



MICHIGAN INDIGENT
DEFENSE COMMISSION

Date: Tuesday, August 17, 2021, Time: 9:00 a.m.
Michigan Bankers Association
507 S Grand Ave, Lansing, MI 48933

This meeting also be accessible by Zoom:

<https://us02web.zoom.us/j/81240704375>

Meeting ID: 812 4070 4375

One tap mobile

+19292056099, 81240704375# US (New York)

MEETING AGENDA

1. Roll call and opening remarks
2. Introduction of Commission members and guests
3. Public comment
4. Additions to agenda
5. Consent agenda (action item)
 - July 8, 2021 Special Meeting Minutes
 - FY22 MOU with Attorney General
 - Indigency Standard (minor correction to previously approved Standard)
6. Chair Report
7. Interim Executive Director Report
8. Commission Business
 - a. Committee Reports
 - Executive Committee
Chair Jeffrey Collins
 - Staff organizational chart and position revisions (action item)
 - Executive Search Committee
Gary Walker, Chair
 - Strategic Planning Committee
Christine Green, Chair
 - Training and Education Committee
Tracey Brame, Chair
 - Guidelines for Trainers and Training Providers (action item)
 - b. Submission of Comments to Michigan Supreme Court on Proposed Court Rule Changes
 - ADM File No. 2021-12 – Proposed Amendments of Michigan Court Rules Related to Standard 5 (action item)
 - ADM File No. 2021-14 – Proposed Administrative Order to Require Mandatory Submission of Case Data to the Judicial Data Warehouse (action item)
 - c. Presentation: MIDC Research and Data
Jonah Siegel, Research Director (with Jeanette Husseman)
 - d. Annual Budget Presentation (action item)
 - e. Local Share Study – final report (action item)

- f. FY21 Compliance Updates
 - FY21 Q3 Reporting
 - Budget adjustments
 - Authorization for continuation of spending (**action item**)
- g. Review of FY22 Compliance Plan and Cost Analysis Submissions (**action items**)
 - Committee reports
 - Recommendation: Approve cost analysis (*compliance plans previously approved at June 2021 MIDC meeting*)
 1. Alger County
 2. D 17 – Township of Redford
 3. D 28 - City of Southgate
 4. D 29 - City of Wayne
 5. D 38 - City of Eastpointe
 6. D 45 - City of Oak Park
 7. Ogemaw County
 8. Tuscola County
 9. Washtenaw County
 - Recommendation: Approve compliance plan and cost analysis (*plans and costs previously disapproved at June 2021 MIDC meeting*)
 10. Alcona County
 11. Alpena County
 12. Charlevoix County
 13. Crawford County
 14. D 18 - City of Westland
 15. D 39 – Cities of Roseville and Fraser
 16. D 40 - City of St Clair Shores
 17. D 41-a-2 - Charter Township of Shelby
 18. D 43-2 City of Ferndale
 19. D 61 - City of Grand Rapids
 20. Delta County
 21. Dickinson County
 22. Eaton County
 23. Emmet County
 24. Grosse Pointe Woods
 25. Hillsdale County
 26. Houghton, Baraga and Keweenaw Counties
 27. Iron County
 28. Jackson County
 29. Marquette County
 30. Montmorency County
 31. Oakland County
 32. Ontonagon County
 33. Presque Isle County
 34. St. Joseph County
- 9. Next meeting – **October 19, 2021**
- 10. Adjourn

Michigan Indigent Defense Commission Meeting Minutes

The meeting was held remotely via Zoom in compliance with the Open Meetings Act and Public Act 228 of 2020 and pursuant to the City of Lansing's state of emergency resolution #2021-081 to reduce transmission of COVID-19 and protect the health of Commissioners, MIDC staff and members of the public interested in attending the meeting. The MIDC website and meeting notice included information for members of the public on how to participate.

July 8, 2021
Time: 9:00 am

Commission Members Participating

During roll call Commissioners were asked to identify the county, city, town or village and state from which they are attending, that information is reflected below in parentheses following each Commissioner's name.

- Judge Jeffrey Collins (Wayne County, Michigan)
- Joshua Blanchard (Greenville, Montcalm County, Michigan)
- Tracy Brame (Grand Rapids, Kent County, Michigan)
- Hakim Crampton (Jackson, Jackson County, Michigan)
- Andrew DeLeeuw (Ann Arbor, Washtenaw County, Michigan)
- Judge James Fisher (Grand Rapids, Kent County, Michigan)
- Christine Green (Rapid City, Kalkaska County, Michigan)
- Margaret McAvoy (Mount Pleasant, Isabella County, Michigan)
- Cami Pendell (Lansing, Ingham County, Michigan)
- Michael Puerner, Chair, (Beaver Island, Charlevoix County, Michigan)
- Judge Kristina Robinson Garrett (Detroit, Wayne County, Michigan)
- John Shea (Dexter Township, Washtenaw County, Michigan)
- William Swor (Detroit, Wayne County, Michigan)
- Gary Walker (Chocolay Township, Marquette County, Michigan),

Commission Members Absent:

Kimberly Buddin, David Jones, James Krizan and Tom McMillin

Staff Members Participating

Loren Khogali, Shunkea Brown, Barbara Klimaszewski, Marla McCowan, Kelly McDoniel, Rebecca Mack, Deborah Mitchell, Susan Prentice-Sao, Christopher Sadler, Jonah Siegel, Nicole Smithson, Kristen Staley, Melissa Wangler and Marcela Westrate

Chair Collins called the Michigan Indigent Defense Commission ("MIDC" or "the Commission") meeting to order at 9:03 am.

Introduction of Commission members and guests

Chair Collins welcomed attendees to the meeting.

Public Comment

Chair Collins called for public comment. There were no members of the public wishing to comment.

Additions to agenda

Commissioner Swor moved that a report and resolution on behalf of the Commission be added to the agenda. Commissioner Walker seconded. The motion carried.

Judge Robinson Garrett briefly left the meeting because of a power outage.

Consent Agenda

Commissioner Puerner moved that the consent agenda containing the minutes from the June 15, 2021 meeting be adopted. Commissioner Swor seconded. The motion carried.

Chair Report

Chair Collins appointed an Executive Search Committee. Commissioner Walker is heading that committee. The other members of the committee are Chair Collins, Commissioners Brame, DeLeeuw, Green, Puerner, Judge Robinson Garrett and Commissioner Shea.

Executive Director's Report

Ms. Khogali thanked Commissioners and staff and noted that she is excited to see the work of the Commission continue. She thanked everyone for the grace and support with which the announcement of her departure was met.

Report of Executive Committee

Recommendation to appoint Interim Executive Director effective July 23, 2021

The Executive Committee is recommending the appointment of Ms. McCowan as interim director effective July 23, 2021. Ms. McCowan has indicated that she is not going to apply for the permanent position as executive director. Commissioner Walker moved that Ms. McCowan serve as interim director effective July 23 and that she return to her position after the new executive director is hired. Ms. McAvoy seconded the motion. The motion carried.

Report of Executive Search Committee

The Executive Search Committee met and has two items to bring to the full commission, the proposed job description and the date of closure for the submission of applications. The Executive Search Committee recommends that the job description be adopted with a closing date of August 15, 2021. Judge Fisher moved that the job description be adopted and that the date of closure for applications be August 15, 2021. Commissioner Swor supported. The motion carried.

Commissioner Walker indicated that any commissioner will be able to view all the applications.

Resolution of Appreciation for Executive Director Loren Khogali

Ms. McCowan presented the following resolution in tribute to Ms. Khogali:

**“Resolution of Appreciation
Michigan Indigent Defense Commission
July 8, 2021**

**Whereas,
Loren Khogali**

Skillfully served as the Executive Director of the Michigan Indigent Defense Commission from
February 2018 to July 2021;

Secured substantial funding from the Legislature each year so that the MIDC could fully fund the
approved compliance plans, these amounts included \$87 million in FY19, \$117.5 million in FY20,
and \$126.7 million in FY21;

Obtained the Department of Licensing and Regulatory Affairs’ approval of Standard 5—thereby
requiring all indigent defense programs in Michigan to be independent from the judiciary;

Oversaw the process for the MIDC’s approval of Standards 5 through 8 and the Indigency Standard;

In the midst of a global pandemic took steps to ensure the rights of indigent defendants to receive
effective representation was not compromised and on March 27, 2020, coordinated a special MIDC
meeting to address new challenges facing public defense;

Encouraged an atmosphere of collaboration, connection, and innovation while leading the MIDC
staff through 17 months of working remotely; and

Earned the utmost respect from the Commission, the MIDC’s staff, and public defense stakeholders
statewide.

**Therefore, the Michigan Indigent Defense Commission recognizes and thanks Loren
Khogali for her extraordinary service, her vision, her dedication, and her inspiring
leadership.”**

Commissioner Shea moved that the resolution be adopted as presented. Commissioner Swor seconded. The motion passed.

Commissioner Walker discussed the next steps in the Executive Search Committee’s process. The committee would like to secure some administrative support outside of the MIDC staff for the limited purpose of search process. Ms. Khogali will explore options for that support, including a temporary contract.

Commissioner Shea moved that the Commission approve spending money on a contractor for administrative assistance and that that contractor view applications through a lens of equity. Judge Fisher seconded the motion. The motion carried.

Commissioner Swor moved that the meeting be adjourned. Judge Fisher seconded. The motion carried. The meeting was adjourned at 9:44 am.

The next meeting will be held August 17, 2021, the location will be determined.

Respectfully submitted,
Marcela Westrate

LARA ~~21~~-MOU-00347

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF ATTORNEY GENERAL
LICENSING AND REGULATION DIVISION
AND
THE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN INDIGENT DEFENSE COMMISSION
FOR FISCAL YEAR 202~~1~~0-202~~1~~1: October 1, 202~~1~~0 - September 30, 202~~1~~1**

Purpose

The purpose of this Memorandum of Understanding (MOU) is to clearly define the following:

- The requirements for legal services rendered by the Department of Attorney General (AG)/Licensing and Regulation Division (LRD) to the Department of Licensing and Regulatory Affairs (LARA)/Michigan Indigent Defense Commission (MIDC) (hereinafter collectively referred to as the "parties");
- The specific amount to be paid for services rendered by AG/LRD to LARA/MIDC; and
- The budgeting and invoicing requirements for such services.

Services Regarding the Michigan Indigent Defense Commission Act

The AG/LRD shall provide legal representation and other legal services to LARA/MIDC for matters brought forth under the Michigan Indigent Defense Commission Act, 2013 PA 93, as amended. The foregoing includes:

- Attending MIDC meetings; and
- Providing legal advice related to the Michigan Indigent Defense Commission Act, and other relevant statutes, as requested by MIDC.

Estimated Budget and Payments

In return for providing the services indicated above, MIDC agrees to pay AG/LRD for services regarding the Michigan Indigent Defense Commission Act and other relevant statutes as follows:

- Personnel Costs:

Attorney (0.1 FTE)	\$ 20,000
Total Personnel Costs	\$ 20,000
- Expenses:

Other	\$ 500
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- Total Estimated Budget \$ 20,500

Commented [BM(1)]: I will need to check with my fiscal team to ensure that these dollar figures are accurate

LARA ~~224~~-MOU-00347

The personnel funds may be used for salary and fringe benefits. Any associated costs, such as transcripts, consultant costs, and travel that are incurred through the normal course of business are reimbursable under this MOU.

Upon program staff approval, LARA's Finance and Administrative Services will pay the invoice via inter-agency transaction process using the following coding structure for each agency:

<u>LARA</u>	<u>AG</u>
Agency Code: 641	Agency Code: 111
Accounting Event: IN04	Accounting Event: IN04
Accounting Template: 6412503T001	Accounting Template: 111641IDC
Dept. Object: 8140	Dept. Object: 5490

Commented [BM(2): I will need to check on our Agency codes, etc., as well.

The AG's Fiscal Management Office will submit invoices detailing the specific services provided, with supporting documentation, on a quarterly basis to: lara-ftp-sku@michigan.gov.

~~Chris Graham~~
~~Finance & Administrative Services~~
~~4th Floor, Ottawa Bldg.~~
~~Lansing, MI 48909~~

Personnel

Attorneys and support staff to be assigned are not to exceed the number of staff and the budget limit. The attorneys and support staff will be physically housed and supervised in the AG/LRD.

Assignment of Priorities

The Executive Director of the MIDC or his/her designee will determine the priorities of legal assignments. Assignments will be made through the Division Chief of LRD to support the established priorities. The parties will work together to resolve scheduling conflicts.

Reports

The AG/LRD will provide quarterly status reports of all legal assignments. The content of the reports will reflect the opened, closed, and pending status during the quarter, and other mutually agreed upon information. This report will not only keep all parties familiar with activities but will support the annual cost paid by LARA/MIDC.

Meetings will be scheduled at least quarterly with the Executive Director of MIDC to discuss quarterly reports. In addition, meetings to discuss cases will be scheduled on an as-needed basis.

Modifications

Any changes, amendments, or revisions to this MOU shall only be effective if made in writing with the written concurrence authorized by the AG/LRD and the LARA/MIDC.

Termination

This agreement shall be in full force and effect for the period specified in this MOU. This MOU may be terminated by either party by giving 60-day written notice stating the reasons for termination and the effective date.

LARA ~~21~~-MOU-00~~34~~7

Special Conditions

This MOU is conditionally approved subject to, and contingent upon, the availability of funds.

Agreement Period

This MOU is in full force and effect from October 1, 202~~1~~⁹ through September 30, 202~~1~~⁹.

DEPARTMENT OF ATTORNEY GENERAL

By: _____ Date: _____
Christina M. Grossi, Chief Deputy

By: _____ Date: _____
James Selleck, Director of Fiscal Management

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

By: _____ Date: _____
Orlene Hawks, Director

The MIDC Act requires the MIDC to “promulgate objective standards for indigent criminal defense systems to determine whether a defendant is indigent or partially indigent.” MCL 780.991(3)(e). It also directs the MIDC to “promulgate objective standards for indigent criminal defense systems to determine the amount a partially indigent defendant must contribute to [their] defense.” MCL 780.991(3)(f). The United States Supreme Court has long recognized that “[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has.” *Griffin v Illinois*, 351 US 12, 19; 76 S Ct 585; 100 L Ed 891 (1956). The MIDC is also mindful that a system of screening for indigency should not create “cumbersome procedural obstacles” for a defendant. *Alexander v Johnson*, 742 F2d 117, 124 (CA 4, 1984).

Accordingly, the MIDC proposed a minimum standard for those local funding units that elect to assume the responsibility of making indigency determinations and for setting the amount that a local funding unit could require a partially indigent defendant to contribute to their defense. The version approved by the Commission is as follows:

Definitions

As used in this Standard:

“Appointing authority” means the individual or office selected by the local funding unit that determines indigency and approves requests for counsel and/or requests for experts and investigators.

“Available assets” means funds and property in which defendant has an ownership interest and ability to liquidate that are not exempt assets.

“Basic living expenses” means costs related to those needs which must be met in order to avoid serious harm in the near future. These costs include, but are not limited to, housing, food, clothing, childcare, child support, utilities, medical insurance, other necessary medical expenses, and transportation (fares, car payments, car insurance, gasoline).

“Contribution” means “an ongoing [payment] obligation [for one’s defense costs] during the term of the appointment.” *People v Jose*, 318 Mich App 290, 298; 896 NW2d 491 (2016).

“Current monthly expenses” means those costs that defendant pays on a regular monthly basis. These costs include, but are not limited to, basic living expenses, court obligations, minimum credit card payments, loan payments, tuition payments, phone, internet, and cable. If an expense is not assessed in monthly installments but should be treated as a current monthly expense because it is a regularly occurring or long-term obligation, the expense should be converted to monthly installments.

“Exempt assets” means funds and property that defendant would be able to protect from levy and sale under execution under MCL 600.6023 if they were a judgment debtor or funds and property that defendant would be able to exempt under 11 USC 522 if they were a debtor in a bankruptcy case. Defendant must choose either the state or federal exemptions.

“Gross Income” means funds or compensation periodically received from any source during a 52-week period. Gross income includes, but is not limited to, wages, pensions, stock dividends, rents, insurance benefits, trust income, annuity payments, and public assistance.

“Indigent” means an inability to obtain competent legal representation on one’s own without substantial financial hardship to one’s self or one’s dependents.

“Local funding unit” means the governmental entity or entities listed as a grantee in the grant contract with the MIDC.

“Net income” means gross income minus those deductions required by law or as a condition of employment. These deductions include, but are not limited to, taxes, union dues, and funds withheld pursuant to a garnishment or support order.

“Partially indigent” means an inability to afford the complete cost of legal representation but an ability to contribute a monetary amount toward one’s representation.

“Prosecuting authority” means any governmental agent or entity pursuing charges against defendant.

“Public assistance” means governmental benefits or subsidies like food assistance, temporary assistance for needy families, Medicaid, disability insurance, or public housing.

“Reimbursement” means a repayment “obligation arising after the term of appointment has ended.” *Jose*, 318 Mich App at 298.

“Seasonal income” means income that is earned from regularly reoccurring employment that lasts for 26 weeks or less in any 52-week period.

“Substantial financial hardship” means an inability to meet the basic living expenses of one’s self or one’s dependents.

Indigency Determination

(a) A system must have a reasonable plan for screening for indigency which is consistent with this Standard. A plan that leaves screening decisions to the court can be acceptable.

(b) A defendant is rebuttably presumed to be indigent if defendant receives personal public assistance, earns a net income less than 200% of the federal poverty guidelines, is currently serving a sentence in a correctional institution, is less than 18 years of age, and/or is receiving residential treatment in a mental health or substance abuse facility. See MCL 780.991(3)(b).

(c) A defendant who cannot, without substantial financial hardship to themselves or to their dependents, obtain competent, qualified legal representation on their own also qualifies for appointed counsel. MCL 780.991(3)(b).

(d) Factors to be considered when determining eligibility for appointed counsel under subparagraph (c) include net income, property owned by defendant or in which they have an economic interest to the extent that it is an available asset, basic living expenses, other current monthly expenses, outstanding obligations, the number and ages of

defendant's dependents, employment and job training history, and their level of education. MCL 780.991(3)(a). In addition, the seriousness of the charges faced by defendant, whether defendant has other pending cases, whether defendant is contributing to the support and maintenance of someone other than a dependent, and local private counsel rates should also be considered. This subsection does not provide an exhaustive list of factors for the appointing authority to consider.

(e) A defendant who cannot obtain competent counsel on their own without substantial financial hardship, but who has the current or reasonably foreseeable ability to pay some defense costs, is partially indigent.

(f) A defendant must be screened for indigency as soon as reasonably possible, but a determination as to whether a defendant is partially indigent can be deferred until contribution or reimbursement is requested or ordered.

(g) Defendants who have retained counsel or who are representing themselves can request to be screened for indigency in order to qualify for expert and investigator funding.

Household and Marital Income

The appointing authority will not presume that defendant can use household income, including income of a spouse, and joint marital assets to pay defense costs unless it has information that defendant's household income and/or joint marital assets should be considered.

Joint Bank Accounts

The appointing authority will presume that defendant owns 50% of the funds in a joint bank account. Defendant must inform the appointing authority if they own more than 50% of the funds in a joint bank account. Conversely, defendant can rebut the presumption of 50% ownership by submitting a sworn statement explaining why the presumption should not apply.

Seasonal Income

If defendant earns a seasonal income, the appointing authority should consider how defendant's expected annual income compares to the federal poverty level instead of comparing defendant's current monthly income to the federal poverty level. For example, the federal poverty level for Defendant A's household is \$4,000 per month. Defendant A earns his annual income over three summer months when Defendant A makes \$9,000 to \$10,000 per month. Even though Defendant A's current monthly income is double the federal poverty level, Defendant A should be treated as someone who only makes about 75% of the federal poverty level.

Self-Employment Income

If defendant is self-employed, the appointing authority should consider defendant's adjusted gross income. Adjusted gross income is determined by deducting business expenses and any expenses required by law from gross income. An expense is a "business expense" if it is ordinary and necessary. Expenses are ordinary if they are common and accepted in defendant's trade or business. Expenses are necessary if they are helpful and appropriate for defendant's trade or business.

Educational Grants and Scholarships

A grant or scholarship, or any part thereof, is not income unless it is provided to defendant on a periodic basis and it exceeds the tuition and boarding costs paid to an educational provider. A grant or scholarship is an available asset to the extent that it exceeds defendant's tuition and boarding costs and is allowed to be used for non-tuition and boarding expenses by the grantor. For example, Defendant A receives a number of grants and scholarships at the beginning of the school year. Defendant A has no boarding costs and has \$1,000 in scholarship funds left over after paying tuition. Although the \$1,000 is not income, it is an available asset. Student loan proceeds, however, are not available assets.

Liquidation of Assets

The appointing authority can only consider defendant's income and available assets when deciding whether defendant has sufficient means to retain counsel. Under no circumstances can the appointing authority demand that defendant liquidate or mortgage an exempt asset.

Debts as Disqualifiers

The appointing authority cannot reject a request for counsel because defendant has a regularly recurring expense that the appointing authority deems excessive unless the appointing authority can show that the expense is unnecessary, can be easily eliminated, and the elimination of the expense would result in defendant having sufficient income to retain counsel. For example, if Defendant A has a \$150 monthly cellphone bill, Defendant B has a \$600 monthly car payment, and Defendant C has a \$1,700 mortgage, they might be eligible for appointed counsel.

Change in Financial Condition

The effect of a change in defendant's financial condition during the course of the case depends on whether the change is positive or negative for defendant.

(a) If defendant's financial condition declines during the case, defendant can request to be rescreened to see if counsel should be appointed or if the contribution amount should be reduced or eliminated. This rescreening should occur as soon as reasonably possible.

(b) If defendant's financial condition significantly improves during the course of the case, a redetermination of defendant's status as indigent/partially indigent should be made and a redetermination of defendant's contribution payments should occur. If defendant has sufficient income and/or available assets, defendant should make contribution payments equaling 100% of the costs of representation. There should never be a change of attorney by the court or appointing authority based solely on defendant's new ability to retain counsel.

(c) Defendant has an ongoing duty during the pendency of the case to report significant improvements in their financial condition to the appointing authority. The obligation to report a change of financial condition belongs exclusively to defendant, not their attorney.

(d) The prosecuting authority lacks standing to challenge the continuation of appointed counsel due to defendant's improved financial condition.

Appointing Authority

Except as otherwise provided, a local funding unit can designate the individual(s) or entity of its choice to review applications for the appointment of counsel provided that they agree to comply with all applicable MIDC Standards and policies and they agree to take adequate measures to safeguard the sensitive nature of the information disclosed during the application process. Only a licensed attorney, however, can review requests for experts and investigators.

Managed assigned counsel coordinators and public defender offices can serve as appointing authorities. Anyone currently employed by a court funded by the local funding unit cannot serve as an appointing authority or be employed by the appointing authority to assist with their screening responsibilities.

Obligations of Appointing Authority

(a) When defendant provides information about their financial condition under oath or affirmation, the appointing authority has no obligation to independently verify the information or require supporting documentation from defendant. This Standard, however, does not prohibit the Appointing Authority from investigating defendant's financial situation or requiring defendant to provide supporting documentation.

(b) Information about defendant's financial situation is confidential and the Appointing Authority can only disclose this information with defendant's consent, upon court order, or upon request from the MIDC or its designee for purposes of auditing, data collection, or investigation.

(c) This Standard does not impose an obligation on the Appointing Authority, assigned counsel, or the funding unit to recover defense costs from defendant.

Cost of Indigency Assessment

There is no cost for requesting an assessment for indigency. No screening costs can be passed to defendant.

Contribution

This Standard does not require local funding units to seek contribution. But if a local funding unit elects to pursue contribution in a specific case, this Standard controls, among other things, when and how much contribution can be sought.

The appointing authority cannot require an indigent defendant to contribute to the cost of their defense.

An appointing authority cannot require a partially indigent defendant to contribute to the cost of their defense if doing so would cause defendant a substantial financial hardship.

In setting the amount of contribution, the appointing authority should first subtract defendant's current monthly expenses from defendant's monthly net income. If the result is negative, the appointing authority cannot require contribution. If the result is positive, the appointing authority shall direct defendant to remit no more than 25% of the result each month. For example, Defendant A's net monthly income is \$2,000. Defendant A's current monthly expenses are \$1,600. Defendant A should contribute \$100 per month towards Defendant A's defense costs.

The amount of contribution payments cannot be based on whether Defendant could convert an available asset into cash. Nonexempt funds belonging to defendant, however, could be directed to be paid as a single lump sum payment that is no more than 25% of the total amount of the nonexempt funds. For example, Defendant A has \$500 in nonexempt funds. Defendant A could be directed to make a single contribution payment totaling \$125. Funds from Social Security and other means-tested benefits are always exempt from contribution when in the hands of the benefits recipient.

The appointing authority may adjust the amount and/or timing of contribution payments as necessary to avoid causing defendant a substantial financial hardship. Under no circumstances will defendant be required to contribute more than the actual cost of defense. If defendant fails to pay any ordered contribution, the local funding unit may seek a wage assignment.

Defendant's obligation to make contribution payments ends at sentencing or when defendant's defense costs are paid—whichever is earlier. If at sentencing the sum of

defendant's contribution payments are less than the cost of defendant's defense, the appointing authority can request ~~a reimbursement order on or after~~at defendant's sentencing. If defendant contributed more than the cost of their defense, if all charges against defendant are dismissed, or if defendant is found not guilty of all charges against them, the amount of defendant's contribution payments must be refunded to defendant. If defendant becomes indigent during the proceedings, defendant's contribution payments must be applied towards the costs of defendant's defense before they can be used to pay any assessment.

Judicial Review

(a) If defendant disagrees with the appointing authority's decision to deny defendant's request for appointed counsel, an expert, or an investigator or its decision concerning contribution, defendant can request a review of the determination by the judge assigned to defendant's case. This right of review also applies to Defendant's second or subsequent request for counsel and second or subsequent request for review of a contribution determination.

(b) Defendant can request a review by making an oral motion while on the record or by filing a Request for Review of Appointing Authority Determination form or other document seeking review with the court. The appointing authority shall provide defendant with a copy of the Request for Review of Appointing Authority Determination form with its denial of the request for appointed counsel.

(c) The prosecuting authority lacks standing to seek judicial review of the appointing authority's decision to appoint or deny counsel or the appointing authority's decision concerning contribution.

(d) Defense counsel lacks standing to seek judicial review of the appointing authority's decision to appoint counsel.

Determination of Reimbursement

The Michigan Supreme Court has determined that the U.S. Constitution does not require that defendant's foreseeable ability to pay be considered before a defendant can be directed to pay reimbursement for appointed counsel. *People v Jackson*, 483 Mich 271, 290; 769 NW2d 630 (2009). But "[t]he public would not be profited if relieved of paying costs of a particular litigation only to have imposed on it the expense of supporting the person thereby made an object of public support." *Adkins v E I DuPont de Nemours & Co*, 335 US 331, 339; 69 S Ct 85; 93 L Ed 43 (1948).

Local funding units should only seek reimbursement from defendants who have a meaningful ability to pay it. Thus, if a defendant is indigent, and is expected to remain indigent in the near future, the local funding unit should not seek any reimbursement for defense costs.

The amount of requested reimbursement cannot exceed the actual cost. Local systems with a public defender office, however, can use an average hourly cost that encompasses employee salaries, fringe benefits, and office overhead when determining attorney's fees. This average hourly cost cannot exceed the hourly rate paid to attorneys on the local system's roster of conflict attorneys for the same type of case.

The amount of a reimbursement request should not cause defendant substantial financial hardship. In deciding the amount of reimbursement to request, the local funding unit should consider defendant's current income, available assets, current monthly expenses, and dependents, as well as any reasonably anticipated changes to defendant's economic situation in the near future.

Many defendants will be unable to afford to repay their cost of defense in a lump sum payment. When that is the case, the local funding unit should suggest a payment plan based on what defendant could reasonably afford to pay towards defense costs for up to two years if defendant were convicted of a misdemeanor or up to five years if defendant were convicted of a felony. During the repayment period, the amount and/or timing of installment payments should be adjusted as necessary to avoid causing defendant a substantial financial hardship. If defendant has good cause for failing to pay the full amount of the requested defense costs by the end of the repayment period, the local funding unit should ask the court to waive the balance. Similarly, while it may be appropriate to have the probation department assist the court in collecting defense costs, it is inappropriate to make defendant's failure to pay a probation violation absent a determination that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order. See MCR 6.425(E)(3)(a).

Comments:

1. *When assessing the reasonableness of a proposed plan for indigency screening, the Commission will generally look at whether the plan ensures that each defendant's financial situation is properly considered and the cost of the screening plan. The Commission also acknowledges that a screening plan should not require screening of defendants for whom there is no possibility of incarceration upon conviction. See MCL 780.983(f)(i).*
2. *The MIDC Act provides that a rebuttable presumption of indigency arises when a defendant earns an income less than 140% of the federal poverty guideline. MCL 780.991(3)(b). Research and input from stakeholders, however, reveals that it is unlikely*

that a defendant earning an income less than 200% of the federal poverty guideline would be able to retain counsel without experiencing substantial financial hardship.

3. *A public defender office or managed assigned counsel coordinator who is screening for indigency should be mindful of the rules concerning conflicts of interest.*
4. *This Standard should be liberally construed to favor the appointment of counsel and the granting of requests for expert and investigator fees. See People v Gillespie, 41 Mich App 748, 753; 201 NW2d 104 (1972) (ambiguities about defendant's ability to retain counsel should be resolved in defendant's favor).*



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

July 20, 2021

Jeffrey Collins, Chair
Michigan Indigent Defense Commission
611 W. Ottawa, 4th Floor
Lansing, MI 48933

Re: Michigan Indigent Defense Commission Indigency Screening Standard

Dear Chair Collins:

I am in receipt of your June 24, 2021 letter requesting approval of the Michigan Indigent Defense Commission's proposed standard for determining indigency and contribution in cases where criminal charges are filed and a person requested that counsel be appointed.

In a manner consistent with your request, to coordinate with proposed amendments to the Michigan Court Rules intended to bring the court rules into alignment with recently approved MIDC standard 5 and with the statutory submission of annual compliance plans for fiscal year 2023 in April 2022, it is currently my intent to formally approve the indigency screening standard in October of this year.

Please do not hesitate to contact me for further discussion or if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Orlene Hawks".

Orlene Hawks, Director
Department of Licensing and Regulatory Affairs

From: Khogali, Loren (LARA) <KhogaliL@michigan.gov>

Sent: Thursday, July 22, 2021 9:06 PM

To:

Subject: Final ED Update

Dear Commissioners:

As the Commission heads into its August meeting, I wanted to take the opportunity to provide a few updates and to thank you for the opportunity to lead such impactful work with an exceptional team over the past few years. Many thanks to Marla for stepping into the Interim Executive Director role for the duration of the search. I hope that I will have the opportunity to see and work with many of you again. Please stay in touch if you'd like - my personal email is lorenkhogali@gmail.com and my cell phone is (734) 674-3512.

Commission Updates

- **Appointments:** Four commission seats, two representing the Senate Majority Leader and two representing the Speaker of the House, expired on April 1, 2021. Today, the Governor made appointments to two of those seats. **Tom McMillin** has been reappointed to the Commission on behalf of the Speaker of the House. **Debra Kubitskey** was appointed on behalf of the Senate Majority Leader. Ms. Kubitskey is an Assistant County Administrator in Jackson County. She will succeed Mike Puerner. Congratulations to Commissioner McMillin and welcome, Commissioner Kubitskey.

Without question, Commissioner Puerner's commitment to the mission of the Commission and his thoughtful leadership as chair of the Commission and as the immediate past-chair on the Executive Committee will be missed. Mike became Chair just as I joined the Commission in 2018 and his partnership, accessibility and support were invaluable as we adjusted to being housed in a new branch of government, worked to secure funding for compliance plans for the first time and navigated all of the new considerations that accompanied securing and distributing that funding. Thank you, Mike, for the time and work that you have dedicated to the Commission.

- **Wayne County Mediation Settlement:** Wayne County and the Commission have reached a mediation settlement agreement. The agreement has been signed by MIDC and sent to the County for presentation and approval by its Commission.

- **Indigency and Contribution Standard:** Earlier this week, the Director of LARA sent a letter indicating her intent to sign MIDC's standard on Indigency Determination and Contribution. She will sign the standard in the Fall ensure that time statutory timeline for submission of a compliance plan aligns with the fiscal year 2023 compliance planning cycle. I have included the letter for your information.

Compliance Planning Process

At its upcoming meeting, the Commission will continue the process of review compliance plans and cost analyses for fiscal year 2022 funding. At the June meeting, the Commission provided full approval to plans and cost analyses for 64 local systems. The submissions of the remaining 56 systems will be reviewed over the course of the Commission's next few meetings.

Commission staff and the local systems have continued to successfully use EGrAMS for submission and review of plans. This week, local systems with fully approved compliance plans and cost analyses received a fiscal year 2022 grant contract. This will allow grant contracts to receive approval through local government processes and be submitted for signature by MIDC and LARA once a fiscal year 2022 budget is signed. At this time, we anticipated that the budget will be signed in September.

Return to In Person Work and Remote Work

As of July 12, State of Michigan employees began the process of returning to in-person work. For MIDC, this has meant that Regional Managers have done some in-person field work, visiting courts and conducting compliance meetings, for the first time since March of 2020. We have developed some internal protocol to help guide the process for returning to in-person work. The State Court Administrative Office provides comprehensive guidance as to protocol for in person proceedings in the courts, which informs how MIDC approaches field work.

In addition, LARA has decided to offer a remote work plan option to its staff. By September 7, all persons who will continue to work remotely in full or in part, will have remote work plans in place. Most MIDC staff with Lansing as their work station will maintain at least partial remote work status.

Reform Initiatives

Several important initiatives driven by partnerships between the judicial, legislative and executive branches have been launched over the last few months. I thought that a brief overview might be helpful.

- **Justice For all Commission:** This Commission is committed to providing 100% access to the civil justice system. The MIDC Executive Director is appointed to this Commission and multiple MIDC staff members serve on committees of the Commission. The Commission's work is underway and committees have been meeting regularly to do the work that will underlie the Commission's findings.
- **Michigan Judicial Council:** The MJC was just recently launched to develop a strategic agenda for the judicial branch with a focus on equity. I circulated a survey to this Commission at Chief Justice McCormack's specific request for feedback from this Commission. The survey deadline has been extended to July 28th. If you have not yet completed the survey, you can do so [here](#).
- **Jail Reform Advisory Council:** This Council was established to oversee the implementation of the Jail and Pretrial Incarceration Task Force recommendations and the resulting legislation. Takura Nyamfukudza, who represented MIDC on the Task Force, is also appointed to the Council.
- **Juvenile Justice Task Force:** Today, the Governor announced appointments to the Task Force, which include prior MIDC commissioner Kim Thomas. This task force will focus on analyzing our juvenile justice system, while recommending practices and strategies for reform grounded in data, research, and constitutional principles.
- **Forensic Science Task Force:** This task force was formed by the Governor to study issues related to forensic science and advise the Governor and Director of the Michigan State Police on the state of forensic science in the State of Michigan. Jonathan Sacks, Director of SADO and former MIDC ED is appointed to this task force.

Transition

Marla, myself and the Executive Committee, with the support of the entire staff team, have worked to ensure that a good transition plan is in place as I conclude my time with the Commission.

The position description for Executive Director has been circulated widely within the state and nationally. The closing date for applications is **August 15th**. Please share the opportunity widely. The position and application are available on our [website](#). The

Search Committee is underway and this week, we secured some administrative support for the committee as it begins to develop its process of receiving, reviewing and evaluating candidates.

Final Thoughts

This Commission has led the most critical and widespread reform of the criminal legal system that has occurred in this state. There are now 120 public defense systems in Michigan. As the Commission searches for its next Executive Director, I hope that it considers the importance of sustainability.

Critical to the continuing success of indigent defense reform will be identifying what steps need to be taken to ensure that MIDC's operations can successfully support local indigent defense systems and leaders, manage growing general fund distributions and implement new projects and best practices that lead to innovation, better services for clients that benefit the public welfare and the most effective and efficient use of state and local funding. The Commission will need to invest in its most valuable resource – its staff.

There is also a growing opportunity to engage and partner locally and at the state level in broader state and local criminal legal system reform that impacts the people are served by local indigent defense systems. How will the Commission ensure that there is a seat at the table for public defense in statewide justice reform initiatives? How will it continue to shift the narrative at the state level to include public defenders and community members impacted by the criminal legal system as authentic partners in defining a criminal legal system that best serves the public safety?

I hope that the Commission thinks big about data and its important role in assessing the impact of the standards, developing and supporting best practices and ensuring that Michigan remains a national leader in indigent defense reform. The Michigan Supreme Court has launched initiatives focused on improving data collection to ensure that criminal justice policy decisions and the decisions of individual judges are based in accurate and accessible information. Ensuring that accurate and comprehensive legal system data is widely accessible is a primary way to end the systemic racism and economic bias that drives overincarceration and devastates our state's communities. How will the MIDC invest in supporting increased and improved criminal legal system data?

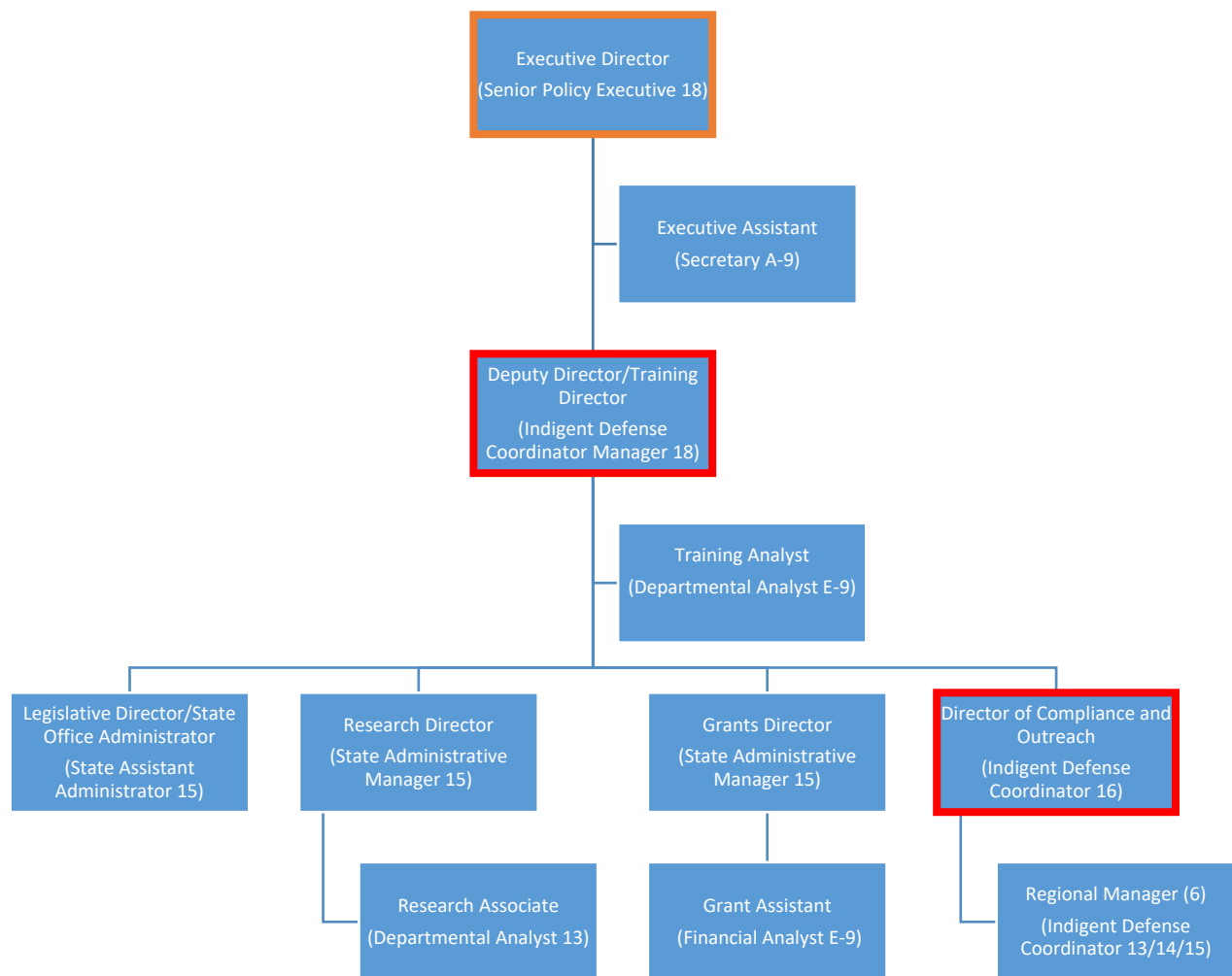
I can already see the seeds of opportunity, growth and vision that accompany transition. And even in my departure, I am excited for what comes next for the Commission.

With that, I will say thank you for the opportunity to lead such impactful work and to work with such an exceptional team. I wish you an excellent meeting on August 17th.

Take good care,
Loren Khogali

MIDC Staff Organizational Chart and Position Proposed Revisions:

- Approve the option to offer up to 20% in “critical pay” above the maximum salary described in the Executive Director job specification for Senior Policy Executive and authorize the Executive Director Hiring Committee to work with Civil Service during contracting negotiations to facilitate this pay scale with the next Executive Director candidate;
- Adjust the Indigent Defense Coordinator Manager 18 job specification to include responsibilities for deputy director;
- Create a Senior Indigent Defense Coordinator 16 position within the current Indigent Defense Coordinator job specification.



MICHIGAN CIVIL SERVICE COMMISSION
JOB SPECIFICATION

SENIOR EXECUTIVE SERVICE

JOB DESCRIPTION

Employees in this job are part of the Senior Executive Service (SES) authorized and defined by Civil Service Commission Rule 4-6. Appointments are limited to a term not to exceed two years. Incumbents may be re-appointed to additional terms. Additional conditions of employment specific to the SES are addressed in the SES rule.

There are seven classifications in this job.

Position Code Title - Senior Executive Asst Dpty Dir

Senior Executive Assistant (Deputy Director) 15

The employee in this job is responsible for advising and assisting with the direction of activities in major programmatic areas of a principal department or agency by participating in the formulation and implementation of policies and programs critical to the mission of the department or agency. The employee functions as an assistant to the deputy director of a principal department or agency or to the chief deputy director of a principal department.

Position Code Title - Senior Executive Assistant Dir

Senior Executive Assistant (Director) 16

The employee in this job is responsible for advising and assisting with the direction of activities in a principal department or agency by participating in the formulation and implementation of policies and programs critical to the mission of the department or agency. The employee functions as an assistant to the director of a principal department.

Position Code Title - Senior Policy Executive

Senior Policy Executive 18

The employee in this job is responsible for directing the activities of office-level programmatic areas of a principal department or agency by participating in the formulation and implementation of policies and programs critical to the mission of the department or agency. The employee functions as a member of the department's top policy advisory staff, committee, or council and reports directly to a chief deputy director or deputy department director.

Position Code Title - Senior Management Executive

Senior Management Executive 19

The employee in this job is responsible for directing the activities of bureau-level programmatic areas of a principal department or agency by participating in the formulation and implementation of policies and programs critical to the mission of the department or agency. The employee functions as a member of the department's top policy advisory staff, committee or council and reports directly to a state department director, chief deputy director, or deputy department director.

Position Code Title - Senior Deputy Director

Senior Deputy Director 20

The employee in this job is responsible for directing the activities of major programs in a principal department or agency by participating in the formulation and implementation of policies and programs critical to the mission of the department or agency. The employee functions as the classified deputy director of a principal department or agency and reports directly to a state department director, other deputy director, board, or commission.

Position Code Title - Senior Chief Deputy Director

Senior Chief Deputy Director 21

The employee in this job is designated by a principal department director as the sole Chief Deputy Director of the department. The position is responsible for directing the activities of all employees and programs in a principal department, with the exception of job functions that are legislatively mandated to be under the direction of the department director or approved by the State Personnel Director to be under other authority. The employee assists the department director in the formulation and implementation of policies and programs that are critical to the mission of the department. Agencies with more than 10,000 employees may establish additional Chief Deputy Directors with the approval of the State Personnel Director.

Position Code Title - Senior Director

Senior Director 22

The employee in this single position serves as the State Personnel Director reporting directly to the Civil Service Commission. The employee formulates and implements the policies and programs that are critical to the mission of the Commission.

NOTE: The duties below are not intended to fully describe any one position or to distinguish essential or nonessential job functions. Essential and position-specific job functions are found in the individual position descriptions.

JOB DUTIES

NOTE: The job duties listed are typical examples of the work performed by positions in this job classification. Not all duties assigned to every position are included, nor is it expected that all positions will be assigned every duty.

Organizes and administers the operations of a principal state department, agency, region, bureau or office.

Formulates and establishes overall department policies, priorities, perspectives, and philosophy.

Confers with legislators, governor's aides, and officials of federal, regional, state, and local agencies, professional organizations, citizens, and special interest groups on matters relating to the department's mission, policy, and operation.

Directs the activities of departmental employees in the implementation of programs and policies.

Establishes program objectives, goals, and priorities and determines operating policies and implementation methods within the context of overall agency policies and guidelines.

Reviews progress and activity reports, assesses effectiveness of operations, and determines need for improvement.

Develops budget recommendations for capital outlay, personal services, equipment, and materials.

Selects and assigns staff, assuring equal opportunity in hiring, promotion, and other employment practices; identifies staff development needs and assures that training is obtained; assures that proper labor relations and conditions of employment are maintained.

Reviews legislative analyses and proposed legislation and determines or recommends department position and course of action; interprets legislation to staff, other agencies, and the public; assures conformance of agency and operating policies, rules, guidelines, and procedures with legislative mandates.

Advises staff in the resolution of sensitive, complex, or precedent-setting situations; determines appropriate course of action; assigns responsibilities and monitors actions and responses.

Directs and reviews research in such areas of program operations as management systems development, target audience needs assessment, and program evaluation.

Advises Executive Office and governing boards or commissions of policy issues and program accomplishments.

Generates public and staff confidence, interest, and participation in departmental programs; motivates staff toward the accomplishment of program objectives; influences authorities to favorable actions regarding departmental operations.

Drafts statements, prepares reports, press releases, and speeches on program and policy issues.

Addresses citizen groups, legislative committees, members of the press, and others regarding program and policy issues.

JOB QUALIFICATIONS

Knowledge, Skills, and Abilities

Competencies-

Competencies are applied knowledge, skills, abilities, or behaviors that contribute to success in a job. They represent a blend of behavioral-based factors with traditional knowledge-based factors that are important to a particular job. The following list is not intended to cover all possible competencies, since functions and responsibilities will vary from position to position. Rather, they provide guidance for the development, expansion, and enhancement of position-specific requirements.

Strategic Vision: Includes knowledge of the nature and impact of applicable legislative, administrative, and regulatory requirements pertaining to strategic planning; knowledge of how strategic and change management planning relates to customer focus and budget formulation; and the ability to identify problems and potential concerns, to develop creative and innovative solutions and provide leadership, involving others in the decision-making process.

Resource and Program Management: Includes knowledge of the nature and impact of applicable legislation, administrative, and regulatory requirements pertaining to resource management; knowledge of the structure and management of appropriations and funds supporting the department's mission and programs; ability to implement management control and evaluation systems, and to use performance measurement to achieve objectives and results; and the ability to use management methods and systems to improve program effectiveness and customer service.

Human Resource Management: Includes knowledge of how human resource policies, procedures, and practices (e.g., reward and recognition systems) support the department's mission and functions; ability to engage in planning, recruitment, and selection to acquire and maintain a diverse and skilled work force; and the skill to delegate responsibility, build teams, and foster cooperation throughout the organization, and to optimize workforce potential to meet the department's strategic vision.

General: Includes knowledge of the basic mission of the principal department; ability to advocate positions, communicate ideas and information, and work effectively on teams in support of common objectives; and the ability to identify key internal and external contacts and maintain networks in support of departmental needs and interests, and the ability to generate understanding and support from the Executive Office, legislators, professional organizations, and governing boards or commissions.

Working Conditions*None***Physical Requirements***None***Education**

Possession of a bachelor's degree in any major.

Experience

Senior Executive Assistant (Deputy Director) 15, Senior Executive Assistant (Director) 16

Two years of professional, P11-level experience or one year of professional 12-level experience as a senior-level worker, a manager, or a staff/program specialist (includes administrative assistant) or equivalent.

Senior Policy Executive 18

Two years of professional experience as a manager or program/staff specialist or equivalent experience.

Alternate Education and Experience

Education level typically acquired through completion of high school and three years of safety and regulatory or law enforcement experience at the 14 level; or, two years of safety and regulatory or law enforcement supervisory experience at the 15 level, may be substituted for the education and experience requirements.

Senior Management Executive 19

Two years of professional, managerial experience.

Senior Director 22, Senior Chief Deputy Director 21, Senior Deputy Director 20

Two years of experience as a director of a division.

Special Requirements, Licenses, and Certifications*None*

NOTE: Equivalent combinations of education and experience that provide the required knowledge, skills, and abilities will be evaluated on an individual basis.

JOB CODE, POSITION TITLES AND CODES, AND COMPENSATION INFORMATION**Job Code**

SENIOREXC

Job Code Description

SENIOR EXECUTIVE SERVICE

Position Title

Senior Executive Asst Dpty Dir

Senior Executive Assistant Dir

Senior Policy Executive

Senior Management Executive

Senior Deputy Director

Senior Director

Position Code

SENEXDEP

SENEXDIR

SENPLEXC

SENMGEXC

SENDPDIR

SENRDIR

Pay Schedule

NERE-069P

NERE-070P

NERE-072P

NERE-073P

NERE-074P

NERE-075P

Senior Chief Deputy Director

SECHDEP

NERE-116P

JZ

01/27/2019

**MICHIGAN CIVIL SERVICE COMMISSION
JOB SPECIFICATION**

INDIGENT DEFENSE COORDINATOR MANAGER

JOB DESCRIPTION

Employees in this job function as professional managers, directing the work of Indigent Defense Coordinators who promote effective indigent defense delivery systems and ensure best practices and compliance with the Michigan Indigent Defense Commission standards. The work requires knowledge of the fundamental principles and subjects of law and the state and federal legal systems, and supervisory techniques, personnel policies, and procedures.

There is one classification in this job.

Position Code Title - Indigent Defense Coord Mgr-1

Indigent Defense Coordinator Manager 18

The employee functions as the first-line manager of Indigent Defense Coordinators.

JOB DUTIES

NOTE: The job duties listed are typical examples of the work performed by positions in this job classification. Not all duties assigned to every position are included, nor is it expected that all positions will be assigned every duty.

Evaluates and verifies employee performance through the review of completed work assignments and work techniques.

Schedules work assignments, establishes priorities, and directs the work of subordinate employees.

Selects and assigns staff, ensuring equal employment in hiring and promotion.

Plans and conducts in-service training activities for subordinate Indigent Defense Coordinators.

Directs indigent defense coordinators in working with local courts on indigent defense delivery systems, creating plans, and ensuring compliance of minimum standards.

Reviews the recommendations and decisions of staff and holds conferences on questionable issues.

Participates in meetings and conferences and speaks before groups on indigent defense and legal topics of concern.

Performs research and analysis required for the solution of major indigent defense legal problems.

Coordinates the compiling of statistical data.

May occasionally perform any task assigned to subordinate staff, consistent with any licensing or certification requirements.

Performs related work as assigned.

JOB QUALIFICATIONS

Knowledge, Skills, and Abilities

Extensive knowledge of the fundamental principles and/or subjects of law and the state legal system.

Extensive knowledge of the barriers indigent defendants face in the legal system.

Extensive knowledge of the nature and use of tools of legal study.

Extensive knowledge of legal research techniques and procedures.

Extensive knowledge of the preparation of briefs and arguments for defending complex cases before the courts.

Extensive knowledge of training methods and materials.

Extensive knowledge of the statutes and regulations of the department.

Extensive knowledge of the powers and functioning of defense attorneys.

Thorough knowledge of training and supervisory techniques.

Thorough knowledge of equal employment opportunity policies and procedures.

Thorough knowledge of employee policies and procedures and personnel practices.

Thorough knowledge of labor relations.

Ability to instruct, direct, and evaluate coordinators.

Ability to direct and motivate others.

Ability to interpret complex laws, statutes, court decisions, legal opinions, and legal documents.

Ability to present ideas clearly and effectively. Ability to assimilate quickly oral and written data, to analyze facts, and to draw logical conclusions.

Ability to communicate effectively. Ability to use judgment, tact, and discretion.

Working Conditions

None

Physical Requirements

None

Education

Possession of a Juris Doctorate degree from an accredited school of law.

Experience

Indigent Defense Coordinator Manager 18

Four years of professional experience (post-bar admission) in providing training or technical assistance to defense attorneys, or performing professional, legal work within a defense attorney's office, including two years equivalent to an Indigent Defense Coordinator P15.

Special Requirements, Licenses, and Certifications

Membership in good standing in the Michigan State Bar.

NOTE: Equivalent combinations of education and experience that provide the required knowledge, skills, and abilities will be evaluated on an individual basis.

JOB CODE, POSITION TITLES AND CODES, AND COMPENSATION INFORMATION

Job Code

INDFCDMGR

Job Code Description

INDIGENT DEFENSE COORDINATOR MANAGER

Position Title

Indigent Defense Coord Mgr-1

Position Code

INDCMGR1

Pay Schedule

NERE-079

SC

08/27/2017

MICHIGAN CIVIL SERVICE COMMISSION
JOB SPECIFICATION
INDIGENT DEFENSE COORDINATOR

JOB DESCRIPTION

Employees in this job complete a variety of assignments to provide guidance, direction and technical assistance to local units of government for the purpose of improving legal representation of adults in Michigan facing criminal charges who cannot afford an attorney. The work involves legal research and analysis, planning and development, and stakeholder collaboration to promote effective indigent defense delivery systems and ensure best practices and compliance with the Michigan Indigent Defense Commission standards.

There are three classifications in this job.

Position Code Title - Indigent Defense Coordinator-E

Indigent Defense Coordinator 13

This is the entry level. The employee carries out a range of professional indigent defense coordinator assignments while learning the methods of the work.

Indigent Defense Coordinator 14

This is the intermediate level. The employee performs an expanding range of indigent defense coordinator assignments in a developing capacity.

Indigent Defense Coordinator P15

This is the experienced level. The employee performs a full range of indigent defense coordinator assignments in a full-functioning capacity. Extensive independent judgement is used to make decisions in carrying out assignments that have substantial impact on services or programs. Availability of guidelines is limited and theories, principles, and practices of the profession must be used to determine appropriate course of action.

JOB DUTIES

NOTE: The job duties listed are typical examples of the work performed by positions in this job classification. Not all duties assigned to every position are included, nor is it expected that all positions will be assigned every duty.

Collaborates with partners in local units of government including county commissioners, administrators, staff, and other representatives on indigent defense delivery systems.

Provides assistance in the development and coordination of compliance plans for Michigan Indigent Defense Commission (MIDC) standards and best practices.

Identifies and meets with key members of the local criminal justice systems such as court staff, judges, criminal defense attorneys, prosecutors, jail staff to promote best practices in indigent defense representation and compliance with MIDC standards.

Prepares and delivers presentations about the work of the MIDC to all system stakeholders.

Consults at the local level, offering practical and innovative solutions, for indigent defense reform.

Researches best practices for indigent defense delivery systems and assists with the development of policy to support the work of the MIDC.

Assists with criminal defense delivery systems in identifying and collecting data and implementation of data collection systems.

Evaluates local systems' compliance with approved standards and recommends corrective actions if a system is not in compliance.

Monitors national indigent defense developments and policies; and keeps informed of new legislation and analyses of recent court decisions and rule changes for both state and federal laws.

Conducts research, maintains records, prepares reports and conducts correspondence related to the work as needed.

Performs related work as assigned.

JOB QUALIFICATIONS

Knowledge, Skills, and Abilities

Note: Some knowledge in the area listed is required at the entry level, developing knowledge is required at the intermediate level, and considerable knowledge is required at the experienced level.

Knowledge of the fundamental principles and subjects of law.

Knowledge of the nature and use of the tools of legal study.

Knowledge of legal research techniques and procedures.

Knowledge of the preparation of briefs and arguments for the trying of complex cases before the courts.

Knowledge of training methods and materials.

Knowledge of the state legal system.

Knowledge of the Michigan Indigent Defense Commission Act.

Knowledge of the powers and functions of defense attorneys.

Ability to interpret laws, statutes, court decisions, legal opinions and legal documents.

Ability to use judgment, tact and discretion.

Ability to present ideas clearly and effectively.

Ability to quickly assimilate oral and written data, analyze facts and draw logical conclusions.

Ability to maintain records, and prepare reports and correspondence related to the work.

Ability to communicate effectively with others, both orally and in writing.

Ability to maintain favorable public relations.

Working Conditions

Extensive travel is required.

Physical Requirements

None

Education

Possession of a Juris Doctorate degree from an accredited school of law.

Experience**Indigent Defense Coordinator 13**

No specific type or amount required.

Indigent Defense Coordinator 14

One year of professional experience in legal work equivalent to an Indigent Defense Coordinator 13 or as a defense attorney.

Indigent Defense Coordinator P15

Two years of professional experience in legal work, including one year equivalent to an Indigent Defense Coordinator; or, two years of experience as a defense attorney.

Special Requirements, Licenses, and Certifications

Membership in good standing in the Michigan State Bar.

NOTE: Equivalent combinations of education and experience that provide the required knowledge, skills, and abilities will be evaluated on an individual basis.

JOB CODE, POSITION TITLES AND CODES, AND COMPENSATION INFORMATION**Job Code**

INDDEFCDR

Job Code Description

INDIGENT DEFENSE COORDINATOR

Position Title

Indigent Defense Coordinator-E

Position Code

INDDCDRE

Pay Schedule

NERE-076

SC

08/13/2017

Guidelines for Trainers and Training Providers

Michigan Compiled Laws §780.991(4) provides that “The MIDC shall establish standards for trainers and organizations conducting training that receive MIDC funds for training and education. The standards established under this subsection must require that the MIDC analyze the quality of the training, and must require that the effectiveness of the training be capable of being measured and validated.”

Purpose

Attorneys in Michigan accepting adult indigent criminal case assignments must annually complete continuing legal education relevant to their indigent defense clients. MCL §780.991(2)(e). Every trial court funding unit in Michigan must submit a plan for compliance with the Standards, including MIDC Standard 1 - Training and Education of Defense Counsel, and a cost analysis to ensure sufficient funding to comply with the Standards. Systems shall only employ attorneys who have attended the required training described in MIDC Standard 1. *Standards for Trainers and Training Providers* shall serve as a supplement to Standard 1 and provide guidance for compliance with Standard 1.

Development of Training Programs

Training providers should be identified, selected, or approved by each funding unit to design or deliver courses for new and/or experienced attorneys that meet the objectives of Standard 1.

Program Development

The following steps should be taken when developing any program:

1. *Identify training needs and objectives and substantive content planning.* When possible, planning should be done by a group largely composed of defense attorneys. Attorneys accepting assignments should also be surveyed periodically to identify training needs. Systems may consider surveying other stakeholders, including judges, for potential topics to cover in trainings.
2. *Determine the type of training to be provided.*
 - a. Skills Training for New Attorneys. A “basic skills acquisition” course should be a two day-long (or more) program involving a live and interactive approach to learning core trial skills relevant to indigent criminal defense. Typically, these programs involve 16-24 hours of hands-on skills training. The courses do not have to be delivered on consecutive days.
 - b. Continuing Legal Education (“CLE”). The annual requirement for training should cover topics including knowledge of the law, knowledge of scientific evidence and

applicable defenses, knowledge of technology, and other topics relevant to practicing indigent criminal defense.

3. *Identify the person or group responsible for training and generally describe their responsibilities.* Trainers should adhere to the *Standards for Trainers* described below.
4. *Determine the training format and location for the training.* Sessions can be presented live and in person and/or online.
5. *Determine the training method.* Sessions can be in a plenary format, small group, and/or breakout sessions. The content for annual CLE can generally be delivered through demonstration, lecture, and/or an interactive participation method. Skills training must be live and interactive.
6. *Determine the length of the training.* The hours of training that will count towards satisfaction of Standard 1 should be communicated to attorneys prior to training through advertisement or the registration process. The training provider should take steps to ensure it is able to provide the number of CLE hours it advertises.

Record Attendance

Training providers should develop and communicate a consistent method for tracking attendance by attorneys at training events. This can include self-tracking by attendees on a form supplied by the training provider. *Reporting attendance* is addressed below.

The time spent in training should be tracked in hours, reduced in $\frac{1}{4}$ increments for any portion of the hour that the attorney chooses to be absent from the training. For sessions spanning several hours, the following model for tracking time should be used:

- For every three consecutive hours of training, a planned 15-minute break should not be deducted from the hours spent in training.
- For every eight consecutive hours of training, a planned 30 minute group or working lunch (or similar) break should not be deducted from the hours spent in training.

Local systems and training providers should communicate any penalty or consequence to attorneys who repeatedly register for a training event but who fail to attend.

Evaluations

All trainings must be evaluated by the attendees. The evaluations should seek to ensure that the objectives of the training were met and provide feedback about the quality of the training provided. A summary or synopsis of the evaluations collected must be submitted upon request to the MIDC.

Best Practices

Training objectives and a detailed agenda should be supplied or communicated to trainees prior to the training session.

All trainings for assigned counsel should incorporate client-centered representation values, and reinforce the concept that the attorney's role is to respect the stated interests of their clients.

Whenever possible, any and all relevant ethical principles should be incorporated into the training objectives and content delivered.

Standards for Trainers

General Statement

The training community must be committed to diversity and inclusion. Training providers must be devoted to creating programs with diverse participants and trainers. Systems and training providers must be dedicated to recruiting, developing, and encouraging the contributions that trainers bring in terms of their education, opinions, culture, ethnicity, race, sex, gender identity and expression, nation of origin, age, languages spoken, veteran's status, color, religion, disability, sexual orientation and beliefs.

Qualifications of Trainers

A trainer must be able to demonstrate experience or expertise in the subject matter being taught.

Expectations of Trainers

Trainers must promote an environment of encouragement and support for trainees and create a space that is safe, positive, and constructive for all participants. Trainers should prepare and provide training materials to participants in a timely manner, adhere to the agenda including specified lesson time, and answer questions or provide feedback to trainees as expected for the training format.

Reporting Attendance

Format

In order for attorneys to receive CLE credit, systems must ensure that any reporting is submitted in the format approved by the MIDC, and include the following information:

- The attorney's first and last name as it appears on the attorney's bar card. The use of nicknames, abbreviated names, and lack of Jr & Sr designations is not permitted.

- The attorney's P#.
- The trainer/training provider. For example: CDAM, SADO, NAPD, Bar Association, PD Office, or individual(s).
- The type of training: skills training or annual CLE.
- The format of the training, whether in person with location, online, or recorded. For recorded trainings, the date of the original recording must be provided.
- The accurate number of hours spent in training, recorded in 1/4 hour increments for any portion of the hour that the attorney chooses to be absent from the training.
- ANY CLE information that is submitted with incorrect/incomplete/ineligible information will be returned to sender (individual, office, system or provider).

Timing

Documentation of attendance not submitted to the MIDC within 30 days after completion of the course(s) may be invalidated.

False Reporting

An attorney intentionally misreporting the time spent in training may be reported by the MIDC to the Attorney Grievance Commission.

Comments:

1. *The MIDC's Director of Training, Outreach and Support should be used as a resource to assist in compliance with these standards.*
2. *Practical experience such as serving as a second chair during trial should not be counted towards the annual CLE requirement of MIDC Standard 1 but may be considered among an attorney's qualifications as set forth in MIDC Standard 7.*
3. *The MIDC discourages any general policy limitation on the number of online events that an attorney may attend each calendar year.*
4. *MIDC Standard 1 states that attorneys shall have reasonable knowledge of substantive the law, scientific evidence and applicable defenses, and technology. ABA Principle 4 – 1.12:*
https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/



MICHIGAN INDIGENT
DEFENSE COMMISSION

August __, 2021

Larry S. Royster
Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909

Submitted via email to:
ADMcomment@courts.mi.gov

RE: ADM File No. 2021-12—Proposed Amendments of MCR 2.117, 3.708, 3.951, 6.005, 6.104, 6.445, 6.610, 6.625, 6.905, 6.907, 6.937, and 6.938

Dear Mr. Royster:

We are writing to provide context and additional information in support of the proposed court rule changes.

The U.S. Supreme Court has explained that an accused must receive the services of an effective and independent advocate in order to have a fair trial. *Polk County v Dodson*, 454 US 312, 322; 102 S Ct 445; 70 L Ed 2d 509 (1981). Judges having control over which attorneys receive indigent defense assignments can “compromise[] the integrity of the attorney-client relationship and work[] to the detriment of indigent defendants by providing them with counsel whose professional judgment may be influenced by concerns that do not affect counsel for clients with financial means. . . . [Court-appointed d]efense attorneys (especially those who have practiced in front of the same judiciary for long periods of time) instinctively understand that their personal income is tied to ‘keeping the judge happy.’” National Legal Aid & Defender Association, *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis* (June 2008), p 39. See also ABA Ten Principles of a Public Defense Delivery System (2002).

On October 29, 2020, the Michigan Department of Licensing and Regulatory Affairs approved MIDC Minimum Standard 5. This Standard seeks to ensure appointed counsel’s independence by (1) removing the selection, appointment, and payment of indigent defense counsel from the judiciary and (2) allowing funding units to resolve requests for expert and investigative assistance. In accordance with the MIDC Act, funding units submitted grant requests with compliance plans explaining how they will comply with Standard 5 on April 27, 2021. The new grant year will start on October 1, 2021.

The proposed changes to the court rules essentially fall within one of the following categories:

Mr. Larry S. Royster
 August ____, 2021
 Page Two

1. Changes to reflect the fact that the local funding units make assignments of counsel. Rules with this type of change include MCR 2.117, 3.708, 3.951, 6.005, 6.104, 6.445, 6.610, 6.625, 6.905, 6.907, 6.937, and 6.938.
2. Changes to reflect the fact that some local funding units initially determine indigency. Rules with this type of change include MCR 6.005 and 6.625. Additionally, the proposed change to MCR 6.005(B)(5) adopts the rebuttable presumptions of indigency listed in the MIDC's Indigency Standard.
3. Changes to reflect the fact that MIDC Minimum Standard 4 provides for counsel at first appearance and to assist with the implementation of this standard. Rules with this type of change include MCR 2.117, 3.951, 6.005, 6.104, 6.445, and 6.610.

The proposed rule changes are needed to confer on appointed counsel the independence from the judiciary enjoyed by the prosecution and retained counsel. The proposed rule changes relieve the pressure—real or imagined—on appointed counsel to make case decisions that ensure continued appointments from the court. By increasing independence from the judiciary, expanding the presumptions on who is indigent, and promoting the use of counsel at arraignments, the proposed rule changes will hopefully result in better outcomes for impoverished individuals.

Thank you for your consideration of the proposed rule changes. The MIDC is very grateful that the courts have been such invaluable partners in achieving the goals of the MIDC Act. Please let me know if we can be of further assistance.

Sincerely,

/s/ Nicole M. Smithson

Nicole M. Smithson, Regional Manager
 Michigan Indigent Defense Commission
 Email: smithsonn@michigan.gov

/s/ Marla R. McCowan

Marla R. McCowan, Interim Executive Director
 Michigan Indigent Defense Commission
 Email: mccowanm@michigan.gov

Order

**Michigan Supreme Court
Lansing, Michigan**

May 19, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2021-12

Brian K. Zahra

David F. Viviano

Richard H. Bernstein

Elizabeth T. Clement

Megan K. Cavanagh

Elizabeth M. Welch,
Justices

Proposed Amendments of
Rules 2.117, 3.708, 3.951,
6.005, 6.104, 6.445, 6.610,
6.625, 6.905, 6.907, 6.937,
and 6.938 of the Michigan
Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 2.117, 3.708, 3.951, 6.005, 6.104, 6.445, 6.610, 6.625, 6.905, 6.907, 6.937, and 6.938 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for public hearing are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover]

Rule 2.117 Appearances

(A) [Unchanged.]

(B) Appearance by Attorney.

(1)-(2) [Unchanged.]

(3) Appearance by Notice of Appointment.

(a) In some actions, an appointing authority independent of the judiciary determines the attorney that will represent a party for the entirety of the action. In some actions, an appointing authority independent of the judiciary determines that an attorney will represent a party for a single hearing—like an arraignment.

(b) In actions where an attorney is appointed for the entirety of the action, the appointing authority's notice of appointment constitutes an appearance on behalf of the appointed attorney.

(c) In actions where an attorney is appointed for a single hearing, the attorney should orally inform the court of the limited appointment at the time of the hearing. It is not necessary for the appointing authority to file an order of appointment or for the attorney to file an appearance.

(43) [Renumbered but otherwise unchanged.]

(C) Duration of Appearance by Attorney.

(1)-(2) [Unchanged.]

(3) In appointed cases, substitute counsel shall file an appearance with the court after receiving the assignment from the appointing authority.

(43) [Renumbered but otherwise unchanged.]

(D)-(E) [Unchanged.]

Rule 3.708 Contempt Proceedings for Violation of Personal Protection Orders

(A)-(C) [Unchanged.]

(D) Appearance or Arraignment; Advice to Respondent. At the respondent's first appearance before the circuit court, whether for arraignment under MCL 764.15b, enforcement under MCL 600.2950, 600.2950a, or 600.1701, or otherwise, the court must:

(1)-(2) [Unchanged.]

(3) advise the respondent that he or she is entitled to a lawyer's assistance at the hearing and, if the court determines it might sentence the respondent to jail, that the court, or the local funding unit's appointing authority if the local funding unit has determined that it will provide representation to respondents alleged to have violated a personal protection order, will appoint a lawyer at public expense if the individual wants one and is financially unable to retain one,

- (4) if requested and appropriate, appoint a lawyer or refer the matter to the appointing authority,

(5)-(6) [Unchanged.]

(E)-(I) [Unchanged.]

Rule 3.951 Initiating Designated Proceedings

- (A) Prosecutor-Designated Cases. The procedures in this subrule apply if the prosecuting attorney submits a petition designating the case for trial in the same manner as an adult.

- (1) [Unchanged.]

- (2) Procedure.

- (a) The court shall determine whether the juvenile's parent, guardian, or legal custodian has been notified and is present. The arraignment may be conducted without a parent, guardian, or legal custodian, provided a guardian ad litem or attorney appears with the juvenile. Attorney appointments, even if just for the arraignment, are to be done by the court's local funding unit's appointing authority.

- (b) The court shall read the allegations in the petition and advise the juvenile on the record in plain language:

- (i) of the right to an attorney at all court proceedings, including the arraignment~~pursuant to MCR 3.915(A)(1);~~

- (ii)-(vi) [Unchanged.]

- (c)-(d) [Unchanged.]

- (3) [Unchanged.]

- (B) Court-Designated Cases. The procedures in this subrule apply if the prosecuting attorney submits a petition charging an offense other than a specified juvenile violation and requests the court to designate the case for trial in the same manner as an adult.

- (1) [Unchanged.]

(2) Procedure.

- (a) The court shall determine whether the juvenile's parent, guardian, or legal custodian has been notified and is present. The arraignment may be conducted without a parent, guardian, or legal custodian, provided a guardian ad litem or attorney appears with the juvenile. Attorney appointments, even if just for the arraignment, are to be done by the court's local funding unit's appointing authority.
- (b) The court shall read the allegations in the petition, and advise the juvenile on the record in plain language:
 - (i) of the right to an attorney at all court proceedings, including the arraignment~~pursuant to MCR 3.915(A)(1);~~
 - (ii)-(vii) [Unchanged.]
- (c)-(d) [Unchanged.]

(3) [Unchanged.]

Rule 6.005 Right to Assistance of Lawyer; Advice; Appointment for Indigents; Waiver; Joint Representation; Grant Jury Proceedings.

- (A) Advice of Right. At the arraignment on the warrant or complaint, the court must advise the defendant
 - (1) of entitlement to a lawyer's assistance at all ~~subsequent~~ court proceedings, and
 - (2) that the ~~defendant is entitled to~~court will appoint a lawyer at public expense if the defendant wants one and is financially unable to retain one.

The court must ~~ask~~question the defendant ~~to determine~~ whether the defendant wants a lawyer and, if so, whether the defendant is financially unable to retain one.

- (B) Questioning Defendant About Indigency. If the defendant requests a lawyer and claims financial inability to retain one, the court must determine whether the defendant is indigent unless the court's local funding unit has designated an appointing authority in its compliance plan with the Michigan Indigent Defense Commission. If there is an appointing authority, the court must refer the defendant to the appointing authority for indigency screening. If there is no appointing authority, or if the defendant seeks judicial review of the appointing

authority's determination concerning indigency, t~~The~~ court's determination of indigency must be guided by the following factors:

(1)-(3) [Unchanged.]

(4) availability and convertibility, without undue financial hardship to the defendant and the defendant's dependents, of any personal or real property owned;~~and~~

(5) the rebuttable presumptions of indigency listed in the MIDC's indigency standard; and

(65) [Renumbered but otherwise unchanged.]

The ability to post bond for pretrial release does not make the defendant ineligible for appointment of a lawyer. The court reviews an appointing authority's determination of indigency de novo and may consider information not presented to the appointing authority.

(C) [Unchanged.]

(D) Appointment or Waiver of a Lawyer. ~~Where~~If the court makes the determination~~determines~~ that ~~at~~the defendant is financially unable to retain a lawyer, it must promptly refer the defendant to the local indigent criminal defense system's appointing authority for appointment of a lawyer~~appoint a lawyer and promptly notify the lawyer of the appointment~~. The court may not permit the defendant to make an initial waiver of the right to be represented by a lawyer without first.

(1)-(2) [Unchanged.]

The court should encourage any defendant who appears without counsel to be screened for indigency and potential appointment of counsel.

(E) Advice at Subsequent Proceedings. If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding (e.g., preliminary examination, arraignment, proceedings leading to possible revocation of youthful trainee status, hearings, trial or sentencing) need show only that the court advised the defendant of the continuing right to a lawyer's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. Before the court begins such proceedings,

(1) [Unchanged.]

(2) if the defendant requests a lawyer and is financially unable to retain one, the court must refer the defendant to the local indigent criminal defense system's appointing authority for the appointment of~~appoint~~ one; or

(3) [Unchanged.]

The court may refuse to adjourn a proceeding for the appointment of~~to appoint~~ counsel or allow a defendant to retain counsel if an adjournment would significantly prejudice the prosecution, and the defendant has not been reasonably diligent in seeking counsel.

(F) Multiple Representation. When two or more indigent defendants are jointly charged with an offense or offenses or their cases are otherwise joined, the local indigent criminal defense system~~court~~ must appoint separate lawyers unassociated in the practice of law for each defendant. Whenever two or more defendants who have been jointly charged or whose cases have been joined are represented by the same retained lawyer or lawyers associated in the practice of law, the court must inquire into the potential for a conflict of interest that might jeopardize the right of each defendant to the undivided loyalty of the lawyer. The court may not permit the joint representation unless:

(1)-(3) [Unchanged.]

(G)-(H) [Unchanged.]

(I) Assistance of Lawyer at Grand Jury Proceedings.

(1) [Unchanged.]

(2) The prosecutor assisting the grand jury is responsible for ensuring that a witness is informed of the right to a lawyer's assistance during examination by written notice accompanying the subpoena to the witness and by personal advice immediately before the examination. The notice must include language informing the witness that if the witness is financially unable to retain a lawyer, the chief judge in the circuit court in which the grand jury is convened will on request refer the witness to the local indigent criminal defense system for appointment of an attorney~~appoint one for the witness~~ at public expense.

Rule 6.104 Arraignment on the Warrant or Complaint

(A) Arraignment Without Unnecessary Delay. Unless released beforehand, an arrested person must be taken without unnecessary delay before a court for arraignment in accordance with the provisions of this rule, or must be arraigned without unnecessary delay by use of two-way interactive video technology in accordance with MCR 6.006(A). The arrested person is entitled to the assistance of an attorney at arraignment unless

(1) the arrested person makes an informed waiver of counsel or

(2) the court issues a personal bond and will not accept a plea of guilty or no contest at arraignment.

(B)-(D) [Unchanged.]

(E) Arraignment Procedure; Judicial Responsibilities. The court at the arraignment must

(1) [Unchanged.]

(2) if the accused is not represented by a lawyer at the arraignment, advise the accused that

(a)-(c) [Unchanged.]

(d) if the accused does not have the money to hire a lawyer, the local indigent criminal defense system~~court~~ will appoint a lawyer for the accused;

(3) advise the accused of the right to a lawyer at all ~~subsequent~~ court proceedings ~~and, if appropriate, appoint a lawyer;~~

(4)-(6) [Unchanged.]

The court may not question the accused about the alleged offense or request that the accused enter a plea.

(F)-(G) [Unchanged.]

Rule 6.445 Probation Revocation

(A) [Unchanged.]

(B) Arraignment on the Charge. At the arraignment on the alleged probation violation, the court must

(1) [Unchanged.]

(2) advise the probationer that

(a) [Unchanged.]

(b) the probationer is entitled to a lawyer's assistance at the hearing and at all ~~subsequent~~ court proceedings, including the arraignment on the violation/bond hearing, and that a lawyer~~the court~~ will be appointed~~a lawyer~~ at public expense if the probationer wants one and is financially unable to retain one,

(3) if requested and appropriate, refer the matter to the local indigent criminal defense system's appointing authority for appointment of a lawyer~~appoint a lawyer~~,

(4)-(5) [Unchanged.]

(C)-(H) [Unchanged.]

Rule 6.610 Criminal Procedure Generally

(A)-(C) [Unchanged.]

(D) Arraignment; District Court Offenses

(1) Whenever a defendant is arraigned on an offense over which the district court has jurisdiction, the defendant must be informed of

(a)-(b) [Unchanged.]

(c) the defendant's right

(i) to the assistance of an attorney at all court proceedings, including arraignment, and to a trial;

(ii)-(iii) [Unchanged.]

The information may be given in a writing that is made a part of the file or by the court on the record.

(2) [Unchanged.]

(3) The right to the assistance of an attorney, to an appointed attorney, or to a trial by jury is not waived unless the defendant

(a)-(b) [Unchanged.]

If the defendant has not waived the right to counsel, the court must refer the matter to the Appointing Authority for the assignment of counsel.

(4) [Unchanged.]

(E)-(F) [Unchanged.]

(G) Sentencing.

(1)-(3) [Unchanged.]

(4) Immediately after imposing a sentence of incarceration, even if suspended, the court must advise the defendant, on the record or in writing, that:

(a) if the defendant wishes to file an appeal and is financially unable to retain a lawyer, the local indigent criminal defense system's appointing authority~~court~~ will appoint a lawyer to represent the defendant on appeal, and

(b) [Unchanged.]

(H)-(I) [Unchanged.]

Rule 6.625 Appeal; Appointment of Appellate Counsel

(A) [Unchanged.]

(B) If the court imposed a sentence of incarceration, even if suspended, and the defendant is indigent, the local indigent criminal defense system's appointing authority~~court~~ must ~~enter an order appointing~~ a lawyer if, within 14 days after sentencing, the defendant files a request for a lawyer or makes a request on the record. If the defendant makes a request on the record, the court shall inform the appointing authority of the request that same day. Unless there is a postjudgment

motion pending, the ~~appointing authority~~~~court~~ must ~~act~~~~rule~~ on a defendant's request for a lawyer within 14 days after receiving it. If there is a postjudgment motion pending, the ~~appointing authority~~~~court~~ must ~~act~~~~rule~~ on the request after the court's disposition of the pending motion and within 14 days after that disposition. If a lawyer is appointed, the 21 days for taking an appeal pursuant to MCR 7.104(A)(3) and MCR 7.105(A)(3) shall commence on the day of the appointment.

- (C) If indigency was not previously determined or there is a request for a redetermination of indigency, the court shall make an indigency determination unless the court's local funding unit has designated this duty to its appointing authority in its compliance plan with the Michigan Indigent Defense Commission. The determination of indigency and, if indigency is found, the appointment of counsel must occur with 14 days of the request unless a postjudgment motion is pending. If there is a postjudgment motion pending, the appointing authority must act on the request after the court's disposition of the pending motion and within 14 days after that disposition.
- (D) If a lawyer is appointed, the 21 days for taking an appeal pursuant to MCR 7.104(A)(3) and MCR 7.105(A)(3) shall commence on the day the notice of appointment is filed with the court.

Rule 6.905 Assistance of Attorney

- (A) [Unchanged.]
- (B) ~~Court~~-Appointed Attorney. Unless the juvenile has a retained attorney, or has waived the right to an attorney, the magistrate or the court must refer the matter to the local indigent criminal defense system's appointing authority for appointment of~~appoint~~ an attorney to represent the juvenile.

(C)-(D) [Unchanged.]

Rule 6.907 Arraignment on Complaint or Warrant

- (A)-(B) [Unchanged.]
- (C) Procedure. At the arraignment on the complaint and warrant:
- (1) The magistrate shall determine whether a parent, guardian, or an adult relative of the juvenile is present. Arraignment may be conducted without the presence of a parent, guardian, or adult relative provided the local funding unit's appointment authority~~magistrate~~ appoints an attorney to

appear at arraignment with the juvenile or provided an attorney has been retained and appears with the juvenile.

(2) [Unchanged.]

Rule 6.937 Commitment Review Hearing

(A) Required Hearing Before Age 19 for Court-Committed Juveniles. The court shall schedule and hold, unless adjourned for good cause, a commitment review hearing as nearly as possible to, but before, the juvenile's 19th birthday.

(1) [Unchanged.]

(2) Appointment of an Attorney. The local funding unit's appointing authority~~court~~ must appoint an attorney to represent the juvenile at the hearing unless an attorney has been retained or is waived pursuant to MCR 6.905(C).

(3)-(4) [Unchanged.]

(B) Other Commitment Review Hearings. The court, on motion of the institution, agency, or facility to which the juvenile is committed, may release a juvenile at any time upon a showing by a preponderance of evidence that the juvenile has been rehabilitated and is not a risk to public safety. The notice provision in subrule (A), other than the requirement that the court clearly indicate that it may extend jurisdiction over the juvenile until the age of 21, and the criteria in subrule (A) shall apply. The rules of evidence shall not apply. The local funding unit's appointing authority~~court~~ must appoint an attorney to represent the juvenile at the hearing unless an attorney has been retained or the right to counsel waived. The court, upon notice and opportunity to be heard as provided in this rule, may also move the juvenile to a more restrictive placement or treatment program.

Rule 6.938 Final Review Hearings

(A)-(B) [Unchanged.]

(C) Appointment of Counsel. If an attorney has not been retained or appointed to represent the juvenile, the local funding unit's appointing authority~~court~~ must appoint an attorney and the court may assess the cost of providing an attorney as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(D)-(E) [Unchanged.]

Staff comment: The proposed amendments would generally shift the responsibility for appointment of counsel for an indigent defendant in a criminal proceeding to the local funding unit's appointing authority. These proposed amendments were submitted by the Michigan Indigent Defense Commission, and are intended to implement recently-approved Standard Five of the MIDC Standards.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by September 1, 2021, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-12. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 19, 2021

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk



MICHIGAN INDIGENT
DEFENSE COMMISSION

August __, 2021

Larry S. Royster
Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909

Submitted via email to:
ADMcomment@courts.mi.gov

RE: ADM File No. 2021-14—Mandatory Submission of Case Data to the Judicial Data Warehouse

Dear Mr. Royster:

I am writing in support of an Administrative Order that would require mandatory submission of case data to the Judicial Data Warehouse.

In Michigan, criminal legal system data has historically been highly decentralized, and as a result, it is difficult for stakeholders to access and analyze data. The Judicial Data Warehouse (JDW) is the most centralized criminal legal system database that currently exists in the state, thus making it a critical component of building a comprehensive dataset across the system. The Michigan Indigent Defense Commission (MIDC) regularly utilizes data from the JDW in its assessment of how local systems are complying with required minimum standards for the delivery of public defense services, but our ability to use the data is considerably hampered by the current state of data. Although almost all trial courts currently submit data to the JDW, key data elements are missing or inconsistent, making it impossible to conduct rigorous analyses without manually supplementing the data from other sources. Proposed Administrative Order No. 2021-X takes an important first step in ensuring the accuracy and consistency of data in the JDW and, as such, the MIDC is in full support.

Sincerely,

/s/Jonah Siegel

Dr. Jonah Siegel, Research Director
Michigan Indigent Defense Commission
Email: SiegelJ2@michigan.gov

Order

**Michigan Supreme Court
Lansing, Michigan**

April 14, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2021-14

Brian K. Zahra

David F. Viviano

Proposed Administrative
Order No. 2021-X

Richard H. Bernstein

Elizabeth T. Clement

Megan K. Cavanagh

Elizabeth M. Welch,
Justices

Mandatory Submission of
Case Data to the Judicial
Data Warehouse

On order of the Court, this is to advise that the Court is considering the adoption of an Administrative Order that would require mandatory submission of case data to the Judicial Data Warehouse. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

Administrative Order No. 2021-X – Mandatory Submission of Case Data to the Judicial Warehouse

For two decades, the Judicial Data Warehouse has been an essential tool allowing users to locate trial court records from throughout the state, informing judicial decisions, enhancing court administration, improving public policy through data-driven research, and promoting transparency.

Nearly all trial courts provide a daily or weekly feed of case-level data to the JDW, but frequently, certain data elements are missing or reported inconsistently by different courts, and several courts do not participate at all, creating problematic data gaps. To address these problems, courts should be required to submit data in a uniform manner and across all courts. Doing so will ensure the JDW contains uniformly reported data that will be more useful to courts, law enforcement, researchers, and other users. In addition, a

more complete database will relieve courts of the requirement to submit certain reports that are currently prepared manually or with special programming, and ultimately is intended to be a resource for the general public about how courts in Michigan operate.

Therefore, on order of the Court, pursuant to 1963 Const, Art VI, §4, which provides for the Supreme Court's general superintending control over all state courts, all trial courts must submit all case data including nonpublic and financial records to the Judicial Data Warehouse in a format and frequency defined by the SCAO . This order replaces all existing Memoranda of Understanding between SCAO and any trial courts regarding the JDW.

This order shall remain in effect until further order of the Court.

Staff Comment: This administrative order would make it mandatory for all courts to submit case information to the Judicial Data Warehouse in a uniform manner as required by SCAO.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by August 1, 2021, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-14. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 14, 2021

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk



MICHIGAN INDIGENT DEFENSE COMMISSION

To: MIDC Commissioners

From: Marla McCowan, Interim Executive Director & Marcela Westrate, Legislative Director

Date: August 9, 2021

MIDC Internal Operating Procedures require that the Executive Director “prepare a proposed annual budget for Commission approval no later than the August meeting of the proceeding fiscal year.” MIDC IOP, Sec. III(A)(3). The FY22 budget process is on-going; a budget for FY22 has not yet been adopted. The attached draft spending plan assumes an appropriation equal to the Governor’s FY22 executive budget recommendation.

Budget planning for fiscal year 2022 began in the late summer/early fall of 2020. The process reflected uncertainty about the impact of COVID-19 on the State’s budget, MIDC operations and local systems’ indigent defense grants. Fortunately, beginning with the revenue estimating conference in May 2021, reported state revenues are much higher than anticipated. The FY22 budget should be finalized by September 30th. Once the budget is signed, MIDC will work with LARA’s Financial and Administrative Services staff to complete a spending plan for FY22.

Overview

The Commission’s budget consists of two line items, one for the office’s operational budget and a second for grants to local funding units.

The Governor’s FY22 Executive Budget Recommendation (EBR) included a recommended appropriation of **\$2,699,400** for operations. There is a slight decrease in this line compared to the current fiscal year; that decrease is due to a reduction in the cost of benefits across state government. The EBR allocated **\$148.9 million** for compliance grants to local funding units. This reflects an increase of \$31.4 million from FY21, which includes a **\$19,350,000** general fund increase for ongoing compliance with minimum standards 1-4 and **\$12,000,000** for compliance with minimum standard 5.

In FY19, \$86.9 million was distributed in grant funding to local funding units. In FY20, \$80.6 million was appropriated and in FY21, \$117.4 million. In FY21, the Commission approved state funding for local system compliance plans totaling \$126,743,000. Though the total state funding approved by the Commission for FY21 compliance plans exceeded the appropriation, the difference was met through unexpended funds from local funding units’ FY19 compliance grants. Approximately \$5 million of the FY20 grant funding was not distributed due to the amount of unexpended grant funds and was placed in a work project to offset FY21 grants.

FY22 Proposed Budget

Attached is a proposed budget for FY22 based on the Governor's Executive Budget Recommendation, which was passed by the House of Representatives but has not been approved by the Senate.

Employee Wages and Benefits:

This is the most significant portion of MIDC's budget. MIDC is allocated 16.0 FTEs. It currently maintains 13 FTEs with two positions vacant but funded in the budget (the Executive Director position and the Administrative Assistant position that became vacant when Ms. Mitchell was promoted to the Training Analyst position). The FY22 employee wages and benefits lines assumes full-year funding for 15 FTEs.

On October 1, employees will receive a 2% increase in salary. A second 1% increase is scheduled to go into effect on April 1, 2022. Several MIDC staff members are eligible to receive automatic step increases pursuant to the Michigan Civil Service Commission's schedule, estimates for these increases is included in these lines.

The Executive Committee will make a recommendation to the Commission to modify the organizational chart, which will be discussed at the August meeting. The changes associated with this modification have not been included in the FY22 proposed budget. Discussions with LARA will continue after the Commission's vote on this issue.

Travel (employee and commissioner): Most travel costs are regional staff traveling statewide for meetings with local funding units and court watching. FY21 spending reflects minimal travel expenditures because of COVID. Travel will resume in FY22 and we will work with LARA to determine an appropriate travel amount.

Lease: MIDC staff relocated to the Ottawa building in September of 2020. The cost of the lease in the Ottawa Building is \$43,000.44 annually (\$3,583.37/month).

Attorney General Services: The MIDC contracts annually with the Attorney General for legal services. The current Memorandum of Understanding allows for up to \$20,000. The process of finalizing an MOU for FY22 is underway. No significant changes are anticipated and the cost is incorporated into the all other costs line.

The EBR included \$75,000 for annual maintenance for the MIDC's new grant management system. Those funds are in LARA's Information Technology Project and Services line item.

Compliance Grants to Local Systems

The FY22 Executive Budget allocates \$148.9 million for grants to local systems to fund compliance with minimum standards 1-5. To date, 64 of 120 compliance plans and cost analyses have been fully approved, totaling \$57,440,654 in state grant funding.

In FY21, \$117.4 million was appropriated to fund 120 compliance grants to local systems. The total cost of state funding approved by the Commission in FY21 was \$126,743,000. The FY20 unexpended funds as reported by the local funding units exceeded the difference between the FY21 appropriation and the FY21 grant total. While MIDC continues to reconcile FY20 reporting, including unexpended balances, the estimated unexpended balance for FY20 is upwards of \$40 million. The significant unexpended balance appears to be largely related to the impact of COVID on the courts and the criminal legal system.

It is likely that there will again be a significant unexpended balance from FY21 that will offset FY22 grants. Using a conservative estimate for fourth quarter spending, we are estimating 74% of the FY21 appropriation for compliance grants will be spent by the end of the fiscal year. MIDC staff continues to work with local systems to assess the impact of backlogged criminal cases and the potential impact on local systems' budgets in FY22.

Other Aspects of MIDC Budget

Work Projects: The MIDC maintains two work projects with specific purposes. Work projects must be renewed by the legislature each year. MIDC staff has been working with LARA to renew the projects below.

A 2018 work project with a current balance of \$125,000 funded a portion of the grant management system development and implementation.

A 2020 work project with a balance of \$5,816,065 reflects the amount remaining after funding was distributed for FY20 compliance grants.

Federal Grants: In FY21, the Commission was awarded a federal Byrne JAG grant through the Michigan State Police to fund a statewide intensive trial skills training program for attorneys. That grant, totaling approximately \$250,000 will end September 30. MIDC has been invited to apply for an FY22 Byrne JAG grant.

Conclusion

All MIDC staff will remain at some level of remote work, consistent with the remote work policy adopted by the Department. MIDC has been able to work remotely in an effective and efficient manner in almost all aspects. As we continue to adjust to a long-term remote work setting, we expect to we may make some minimal equipment purchases to ensure that our staff is able to continue to work at their highest level.

Once a budget is signed, the proposed budget will be adjusted to reflect the final appropriation. MIDC will work with LARA FAS to finalize a spending plan for FY22.

		Draft FY22 Financial Plan	FY21 Financial Plan	Expenses through June 2021	Highlights by Category	FY21 Spending through June
Appropriation:		\$2,699,400	2,714,000			
Amount Encumbered from FY 20 funding for PSC Contract			123,510			
Total Available for Operations (estimated for FY22)		\$2,699,400	2,837,510			
State Employee Wages		\$1,568,974	1,446,126	961,552		
State Employee Benefits		\$966,731	965,570	643,248		
Materials and Equipment		\$9,450	10,850	7,031		
					Verizon	\$5,398
					Office supplies	\$215
					Printer/Copier lease	\$1,429
All Other Contracts		\$7,230	217,510	217,113		
					Elefant - website maintenance	\$1,920
					Providence - email maintenance	\$544
					Public Sector Consultants - Local Share Study (will not be needed in FY22)	\$47,603
					Experis - Review of financial reports (MIDC is working to extend this into FY22)	\$14,221
					Office Westlaw Account	\$2,264
					Mediation - Legal Services	\$3,920
					OneSpan Electronic Signature Program - used for FY21 Contracts	\$99

All Other Costs		\$147,015	175,653	99,990		
					Training for staff & bar dues for eligible staff	\$3,225
					Rent - assessed quarterly	\$32,250
					DTMB Telephones/Data	\$1,917
					DTMB IT Allocation - includes costs for new equipment and monthly DTMB fees	\$48,578
					Slack	\$964
					Obsurvey	\$444
					Shared Server Allocation	\$2,695
					LARA and those assessed across state departments and LARA bureaus	\$4,919
					Register .gov domain for MIDC website - annual fee	\$400
TOTAL Expenditures		\$2,699,400	2,815,709	1,928,934		

Michigan Indigent Defense Commission: Stakeholder Perspectives on Local Share

Final Report

August 9, 2021

PSC



**PUBLIC SECTOR
CONSULTANTS**

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Background

Michigan, like many other states across the country, historically struggled to provide effective, quality representation to underserved defendants. A 2008 study by the National Legal Aid & Defender Association (NLADA) evaluated trial-level indigent defense delivery systems across ten representative counties in Michigan and found that none of those counties provided constitutionally adequate services. Specifically, those counties failed to guarantee independence from the judiciary; supervise and enforce a reasonable workload; provide confidential meeting spaces; ensure that defense attorneys were qualified to take on these cases; and implement vertical representation.¹ To address these issues, in 2011, Gov. Rick Snyder’s administration convened an advisory commission that made specific recommendations to improve the state’s indigent defense system. In response to those recommendations, Governor Snyder signed the Michigan Indigent Defense Commission Act of 2013 into law, establishing the Michigan Indigent Defense Commission (MIDC).

By statute, the MIDC develops and oversees the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure trial-level defense services effectively assist all underserved adults in the state consistent with the safeguards guaranteed by the United States Constitution, the Michigan Constitution of 1963, and the MIDC Act. As part of this act, local jurisdictions must maintain statutorily defined annual spending, or the “local share” contribution. Indigent defense spending beyond the local share that is reasonably and directly related to compliance with the approved minimum standards is funded by the State.

In 2018, the legislature amended the act to include a provision that requires the MIDC to submit a report to the governor and state legislature by October 31, 2021, that makes recommendations relative to the appropriate level of local share. To develop informed recommendations, the MIDC contracted with Public Sector Consultants (PSC)—a research, policy, and project management firm based in Lansing—to evaluate the current local share funding contributions.

This report reflects PSC’s evaluation activities and recommendations. PSC conducted interviews and collected MIDC data to assess the current program’s functionality and better understand local jurisdictions’ potential funding contributions as the MIDC implements its standards. PSC’s evaluation and recommendations were further informed by additional data collection, focus groups, and a survey of local and state indigent defense system stakeholders that investigated themes, concerns, and ideas raised during interviews and initial data collection.

Evaluation Activities

Data Collection and Analysis

PSC collected and analyzed MIDC data related to state grant and local share funding by funding unit for fiscal years (FY) 2019, 2020, 2021, and 2022, with FY 2021 and 2022 data preliminary.^{2,3} PSC’s purpose

¹ National Legal Aid & Defender Association. June 2008. *Evaluation of Trial-Level Indigent Defense Systems in Michigan*. Accessed July 22, 2021. <https://www.in.gov/publicdefender/files/NLADA-Report-Michigan.pdf>

² FY 2019 and FY 2020 demonstrate 126 and 124 funding units, respectively. FY 2021 demonstrates 120 funding jurisdictions, which is a preliminary number due to potential consolidations in FY 2021.

³ FY 2022 funding is an estimate based on Gov. Gretchen Whitmer’s proposed budget recommendations for FY 2022.

was to complement interviews, surveys, and focus groups that discuss system funding by comparing funding models and exploring other relevant issues to the current local share formula. PSC integrated inflation because of its important role in setting future local share funding. PSC also included some initial analysis on attorney fee reimbursement collection from underserved defendants, as that fee was factored into the calculation of local share. PSC also developed state funding forecast scenarios through FY 2025.

Stakeholder Interviews

As part of the evaluation, PSC conducted 20 one-hour interviews with 22 diverse stakeholders, including MIDC members, county and municipal administrators, court administrators, current and former judges, prosecuting and defense attorneys, local government representatives, Michigan legislators, and representatives from national criminal defense organizations. Participants identified what works well under the current local share formula, as well as challenges, gaps, and opportunities for improvement. To gather diverse perspectives across Michigan's 83 counties and 124 systems, PSC selected participants who reflect Michigan's varied socioeconomic and geographic landscapes.⁴

After completing data analysis and stakeholder interviews, PSC presented a detailed interim report to Commission members at their April 20, 2021, meeting. The report findings were used to develop the materials for the next phases of the project, the survey questionnaire and the focus group discussion guide.

Focus Groups

PSC facilitated six two-hour focus groups to further explore concerns and ideas highlighted during interviews. While still valuing geographically and socioeconomically diverse perspectives, PSC gathered focus groups based on participants' direct involvement with their jurisdiction's indigent defense system operations. The focus groups consisted of county administrators, county commissioners and prosecutors, court administrators and public defenders, criminal defense attorneys, municipal administrators, and MIDC staff. Participants discussed the current formula's benefits, drawbacks, and impact as well as future funding considerations, reimbursement collection from partially indigent defendants, and the decision-making dynamic between the State and local jurisdictions.

Survey

While conducting focus groups, PSC released a brief six-question survey to organizations representing the many professions involved in Michigan's indigent defense system. Recipients included county and municipal administrators, county commissioners, criminal defense attorneys, judges, prosecutors, and public defenders.

⁴ Due to indigent defense systems regionalizing their services and merging, the total number of systems can fluctuate year to year and has steadily decreased over the last several years.

Current Program Operational Overview

The MIDC Act of 2013 established a formula for providing funding to all of Michigan’s jurisdictions based on their unique three-year spending averages (from 2010 to 2013). Every jurisdiction carries out its indigent defense duties according to standards instituted in statute. Recently, new requirements were adopted under standard five, independence from the judiciary, for the FY 2022 budget submission. As of October 29, 2020, five of the eight standards proposed by the MIDC have received final approval from the Department of Licensing and Regulatory Affairs Director, as required by the MIDC Act. It is anticipated that standards six through eight will soon be adopted. The formula is now in its third year of operation; funding units submit annual reimbursement plans for MIDC approval.

State and Local Share Funding: FY 2019, 2020, 2021, and 2022 Budgets

In fiscal years 2019, 2020, and 2021, MIDC state funding primarily focused on meeting standards one through four. State funding was \$86.7 million in FY 2019, followed by \$117.4 million in FY 2020, and \$134.7 million in FY 2021. Meanwhile, local share funding was \$37.9 million in FY 2019, and approximately \$38.5 million in each of the following fiscal years. Altogether, the total local share percentage of total system costs was 30 percent in FY 2019, 24 percent in FY 2020, and 22 percent in FY 21 (Exhibit 1). State funding increased by 35 and 15 percent, respectively, year over year, in FY 2020 and FY 2021, reflecting the large funding needs to help jurisdictions meet standards one through four.⁵

For FY 2022, the MIDC requested \$34.1 million in additional state funding, of which \$22.1 million of the request is attributed to increased costs of standards one through four and the remaining \$12 million for implementing standard five. The FY 2022 additional request of \$34.1 million, if approved, represents a 25 percent increase over total FY 2021 state funding, which was \$134.7 million. With FY 2022 local share funding reflecting a 1.2 percent inflation increase over FY 2019 funding—leading to FY 2022 funding of \$38.4 million—the total local share percentage would be 19 percent, down from 22 percent in FY 2021 (Exhibit 1).

EXHIBIT 1. FY 2019–2021 Budget Spending

Fiscal Year	State MIDC Grants	Local Share	Total System Costs	Total Local Share Percentage
FY 2019	\$86,759,934	\$37,925,642	\$124,685,577	30%
FY 2020	\$117,424,880	\$38,523,865	\$157,698,982	24%
FY 2021	\$134,689,367	\$38,486,189	\$173,175,556	22%
FY 2022	\$168,789,367	\$38,418,957	\$207,473,521	19%

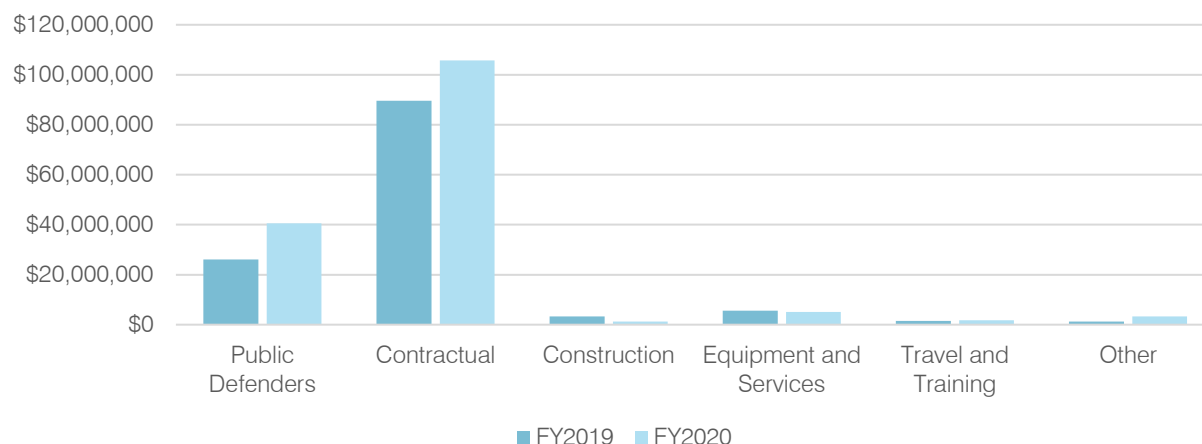
Source: PSC analysis of MIDC data.

Note: FY 2020 Total System Costs includes \$1.7 million in other funding sources from Macomb and Oakland jurisdictions. FY 2022 figures assume the \$34.1 million state budget request is approved.

⁵ It is important to note that the unspent balance from the previous fiscal year offsets the following fiscal year grant. In FY 2019, the estimated unspent balance of approximately \$47 million offsets the MIDC FY 2020 grant of \$117.4 million, leading a MIDC grant dispersion of \$70.4 million. In FY 2020, the estimated unspent balance of approximately \$53 million offsets the MIDC FY 2020 grant of \$135 million, leading a MIDC grant dispersion of \$82 million.

Jurisdictions' highest cost was related to contractual attorneys, experts, and investigators, which represented 70 percent of total system costs in FY 2019 and 67 percent in FY 2020. In those same fiscal years, public defender offices represented the second highest costs of total system costs in each year, at 21 and 26 percent, respectively.⁶ Altogether, the contractual and public defender categories represented more than 90 percent of total system costs in each year, substantially above other categories (Exhibit 2). Within the contractual category, attorneys represented the largest cost at more than 90 percent of the total in each year.

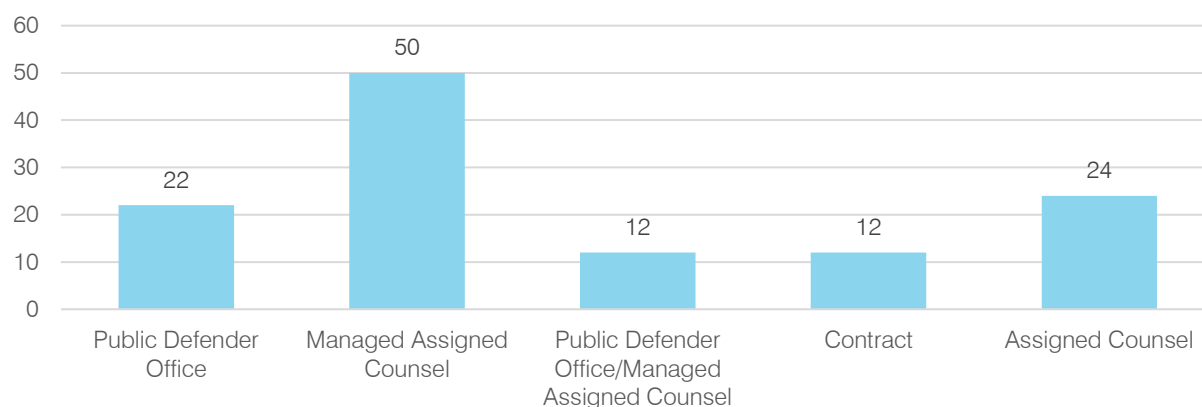
EXHIBIT 2. Total System Costs by Category



Local Indigent Defense Models

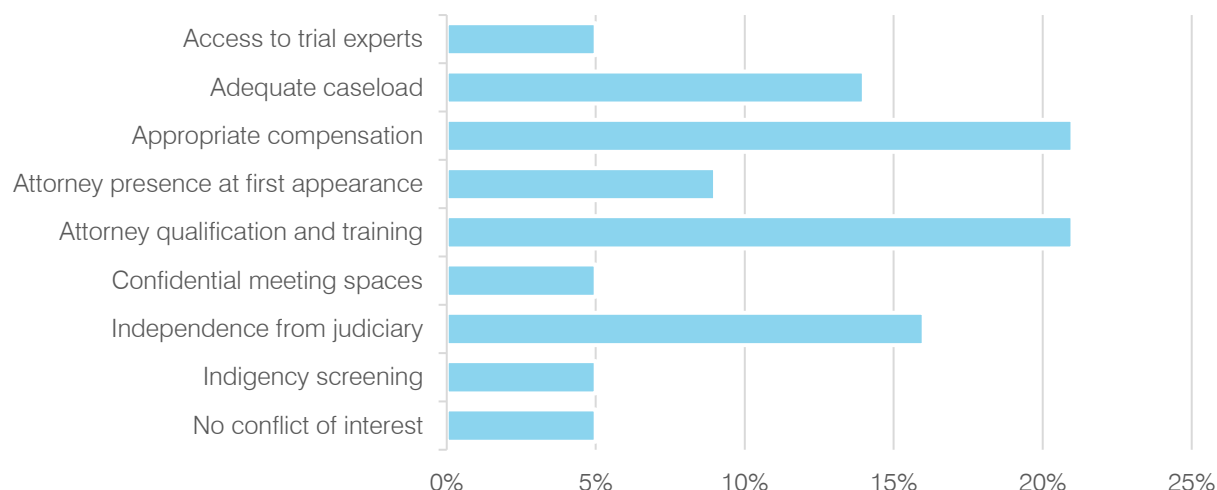
Within their annual budgets, jurisdictions have adopted indigent defense service delivery models, including public defender offices, managed assigned counsel, contract systems, or a combination of these. Exhibit 3 lists the types and number of legal defense systems in Michigan. Communities and models across Michigan that are known for their success rates and best practices were frequent topics of conversation throughout interviews. Though many participants identified a public defender office as the model to emulate, local jurisdictions' expertise in and understanding of their own systems' needs guided which model best fit each jurisdiction. Just as many participants noted that one defense system type will not necessarily work for all of Michigan's regions due to population (caseload) and geographic (transportation logistics) concerns.

⁶ Detailed data for FY 2021 and FY 2022 is not currently available.

EXHIBIT 3. Michigan's Types of Legal Defense Systems

System Strengths and Challenges

Interviewees were asked to identify guiding principles that stood out in their indigent defense systems and experiences to ensure accurate program evaluation (Exhibit 4). Later, all participants offered retrospections on the indigent defense system's progress since state funding began three years ago. The following sections highlight both the strengths and challenges noted during these interviews.

EXHIBIT 4. Most Vital Principles Helping to Ensure Legal Access, According to Interviewees

When asked about system improvements related to standards adoption, focus group participants' and interviewees' responses aligned. MIDC staff indicated that requiring counsel at all critical stages in a defendant's case—including a defendant's first court appearance—represents an enormous improvement in client-attorney relationships. The requirement helps the defendant receive a fairer trial in two key ways. First, defendants develop a better understanding of their case, including sentencing options and potential effects on their future. Second, having assigned counsel at a defendant's first court appearance fosters better working relationships between MIDC and jails by closing the gap in defendants'

understanding of what happens next. Although jail administrators play a crucial role in the justice system, they do not typically have legal training or expertise; in this capacity, assigned counsel best serve defendants. MIDC staff and public defenders also cited attorney trainings as an opportunity to learn, network, and build a culture of defense within their respective communities.

System Strength: Standardizing Defense Services

Most participants, across varied industries and geographic locations, stated the current system is a considerable improvement for indigent defense over preceding systems. Though participants' definitions of program success differed, both MIDC members and non-MIDC members agreed that standards implementation has been successful. While non-MIDC members often cited the implementation of specific standards as the marker of success, MIDC members most frequently indicated the achievement of statewide standardization. One MIDC member noted the benefits of "standardizing indigent defense practices across the state and holding local units accountable," stating the act "helped push public defense a long way in a short period of time."

Since the MIDC came into being during the Snyder administration, more than 20 public defender offices formed, [which is] tremendous progress. Some areas up north—where they don't have adequate resources—are establishing regional offices [to] share resources.

—County commissioner from Michigan

One county commissioner highlighted the immensely positive impact of "bipartisan support and widespread understanding" of indigent defense. Commenting on stakeholders' gradual acceptance of the program, a prosecutor supported the formula being "enshrined in statute," noting that local jurisdictions' "pushback has subsided" since the MIDC Act was implemented. A Michigan Supreme Court representative echoed these sentiments, applauding system participants' "joint commitment to making indigent defense a high priority" within Michigan's criminal justice system.

In addition to systemic progress, the program's implementation has led to a greater understanding of the need for adequate indigent defense services at the local level. Several court administrators and public defenders affirmed that having all court staff "dedicated to the same proposition of proper indigent defense" was a strong factor in their funding units' success in providing these services. Other participants commended Michigan's progress in indigent defense improvements. One attorney from a national organization expressed that Michigan is a national model in terms of its dedication to a unique combination of state and local influence. This distinctive system structure is key to the program's success, according to county administrators, county commissioners, prosecutors, and others—striking a balance between rising system costs, proportionally greater state funding, and maintenance of local control is the challenge facing Michigan's indigent defense system in the coming years.

System Challenge: Disconnect Between Implementation and Desired Outcomes

Though participants acknowledged the benefits of a standardized system, many noted there remain obstacles to ensuring indigent defense practices are comparable to client-paid attorney work. Many municipal and county government representatives expressed concern about budget uncertainties at the local level related to uncertainties about the continued availability of state funding. One judge highlighted another major obstacle—legislators' uphill battle to secure more funding for a public program that is

largely unpopular with constituents. Defense attorneys highlighted MIDC staff's perceived lack of oversight in key regions of the state, noting regional support should play a larger role in standards enforcement. Multiple participants across professions agreed that greater resource regionalization would benefit jurisdictions needing access to trial experts.

Participants involved in the day-to-day operations at the local level, especially those working directly with the courts, highlighted that, while state standardization is beneficial, implementation has been slow. An attorney stated that indigent representation across Michigan is not yet equal, emphasizing that client-paid attorneys can spend greater time and resources on their cases than attorneys with underserved clients. A judge argued that the court system is still overloaded, and burnout is common among defense lawyers for underserved clients.

Several participants mentioned low hourly rates as potential deterrents in recruiting public defense attorneys. In addition to historically low pay rates—compared to non-public defender attorney fees—some jurisdictions struggle to entice qualified candidates. One court administrator emphasized their county's most significant problem is attracting “attorneys with a fire in their belly for legal defense work.” A prosecutor explained that the lack of qualified candidates is compounded by arduous travel demands for rural jurisdictions, especially those located in northern Michigan and the Upper Peninsula.

Attorneys who are the best can only do [criminal defense] for a few years . . . fighting so hard for so little is wearing.

—Judge from Michigan

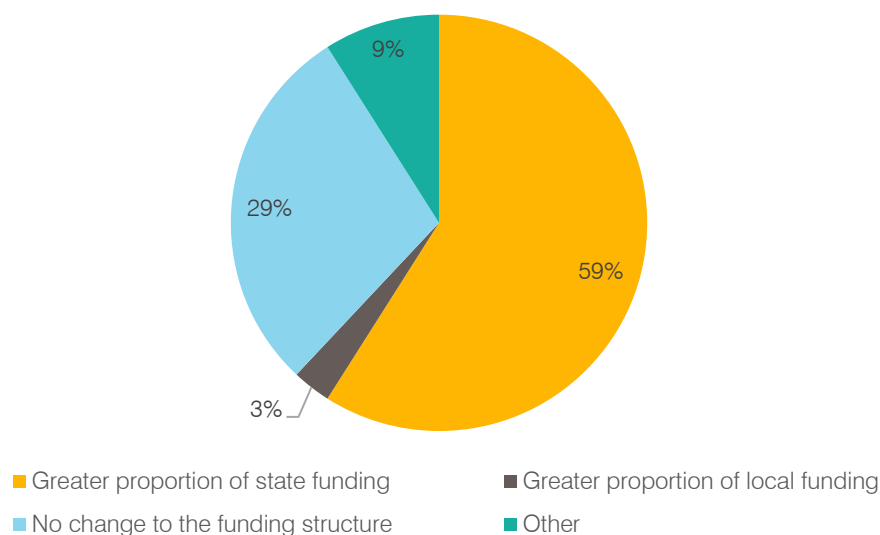
Perspectives on the Ideal Funding System

Participants provided a range of responses when asked to describe their ideal funding system. Most descriptions, however, fell into two categories:

- Support for full state funding
- Maintaining the current funding structure, in which funding is a combined effort between the State and local systems

A small group of combination-funding supporters promoted an alternative option in which the State funds jurisdictions to meet MIDC standards, and then local jurisdictions fund “above and beyond” that amount. Only one participant advocated for greater pressure on local jurisdictions to provide more funding than they do currently. The majority of participants, across profession and geographic location, favored maintaining the current combination-funding system to retain local control over decision making (Exhibit 5).

EXHIBIT 5. Survey Respondents' Ideal Future Funding Formula



Support for Full State Funding

In illustrating the ideal indigent defense funding system for Michigan, many participants referenced the MIDC Act's wording specifically, with several asserting that full state funding would comply with state statute. Several county administrators and commissioners went so far as to question the legality of a non-state-funded system according to the Sixth Amendment, which codifies legal defense services for underserved people as a state responsibility. From a national perspective, one defense attorney recognized that a fully state-funded program would have been too much of a shock initially when Michigan transitioned to this system in 2017; however, they stated this shift to state control would minimize the need for local control once the MIDC adopts the remaining standards. Other participants worried about the pressure that rising costs will place on the system statewide once the implementation of MIDC standards six through eight are underway. As long as state funding is provided, one prosecutor asserted, "the vast majority of [jurisdictions] will be comfortable with whatever amount of control they retain," asserting that funding was the crux of local jurisdictions' pushback against the system initially.

The prosecutor also voiced that funding courts largely through fines and costs at the local level is "highly problematic," and advocated reducing the financial burden for defendants with low incomes. Some states, like Kentucky, have shifted toward administrative frameworks to deal with certain types of misdemeanors; several participants suggested studying other states' indigent defense models and comparing their success to Michigan's. Despite expressing that state funding is preferable to the current arrangement of state and local partnership, one judge noted that a completely state-run system may be more susceptible to budget cuts than a combination-funding system.

Benefits of State/Local Combination Funding

Participants in favor of maintaining the combination-funding scenario are proponents of preserving local control in program administration. A defense attorney stated that "cutting out local [control] altogether is

somewhat problematic,” noting the importance for local jurisdictions to have a financial stake in providing these services. They acknowledged that “inequities [between jurisdictions] are the hitch,” stating preservation of local traditions works well, depending on the jurisdiction and the extent of their resources. Most focus group participants agreed with that sentiment—MIDC staff and prosecutors alike stressed that “one size does not fit all” when attempting to solve unique problems across Michigan’s socioeconomically, demographically, and geographically diverse jurisdictions.

Many municipal, county, and court administrators agreed that the predictability of the indigent defense line item within their annual county budget is the best benefit of the current formula. A few participants expressed gratitude for their jurisdiction’s increased budget (by way of state funding) and acknowledged their jurisdiction would likely never again increase their own budget contributions toward indigent defense.

We need to keep local control. [Local jurisdictions] wouldn’t have opened these new units if they thought they’d get stuck holding the bag.

—County administrator from Michigan

Many who supported continuing this funding approach specifically emphasized that local control is in local jurisdictions’ and defendants’ best interest. A Michigan Supreme Court representative further reinforced this notion by expressing that decision makers in local jurisdictions are better positioned than state stakeholders to understand the gaps and challenges in their own systems. Participants who favor this combination-funding model trust that jurisdictions are also better equipped to solve problems on their own.

[The current formula] is a good balance. Local costs haven’t gone up with the increased level of representation [because] our city couldn’t afford it.

—Court administrator from Michigan

Local Control: Finding a Balance

Municipal and county government representatives identified ongoing tension between proponents of local control and state regulation as another underlying obstacle. County administrators, county commissioners, and municipal administrators agreed that local jurisdictions’ decision-making authority is severely diminished by the MIDC’s recent implementation (and forthcoming consideration) of additional indigent defense standards. When asked whether local jurisdictions are perceived to be decision makers or system managers, MIDC staff, criminal defense attorneys, and public defenders mostly answered, “decision makers,” while prosecutors, county commissioners, and county and municipal administrators viewed jurisdictions as stewards of MIDC directives. Some local jurisdictions view the standards as mandates requiring rigid execution, with gradually less local input needed as the remaining standards are implemented.

Local control is like Thanksgiving Day. Everyone has turkey, stuffing, and potatoes, but each jurisdiction prepares it differently.

—Court administrator from Michigan

The varying levels of local match have created perceptions of inequality in funding. Several participants highlighted the perceived inequity of the State expecting local jurisdictions with means to implement these new standards, while those struggling with financial hardships will receive financial assistance from the State. A public defender supported this view, indicating how it will be “harder to tease out local components versus those that should be state funded” due to varying local share determination elements that are now part of the MIDC Act. A county commissioner agreed, highlighting local jurisdictions’ frustration with the perceived lack of clarity in determining what is funded by MIDC grants during annual budget reviews. The representative further explained that the current formula can “discourage innovation” in providing services, sometimes forcing jurisdictions to “stoop to the lowest common denominator” by prohibiting seemingly extraneous spending.

Some participants interpret the MIDC Act’s decision-making role differently from each other; for example, some county and municipal administrators questioned what measurable progress has been achieved since the MIDC Act’s implementation. It can be difficult for system participants not actively providing defense services to recognize the significant improvements for underserved defendants. When asked whether specific elements of Michigan’s indigent defense system have improved or worsened, survey respondents largely answered that defense services rendered and decision-making authority were either somewhat better or had not changed since the implementation of the MIDC standards. In addition to state oversight and local control power dynamics, responses detailing the current local share formula’s drawbacks were related to the perceived unfairness of vastly different contribution levels between local jurisdictions. While responses indicated that budget predictability got better, respondents were unsure about how fairly resources were distributed across jurisdictions.

[There is] an antipathy in local government to trust Lansing [officials]. That mistrust was probably a major reason for funding units to hang on to control of their systems.

—Prosecutor from Michigan

Regionalization

In an effort to bridge the gap between state control and local decision making, one judge advocated for greater regionalization of resources to help struggling jurisdictions meet the standards set forth by the MIDC. Multiple participants across professions also lauded regionalization as a solution to limited resources in rural areas and as a cost-savings measure in higher-resource areas without the demand to match. One defense attorney advocated for district court systems to continue their legacy of coordination to most efficiently serve larger communities with an abundance of resources. Municipal administrators supported this sentiment but noted that “regional approaches need to be designed by local jurisdictions” to best serve defendants.

Drawbacks of State/Local Combination Funding

When asked whether the current formula is equitable across all of Michigan’s 124 systems, most participants said it was not. The few who responded affirmatively described an equal system, noting the benefits of jurisdictions’ contributions being calculated equally according to the same formula. Those who responded negatively to the question of equitability largely echoed the issues raised earlier. One county administrator highlighted that communities who previously provided funding beyond the minimum

required are now being harmed when compared to jurisdictions who contribute less, noting an implicit disincentive for jurisdictions to contribute more. Other respondents agreed, with one defense attorney urging the State to release jurisdictions from the burden of contributing more than their counterparts, despite meeting and surpassing the MIDC standards, which they deemed “an unfair tax on counties who tried to [implement] defense the right [way].”

A former judge referenced the inequity resulting from some jurisdictions recouping what would be local funding through “aggressive [reimbursement] collection policies,” recommending that revenue should start to be tracked and analyzed. Drafters of the original legislation conceded that the current formula had faults dating back to its planning, but it had reached peak political palatability—it needed to pass as is or not pass at all to facilitate improvements in Michigan’s indigent defense system. In acknowledging certain jurisdictions that “did not pay enough” in 2010, a defense attorney noted that those same jurisdictions are still not contributing enough. One judge summarized participants’ frustrations best: “The system perpetuates inequities” that already exist across the state.

Most focus group participants agreed unequivocally that inequities existed prior to the MIDC Act, with one MIDC staff person pointing out that the formula was implemented inequitably, “with injustices built in.” To help combat the inequities of jurisdictions funding and/or allocating their indigent defense budgets differently, public defenders and county commissioners suggested that the State should contribute 100 percent. Participants supporting this initiative argued that the State should “stick to its promise” by fulfilling its responsibility outlined in statute. Some prosecutors, county commissioners, and defense attorneys advocated for greater regionalization of resources as an equalizer across counties—less dependence on individual jurisdictions’ budgets—and as a cost savings. Still other focus group participants across professions disagreed with the notion that equity in providing defense services should be a comparison of jurisdictions, instead stating that MIDC should reevaluate imbalances in funding between various branches of the criminal justice system, including juvenile and abuse/neglect defense.

The State needs to deal with escalating costs...[We] have to up our game with indigent defense, [it’s] fundamental; but we can’t do it on the counties’ dime.

—County commissioner from Michigan

Some participants felt this friction also extended to comparisons between local jurisdictions’ spending and varied statewide contributions to local share. One attorney noted the current formula is unfair to jurisdictions that are “trying to do better” for their underserved population by spending as much as their budget would allow during the three-year period (2010–2012). Similarly, the current system “rewards those who were not doing a good job in an arbitrary year,” stated a local government representative. Further, these inequities are bolstered by a system that enables “bad behavior” at the financial expense of “jurisdictions doing a good job,” according to one judge. The ideal solution, proposed by a defense attorney, would enact “a policy that requires those with means to pay more, but does not impose another burden on small jurisdictions who cannot afford it.”

In some jurisdictions, initial pushback has transformed into fervent support of the current formula apportionment. Multiple participants emphasized the benefit of having a “local carve-out” for system control. One defense attorney stated that “allowing local [jurisdictions] to deliver services without [directives] from Lansing” enables local jurisdictions to be the decision makers for their communities. Representatives from a national organization argued that initial onus on local jurisdictions to develop

innovative solutions to their community's unique problems prodded investment and ingenuity in improving individual local systems.

How can it be okay for the State to have 100 percent responsibility in one jurisdiction compared to 60 percent in another?

—County administrator from Michigan

Local Share Variance and Inflation

There is considerable dispersion by jurisdiction in terms of local share spending as a percentage of total costs, from as low as zero to as much as 89 and 88 percent in FY 2019 and FY 2020. At the same time, the number of jurisdictions with local share percentages above 50 percent declined from 11 to six between FY 2019 and FY 2020, indicating less variance at the high end of local share funding. As time progresses, the share of jurisdictions with relatively high local share funding percentages will decline, in part due to a lack of annual compounding inflation (i.e., inflation indexation is only to FY 2019 local share funding levels.) As a result, inflation dynamics were an important variable to assess.

The MIDC Act guidelines require local jurisdictions to increase their local share funding each fiscal year by inflation, which in recent years has been between 1.0 and 2.0 percent on average, according to the accepted legal interpretation of MCL 780.983. However, the base year to which jurisdictions apply the inflation increase is fixed to FY 2019 funding levels, not the previous fiscal year. In other words, when jurisdictions apply the inflation increase to determine FY 2022 funding levels, inflation is applied to FY 2019 funding levels, *not* FY 2021 funding levels. All future local share increases only compound from FY 2019 funding levels. Jurisdictions deducted attorney fee reimbursements from *gross* spending on indigent defense services between FY 2010 and FY 2012, leading to average *net* spending in those three years. The local share funding for FY 2019 is based on the average *net* spending on indigent defense for FY 2010, FY 2011, and FY 2012. There were no inflation-based increases between FY 2010–2012 and FY 2019.

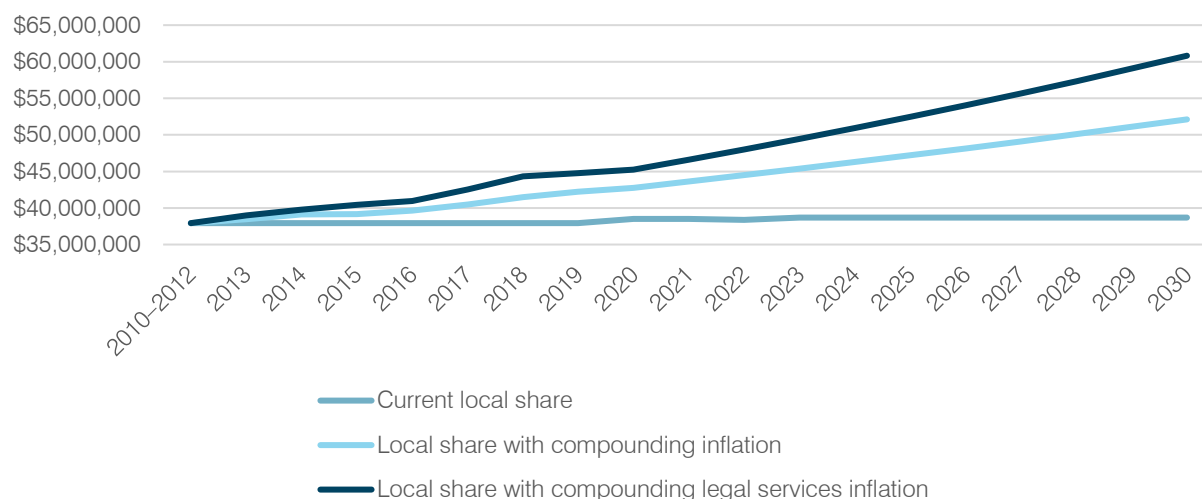
Given these rules, the potential for inflation-based increases in local spending was limited. In a scenario in which net spending was subject to inflation between FY 2010–2012 and FY 2019, local spending on indigent defense would have been higher by FY 2019. Additionally, after FY 2019, if inflation increases were applied to the previous year's spending by the local unit, instead of to only FY 2019 levels, forecasted spending would likely be much higher for local units than the current projected path.

For example, in FY 2019, local share funding was \$37.9 million. If local share funding were subject to inflation between FY 2012 and FY 2019 the funding total would have increased to \$42.2 million by FY 2019. If local share funding were subject to the legal services component of inflation, the funding total would have been even greater, at \$44.8 million (Exhibit 6).⁷ Indeed, the legal services inflation rate has historically been slightly higher than overall inflation (Appendix A). In this context, PSC applied a 2 percent annual inflation rate and a 3 percent legal services inflation rate for fiscal years 2023–2030. While recent inflation in the U.S. has generally been below 2 percent on an annual basis, it is broadly

⁷ Inflation is based on Bureau of Labor Statistics data on Consumer Price Index for Urban Consumers, which represents 93 percent of the U.S. population. This includes the legal services component. For more information, please see question three of the [Consumer Price Index Frequently Asked Questions](#).

consistent with consensus forecasts of U.S. inflation.⁸ In these scenarios, by FY 2030, local share funding would exceed \$50 million and \$60 million, respectively. These totals are much higher than the expected funding under the current local share formula, which would remain around \$38 million by FY 2030 (Exhibit 6).

EXHIBIT 6. Inflationary Impact of Local Share Costs



Amending the Formula

When asked to provide suggestions or principles to guide changes to the current formula, most participants supported maintaining the current system. Those who supported formula change, according to one court administrator, are wary of its impact on the current funding structure, specifically over local jurisdictions' contributions increasing. A defense attorney agreed with this sentiment, noting that any changes made to the formula at this point, given that the program is still in the early stages, "might undo progress." Other participants used stronger language, labeling a reevaluation and potential formula amendment as a "reckless" undertaking that could "collapse" the current system. Even if some participants expressed support for eventually changing the formula—incorporating jurisdictions' poverty rates and caseloads, for example—almost everyone agreed that amendments should not be made lightly or quickly. Many participants warned that significant changes right now may result in the state "not keeping its promise" to continue funding the majority of jurisdictions' indigent defense budgets, leaving local jurisdictions to pay increased costs, which many are unable to do.

Participants including prosecutors, county commissioners, county administrators, and municipal administrators stated that the bigger issue to manage is the legality of the existing formula in relation to the Headlee Amendment. In 1978, Michigan voters amended the state constitution in an attempt to limit the growth of state government and preclude local governments from raising taxes without a vote of the people. The amendment added several provisions (sections 25 through 33) to Article IX of the state constitution and has significantly affected State-local finances. Section 29 prohibits the State from

⁸ Following the passage of the American Rescue Plan Act in 2021 and ongoing labor and supply shortages, there has been some concern among economists that inflation could increase. Indeed, inflation has increased in the first half of 2021. While PSC acknowledges this debate, for the purposes of the assessment, PSC assumes 2 percent inflation as a forecast.

mandating that local governments provide new services unless the State reimburses the locals for any necessary increased costs they may incur. As a result, representatives of local jurisdictions argue that some of the MIDC's requirements trigger violations of the Headlee Amendment, given that many jurisdictions expressed the need for greater transparency in the MIDC's approval of direct and indirect costs—costs which many local jurisdictions view as extraneous in the first place.

State and Local Share Funding Forecasts

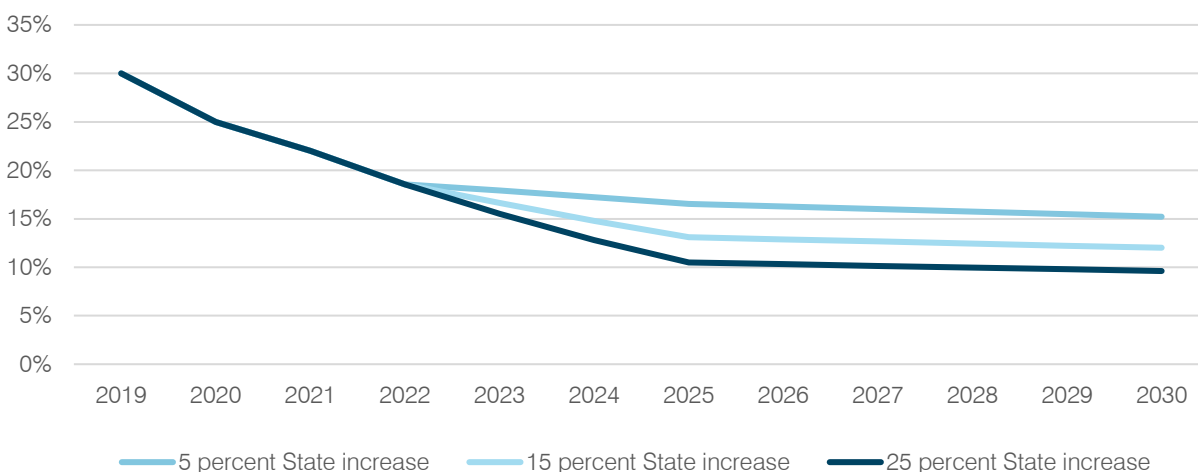
While jurisdictions have made significant progress in meeting standards one to four through FY 2021, several will require additional funding in future years. Indeed, the MIDC requested \$22.1 million in the FY 2022 Michigan budget for standards one through four. Additionally, in preparation for standard five's implementation—which addresses systems' independence from the judiciary—the MIDC has correspondingly requested \$12 million from the FY 2022 Michigan budget. Combined, the FY 2022 request is \$34.1 million, a 25 percent increase over FY 2021. Standards six and seven, which address attorney workload and qualifications, will be a focus in later years. Implementing standard six alone will likely be a costly endeavor. Some jurisdictions have already begun to implement the later standards (including standard eight, which regulates attorney compensation), but not all jurisdictions will be required to do so until the standard goes into effect at a later date. Implementation timelines for the standards depend on final standard approval by the director of the Department of Licensing and Regulatory Affairs and approval of the compliance plan submitted by the local jurisdiction.

These timing and funding uncertainties make it very difficult to generate a specific state funding forecast. However, PSC generated a range of possible state funding scenarios through FY 2025 when PSC assumes—for the purposes of the analysis—that all eight standards will have been met. Given the extensive efforts needed to meet standards one through four over FY 2019–FY 2022, standard five implementation in FY 2022, and the fact that some jurisdictions have already begun to implement standards six through eight, PSC assumed that standards six through eight should not take as long to implement as standards one through five. Therefore, PSC assumed an additional three fiscal years—FY 2023, FY 2024, and FY 2025—to meet all standards. It is possible that all standards may be met before FY 2025, so PSC has presented annual scenarios for each fiscal year. Additionally, forecasting local share funding is relatively straightforward, as local share increases are tied to consumer price inflation increases in each year and are only indexed to FY 2019 funding levels. As a result, it is possible to estimate scenarios on how the local share funding contribution could evolve over time.

PSC considered three state funding increases in fiscal years FY 2023, FY 2024, and FY 2025—5 percent, 15 percent, and 25 percent in each year—which are meant to illustrate possible scenarios and are not based on a specific methodology. Indeed, it is too early to speculate total resources needed to meet standards six through eight, though state funding increases are expected. Following FY 2025, state funding is assumed to be indexed to inflation.

Under these state funding increase scenarios, local share funding percentages will decline from 19 percent in FY 2022 to between 10 to 15 percent in FY 2025 and beyond (Exhibit 7). This would represent a marked decline from the initial FY 2019 local share percentage of 30 percent.

EXHIBIT 7. Local Share Funding Percentages Under State Grant Increase Scenarios (5 percent, 15 percent, 25 percent)



Attorney Fee Reimbursements

Participants were asked to discuss their system’s fee reimbursement collection practices and identify whether collection efforts were considered part of indigent defense system operation or as additional revenue earned by systems—responses were mixed. Prosecutors and public defenders confirmed that previously, defendants were assessed as “partially indigent” based on a combination of clerks’ evaluation of those individuals’ financial status and judges’ calculation of their attorney’s hourly fee. While one court administrator stated that courts do not view fee reimbursement collection as a revenue source, a prosecutor noted the need for implementing standard five (independence from the judiciary) given that judges seemed to have executive oversight in determining indigency. Participants from both groups called for greater uniformity and transparency in establishing defendants’ level of indigency to combat the significant range in collection practices across the state.

[The formula] was never really equitable. [Jurisdictions] performing poorly weren’t penalized.

—Judge from Michigan

Some local systems aggressively collect attorney fee reimbursement, while on the other end of the spectrum, some have completely foregone collection efforts to avoid compounding fees for people without the means to pay. Defense attorneys and MIDC staff shared defendants sometimes “decline representation because they cannot afford a court-appointed attorney” and that defense attorneys sometimes underreport their billable time to limit that exact financial burden on clients. One defense attorney questioned why local systems feel the need to collect at all, given that most of the systems’ funding is provided by the State (75 percent on average, according to one MIDC staff person). Prosecutors and municipal administrators pointed out that implementing the MIDC standards has unintentionally increased indirect costs related to indigent defense often not funded by the State, including additional weekend magistrates, prosecutorial staff, and staff and resources to conduct time studies. Participants

working in the indigent defense system outside of defense services communicated that their departments' needs are left out of the formula's considerations, ultimately to the defendants' and overall system's detriment.

While jurisdictions deducted attorney fee reimbursements under the local share formula in FY 2010–2012, reimbursements do not factor into local share payments in FY 2019 and beyond. The MIDC currently requests attorney fee reimbursement information, which jurisdictions should complete and certify. PSC and MIDC obtained available reimbursement data for FY 2020, but FY 2019 reports were unavailable. Of 124 systems, the majority (121) provided data on attorney fee reimbursements, and MIDC staff were able to verify figures for 45 jurisdictions. Three jurisdictions did not provide any information. As a result, the results of this analysis should be considered preliminary. (Appendix B has anonymized data on each system's FY 2020 local share spending, FY 2020 attorney fee reimbursements, and average FY 2010–2012 attorney fee reimbursement collections.)

Out of 124 systems in FY 2020, slightly less than half (59) reported zero attorney fee reimbursement collections in FY 2020, while half (62) reported collection of attorney fee reimbursements. Three did not provide any information. Compared to FY 2010–2012 attorney fee collection data, FY 2020 figures suggest that 45 jurisdictions have phased out attorney fee collection altogether (Exhibit 8). Meanwhile, 14 jurisdictions reported zero collections in FY 2010–2012 and continued to report zero collections in FY 2020.

EXHIBIT 8. Attorney Fee Reimbursement Collection Reporting Data

Number of Jurisdictions	FY 2020	FY 2010–2012 average	Difference
Did not collect reimbursement	59	14	-45
Reported collection	62	107	+45
No data provided	3	3	0
Total	124	124	0

Source: PSC analysis of MIDC data.

The evolution of attorney fee collections since FY 2010–2012 indicates that a minority of systems (20) have since increased attorney fee reimbursement collections. Another 40 systems have continued to collect attorney fee reimbursements, but at lower levels than in FY 2010–2012 (Exhibit 9). Finally, 59 reported zero collections, equivalent to data presented in Exhibit 8, while there were five jurisdictions without sufficient information for a comparison to FY 2010–2012 levels. Altogether, preliminary data indicates that a minority (16 percent) of jurisdictions have stepped up attorney fee reimbursement collections since FY 2010–2012, while a majority (80 percent) have either reduced or phased out collections.

EXHIBIT 9. Attorney Fee Reimbursement Collection Data—FY 2020 versus FY 2010–2012

Number of Jurisdictions	FY 2020
Greater than FY 2010–2012 average	20
Less than FY 2010–2012 average	40

Did not collect reimbursement	59
Not enough information	5
Total	124

Source: PSC analysis of MIDC data

Comparing FY 2020 attorney fee reimbursement data to FY 2020 local share funding by system also provides useful insight. In FY 2020, 14 systems collected more than their respective local share contribution, while 48 collected attorney fee reimbursements less than their local share contribution (Exhibit 10). Finally, 59 reported zero collections, while three did not provide sufficient information. Overall, a small minority (11 percent) collected more than their respective local share, while the majority collects less than their local share or zero.

EXHIBIT 10. FY 2020 Attorney Fee Reimbursement Data and Local Share

Number of Jurisdictions	FY 2020
Greater than local share	14
Less than local share	48
Did not collect reimbursement	59
Not enough information	3
Total	124

Source: PSC analysis of MIDC data.

Additionally, PSC examined hypothetical scenarios in which attorney fee reimbursements were incorporated into FY 2020 local share funding levels for all jurisdictions. In the first year of MIDC funding, FY 2019, systems deducted attorney fee reimbursement collections (i.e., revenues) from expenses to arrive at their local share contribution. State funding in FY 2019 and subsequent years accounts for that deduction. If jurisdictions *excluded* average FY 2010–2012 attorney fee reimbursement collection deductions from FY 2020 local share funding, the local share funding percentage of total system costs would increase from 24 percent to 32 percent (Exhibit 11). In this scenario, the calculation of local share funding was only based on expenses in FY 2010–2012 and did not allow for revenue deductions (i.e., attorney fee reimbursements). Overall, average FY 2010–2012 attorney fee reimbursements represented approximately 30 percent of FY 2020 local share funding.

Meanwhile, if systems *included* FY 2020 attorney fee reimbursement collections in the calculation of FY 2020 local share funding, the local share percentage of total system costs would increase from 24 percent to 29 percent. This represents a scenario in which systems account for revenues (i.e., attorney fee reimbursements) when calculating annual local share funding, which they are not required to do on an annual basis. Overall, FY 2020 attorney fee reimbursement collections represented approximately 17 percent of FY 2020 local share funding.

EXHIBIT 11. FY 2020 Local Share Percentage Incorporating Attorney Fee Reimbursements

	FY 2020
Local share	24%
Local share <i>excluding</i> FY 2010–2012 attorney fee reimbursement collection	32%
Local share <i>including</i> FY 2020 attorney fee reimbursement collection	29%

Source: PSC analysis of MIDC data.

Recommendations

Based on the evaluation activities conducted, PSC developed recommendations for MIDC to implement to gather additional data to reevaluate the formula in the future.

Delay Formula Amendments

Interviewees, focus group participants, and survey recipients across all professions participating in Michigan’s indigent defense system agreed the current formula should not be amended at this time. While the formula does not yet achieve equity among jurisdictions, adjusting the funding structure now would likely disrupt the progress made in improving Michigan’s indigent defense system thus far.

Explore Further Regionalization Efforts

While acknowledging the unique characteristics and needs of Michigan’s local government funding units, it must be noted that regionalization has proven successful in more rural, less densely populated communities and in communities with an abundance of resources coupled with lower demand. Where appropriate, MIDC should assess the feasibility and potential impact of further regionalizing and pooling of system resources and/or outright combining neighboring indigent defense systems. This type of resource coordination could streamline indigent defense operations and lower or avoid costs by decreasing duplicate or inefficient local funding requests. Further regionalization efforts should be encouraged at the state level and should be driven by local jurisdictions.

Require Reimbursement Collection Reporting

MIDC should require local systems to submit and verify reporting on appointed attorney fee reimbursement collection at the risk of their state system funding payments being delayed. Greater accountability for reimbursement collection reporting—and other data the MIDC sees fit to collect—will provide a better understanding of issues and gaps related to funding indigent defense. Collections, if any, as assessed and collected by the courts and the local indigent defense system for appointed attorney reimbursement should be clearly mandated to support the local indigent defense system to enhance the resources already provided by the state and the local share. In addition, the legislature should review and consider removing the average attorney fee collections from the current local share formula calculation, which will move the formula toward better equity between indigent defense systems’ local share contributions to indigent defense spending (Appendices B and C).

Establish Reevaluation Timeline

Following standards implementation and additional fiscal years of data collection, the MIDC should establish a reevaluation timeline for the funding formula for Michigan's indigent defense system. PSC advocates to resume reevaluation after all MIDC standards have been implemented for at least several budget cycles. Standards implementation includes realization of the indigency screening standard, to be approved by Orlene Hawks, Director of the Department of Licensing and Regulatory Affairs, in October 2021.

Conclusion

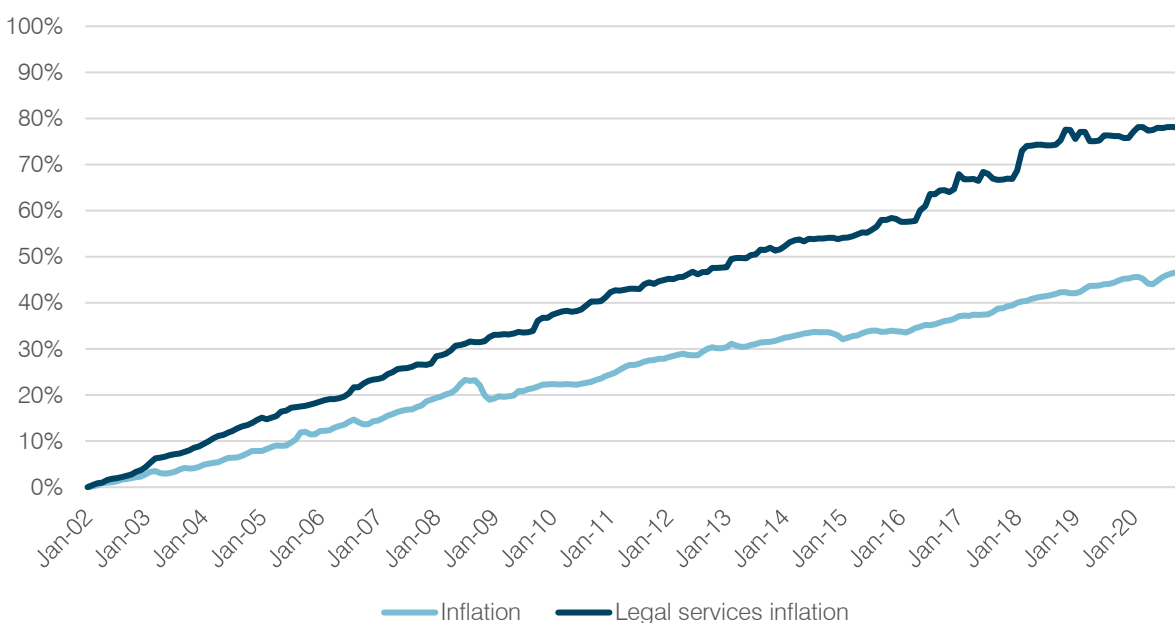
Despite the conversations ahead for state and local funding contributions, it is important to note this program is still in its early stages of implementation. In addition, this system review mandated by the Michigan legislature occurred during the COVID-19 pandemic—unprecedented in scope, its toll on Michigan's criminal justice system was severe and unpredictable. The difficulties and departure from normalcy that the pandemic wrought cannot be overstated, especially for a statewide program in its second year of operation. The work completed thus far is a preliminary analysis of the local share formula, consistent with the experiences of experts in the field, current MIDC data, and projections for future years. Overall, Michigan's indigent defense system is much better equipped to adequately provide effective, quality representation to underserved defendants than the previous locally funded system. Participants during all phases of this project have conceded that while the funding formula may not be perfect or final, altering it now would be a disservice to local jurisdictions and the defendants they serve. Following implementation and operationalization of the remaining standards, MIDC should again evaluate the benefits and drawbacks of the current formula—and its equitability—to assess whether the formula should be amended in the future.

Appendix A: Inflation and Legal Services Inflation

The U.S. consumer price index (CPI), as calculated and published by the U.S. Bureau of Labor Statistics,⁹ comprises many goods and services purchased by U.S. residents, including food, energy, healthcare, telecommunications, and education. Legal services is listed in the CPI and is approximately equivalent to the average price of legal services that U.S. residents consume. U.S. inflation has been fairly low in recent years, ranging between 1 and 2 percent year over year, on average, over the last decade, though it was slightly higher in the previous decade. Meanwhile, the legal services component of inflation has slightly outpaced overall U.S. inflation. There is no consumer price index for indigent legal services.

From January 2002 until December 2020, overall U.S. inflation cumulatively increased by almost 50 percent. Over the same period, legal services inflation rose by almost 80 percent (Exhibit A1). While legal services for underserved defendants may not exactly match the price dynamics of legal services inflation, it is still useful for PSC's analysis. Overall CPI is utilized to calculate the increase in local share spending on legal services for underserved defendants, and as such, it is useful to understand if local share spending would be higher if it were applied to legal services instead. To forecast local share spending following FY 2021, PSC used an overall inflation rate of 2 percent and a legal services inflation rate of 3 percent. These annual rates are broadly consistent with previous price dynamics and are reasonable assumptions.

EXHIBIT A1. U.S. Inflation versus Legal Services Inflation



Note: January 2002 = 0.

⁹ U.S. Bureau of Labor Statistics. n.d. "Consumer Price Index." *U.S. Bureau of Labor Statistics*. Accessed March 25, 2021. <https://www.bls.gov/cpi/>

Appendix B: FY 2020 Local Share Spending and Attorney Fee Reimbursements (Preliminary)

EXHIBIT B1. System Data on FY 2020 Local Spending, FY 2020 Attorney Fee Reimbursements, and Average FY 2010–2012 Attorney Fee Reimbursements

Local Systems	FY 2020 Local Spending	FY 2020 Attorney Fee Reimbursements	FY 2010–2012 Average Attorney Fee Reimbursements
1	\$41,012	\$0	\$30,526
2	\$53,464	\$0	\$7,504
3	\$540,904	\$0	\$268,438
4	\$163,361	\$0	\$0
5	\$80,156	\$0	\$58,413
6	\$114,336	\$0	\$0
7	\$158,449	\$0	\$0
8	\$231,302	\$0	\$27,912
9	\$606,199	\$0	\$29,576
10	\$283,151	\$48,889	\$55,700
11	\$575,097	\$154,106	\$178,485
12	\$154,707	\$0	\$18,829
13	\$698,290	\$0	\$88,707
14	\$254,342	\$44,924	\$22,902
15	\$168,477	\$3,332	\$9,021
16	\$144,515	\$0	\$20,485
17	\$224,374	\$74,905	\$36,877
18	\$236,526	\$2,926	\$129,253
19	\$147,842	\$19,445	\$1,047
20	\$15,030	\$35,485	\$57,361
21	\$206,507	\$600	\$144
22	\$17,591	\$72,442	\$83,700
23	\$52,617	\$660	\$8,602
24	\$62,957	\$5,990	\$41,550
25	\$78,855	\$0	\$6,842
26	\$9,831	\$18,188	\$23,805
27	\$8,938	\$0	\$7,249
28	\$45,990	N/A	\$0
29	\$40,370	\$0	\$40,894
30	\$14,832	\$1,059	\$14,137
31	\$10,736	\$0	\$15,611
32	\$1,462	\$0	\$28,010

Local Systems	FY 2020 Local Spending	FY 2020 Attorney Fee Reimbursements	FY 2010–2012 Average Attorney Fee Reimbursements
33	\$4,687	\$0	\$1,640
34	\$23,476	\$647,092	\$5,383
35	\$14,487	N/A	\$3,890
36	\$12,661	\$5,228	\$14,295
37	\$76,757	N/A	\$6,193
38	\$55,316	\$0	\$0
39	\$31,142	\$11,010	\$37,761
40	\$1,086,674	\$273,338	\$450,720
41	\$122,808	\$194,698	\$1,122,667
42	\$53,008	\$0	\$111,147
43	\$90,250	\$267,828	\$304,161
44	\$7,079	\$0	\$71,163
45	\$0	\$0	\$35,199
46	\$43,619	\$57,241	\$147,559
47	\$18,375	\$0	\$21,145
48	\$15,309	\$0	\$23,927
49	\$1,781	\$3,447	\$35,448
50	\$22,692	\$0	\$600
51	\$42,170	\$10,238	\$42,076
52	\$82,782	\$18,034	\$43,348
53	\$21,911	\$20,592	\$45,152
54	\$17,464	\$26,031	\$46,192
55	\$18,023	\$4,813	\$2,165
56	\$31,807	\$41,160	\$28,863
57	\$2,826	\$0	\$6,150
58	\$6,237	\$0	\$6,166
59	\$177,125	\$68,293	\$70,061
60	\$7,161	\$22,040	\$7,393
61	\$39,165	\$2,640	\$29,959
62	\$13,797	\$0	\$0
63	\$0	\$53,320	\$48,481
64	\$109,591	\$51,604	\$71,817
65	\$68,654	\$48,762	\$90,990
66	\$445,328	\$100	\$10,671
67	\$162,829	\$0	\$30,198
68	\$1,335,599	\$0	\$41,175
69	\$104,397	\$15,263	\$1,951
70	\$156,959	\$259,430	\$261,897

Local Systems	FY 2020 Local Spending	FY 2020 Attorney Fee Reimbursements	FY 2010–2012 Average Attorney Fee Reimbursements
71	\$83,401	\$16,615	N/A
72	\$10,185	\$0	\$0
73	\$3,233	\$0	\$1,653
74	\$15,015	\$970	\$0
75	\$3,151	\$0	\$10,008
76	\$113,756	\$0	\$0
77	\$81,183	\$0	\$56,094
78	\$921,865	\$38,526	\$166,908
79	\$223,413	\$0	\$46,202
80	\$171,806	\$13,192	\$0
81	\$73,071	\$0	\$8,181
82	\$238,440	\$0	\$140,799
83	\$567,334	\$99,534	N/A
84	\$1,176,108	\$53,796	\$264,914
85	\$39,853	\$0	\$36,553
86	\$2,449,097	\$43,340	\$310,833
87	\$77,894	\$0	\$0
88	\$109,845	\$2,284	\$156,521
89	\$52,833	\$0	\$26,635
90	\$214,815	\$152,606	\$83,048
91	\$936,856	\$0	\$204,509
92	\$30,176	\$3,922	\$4,491
93	\$136,830	\$0	\$4,792
94	\$2,242,139	\$1,260,801	\$1,122,180
95	\$229,920	\$0	N/A
96	\$156,856	\$14,519	\$0
97	\$166,910	\$0	\$139,941
98	\$116,201	\$5,317	\$6,477
99	\$259,599	\$26,452	\$22,204
100	\$215,997	\$43,111	\$243,435
101	\$225,180	\$12,896	\$16,093
102	\$16,915	\$0	\$0
103	\$676,864	\$0	\$634
104	\$201,412	\$0	\$1,603
105	\$1,868,991	\$1,029,655	\$1,321,217
106	\$92,954	\$0	\$1,603
107	\$147,850	\$0	\$88,666
108	\$27,774	\$14,355	\$8,989

Local Systems	FY 2020 Local Spending	FY 2020 Attorney Fee Reimbursements	FY 2010–2012 Average Attorney Fee Reimbursements
109	\$70,307	\$0	\$56,610
110	\$54,338	\$0	\$0
111	\$82,273	\$0	\$33,518
112	\$943,395	\$0	\$479,028
113	\$74,902	\$23,936	\$4,000
114	\$203,667	\$0	\$142,014
115	\$917,671	\$0	\$19,157
116	\$65,684	\$80,974	\$59,499
117	\$36,314	\$0	\$6,032
118	\$106,082	\$5,155	\$148,528
119	\$750,173	\$149,554	\$349,087
120	\$423,223	\$0	\$47,550
121	\$253,957	\$0	\$70,914
122	\$2,441,933	\$79,080	\$152,599
123	\$7,611,175	\$647,092	\$684,566
124	\$146,902	\$61,801	\$5,803
Total	\$38,523,884	\$6,464,638	\$11,343,271

Source: MIDC.

Appendix C: FY 2020 System Local Share Spending as a Percent of Total Local Share Spending

Total FY 2020 local share spending was \$38.5 million, and PSC calculated each system's local share spending as a percent of \$38.5 million (Exhibit C1). To create a proxy for what each system would be spending if attorney fee reimbursement collections were not deducted, PSC also performed the same calculation, but excluded average FY 2010–2012 attorney fee reimbursement deductions from each system's local share spending and from total local share spending. This was accomplished by adding each system's average FY 2010–2012 attorney fee reimbursement deductions to their respective local share spending. This results in total local share spending of \$49.9 million, which is the sum of actual FY 2020 local share spending of \$38.5 million and total average FY 2010–2012 attorney fee reimbursements of \$11.4 million.

By excluding average FY 2010–2012 attorney fee reimbursement deductions, some systems have slightly larger percentage contributions to total local spending, which indicates average FY 2010–2012 attorney fee reimbursements were sizeable relative to FY 2020 local share (Exhibit C1). Meanwhile, some systems have smaller or equal percentage contributions to total local spending, which indicates average FY 2010–2012 attorney fee reimbursements were modest relative to FY 2020 local share. These small shifts suggest that excluding average FY 2010–2012 attorney fee reimbursement deductions from the local share formula may enhance equity between indigent defense systems' local share contributions to indigent defense spending.

EXHIBIT C1. FY 2020 System Local Share Spending as a Percent of Total Local Share Spending

Local System	System Local Share as Percent of Total Local Share	System Local Share as a Percent of Total Local Share, Excluding FY 2010–2012 Average Attorney Fee Reimbursements
1	0.106%	0.143%
2	0.139%	0.122%
3	1.404%	1.623%
4	0.424%	0.328%
5	0.208%	0.278%
6	0.297%	0.229%
7	0.411%	0.318%
8	0.600%	0.520%
9	1.574%	1.275%
10	0.735%	0.680%
11	1.493%	1.511%
12	0.402%	0.348%
13	1.813%	1.578%
14	0.660%	0.556%
15	0.437%	0.356%
16	0.375%	0.331%

Local System	System Local Share as Percent of Total Local Share	System Local Share as a Percent of Total Local Share, Excluding FY 2010–2012 Average Attorney Fee Reimbursements
17	0.582%	0.524%
18	0.614%	0.734%
19	0.384%	0.299%
20	0.039%	0.145%
21	0.536%	0.414%
22	0.046%	0.203%
23	0.137%	0.123%
24	0.163%	0.210%
25	0.205%	0.172%
26	0.026%	0.067%
27	0.023%	0.032%
28	0.119%	0.092%
29	0.105%	0.163%
30	0.038%	0.058%
31	0.028%	0.053%
32	0.004%	0.059%
33	0.012%	0.013%
34	0.061%	0.058%
35	0.038%	0.037%
36	0.033%	0.054%
37	0.199%	0.166%
38	0.144%	0.111%
39	0.081%	0.138%
40	2.821%	3.083%
41	0.319%	2.498%
42	0.138%	0.329%
43	0.234%	0.791%
44	0.018%	0.157%
45	0.000%	0.071%
46	0.113%	0.383%
47	0.048%	0.079%
48	0.040%	0.079%
49	0.005%	0.075%
50	0.059%	0.047%
51	0.109%	0.169%
52	0.215%	0.253%
53	0.057%	0.134%

Local System	System Local Share as Percent of Total Local Share	System Local Share as a Percent of Total Local Share, Excluding FY 2010–2012 Average Attorney Fee Reimbursements
54	0.045%	0.128%
55	0.047%	0.040%
56	0.083%	0.122%
57	0.007%	0.018%
58	0.016%	0.025%
59	0.460%	0.496%
60	0.019%	0.029%
61	0.102%	0.139%
62	0.036%	0.028%
63	0.000%	0.097%
64	0.284%	0.364%
65	0.178%	0.320%
66	1.156%	0.914%
67	0.423%	0.387%
68	3.467%	2.761%
69	0.271%	0.213%
70	0.407%	0.840%
71	0.216%	N/A
72	0.026%	0.020%
73	0.008%	0.010%
74	0.039%	0.030%
75	0.008%	0.026%
76	0.295%	0.228%
77	0.211%	0.275%
78	2.393%	2.183%
79	0.580%	0.541%
80	0.446%	0.345%
81	0.190%	0.163%
82	0.619%	0.760%
83	1.473%	N/A
84	3.053%	2.890%
85	0.103%	0.153%
86	6.357%	5.535%
87	0.202%	0.156%
88	0.285%	0.534%
89	0.137%	0.159%
90	0.558%	0.597%

Local System	System Local Share as Percent of Total Local Share	System Local Share as a Percent of Total Local Share, Excluding FY 2010–2012 Average Attorney Fee Reimbursements
91	2.432%	2.289%
92	0.078%	0.070%
93	0.355%	0.284%
94	5.820%	6.747%
95	0.597%	N/A
96	0.407%	0.315%
97	0.433%	0.615%
98	0.302%	0.246%
99	0.674%	0.565%
100	0.561%	0.921%
101	0.585%	0.484%
102	0.044%	0.034%
103	1.757%	1.359%
104	0.523%	0.407%
105	4.852%	6.397%
106	0.241%	0.190%
107	0.384%	0.474%
108	0.072%	0.074%
109	0.183%	0.255%
110	0.141%	0.109%
111	0.214%	0.232%
112	2.449%	2.852%
113	0.194%	0.158%
114	0.529%	0.693%
115	2.382%	1.879%
116	0.171%	0.251%
117	0.094%	0.085%
118	0.275%	0.511%
119	1.947%	2.204%
120	1.099%	0.944%
121	0.659%	0.651%
122	6.339%	5.203%
123	19.757%	16.636%
124	0.381%	0.306%

Source: PSC analysis of MIDC data.



**PUBLIC SECTOR
CONSULTANTS**

230 N. Washington Square
Suite 300
Lansing, MI 48933

AMENDMENT TO ALLOW FOR EXPENDITURE OF FY2020 UNEXPENDED FUNDS

Subject to the terms and conditions below, the State of Michigan, the Michigan Indigent Defense Commission (MIDC) and the Department of Licensing and Regulatory Affairs (LARA) (collectively "Grantor") and Bay County ("Grantee") enter into this Agreement to allow Grantee to use funds remaining from Grant No. 2020-23 after September 30, 2020.

BACKGROUND

In 2019, the Michigan Legislature appropriated funds to cover the cost of indigent defense services under the Michigan Indigent Defense Commission Act. Funding for fiscal year 2020 was distributed to 124 funding units pursuant to a grant contract executed between each funding unit and Grantor. The funds distributed under these grant contracts included the state grant amount and the local share. The amount of the grants included funding for the period of October 1, 2019 through September 30, 2020.

Pursuant to the MIDC Act, all indigent defense grant funds are required to be held in a restricted fund. MCL 780.993(14)(b). The MIDC Act also provides that unexpended funds in a system's restricted fund (not subject to MCL 780.993(11)) will be included in the system's subsequent fiscal year's expenditures through the subsequent year's compliance plan and cost analysis.

The parties are unable to fully execute a new grant contract for fiscal year 2021 on or before October 1, 2020. The parties agree, however that Grantee should make indigent defense related expenditures with unexpended funds from fiscal year 2020 in order to ensure the uninterrupted provision of indigent defense services.

TERMS

1. **SCOPE OF AUTHORITY:** This agreement incorporates by reference the fiscal year 2020 grant contract and associated fiscal year 2020 compliance plan and cost analysis. If Grantee received a budget adjustment or during fiscal year 2020, should continue spending funds in accordance with the budget adjustment. Any funds used pursuant to this agreement shall be used consistent with the FY20 approved compliance plan and cost analysis, or where the funding unit has an approved compliance plan and cost analysis for FY21, consistent with the approved FY21 compliance plan and cost analysis pending execution of an FY21 grant contract. Grant funds shall not be used for any other purpose.
2. **VARIATION FROM FISCAL YEAR 2020 SPENDING:** Any variation in Grantee's spending requires prior written approval from the MIDC. Grantee must follow MIDC policy and procedure when applying for approval.
3. **OFFSET:** The state grant for fiscal year 2021 will be offset by the amount of unexpended funds (not subject to MCL 780.993(11)) remaining on September 30, 2020.
4. **FUND BALANCE REPORTING:** Michigan Compiled Laws 780.993(15) requires Grantee to report all unexpended funds as of September 30th by October 31, 2020.
5. **INCORPORATION:** All terms and conditions of the parties' fiscal year 2020 grant agreement, including attachments, are incorporated into this Agreement. If there is a conflict between the terms and conditions of the fiscal year 2020 grant agreement and this Agreement, this Agreement prevails.

MISCELLANEOUS PROVISIONS

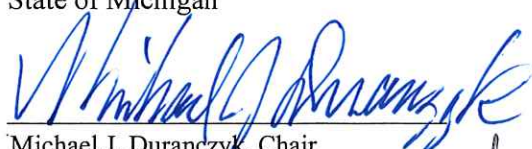
6. LOCAL SHARE: Nothing in this agreement affects the calculation of the local share pursuant to the MIDC Act. That share is adjusted on an annual basis.
7. MODIFICATION: This Agreement, and all documents incorporated hereto, constitute the parties' entire agreement. This Agreement can only be modified by the parties' written agreement.
8. WAIVER: Failure to enforce any provision of the Agreement shall not constitute a waiver.
9. SEVERABILITY: If any court or competent jurisdiction finds any part of this Agreement to be invalid or unenforceable, that part will be deemed deleted from this Agreement. The severed part will be replaced with a mutually agreeable provision that achieves the same or similar objectives. The remaining Agreement will continue in full force and effect.
10. HEADINGS: The use of headings in this Agreement is for convenience only. Headings shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the parties.
11. TERMINATION: This agreement shall terminate on December 31, 2020 or the date that the parties sign their FY21 grant contract. Expenses made under this Agreement, however, shall be included and supported with documentation in the first report required under the FY21 grant contract.
12. SIGNATORIES: The signatories warrant that they are empowered to enter into this Agreement and agree to be bound by it.

 Loren Khogali, Executive Director
 Michigan Indigent Defense Commission
 Department of Licensing and Regulatory Affairs
 State of Michigan

Date: _____

 LeAnn Droste, Director
 Bureau of Finance and Administrative Services
 Department of Licensing and Regulatory Affairs
 State of Michigan

Date: _____


 Michael J. Duranczyk, Chair
 Bay County Board of Commissioners

Date: 11/5/2020

APPROVED AS TO LEGAL FORM ONLY

 BAY COUNTY CORPORATION COUNSEL
 DATE: 11/5/2020

To: Michigan Indigent Defense Commission

From: Marla R. McCowan
Interim Executive Director
Director of Training, Outreach & Support

Re: FY21 overview and FY22 status and recommendations by Staff

Date: August 11, 2021

I. FY21 Compliance Funding Distribution Update; Q2 adjustments; Q3 reporting

A. Overview

As of the April 2021 meeting, all **120 systems have had their plans and cost analyses approved**, contracts have been distributed to those systems, and all systems have fully executed contracts in place. All have received multiple distributions of funding and will receive the final distribution on or approximately August 15, 2021 unless the distribution exceeded the funds on deposit with the system.

	MIDC Funding	Local Share	Total System Costs
FY 2019	\$86,722,179.85	\$37,963,396.67 ¹	\$124,685,576.52
FY 2020	\$117,424,880.47	\$38,523,883.90	\$157,698,982.46
FY 2021	\$126,743,000.64	\$38,486,171.32	\$165,229,171.96

1. System reporting - progress towards compliance

Staff is in the process of reviewing the third quarter of reporting from systems for FY21 (covering April 1, 2021 – June 30, 2021) at the end of July. The reporting is composed of:

- A **program report**, detailing the progress towards compliance with the approved plan. All program reports are currently submitted online

¹ The annual inflationary increase described in MCL 780.983(i) are calculated from the FY2019 local share.

through a survey-type of system for ease in submitting, receiving, and organizing the information provided.

- A **financial status report** in the format approved by the Commission, to provide information regarding the spending on indigent defense between April 1, 2021 – June 30, 2021.
- A **budget adjustment request** if applicable, to accommodate necessary changes to the line items without exceeding the approved total grant award;
- A **list of attorneys** providing services in the system, including full name and P#, to track progress on continuing legal education.

The MIDC staff worked to simplify the reporting process and created a series of short web-based tutorials to provide systems with guidance on completing the necessary reporting documents. The tutorials, along with a number of resources for reporting, can be found on our grants page at www.michiganidc.gov/grants.

2. Changes and adjustments to approved plans and/or cost analysis

a. Budget adjustments – **information item**

- 1) The Grant Manager processed the following **budget adjustment requests** pursuant to the process set forth in the MIDC's [Grant Manual](#) at p. 26 (June 2020):

- **Approved budget adjustments**
[Muskegon County](#)

II. FY22 Compliance Planning, Submissions, and Recommendations

A. Overview

Statutory authority MCL §780.993 (as amended with emphasis December 2018):

(3) No later than 180 days after a standard is approved by the department, each indigent criminal defense system shall submit a plan to the MIDC for the provision of indigent criminal defense services in a manner as determined by the MIDC and shall submit an annual plan for the following state fiscal year on or before **October 1** of each year. A plan submitted under this subsection must specifically address how the minimum standards established by the MIDC under this act will be met and must include a cost

analysis **for meeting those minimum standards**. The standards to be addressed in the annual plan are those approved not less than **180** days before the annual plan submission date. The cost analysis must include a statement of the funds in excess of the local share, if any, necessary to allow its system to comply with the MIDC's minimum standards.

(4) The MIDC shall approve or disapprove **all or any portion of** a plan or cost analysis, or both a plan and cost analysis, submitted under subsection (3), and shall do so within 90 calendar days of the submission of the plan and cost analysis. If the MIDC disapproves **any part of** the plan, the cost analysis, or both the plan and the cost analysis, the indigent criminal defense system shall consult with the MIDC and, **for any disapproved portion**, submit a new plan, a new cost analysis, or both within **60** calendar days of the mailing date of the official notification of the MIDC's disapproval. If after 3 submissions a compromise is not reached, the dispute must be resolved as provided in section 15. **All approved provisions of an indigent criminal defense system's plan and cost analysis must not be delayed by any disapproved portion and must proceed as provided in this act. The MIDC shall not approve a cost analysis or portion of a cost analysis unless it is reasonably and directly related to an indigent defense function.**

B. FY22 Submissions

Staff hosted several webinars for compliance planning as well as training for the MIDC's new grant management system and made recordings of the webinars available on our YouTube page and our website along with the forms and relevant documents for submission. The MIDC staff expected to receive a total of 120 compliance plans and cost analyses from funding units for FY22. The dates of submission are tracked closely by staff to ensure compliance with the statutory timelines for review by the Commission.

1. Status of Submissions to date

a. Approved plans and costs for FY22

As of the June 15, 2021 meeting, 64 of 120 systems have had their plans and cost analyses approved, contracts have been distributed to those systems for review and signature.

FY22 Total system cost approved (to date): \$72,769,476.84

- Local share (increase of 1.2% from FY19): \$15,328,795.64
- MIDC funding approved for compliance plans: \$57,440,654.20
- MIDC funding approved to reimburse systems for the cost of planning: \$38,943.43

Note: There is a net decrease in the local share from the total presented at the June 2021 meeting by \$27.00 due to a typographical error in Clinton County. No other totals were impacted.

b. Disapproved plans and/or cost analyses for FY22 (first submissions)

As of the June 15, 2021 meeting, the MIDC rejected the plan and/or cost analysis from 56 systems for their first submission for FY22. Those systems were notified of the MIDC's action through a mailing dated June 21, 2021. The deadline for resubmission is August 20, 2021. Most systems resubmitted on or before July 23, 2021, to be considered by the Commission at its August meeting. Of those, 34 systems are set forth with staff recommendations in section 2.b. of this memo. The remaining 22 will be presented for Commission action at the **October 19, 2021 meeting**.

2. Review of FY22 Compliance Plans and Cost Analyses

a. Committee Work

Notes from committee meetings

- 1) **Committee Description: General Increase to Plan**
 - Reviews any compliance plan that includes an increase to the cost analysis total, excluding direct indigent defense services and annual inflationary increases.

Committee members –

- Christine Green (Chair)
- James Fisher
- Hakim Crampton
- Joshua Blanchard

- 2) **Committee Description: Increase to Direct Costs** – Reviews any plan in which there is an increase to direct indigent defense services.

Committee members –

- William Swor (Chair)
- Jeffrey Collins
- David W. Jones

- 3) **Committee Description: System Change** – Reviews any compliance plan that includes a substantial change to the method or system by which the funding unit will deliver indigent defense services funded under the MIDC grant.

Committee members –

- Gary Walker (Chair)
- Andrew DeLeeuw
- Tracey Brame
- Margaret McAvoy
- Kristina Robinson-Garrett

b. Substantive Review of Resubmissions – Action Requested

Senior staff recommends, pursuant to MCL 780.993(4), as follows:

Plan previously approved, recommend approving cost analysis:

No change at all to plan; same or decreases to costs, and/or on track with spending

1) D 45 - City of Oak Park

FY21 Total system cost approved: \$449,850.00

FY22 Total system cost requested: \$449,850.00 (no change from 1st submission)

Managed assigned counsel system; clarification is required for MAC payment structure (hourly vs. monthly rate).

Resubmission: MAC will be compensated hourly.

Standard 5 innovation in implementation

2) D 28 - City of Southgate

FY21 Total system cost approved: \$186,265.04

FY22 Total system cost requested: \$210,585.60 (reduced from 1st submission, which was \$253,458.91)

Assigned Counsel System / House Counsel system will participate in Wayne County District Court Regional Office for standards 1, 3 and 5; significant increase to personnel for fringe benefits requires detail; significant increase to contractual attorney payments without explanation and does not track projected spending. Cost analysis should be revised to track some spending through regional office.

Resubmission: Detail for personnel including increases to fringe benefits was supplied and revisions made to include regional participation; contractual attorney increase (+\$29,500) tracks with spending projections.

3) D 29 - City of Wayne

FY21 Total system cost approved: \$179,204.94

FY22 Total system cost requested: \$148,225.11 (reduced from 1st submission, which was \$195,910.98).

Contract defender system will participate in Wayne County District Court Regional Office for Standards 1, 3 and 5; system continues to seek funding for a part time court officer and should remove (new) “Zoom Coordinator” position; detail is needed to justify added attorney hours and coverage for contract attorneys to cover expungements should be removed; cost analysis should be revised to track some spending through regional office.

Resubmission: Zoom coordinator position removed and all other corrections have been made.

Increases (more than 5% from prior year) to direct services and/or spending

Revised payment/fee schedules

4) D 38 - City of Eastpointe

FY21 Total system cost approved: \$469,842.12

FY22 Total system cost requested: \$554,946.15 (reduced from 1st submission, which was \$808,996.15)

Managed assigned counsel system seeking to increase attorney fees by \$345,400; additional caseload and spending information is required to support request.

Resubmission: Request reduced to track projected spending while implementing new event based payment schedule.

5) Ogemaw County

FY21 Total system cost approved: \$608,093.00

FY22 Total system cost requested: \$761,006.90 (reduced from 1st submission, which was \$838,846.90)

System currently uses a flat-rate contract with MAC supervision but will shift to a hybrid contract system with MAC supervision/minimum monthly payment and hourly pay after average monthly hours exceeded; substantial increase in attorney fees in order to implement hybrid system with added hours for MAC and clerical support (+\$220,189) that includes math errors and potentially duplicative payments requiring revisions.

Resubmission: Duplicative interview payments removed, MAC and clerical support reduced.

Added Social workers

6) Alger County

FY21 Total system cost approved: \$429,084.71

FY22 Total system cost requested: \$458,825.90 (no change from initial submission)

Public defender office seeking to add a MAC for conflict administration; additional information is required regarding salaries, correction's staff hours, cost allocation formula; clarification/detail regarding (new) contract social worker duties is requested as well.

Resubmission: Information was supplied regarding salaries consistent with local policies; social worker duties have been detailed in the plan; ancillary spending is necessary to facilitate Standards 2 and 4 (no change from previously requested ancillary spending).

7) Washtenaw County

FY21 Total system cost approved: \$6,050,067.42

FY22 Total system cost requested: \$6,681,041.32 (reduced from 1st submission, which was \$6,906,041.32)

Public defender office with MAC administrator for conflict cases; system is seeking significant increase (+\$1,195,434,12) to personnel, additional information regarding tracked or projected spending is required to analyze the request.

Resubmission: FY21 spending was analyzed for PD office and contractual spending; resubmission reduced spending initially by \$474,728.64 and by an additional \$225,000 due to right-sizing attorney payments; with hiring timeline in place requested spending should track projections. Direct Service Provider changes increases due to addition of 10 new PD staff (salary + fringe), building of holistic defense team (1 MSW, 2 client advocates/paralegals), 2 attorneys to cover specialty courts, 2 attorneys to fully cover 15th District Court; 2 clerks (to assist the 4 new attorneys) 1 executive assistant for Chief & Deputy Chief; space modification to accommodate additional staff.

Systems seeking reimbursement for overspending and/or additional funding for COVID backlog

8) D 17 – Township of Redford

FY21 Total system cost approved: \$211,431.17

FY22 Total system cost requested: \$406,469.40 (increase from 1st submission, which was \$301,469.40)

Assigned counsel system will participate in Wayne County District Court regional office detailed below. Cost analysis should be revised for clarification in spending and include reimbursement for FY21.

Resubmission: Reimbursement for error correction for services funded in FY21 is included (+\$105,000).

9) Tuscola County

FY21 Total system cost approved: \$1,138,982.00

FY22 Total system cost requested: \$1,501,036 (increase from 1st submission, which was \$1,408,556.44)

Managed assigned counsel system with hourly pay for roster of attorneys; significant increase to contract attorney payments (+\$258,395) requires detail/formula for request.

Resubmission: The system provided a detailed memo regarding the projected spending for the contract attorneys, including projected spending reviewed

by staff, administration costs associated with Standard 5, a request for reimbursement for overspending in FY21 (+\$177,000), COVID backlog and various docketing issues.

Plan and cost analysis previously disapproved, recommend approving plan and cost analysis

No change to method of delivering services from prior year; same or decreases to costs, and/or on track with spending

10) D 39 – Cities of Roseville and Fraser

FY21 Total system cost approved: \$796,130.54

FY22 Total system cost requested: \$796,032.20 (reduced from 1st submission, which was \$823,716.20)

Assigned counsel system moving to a managed assigned counsel system. There is missing and incomplete information in the plan for Standard 2 regarding meeting space and the ancillary position's job description and duties; in the cost analysis the system seeks \$25,000 to pay the Macomb County Jail a \$10 per inmate fee for facilitating arraignments. This fee, however, has been in effect since 2004 and does not appear to be related to the Standards.

Resubmission: The system provided detail regarding the space for in and out of custody defendants and clarified that a booking officer will be facilitating meetings to comply with the Standards; jail fee has been removed.

11) D 40 - City of St Clair Shores

FY21 Total system cost approved: \$534,636.91

FY22 Total system cost requested: \$480,886.01 (reduced from 1st submission, which was \$493,136.01)

Managed assigned counsel system with a MAC who is also a part-time judge. Clarification is required regarding compliance with Standards 2, 3 and 5. System requesting funds to have current MAC train new MAC and to have current MAC prepare FY23 plan and cost analysis; additional information about MIDC clerk and MAC duties needed.

Resubmission: Plan makes clear that the system will be completely independent from the judiciary, minimal training will be required to facilitate implementation; in custody meeting arrangements have been confirmed and

clarified; system provided support for ancillary spending and all spending will continue to be analyzed in future requests from this system.

12) Hillsdale County

FY21 Total system cost approved: \$407,313.37

FY22 Total system cost requested: \$386,408.25 (no change in resubmission)
Managed assigned counsel system; reduced jail officer time from 40 hrs to 25 hrs/wk; reduced equipment from prior year; no change to line items for attorney pay but rate change from \$100/hr to \$75/100/125 for misdemeanor, non-capital felony, capital felony cases as described in plan for Standards 2 and 4.

Resubmission: Attorney rates for conflict cases revised and reflect payments of no more than Standard 8 rates.

13) Iron County

FY21 Total system cost approved: \$619,053.86

FY22 Total system cost requested: \$605,763.09 (reduction from 1st submission, which was \$606,707.09)

Public defender office (nonprofit model) with a conflict attorney administrator; missing or incomplete information for compliance with Standard 5 including payments to counsel; ancillary spending should be deleted or clarified and travel and training must be revised.

Resubmission: Plan was revised to clarify that the court will not be making any assignments or conducting review of billing; process for tracking assignments to conflict counsel has been added; ancillary spending limited to assistance with reporting that is required; travel and training has been revised.

14) St. Joseph County

FY21 Total system cost approved: \$918,293.67

FY22 Total system cost requested: \$883,522.96

No initial submission.

Managed assigned counsel system; minor decrease to MAC salary and fringe benefits due to hiring new MAC not previously employed by the county; minor increase for assigned attorney due to actual need and increase caused by COVID.

No change, COLA or similar is the only increase, on track to spend prior year

15) **Alcona County**

FY21 Total system cost approved: \$152,650.00

FY22 Total system cost requested: \$157,675.00

No initial submission.

Flat fee contract system, with provision for hourly on capital cases. MAC manager oversees system. Extremely modest increases in monthly contract fee, training and memberships, decrease in MAC fees.

16) **D 43-2 City of Ferndale**

FY21 Total system cost approved: \$551,357.44

FY22 Total system cost requested: \$ 557,541.25 (reduced from 1st submission, which was \$559,599.19)

Managed assigned counsel system will continue. Plan needs additional information about Standard 2 and 3; increased funding request for MAC needs support; method for compensating MAC needs clarification; cost analysis appears to contain incorrect information about fringe benefits.

Resubmission: Plan clarifies under Standard 2 that there is a window for attorneys and clients to exchange papers and under Standard 3 that investigators will be paid at MIDC published rates; MAC compensation was reduced from first submission and will be hourly, fringe benefit rates have been corrected.

17) **Eaton County**

FY21 Total system cost approved: \$2,085,798.00

FY22 Total system cost requested: \$2,114,708.83 (reduced from first submission, which was \$2,121,676.83)

Public defender office and managed assigned counsel system; process for selection of attorneys and review of decisions needs clarification in the plan and reference to review by MIDC regional manager must be removed; cost analysis requires support for increase to attorney fees and expert and investigator funding as well as miscellaneous items in the contracts category of spending.

Resubmission: Standard 5 questions updated appropriately; vehicle expenses removed; miscellaneous line items identified (IT support); and contract attorney contract hours increased due to COVID backlog.

Standard 5 innovation in implementation

18) D 41-a-2 - Charter Township of Shelby

FY21 Total system cost approved: \$378,519.45

FY22 Total system cost requested: \$322,175.00 (increase from 1st submission, which was \$258,950.00)

Assigned counsel system will contract with Macomb County Public Defender Office to provide MAC support and limited representation services; additional information is required to determine assignment process and attorney fee schedule under Standards 2 and 4.

Resubmission: A new event based schedule has been supplied and the public defender will make the assignments.

19) Dickinson County

FY21 Total system cost approved: \$541,144.46

FY22 Total system cost requested: \$572,946.43 (no change from initial submission)

Assigned counsel system moving to a managed assigned counsel system. There is missing and incomplete information in the plan for Standards 2 and 4; detail is required for personnel and minor corrections to the cost analysis are requested.

Resubmission: Co-MAC administrators will take felonies and misdemeanors, respectively, and standards were addressed; personnel was removed; language line services included to allow the attorneys to receive translation services outside of court.

Increase largely related to implementation of Standard 5

20) Charlevoix County

FY21 Total system cost approved: \$514,125.60

FY22 Total system cost requested: \$601,064.41 (increase from 1st submission, which was \$600,462.54)

System proposes moving from a contract defender model to a hybrid single-attorney PD office (county employee) combined with 3 contract attorneys. Significant additional detail is required regarding caseloads and assignments through Standards 4 and 5; clarification or documentation in spending in

several categories is required including ancillary spending, experts and investigators, supplies and travel.

Resubmission: Contract defender model will transition to a county employee MAC administrator model; conflict coverage from a neighboring system has been added; increased costs due to new MAC administration; experts, investigators and supplies request based on spending and actual need.

21) D 61 - City of Grand Rapids

FY21 Total system cost approved: \$655,510.00

FY22 Total system cost requested: \$1,153,976.13 (increase from 1st submission, which was \$867,358.34)

Assigned counsel system using an indigent defense coordinator for selection, assignments and supervision of attorneys who is not an attorney and appeals of decisions made by the coordinator or neighboring review partner is made to a non-attorney.

Resubmission: Contracted attorney will be in place for selection and supervision of assigned counsel; an attorney in a neighboring system will be used for appealing decisions made by the administrator; cost increases are directly related to indigent defense services, modifications to plan for Standard 3, and plan for implementation of Standard 5; costs include addition of MAC administrator, analyst to support administrator, and increase to contractual attorneys (+\$204,370) due to COVID backlog and increasing flat rate of \$200/case to \$300/case.

22) Grosse Pointe Woods

FY21 Total system cost approved: \$45,375.00

FY22 Total system cost requested: \$55,920.00 (reduced from 1st submission, which was \$65,750.00).

Assigned counsel system seeks to add a managed assigned counsel coordinator; many incomplete answers in plan and missing information from the cost analysis.

Resubmission: System provided detail for all standards including training, interviews, experts and investigators, first appearance and all critical stages, and independence from the judiciary. Cost analysis includes funding for MAC administrator (\$15,600) and training; removed expert and investigator funding to coordinate with regional office.

23) **Ontonagon County**

FY21 Total system cost approved: \$162,911.00

FY22 Total system cost requested: \$196,837.31 (no change from initial submission)

Assigned counsel system will become a managed assigned counsel system; questions in the compliance plan regarding resolution of conflicts in assignments, billing, and expert and investigative assistance were not answered and require detail for analysis.

Resubmission: System supplied significant detail regarding contracting with an attorney to manage the assigned counsel system; increase to contracts for attorneys, minor increases to travel and training.

Other increases (more than 5% from prior year) to direct services and/or spending

24) **Alpena County**

FY21 Total system cost approved: \$610,435.00

FY22 Total system cost requested: \$675,423.47

No initial submission.

Public defender system with MAC-managed attorney panel for conflicts and overflow. PD office just opened in early July, so it is making a few adjustments in budget to reflect current rents, salary adjustments, and increases in training and memberships. MAC panel (which includes arraignments) also increased to accommodate COVID backlog.

25) **Delta County**

FY21 Total system cost approved: \$585,443.54

FY22 Total system cost requested: \$729,874.75 (decrease from initial submission, which was \$741,920.75)

Contract defender system with a lead attorney responsible for many plan components; clarification is required for Standards 1 and 5; the plan and cost analysis seeks to increase hourly rate of funding to attorneys for initial interviews from \$100/hr (misdemeanors) to \$120/hr and for other felonies to \$125/hr; cost analysis also includes a request for \$22,000.00 for materials and labor to construct new confidential meeting space in the courthouse for use by attorneys and their in-custody clients.

Resubmission: Minor changes to plan resolved in resubmission; hourly rate for other felonies decreased; increased spending for contracts base rates,

initial interviews, and increase to conflict case coverage; minor equipment, construction request is supported and needed to facilitate attorney client meetings.

26) **Emmet County**

FY21 Total system cost approved: \$446,636.00

FY22 Total system cost requested: \$493,799.60 (decrease from 1st submission, which was \$501,187.01)

Contract defender system will move to a managed assigned counsel system with an attorney administrator. Additional detail is required for Standards 1, 2 and 3; equipment purchases must be clarified and revisions to supplies and travel are requested.

Resubmission: Plan includes complete information for training, initial interviews, and use of experts and investigators; increase includes three percent increase to contract attorneys (+\$6,984.00) and new attorney administrator position (+\$40,800.00); equipment purchases were revised and reduced (+\$2,258.60); travel request uses correct rates.

27) **Houghton, Baraga and Keweenaw Counties**

FY21 Total system cost approved: \$700,178.20

FY22 Total system cost requested: \$789,492.20 (increase from 1st submission, which was \$780,342.00)

Public defender office (nonprofit model) will add a managed assigned counsel administrator for conflict cases; detail is required to ensure compliance with Standard 2; the cost analysis needs clarification on staff raises, payments for prisoner cases; travel and training and supplies require further detail.

Resubmission: Clarification on timing of communication for in custody and out-of-custody clients was clarified and meeting space has been sufficiently described; raises are consistent with local policy; request for travel and training detail has been provided; need for supplies has been documented and largely related to COVID; payment for prisoner cases has been combined with conflict attorney line.

28) **Jackson County**

FY21 Total system cost approved: \$3,522,431.66

FY22 Total system cost requested: \$4,175,035.50 (no change in resubmission)

Public defender office and managed assigned counsel system; clarification is requested regarding process for compliance with Standard 2; significant increases for additions to PD staff (+\$490,000) and contractual attorneys (+\$300,000) and additional information regarding projected spending is requested for analysis; expansion of construction project in courthouse space being modified in FY21 (+\$80,437) is requested here to accommodate additional staff sought in FY22.

Resubmission: Standard 2 compliance clarified; direct service spending increases track projected spending analysis and demonstrated need; construction is related to space for staff expansion.

29) **Marquette County**

FY21 Total system cost approved: \$1,098,460.19

FY22 Total system cost requested: \$1,239,490.71 (increase from 1st submission, which was \$1,232,350.71)

Public defender office responsible for all assignments including conflict counsel and requests for investigative and expert assistance in conflict cases; additional information is required to assess compliance with Standards 2 and 4; clarification regarding payments and reimbursement in prison cases is requested.

Resubmission: Process in place for tracking conflict cases and requests for conflict expert and investigative services; clarification provided for billing for prison cases; raises for county employees consistent with local policies; increases to conflict counsel, expert and investigative funding warranted; new social worker position added to staff along with related equipment.

30) **Montmorency County**

FY21 Total system cost approved: \$235,820.00

FY22 Total system cost requested: \$256,742.41

No initial submission.

Public defender system with MAC-managed attorney panel for conflicts and overflow. PD office just opened in early July, so is making a few adjustments in budget to reflect current rents, salary adjustments, and increases in training and memberships. MAC panel (which includes arraignments) also increased to accommodate COVID backlog.

31) **Oakland County**

FY21 Total system cost approved: \$7,203,836.12

FY22 Total system cost requested: \$7,650,353.49

No initial submission.

Managed assigned counsel system (in process of hiring MAC Administrator); added personnel and supplies for new indigent defense department; system slightly reduced requested attorney's fees and expert funds based on historical spending despite having significant number of cases pending trial due to COVID; and system reevaluated ancillary staffing. In addition, there are several one-time costs: construction of indigent defense department office, furniture and equipment for the indigent defense office, and completion of FY21 feasibility study on creating a public defender office in FY23.

32) **Presque Isle County**

FY21 Total system cost approved: \$218,468.51

FY22 Total system cost requested: \$236,868.59 (increase from 1st submission, which was \$202,246.59).

Contract defender system will add an attorney administrator for FY22; clarification is required to assess compliance for Standards 3 and 5; cost analysis requires clarification or revision of rates and quantities for hours, supplies, and services.

Resubmission: Standard 3 plan answers were clarified, Standard 5 questions regarding conflicts and appeals process provided; cost analysis has been corrected on several line items; increase largely attributable to contracts for attorneys including conflict cases (+\$28,400).

Systems seeking reimbursement for overspending and/or additional funding for COVID backlog

33) **Crawford County**

FY21 Total system cost approved: \$316,295.80

FY22 Total system cost requested: \$708,294.31 (increase from 1st submission, which was \$422,129.08).

Managed assigned counsel system will seek addition of an attorney administrator independent from the court system. There are many details missing from the plan needed to assess compliance and significant additional detail is required in the cost analysis.

Resubmission: System will incorporate a managed assigned counsel administrator who will be independent from the judiciary who will manage the arraignment schedule, make attorney assignments, review and approve attorney invoices and review and approve requests for expert and investigative assistance. The Administrator will also responsible for MIDC reporting and planning. Cost analysis increases to bailiff hours (+\$1,692.00), increase to Corrections Staff (+\$825.00) and new clerk hours to facilitate Standard 5 case assignments (+\$3,204); increase to assigned counsel (+\$263,200.00) addition of a MAC (+\$36,000.00), request for reimbursement for overspending in FY21 (+\$90,000.00), slight increase in travel and training (+\$707.00) increase in request for transcript fee reimbursement (+\$5000.00).

34) D 18 - City of Westland

FY21 Total system cost approved: \$447,280.00

FY22 Total system cost requested: \$614,435.00 (increase from 1st submission, which was \$594,035.00)

Assigned counsel system will use Wayne County District Court Regional Office for experts and investigator assignments; plan, however, refers to court making assignments, attorney supervision and appeals are to non-attorneys; missing details regarding review process.

Resubmission: System will contract with an attorney administrator for assignments and related duties and will only use regional office for appealing decisions of administrator; cost analysis increase includes reimbursement for FY21 overspending on attorneys (+\$68,000), increase in attorney hours (+\$88,200), MAC administration (+\$10,400) and includes funding for experts and investigators (\$10,000).

c. Summary of funding totals recommended for approval

		MIDC Funding	Local Share	Total System Costs
Alcona County	1	\$117,064.17	\$40,610.83	\$157,675.00
Alger County	1	\$405,885.10	\$52,940.80	\$458,825.90
Alpena County	1	\$513,660.66	\$161,762.81	\$675,423.47
Charlevoix County	1	\$434,236.21	\$166,828.20	\$601,064.41
Crawford County	1	\$693,411.84	\$14,882.47	\$708,294.31
D 17 Township of Redford	1	\$354,367.03	\$52,102.37	\$406,469.40
D 18 City of Westland	1	\$552,093.78	\$62,341.22	\$614,435.00
D 28 City of Southgate	1	\$205,944.57	\$4,641.03	\$210,585.60
D 29 City of Wayne	1	\$124,979.07	\$23,246.04	\$148,225.11
D 38 City of Eastpointe	1	\$502,456.41	\$52,489.74	\$554,946.15
D 39 Roseville and Fraser	1	\$706,665.52	\$89,366.68	\$796,032.20
D 40 City of St Clair Shores	1	\$473,875.83	\$7,010.18	\$480,886.01
D 41-a-2 Shelby Twp	1	\$322,175.00	\$0.00	\$322,175.00
D 43-2 City of Ferndale	1	\$542,382.50	\$15,158.75	\$557,541.25
D 45 City of Oak Park	1	\$408,092.86	\$41,757.14	\$449,850.00
D 61 City of Grand Rapids	1	\$978,584.39	\$175,391.74	\$1,153,976.13
Delta County	1	\$621,355.97	\$108,518.78	\$729,874.75
Dickinson County	1	\$505,099.52	\$67,846.91	\$572,946.43
Eaton County	1	\$1,673,737.93	\$440,970.90	\$2,114,708.83
Emmet County	1	\$332,563.71	\$161,235.89	\$493,799.60
Grosse Pointe Woods	1	\$52,800.00	\$3,120.00	\$55,920.00
Hillsdale County	1	\$273,765.57	\$112,642.68	\$386,408.25

Houghton (Baraga, Keweenaw)	1	\$632,581.33	\$156,910.87	\$789,492.20
Iron County	1	\$533,406.78	\$72,356.31	\$605,763.09
Jackson County	1	\$3,613,252.33	\$561,783.17	\$4,175,035.50
Marquette County	1	\$1,011,820.06	\$227,670.65	\$1,239,490.71
Montmorency County	1	\$239,992.80	\$16,749.61	\$256,742.41
Oakland County	1	\$5,799,650.39	\$1,850,703.10	\$7,650,353.49
Ogemaw County	1	\$614,603.90	\$146,403.00	\$761,006.90
Ontonagon County	1	\$169,334.85	\$27,502.46	\$196,837.31
Presque Isle County	1	\$162,699.80	\$74,168.79	\$236,868.59
St. Joseph County	1	\$464,441.25	\$419,081.71	\$883,522.96
Tuscola County	1	\$1,249,564.16	\$251,471.88	\$1,501,036.04
Washtenaw County	1	\$4,058,515.78	\$2,622,525.54	\$6,681,041.32
Total recommended	34	\$29,345,061.07	\$8,282,192.25	\$37,627,253.32

MIDC Region	Trial Court System		MIDC Funds Requested	FY22 Local Share (+ 1.2%)	Total System Cost	Regional Total Costs
LMOSC	D 41a1 Sterling Heights	1	\$360,353.00	\$0.00	\$360,353.00	
	D 46 Southfield	1	\$491,728.00	\$81,972.00	\$573,700.00	
	D 48 Birmingham	1	\$515,257.40	\$17,292.64	\$532,550.04	
	D 50 Pontiac	1	\$603,133.64	\$17,846.62	\$620,980.26	
	D 51 Waterford	1	\$250,430.85	\$31,495.97	\$281,926.82	
	Lapeer County	1	\$626,929.81	\$108,770.19	\$735,700.00	
	St. Clair County	1	\$2,350,681.03	\$742,832.29	\$3,093,513.32	
						\$6,198,723.44
Mid Michigan	Arenac County	1	\$143,646.61	\$113,217.22	\$256,863.83	
	Bay County	1	\$901,881.83	\$600,267.28	\$1,502,149.11	
	Clare/Gladwin Counties	1	\$1,280,120.43	\$234,211.53	\$1,514,331.96	
	Huron County	1	\$575,437.43	\$80,388.83	\$655,826.26	
	Iosco County	1	\$199,089.24	\$170,125.24	\$369,214.48	
	Isabella County	1	\$1,351,810.10	\$236,106.56	\$1,587,916.66	
	Lake County	1	\$235,547.38	\$77,132.21	\$312,679.59	
	Mason County	1	\$615,564.60	\$155,320.77	\$770,885.37	
	Mecosta County	1	\$310,235.20	\$165,276.80	\$475,512.00	
	Newaygo County	1	\$683,862.70	\$199,441.35	\$883,304.05	
	Oceana County	1	\$458,186.10	\$92,044.44	\$550,230.54	
	Osceola County	1	\$361,744.15	\$69,619.53	\$431,363.68	
	Oscoda County	1	\$154,873.98	\$53,806.02	\$208,680.00	
	Roscommon County	1	\$216,530.94	\$201,674.06	\$418,205.00	
	Sanilac County	1	\$344,203.39	\$65,041.20	\$409,244.59	
						\$10,346,407.12
Northern Michigan	Antrim County	1	\$182,786.23	\$79,372.17	\$262,158.40	
	Cheboygan County	1	\$303,321.19	\$143,100.85	\$446,422.04	
	Gogebic County	1	\$463,410.81	\$103,358.07	\$566,768.88	
	Grand Traverse County	1	\$1,116,101.35	\$155,422.96	\$1,271,524.31	
	Kalkaska County	1	\$396,646.87	\$39,462.94	\$436,109.81	
	Leelanau County	1	\$206,736.62	\$52,315.70	\$259,052.32	
	Luce County	1	\$262,195.93	\$29,880.31	\$292,076.24	
	Manistee/Benzie Counties	1	\$704,673.31	\$280,379.94	\$985,053.25	
	Schoolcraft County	1	\$202,899.73	\$35,958.87	\$238,858.60	
						\$4,758,023.85

South Central Michigan	Clinton County	1	\$1,155,074.66	\$146,421.91	\$1,301,496.57	
	Genesee County	1	\$3,869,213.84	\$1,322,530.18	\$5,191,744.02	
	Gratiot County	1	\$678,966.43	\$82,584.93	\$761,551.36	
	Ingham County	1	\$5,566,775.92	\$912,845.25	\$6,479,621.17	
	Livingston County	1	\$1,392,680.60	\$927,689.27	\$2,320,369.87	
	Monroe County	1	\$966,374.61	\$213,883.16	\$1,180,257.77	
	Shiawassee County	1	\$1,156,393.71	\$105,043.58	\$1,261,437.29	
						\$18,496,478.05
Wayne County	D 16 Livonia	1	\$574,956.13	\$17,418.40	\$592,374.53	
	D 19 Dearborn	1	\$1,074,502.99	\$78,083.56	\$1,152,586.55	
	D 20 Dearborn Heights	1	\$190,451.15	\$9,735.10	\$200,186.25	
	D 21 Garden City	1	\$122,320.14	\$8,850.95	\$131,171.09	
	D 22 Inkster	1	\$43,676.07	\$45,540.00	\$89,216.07	
	D 23 Taylor	1	\$361,001.18	\$39,975.01	\$400,976.19	
	D 24 Allen Park	1	\$156,078.52	\$14,686.48	\$170,765.00	
	D 27 Wyandotte	1	\$231,217.77	\$1,448.03	\$232,665.80	
	D 30 Highland Park	1	\$120,944.03	\$13,662.00	\$134,606.03	
	D 31 Hamtramck	1	\$108,590.15	\$14,345.10	\$122,935.25	
	D 33 Woodhaven	1	\$208,594.07	\$76,005.93	\$284,600.00	
	D 34 Romulus	1	\$263,562.54	\$54,774.50	\$318,337.04	
	D 35 Plymouth	1	\$343,382.78	\$30,837.22	\$374,220.00	
	Grosse Pointe Farms/Shores	1	\$54,631.70	\$14,868.30	\$69,500.00	
	Grosse Pointe Municipal	1	\$12,099.04	\$3,200.96	\$15,300.00	
	Grosse Pointe Park	1	\$26,164.41	\$10,085.59	\$36,250.00	
						\$4,325,689.80
Western Michigan	Allegan/Van Buren Counties	1	\$2,127,228.86	\$535,611.12	\$2,662,839.98	
	Barry County	1	\$595,406.47	\$229,039.21	\$824,445.68	
	Berrien County	1	\$3,508,379.23	\$569,469.67	\$4,077,848.90	
	Calhoun County	1	\$3,076,032.47	\$691,457.10	\$3,767,489.57	
	Cass County	1	\$244,915.60	\$251,853.40	\$496,769.00	
	Ionia County	1	\$345,612.24	\$221,226.90	\$566,839.14	
	Kent County	1	\$5,999,666.07	\$2,425,133.52	\$8,424,799.59	
	Montcalm County	1	\$718,984.93	\$222,976.18	\$941,961.11	
	Muskegon County	1	\$2,361,498.58	\$670,241.53	\$3,031,740.11	
	Ottawa County	1	\$2,915,257.46	\$934,164.04	\$3,849,421.50	
						\$28,644,154.58
TOTAL APPROVED (AS OF JUNE 15, 2021)		64	\$57,440,654.20	\$15,328,822.64	\$72,769,476.84	