



MICHIGAN INDIGENT
DEFENSE COMMISSION

2018 Impact Report

Correcting the Crisis

Ten Years after the NLADA's evaluation
of Michigan's Trial-Level
Indigent Defense System

Letter from the Chair.

Ten years ago, the National Legal Aid & Defender Association issued its report finding that Michigan was failing to meet its constitutional mandate to provide effective counsel to indigent defendants. The State of Michigan has taken seriously its charge to improve indigent defense services in Michigan, forming the Michigan Indigent Defense Commission (MIDC) to identify the path forward. In its fourth full year of work, the MIDC continues to make tremendous progress in its goal to reform and improve the indigent criminal defense system in Michigan.

This has been a year of evolution and advancement in indigent defense. After promulgating the first four minimum standards for indigent defense in Michigan, the Commission received, reviewed and approved 134 plans for compliance with the first four standards for indigent defense in Michigan. Many of the plans for compliance bring to fruition system-changing models that will establish a new expectation of quality representation for indigent adults in Michigan.

We successfully secured funding for implementation of the first set of standards statewide. We held a public hearing to receive feedback on the next set of minimum standards, revised and submitted those standards for final approval to the Director of Licensing and Regulatory Affairs.

In this next year, the Commission looks forward to supporting local systems as they begin to implement the first four standards, assessing compliance and beginning to measure the impact on indigent defense services. As we move forward, we are committed to ensuring the integrity of the state's indigent defense expenditures and looking for opportunities to build continuity and efficiency of local delivery of services by identifying and encouraging best practices in indigent defense.

With the growing progress toward ensuring the right to counsel for indigent defendants, Michigan is becoming a national leader in indigent defense reform. There continues to be much work to do and the Commission stands ready.

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/>.

Sincerely,

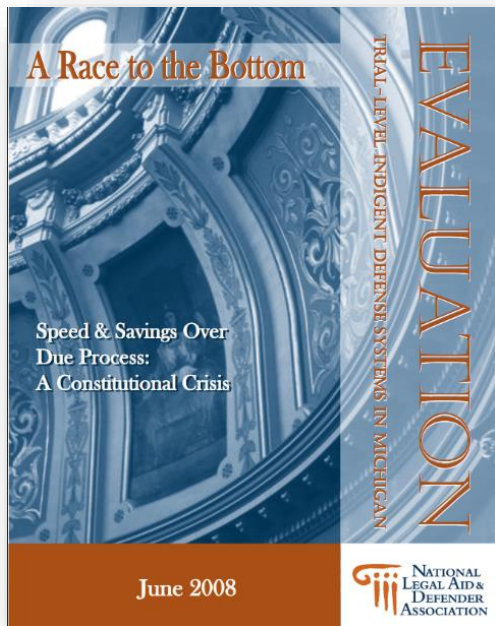
Michael Puerner, Chair
Michigan Indigent Defense Commission

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Introduction

Ten years ago, the National Legal Aid and Defender Association published a blistering evaluation of Michigan’s trial-level indigent defense system entitled “*A Race to the Bottom, Speed and Savings Over Due Process: A Constitutional Crisis*” (June 2008). The report



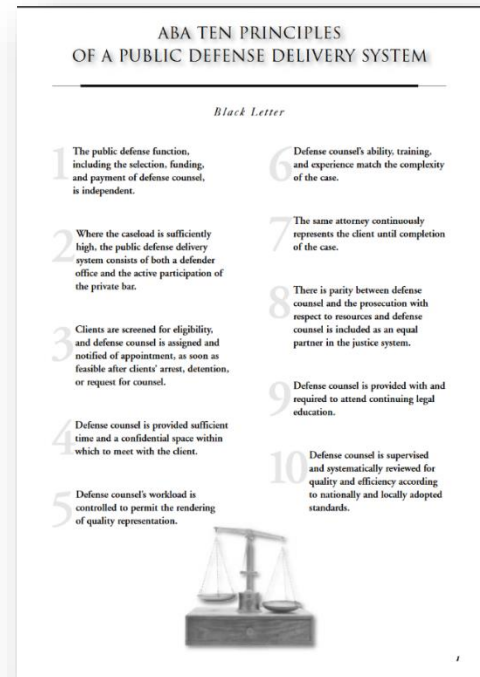
detailed a year-long evaluation of ten counties providing various models of services statewide: public defender offices, assigned counsel systems, contract systems, and a mixed system employing a combination of delivery methods. The study was done in partnership with the State Bar of Michigan and on behalf of the Michigan Legislature.

The NLADA assessed the individual systems through the lens of the **American Bar Association’s Ten Principles of a Public Defense Delivery System**, which “constitute the fundamental standards that a public defense delivery system should meet if it is to deliver...`effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney.” *Race to the Bottom*, at p. iii. In its sobering conclusion, the NLADA report found that none of the systems studied in Michigan were providing constitutionally adequate public defense

services. Further, at the time of that study ten years ago, Michigan ranked 44th of the 50 states in *per capita* spending on indigent defense. The inescapable conclusion of the report was that increased funding *and* oversight was needed to ensure the right to counsel was being met in Michigan.

In response to the study, Governor Rick Snyder created an advisory commission to recommend improvements to the state’s indigent defense system. In 2013, the advisory commission **made a number of recommendations**, including the creation of a permanent commission to promulgate and enforce standards consistent with the **ABA’s Ten Principles**. The advisory commission’s full report can be found **on the MIDC’s website**.

The Michigan Indigent Defense Commission (MIDC) was created by legislation in 2013. The MIDC Act is found at MCL §780.981 *et. seq.* This annual report details the **fourth full year of work** completed by the Commission through the support of staff and state appropriations for operational needs. The Commission, staff, and core organizational components are described in overview form. The statewide impact of the Commission’s work is set forth in the section titled “Correcting the Crisis”, below.



The Commission

The 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,

Commissioners

Michael Puerner, Chair, Ada

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

Derek King, Ceresco

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

Kristina Robinson, Detroit

Represents the Chief Justice of the Michigan Supreme Court (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)

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)

the Michigan constitution of 1963, and with the MIDC Act.

The Governor makes appointments to the 15-member Commission pursuant to MCL §780.987, and began doing so in 2014. The interests of a diverse group 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.

Commissioners

During the reporting year, Governor Rick Snyder reappointed Judge Thomas

Boyd of Mason, Nancy J. Diehl of Detroit, Judge James Fisher of Grand Rapids (retired), and Gary Walker of Marquette to the Michigan Indigent Defense Commission. They will serve four-year terms expiring April 1, 2022.

The Governor appointed **Ms. Kristina Robinson** of Detroit to fill a vacancy on the Commission. Ms. Robinson will serve as the nominee of the Chief Justice of the Supreme



Court for the balance of a term expiring April 1, 2019.

At the end of 2018, the MIDC Act was amended to add

members to the Commission. These members will represent the Michigan Association of Counties, the Michigan Municipal League, the Michigan Township Association and the State Budget Office. It is anticipated that appointments will be made by the Governor in 2019.

Information about the Commissioners can be found [on the MIDC's website](#).

Commissioners

Joseph Haveman, Holland

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

Tom McMillin, Oakland Township

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)

Hon. James Fisher (Retired), Hastings

Represents the Michigan Judges Association (Term Expires 4-1-22)

Hon. Thomas Boyd, Okemos

Represents the Michigan District Judges Association (Term Expires 4-1-22)

Nancy J. Diehl, Detroit

Represents the State Bar of Michigan (Term Expires 4-1-22)

Gary Walker, Marquette

Represents the Prosecuting Attorneys Association of Michigan (Term Expires 4-1-22)

Thomas P. Clement, East Lansing

Supreme Court Chief Justice Designee, ex officio member

Commission Meetings

The Commission met nine 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. The meetings are open to the public, unless otherwise noted. The Commission held additional meetings during the reporting year to facilitate approval of compliance plans submitted by systems statewide, to conduct interviews for the Executive Director position, and to hold a public hearing on the next proposed standards for indigent defense system reform. Minutes from the Commission meetings are available on the [MIDC's website](#).

Executive Director



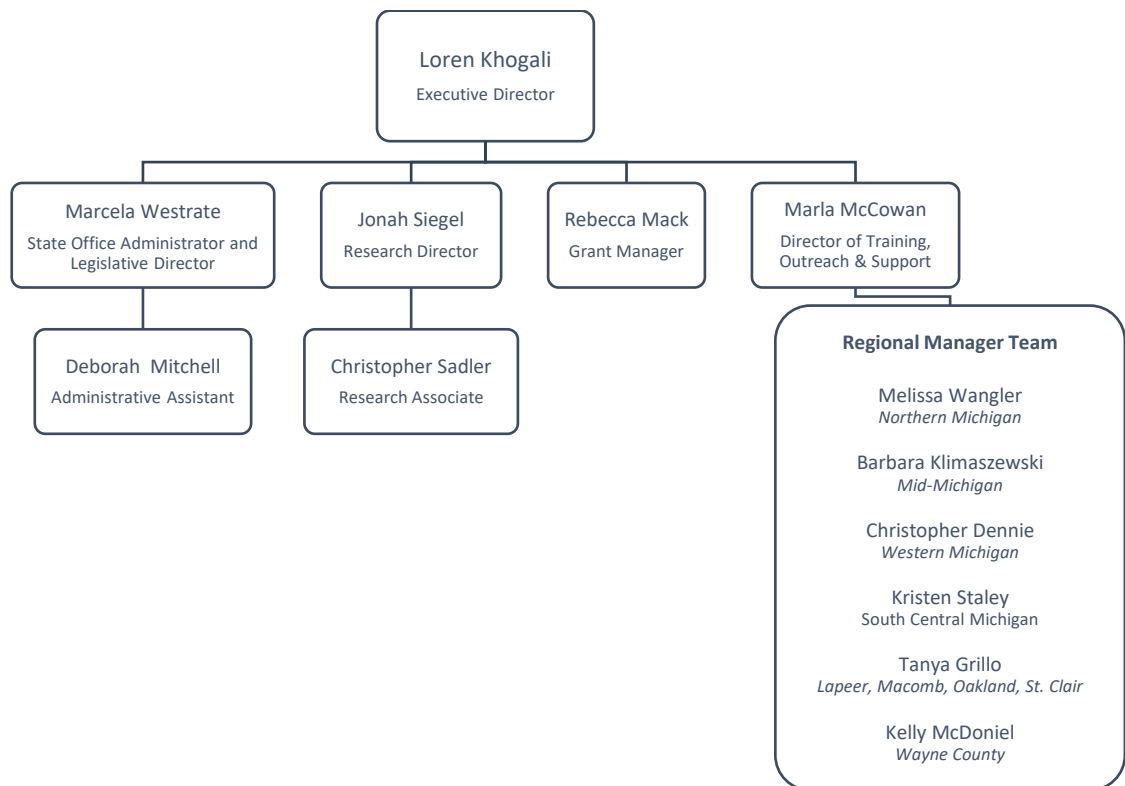
Loren Khogali
MIDC Executive Director

In February 2018, Loren Khogali began her tenure as the new Executive Director of the MIDC. Most recently Ms. Khogali was an attorney for 13 years with the Federal Public Defender Office in Detroit where she advocated on behalf of indigent persons charged with federal crimes at the trial, appellate and post-conviction stages. During her time at the Federal Defender Office, she participated in

the development and leadership teams for the Court’s reentry and alternative to prison programs. Since 2005, Ms. Khogali has also served in a variety of leadership roles for the board of directors of the ACLU of Michigan, including a five-year term as board chair. She serves on the Criminal Jurisprudence and Practice Committee of the State Bar of Michigan.

Staff Organization

The organizational staff structure was prepared by the Executive Director pursuant to MCL §780.989(1)(d)(i) and at the conclusion of 2018 appeared as follows:



In 2018, there were new additions and reorganization of staff. Policy Associate **Kristen Staley** became the Regional Manager for South

Central Michigan, and **Melissa Wangler** joined the staff as the Regional Manager for Northern Michigan. Prior to working for the Commission, Ms. Wangler was an attorney in private practice in West Branch, Michigan, accepting assigned cases in Ogemaw and neighboring counties.



Melissa Wangler

Agency Operational Budget

At the beginning of fiscal year 2018, the MIDC moved from the Judicial Branch to the Executive Branch of the State of Michigan under the Department of Licensing and Regulatory Affairs (LARA).

The MIDC is required by statute to publish its budget and a listing of all expenditures. Annual budget, salary, and related information is listed for the fiscal year pursuant to MCL §780.999.

The MIDC's total appropriation to maintain agency operations for the 2018 fiscal year was \$2,386,800. As a result of the State of Michigan switching to a new financial management system, LARA was unable to provide budget information until late the fiscal year.

For the 2018 fiscal year, the MIDC had 14 full-time employees whose salaries, insurance and retirement benefits are included in the first three categories. The total spending for these three lines was lower than anticipated because of staff transitions during the fiscal year. The travel line includes both employee and Commissioner travel. Contractual Services includes the MIDC's office rent. Supplies and materials

includes the MIDC’s contract with an information technology vendor. Cost allocations includes the amount that the Department of Licensing and Regulatory Affairs charges the MIDC to manage the agency’s payroll, human resources, budgetary and other functions. In addition to its general operational costs, in fiscal year 2018, the Commission made final payments on innovation grants to two local systems, made a partial payment on a contract for caseload study and paid its portion of mediation with Oakland County.

Total Appropriation:	\$2,386,800
Categories	Expenditures
Salaries & Wages	\$1,094,049
Longevity & Insurance	\$151,414
Retirement & FICA	\$605,569
Terminal Leave	\$4,263
Travel (In & Out of State)	\$29,011
Communications	\$19,403
Contractual Services	\$109,644
Supplies, Materials & Equipment	\$58,429
Cost Allocations	\$51,535
Mediation	\$1,257
Innovation Grants	\$40,755
Rand Corporation	\$50,000

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 MIDC must submit an annual request to

retain its work project funding and this request is subject to legislative approval.

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 resources for compliance planning and implementation described below. The website had 19,362 visits in 2018 (an increase from 18,384 visits in 2017). The most popular pages cover the MIDC's standards, grants, policies, and reports.

Correcting the Crisis

It has been ten years since the NLADA published its scathing review of Michigan's fundamentally broken trial-level indigent defense system. Since that time, the Commission – through the support of the Governor, the Legislature, and all stakeholders in the criminal justice community – has been working tirelessly to improve the method for delivering public defense statewide.

As detailed in **prior annual reports**, the Commission almost immediately proposed standards for system reform during the initial year of work. The first standards were conditionally approved by the Michigan Supreme Court in 2016 and amendments to the enabling legislation were made at the end of that year. In 2017, the Commission submitted those same first standards for indigent defense delivery systems to the Michigan Department of Licensing and Regulatory Affairs (LARA). The standards were based on the ABA's Ten Principles and 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 standards were approved in the spring of 2017. 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 standards, along with a cost analysis, to 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.

The MIDC Act allowed the Commission 60 days to review the plans and cost analyses submitted by the trial court funding units. The process involved 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 were 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 submissions in December of 2017 and continued to review the plans through June 2018. Simultaneously, the appropriations process began to ensure implementation of the plans approved by the Commission as described in the MIDC Act.

Approving Plans for Indigent Defense Reform

From December 2017 through June 2018, the MIDC approved the plans and cost analyses submitted by nearly every funding unit statewide. By October 2018, plans from every system were approved through the statutory framework. Pursuant to the MIDC Act, indigent defense systems are required to comply with their plan within 180 days after receiving funding.

December 19, 2017	11
January 5, 2018	5
February 20, 2018	5
March 26, 2018	50
April 17, 2018	35
June 12, 2018	23
August 21, 2018	2
October 16, 2018	3
Total	134

Securing Appropriations to Fund Plans

In February 2018, Governor Snyder announced his Executive Budget Recommendation, which included an unprecedented \$61.3 million in funding for indigent defense across the State of Michigan. The plans for compliance submitted by the local systems indicated a need for additional resources to address both the longevity and magnitude of the indigent defense crisis in Michigan.

Because a local system's compliance with the standards is mandated only with adequate funding, it was critical to secure funding for the totality of the cost of implementing the compliance plans.

The State of Michigan’s commitment to addressing the statewide constitutional crisis by reforming its indigent defense system was

The \$84 million set-aside in the 2019 state government budget is the first state investment in publicly funded attorneys for those who can't afford their own lawyer.

Michigan lawmakers approve \$84M to give the poor a fair fight in court
Lansing State Journal, June 19, 2018

reflected in a final budget bill appropriating \$84 million to fund all the MIDC-approved compliance plans.

Governor Snyder signed the budget on June 21, 2018.

Through the supplemental appropriations process, the

MIDC received a total of \$86.8 million to distribute to local systems for compliance with the minimum standards.

Developing Guidelines to Report Compliance by Systems

The MIDC staff conducted implementation meetings in all systems during the summer of 2018. The purpose of the meetings was to assess adjustments necessitated through transition, regardless of the method of delivering services set forth in the various plans. By the end of the summer, the MIDC published a **Guide for Reporting Compliance with Standards and Distribution of Grant Funds**, and the staff conducted a series of webinars to assist with implementation. The **MIDC’s website** was regularly updated with information about funding distribution and expectations for reporting compliance. Grant contracts were executed beginning in October of 2018, and funding was distributed pursuant to Commission policy as set forth in the contracts.

Distributing Funding to Implement Approved Plans

Pursuant to the MIDC Act, a local system is required to comply with their plan within 180 days after receiving funding through the grant process. The MIDC allowed fifty percent of the award to be disbursed up front so the local systems could make progress towards compliance immediately. The remainder of the grant dollars will be distributed on a quarterly basis through a reporting and disbursement process during the 2019 fiscal year.

By the end of December 2018, almost half of the systems had received their initial grant dollars totaling \$17,833,035.90, with a significant infusion of funding distributed in every region in Michigan.

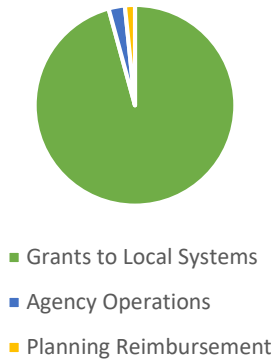
All systems are required to contribute the average amount expended on indigent defense in the three years prior to the MIDC Act’s passage in 2013. The Act requires the “local share” to be maintained with minimal annual increases consistent with the CPI. These local dollars are combined with the



state grant funds to comprise the total system cost and will be monitored through a special fund described in the MIDC Act. The local

share statewide totals \$37.9 million that the individual systems contribute towards indigent defense.

MIDC Funding \$90.6 million



The MIDC Act specifically provides that the funding unit can be reimbursed for the costs of developing and implementing the plan upon approval, separate from the grant award. MCL §780.993(2). The MIDC distributed \$1,464,933.64 under this provision to local systems.

System Improvements Realized through Early Implementation

Most systems statewide were eager to begin work upon receiving funding from the Commission, including those featured in the NLADA’s 2008 report. Of the ten systems studied in the NLADA’s *Race to the Bottom*, seven had signed contracts and received grant funding by the end of 2018:

Alpena County moved from a flat-rate contract system to an independently managed assigned counsel system with hourly rates paid to attorneys accepting assignments. The County uses a part-time attorney administrator to oversee the services delivered. Alpena County

contributes \$159,844.67 to the system cost, and the MIDC grant award is \$419,156.97 for a total system cost of \$579,001.64.

Bay County had been operating a public defender office and returned to an earlier model of

a two-office system to meet the needs of their clients, with a separate list of attorneys dedicated to handling cases where the offices have a conflict of interest. Bay County contributes \$593,149.49 to the system cost, and the MIDC grant award is \$453,624.52 for a total system cost of \$1,046,774.01.

Chippewa County elected to maintain its public defender office, but added staff and resources to ensure compliance with current and proposed MIDC standards. Through state funding, the Chief Public Defender hired another defender, began contracting with a private investigator, and added resources to the office to comply with the plan.

“We’re now going to be on an even playing field.”

--Jennifer France
Chippewa County Chief Public Defender
Grant helping public defender office expand its staff, The Sault News, August 27, 2018

With the grant money from the MIDC, [Alpena’s system] will now be overseen by a county managed assigned counsel system in which nine attorneys in circuit and district court will be paid an hourly rate to take on those cases.

A Fairer Fight: Counties get state help to improve indigent defense
The Alpena News, April 9, 2018

Chippewa County contributes \$219,544 to the system cost, and the MIDC grant award is \$285,724.22 for a total system cost of \$505,268.22.

Grand Traverse County is maintaining their assigned counsel system, but now includes full-time coverage for arraignment hearings, and improvements to their jail to provide ample confidential space for attorneys to meet with their clients, among other features of their plan. Grand Traverse County contributes \$153,580 to the system cost, and the MIDC grant award is \$628,678, for a total system cost of \$782,258.

Marquette County opted to transition from an assigned counsel system to a public defender office after conducting a feasibility study and determining that it was the best model in terms of cost effectiveness and quality of representation for indigent defendants. Marquette County contributes \$224,971 to the system cost, and the MIDC grant award is \$680,941, for a total system cost of \$905,912.

“There were three models we presented in there for the board’s consideration and it just so happened that even with the way we looked at this, probably the best one regardless was the public defender’s office.”

--Scott Erbisch, Marquette County Administrator
...AND JUSTICE FOR ALL: Marquette County public defender’s office to be created, The Mining Journal, April 9, 2018

Ottawa County developed a plan through local stakeholders that moved from an assigned counsel system to a public defender office. The office will establish two locations within the County to accommodate clients and be accessible for hearings. Ottawa County contributes \$923,087 to

the system cost, and the MIDC grant award is \$1,944,219 for a total system cost of \$2,867,306.

Robert Hamilton has 30 years' experience in indigent defense counsel, giving him extensive knowledge of the criminal justice system.

Ottawa County: Hamilton selected as county's new public defender, The Grand Haven Tribune, October 13, 2018

Shiawassee County also decided to move to a public defender office model in place of its assigned counsel system.

The plan calls for almost direct parity with the local prosecutor's office in terms of both staffing, space, and supplies. Shiawassee contributes \$103,798 to the system cost, and the MIDC grant award is \$802,239, for a total system cost of \$906,037.

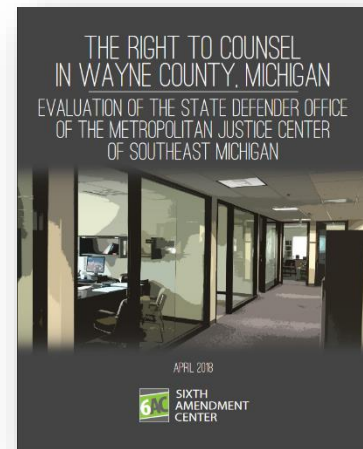
Jackson, Oakland, and Wayne Counties were also featured in the NLADA report and are expected to receive funding to implement their approved plans during the 2019 fiscal year.

Jackson County will contribute \$555,121 to the system cost, and the MIDC grant award is \$1,242,587.22 for a total system cost of \$1,797,708.93.

Oakland County will contribute \$1,828,758 to the system cost, and the MIDC grant award is \$4,912,256 for a total system cost of \$6,741,014.

Wayne County, which accounts for approximately one-third of indigent defense cases statewide, will contribute \$7,447,334 to the system cost, and the MIDC grant award is \$17,275,171 for a total system cost of

\$24,722,505. Wayne County’s plan is designed to implement recommendations made by the **Sixth Amendment Center** in a report produced at the request of the County through an innovation grant funded by the MIDC in 2017.



Studies Contributing to Innovative Change

Social Worker Defense Project

The MIDC was awarded a grant from the Bureau of Justice Assistance in FY2016 to pilot and test the use of a social worker in public defense. Although social workers are used in many public defense systems across the state, there has been little research assessing the efficacy of this model. In particular, there has been little insight into the role of social workers in assigned counsel systems. In response, the MIDC is partnering with the Urban Institute to implement and evaluate the impact of a social worker in Genesee County’s assigned counsel system. After program design and development, the MIDC launched the program in 2018. Selected attorneys from the Genesee County panel attended program-specific training and are currently working with a social worker to provide additional support and advocacy for people accused of crimes. The social worker conducts client assessments, gathers community resources, and provides attorneys with information that can be used to advocate for individualized community support instead of

additional time in jail or prison. The program will run through the beginning of 2020.

Client Focus Groups

Although the MIDC is tasked with working directly with local funding



units, courts, attorneys and policymakers, staying connected to those most directly impacted by Michigan's indigent defense systems is one of the MIDC's core values. In 2018, MIDC staff visited jails around the state to speak with incarcerated individuals who had been represented by court-appointed counsel. Through a series of focus groups, staff learned about the experiences of clients as they pertain to

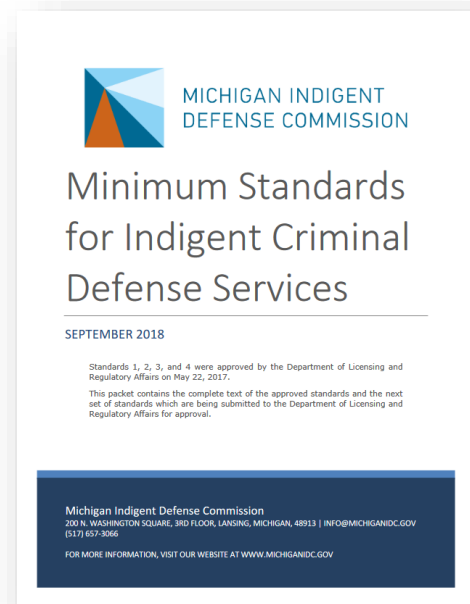
defense representation and to the specific issues addressed in the MIDC's Standards. Clients were asked to reflect on their experiences, provide feedback on current standards, and brainstorm potential solutions to issues plaguing the indigent defense system. In particular, clients emphasized feeling helpless, uninformed, and out of control, pointing to the importance of having counsel at first appearance and well as the importance of a timely first interview between attorneys and clients.

Finalizing the Next Standards for System Reform

While the initial compliance plans were funded and implementation began, the Commission continued working on the next standards for indigent defense delivery systems. These standards address the need for independence from the judiciary, defender workload limitations, qualification and review of attorneys accepting assignments in adult criminal cases, and attorney compensation.

The MIDC held a hearing on June 12, 2018 to receive public comment on the proposed standards. In order to encourage stakeholders to participate in submitting comments and feedback regarding the standards, the MIDC staff hosted a webinar prior to the public hearing to provide an overview of the new standards. Stakeholders were invited to participate in the public hearing in person or to submit comments by way of email.

In August of 2018, the MIDC approved final versions of the next set of indigence defense compliance standards. Much consideration was given to the public comments received over the past year. For example, based on feedback from numerous public defenders, one of the standards was amended to broaden the qualifications necessary for attorneys to handle high-severity felony and life offense



cases. The full set of the final **standards can be found on MIDC's website.**

Per the MIDC Act, the updated standards were sent to the Department of Licensing and Regulatory Affairs (LARA) for final approval in September 2018. LARA opened a public comment period, which closed in December 2018. Once LARA approves the new standards, the clock begins on the next round of compliance planning as local systems will have 180 days to submit a plan and cost analysis for approval.

Attorney Caseloads

The MIDC Act requires that attorney workloads are controlled to allow for effective representation, and **Standard 6** directly addresses this issue. The Standard sets forth maximum caseloads consistent with recommendations by the American Council of Chief Defenders, but also identifies the need for a Michigan-specific weighted caseload study. To this end, the MIDC contracted with the RAND Corporation to help



Defenders gather at the MIDC Office September 13, 2018

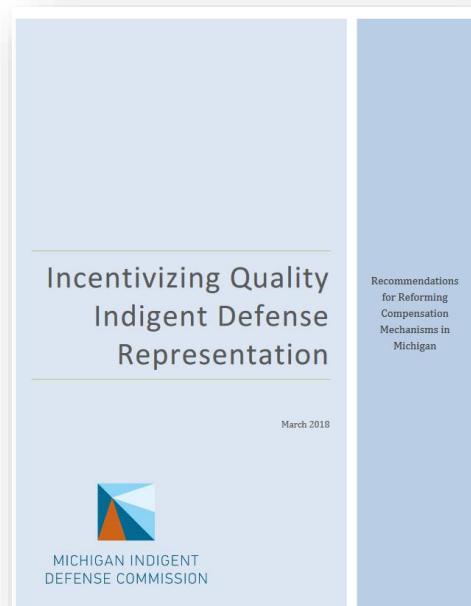
determine maximum caseload standards for defense counsel representing clients in the trial-level courts of the state of Michigan.

The RAND Corporation conducted a study in 2018 that included three data collection

efforts, a nationally recognized method of determining caseloads. In the first phase, researchers from RAND worked with selected defense attorneys to track the average amount of time counsel currently spends on trial-court level criminal matters. In the second phase, researchers asked attorneys around the state to reflect on these findings and distinguish between the time that is currently being spent and how much time *should* be spent. The final effort gathered a panel of experienced criminal defenders representing all regions of the state in Lansing. The panel reviewed the previous data collection efforts and came to consensus on recommended average time expenditures for counsel representing indigent defendants across categories of cases. Recommendations from the RAND Corporation are forthcoming.

Attorney Compensation

In its 2008 report of Michigan’s indigent defense systems, the NLADA found that inadequate attorney compensation is one of the reasons that the state of Michigan fails to provide constitutionally adequate legal representation to poor people charged with crimes. To fully understand the nature of inadequate compensation, the MIDC explored how current payment structures across the state encourage or discourage attorneys to provide quality services to clients. When systems are balanced, the



needs of clients, defense attorneys, courts, and the taxpayers who fund the system are all protected. Such balance is most likely to exist in systems that compensate attorneys based on the effort they expend; implement court policies that reimburse attorneys for out-of-pocket expenses; create an environment insulated from undue judicial pressure; institute controls that manage the number of hours that appointed attorneys dedicate to indigent defense; and design clear guidelines for how attorney performance will be appraised. The MIDC published the results of its inquiry in a 2018 report called *Incentivizing Quality Indigent Defense Representation* (March 2018) and has integrated lessons learned into the text of **Standard 8**.

Amendments to the MIDC Act Broaden Mandate

Stakeholders continue to respond to the need for reform while balancing the value of local control, and to that end amendments were made to the MIDC Act during the reporting year which became effective on December 23, 2018. The amendments expand the authority of the Commission to:

- Implement a system of performance metrics to assess the provision of indigent defense services to be reported annually to the Governor, legislature and State Budget Office;
- Develop objective standards for courts to determine whether a defendant is partially indigent and for determining the

amount a partially indigent defendant should contribute to their defense;

- Establish standards for MIDC-funded training and to measure the quality of the training;
- Serve as a clearinghouse for experts and investigators and for systems that request it, develop and operate a system to determine the need and availability for an expert or investigator;

The legislation also:

- Adds members to the Commission, the names of whom will be submitted to the Governor for appointment by Michigan Association of Counties, Michigan Township Association, Michigan Municipal League and State Budget Office;
- Provides that all contributions or reimbursements collected from partially indigent defendants shall be spent on indigent defense. Twenty percent of the funds will be remitted to LARA to be spent by the MIDC in support of indigent defense systems and 80% will be retained by local systems “for purposes of reimbursing the costs of collecting the funds...and funding indigent defense.”

Conclusion and Recommendations

The MIDC and the State of Michigan have made tremendous progress over the last four years towards ensuring the right to counsel for indigent defendants. As implementation of the first standards evolves

and approval of the next set of standards impends, there continues to be much work to do. The Commission looks forward to providing support to local systems as they begin implementation of the standards, to work constructively with the local systems in assessing compliance with the standards and to collaborate with local systems as they begin to plan for the second set of standards.

To maintain Michigan's leadership in nationwide indigent defense reform, the Commission makes recommendations in three critical areas.

Funding of Indigent Defense Standards

- The state must continue to meet its obligation to fully fund the local systems plans for compliance with the first four indigent defense standards and upon approval, the next four indigent defense standards;
- The state must authorize adequate operational funding to MIDC to enable it to meet its authority to provide statewide compliance and fiscal monitoring to ensure the integrity of indigent defense expenditures.

Research and Data-Driven Policy

- A statewide system to collect data must be developed and implemented in public defender offices and assigned counsel systems, which will enable the MIDC to assess the impact of standards implementation and identify best practices;

- Improvements to facilitate the collection of information specific to indigent defense cases must be put in motion. The MIDC will continue work with the broad variety of case management systems currently used by courts across the state to enhance its ability to collect information specific to indigent defense cases and to pave the way for easier reporting by the local systems.

Establishing Continuity

- The MIDC will continue to support local systems in identifying opportunities for institutionalizing best practices for indigent defense across multiple systems;
- The MIDC will work with all stakeholders in the criminal justice system to identify and address any necessary statutory and court rule revisions as implementation of the standards occurs;
- The MIDC will engage stakeholders in the criminal justice system as it develops standards for determining whether a defendant is partially indigent and establishing standards for MIDC-funded training and to measure the quality of the training.



MICHIGAN INDIGENT
DEFENSE COMMISSION