/dc213.pdf>

⁵ Huron County has also adopted these forms from SCAO:

MC 02: <http://courts.mi.gov/Administration/SCAO/Forms/courtforms/mc02.pdf>;

MC 221: <http://courts.mi.gov/Administration/SCAO/Forms/courtforms/mc221.pdf>

⁶ Statistical significance means that the difference between pre-CAFA and post-CAFA outcomes is large enough to indicate a true difference in outcomes and not a difference that could just be due to chance alone. $Z=-2.68$, $p=.0028$.

⁷ MIDC, *supra* n.2.

Date: _____

Lodged: Yes or No

DEFENDANT INTAKE FORM

Name: _____ DOB: _____

Address: _____

Telephone Number(s): _____

District Court Case File No.: _____

Charge(s): _____

Co-Defendants: _____

Interpreter Request: _____ Veteran: _____

Disability Request(s): _____

Information Pertaining to Setting of Bond and Conditions of Bond:

Employment Status: _____

Transportation Issues: _____

Health/Medications: _____

Alcohol/Controlled Substances a Factor in Offense: _____

Necessary to leave State of Michigan and for What Purpose: _____

Miscellaneous: _____

Requesting Court Appointed Attorney/Financial Form: _____

Potential Conflict with Court Appointed Attorney: _____

Evidence/ Witness Concerns: _____

STATE OF MICHIGAN 73B DISTRICT COURT	DEFENDANT'S INCOME EXPENSE STATEMENT	CASE NO.
---	---	-----------------

Court Address:
Huron County Building
250 E Huron Ave., Room 105
Bad Axe MI 48413

Court Telephone No.
(989) 269-9987

Defendant's Name: _____

Monthly Income (How much money do I make?)

Gross Monthly Income	
Gross Monthly Income of Spouse/Partner	
Unemployment Benefits	
Social Security/SSI	
Child Support (Received)	
Alimony (Received)	
Disability	
Veteran's Benefits	
Interest/Dividends	
Side Jobs	
Other	
Total	

Monthly Expenses (How much money do I spend?)

Mortgage OR Rent	
Utilities: Heat, Electric, Gas, Water, Trash	
Vehicle Payment/TAT Bus	
Vehicle Fuel	
Insurance – Vehicle	
Insurance – Health	
Insurance – Other	
Loan Payments	
Child Support/Alimony (paid out)	
Medical payments (medications, etc...)	
Groceries	
Court Payments (other than this court)	
Tobacco	
Alcohol	
Phone (Home and/or Cell)	
Cable/Satellite and/or Internet	
Other	
Total	

Total: Income – Expenses = _____

I certify under penalty or perjury that this financial statement is a complete and accurate statement of my income, assets, and expenses, and that I have no other additional income. I will provide supporting documentation of income and debts upon request.

Date

Signature

Print Name

STATE OF MICHIGAN
IN THE 73B DISTRICT COURT FOR THE COUNTY OF HURON COUNTY

The People of the State of Michigan

Plaintiff,

-vs-

Case No. _____

Hon. DAVID B. HERRINGTON

Defendant. /

REQUEST FOR
COURT-APPOINTED ATTORNEY
AND ORDER

REQUEST

The defendant requests a court-appointed attorney and submits the following information.

1. CHARGE: _____ Misdemeanor Felony Paternity
2. Next Hearing Date: _____
3. Bail Amount: _____
4. Income, Assets, Obligations, and Expenses (Please see back)
5. Contribution Toward Attorney Costs:

I understand that I may be required to contribute to the cost of an attorney.

Date: _____ Signature: _____

6. Pursuant to Michigan Court Rule 1.110, all fines, costs, restitution, and other court fees must be paid in full on the date of sentencing.

ORDER

1. _____ (P- _____) is appointed to represent the defendant.
2. The petition is denied because: The Court will not sentence the defendant to jail or to suspended jail sentence (MCR 6.610) OR
 Defendant is not indigent OR
 Other: _____

Dated: _____

DAVID B. HERRINGTON (P40360)
District Court Judge