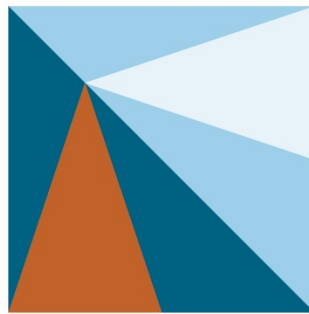


Planning for Change

2017 Annual Impact Report



MICHIGAN INDIGENT
DEFENSE COMMISSION

Letter from the Outgoing Chair

The Michigan Indigent Defense Commission (MIDC) continued to make dramatic and significant progress in our goal of reform and improvement of the criminal defense system during our third full year of work. It has been a year of change, transition and advancement.

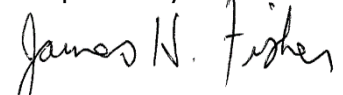
We moved from the judicial to the executive branch, and adapted to become part of the Department of Licensing and Regulatory Affairs. Our first four standards were formally adopted. We began to work directly with funding units to develop their plans to achieve compliance with those standards. Meanwhile, the next standards for reform have been proposed, and we look forward to the public hearing process that will assist in their adoption.

The MIDC's Staff is to be commended for their tremendous work in developing resources to be utilized in producing compliance plans. These include the application materials, webinars and planning information documents, a web portal for document submission, and personal assistance and support to all funding units during the planning process. The result was that virtually every funding unit in the state made a timely submission of its compliance plan, and many have already received our approval. Many of these are system-changing models that will establish a new culture of quality representation for indigent adults in Michigan.

The cooperation we have received from local funding units has been very gratifying, and we look forward to working with them to make implementation of reform a reality. We are grateful for the substantial increase in state resources proposed by Governor Snyder that will be necessary to fund these reforms and we plan to work with the legislature during the appropriations process to ensure that Michigan has a justice system that is the pride of all our citizens.

This Impact Report is presented pursuant to the requirements of MCL §780.989(h) and §780.999, and is available on our website at <http://michiganidc.gov/policies-and-reports/>.

Respectfully Submitted,



Hon. James H. Fisher (Retired)

Chair

Michigan Indigent Defense Commission

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Overview of the Commission

The Michigan Indigent Defense Commission (MIDC) develops and oversees 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 Act is found at MCL §780.981 et. seq. The Governor makes appointments to the 15-member Commission pursuant to MCL §780.987, and began doing so in 2014. The interests of stakeholders in the criminal justice system are represented by Commissioners appointed on behalf of defense attorneys, judges, prosecutors, lawmakers, the state bar, bar associations advocating for minorities, local units of government, and the general public.

Information about the Commissioners can be found **on the MIDC's website**.

Commissioners

**Hon. James Fisher (Retired),
Chair, Hastings**

*Represents the Michigan Judges
Association (Term Expires 4-1-18)*

Hon. Thomas Boyd, Okemos

*Represents the Michigan District Judges
Association (Term Expires 4-1-18)*

Nancy J. Diehl, Detroit

*Represents the State Bar of Michigan
(Term Expires 4-1-18)*

Gary Walker, Marquette

*Represents the Prosecuting Attorneys
Association of Michigan
(Term Expires 4-1-18)*

Derek King

*Represents local units of government
(Term Expires 4-1-19)*

H. David Schuringa, Grandville

*Represents the general public
(Term Expires 4-1-19)*

Frank Eaman, Pentwater

*Represents the Criminal Defense
Attorneys of Michigan
(Term Expires 4-1-20)*

Reappointments to the MIDC in 2017

Governor Rick Snyder reappointed two Commissioners during the reporting year.

Commissioners

Brandy Robinson, Detroit

Represents those whose primary mission or purpose is to advocate for minority interests (Term Expires 4-1-20)

William Swor, Grosse Pointe Woods

Represents the Criminal Defense Attorneys of Michigan (Term Expires 4-1-20)

John Shea, Ann Arbor

Represents the Criminal Defense Attorneys of Michigan (Term Expires 4-1-20)

Joseph Haveman, Holland

Represents the Speaker of the House of Representatives (Term Expires 4-1-21)

Tom McMillin, Rochester Hills

Represents the Speaker of the House of Representatives (Term Expires 4-1-21)

Jeffrey Collins, Detroit

Represents the Senate Majority Leader (Term Expires 4-1-21)

Michael Puerner, Ada

Represents the Senate Majority Leader (Term Expires 4-1-21)

Thomas P. Clement, East Lansing

Supreme Court Chief Justice Designee, ex officio member

Vacant at the end of 2017

Represents the Chief Justice of the Michigan Supreme Court

Tom McMillin has been with the Commission since 2016 and will continue to serve as a nominee of the Speaker of the House. Mr. McMillin is a certified public accountant and the owner of Michigan Community Auditors PLLC. He served in the Michigan House of Representatives from 2009 – 2014 and was recently elected to the State Board of Education. Mr. McMillin holds a bachelor's degree in accounting and economics from the University of Michigan.

Michael Puerner is an original member of the MIDC, appointed by the Governor in 2014 and reappointed in the summer of 2017. Mr. Puerner is the vice president, secretary, and general counsel of Hastings Mutual Insurance Company. He is secretary

of the Hastings Mutual Insurance Company Charitable Foundation and chair of the Insurance Alliance of Michigan. Mr. Puerner holds a bachelor's degree in American Studies from Northwestern University and a law degree from the University of Minnesota Law School. He will continue to serve as a nominee of the Senate Majority Leader. Mr. Puerner will serve as the Chairperson of the MIDC in 2018.

Introduction to New Commissioners



Joseph Haveman was appointed by the Governor to replace former Commissioner Richard Lindsey. Mr. Haveman is the director of government affairs for the Hope Network, a non-profit organization that empowers individuals with disabilities to live independently. He served in the Michigan House of Representatives from 2009 – 2014 and previously served as a Holland City Councilman and an Ottawa County Commissioner. Mr. Haveman holds a bachelor's degree in public administration from Ferris State University. He will serve as a nominee of the Speaker of the House.

Jeffrey Collins was appointed to replace former Commissioner Shela Motley. Judge Collins is a partner at Collins & Collins, PC, and previously served as the Deputy Wayne County Executive. Judge Collins presided over the criminal division of the Wayne County Circuit Court before

joining the Michigan Court of Appeals. In 2001, Judge Collins left the bench to serve as the United States Attorney for the Eastern District of Michigan. He has taught various law classes at Wayne County Community College, the University of Michigan, and Wayne State University School of Law. Collins holds a bachelor's degree in psychology from Northwestern University and a law degree from Howard University School of Law. He will serve as a nominee of the Senate Majority Leader.

"I thank Jeffrey for his commitment to ensuring all Michiganders have access to sufficient legal representation."

--Governor Rick Snyder
August 28, 2017

Commission Business

Meetings

The Commission met seven times during the reporting year. All meetings are conducted in the MIDC's Lansing office, located in the Capitol National Bank Building at the corner of Ottawa Street and North Washington Square. Minutes from the Commission meetings are available **on the MIDC's website**.

Standing committees meet informally on a regular basis to draft and develop materials referred to the whole Commission. The material refined through committee work forms the basis of the work authorized

by, approved of and produced by the Commission. The Commission as a whole sets the policy for indigent defense reform.

The Commission has several standing committees which are described in the Commission's bylaws. Ad Hoc Committees are occasionally established to perform specific tasks. During the reporting year, the Ad Hoc **Compliance Planning Committee** created an internal process for reviewing plans submitted by indigent defense delivery systems. The Ad Hoc **Legislative Committee** worked with the Governor's Office, the State Budget Office, the Department of Licensing and Regulatory Affairs, and the Michigan Association of Counties to address potential changes to the MIDC Act.

Policies and Procedures

During regularly scheduled open meetings, the Commission adopts policies and procedures consistent with its mission of indigent defense reform. In 2017, the Commission largely focused on preparing for the

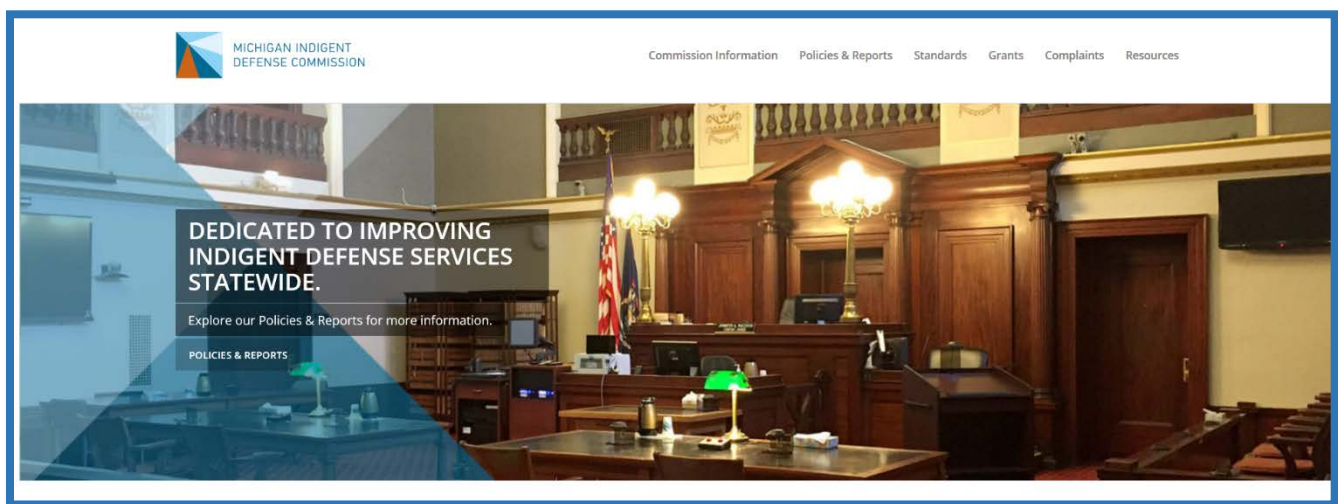


receipt and review of compliance plans from all indigent defense delivery systems statewide. The materials are detailed in the section "Planning for Change", below. All policies and procedures published by

the Commission are located **on the MIDC's website** pursuant to the requirements of MCL §780.989(6).

Website

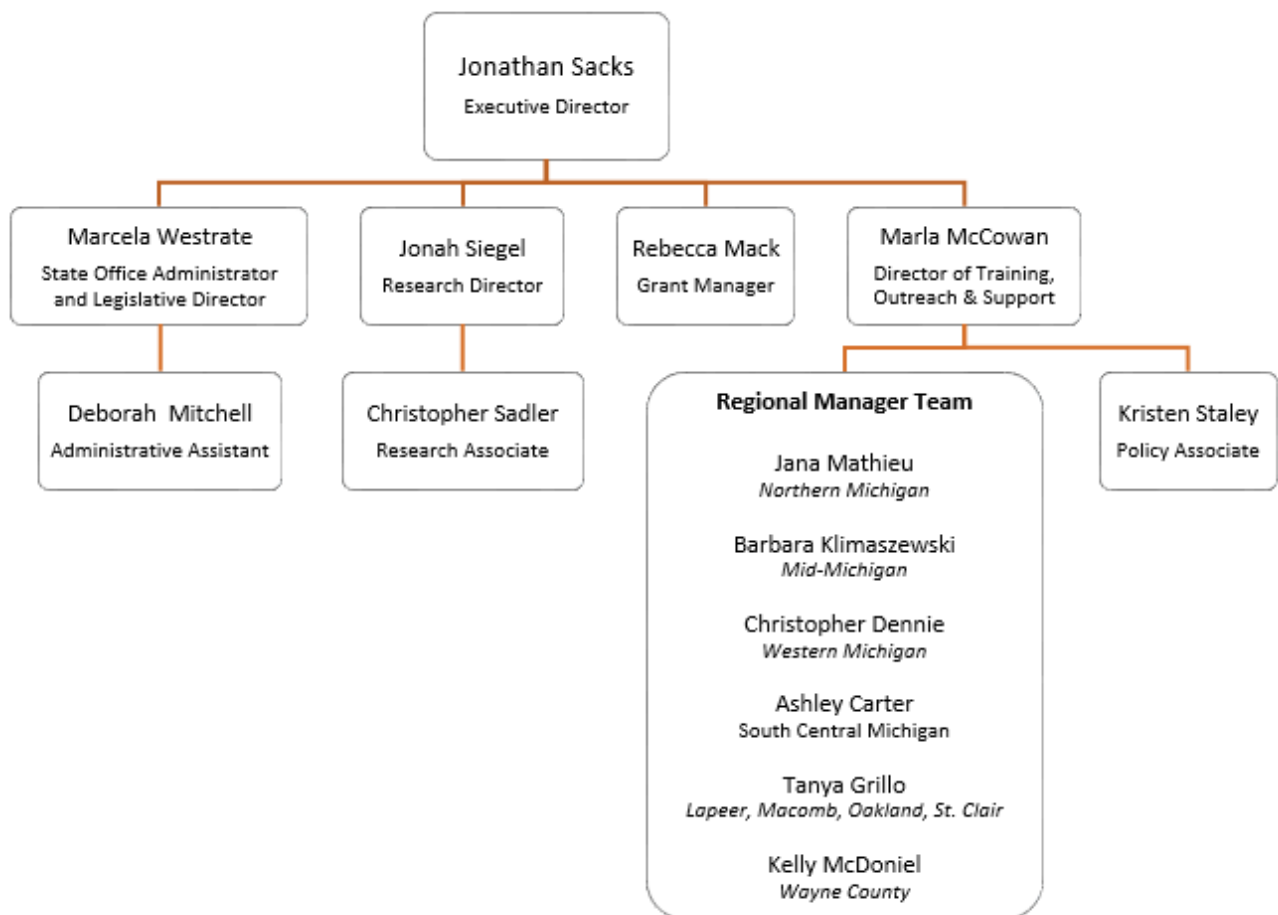
The MIDC maintains a website pursuant to MCL §780.989(6) and §780.999, which serves as the main resource to learn about our policies, standards, and resources as we carry out the mission of improving indigent defense delivery systems statewide. The website is found at **www.michiganidc.gov**. The MIDC posts news and noteworthy issues, information about meetings and upcoming events, and the publications and resources described below. The website had **18,384 visits in 2017** (an increase from 13,241 visits in 2016). The most popular pages cover the MIDC's standards, grants, policies, and reports.



Staff Organization and Operations

Organizational Chart

The organizational staff structure was prepared by the Executive Director pursuant to MCL §780.989(1)(d)(i) as follows:



Welcoming New Staff

Throughout the calendar year, the MIDC's staff grew significantly. Our team of Regional Managers transitioned from independent contractors to full time employees. The team was joined by new members: **Jana Mathieu** and **Tanya Grillo**, both experienced criminal defense attorneys

based in their respective regions. **Rebecca Mack** was hired as the MIDC's first Grant Manager, bringing extensive knowledge in the field after 23 years with the Michigan Supreme Court in various capacities involving trial court funding and fiscal legislative analysis. **Kristen Staley** will serve as the MIDC's Policy Associate and build on her background as the former Deputy Director of the Michigan Council on Crime and Delinquency and other experiences in criminal justice system reform. **Deborah Mitchell** is the new Administrative Assistant, facilitating a critical role of communication and support at the central office in Lansing.

At the end of 2017, the Commission announced that **Jonathan Sacks will be leaving** his work at the MIDC to become the Director of Michigan's State Appellate Defender Office. Mr. Sacks was hired as the first Executive Director by the MIDC in 2015. He organized and oversaw all aspects of the earliest work of the Commission and staff – including the development and approval of the first standards and best practices for indigent defense delivery – as detailed below and in prior impact reports published by the MIDC. The Commission thanks Mr. Sacks for his three years of service and efforts to improve trial level indigent defense in Michigan.

Mr. Sacks will be replaced by incoming Executive Director **Loren Khogali** in early 2018.

Agency Budget

In 2017, the Executive Director and State Office Administrator met with the Director of LARA and LARA staff to discuss all aspects associated with the MIDC's move to the executive branch of government. This transition took place in the fall of 2017, corresponding with the 2018 fiscal year. The MIDC remained in the judicial branch of government for the 2017 fiscal year.

The MIDC is required by statute to publish its budget and a listing of all expenditures. Expenses are listed quarterly **on the MIDC website**. Annual budget, salary and related information is detailed here for the fiscal year pursuant to MCL §780.999.

Expenditures 10/1/2017 – 09/30/2017	
Salaries and Wages	\$974,792.28
Longevity	780.00
Insurances	138,081.32
Retirement and FICA	571,110.57
Contracted Services, Supplies & Materials	107,470.10
Travel	38,395.44
Equipment	2,977.68
Rent	78,724.01
Discretionary Grants	211,248
Caseload Study	199,746
Total	2,323,235.40

A statutory provision allows the MIDC to carry forward any unspent appropriations for a maximum of four fiscal years. Each balance is placed within a specifically defined work project and can only be used to fund activities that fall within that project's definition. The expenditures

in FY 2017 represent a combination of our annual appropriations and work project funds. The MIDC must submit an annual request to retain its work project funding and this request is subject to legislative approval.

The MIDC received \$2.4 million in appropriations for fiscal year 2017, which began on October 1, 2016, and ended on September 30, 2017. For FY 2018, the MIDC received approximately the same funding to maintain agency operations.

The MIDC also received a five million dollar supplemental appropriation from the legislature for fiscal year 2017. Those funds were designated to pay costs incurred by local systems in developing the plan and cost analysis for compliance with the standards. The MIDC Act authorizes the Commission to award a grant to reimburse local systems for these costs. In 2018, the Commission will begin the process of issuing grants to local indigent defense systems under this statutory provision.

Planning for Change

Transition to Executive Branch

At the beginning of 2017, Governor Snyder signed into law a series of changes to the Michigan Indigent Defense Commission Act. The primary legislative amendments: (1) moved the MIDC from the Judicial

Branch to the Department of Licensing and Regulatory Affairs (LARA); (2) clarified the definition of local systems as trial court funding units; and (3) required LARA to approve proposed minimum standards for indigent defense and specifies that these minimum standards should not infringe on Supreme Court authority. These changes were necessitated after the Michigan Supreme Court issued an Order conditionally approving the first standards for indigent defense delivery systems pending resolution of constitutional concerns arising from the original MIDC Act.

Some operations of the MIDC staff continued under the judicial branch in the transition until the fiscal year concluded. Commission business proceeded according to the revised MIDC Act requirements.

First Standards Approved

The Michigan Indigent Defense Commission submitted the first set of standards for indigent defense delivery systems to the Michigan Department of Licensing and Regulatory Affairs (LARA) on February 6, 2017. The standards involve education and training, the initial client interview, experts and investigators, and counsel at first appearance and other critical stages in front of a judge.

The MIDC received comments when the standards were originally published in 2015, and comments were also submitted to the Michigan

Supreme Court prior to the Court conditionally approving the standards on June 1, 2016. LARA Director Shelly Edgerton approved these standards in an order dated May 22, 2017, following a thorough review and a public comment period.

Based on the timetable described in the MIDC Act, every court funding unit in Michigan was required to submit a plan for compliance with the first four standards for indigent defense, along with a cost analysis, to

Systems have 180 days after a standard is approved to submit a plan for compliance and cost analysis to the MIDC.

the MIDC no later than November 20, 2017. Under the Act, each system was given the opportunity to select its desired indigent defense delivery method to comply with the MIDC

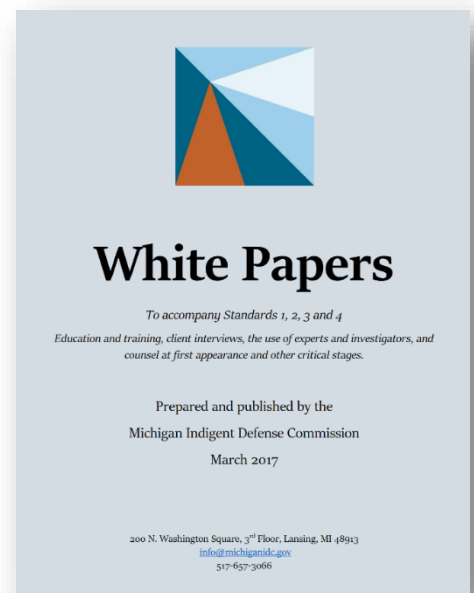
standards, and multiple models ranging from a defender office, an assigned counsel list, contract attorneys, or a mix of systems would be considered compliant.

Resources for Compliance

The MIDC's responsibility and authority is to work with the counties and courts to ensure compliance with minimum standards within the indigent defense delivery system selected by the local funding unit. The MIDC published and promoted a number of resources during the 180-day timeframe to support the local systems in preparing and

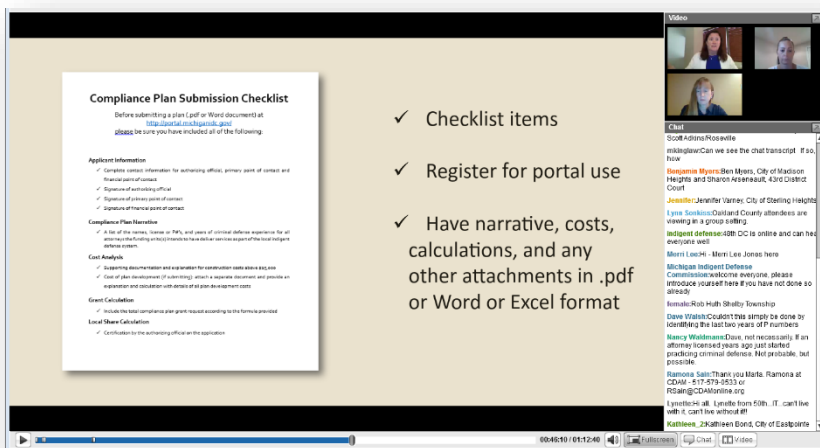
submitting compliance plans and cost analyses. These resources included:

- ✓ A **Guide for Submission of Compliance Plans, Cost Analyses, and Local Share Calculations**, designed to answer questions from funding units to prepare documents to submit to the MIDC.
- ✓ Answers to the most frequently asked questions from funding units, in a shorter handout form, available on the MIDC's "helpful information" tab on the **website's "standards" page**.
- ✓ **White papers** prepared for each of the first four standards describing background information as well as details for implementing each standard.
- ✓ A **report detailing the progress in Huron County** piloting a counsel at first appearance project, useful for many systems to understand the implementation of MIDC Standard 4.
- ✓ **Model Plans** to illustrate sample language and potential costs for a variety of systems including new



public defender offices, contract systems, and other methods for assigning counsel.

- ✓ A simplified **application form**, designed to capture both the narrative plan and cost analysis to be completed by each authorizing official for every trial court funding unit. The application was intended to be prepared and submitted through the MIDC's web portal in order to capture critical data about the funding unit by the research team. A short video tutorial was published to assist with registration and submission of the plan.
- ✓ **Regional Managers** on staff to provide direction and guidance to indigent defense delivery systems around the state on compliance with MIDC-enacted standards.
- ✓ A **series of interactive webinars** co-hosted by each Regional



Manager along with the Grant Manager to provide answers to frequently asked questions about the application process at the convenience of the

viewer. The sessions were recorded and posted on the MIDC's website for review by applicants unable to attend the live session.

Discretionary Grants

The Commission offered a competitive grant opportunity to fund programs dedicated to improving indigent defense locally and statewide. As part of the MIDC's mandate to establish best practices for delivering the effective assistance of counsel to indigent defendants charged with crimes, the Commission created this mechanism. It is separate from permanent compliance planning, and is intended to encourage local systems to pursue innovative projects to immediately improve indigent defense. Sixteen applications were received and at the August 15th meeting, the Commission voted to fund the following projects:

- ***Allegan/Van Buren Regional Indigent Defense Program (RIDP):*** To explore an innovative regional model regarding the implementation of a joined/hybrid Public Defender Office to provide Indigent Defense Services;
- ***Calhoun County Indigent Defense Intake Study:*** To identify and develop best practices for the indigent defense intake and reimbursement process to identify the truly indigent, assure integrity of the system and increase compliance with reimbursement orders;

- ***Feasibility Study of Multi-County Administration of a Managed Appointment Model for Indigent Defense Services:*** To study the feasibility of joining Mecosta County with 5 other counties to provide a single administrator to manage each county's indigent service plan;
- ***Feasibility Study for the creation of a Managed Assigned Counsel Model for the 3rd Class District Courts of Macomb County:*** To study the feasibility of joining with the other 3rd Class District Courts in Macomb County to provide a single administrator to manage each of the district court's indigent service plan;
- ***Assessment of Metropolitan Justice Center State Defender Office (Wayne County) Felony Practice:*** To obtain the consulting services of The Defender Initiative at Seattle University and its partner The Sixth Amendment Center with the assistance of the National Legal Aid & Defender Association to study SDO's felony representation.

The grants were awarded on a one-time basis of up to \$80,000 for projects that will conclude no later than September 2018. Systems will be required to report on progress regularly.

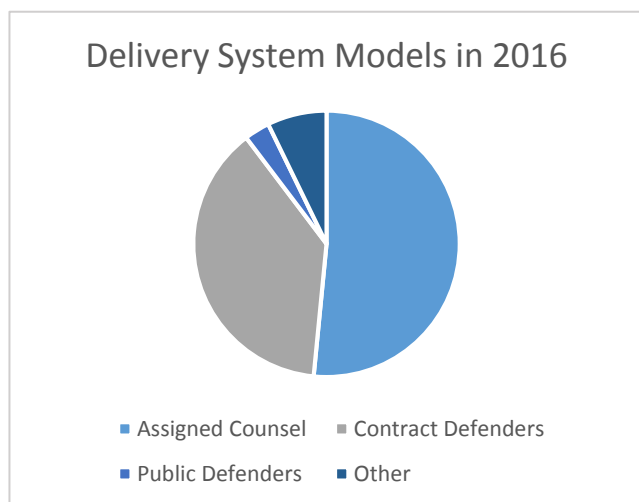
Compliance Plans Submitted by Systems

Last year, the Commission released a report of its first survey to measure the delivery of criminal justice for indigent defense reform in Michigan entitled ***Snapshot of Indigent Defense Representation in Michigan's Adult Criminal Courts: The MIDC'S First Survey of Local Court Systems*** (Dr. Jonah Siegel, February 2016). With no current statewide standards in place, the survey revealed wide variation in how Michigan trial courts deliver services to indigent defendants.

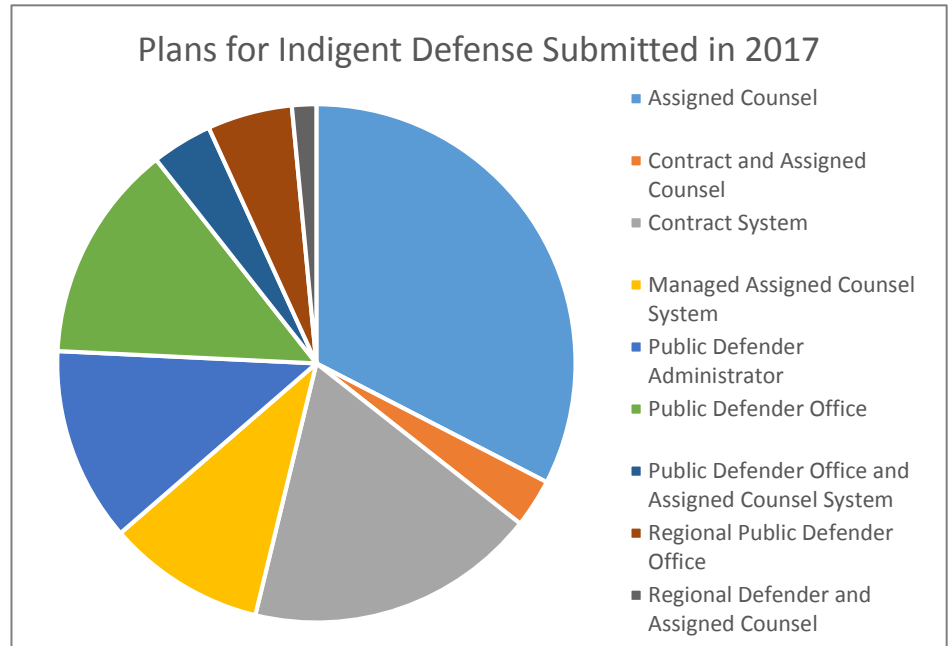
As described in the *Snapshot*, there were essentially **three categories** of systems used in Michigan in 2016: more than half used an **assigned counsel system** in which private attorneys are paid either per hour, per case, or per case event; **contract defenders**, where private attorneys are paid a set amount of money to represent a certain number or percentage of cases; a small percentage of **public defender offices**; or a

variation of either the assigned counsel or contract defender models used in some district courts.

The discretionary grants awarded in the summer of 2017 provided a preview to the interest in system reform. The compliance plans submitted by trial



court funding units statewide fortified the conclusion that **systems were eager for change**. By the November 20, 2017 deadline, 132 of Michigan's 134 trial court funding units submitted plans for compliance with the MIDC's first four standards for indigent defense. These court systems seized on the



opportunity for system reform and submitted plans that **use a range of models** including traditional assigned counsel systems, managed assigned counsel systems, contract defenders, public defender administrators, public defender offices, regional defender models, or a blend of delivery methods to deliver services.

A **managed assigned counsel system** 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 an attorney employed or contracted by the local funding unit. A **public defender administrator** or indigent defense administrator is typically a court or county employee

overseeing assignments to a roster of private attorneys. A **regional defender** operates a public defender office over multiple counties to deliver services to the communities. All systems will have the opportunity to resubmit plans on an annual basis.

Approval Process Underway

The MIDC Act allows the Commission 60 days to review the plans and cost analyses submitted by the trial court funding units. This process involves multiple layers of review, beginning with the Regional Manager team, the Grant Manager, Senior Staff, and Committees composed of groups of Commissioners. The plans and staff recommendations are then reviewed by the Commission as a whole for a decision to approve or disapprove the plan, the cost analysis, or both. There is statutory authority describing the process for resubmission of any disapproved plan or cost analysis.

The Commission began the work of making decisions on these first

“[T]he entire criminal justice system is better served when quality and resources are increased.”

--Stuart Fenton
Chief Assistant Prosecutor, Emmet County
"Prosecutors See Value in New Indigent Defense Standards",
Petoskey News, October 17, 2017

submissions in December of 2017 and will continue to review the plans in 2018. Simultaneously, the appropriations process has begun to ensure implementation of the plans approved by the Commission as described in the MIDC Act.

Data Collection and Reporting

As local systems prepare for the implementation of their compliance plans, the MIDC will develop a variety of data collection systems to put into place. Through data collection, the MIDC will evaluate critical performance metrics to monitor progress and ensure compliance with minimum standards. The MIDC will work closely with local stakeholders to ensure that data collection is as efficient and accurate as possible.

Next Standards Developed

As compliance planning for the first standards continues, the MIDC has proposed four additional standards for indigent criminal defense services addressing the need for independence from the judiciary, defender workload limitations, qualification and review of attorneys accepting assignments in adult criminal cases, and economic disincentives and incentives. The **full text of all of standards can be found on the MIDC's website**. The Commission extended a comment period on the proposed standards through 2018, and will hold a public hearing prior to submitting any standard to the Department of Licensing and Regulatory Affairs. These standards were developed by the Commission and staff and informed in part through studies conducted by the MIDC's research team.

In 2016, the Michigan Indigent Defense Commission gathered basic information from attorneys on their experiences in indigent defense. The responses that we received documented the prevalence of inadequate compensation in indigent defense systems across the state. That report is entitled: ***Attorney Perspectives on Michigan's Criminal Indigent Defense System: A Report of the Michigan Indigent Defense Commission*** (June 2017), available **on the MIDC's website**. Over 340 attorneys practicing indigent defense in Michigan completed the survey. Some highlights from the survey reveal that:

- attorneys value training and education even though it is not a current requirement to accept assigned cases;
- jails and courthouses lack confidential meeting spaces to visit clients;
- attorneys struggle to obtain funding from courts for experts and investigators;
- some attorneys adjust their practice because of low rates of compensation for assignments.

“Attorneys are [mostly] paid a set rate per case, plus a low hourly rate for conducting trials. There’s no motivation to go to trial, no motivation to thoroughly prepare for trial, and every motivation to get the client to plead right away at the first meeting with the prosecutor.”

--Defense attorney
MIDC Survey 2017

As a follow up, the MIDC sought in-depth information about attorney compensation and costs. These experiences will directly inform the development of the MIDC's proposed Standard 8, Economic Disincentives or Incentives.

The 2016 survey of defense attorneys also revealed concerns over the case assignment process and a lack of independence from the judiciary. The concerns led the MIDC's Research Unit to investigate the distribution of case assignments across circuit courts in Michigan to assess the prevalence of imbalance in the assignment process. Eight circuits were selected for the study, which revealed that the majority of courts examined do not consistently appoint attorneys on a balanced rotational basis even when their assignment processes appear, on paper, to be independent and fair. That research brief is available on the MIDC's website at <http://bit.ly/MIDcasedistrib>.

"In some instances, there are extreme differences between the top and bottom portion of attorneys accepting cases."

The efforts of our research staff have contributed to the growing acknowledgement of the leadership Michigan is providing in the system reform process.

Conclusion

This has been a tremendous year of progress toward implementing indigent defense reform through collaboration between the MIDC and local indigent defense delivery systems. As the process of compliance planning concludes, the MIDC Act provides that the State of Michigan will fund implementation of the local systems' compliance plans, as approved by the Commission. The Commission looks forward to watching this process succeed so that we can meaningfully improve indigent defense representation for people who are poor and charged with crimes in the State of Michigan.

The Commission will continue to work with all stakeholders to identify and address any revisions to the MIDC Act that may be needed as standards are implemented.
