

**Snapshot of Indigent Defense Representation in
Michigan's Adult Criminal Courts: The MIDC'S
First Survey of Local Court Systems**
A REPORT OF THE MICHIGAN INDIGENT
DEFENSE COMMISSION

Jonah A. Siegel | Research Director | February 2016

Highlights

Established in 2013 through the passage of Public Act 93, the Michigan Indigent Defense Commission (MIDC) aims to create statewide standards for the delivery of adult criminal indigent defense services. A key component of the MIDC's mandate is to develop a comprehensive understanding of the current operation of indigent defense representation in Michigan. To this end, the MIDC conducted a survey in 2015 of all circuit and district courts to gather basic information on the representation of poor people charged with crimes in their systems. Survey questions addressed the extent to which local public defense systems currently engage in evidence-based practices that have been identified nationally as characterizing high-quality and effective representation.

With no current statewide standards dictating best practices, the survey revealed wide variation in how courts deliver services to indigent defendants. Key findings include:

- Courts employ loose and varied guidelines in determining the eligibility of defendants for appointed counsel services.
- In the majority of courts, defendants whose requests for counsel have been denied have no recourse to further pursue assistance.
- With few exceptions, the vast majority of court systems rely on assigned counsel systems and/or contract defender systems to deliver representation to poor people. As of 2015, only six public defender offices were operational within the state, with a seventh starting operations in 2016.
- There is little consistency in attorney compensation for appointed cases, with hourly rates ranging from \$33 per hour to over \$100 per hour.
- Most appointed counsel systems do not operate independently from the judiciary. According to an informal scale, approximately one-quarter of assigned counsel systems can be considered independent, while 15% of contract defender and 40% of public defender office systems operate independently.
- Only 6% of district courts require attorneys to be present at both the bail hearing and at arraignment, despite the documented importance of legal guidance in these early stages.
- Sixty-three percent of court systems report the existence of confidential meeting space in both their courthouse and holding facility, though attorneys explain anecdotally that "private" meeting rooms are often filled to capacity, difficult to book, or composed of cubicle-type spaces that do not actually allow for confidential discussions.
- Only 15% of indigent defense systems currently report the existence of local guidelines requiring participation in Continuing Legal Education courses.

In combination with future surveys of court systems and attorneys, focus groups, and court observation, the findings from this survey will inform the development of both future standards and the creation of local compliance plans.

Commissioners

Pursuant to MCL 780.987, the Governor appointed the following Commissioners as submitted by the person, group or organization listed below:

Hon. James Fisher, Chair, Michigan Judges Association

Frank Eaman, Criminal Defense Attorneys of Michigan

Jon Campbell, local units of government

William Swor, Criminal Defense Attorneys of Michigan

Nancy J. Diehl, State Bar of Michigan

Richard Lindsey, Speaker of the House of Representatives

Tom McMillin, Speaker of the House

Brandy Robinson, those whose primary mission or purpose is to advocate for minority interests

Michael Puerner, Senate Majority Leader

Gary Walker, Prosecuting Attorneys Association of Michigan

Hon. Thomas Boyd, Michigan District Judges Association

John Shea, Criminal Defense Attorneys of Michigan

Shela Motley, Senate Majority Leader

Kevin Oeffner, Chief Justice of the Michigan Supreme Court

David Schuringa, the general public

Joseph J. Baumann, ex officio member, Supreme Court

Statement from the Chair

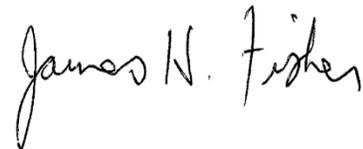
In 2013, the Michigan Advisory Commission on Indigent Defense found a lack of consistent data collection on indigent defense within county systems in Michigan. As a result, the MIDC Act requires collection of “data from all indigent criminal defense systems and individual attorneys providing indigent criminal defense services to adults.” MCL 780.989(2).

The Michigan Indigent Defense Commission (MIDC) is proud to now release the results of Michigan’s first comprehensive statewide survey of public defense. The MIDC surveyed all circuit and district courts throughout Michigan’s 83 counties. The Commission wishes to thank the State Court Administrative Office for assistance and guidance throughout the process of releasing a survey to Michigan’s entire court system.

The survey specifically focuses on delivery systems for indigent defense, costs of this delivery, independence of the public defense function, appointment of attorneys, confidential meeting space, and education and training. We believe that these different topics allow for a first clear snapshot of indigent defense in Michigan.

We hope that these results prove enlightening for all criminal justice stakeholders and the general public. We also expect that the results provide a starting point for local counties and courts to work with the MIDC to provide the best possible models for delivering the highest quality of representation to indigent defendants.

Respectfully Submitted,

A handwritten signature in black ink that reads "James H. Fisher". The signature is written in a cursive style with a large, prominent "F".

Hon. James H. Fisher (Retired)
Chair

Michigan Indigent Defense Commission

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Background

In 2011, Governor Rick Snyder established the Michigan Advisory Commission on Indigent Defense after a series of lawsuits and research reports documented widespread concerns with the delivery and practice of indigent defense in the State of Michigan. The Advisory Commission investigated and made recommendations for improvements to the system of providing legal representation for indigent criminal defendants. One year later, the Advisory Commission concluded that Michigan's counties offer an "uncoordinated, 83-county patchwork quilt" of public defense systems that fail to provide the type of quality legal representation mandated by the Supreme Court in *Gideon v Wainwright*.¹

Michigan Indigent Defense Commission Mandate

- *Collect and compile data for the review of indigent defense services in Michigan;*
- *Propose minimum standards to ensure all systems providing indigent defense meet constitutional obligations for effective assistance of counsel;*
- *Guide local court systems in the development of plans to meet standards;*
- *Award grants to bring local systems in compliance with the new standards;*
- *Measure the performance of local systems in providing public defense services.*

The Commission further found that local courts are not held accountable by data collection or any statewide standards ensuring constitutionally adequate defense counsel. These recommendations served as the basis for legislation and resulted in the passage of Public Act 93 of 2013, which established the Michigan Indigent Defense Commission (MIDC).

The MIDC is responsible for improving representation for poor people accused of crimes through several steps. First, the MIDC proposes minimum standards to the Michigan Supreme Court. After the Court adopts the standards, the MIDC works with local indigent defense systems to develop compliance plans to meet the minimum standards. Finally, the MIDC helps local systems secure state funding for reform and then monitors compliance with minimum standards over time.

One of the most glaring findings in both the Advisory Commission's final report and a 2008 research report conducted by the National Legal Aid and Defender Association (NLADA)² was the lack of consistent data collection within indigent defense systems in Michigan. As a result, the MIDC has very little reliable information on current indigent defense practices. While the Advisory Commission's report provides a helpful overview of practices and the NLADA report offers detailed case studies of ten different counties, comprehensive data on court-by-court practices currently do not exist.

In response, the MIDC's first research task was to survey all circuit and district courts in the state to gather basic information on the representation of indigent adult criminal defendants in their systems. Survey questions addressed the extent to which local public

defense systems currently engage in evidence-based practices that have been identified nationally as characterizing representation that is high-quality and effective.³ The survey also intended to shed light on *process*. Since data on indigent defense representation have never been comprehensively and consistently collected in Michigan, data collection provided critical insight to the MIDC into how to most effectively connect with stakeholders to gather accurate information. The results will be used by the MIDC to inform the development of statewide minimum standards and to guide the implementation of standards in each local jurisdiction.

Data and Methods

The MIDC designed the survey using a basic online survey tool and included multiple choice, open-ended, interval scale and ratio scale questions. The MIDC informed respondents that the survey would take, on average, between 20 and 30 minutes to complete, although some sections might require respondents to gather information from other court staff or stakeholders from other courts. Questions covered the following topics, among others: determination of indigence, models of service delivery, attorney appointment and contact with clients, attorney presence at court hearings, attorney training, and annual expenditures.

The survey prompted respondents to collaborate with relevant coworkers and other local agencies to submit a single survey per indigent defense court system. MIDC's statute defines the boundaries of a court system as a "local unit of government that funds a trial court combined with each and every trial court funded by the local unit of government."⁴ The statute further stipulates that, "If a trial court is funded by more than 1 local unit of government, those local units of government, collectively, combined with each and every trial court funded by those local units of government." Rather than imposing this legal definition of a court system, however, this survey allowed courts to identify the boundaries of their perceived system for themselves. This decision was made because, anecdotally, local courts frequently function in ways that do not conform neatly to legally defined system boundaries. In order to (a) capture actual practice on the ground, and (b) ascertain discrepancies between state expectations and local practice, survey respondents were instructed to consider a "system" to be any combination of counties or courts that utilize the same funding streams for indigent defense and the same mechanisms for appointing public attorneys.

In order to disseminate the survey to court systems, the MIDC partnered with the State Court Administrative Office to identify the primary points of contact for each court. The

survey was first emailed to these judges and court administrators in July 2015. The research team followed up with stakeholders by telephone and email in the months following survey launch to answer questions about the MIDC and the survey. The MIDC staff and commission members also made efforts to discuss and encourage participation in the survey during meetings or site visits with court employees.

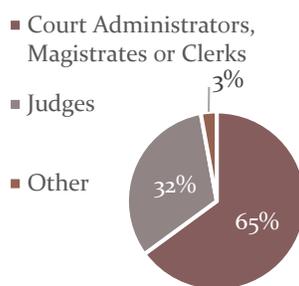
Within three months of survey launch, the MIDC made contact with every court system and received responses from all but one of the 165 self-identified systems.

Results

Within three months of survey launch, the MIDC made contact with every court system and received responses from all but one of the 165 self-identified systems.⁵ As described above, Michigan's courts are structured uniquely in each county, and so courts submitted responses in a multitude of ways based on their own understanding of how decisions are made about indigent representation in their system. Courts self-identified their "systems" in the following ways:

- *Based on statewide circuit or district delineations.* For example, the 1st District Court (Monroe County) and the 11th Circuit Court (Alger, Luce, Mackinac and Schoolcraft Counties) each submitted a single survey for the entirety of their respective jurisdictions.
- *Based on a combination of statewide circuit or district delineations.* For example, the 26th Circuit (Alpena and Montmorency Counties) submitted a response in cooperation with the 88th District (also Alpena and Montmorency Counties).
- *Based on county delineations.* For example, the 90th District Court submitted separate responses for each of the two counties within its jurisdiction.

Figure 1: Distribution Of Survey Respondents (n=179 respondents)



Whereas there are 161 distinct circuit and district court systems identified by the state, local courts self-identified a total of 165 systems, many of which were either smaller or larger than those defined by the state.

Several court systems submitted multiple surveys, either because of a lack of communication between stakeholders or because stakeholders felt that they could only accurately characterize their systems through the submission of more than one response. In total, the MIDC received 179 survey responses from the 164 court systems that completed the

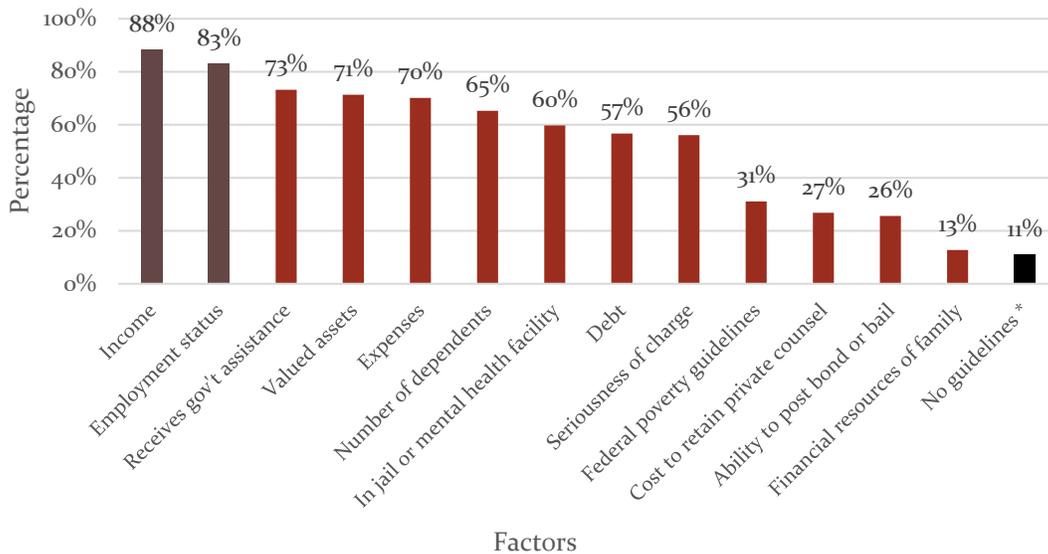
survey. Almost two-thirds of responses were submitted by court administrators, magistrates or clerks while another one-third of responses were submitted by judges. A small number of remaining responses were completed by court finance officers or local public defenders.

The following sections describe and illustrate the survey findings. To most effectively illustrate the aggregated results, the research team selected a single survey from each of the 164 court systems to present for the analysis.⁶

ELIGIBILITY

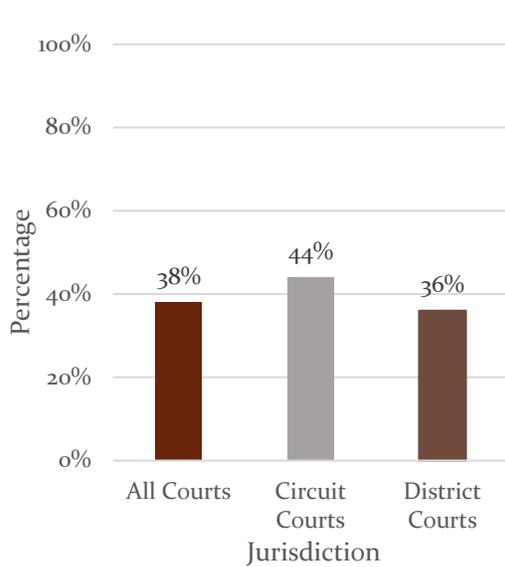
Although national best practices dictate that indigent defense systems evaluate the financial eligibility of defendants for indigent defense representation,⁷ there do not exist national or statewide mandates specifying the methods by which this must occur.⁸ As a result, Michigan courts vary tremendously in their practices. As illustrated in Figure 2, the majority of courts report that they use at least some criteria in making their determination. Over three-quarters of court systems consider income (88% of court systems) and employment status (83% of court systems). In addition to the factors listed below, courts also mention weighing the likelihood of jail time and any extenuating circumstances such as medical illness and expenses. Among courts that report the use of specific factors to determine eligibility, over three-quarters (76%) require that judges consider these criteria, while in the remaining courts (24%), guidelines are suggestive rather than mandatory.

Figure 2. Factors Used To Determine Eligibility (n=164 courts)



At the same time, 11% of courts report that they do not use any guidelines to make eligibility determinations. Comments provided in survey responses suggest that some of the courts without guidelines allow judges to make independent decisions based on the specifics of the individual case while other courts grant all requests for appointed attorneys. As one court administrator articulated, “We will readily appoint anytime that it appears at all necessary to protect the defendant's constitutional rights and best interests.” Research by the NLADA has documented a similar phenomenon in courts across the country and attributes the lack of guidelines to resource concerns, as granting every request keeps dockets moving and, in some locations, may be more cost efficient than conducting eligibility screenings.⁹

Figure 3. Percentage Of Courts That Allow Eligibility Challenges (n=157 courts)



Just over one-third of courts provide a process by which defendants can challenge a court’s determination of their eligibility for indigent representation. However, even in systems that allow for challenges, many stakeholders report that this process is never used. One court administrator explained, “I have been at the Court for 7½ years and have never seen anyone ask for a hearing.” In 62% of courts, defendants whose requests for counsel have not been granted have no recourse to further pursue legal assistance, despite the recommendation of the National Study

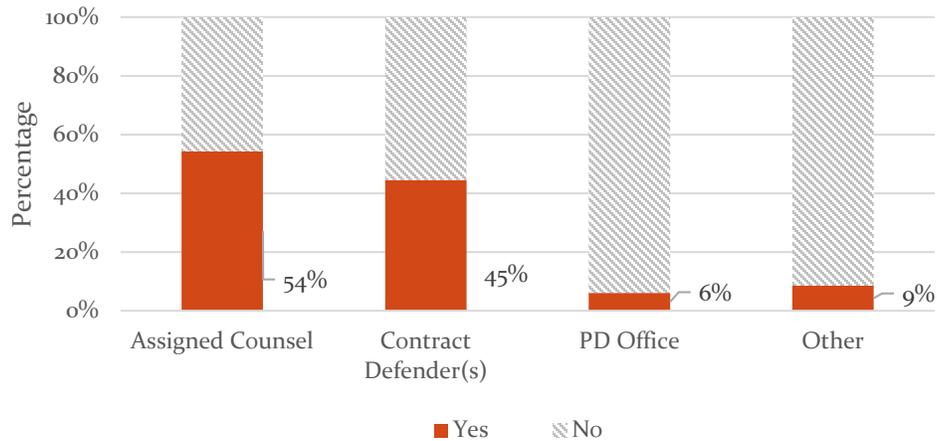
Commission on Defense Services that all decisions of ineligibility should be reviewable by an expedited interlocutory appeal.¹⁰ Circuit courts report that they are more likely than district courts to allow defendants to challenge these determinations.

DELIVERY MODELS

Respondents were prompted to select the model(s) of delivery for indigent defense representation utilized within their court systems from the following options: (a) assigned counsel services, (b) contract defender services, (c) public defender office, and (d) other forms of delivery.¹¹ Because court systems often rely on a combination of delivery models, respondents were able to select as many options as were relevant to their system. Figure 4 illustrates the percentage of court systems that utilize each type of delivery model. More than half of court systems report using an assigned counsel system in which private

attorneys are paid either per hour, per case, or per case event. Just under half of court systems indicate using contract defenders, where private attorneys are paid a set amount of money to represent a certain number or percentage of cases. Only a handful of court systems utilize public defender offices since, at the time of survey submission, only six public defender offices were operational within the state, with a seventh starting operations in 2016. Nine percent of court systems report using a delivery model that they felt did not fall into one of these other categories. Based on the descriptions provided by respondents in this final category, the majority of these systems can accurately be described as a variation of either the assigned counsel or contract defender models. Appendix A provides a detailed list of the delivery models currently utilized by each court system.

Figure 4. Utilization Of Delivery Models By Court Systems (n=163 courts)



Although some court systems exclusively utilize an assigned counsel system or a contract defender system, others creatively combine delivery systems for different purposes. For instance, one court system diverts half of its cases to the local public defender office while assigning the remaining half to attorneys on an assigned counsel list. Another court contracts with attorneys at a local law firm who can take up to 200 cases each per year. Once this quota is reached, any additional cases are assigned to attorneys on the local roster. A third court system primarily relies on a single contract defender but maintains a list of roster attorneys when conflicts occur. In this system, the local public defender office provides representation for felony probable cause hearings and preliminary exams. These courts offer examples of the nuanced and creative means through which indigent defense representation is provided at the local level in Michigan.

EXPENDITURES

The delivery models utilized by each court, in turn, inform how attorneys are compensated for their services. Attorneys who are not salaried through a public defender office can be paid hourly, per case, per case event or through contracts that stipulate the number of cases attorneys must accept or amount of time they must be present in court. To provide a snapshot of payment schemes, hourly rates across the state range from \$33 per hour to over \$100 per hour depending on the court and type of case in question. Attorneys paid based by case event earn differing amounts for each event type; for instance, in one court system, assigned counsel earn \$200 for a pretrial conference, \$265 for a plea, and \$150 for a motion hearing. Another court system prorates case event rates based on a defendant's sentence range; for instance, motions start at \$60 for a 24-60 month sentence and max out at \$130 for life without parole sentences. A contract attorney, on the other hand, might agree to handle all cases on the docket in a single day for \$500 or, in another court system, up to 200 cases per year for \$320 per case. Contract attorneys may also take on a percentage of a court's indigent defense caseload for a fixed monthly or annual fee. As evidenced by this snapshot of attorney payment, compensation for indigent defense representation varies widely across courts and counties.

Compensation for indigent defense representation varies widely across courts and counties.

Although courts set forth clearly defined payment systems for public counsel, many struggle to identify the precise amount spent on indigent representation annually. Approximately 20% of court systems report uncertainty about this figure for the previous fiscal year, and a considerable portion of the remaining 80% are only able to provide an estimate. Among courts that do report either exact or estimated annual expenditures, circuit courts (n=46 courts) spent an average of approximately \$750,000 with a minimum of \$42,000 and a maximum of \$7.5 million. District courts (n=85 courts) report spending an average of \$150,000 annually with a minimum of \$11,000 and a maximum of \$970,000.

To supplement survey data on expenditures, the Michigan State Court Administrative Office provided the MIDC with an approximation of indigent defense expenditures over the last decade. The figures below replicate the total expenditures and per capita expenditures calculated in the National Legal Aid and Defender Association's 2008 report, *A Race To The Bottom*,¹² and locate overall indigent defense expenditures within a larger context of change over time. Both graphs illustrate the increase in spending between

2004 and 2007, followed by a gradual decrease and eventual leveling out in recent years. In 2014, Michigan courts spent, on average, just \$7.33 per capita on criminal indigent defense, a drop from 2008 levels that ranked Michigan 44th among all states.¹³

Figure 5. Total Expenditures For Indigent Defense Delivery, 2004-2014



Figure 6. Per Capita Expenditures For Indigent Defense Delivery, 2004-2014



The expenditures reported in the current survey as well as those reported to the State Court Administrative Office primarily reflect direct representation expenses, the fees paid directly to attorneys through the delivery models described above. Most courts do not separately keep track of trial related expenses, such as payment for extraordinary hours, investigators and expert witnesses, but those that do generally report spending only a

small fraction of their budget on these additional costs. Attorneys anecdotally report facing obstacles to obtaining funds for these expenses even in court systems that technically allow for the petitioning of additional funds as necessary.

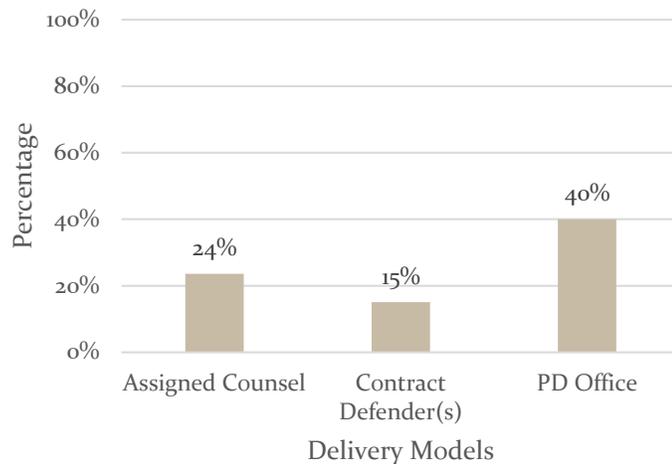
INDEPENDENCE

Regardless of how indigent defense services are delivered, the independence of defense counsel from judicial control is a central component in ensuring quality representation. The American Bar Association emphasizes the importance of independence in its ten principles, arguing that the selection, funding, and payment of defense counsel must all be independent from judicial supervision.¹⁴ The MIDC Act requires establishment of a minimum standard to encourage development of independent systems of public defense.¹⁵ Local courts in Michigan have come under fire for their lack of independence for many years,¹⁶ and the findings of the MIDC's first survey confirmed these concerns. Based on a series of questions from the survey, Figure 7 depicts the percentage of court systems that function as independent from the judiciary according to their mode of service delivery. Assigned counsel systems are deemed as independent when they meet the following criteria:

- The court **has** a single list of assigned attorneys to be used by all judges;
- Judges **do not** have discretion in selecting from the assigned attorney list;
- Judges **do not** maintain their own individualized lists of assigned attorneys; and
- Judges **do not** play a role in appointing attorneys to the assigned counsel panel.

Contract defender systems must meet a similar set of criteria to be considered independent. Public defender models are counted as independent if judges do not play any role in the hiring or termination of the chief defender. According to these informal scales, almost one-quarter of assigned counsel systems can be considered independent, while 15% of contract defender and 40% of public defender office systems operate independently. However, a more detailed look suggests that indigent defense systems likely operate less independently than these numbers indicate. For example, one

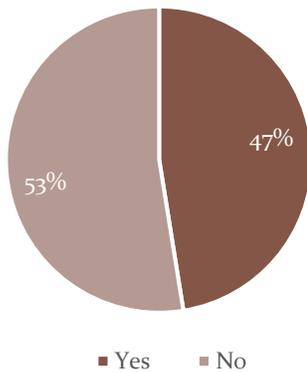
Figure 7. Independence By Delivery Model (n=154 courts)



court that uses an assigned counsel model and would be considered independent based on the scale above elaborated in their qualitative response that although judges generally do not appoint attorneys themselves, the respective chief judges in the local district and circuit courts retain the power to add or delete attorneys from the list. Conversations with local attorneys in response to these findings further reveal that even where an administrator controls the list, judges may still have the ultimate say in assignments. Indeed, a review of Michigan's Local Administrative Orders confirms that a lack of independence is clearly written into the formal policies of many local indigent defense systems.¹⁷

ATTORNEY APPOINTMENT AND PRESENCE

Figure 8. Existence Of Time To Appointment Guidelines (n=158 courts)

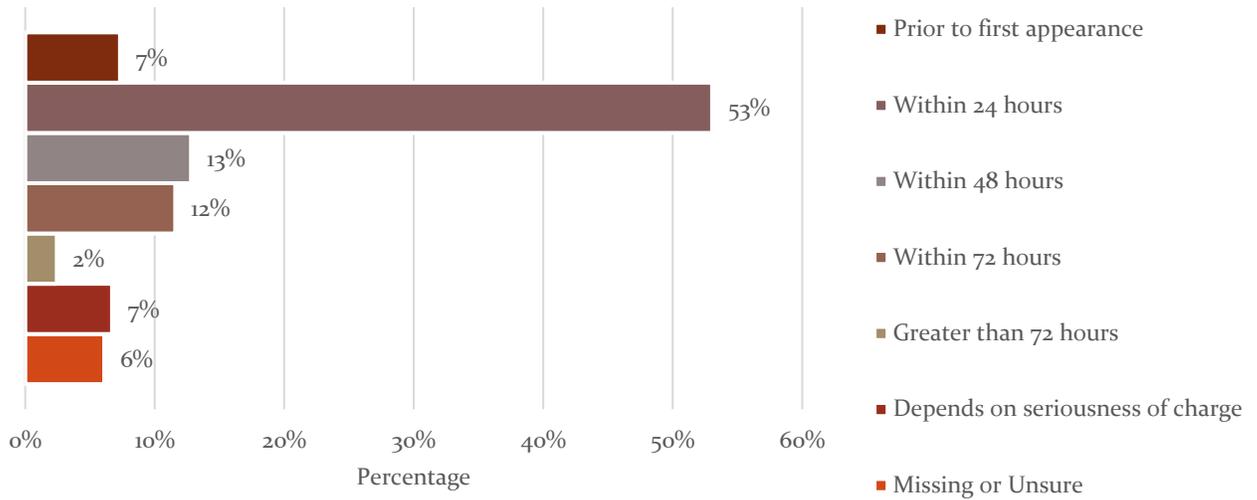


Immediate appointment of counsel to defendants is essential to obtaining favorable outcomes. Early appointment, for instance, allows for attorney involvement in pretrial detention hearings and the opportunity to pursue transient evidence such as security cameras and phone records. Attorneys can also take advantage of early appointment to develop relationships with their clients and make long-term decisions about legal strategy.¹⁸ Due to the importance of early appointment, the MIDC's first set of standards

will address the timing of both the initial appointment and the first client interview. As illustrated in Figure 8, fewer than half of court systems currently report the existence of local guidelines for time to appointment. The lack of guidelines means that indigent clients may be forced to wait lengthy periods of time – often in detention – between when they are first arrested and when they are provided with an attorney.

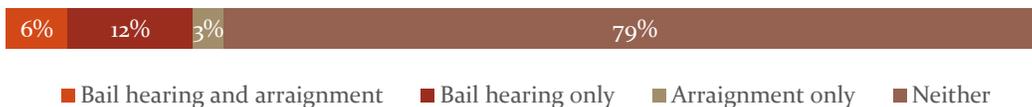
Despite the lack of guidelines, Figure 9 demonstrates that courts make an effort to complete the appointment relatively quickly, with 60% of court systems appointing counsel either prior to first appearance or within the first 24 hours following first appearance. Another 25% of systems appoint attorneys between 24 and 72 hours following first appearance. Interestingly, there is not a statistically significant relationship between the existence of guidelines and the speed with which attorneys are appointed, meaning that the 47% of courts that report having guidelines do not appoint attorneys more quickly than the 53% of courts that report an absence of guidelines.¹⁹

Figure 9. Elapsed Time Between First Appearance And Appointment Of Counsel (n=164 courts)



Part of the motivation behind inquiry into the timing of appointment is that best national practices dictate the importance of attorney presence from the earliest stages of the process, including at the bail hearing and arraignment.²⁰ The MIDC survey revealed that very few indigent defense systems – district courts, in particular – require attorneys to be present during these stages. As illustrated in Figure 10, only 6% of district courts mandate that attorneys are present at both of these hearings. MIDC’s first set of proposed standards requires counsel to be present at first appearance, so the Commission expects that the data in this chart will shift dramatically in the coming years.

Figure 10. Events At Which Attorneys Are Required To Be Present (n=112 district courts)



In addition to requiring counsel to be present at first appearance, the first set of standards also creates new guidelines for the timing of the initial interview between an attorney and her client. A handful of courts report that they oversee this process. One respondent explained, “It is the practice of the court to have attorneys meet with their client as soon as they can arrange a meeting after they receive notification of the appointment. Notification of their appointment is faxed to their office as soon as the defendant receives the name of the attorney assigned.” However, most courts do not have a good sense of

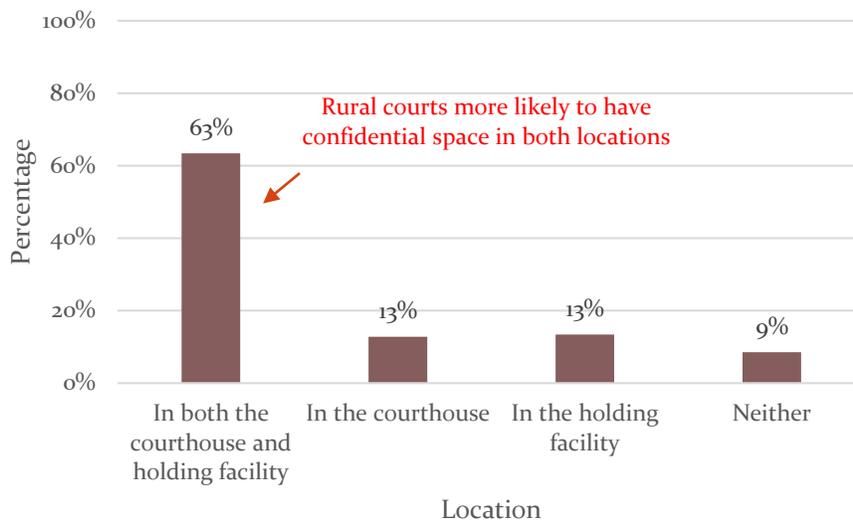
how quickly attorneys meet with their clients after appointment. Almost half of courts report uncertainty as to when this first meeting takes place, and fewer than 5% of courts estimate that it occurs prior to first appearance. Several express concern that attorneys are not meeting with their clients until the day of the next court event.

Once attorneys are appointed, indigent defense systems report relative success in ensuring continuous representation throughout the course of a defendant's proceedings. Almost 90% of indigent defense systems report that attorneys in their local courts provide continuous representation either "always" or "almost always."

CONFIDENTIAL MEETING SPACE

Another critical component of quality indigent defense is the ability of attorneys to meet with clients in confidential meeting spaces. Attorney-client meetings present an opportunity for attorneys to gather evidence, provide procedural information, discuss legal options, offer advice, assess clients' physical and mental well-being, and build relationships with clients. Exchanging this type of sensitive information is best accomplished in a private space that prevents the involvement of third parties and facilitates comfort and trust among clients. As such, both the United States Court of Appeals for the Sixth Circuit²¹ and the American Bar Association²² have recognized the importance of private meeting space in ensuring confidentiality and fostering the conditions for the best possible representation.

Figure 11. Existence Of Confidential Meeting Space (n=163 courts)

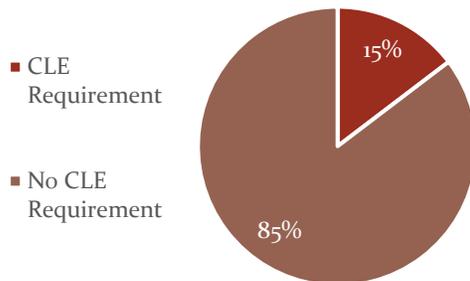


Despite the critical role of confidential meeting space in legal representation, Figure 11 suggests that 9% of indigent defense systems in Michigan report that neither their

courthouse(s) nor their holding facilities have private space for attorney-client meetings. Another 26% of systems report that they have confidential space in one but not both of these locations. It is likely that the percentage of courts that lack private meeting spaces may be even higher in reality, with attorneys explaining anecdotally that “private” meeting rooms are often filled to capacity, difficult to book, or composed of cubicle-type spaces that do not actually allow for confidential discussions.

EDUCATION AND TRAINING

**Figure 12. Annual CLE Requirements
(n=163 courts)**



Under the Sixth Amendment, defendants are guaranteed the right not only to counsel but to counsel that is effective. In response, the American Bar Association has identified continuing legal education as a central component of ensuring effective public defense representation, and the MIDC Act requires standards for Continuing Legal Education.²³ Some local court systems have

taken it upon themselves to mandate indigent defense attorneys to complete such credits, but there is no statewide requirement. At present, just 15% of indigent defense systems report the existence of local guidelines dictating participation in CLE courses. The MIDC's first set of proposed standards mandates appointed counsel to complete 12 annual continuing education requirements, which according to the American Bar Association, is consistent with the requirements set by other states.²⁴

Conclusions

Michigan's first comprehensive study of indigent defense representation across the state offers new insight into current practices and opportunities for the reform of local public defense systems. The results suggest that many jurisdictions are making considerable efforts to provide effective public representation but that resource shortages and a lack of clear direction have created obstacles to implementing the quality of representation intended by the Supreme Court in *Gideon v Wainwright*.²⁵

The findings also illuminate many of the issues addressed in the MIDC's first four proposed standards, which are described at length on the agency's website.

The first standard emphasizes the education and training of defenders including the addition of an annual CLE requirement for public defense counsel. With only 15% of

indigent defense systems currently mandating CLE credits, the first standard will create widespread change in the ongoing education of defense attorneys.

A second standard sets rigid guidelines for the timing of the first interview, mandating that appointed attorneys meet with clients in local custody within three business days of appointment. This interview must take place in a confidential setting that allows attorneys to build trust with and accurately assess the competence of clients. As indicated in the survey, courts are largely unaware of how much time typically passes between appointment and the first interview, and many courts do not presently provide confidential space for this meeting.

A third standard encourages the use of investigators and experts to facilitate the best possible representation of clients. Although this survey did not address these issues in depth, the lack of expenditures reported by local systems on trial related expenses suggest that few systems are set up to provide such resources to public defense counsel.

The fourth standard will obligate indigent defense systems to assign counsel as soon as the defendant's liberty is subject to restriction by a judge or magistrate. At present, only 6% of indigent defense systems currently require counsel to be present at both arraignment and bail hearings, but the proposed standard mandates counsel to be present at first appearance in every case where counsel has been requested.

Future data collection efforts will build on the information gathered by this first survey to obtain even more detailed information on the current landscape of practice related to the first set of proposed standards.

The survey also suggests a number of important lessons about moving ahead with both standards implementation and ongoing data collection. First, the findings highlight the importance of establishing consistency between how local courts define their indigent defense "systems" and the bounds of these systems as dictated by the Michigan Court Rules. The MIDC will work closely with local and state stakeholders on this issue to more closely align practice and policy. Second, the survey confirmed the extent to which courts are shaped – and strengthened – by local norms. Although the MIDC's standards will set statewide guidelines, they are intended to be implemented according to local needs and circumstances rather than a one-size-fits-all approach. The MIDC will learn from courts about the nuances of each system that simultaneously present unique opportunities and challenges for standards compliance. Finally, the process of collecting data underscored the current lack of local resources as a substantial obstacle to adequate data tracking. The MIDC will design data collection and analysis as tools that assist rather than burden overworked courts as they reform their indigent representation systems.

The first survey of indigent defense court systems is just one part of an extensive, multipronged data gathering strategy that the MIDC will use to initiate comprehensive system change. Using survey tools, focus groups, court observation, and other relevant methods, the MIDC will collect ongoing data from a wide range of system stakeholders including judges, administrators, attorneys, and indigent defendants. The perspectives of these stakeholders will allow the MIDC to generate future standards, assist court systems in the development and implementation of locally effective compliance plans, and monitor system adherence to adopted standards.

Appendix A: The Use of Delivery Models As Reported By Court Systems

Assigned Counsel System

C03, C06, C07, C08, C09, C10/D70, C11, C12, C16, C20, C21/D76, C22, C24/D73A, C25, C29, C30,, C31, C32-Gogebic, C32/D98-Ontonagon, C35, C36, C38, C40, C48, C49, C52, C55, C56/D56A, D01, D03A, D07, D10, D15, D16, D17, D20, D22, D24, D27, D28, D29, D32A, D33, D34, D36, D37, D38, D39, D40, D41A, D41B, D42-New Baltimore, D42-Romeo, D43, D44, D46, D47, D50, D52-1, D52-2, D52-3, D52-4, D53, D54B, D55, D58, D59, D61, D62B, D63, D64A, D64B, D65A, D65B, D66, D71A, D72, D73B, D74, D80-Clare, D80-Gladwin, D84, D85-Benzie, D85, Manistee, D86, D89-Cheboygan, D92, D93, D96

Contract Defender System

C01, C02/D05, C03²⁶, C04, C05/D56B, C12, C15, C17, C19, C22, C23/D81-Alcona, C23/D81-Arenac, C23/D81-Iosco, C23/D81-Oscoda, C26/D88, C27-Newaygo, C27-Oceana, C28, C32-Gogebic, C33, C34/D82-Ogemaw, C34/D82-Roscommon, C37, C39/D02A, C41-Dickinson and Menominee, C41/D95B-Iron, C42, C43, C44, C45, C46, C47, C51/D79-Lake, C51/D79-Mason, C53, C54/D71B, C57, D02B, D03A, D03B, D04, D08, D10, D12, D14B, D15, D18, D19, D23, D36, D52-1, D54A, D57, D63, D67, D75, D77-Mecosta, D77-Osceola, D78-Newaygo, D78-Oceana, D84, D87A, D87B, D87C, D89-Cheboygan, D89-Presque Isle, D90-Charlevoix, D90-Emmet, D92, D94, D95A-Menominee, D95B-Dickinson, D98-Gogebic

Public Defender Office

C11²⁷, C14, C18, C22, C50/D91, D14A, D15, D33, D60, D74

Other Systems

D21, D25, D27, D30, D31, D35, D40, D43, D45, D48, D51, D52-2, D60, D62A

Endnotes

¹ Michigan Advisory Commission on Indigent Defense (2012). "Report of the Michigan Advisory Commission on Indigent Defense;" *Gideon v Wainwright*, 372 US 335; 83 S Ct 792; 9 L Ed 2d 799 (1963).

² *A Race to the Bottom: Speed & Savings Over Due Process: A Constitutional Crisis*, National Legal Aid & Defender Association (2008).

³ See, e.g., the American Bar Association Standing Committee on Legal Aid and Indigent Defendants, *10 Principles of a Public Defense Delivery System*, (http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf).

⁴ Michigan Indigent Defense Commission Act, MCL 780.981 *et seq.*

⁵ MIDC did not receive a survey response from the 13th Circuit Court covering Grand Traverse County, Antrim County, and Leelanau County.

⁶ When multiple surveys were submitted for the same court system, the research team prioritized responses from judges over responses from other court employees (and responses from chief judges over other judges). In several instances, there were large discrepancies between submissions from within the same system, and in these cases, MIDC contacted respondents directly to clarify their answers.

⁷ National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976), Guideline 2.4.

⁸ MCR 6.005(B) provides guidance for the indigency determination.

⁹ National Legal Aid & Defender Association, *supra* n.2.

¹⁰ National Study Commission on Defense Services, *supra* n.7.

¹¹ The models were defined as follows. Assigned counsel services: refer 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 services: refer to one or more private attorneys who are not salaried by the court and are paid by a government entity a set, negotiated amount of money to handle all or a negotiated percentage of indigent criminal representation. Public defender office: A "public defender" is defined as a salaried/benefited government employee; a "public defender office" is defined as two or more attorneys. Attorneys may be (a) full-time (not allowed to handle private cases); or (b) part-time (may handle private cases).

¹² To calculate these figures, the MIDC replicated the strategy utilized by the National Legal Aid & Defender Association: using data provided by the Michigan State Court Administrative Office showing amounts paid to all attorneys by court (circuit, district, probate, and municipal), the NLADA included the total costs for all circuit and district courts and estimated 2/3 of probate costs to cover representation in juvenile delinquency proceedings. For the graphs in this report, the MIDC obtained data for all years between 2004-2014.

¹³ These calculations include estimations for juvenile delinquency proceedings, not otherwise covered by the survey data and MIDC Act.

¹⁴ American Bar Association Standing Committee on Legal Aid and Indigent Defendants, *supra* n.3.

¹⁵ MCL 780.991(1)(a).

¹⁶ *Indigent Criminal Defense*, Michigan Bar Journal, Vol. 71, No. 2 (February 1992); National Legal Aid & Defender Association, *supra* n.2.

¹⁷ Many Local Administrative Orders explicitly allow judges to utilize their discretion in appointing an attorney from the court's central list or maintain their own lists. Other orders extend this discretion more subtly by placing responsibility for appointments in the hands of administrators but including statements such as, "individual Circuit Judges may appoint counsel for indigent parties for cases and hearings as circumstances dictate" (31st Judicial Circuit Court, 2003, Administrative Order on Plan for Appointment of Counsel for Indigent Parties). The Orders include similar forms of discretion related to the appointment of attorneys to panels.

¹⁸ Missouri State Public Defender System, *Guidelines for Representation*, Missouri State Public Defender System, last visited Dec. 17, 2015

(<http://www.publicdefender.mo.gov/contracts/Guidelines%20for%20Representation.pdf>); Jill Paperno, *Practice Tips: The First Interview With a New Client*, New York Criminal Defense, last visited Dec. 17, 2015 (<http://newyorkcriminaldefense.blogspot.com/2011/05/practice-tips-first-interview-with-new.html>)

¹⁹ These results do not measure a practice reported by the National Legal Aid and Defender Association report whereby many district courts do not appoint counsel for misdemeanors. Future surveys and court watching efforts will examine this dynamic.

²⁰ *Hurrell-Harring v State*, 15 NY3d 8, 20; 930 NE2d 217 (2010).

²¹ *United States v Morris*, 470 F3d 596 (CA6, 2006).

²² American Bar Association Standing Committee on Legal Aid and Indigent Defendants, *supra* n.3.

²³ MCL 780.991(2)(e).

²⁴ *Id.*

²⁵ *Gideon v Wainwright*, *supra* n.1.

²⁶ The 3rd Circuit reported a contract system in combination with an assigned counsel system. This contract is with the Legal Aid and Defender Association, a non-profit public defender office.

²⁷ The 11th Circuit reported the use of a public defender office; because there is not an actual public defender office in this circuit, the MIDC suspects that they are referring to the use of public defenders more generically.