

2019

IMPACT REPORT

Indigent Defense Transformation

Begins Statewide



MICHIGAN INDIGENT
DEFENSE COMMISSION

Preface

This report captures the fifth full year of work by the Michigan Indigent Defense Commission (MIDC). We accomplished an extraordinary amount this year: distributing over \$87 million to local systems to comply with minimum standards for indigent defense, evaluating the implementation of compliance plans, and supporting a second year of funding for all trial court systems across the state.

The MIDC's standards ensure that due process is upheld for those most vulnerable to being disenfranchised of their constitutional rights in the criminal legal system. Because of the standards, every indigent adult charged with a crime in Michigan – from low level misdemeanors to severe felonies – has access to adequate resources to defend themselves in court. Assigned attorneys are now consistently trained to ensure competency and heightened skill. Clients are given confidential and timely access to an attorney, regardless if they are in jail or at home. And, perhaps most importantly of all, no one stands alone in court, as those accused of a crime are given counsel from the first in-court appearance until the last.

But our work has only just begun.

This report features highlights of the Commission's impact around every region in the great State of Michigan; however, we simultaneously acknowledge that **we have more to do**. The novel coronavirus (COVID-19) has ravaged our state and our citizens, especially those incarcerated in Michigan's prisons and jails. We know that the criminal legal system continues to disproportionately impact people and communities of color at a staggering rate and that significant effort from all stakeholders is required to combat systemic racism and ensure justice for all. While we have seen significant investment in indigent defense as part of the State's public safety initiative over the past two years, it is important to remember that commitment comes on the heels of decades upon decades of no investment of state resources to defend the constitutional rights of those charged in criminal court and requiring an appointed attorney.

As this next year unfolds, we look forward to employing the MIDC's mandate to ensure that all Michiganders have access to counsel and to due process, and we remain committed to exploring innovative best practices so that Michigan remains a leader in public defense services for the nation to model.

June 2020

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Michigan Indigent Defense Commission Members

Michael Puerner, Chair, Ada

Represents the Senate Majority Leader

Hon. Thomas Boyd, Okemos

Represents the Michigan District Judges Association

Tracey Brame, Grand Rapids

Represents the Chief Justice of the Michigan Supreme Court

Kimberly Buddin, Novi

Represents bar associations whose primary mission or purpose is to advocate for minority interests

Jeffrey Collins, Detroit

Represents the Senate Majority Leader

Nathaniel “Hakim” L. Crampton, Jackson

Represents the general public

Andrew D. DeLeeuw, Manchester

Represents the Michigan Association of Counties

Nancy J. Diehl, Detroit

Represents the State Bar of Michigan

Frank Eaman, Pentwater

Represents the Criminal Defense Attorneys of Michigan

Hon. James Fisher (Retired), Hastings

Represents the Michigan Judges Association

Christine A. Green, Ann Arbor

Represents the State Budget Office

Joseph Haveman, Holland

Represents the Speaker of the House of Representatives

James R. Krizan, Allen Park

Represents the Michigan Municipal League

Margaret McAvoy, Owosso

Represents the Michigan Association of Counties

Tom McMillin, Oakland Township

Represents the Speaker of the House of Representatives

Cami M. Pendell

Supreme Court Chief Justice Designee, ex officio member

John Shea, Ann Arbor

Represents the Criminal Defense Attorneys of Michigan

William Swor, Grosse Pointe Woods

Represents the Criminal Defense Attorneys of Michigan

Gary Walker, Marquette

Represents the Prosecuting Attorneys Association of Michigan

Overview of the Commission

The Michigan Indigent Defense Commission (MIDC) was created by legislation in 2013. The MIDC Act is found at MCL §780.981 *et. seq.*

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

The Governor makes appointments to the 18-member Commission pursuant to MCL §780.987, and began doing so in 2014. The interests of a diverse group of stakeholders in the criminal legal 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, the state budget office, and the general public.



New Commissioners

During the reporting year, Governor Gretchen Whitmer made a number of appointments pursuant to amendments to the MIDC Act expanding stakeholder interests in the composition of the Commission:

- **Tracey Brame, of Grand Rapids**, is the associate dean at Western Michigan University Thomas M. Cooley Law School in Grand

Rapids and a professor and co-director of the Access to Justice Clinic. She earned her Juris Doctor degree from University of Michigan Law School. Ms. Brame is appointed to succeed Kristina Robinson whose term expired April 1, 2019, to represent the Chief Justice of the Supreme Court for a term expiring April 1, 2023.

- **Kimberly Buddin, of Novi**, is policy counsel with the ACLU of Michigan and a VAWA/U-Visa Pro-Bono Attorney at the Michigan Immigrant Rights Center. She earned her Juris Doctor degree from Michigan State University Law School. Ms. Buddin is appointed to succeed Brandy Robinson who resigned March 20, 2019, to represent bar associations whose primary mission or purpose is to advocate for minority interests, for a term expiring April 1, 2020.
- **Nathaniel “Hakim” L. Crampton, of Jackson**, is the Michigan statewide organizer for JustLeadershipUSA, a case manager for the Community Action Agency with the Jackson Housing Commission, and a youth action Michigan adult ally with the Student Advocacy Center of Michigan. Mr. Crampton is appointed to succeed David Schuringa whose term expired April 1, 2019, to represent the general public for a term expiring April 1, 2023.
- **Andrew D. DeLeeuw, of Manchester**, is an executive assistant to the county administrator of Washtenaw County. He earned his Master of Public Policy from the University of Michigan’s Gerald R. Ford School of Public Policy. Mr. DeLeeuw is appointed to fill a new seat created by Act 443 of 2018, to represent the Michigan Association of Counties for a term expiring April 1, 2023.

- **James R. Krizan, of Allen Park**, is the assistant to the city manager for the City of Royal Oak and the former village manager for the Village of Decatur. Mr. Krizan is appointed to fill a new seat created by Act 443 of 2018, to represent the Michigan Municipal League for a term expiring April 1, 2023.
- **Christine A. Green, of Ann Arbor**, is a trustee with the Scio Township Board of Trustees and a retired attorney with Green & Green, PC. She earned her Juris Doctor degree from the University of Michigan Law School. Ms. Green is appointed to fill a new seat created by PA 214 of 2018, to represent the State Budget Office for a term expiring April 1, 2023.
- **Margaret A. McAvoy, of Owosso**, is the county administrator controller for Isabella County and serves on the Board of Directors and Executive Committee for the Great Lakes Bay Michigan Works! Ms. McAvoy is appointed to fill a new seat created by Act 443 of 2018, to represent the Michigan Association of Counties for a term expiring April 1, 2023.



In addition to the Governor's appointments, **Michigan Supreme Court General Counsel Cami M. Pendell** was appointed by the Chief Justice as an *ex officio* member of the Commission during the reporting year, succeeding Thomas P. Clement.

Notable Commissioner Accomplishments

The Commissioners regularly donate an extraordinary amount of time to positions of leadership in the legal community outside of their work on the Michigan Indigent Defense Commission. During the reporting year, Commissioner **Kimberly Buddin** was appointed to the **Advisory Board for the Michigan Intelligence Operations Center for Homeland Security**, Commissioner **Tracey Brame** was named as the incoming **President of the Grand Rapids Bar Association**, Commissioner **Tom Boyd** was appointed to **Michigan's Joint Task Force on Jail and Pretrial Incarceration**, and Commissioner **William W. Swor** became the **Chair-Elect of the American Board of Criminal Lawyers**.

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

Commission Meetings

The Commission met eight times during the reporting year. The meetings are open to the public. Most Commission meetings were held at the Commission's downtown Lansing office of the Capitol National Bank Building, though in an effort to allow wider access to the public, the Commission began using the Michigan Bankers Association for meetings. The times and location of the meetings are made widely available on the Commission's website, and



alternate access including telephone call-in options are often used by members of the public as well. A significant portion of the Commission's work this year was devoted to facilitating approval of compliance plans submitted by systems statewide. Minutes from the Commission meetings are available on the [MIDC's website](#).

Agency Operations

Executive Director and Staff

In 2019, the Michigan Indigent Defense Commission was supported by Executive Director Loren Khogali and thirteen full time staff members. During the reporting year, the Commission welcomed several new staff members:

- [Nicole Smithson](#) is the new Regional Manager for the Lapeer, Macomb, Oakland, and St. Clair County Region. Prior to working



for the MIDC, Ms. Smithson was an attorney with Holzman Law, PLLC, working in its bankruptcy, creditor's rights, litigation, mergers and acquisitions, and real estate departments. She has experience as a sole practitioner representing

individuals in criminal, juvenile, domestic relations, and probate matters. She previously consulted for the JUSTICIA Foundation for Development and Human Rights in Lebanon on projects for the World Bank and the United Nations Development Program. She

also served as a staff attorney/magistrate at the Butler County Common Pleas Court and a judicial law clerk at the Arizona Court of Appeals, Division Two. Ms. Smithson replaced Regional Manager Tanya Grillo, who returned to private practice at the beginning of the reporting year.

- **Susan Prentice-Sao** is the new Regional Manager for Western Michigan. Prior to joining the MIDC, she represented indigent



defendants for over a decade in Kalamazoo County and surrounding areas. She has experience as a sole practitioner representing individuals in criminal, juvenile, neglect, domestic relations, probate, and bankruptcy matters. Ms. Prentice-Sao replaced

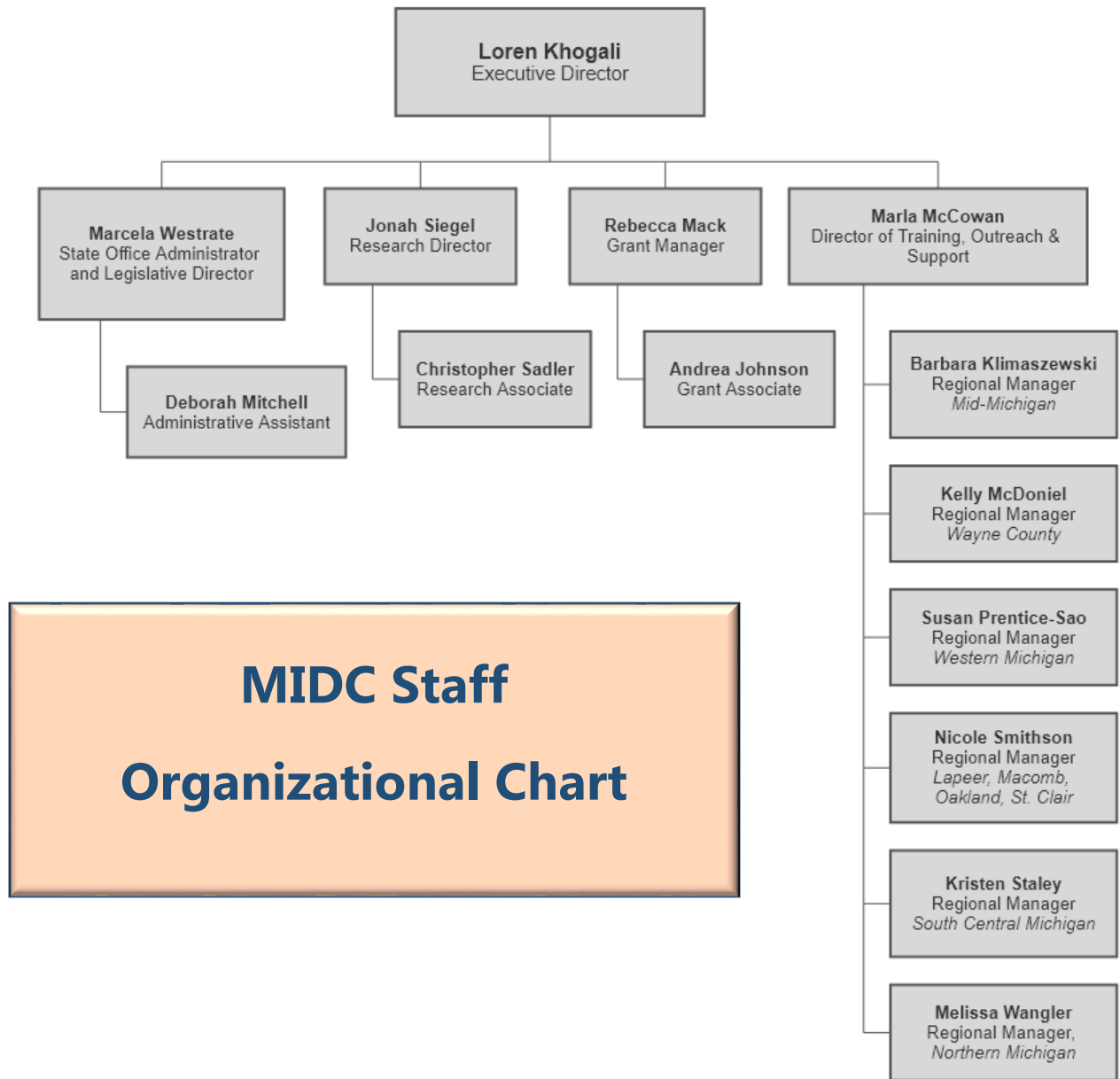
Regional Manager Christopher Dennie, who became the Director of the Kent County Office of the Defender at the beginning of the reporting year.

- **Andrea Johnson** joined the staff as a Grant Associate during the



reporting year, bringing her experience in accounting at the Plymouth District Court to her role assisting the MIDC's Grant Manager with reporting requirements for trial court systems across Michigan.

The organizational staff structure was prepared by the Executive Director pursuant to MCL §780.989(1)(d)(i) and at the conclusion of 2019 appeared as follows:



Notable Staff Accomplishments

In 2019 Governor Whitmer established several important task forces, including the **Michigan Poverty Task Force** charged with ensuring that state government brings the full force of its efforts and resources to the fight against poverty. MIDC **Executive Director Loren Khogali** was named as a member of the task force at the end of 2019 and will work with other designees from state departments and agencies charged with making recommendations to the Governor towards these efforts.

Each year the **State Bar of Michigan** presents the **Champion of Justice Award** to a member possessing “integrity and adherence to the highest principles and traditions of the legal profession, superior professional competence, and an extraordinary professional accomplishment that benefits the nation, the state, or the local community in which the lawyer or judge lives.” In 2019 **Marla R. McCowan** was presented with the award along with two other Michigan attorneys. Ms. McCowan has been part of the original staff to the Commission serving as the Director of Training, Outreach and Support since 2015.

Agency Operational Budget

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 2019 fiscal year was \$2,420,700.

In the reporting year, the MIDC had 14 full-time employees whose salaries, insurance and retirement benefits are included in the first

FY 19 Appropriation:	\$2,420,700.00
Salaries & Wages	\$1,102,473.00
Longevity & Insurance	\$146,887.00
Retirement & FICA	\$634,176.00
Terminal Leave	\$12,212.00
Travel (In & Out of State)	\$28,685.00
Communications	\$18,977.00
Contractual Services	\$119,491.00
Supplies & Materials	\$23,521.00
Equipment	\$120.00
Cost Allocations	\$87,041.00
Information Technology	\$40,704.00
TOTAL Expenditures	\$2,214,287.00
Remaining Appropriation	\$206,413.00

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-related expenses. 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.

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. In 2019, these work projects served to fund compliance planning costs for funding units and projects related to best practices, data collection and research.

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 as described in this report. The website had **25,239 visits in 2019** (an increase from 19,362 visits in 2018). The most popular pages cover the MIDC's standards, grants, policies, and reports.

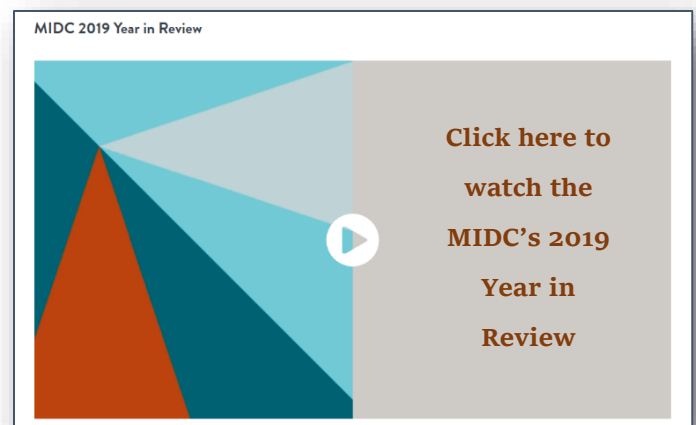
First Full Year of Compliance Plan Funding and Implementation Completed

Overview

This year marked a significant achievement for indigent defense reform in Michigan. The MIDC secured \$86.7 million in funding for 134 trial court systems to comply with the first four standards approved by the Commission. Those standards include training for assigned counsel, initial interviews by attorneys within three business days from assignment, funding for experts and investigators, and counsel at first appearance and other critical stages of the proceedings. Approximately 85% of the funding is for direct services to indigent defendants: services such as attorney fees, expert witness and investigative assistance.

In addition to setting standards and providing funding for trial court systems, the Commission remained dedicated to providing support at the local level in order to ensure successful implementation of the system's specific plan. To that end, the MIDC staff hosted webinars throughout this year to assist stakeholders with the program and financial reporting components of the compliance plans that were approved by the Commission. The MIDC staff also spent hundreds of hours in the field meeting with local partners to assess progress on implementing the standards and to watch criminal case proceedings in every county in Michigan. This approach has cultivated meaningful partnerships between the Commission and individual communities statewide, and allowed for both insight and flexibility as systems worked hard to reform their local programs according to their own identified needs. The Commission's efforts surrounding funding, oversight, implementation, and transformation of indigent defense are detailed below.

As a companion to this report, the MIDC published a **short video story capturing highlights of the Commission's accomplishments this year.**

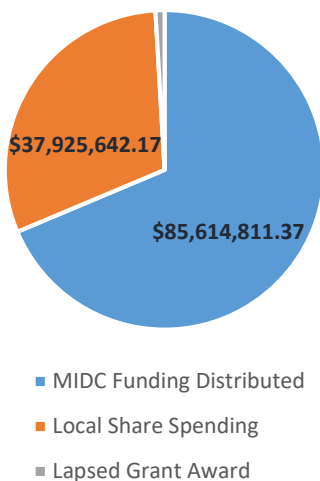


Funding Distributed for Fiscal Year 2019

The 2018 annual report detailed the Commission's work to process and approve compliance plans and cost analyses from all 134 trial court funding units in Michigan. The State of Michigan's commitment to addressing the statewide constitutional crisis by reforming its indigent defense system was reflected in an appropriation of \$86.7 million to distribute to local systems for compliance with the minimum standards.

Pursuant to the MIDC Act, a local system is required to comply with their approved plan within 180 days after receiving funding through the grant process. Grant contracts were executed beginning in October of

FY19 Total System Cost
\$124,685,576.92



2018, and funding was distributed pursuant to Commission policy as set forth in the contracts throughout 2019. 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 were provided on a quarterly basis through a reporting and disbursement process during the 2019 fiscal year. All but one system¹ signed a grant

contract with the MIDC and the Department of Licensing and Regulatory Affairs (LARA) to receive full funding to comply with the standards.

¹ The 36th District Court for the City of Detroit did not sign a contract prior to the end of FY2019 resulting in their grant award of \$1,145,123.38 lapsing to the State's general fund.

Some systems coordinated indigent defense delivery in their plans for compliance resulting in **125 total contracts** for the 134 trial court funding units identified statewide. 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 is 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.

Funding Unit(s) of Approved Plan	Total System Cost	Local Share	Grant Request
Lapeer, Macomb, Oakland, St. Clair			
D 37 - Warren and Centerline	\$1,031,580.03	\$120,164.14	\$911,415.89
D 38 Eastpointe	\$471,543.60	\$51,867.33	\$419,676.27
D 39 Roseville and Fraser	\$1,099,766.99	\$88,307.00	\$1,011,459.99
D 40 St Clair Shores	\$454,918.02	\$6,927.06	\$447,990.96
D 41a-1 Sterling Heights	\$241,233.53	\$0.00	\$241,233.53
D 41a-2 - Utica, Macomb, Shelby	\$434,214.00	\$0.00	\$434,214.00
D 41b - Mt. Cl., Harris., Clinton	\$386,516.92	\$42,680.20	\$343,836.72
D 43-1 Hazel Park	\$1,121,167.96	\$17,979.33	\$1,103,188.63
D 43-2 Ferndale	\$636,682.12	\$14,979.00	\$621,703.12
D 43-3 - Madison Heights	\$463,791.17	\$1,743.02	\$462,048.15
D 44 - Royal Oak	\$390,210.00	\$22,204.00	\$368,006.00
D 45 - Oak Park	\$250,230.52	\$41,262.00	\$208,968.52
D 46 - Southfield	\$503,681.00	\$81,000.00	\$422,681.00
D 47 Farmington/Hills	\$189,674.28	\$21,439.28	\$168,235.00
D 48 Bloomfield	\$335,239.76	\$17,087.59	\$318,152.17
D 50 Pontiac	\$812,676.00	\$17,635.00	\$795,041.00
D 51 - Waterford	\$274,618.23	\$31,122.50	\$243,495.73
Lapeer County	\$483,783.49	\$107,480.42	\$376,303.07
Macomb C 16 & D 42-1, 42-2	\$4,762,401.00	\$2,193,874.00	\$2,568,527.00
Oakland C 6 & D 52-1, 2, 3, 4	\$6,741,014.00	\$1,828,758.00	\$4,912,256.00
St. Clair County	\$882,623.00	\$734,024.00	\$148,599.00
Mid-Michigan			
Alcona County	\$149,199.00	\$40,129.28	\$109,069.72
Alpena County	\$579,001.64	\$159,844.67	\$419,156.97
Arenac County	\$276,266.70	\$111,874.72	\$164,391.98
Bay County	\$1,046,774.01	\$593,149.49	\$453,624.52
Clare County	\$909,517.24	\$155,516.42	\$754,000.82
Gladwin County	\$739,236.18	\$75,917.90	\$663,318.28
Huron County	\$286,376.41	\$79,438.60	\$206,940.81
Iosco	\$189,425.91	\$168,107.94	\$21,317.97
Isabella County	\$1,518,690.57	\$233,306.88	\$1,285,383.69

The MIDC's website includes the total funding awarded for every system. Click on the spreadsheet image to review the totals.

In August 2019 the Commission authorized an independent study to review the appropriate amount of the local share pursuant to amendments in the MIDC Act. That study will begin in 2020 and a report will be submitted regarding the recommendations in 2021. MCL §780.993(6).

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.

Reporting by Systems

Program Compliance and Data Collection

Prior to the MIDC Act, few local systems collected data on indigent defense. Historically, these data had not been required by any statewide body, and courts tended to maintain only information relevant to their payment systems.

In the last year, almost every system in the state has implemented data collection processes to gather critical data elements related to the MIDC minimum standards. Local systems are now collecting and reporting information quarterly for compliance with each standard. These data

New Data Collected from Every Court System

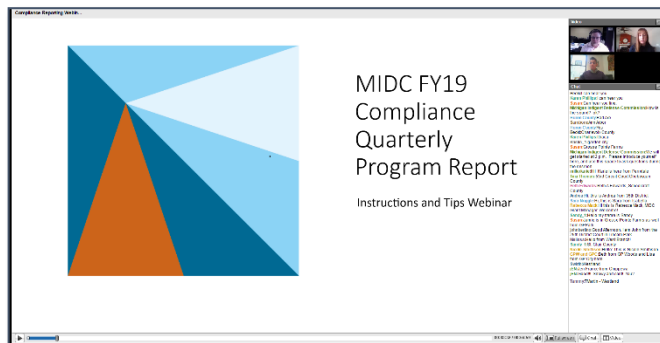
- ✓ Number of arraignments conducted
- ✓ Presence of counsel at each arraignment
- ✓ Number of guilty pleas submitted by mail or at the counter
- ✓ Percentage of new filings represented by assigned counsel/public defender offices
- ✓ Number of cases assigned to every attorney in each system
- ✓ Number of appointed cases in which investigators or experts were utilized

points offer insight into the landscape of indigent defense in every local system and allow for analysis in terms of similarities and differences between systems and change within a system over time.

Local systems have developed data collection procedures that make sense for their community. Because current case management systems were not historically designed to collect information on indigent defense, many

local systems have had to develop workaround solutions for the collection of these data, and they have made major strides throughout 2019 to this end.

In addition to hosting multiple webinars to assist funding units with the reporting requirements, MIDC staff created illustrated instructions and checklists which



were updated periodically to respond to frequently asked questions. In the upcoming year, the MIDC will continue working with local systems to submit accurate and consistent quarterly data, identify case management systems that may benefit from revisions, and start to assess patterns in indigent defense across the state.

Financial Accountability

Each system is required to provide a quarterly report on the expenses incurred for implementing the plan for indigent defense delivery. The contracts signed with the system provide due dates for reporting that occur approximately 30 days after the financial quarter ends. The

Department of Licensing and Regulatory Affairs Michigan Indigent Defense Commission FINANCIAL STATUS REPORT																																																																															
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10. Remarks		11. Certification: I certify that to the best of my knowledge and belief this report is correct and complete and that all expenditures are for the purposes set forth in the approved compliance plan and consistent with the grant contract and attachments.				12. MIDC Approval																																																																									
authorizing signature		date				Grant Manager's Signature Date																																																																									
position		email/phone contact				State Office Admin. Signature Date																																																																									

Commission developed a form to detail the total system costs and identify the source of funding: the local share, MIDC dollars, or other sources when applicable. Tracking

the local share spending is critical to comply with the statutory requirement for using MIDC funds.

Each financial status report (FSR) submitted by the system is supported by documentation for the expenses to be eligible for reimbursement. Expenses identified on the FSR generally fall into the following

categories: **Attorneys and other staff, Experts and Investigators, Training for Assigned Counsel, and other supplies and resources for indigent defense.** The specific

budget categories are detailed in the table with funding approved in each category. The

approved funding includes the MIDC award (\$86.7 million), the local share (\$37.9 million), and outside funding provided by a few local systems (\$2.6 million) to operate their indigent defense program.

At the end of each fiscal year, all systems are required to submit the **balance of unspent funds** distributed for indigent defense. That balance is used to offset the distribution for the following grant year.

The MIDC staff will begin working with the **Office of Internal Audit Services** (OIAS) in the next reporting year to improve MIDC's internal processes for assessing financial compliance by local funding units as well as conducting audits of funding units.

Indigent Defense Budget Category	Approved Funding
Contractual/attorneys	81.3 million
Personnel	17.1 million
Fringe Benefits	8.9 million
Expert witnesses	5.9 million
Construction including meeting space	3.3 million
Supplies/services	3.1 million
Investigators	2.3 million
Equipment	2.4 million
Training and Travel	1.4 million
Other contracts for indigent defense systems	1.2 million

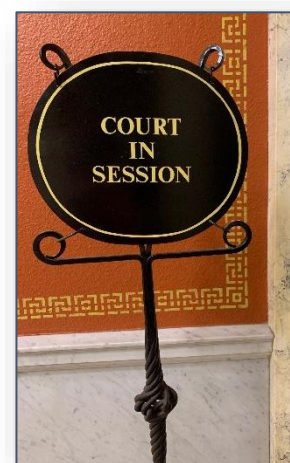
Evaluation of Compliance

Rubric Approved by Commission

The primary method of collecting information about compliance is from the programmatic and financial documentation submitted by the systems themselves. In addition, the MIDC staff meets with the local system to assess compliance through a rubric approved by the Commission and completed by the MIDC's Regional Manager and Grant Manager. The rubric assigns a score to assess compliance; the goal is to determine where additional support may be needed to fully meet the objectives of the MIDC's standards. The score is communicated to the system and information about compliance progress is provided to the Commission during business meetings. The Commission distinguishes between major issues of noncompliance that frustrate the implementation of justice and minor technical reporting infractions.

Court Watching by MIDC Regional Team

The final component for evaluating compliance is through court watching. Regional Managers observed criminal docket proceedings in every trial court during the reporting year and provide information about compliance with the standards through an online survey-style data collection system that is updated in real time. Private space for confidential attorney-client meetings is documented as well as counsel's presence during arraignments and all critical proceedings.



Impact of Implementation

The funding distributed to the local systems for compliance with the standards revealed significant improvements in indigent defense delivery, even in the first year of compliance. These improvements signal the receipt of much needed critical resources to support the fundamental constitutional right to counsel

Standard 1 – Education and Training of Defense Counsel

The first standard proposed and approved by the MIDC was a new requirement of continuing legal education for attorneys accepting adult criminal case assignments in Michigan. Until this standard was in place, Michigan was trailing behind and remains one of only four states in the Country that does not require all attorneys to complete training on a regular basis.

With this standard, attorneys accepting assignments must annually complete at least 12 hours of training relevant to representing indigent

The MIDC granted a total of
\$1,446,527.54
to systems for their attorneys to register for and attend training events during the reporting year.

defendants; new criminal defense attorneys are required to complete at least 16 hours of hands-on skills training in order to perfect trial skills including motion practice, cross-examination, and closing arguments.

More than 2,000 attorneys were identified by systems in their compliance plans for 2019. Unlike most other states, training for

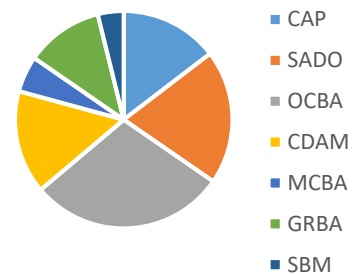
Michigan attorneys is paid by the State at no cost to defense counsel. Every system included a plan for training the attorneys that they identified and provided a cost analysis for that training. Many systems used a registration-based model for training and opted to send their attorneys to an approved vendor such as the Criminal Defense Attorneys of Michigan (CDAM). Training was also offered in-house and online to attorneys as well. In many instances, attorneys tracked their own training and sent verification of completion to the MIDC via email; other systems including larger bar associations included funding to track training for their attorneys and provided a report to the

MIDC at the end of the calendar year. In this first year of required training, the MIDC recognized training for events that occurred between October 1, 2018 and December 31, 2019. **The MIDC received 1,977 individual certificates of completion of attendance** from attorneys

The Criminal Defense Attorneys of Michigan offered nearly 200 hours of qualifying training for assigned counsel.

attending among approximately 140 programs offered during the year, including events such as the statewide conferences hosted by CDAM. In addition to annual training for experienced lawyers, CDAM also provided many skills training courses such as the “Evidence Boot Camp” series, and the popular “Trial College” with options for an expanded (4 day) or abbreviated (2 ½ day) program.

Programs Offered by Training Providers



MIDC Skills Training

The Commission received \$198,230 in grant funding for a unique trial skills program from the Edward Byrne Memorial Justice Assistance Grant Program. With this funding, the MIDC contracted with a vendor to create and pilot a course designed to simulate components of a

criminal trial: voir dire, opening statement, cross-examination, direct examination, and closing arguments.

Keeley Blanchard of Greenville, Michigan, served as the Program Manager and selected locations for the training events in Western

Michigan, Mid-Michigan, and Northern Michigan Counties which were identified in the grant application as having fewer trial opportunities for attorneys to gain critical experience for representing defendants at trial.

Experienced attorneys were selected to serve as trainers along with Ms. Blanchard, and by the end of the calendar year **approximately 90 trainees - attorneys accepting assigned cases in rural areas of Michigan - received a combined total of over 1700 hours of training.**

Evaluations were distributed in the middle of and at the conclusion of each session. Over 200 evaluations were collected, tabulated, and analyzed. The overall rating revealed a **score of 9.1 out of 10** in answering "How valuable was the program, on a scale of 1-10?"



Standard 2 – Initial Interview

The MIDC standard addresses the timing and setting of the initial interview with an assigned client. Counsel is required to meet with a client held in custody in a local jail or detention facility within three business days from the time the attorney is appointed. The system is required to provide confidential space in both the courthouse and local jail in order to facilitate private attorney-client meetings to the extent reasonably possible.

Prior to the implementation of this standard, there was no requirement in Michigan for an attorney to meet with their client within any particular time frame, and many systems did not have private space for meetings in either the courthouse, the jail, or either place. Initial interviews are a critical opportunity for clients to provide attorneys with important information about themselves, ask questions of their attorneys and gain information about the proceedings they are facing. Information gathered at initial meetings may be used at bond hearings, to initiate necessary investigations of the pending charges and to identify reasons or mechanisms for diverting a client from criminal prosecution into a treatment or community-based program.



At the end of 2019, **88% of systems** reported having confidential meeting space for attorneys to meet with their **in-custody clients** in both the courthouse and jail; and **96% of systems** reported having confidential space in the courthouse for **attorneys to meet with clients who were not in custody** on hearing dates. Many courthouses were able to create space without costly construction projects, opting for booth-style additions installed to offer a private setting for these meetings.

Standard 3 – Investigation and Experts

The constitutional right to the effective assistance of counsel often requires an attorney to conduct an investigation to defend against the charges or consult with someone in specialized areas beyond the lawyer's expertise. The historical lack of resources dedicated to indigent defense, especially the right to a reasonable investigation of criminal charges, is reflected in the necessary establishment of prosecutorial units to investigate wrongful convictions at the state and local level.

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."

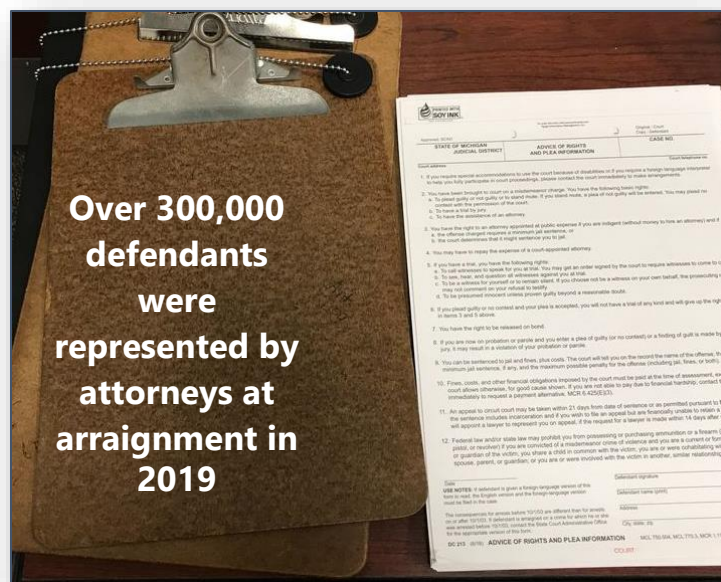
--Strickland v. Washington, 466 U.S. 668 (1984)

The MIDC standard describes counsel's obligations and allows each system to have dedicated funding for indigent defendants to use for investigations and expert witnesses. Over \$8 million was specifically designated for this purpose in 2019,

and by the end of the reporting year a process for attorneys to request experts and investigators had been established in almost every trial court system.

Standard 4 – Counsel at First Appearance and Other Critical Stages

MIDC Standard 4 presented the most significant system change in nearly every trial court in Michigan and accounts for more than half of the grant funds awarded in 2019. Appearing for the first time in court without an attorney was the reality for indigent defendants in Michigan prior to this standard being approved and implemented. With this standard and funding in place, counsel is now present at arraignments and all other critical stages of the proceedings. Most systems have attorneys on standby to answer questions and assist with paperwork and explaining the court process. More often than not, attorneys have been able to advocate for bond at the arraignment. There has been an increased use of personal recognizance bonds consistent with national reform. The majority of systems report improvements to the overall efficiency of the arraignment docket.



System Reform beyond the First Standards

The first year of compliance implementation produced many positive changes to the criminal legal system for indigent defendants. In addition to implementing the first four standards, many systems created plans that incorporated the next standards for indigent defense including independence from the judiciary, manageable caseloads for assigned counsel, a process to qualify and review appointed attorneys, and adequate compensation for attorneys providing public defense. These next standards were approved by the MIDC and remain pending with the Department of Licensing and Regulatory Affairs, but funding units were free to choose any model of delivering indigent defense that best suited their local system.

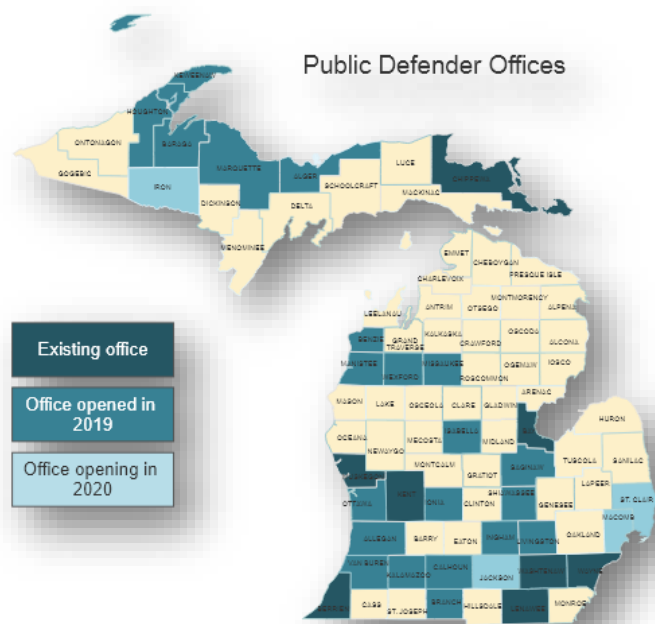


MIDC's First Annual
Leadership Conference
February 2019

The most complete system changing model involved opening a public defender office, with **15 new public defender offices covering 20 counties opening in 2019**. Public defender offices provide full time salaried employees and a dedicated staff to represent adults charged

For systems that wanted to incorporate independence from the judiciary but maintain a traditional roster of attorneys paid as contractors, a Managed Assigned Counsel System

These system-changing models were extraordinary. To celebrate this achievement, the MIDC hosted Michigan's **first annual leadership conference in February of 2019** and welcomed more than 50 new public defender office chiefs, deputies, and new managed assigned counsel administrators for a day-long learning session. These new



leaders in Michigan met and made connections with their peers from across the State to discover innovative ideas and best practices. Most importantly, this group began to create a **community of defenders in Michigan** to ensure that indigent defendants receive the best representation possible when charged with crimes even if they cannot afford to hire a lawyer themselves. The MIDC plans to host this annual event and expand the conversations further in 2020.



Social Worker Defender Program

The Social Worker Defender Program

(SWDP) is a best practice incubated in the Genesee County Court. The project is funded by the Bureau of Justice Assistance and aims to (1) develop and implement a model in which a licensed clinical social worker partners with public defenders to represent indigent clients, (2) evaluate the effectiveness of the model, and (3) create a tool to facilitate the replication of the model, both within Michigan as well as nationally. The primary goal of the model is to **mitigate jail and prison sentences** for adult criminal defendants by developing appropriate individualized community options for the judges' consideration, thereby increasing advocacy for clients, facilitating collaboration between the criminal justice system and local social service providers, and **decreasing reliance on incarceration**. The project launched in the Genesee County

Court in the fall of 2018 and will continue through the end of March 2020.

The Urban Institute is conducting an evaluation of the pilot program and will be releasing a final report in the fall of 2020. Early results

suggest that the program has been beneficial to judges, attorneys, and clients alike.

For attorneys and clients, the involvement of the social worker can increase trust between attorneys and clients while also opening up unexplored areas of concern.

The complete evaluation from the Urban

Institute will offer further guidance on the benefits of social workers in public defense and the circumstances in which a social worker can be most useful. Under the grant, the MIDC will also be creating an instructional tool to allow for replication in public defender systems that are interested in utilizing social workers as part of the public defense team.

"I've found the Social Worker Mitigation Reports very useful. They give me a fuller picture of the person in front of me."

-Genesee County Judge when asked about the involvement of the social worker in a case.

"My client's face lit up. I could see he was thinking, 'this is something different... and so maybe something different might happen.'"

-Genesee County attorney reflecting on introducing the social worker to his client as part of the defense team.

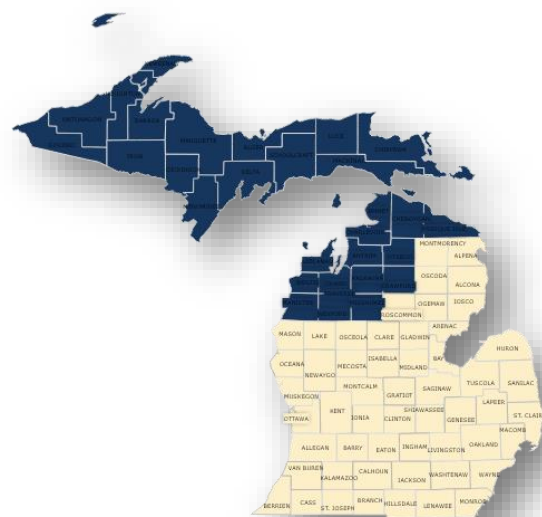
Community Transformation

Implementation of the standards began to improve to indigent defense statewide. The impact regionally and at the county level was also realized through funding and support for the local programs and approved compliance plans. The MIDC distributed \$86.7 million to 125 programs covering all 83 counties and every trial court in Michigan. Individual plans were required to be in place within 6 months of receiving funds. The MIDC remained flexible during significant system reform. Highlights by region are described below.

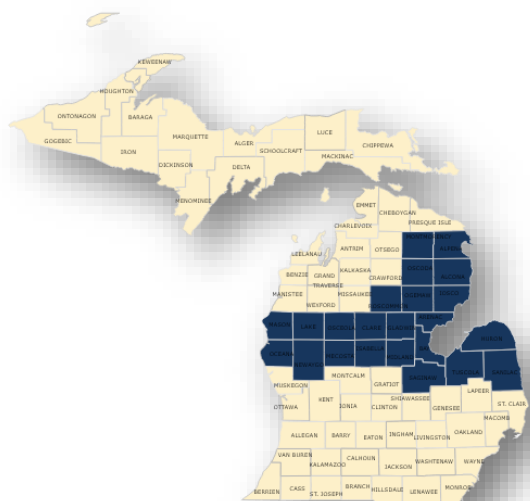
Northern Michigan

\$7,520,211.87 in state funding
distributed for 24 compliance plans

- New **regional public defender offices** were launched covering Benzie/Manistee Counties, Wexford/Missaukee Counties, Houghton/Baraga/Keweenaw Counties and **new County public defender offices** in Marquette and Alger County;
- Nearly all public defender offices are **fully staffed** and are operating independently after a transition period to a Public Defender model;
- Several systems have **utilized expert and investigator dollars** resulting in dismissals/reduction of charges;
- Emmet County was one of the first systems to install a **“Whisper Room” to accomplish confidential attorney client meetings** for incarcerated defendants within the courthouse where courthouse space was limited. The Whisper Room has proven to be an adequate solution and is working well within the District Courtroom to ensure confidentiality.



Mid-Michigan



\$11,098,976.28 in state funding distributed for 23 compliance plans

- **Isabella County** established a PD office as a county department and handles all cases except conflict and multi-defendant cases. The office is housed in a building owned by the county in a medical complex and **offers full public transportation availability for clients;**
- An **8-county alliance** has established a creative approach to management of low-population systems with limited access to attorneys. These counties (**Clare, Gladwin, Mecosta, Osceola, Mason, Lake, Newaygo and Oceana**) have joined together to hire the same firm to manage each of their plans;
- Some systems, such as Ogemaw and Iosco, continued their flat fee contracts, **with added compensation for Standard 4.** These systems are both exploring system change to hourly in the coming year. Some with previous hourly arrangements, such as Huron, Tuscola, Sanilac and Clare/Gladwin, **increased their rates and fully implemented attorney training to improve the quality of services;**
- Nearly all the systems in mid-Michigan have implemented programs with independence from the judiciary. **No system in mid-Michigan remains fully controlled by the judiciary as of the end of the calendar year.**

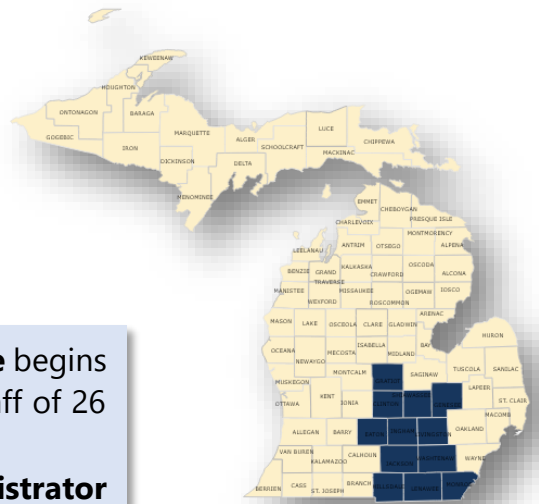


Saginaw County purchased a large law office building nearly adjacent to the courthouse and updated it to meet the needs of the new non-profit agency defender office.

South Central Michigan

\$13,356,202.28 in state funding
distributed for 13 compliance plans

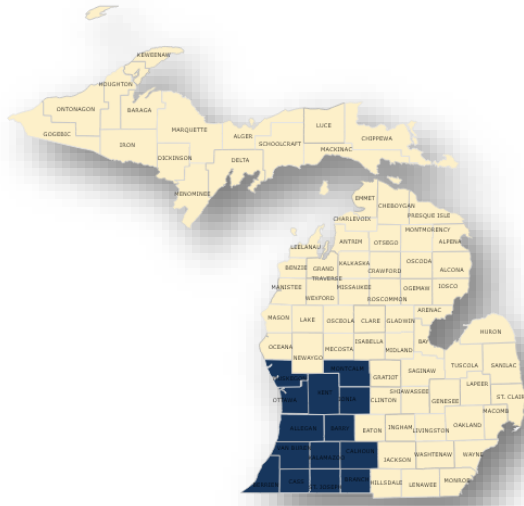
- New **Ingham County Public Defender Office** begins taking cases in March 2019, after hiring a staff of 26 attorneys;
- **Jackson hires its Public Defender Administrator** and the Jackson County Commission approves a plan to open up a countywide public defender office for the next grant cycle;
- Throughout 2019, the new **Shiawassee public defender office succeeded in winning 7 out of 8 trials**, attributing much of the success to its hands-on skill training supported by MIDC's Rural Trial Simulation Training;
- **Genesee began a counsel at first appearance program at its 6 district courts**, led by newly contracted attorney team leaders; new attorney meeting space and office hub is finalized for the county's 70+ indigent defenders in its downtown Flint district court;
- **Livingston** hires its first Chief Public Defender and by the end of the year with a team of 8 attorneys, began taking its first appointments, including **all arraignments, misdemeanors and some non-capital felonies**.



"One of the things about the indigent community is that as a constituency, they don't have a voice...They don't have very many people standing in the wings at the State Capitol. We're moving toward a model that gives them a seat at the table. Our loyalty will be entirely for our clients and it will be undivided."

-Russel Church, Ingham County
Public Defender
"In Defense of the Defenseless"
Lansing City Pulse
March 7, 2019

Western Michigan



\$14,919,118.27 in state funding
distributed for 19 compliance plans

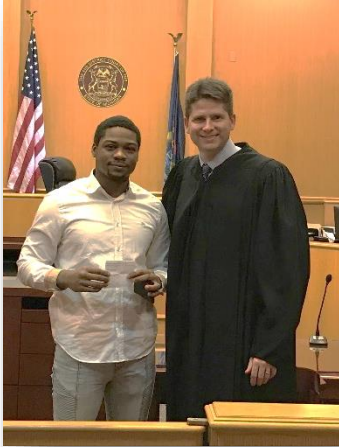
“Our justice system works best...when both sides have experienced, capable attorneys who have the necessary resources and when that happens you end up with the fairest and just results so you don’t have people falling through the cracks. It means you’re going to have fair representation.”

-David Makled, Calhoun Public Defender, *Calhoun County creates Public Defender Office so everyone can have experienced, capable defense*
Second Wave Media, November

- Prior to 2019, there were three Public Defender Offices in Western Michigan: Berrien, Kent County Office of the Defender, and Muskegon. In 2019, **additional public defender offices opened in Allegan/ VanBuren, Branch, Calhoun, Ionia, Kalamazoo, and Ottawa Counties;**
- Allegan and VanBuren counties joined forces to create a **regional Public Defender's Office**. A Chief, Deputy, and 2 staff attorneys were hired. This is a hybrid system that has attorney rosters for each county. This enabled local attorneys who historically provided indigent defense services to continue to provide these services while also incorporating new talent and ideas;
- Several systems also incorporated **Managed Assigned Counsel Administrators including Barry, Montcalm, and St. Joseph Counties**. This is the first time the judges in these systems did not hire and manage the court appointed attorneys in these systems;
- **Kalamazoo County contracted with a nonprofit agency** to provide indigent defense services for its system. This office hired 24 attorneys and a support staff that includes paralegals, secretaries, an office manager, and private investigators;
- Kent County's districts court indigent defense services greatly increased. Prior to 2019, Wyoming only spent approximately \$7,000 per year on attorney fees and only provided approximately 300 people accused of crimes with court appointed attorneys. **In the first 3 months of representation, Kent County Office of the Defender had already represented over 300 clients for this court.**

Lapeer, Macomb, Oakland, St. Clair Counties

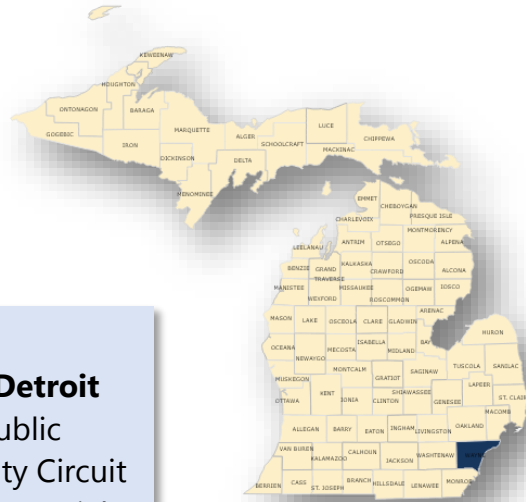
\$16,527,031.75 in state funding
distributed for 21 compliance plans



- **Macomb County** received an innovation grant award to **evaluate the feasibility of creating a public defender office**, efforts to implement those findings began at the end of the calendar year.
- Oakland County coordinates **training for attorneys and counsel at first appearance** for the every court in the county.
- Many District Courts have created programs to improve outcomes for defendants including **50th District Court in Pontiac**, one of the busiest courthouses in Oakland County. The court constructed two private meeting spaces for in-custody defendants and improved four private meeting spaces for out-of-custody defendants. Outreach efforts resulted in a **flyer to let people know that anyone with an outstanding warrant would have an attorney present at court** to assist them if they turned themselves in. This flyer went viral on social media. Since April 8, 2019, the Court has resolved 879 bench warrants. The court has also dismissed 1695 cases since implementation of the MIDC program.
- The **44th District Court in Royal Oak** created a special program to assist defendants charged with driving while their license was suspended. By the end of 2019 **approximately 800 participants have obtained/restored their licenses**.

Wayne County

\$23,300,639.40 in state funding
awarded for 25 compliance plans



- **Neighborhood Defender Service (NDS) of Detroit** began operations to provide holistic-based public defender services in a quarter of Wayne County Circuit Court cases. The NDS team includes attorneys, social workers, advocates, administrators, and investigators.
- In 2019, 19 district courts and 4 municipal courts fully implemented their compliance plans for Standards 1-4. **Many district courts shared resources for on-call attorneys to ensure that an attorney would be available for arraignments during all court hours.** Many district courts who receive pleas by mail from MDOC inmates are connecting the defendants with attorneys via Polycom before processing the pleas. This allows the defendant to consult with an attorney **to ensure that they fully understand the ramifications of the plea**, allowing them to make informed decisions.
- The **Wayne County Criminal Advocacy Program (CAP) continues to provide timely and relevant training to all Wayne County defense attorneys.** The seminars included training on implicit bias and jury selection, body worn cameras and Fourth Amendment issues, immigration and collateral consequences, specialty courts, effective use of preliminary examinations and district court practice, and sentencing advocacy tips for better outcomes.

**“This is
groundbreaking in
Michigan and
nationally...”**

-Chantá Parker, NDS Detroit
Managing Director
*A Big Boost for Indigent
Defense in Wayne County –
Neighborhood Defender
Service Opens Their Detroit
Office, The Craig Fahle Show,
November 21, 2019*

Leadership Valued in Michigan and Nationwide

On April 18, 2019 Governor Gretchen Whitmer signed an Executive Order forming **Michigan's Joint Task Force on Jail and Pretrial**

Roughly half of the people held in Michigan's jails on any given day have not been convicted of a crime and are constitutionally presumed innocent as they await trial.

Incarceration. The task force was co-chaired by Lt. Governor Garlin Gilchrest II and Michigan Supreme Court Chief Justice Bridget M. McCormack and included stakeholders from the criminal legal system. Okemos-based criminal defense attorney **Takura Nyamfukudza was appointed to represent the MIDC on this task force.** This initiative recognized that Michigan's jail population had tripled in recent years even though crimes in Michigan are at a 50-year low. The MIDC

hosted a **roundtable discussion led by PEW Charitable Trusts for criminal defense attorneys to discuss necessary changes** to the

pretrial process which

was attended by the Lt. Governor Gilchrest. Recommendations for policy and budgetary changes to increase justice-system efficiency and effectiveness will be made in 2020.



Participatory Defense

With the creation of new public defender offices and interest across the state in reform of indigent defense, Michigan is uniquely positioned to develop collaborations between public defenders and community members that can empower people who face criminal charges and their family members, improve the practice of public defender offices, and create long-standing partnerships that will create sustained change over time.

In 2019, the MIDC partnered with Silicon Valley DeBug (SVD), a California-based non-profit agency that has developed and helped implemented a model called **participatory defense** in more than 25 sites across the country.

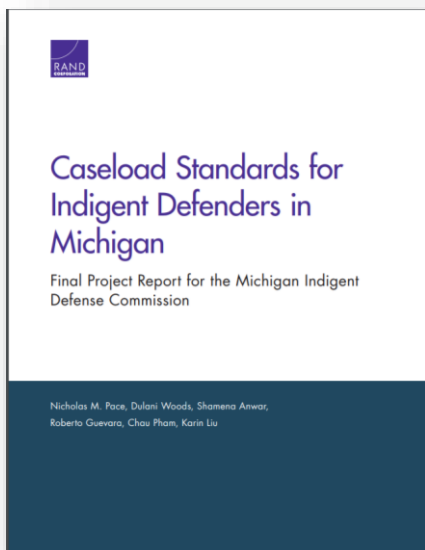
The model primarily operates through the existence of participatory defense hubs where family members and community members guide each other through the challenges of criminal legal system involvement.

Participatory defense simultaneously supports the people moving through the system – people who face criminal charges, their family members, and their communities – while also strengthening their defenses by developing relationships between communities and public defenders.

In 2019, SVD received a grant from the Public Welfare Foundation to develop and implement participatory defense hubs in two sites in Michigan. Through this project, the MIDC aims to create a replicable model for other community-based organizations and public defender offices in Michigan, with the hopes of empowering local communities, improving criminal defense representation, and ultimately shifting the tide of mass incarceration.

Reform Continues in 2020

At the end of 2019, the next standards for indigent defense remained pending approval, including Standard 6 – Indigent Defender Workloads. The Standard sets forth maximum caseloads consistent with



recommendations by the American Council of Chief Defenders, but also identified the need for a Michigan-specific weighted caseload study. To this end, the MIDC contracted with the RAND Corporation to help **determine maximum caseload standards for defense counsel representing clients in the trial level courts of the state of Michigan.** At the

end of 2019, the final recommendations were distributed to the Commission. **The report from RAND is available on the MIDC's website.**

Planning for 2020

Almost as soon as systems implemented plans in 2019, planning for 2020 was underway. The MIDC created a simplified compliance plan application and budget request form, and by the end of 2019 had approved 120 of the 124 plans submitted by trial court systems. The Commission secured over \$80 million to fund these plans, which will be combined with the unspent balance from 2019 to fully fund these plans for a 2nd year of compliance with the MIDC's standards.

Conclusion and Recommendations

The MIDC and the State of Michigan have made tremendous progress over the last five years towards ensuring the right to counsel for indigent defendants. To maintain Michigan's leadership in nationwide indigent defense reform, the Commission recommends as follows:

- The state must identify indigent defense as an integral component of a constitutional public safety system and 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 standards for indigent defense approved by the MIDC;
- The state should dedicate a restricted funding source that will at least in part, provide reliable and continuous annual funding to support indigent defense.
- The state must authorize **adequate operational funding** to the MIDC to enable it to meet its authority to provide statewide compliance and fiscal monitoring to ensure the integrity of indigent defense expenditures;
- 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;

- The MIDC will provide support to local systems for implementing the MIDC's new **grant management system** to enable efficient and accurate reporting of grant funds;
- 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