



MICHIGAN INDIGENT DEFENSE COMMISSION

Date: Tuesday, December 21, 2021, Time: 9:00 a.m.
Michigan Bankers Association
507 S Grand Ave, Lansing, MI 48933

This meeting will also be accessible by Zoom:

Topic: MIDC December Meeting
Time: Dec 21, 2021 09:00 AM Eastern Time (US and Canada)

Join from PC, Mac, Linux, iOS or Android:

<https://us06web.zoom.us/j/84265615375?pwd=TWR3RTBYcXg0bXN1azdLMjNCbUxhdz09>

Password: MIDC2021

One tap mobile:

+12158610692,,,3983903# US Toll
+18882512909,,,3983903# US Toll-free

Dial:

USA 215 861 0692
USA 8882512909 (US Toll Free)
Conference code: 3983903

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**)
 - a. November 22, 2021 Special Meeting Minutes
6. Presiding Officer Report
 - a. Committee Assignments
 - b. Wayne County mediation settlement – update
 - c. Senior Regional Manager position, Relationship with LARA - update
 - d. Ad hoc committee to study unexpended grant funds
 - e. Training sessions: New Commissioner Orientation; Best Practices
7. Final Interim Executive Director Report

8. Commission Business

- a. Standing Committee Reports
 - i. Executive Committee – *Presiding Officer Christine Green*
 - o Policy on Public Comment (action item)
 - ii. Executive Director Hiring Committee - *Gary Walker, Chair*
 - iii. Training and Education Committee - *Tracey Brame, Chair*
 - o Guidelines for Trainers and Training Providers (action item)
- b. Ad hoc committee reports
 - i. Nominations Committee – John Shea, Chair
 - o Election of 2022 Officers (action item)
 - ii. Strategic Planning Committee - *Christine Green, Chair*
 - o Review of Draft Report
 - o Funding for Graphic Design and Publication (action item)
- c. Report - *Grant Management Phase 2 Consulting Report*, Office of Internal Audit Services (OIAS)
- d. Report - *Evaluation of the Michigan Indigent Defense Commission's Minimum Standards for Indigent Defense Services*, Urban Institute (action item)

~~ Break for lunch ~~

- e. Presentation – *Funding for Appointed Appellate Counsel Providing Services in Michigan Trial Courts*, Brad Hall, Michigan Appellate Assigned Counsel System (MAACS)
- f. MIDC 2021 Year in Review
- g. FY21 Compliance Updates
 - i. FY21 Reporting Update
 - o Plan change request (action item)
 - a. City of Wyoming
 - o Budget adjustments
- h. Update on FY22 Compliance Plan and Cost Analysis Submissions
 - o Plan change request (action item)
 - a. Oakland County

9. 2022 Meeting Schedule:

January 24, 2022 (Special Meeting: Strategic Planning)

February 15, 2022

April 19, 2022

June 21, 2022

August 23, 2022

October 18, 2022

December 20, 2022

10. Adjourn

Michigan Indigent Defense Commission Meeting Minutes

The meeting was held in person at the Michigan Bankers Association building in Lansing, MI. Remote access via Zoom was also available for members of the public and Commissioners in compliance with the Open Meetings Act. The MIDC website and meeting notice included information for members of the public on how to participate.

November 22, 2021

Time: 9:00 am

Michigan Bankers Association
507 S Grand Ave, Lansing, MI 48933

Commission Members Participating

The following members participated in person in Lansing:

- Presiding Officer Christine Green
- Joshua Blanchard
- Tracey Brame
- Paul Bullock
- Hakim Crampton
- Andrew DeLeeuw
- Judge James Fisher
- David Jones
- Debra Kubitskey
- Margaret McAvoy
- Judge Robinson Garrett
- John Shea
- William Swor
- Rob VerHeulen

The following members participated remotely under exemptions from the Open Meetings Act. During roll call, these 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.

- Kimberly Buddin (Novi, Oakland County, Michigan)
- James Krizan (Lincoln Park, Wayne County, Michigan)
- Tom McMillin (Oakland County, Michigan)
- Cami Pendell (Eaton County, Michigan)

- Gary Walker (Chocolay Township, Marquette County, Michigan)

Presiding Officer Green called the Michigan Indigent Defense Commission (“MIDC” or “the Commission”) meeting to order at 9:01 am.

After a disruption from individuals attending the meeting via Zoom, Commissioner Blanchard moved to eject members of the public who were not muting themselves and who were disrupting the meeting. Commissioner Brame seconded. The motion carried.

Introduction of Commission members and guests

Presiding Officer Green welcomed attendees to the meeting. No guests wished to introduce themselves.

Public Comment

Malice Green offered public comments.

Additions to agenda

There were no additions to the agenda. Commissioner Shea moved that the agenda be adopted as presented. Judge Fisher seconded. The motion carried.

Consent Agenda

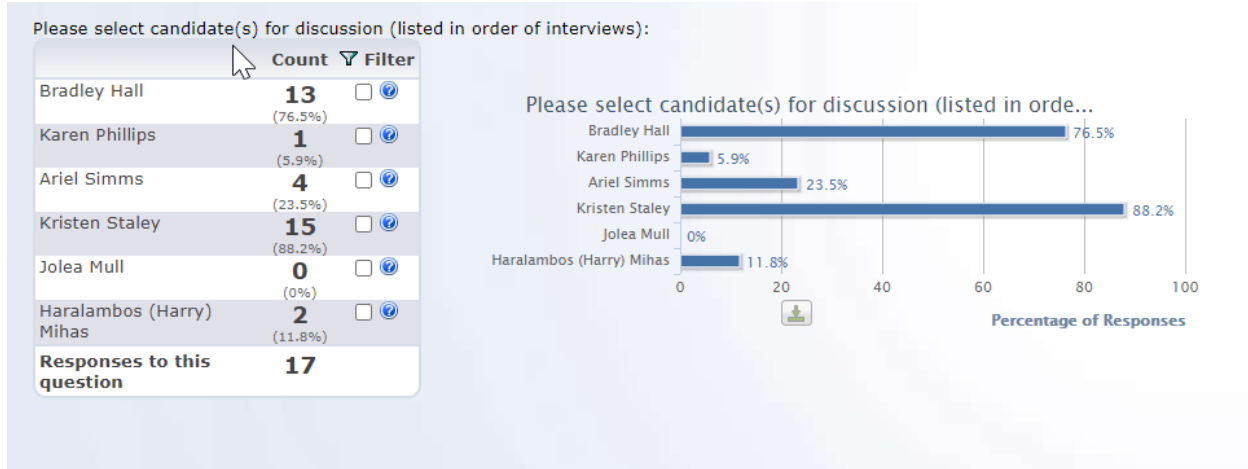
Judge Fisher moved that the consent agenda containing the minutes from the October 29, 2021 meeting be adopted with the change of Commissioner Blanchard’s location to East Grand Rapids, Kent County, Michigan. Commissioner Swor seconded. The motion carried.

Selection of Executive Director

Executive Director Hiring Committee Chair Gary Walker thanked the candidates for applying. He provided an overview of the committee’s process. The committee reviewed all applications and score them, then made recommendations for the candidates to be interviewed by the full Commission. All Commissioners had access to the materials submitted by each candidate.

Commissioner McAvoy moved that the Commission rank the candidates via an electronic poll and discuss the top three candidates. Commissioner Walker seconded. The motion carried.

Commissioners were provided a link to rank their top candidates. The poll was displayed for everyone participating to see.



Commissioner Jones moved that the qualifications for the top two candidates from the Commission's poll, Bradley Hall and Kristen Staley, be discussed. Judge Fisher seconded. The motion carried.

The Commission moved to discussion of the qualifications of each candidate.

After discussion, Judge Fisher moved that the Commission hire Kristen Staley to be the Commission's Executive Director. Commissioner McAvoy seconded. Presiding Officer Green requested a roll call vote. The motion carried, with 16 yeas (Green, Brame, Buddin, Bullock, Crampton, DeLeeuw, Fisher, Jones, Krizan, Kubitskey, McAvoy, Robinson Garrett, Shea, Swor, VerHeulen and Walker) and two nays (Blanchard and McMillin).

Pursuant to the MIDC Action at the August 17, 2021 regular business meeting, Commissioner Walker work with Ms. Staley and LARA on the terms of an offer for the Executive Director position.

The next meeting is December 21, 2021 at 9:00 am. It will be held at the Michigan Bankers Association Building in Lansing and via Zoom.

Commissioner Kubitsky moved that the meeting be adjourned. Commissioner Swor seconded. The motion carried.

The meeting adjourned at 10:05 am.

Respectfully submitted,

Marcela Westrate

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/

Nominations Committee Report and Recommendation

December 2021

Committee Members:

- John Shea, Chair
- Kim Buddin
- Andrew DeLeeuw

The Committee nominates the following Commissioners to serve as Officers for the term beginning January 1, 2022 and concluding December 31, 2022:

- Christine Green, Chair
- Tracey Brame, Vice Chair
- Gary Walker, Secretary

The Committee also recommends that Judge James H. Fisher, past Chair (2014-2017), serve as an ex officio and non-voting member of the Executive Committee.

Dear Commissioners,

The MIDC Strategic Planning Committee submits to you the attached draft Strategic Plan for your review and approval. Chair Jeffrey Collins appointed the Committee on February 23, 2021, and the Commission issued the following charge to the Committee:

The ad hoc strategic planning committee will support the Commission's strategic planning process. In doing so, the committee will work with the Executive Director to ensure an effective strategic planning process for the Commission, lead the development of a two-to-five-year plan for the work of the Commission and make recommendations related to its mission, vision and strategic initiatives for consideration and approval of the full Commission.

Judge Collins appointed Commissioner Christine Green as chair of the Committee, and Commissioners Blanchard, Collins, Crampton, McAvoy, and Swor as Committee members. The Committee met every other Friday, beginning on March 5, 2021, and continuing until October 8th, 2021. The Committee reviewed staff comments and suggestions on November 5th.

The Committee began its process with the following assumptions firmly in mind:

- Local funding units are controlled locally but subject to MIDC minimum standards, (see generally MCL 780.985(3); 780.989(1));
- The draft strategic plan, together with any and all recommendations, will be subject to Commission review and approval; and
- The MIDC is an “autonomous entity” within LARA and that “MIDC shall exercise its statutory powers, duties, functions, and responsibilities independently of the department.” MCL 780.985 Sec. 5 (2).

Committee members engaged in a series of exercises designed to examine the essence of MIDC's value and purpose, and came up with a shared vision of what MIDC should be doing to fulfill its mandate. The draft Mission, Vision and Values Statement arose out of these discussions. All these statements are contained in the draft, and the proposed Mission statement appears below:

Draft Mission Statement

The Michigan Indigent Defense Commission ensures that quality public defense services are accessible to all eligible adults charged with a criminal offense in Michigan.

To accomplish its mission, the MIDC:

- Develops and supports implementation of minimum standards and best practices for indigent defense;
- Advocates for public and private funding to ensure sustainable, resourced public defense systems that meet MIDC minimum standards and constitutional requirements for effective assistance of counsel;
- Monitors compliance with minimum standards for indigent defense;
- Exercises good stewardship of public funds designated to support indigent defense;
- Collects and analyzes data to assess the impact of the Commission's work and inform its decisions.

To make recommendations on the actions MIDC must take over the next five years to further this mission, the Committee examined every aspect of the organization, including operations, governance, policies, the enabling statute, our standards, and our means of enforcing those standards. During these candid discussions Committee members identified what MIDC does best, where our weaknesses lie, what opportunities await us, and what external threats we might face in the next few years.

From these discussions, it became clear that MIDC must make significant strides over the next few years as the remaining standards are approved and implemented. First, MIDC must work to secure its own future. It must build its capacity to administer additional standards and explore national and private funding options as well. It must use reliable data to demonstrate MIDC's impact to the legislature and to potential funders, and it must fulfill the legislature's direction to establish performance metrics and to implement best practices. Second, MIDC must strengthen its relationships with other agencies and with the local funding units. It must develop a process for reviewing local spending practices, and provide additional resources to local units to ensure compliance with the standards. Finally, MIDC must take a leadership role in improving Michigan's criminal justice system, working together with its criminal legal system partners and local system stakeholders.

With these major themes in mind, the Committee settled on the following priorities for the next five years, each of which is supported by and short-term and long-term goals:

1. Ensure the efficient use of public funds distributed and managed by MIDC.
2. Take action on the MIDC's Commitment to diversity, equity and inclusion.
3. Support compliance with MIDC's standards.
4. Encourage innovation and best practices in public defense systems.
5. Ensure operations and funding are in place to sustain the MIDC's mission over time; explore national and private sources of funding.
6. Provide leadership in the criminal justice system.

7. Fortify relationship with LARA and external criminal legal system partners, including local system stakeholders.

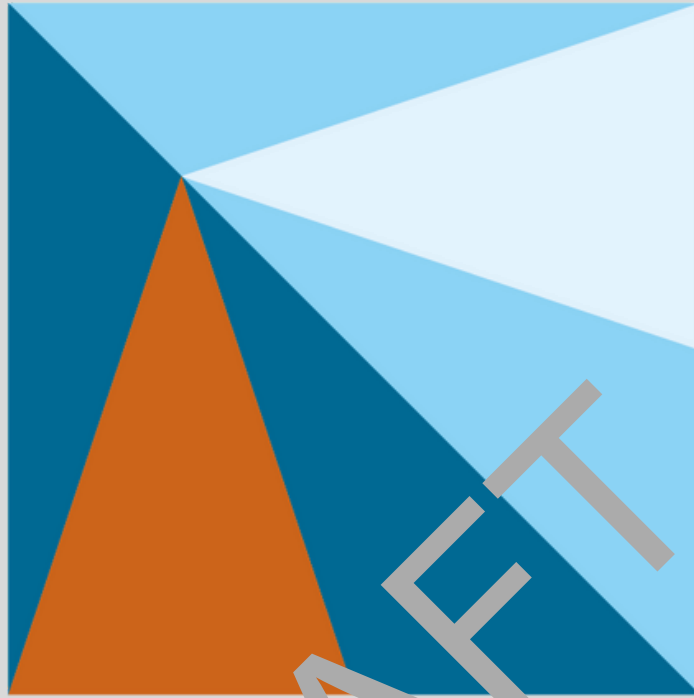
Although the draft Strategic Plan is the product of Committee members, it is informed by the expertise and experience of MIDC's professional staff. Former Executive Director Loren Khogali, and then Interim Executive Director Marla McCowan, participated in Committee meetings. Nicole Smithson and Melissa Wangler prepared a memorandum at the committee's request outlining how MIDC might advance its diversity, equity and inclusion priority. Jonah Siegel made a presentation on the importance of data collection in demonstrating impact, and the barriers we face in gathering that data. After the Committee completed its work, the entire professional staff reviewed the draft plan and made comments and suggestions, many of which were incorporated into the draft plan.

Thank you for the opportunity to participate in this truly inspiring process. The Committee hopes that you will find the draft Strategic Plan reflective of MIDC values and purpose, and that it will be useful as you work toward a final draft.

Yours very truly,

Christine Green

Chair, Strategic Planning Committee
Michigan Indigent Defense Commission



Strategic Plan

Michigan Indigent Defense Commission

Draft - December 2021

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DRAFT

Strategic Planning Committee Members

Christine Green, Committee Chair

Joshua Blanchard

Hon. Jeffrey Collins

Nathanial "Hakim" Crampton

Margaret McAvoy

William Swor



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

The MIDC develops and oversees the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure that criminal defense services are delivered to all indigent adults in this State consistent with the safeguards of the United States Constitution, the Michigan Constitution of 1963, and with the MIDC Act.

The Governor makes appointments to the 18-member Commission pursuant to MCL §780.987, and began doing so in 2014. The interests of a diverse group of partners in the criminal legal system are represented by Commissioners appointed on behalf of defense attorneys, judges, prosecutors, lawmakers, the state bar, bar associations advocating for minorities, local units of government, the state budget office, and the general public.

Mission Statement

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To accomplish its mission, the MIDC:

- Develops and supports implementation of minimum standards and best practices for indigent defense;
- Advocates for public and private funding to ensure sustainable, resourced public defense systems that meet MIDC minimum standards and constitutional requirements for effective assistance of counsel;
- Monitors compliance with minimum standards for indigent defense;
- Exercises good stewardship of public funds designated to support indigent defense;
- Collects and analyzes data to assess the impact of the Commission's work and inform its decisions.

Core Values

In honoring the legal mandates for quality public defense services and fulfilling its mission, the MIDC is guided by these principles:

The presumption of innocence is of the highest priority in a constitutionally adequate criminal legal system.

The pursuit of equal protection for all persons charged with criminal offenses and the elimination of systemic bias from the criminal legal system are bedrock to the Commission's mission.

Our communities and the broader public welfare are enhanced by a quality public defense system that recognizes the value, dignity and humanity of all persons charged in criminal court through zealous, client-centered advocacy.

Authentic partnership with local governments is fundamental to the successful implementation of quality public defense under the MIDC Act.

Continued...

Core values, continued...

Access to comprehensive criminal legal system data is necessary and important to inform the Commission's work.

Training and education of defense attorneys and other defense team members is critical to a quality public defense system.

Diverse partnerships at the state and local level are critical to the Commission's fulfillment of its mission.

Public funding for indigent defense should be used effectively and efficiently to support quality public defense in Michigan.



Vision Statement

Through its contributions, the
Commission envisions:

A sustainable, well-resourced public
defense system that honors the dignity of
all persons that it serves;

Improved trust in the legal process
through the provision of quality public
defense services;

A just and equitable criminal legal system.



Priorities



DRAFT

Ensure the effective use of public funds approved and distributed by the MIDC.

Short Term Goals:

1. Identify and communicate best practices and resource sharing
2. Continue to refine tools to evaluate spending.
3. Promote efficiency through the internal review process.

Long Term Goals:

1. Revisit local share study.
2. Develop processes for monitoring or reviewing spending practices in systems.

Act on the MIDC's commitment to diversity, equity and inclusion.

Short Term Goals:

1. Develop implicit bias and cultural competency training for staff and the Commission.
2. Follow DEI best practices in hiring and retaining the Commission's staff.
3. Encourage local systems to use best practices in hiring indigent defense service providers.
4. Support local efforts to collect data to help identify disparities.
5. Collaborate with systems to support appointed attorneys to receive training on implicit bias, cultural competency, and how to litigate issues like racial disparity.

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Long Term Goals:

1. Regularly review all Commission policies and standards with a DEI lens and assess whether new policies to promote DEI should be adopted.
2. Communicate with scholars and local groups working on DEI.
3. Collect data to help identify disparities at various stages of criminal prosecutions.

Support compliance with the MIDC's standards.

Short Term Goals:

1. Refine and implement a process for dispute resolution between MIDC and local systems and within the local system to resolve compliance issues.
2. Set a regular schedule for review of our Grant Manual and other published policies.
3. Provide technical resources to funding units in accordance with the statutory directive

Long Term Goals:

1. Propose additional standards if necessary and/or not included in MIDC Act.

Encourage innovation and best practices in public defense systems.

Short Term Goals:

1. Improve communication about best practices.
2. Receive regular updates from staff and systems.

Long Term Goals:

1. Establish innovation grant opportunities from public and private sources.

Ensure operations and funding are in place to sustain the MIDC's mission over time; explore national and private sources of funding.

Short Term Goals:

1. Review onboarding and orientation for new Commissioners.
2. Establish open communications between staff and Commissioners through Executive Director.
3. Revisit organizational structure periodically as necessary.
4. Respond to collective suggestions and concerns from staff through the Executive Director about policy or system reform issues.
5. Demonstrate MIDC's impact through data collection and performance metrics.
6. Establish an ad hoc committee to make recommendations about data collection.

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Long Term Goals:

1. Explore other grant funded opportunities and/or a permanent source of revenue for the MIDC.
2. Explore potential statutory or contract amendments to collect data to standardize the method of reporting and make the process less burdensome for the local units.
3. Take a leadership role in ongoing efforts to modernize and standardize indigent criminal defense data collection.

Provide leadership in the criminal legal system.

Short Term Goals:

1. Identify audiences and leaders whose primary role is to improve public defense services and provide leadership to those stakeholders.
2. Approach supportive role with flexibility, recognition of ongoing trends and developments in the criminal legal system.

Long Term Goals:

1. Engage with and prioritize feedback from justice impacted people.
2. Encourage collaboration and creativity in the community of defender leaders and facilitate access to resources for leaders.

Fortify relationship with LARA and external criminal legal system partners, including local system stakeholders.

Short Term Goals:

1. Explore opportunities to coordinate efforts to educate the public about the work of the MIDC, through regular publications, press releases, etc.
2. Engage Commissioners occasionally in meetings with state leadership.

Presiding Officer

Represents the State Budget Office

Joshua Blanchard, Greenville

Represents the Criminal Defense Attorneys
of Michigan

Tracey Brame, Grand Rapids

Represents the Chief Justice of the
Michigan Supreme Court

Kimberly Buddin, Novi

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

Paul E. Bullock, Evart

Represents the Senate Majority Leader

Nathaniel "Hakim" L. Crampton, Jackson

Represents the general public

Andrew D. DeLeeuw, Manchester

Represents the Michigan Association of
Counties

Hon. James Fisher (Retired), Hastings

Represents the Michigan Judges Association

Hon. Kristina Robinson Garrett, Detroit

Represents the Michigan District Judges
Association

David W. Jones, Detroit

Represents the State Bar of Michigan

James R. Krizan, Allen Park

Represents the Michigan Municipal League

Debra Kubitskey, South Lyon

Represents the Senate Majority Leader

Margaret McAvoy, Owosso

Represents the Michigan Association of
Counties

Tom McMillin, Oakland Township

Represents the Speaker of the House of
Representatives

Cami M. Pendell

Supreme Court Chief Justice Designee, ex
officio member

John Shea, Ann Arbor

Represents the Criminal Defense Attorneys
of Michigan

William Swor, Grosse Pointe Woods

Represents the Criminal Defense Attorneys
of Michigan

Robert VerHeulen, Walker

Represents the Speaker of the House of
Representatives

Gary Walker, Marquette

Represents the
Prosecuting Attorneys Association of
Michigan



ELEFANT

TO

Michigan Indigent Defense
Commission

611 W. Ottawa Street, 4th Floor
Lansing, MI 48933

Marla R. McCowan
Interim Executive Director
Deputy Director/Training Director
McCowanM@michigan.gov

FROM

Elefant LLC
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info@elefant.design

Elena Kapintcheva
Co-Founder and Creative Director
elena@elefant.design

CONTENT

- I. **Statement of Work #20211112**
 - Goals and objectives
 - Scope of Work
 - Project Management
 - Estimated Investment
 - Terms and Conditions
 - Conclusion
- II. **Elefant Resume**
- III. **Service Agreement**

“Taking a stand in making a difference. Design makes a difference. It is the subtle and effective communication between beauty and functionality withstanding the test of time.”

Elena Kapintcheva, Founder of ELEFANT

I. STATEMENT OF WORK

This is Statement of Work (“SOW”) #20211112 as referenced in the Service Agreement between Elefant, LLC (“Elefant”) and Michigan Indigent Defense Commission (“Client”). The Client agrees that this SOW incorporates and is subject to the terms and conditions of the Service Agreement, located at the end of this document.

The Michigan Indigent Defense Commission (MIDC) was created by legislation in 2013 after an advisory commission recommended improvements to the state’s legal system. The MIDC works to ensure the state’s public defense system is fair, cost-effective, and constitutional while simultaneously protecting public safety and accountability.

GOALS AND OBJECTIVES

- Design of a strategy report document
- Design and development of a website page to represent the strategy report on the current MIDC website

SCOPE OF WORK

STRATEGY REPORT DOCUMENT

DELIVERABLES

- Design and style a strategic plan document for MIDC (up to 10 pages)
- The document will be presenting the information in a clean, clear, and professional manner
- Visual hierarchy/prioritization of content
- Design will incorporate the established brand style of MIDC
- Utilizing table styling and infographics to emphasize content as needed
- Delivery format – PDF

ASSUMPTIONS

- Each deliverable assumes up to 2 reviews and revisions.

CLIENT EXPECTATIONS

- Reviews, timely feedback, approvals

WEBSITE PAGE

DELIVERABLES

Elefant will create and style a new page on the MIDC website to specifically display the strategic plan

- The page design and functionality will be based on established website look and feel
- Responsive structure
- Beta version for review

ASSUMPTIONS

- Each deliverable assumes up to 2 reviews and revisions.

CLIENT EXPECTATIONS

- Reviews, timely feedback, approvals

PROJECT MANAGEMENT

Strict and consistent project management is essential to successful and timely completion of any project. This mandate has helped us deliver solutions that exceed customer expectations and surpass all quality standards.

Elefant expects and requests the following meetings and communications:

- Milestones meetings (as applicable)
- Status updates (email/conference calls)
- Ontime feedback and approvals
- Support and knowledge transfer

TIMELINE

Timeline commencement contingent on project start date. Milestones and target dates are contingent on client's timely and adequate feedback.

- **MIDC strategy report document** – design, review, approval, delivery in January-February 2022
- **MIDC strategy report web page** – design, style, review, approval in January-February 2022

ESTIMATED INVESTMENT

Our price is based on the time spent with the client, the level of involvement, experience, and the results the client wants to achieve in the timeframe specified. Our hourly rate is \$120 per hour.

PROJECT INVESTMENT

Design Estimate	Hours	Rate	Subtotal
MIDC Strategy Report	16	\$120	\$1,920
Website page design	8	\$120	\$960
Project Total	24	\$120	\$2,880

PAYMENT

- **Report template** – final payment after delivery of the approved formats
- **Website page design** – final payment after website page launch

TERMS AND CONDITIONS

- The price includes all deliverables described in this proposal.
- Deliverables, time, and cost may be approximate, unless otherwise stated.
- No additional licensing or other fees, expenses or consulting fees are required to complete the project scope as stated.
- If additional functionality (out of the scope) is requested by the client, an evaluation will be performed to determine if the request is within or outside of the given scope.
- Media purchase is not included in the price proposal.
- Content is provided by the client unless otherwise stated.
- The terms of the proposal shall be effective for 30 days after presentation to Client. In the event this proposal is not executed by Client within the time identified, the proposal, together with any related terms and conditions and deliverables, may be subject to amendment, change or substitution.
- Knowledge and information about the organization is provided by the client.
- Each decision is based on estimates and assumptions provoked by current knowledge, provided information, research, experience, and best practices.
- Elefant will act with the best intentions to improve the client's visual and marketing communication and promises that will not knowingly do harm.

CONCLUSION

We are confident that we can meet the challenges ahead and stand ready to partner with you in delivering an effective design solution.

If you have questions on this SOW, feel free to contact us at your convenience by email at elena@elefant.design, stanimir@elefant.design or by phone at 586.489.0687

Thank you for working with us,

Elefant

11.12.2021

II. ELEFANT RESUME

OVERVIEW

We are an ever-evolving creative digital design studio, tirelessly working on interactive experiences for the one and only– the User. We have more than 15 years of experience creating design solutions for various clients on two continents.

WHY ELEFANT

Extensive experience with Non-Profit Agencies. Among some of the organizations and companies that we have created designs for are:

- **New York Foundling** – 150 years old agency offering programs helping with foster care, adoption, developmental disabilities, mental health, poverty
- **N Street Village, DC** – one of the top women recovery agencies
- **Cincinnati Children’s Hospital** – Ranked No1 in Midwest
- **Mission Partners** - a Washington, DC based PR agency that works exclusively with NPOs
- **Indian Film Festival of Los Angeles**
- **Bulgarian National Commission Combating Human Trafficking**
- **Other:** As well as a number of local companies from various industries such as Meijer, DTE, General Motors, etc.

Experience with government agencies

- Michigan Indigent Defense Commission
- Criminal Advocacy Program
- Oakland Schools

Long history and relationship with MIDC (Michigan Indigent Defense Commission)

- Professional relationship since 2014, trusted vendor
- Deep knowledge and understanding of the organization - structure, process, workflow, communication
- We created the MIDC branding and created the website in 2015
- Ad hoc MIDC document design, website support, and web analytics
- We created the whole suite of materials for MIDC, including branding, logo, business cards, templates, documents, web design and development, web management
- Established an effective and transparent communication, efficient production, great collaboration, and teamwork

Experience with large agencies

- Elena Kapintcheva also serves as a design director in a global digital agency, leading many large-scale accounts.
- Experience facilitating large qualitative and quantitative research, focus groups, stakeholder interviews, etc.

Dedicated experienced team

- Design director, marketing/business manager, web developer
- Consultation and support during the whole life of the relationship - best practices, knowledge
- Direct and timely communication (calls, emails, virtual meetings, etc.) - no ticketing system.

III. SERVICE AGREEMENT

The following agreement between Elefant and the Client outlines the specific terms by which the current Statements of Work will be governed. This Service Agreement supersedes any terms outlined prior agreements between the two parties.

The terms of the Agreement shall be effective for 30 days after presentation to Client. In the event this Agreement is not executed by Client within the time identified, the Agreement, together with any related terms and conditions and deliverables, may be subject to amendment, change or substitution.

STATEMENT OF WORK

The parties desire to enter into this Agreement where Elefant will provide professional capabilities and expertise (“Services”) available to the client as further set forth in one or more Statements of Work (SOW). The scope of work for each project will be detailed in a separate document. The SOW will include a description of work, an estimated time frame for completion of work, estimated fees and expenses and a list of deliverables.

ESTIMATED FEES AND CHARGES

Design fees: The fees for each project will be estimated based on Elefant’s current knowledge of the project, experience of similar projects, time spent with the client, and the results the client wants to achieve in the timeframe specified. For larger projects, the fees may be broken out into phases of work, to match Elefant’s creative process. Elefant reserves the right to re-quote each phase prior to

commencement of said phase should scope of work, schedule or other factors change over the course of the project.

Additional fees: Unless otherwise specified in the Statement of Work, commissioned video production, imagery and photography are not included. Likewise, fees for writing copy/text or editorial fees are not included as part of the design fees.

Invoices: Unless stated otherwise in the Statement of Work, the Client agrees to pay Elefant all invoiced upon receipt. Late payments more than 30 days are subject to 1.5% interest penalty per month. On larger projects, an initial payment (as specified by Statement of Work) is due immediately upon signature of the project estimate, prior to the start of the project, and upon receipt of the first invoice. If applicable, this initiation fee will be applied to the final invoice. The balance of the total fees will either be billed at the completion of each phase, based on the Statement of Work timeline and agreed phase delivery date OR on a regular (biweekly, monthly etc.) basis as a percentage of work completed. Elefant reserves the right to withhold delivery and any transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full.

Rates: Unless otherwise defined in a specific Statement of Work, any additional work requested by the Client will be handled on a “time and materials” basis. All work will be billed at the rate: \$120/hour. Elefant reserves the right to adjust these rates throughout the life of the project to correspond with current studio billing rates, which typically get adjusted for cost of business, etc. around the first of each calendar year.

Rush charge: Any project that is due within 48 hours of request for said work or otherwise requested to be completed in an unusually short or immediate period of time, is considered a “rush” job and incurs up to a 100% mark-up on top of fixed fee or hourly time typically charged for said work.

CLIENT RESPONSIBILITIES

Client deliverables: The Client will be notified by Elefant of the assets needed to complete the design service in the Statement of Work, including but not limited to: approved copy and content, photography, video, drawings, illustrations, etc. in a form suitable for reproduction or incorporation for final production. The Client is responsible to deliver all needed assets in digital form and in a timely manner. Delays in delivery and/or a request for Elefant to assist in the collection of said assets may cause a delay in the final delivery of work.

Right to use content: The Client is solely responsible to ensure that Client rightfully owns and/or otherwise obtains rights to legally use all assets in the final production material. The Client is solely responsible for securing clearance of all copyright, trademark, and other ownership rights, purchasing any licenses, etc., and can in no circumstances hold Elefant responsible for the use of any protected imagery, text, etc., unless Elefant uses materials under acts of willful misconduct or gross negligence. Should the use of some images, text, etc. require payment of royalties or fees, the Client is solely responsible for all associated costs, which unless otherwise noted, is outside the scope of the Statement of Work.

Client approvals: The Client will be responsible for final approval and proofreading of all project phase materials and deliverables. In the event that the Client has approved deliverables but errors, including but

not limited to typographic errors or misspellings, remain in the finished product, the Client shall incur the cost of correcting such errors.

CHANGE ORDERS/AUTHOR'S ADDITIONS

Elefant agrees to provide all the services outlined in this Agreement within the criteria specified. After the initial design is presented (at the end of the Design Phase), unless otherwise specified, Elefant will make up to two (2) revisions to the presented designs prior to charging a revision/Author's Additions (AA's) fee.

General changes: If the Client changes any of the criteria and/or deliverables during the project requiring additional time, effort, and services, Elefant will submit a Change Order/of Scope to the Client for approval and signature. Changes are billed at the hourly rates. Such charges shall be in addition to all other amounts payable under the Agreement, despite any maximum budget, Agreement price or final price identified therein. Elefant may extend or modify any delivery schedule or deadlines in the Agreement and deliverables as may be required by such Changes.

Services subject to Change Order apply to alterations in the extent of work and include but are not limited to, copywriting/copy editing, design/production of additional pages, additional project phase and revisions not outlined in the Statement of Work, changes in schedule/deadlines/rush orders, changes in the complexity of any element of the project, any changes made after Client approval has been given for a specific stage of the project and additional services requested by the Client.

DELIVERY SCHEDULE

Elefant will make all good-faith efforts to meet the proposed delivery dates outlined in the associated Statement of Work, however, as with all creative projects, a variety of factors can influence Elefant's ability to meet these dates. Whenever possible, Elefant will notify Client of potential delays, and any impact it might have on final delivery. Under no circumstances, shall Elefant be liable for impact of delay beyond what is defined elsewhere in this agreement.

CANCELLATION

The first payment is non-refundable. All cancellations must be done in writing and directed to one of the Elefant member managers. Should the project be cancelled by the Client at any point, or put on hold for more than 3 months, Elefant will immediately close out work and tally hours spent on the project to date plus expenses. Client agrees to pay for all hours spent on project up to the cancellation date. Should actual fees and expenses incurred exceed the first payment, the Client agrees to pay all additional fees and expenses within 30 days of receiving invoice.

COPYRIGHT

Client retains entire right, title, and interest in all designs created by Elefant under this agreement, including, but not limited to, the entire copyright and/or trademark therein the US and throughout the rest of the world. This paragraph shall survive the termination of this agreement. Copyright applies only to use of the design used for the final deliverables. Any assets created in the process of developing the design deliverable, including digital files, non-selected design directions, pre-

press and/or pre-production samples, etc. remain the exclusive ownership of Elefant, who does not grant any license to use by Client.

ACKNOWLEDGMENTS/CREDIT

Elefant retains the right to reproduce, publish and display the deliverables in portfolios and websites, social media, galleries, design periodicals and other media or exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the deliverables in connection with such uses. Either party, subject to the other's reasonable approval, may describe its role in relation to the Project and, if applicable, the services provided to the other party on its website and in other promotional materials, and, if not expressly objected to, include a link to the other party's website.

CONFIDENTIAL INFORMATION

Each party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other party, including without limitation Preliminary Works ("Confidential Information"). Each party, its agents, contractors, and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations under the Agreement except as may be required by a court or governmental authority. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party or is otherwise properly received from a third party without an obligation of confidentiality.

CONSEQUENTIAL DAMAGES WAIVER

In no event will either party be liable to the other for any loss of use, loss of profit, interruption of business, any indirect, special, incidental, punitive, or consequential damages, regardless of the form of action, whether in contract, tort, strict liability or otherwise, even if such party has been advised or should have been aware of the possibility of such damages. This section will survive the termination or expiration of this Agreement.

LIMITATION OF LIABILITY

Notwithstanding any other provision of this Agreement, Elefant's total cumulative liability to Client under this Agreement will be limited to the total amount actually paid to Elefant by Client under the specific Statement of Work in question. This section will survive the termination or expiration of this Agreement.

INDEMNIFICATION

Said party Elefant or Client agree to defend, indemnify and hold the other party (Client or Elefant respectively), harmless from and against an and all losses, damages, liabilities, and expenses (including reasonable attorneys' fees) that other party incurs solely from (i) any breach or alleged breach of the representation and warranties the said party has made under this Agreement, or (ii) any negligent act or omission of the said party, its directions, officers, agents or employees, (iii) any negligent act or omission of the said party, or its agents. Notwithstanding any provision of this Agreement, said party shall have no indemnity obligations for any costs, fees claims, damages, or obligations incurred by other party to the extent caused by other

party's own or a third party's conduct, including its active or passive negligence.

DISPUTE RESOLUTION

Both parties expressly agree that should any dispute arise out the work conducted and/or produced by Elefant on behalf of Client, that both parties will resolve the dispute through binding arbitration as defined by the American Arbitration Association (or international equivalent). Both parties agree to pay their own attorneys' fees incurred in connection with the arbitration, provided, however, the arbitrator will have authority to award attorneys' fees and costs for such proceeding to the prevailing party as required or permitted by applicable law. If there is a dispute as to whether Elefant or the Client is the prevailing party in the arbitration, the Arbitrator will decide this issue. To the extent required by applicable law, Elefant agrees to pay the arbitrator's fees. Both parties agree to cooperate with the arbitration process in a timely fashion, not to exceed 90 days from the date of initiation to the date of reconciliation, unless otherwise granted or required.

MISCELLANEOUS

All the terms and conditions of this Agreement take precedence over any and all prior agreements of any kind whatsoever made by and between Elefant and the Client with respect to the subject matter of this Agreement.

Each of the terms and provisions of this Agreement is and is to be deemed severable in whole or in part, and, if any term or provision, or the application of any term or provision is held invalid, illegal, or unenforceable, the remainder of this Agreement will not be affected.

In signing/accepting this Agreement, Elefant and the Client cannot rely and have not relied upon any prior verbal statement regarding the subject matter, basis or effect of this Agreement, and that all clarifications of, or modifications and/or amendments to this Agreement must be in writing and signed by the Client and an authorized representative of Elefant.

Elefant LLC
11.12.2021

State of Michigan

Department of Licensing and Regulatory Affairs Michigan Indigent Defense Commission Grant Management Phase 2 Consulting Report [Month] 2021

Draft



Internal Audit Services
Richard T. Lowe, CPA, CISA, CIA
Chief Internal Auditor

[Month] 2021

Executive Summary

TO: Orlene Hawks, Director
Department of Licensing and Regulatory Affairs (LARA)

The Honorable Jeffrey Collins, Chair
Michigan Indigent Defense Commission

FROM: Richard T. Lowe, Chief Internal Auditor
Office of Internal Audit Services (OIAS)

Ed Brickner, Division Director
People, Health, and Elected Officials Division (OIAS)

SUBJECT: Consulting Report – Michigan Indigent Defense Commission Grant
Management Phase 2

Commented [MRM1]: Update

This document contains our consulting report of the Michigan Indigent Defense Commission (MIDC). In January of 2021, LARA asked OIAS to assist MIDC with improving its guidance to local indigent criminal defense systems (local systems) for managing financial oversight of subgrantees and to review allowability of expenses submitted for the MIDC grant program for the selected local system.

We determined that MIDC should enhance its guidance to local systems for monitoring their subgrantees. Additionally, we identified disallowed costs totaling \$87,616.

The following table displays the status of the objective conclusions and risk classifications of audit observations of the engagement. Please refer to Appendix A for more detail.

Objective: To assist MIDC with improving its guidance to local systems for managing financial oversight of subgrantees in compliance with PA 0214 of 2018 and other applicable policies and procedures, laws, regulations, and guidelines.	Conclusion: Improvement Needed
Observation: MIDC should update its grant agreement template to include nonprofit public defender offices under its definition of subgrantees.	Risk: Moderate
Observation: MIDC should enhance existing guidance to specify the monitoring activities local systems are required to perform to ensure	Risk: Moderate

subgrantees comply with the terms and conditions of the grant agreement.	
Objective: Review allowability of expenses submitted for the MIDC grant program for the selected local system.	Conclusion: Well Controlled with Opportunities for Improvement
Observation: Ensure local systems adequately monitor their vendors and subgrantees and enforce the requirement that local systems provide documentation to support their expenses.	Risk: Low

During our review, OIAS noted MIDC implemented the proactive measure of requiring local systems with subgrantees to provide copies of the subgrantees' detailed budgets. MIDC staff members then reviewed the budgets to identify potentially ineligible expenses and follow up with the local systems accordingly.

Our report includes the program description and background information, scope, methodology, and procedures, objectives, conclusions, observations, recommendations, and management responses.

We appreciate the professional courtesy extended by your staff during this project. We are available to discuss appropriate corrective actions to help mitigate additional risks that may exist within this program or other departmental activities.

c: Adam Sandoval, Deputy Director, LARA
Marla McCowan, MIDC Interim Executive Director, LARA
Rebecca Mack, Grants Director, MIDC
Sherri Washabaugh, Manager, OIAS

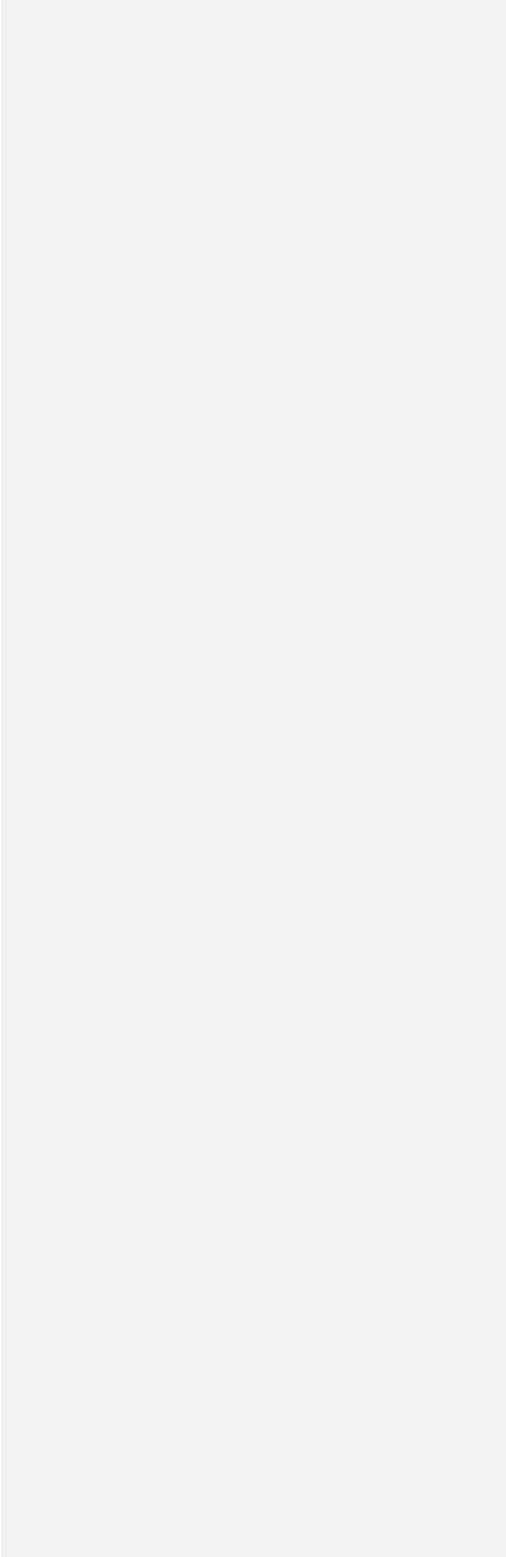
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Department of Licensing and Regulatory Affairs
Michigan Indigent Defense Commission
Consulting Report

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DRAFT



Program Description and Background Information

Executive Order 2011-12 established the MIDC to improve legal representation for indigent criminal defendants. The governor appoints 18 members to the commission, which selects an executive director to supervise 14 full-time staff, including six regional managers working statewide. MIDC develops and implements minimum standards for local systems providing indigent defense services and collects data, supports compliance, administers grants, and encourages best practices to accomplish its mission.

Local systems develop and submit plans each fiscal year to comply with standards established by MIDC to provide indigent defense. MIDC coordinates with each local system to review its compliance plans and approve a reasonable grant amount to be issued. Local systems are required to comply with the approved plan and cost analysis, which identifies budget categories, after receipt of the grant to provide effective counsel in compliance with standards. The commission approved and administered grants totaling \$117 million in fiscal year 2020.

Local systems may choose to provide indigent defense services by contracting with nonprofit entities, thereby creating nonprofit public defender offices (NPDO). Because these third parties pose increased risk of noncompliance with the terms of the grant agreement, it is necessary for MIDC and local systems to implement a robust system of control and monitoring activities. 7 of 130 (5%) local systems utilized NPDOs in FY20 and received a combined \$31 million out of \$117 million (26%) of grant funding. We selected one of these local systems to review for this engagement.

Scope, Methodology, and Procedures

We conducted our consulting engagement in conformance with the *International Standards for the Professional Practice of Internal Auditing*. OIAS' mission is to enhance and protect government operations through risk-based, objective assurance, advice, and insight.

We conducted our review for the period of October 1, 2019 through September 30, 2020, which is the period of the FY20 grant agreements. Our engagement included obtaining and reviewing appropriate records and documents, and other auditing procedures as we considered necessary to satisfy our objectives. Based on the scope and the work needed to complete the engagement, OIAS completed the following procedures summarized below in the body of this report.

Engagement Objective #1

To assist MIDC with improving its guidance to local systems for managing financial oversight of nonprofit public defender offices in compliance with PA 0214 of 2018 and other applicable policies and procedures, laws, regulations, and guidelines.

Conclusion:

Improvement Needed

Factors Impacting Conclusion:

- The grant agreement template provides stringent requirements for subgrantees, but NPDOs are excluded from the definition of subgrantees.
- MIDC now requires local systems that utilize NPDOs to submit those NPDOs' budgets/cost analyses with the local systems' compliance plans.
- MIDC did not define nonprofit public defender offices as subgrantees and require local systems to manage them accordingly.
- There are opportunities for MIDC to enhance guidance to local systems for monitoring NPDOs.

To achieve this objective, OIAS:

- Interviewed MIDC and local system staff to obtain an understanding of grant oversight.
- Reviewed compliance plans, budgets, and supporting documentation when available.
- Utilized the Association of Government Accountants (AGA) Recipient Checklist for Determining if the Entity Receiving Funds Has a Contractor or Subrecipient Relationship, which is based on Code of Federal Regulations (CFR) Title 2 - Grants and Agreements Subtitle A - Office of Management and Budget Guidance for Grants and Agreements Chapter II - Office of Management and Budget Guidance Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), issued by the U.S. Office of Management and Budget (OMB).
- Reviewed requirements of the State of Michigan's Financial Management Guide (FMG), Part II, Chapter 24, Section 200, Subrecipient/Contractor Determination.
- Reviewed the Statewide Grants Framework (Framework) developed by OIAS and based on Office of Management and Budget Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2CFR Part 200 within the Electronic Code of Federal Regulations.

Observation #1: Manage Nonprofit Public Defender Offices as Subgrantees**Risk Classification: Moderate**

MIDC and local systems managed NPDOs as contractors instead of subgrantees, which reduces the level of oversight local systems are required to exercise over their public defender offices.

As part of our review, we created a spreadsheet using the AGA's checklist and answered the questions on the form in consultation with MIDC. We determined that NPDOs should be classified as subrecipients (subgrantees). The FMG requires State agencies to adhere to Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards when determining if a payee is a contractor or subrecipient. Although the Uniform Guidance is specific to federal grants and not required for grants issued by State agencies, this guidance provides a comprehensive framework for identifying grantee responsibilities and monitoring requirements.

Because NPDOs were not categorized as subgrantees, the parts of the grant agreement that dictate how subgrantees should be managed did not apply, including:

- Requirement that local systems include all terms and conditions of the grant agreement in any agreements with subgrantees. Without this requirement, contracts between local systems and subgrantees will not hold subgrantees to MIDC's terms and conditions, and subgrantees will not know what requirements they must comply with.
- Stipulation that local systems remain responsible for meeting the MIDC standards and adherence to the compliance plan. Without this stipulation, local systems may not sufficiently oversee their subgrantees under the belief that the risk of noncompliance with the grant agreement can be transferred to the subgrantees.
- MIDC's right to inspect and audit subgrantees. Without this right, MIDC cannot verify subgrantees are complying with the terms and conditions of the grant agreement.

The FY20 grant agreement between MIDC and local systems describes a subgrantee as "a governmental agency or other legal entity to which an MIDC subgrant is awarded by the Grantee." However, it specifically excludes "attorneys representing indigent defendants, including both public defenders and attorneys contracted to represent indigent defendants, public defender office employees, judges, magistrates, court personnel, and professional service contract vendors." According to our discussions with MIDC, this exclusion applies to NPDOs.

Recommendation:

We recommend that MIDC update its grant agreement template to include nonprofit public defender offices under its definition of subgrantees.

Management Response:

The Michigan Indigent Defense Commission (MIDC) agrees with the recommendation of the Office of Internal Audit Services and will change the language in the grant agreement template to reflect nonprofit public defender offices under its definition of subgrantees in the subsequent grant year.

Observation #2: Enhance Guidance to Local Systems for Monitoring Subgrantees

Risk Classification: Moderate

MIDC should enhance existing guidance to specify the monitoring activities that local systems are required to perform to ensure subgrantees spend funds appropriately and comply with the terms and conditions of the grant agreement.

Per the Framework, grantors must consider the risk of grant recipients being unaware of expectations, deliverables, and requirements related to the granting of funds. Additionally, grantors should establish guidelines and operating procedures for their grants.

During our review, we noted the following:

- The local system was unaware of its NPDO's policies and procedures over fraud, accounts payable, or conflict-of-interest. Without this knowledge, the local system cannot assess if the policies and procedures are appropriate for safeguarding MIDC dollars.
- The local system stated it monitored its NPDO by reviewing the NPDO's monthly invoices and program reports. These documents consisted of that month's case assignments and closings, as well as total expenses, which were broken out into salaries, benefits, and "other." This information does not provide sufficient detail for the local system to determine that the NPDO is adhering to required terms and conditions.
- We did not receive evidence of the local system's monitoring of its NPDO. As a result, we could not validate that the monitoring is taking place as intended.
- The local system did not require its NPDO to provide information related to potentially ineligible activities. The contract between the local system and its NPDO tasked the NPDO with addressing the civil and social needs that arose from clients' criminal cases; however, these services were not eligible to be paid for with the MIDC grant and had to be paid for with outside funding.
- The local system did not review its NPDO's proposed budget for compliance with the grant agreement. MIDC's review disclosed potentially ineligible expenses that the local system had not identified.

MIDC had not yet developed guidance for local systems to monitor subgrantees.

Recommendation:

We recommend that MIDC enhance existing guidance to specify the monitoring activities local systems are required to perform to ensure subgrantees comply with the terms and conditions of the grant agreement.

Management Response:

The MIDC agrees with the recommendation of the Office of Internal Audit Services and will provide enhanced and specific guidance to grantees that choose the nonprofit public defender model regarding the monitoring required by the local government. Our new grant management system is already designed to receive reporting from grant recipients and sub recipients and with training to local stakeholders can be implemented in the next grant year.

Engagement Objective #2

To review the allowability of expenses submitted for the MIDC grant program for the selected local system.

Conclusion:

Well-Controlled with Opportunities for Improvement

Factors Impacting Conclusion:

- The local system's FY20 Q3 financial status report reconciled to its general ledger.
- Some expenditures did not conform to the terms of the compliance plan.
- Local systems did not always submit documentation to support expenses or sufficiently monitor their vendors and subgrantees.

To achieve this objective, OIAS:

- Examined the local system's methodology for estimating personnel costs.
- Reconciled the local system's FY20 Q3 financial status report against its general ledger.
- Reviewed and tested documentation supporting expenses reported by the local system.

Observation #3: Ensure Expenses Are Legitimate and Allowable**Risk Classification: Low**

Opportunities exist to ensure that MIDC funding is consistently used only for eligible expenses and these expenses are supported by appropriate documentation.

PA 0214 of 2018 requires MIDC to ensure "proper financial protocols in administering and overseeing funds utilized by indigent criminal defense systems." To this end, MIDC requires each local system to submit quarterly financial status reports (FSR). The FSR must be supported with documentation for the expenses, such as receipts, invoices, vouchers, and timesheets or a time study.

During our review, we noted that the local system had not provided supporting documentation to MIDC for the period October 1, 2019 through September 30, 2020. We obtained select invoices related to the Experts and Investigators cost analysis category and determined that 20 out of 77 (26%) payments totaling \$10,847 exceeded the expert and investigator hourly rates listed in the compliance plan; however, the MIDC Grant Manual does allow for higher expert and investigator rates when they are specifically authorized by a system on a case-by-case basis. We also noted 15 out of 77 (19%) payments included disallowed costs totaling \$2,654; some of these payments were disallowed by the funding unit's policies and procedures, not by MIDC. Additionally, we identified potential irregularities in four paid invoices.

In addition to testing the local system's invoices, we examined its methodology for estimating the number of jail deputies necessary to transport inmates to their initial visit meetings with their attorneys and the amount of time those transportations take. The local system was charging the grant for the personnel expenses of the jail deputies' wages. Although the local system provided a spreadsheet from the Sheriff's Office listing the number of deputies required for each jail, the spreadsheet does not explain how the Sheriff's Office determined these numbers. The local system did not conduct a time study or evaluate the increase in initial attorney visits since the MIDC standard requiring initial visits was implemented.

We also noted that the local system claimed \$326,722 for indirect costs. The compliance plan does allow the local system to claim 10% of total personnel expenses as indirect costs; however, FY20 total personnel costs amounted to \$2,417,601, 10% of which is \$241,760. Therefore, the local system claimed \$84,962 more in indirect costs than it was entitled to.

MIDC has not consistently enforced the requirement that local systems provide documentation to support expenses. Additionally, local systems are not sufficiently monitoring their vendors and subgrantees.

Recommendation:

We recommend MIDC consistently enforce that local systems provide documentation to support expenses and ensure local systems sufficiently monitor vendors and subgrantees.

Management Response:

The MIDC agrees with the recommendation of the Office of Internal Audit Services and will work with grantees to ensure proper documentation is submitted to support grant expenses. This task has been made difficult in the past year to manage with substantial increases in grant awards and complexity of grants, a very manual grant management system and a long term vacancy in the Grant's Department due to a state mandated hiring freeze. The MIDC will also pursue reclaiming the excess indirect costs from the local government claimed in the FY20 grant year.

The MIDC has launched a new grant management system, EGrAMS, that will shift the focus to online reporting of grant activities with documentation uploads that will aid in the process of a more efficient financial compliance review. EGrAMS went live for FY22 grant applications and post contract grant administration will be implemented with the first reporting due in January 2022.

The MIDC would like to thank the Office of Internal Audit Services for its diligence in reviewing our grant management system and their recommendations for improvements. The coordination and feedback between the agencies has been valuable and will lead to positive change for our grant management, data collection, decision making and reporting.

Appendix A – Classification of Conclusions and Observations**Classification of Audit Objective Conclusions**

Conclusion	Description of Factors
Well-Controlled	The processes are appropriately designed and are operating effectively to manage risks. Control issues may exist but are low risk.
Well-Controlled with Opportunities for Improvement	The processes have design or operating effectiveness deficiencies but do not compromise achievement of important control objectives. Control issues exist but are low or medium risk.
Improvement Needed	The processes are not appropriately designed and/or are not operating effectively to manage risks. Control issues exist but are low or medium risk. Weaknesses are present that compromise achievement of one or more control objectives but do not prevent the process from achieving its overall purpose.
Major Improvement Needed	The processes are not appropriately designed and/or are not operating effectively to manage risks. Control issues exist and are medium or high risk. Weaknesses are present that could potentially compromise achievement of its overall purpose.

Risk Classification of Audit Observations

Rating	Description of Factors
Low	Represents a process improvement opportunity. Observation poses relatively minor exposure to the program under review.
Moderate	Requires near-term department attention. Observation has moderate impact to the program. Compensating controls may exist but are not operating as designed.
High	Requires immediate department attention and remediation. Observation has broad (state or department wide) impact and possible or existing material exposure.

FINAL REPORT

Evaluation of the Michigan Indigent Defense Commission's Minimum Standards for Indigent Defense Services

Jeanette Hussemann, PhD

Lauren Farrell, BA

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202-261-5626

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We thank Cathy Hu for her assistance in this project, as well as all the attorneys, judges, court administrators, and others who participated in this effort.



ABOUT THE URBAN INSTITUTE

The nonprofit Urban Institute is a leading research organization dedicated to developing evidence-based insights that improve people's lives and strengthen communities. For 50 years, Urban has been the trusted source for rigorous analysis of complex social and economic issues; strategic advice to policymakers, philanthropists, and practitioners; and new, promising ideas that expand opportunities for all. Our work inspires effective decisions that advance fairness and enhance the well-being of people and places.

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Introduction

In 2008, the National Legal Aid and Defender Association concluded that “the state of Michigan fails to provide competent representation to those who cannot afford counsel in its criminal courts.”¹ In 2013, the state legislature created the Michigan Indigent Defense Commission (MIDC) to establish and enforce minimum standards of indigent defense across the state, as well as to “ensure the state’s public defense system is fair, cost-effective and constitutional while simultaneously protecting public safety and accountability”.²

In 2017, Michigan adopted four minimum standards of indigent defense to improve the quality of legal representation for adults who are accused of a crime but cannot afford to hire legal counsel. These standards require: 1) Timely and relevant training of assigned attorneys; 2) Confidential meeting space for clients to meet with their attorneys and an initial client interview within three business days of appointment; 3) Access to and use of investigators and experts; and, 4) Legal counsel present upon a person’s initial appearance in court to answer to the charges against them.³

In 2018, the Urban Institute was awarded a contract to conduct a process evaluation of the implementation of the four standards of indigent defense in Michigan. Specifically, this research sought to (1) document the current state of indigent defense in Michigan as it relates to the four standards, (2) assess how implementation of the four standards proceeds across diverse local systems, (3) identify which standards were implemented most smoothly and which presented the most difficulties, and (4) understand what additional supports are necessary to bolster the implementation of indigent defense standards or improve the quality of indigent defense legal representation. In addition, this research sought to gain insight into overall perspectives of the need for indigent defense reform, and perspectives of the benefits and challenges associated with public defense, appointed counsel, and contract models of defense as they relate to the implementation of standards of indigent defense.

The research team implemented a multi-method process to achieve the goals of this study. Qualitative data collection included in-depth, semi-structured interviews with 57 respondents involved in defense reform across 41 Michigan counties. Interviews included 18 chief and/or assistant chief public defenders, 13 attorneys, 12 judges, 7 managed assigned counsel administrators⁴, and 7 court or county administrators. Interviews were conducted between May 2019 and June 2020; prosecutors and jail administrators were not interviewed as a part of this study. The research team also reviewed and coded the FY2019 compliance plans from the 126 funding units that were submitted to the MIDC outlining how

standards of minimum defense would be implemented across courts and counties. This report summarizes the methods and finding of this research study.

Background

Indigent Defense in Michigan

Funded, statewide reform of indigent defense services is by and large a rare and undocumented occurrence. With the exception of New York state, which has recently appropriated over \$200 million dollars to counties to implement counsel at first appearance, state funding for broad reforms of indigent defense – such as limits on court-appointed attorney caseloads and increases in attorney training requirements – are extremely uncommon.⁵ In states like Michigan, where local governments have been responsible for both the funding and oversight of indigent defense services, reforms or improvements to indigent defense services have occurred entirely at the discretion of local stakeholders.

In more than twenty states across the country, indigent defense services are managed at the local level and through a mix of models, including assigned counsel systems, contract systems, and public defender offices.⁶ In Michigan, the largest proportion of counties have historically relied on assigned counsel or contract models to provide indigent defense services. *Assigned counsel models* involve the assignment of indigent cases either systematically or ad hoc to private attorneys, who are typically paid on an hourly basis. In some courts or counties, attorneys need to meet specific requirements to be eligible to have their name placed on a roster to receive cases. For many years, assigned counsel systems in Michigan (and throughout the U.S.) have been managed by court administrators or judges. *Contract models* of indigent defense involve the assignment of indigent cases to private attorneys or groups of attorneys who have been contracted by a state, county, or other jurisdictional entity to provide indigent defense service at a fixed-price per year, or fixed-fee per case. *Public defender office models*, the least common model of indigent defense in Michigan, is typically a county-based or non-profit organization that employs either part-or full-time attorneys to provide legal services on indigent defense cases. Notably, many counties and jurisdictions across Michigan, and across the country, rely on a mixed-model approach to effectively meet their indigent defense needs. For example, a common mixed-model system is one in which a public defender office is supported by a smaller assigned counsel or contract system that takes conflict cases, or a certain subset of criminal cases, to help alleviate large caseloads among attorneys working in public defender offices.

Because the obligation of funding and management of indigent defense has been left to local counties and governments in Michigan, there is a wide variety in the type and quality of legal services provided across the state, which is exacerbated by a diverse geographical landscape characterized by eighty-three counties across two peninsulas. The Upper Peninsula (the U.P.) comprises 15 counties and 29% of the land area of Michigan, but only 3% of the state's population.⁷ The lower peninsular comprises more than 65% of the land of Michigan and is home to large, urban areas such as Detroit and Flint. Prior to the implementation of the four standards of indigent defense, one county in the U.P. and seven counties in lower Michigan relied at least partially on public defender offices to provide defense representation; the remainder of the counties relied on assigned counsel or contract models of indigent defense.

Pushing Towards Reform

In 2008, Michigan was the subject of a report by the National Legal Aid and Defender Association (NLADA) entitled: *A Race to the Bottom Speed & Savings Over Due Process: A Constitutional Crisis*, which evaluated trial-level indigent defense systems across 10 counties in the state. The report highlighted the myriad of indigent defense systems in Michigan and the diversity in the quality of services and qualifications for receiving indigent defense services. The report found that whether an individual is entitled to receive indigent defense services, and the competency of the services received, largely depended on the county in which the person was arrested and arraigned.⁸

Among the 10 counties investigated for the report, none of the indigent defense services were found by the NLADA to be constitutionally adequate, as defined by the *American Bar Associations (ABA) Ten Principles of a Public Defense Delivery System*.⁹ Key deficiencies included assigning lawyers to cases for which they were unqualified to represent; defenders failing to meet with clients in advance of hearings; judges hand-picking defense attorneys; inadequate compensation for attorneys; and, lack of training, investigators, experts, and other resources to support attorneys, among other things.

The report also highlighted the financial strains that are imposed on counties to support indigent defense services. At the time that the report was released, for example, Michigan counties spent \$74.4 million, or \$7.35 per capita, on indigent defense services, which was 38 percent less than the national average of \$11.86.¹⁰ This placed Michigan 44th out of the 50 states in per capita indigent defense spending.

Prior to the NLADA's assessment, calls for indigent defense reform had been made in Michigan. In the 1980s and 1990s, for example, Chief Justices G. Mennen Williams, Dorothy Comstock Riley, Michael

Cavanagh, and James H. Brickley acknowledged the financial strain on counties to fund indigent defense and their inability to meet the funding needs, subsequently urging state reform and assistance with financing.¹¹ In 1992, the *Michigan Bar Journal* published a special edition focused on issues facing Michigan's indigent defense system, including inadequate compensation and lack of training and support services for assigned attorneys, lack of supervision and requirements for assigned attorneys, and lack of independence from the judiciary, among other things. In the early 2000s, Presidents of the State Bar of Michigan, Thomas W. Cranmer and Nancy J. Diehl, acknowledged the need for well-trained and effective assigned attorneys. During her tenure as the President of the State Bar of Michigan between 2004 - 2005, Nancy J. Diehl stated, "Our justice system works best with both a strong prosecution and a strong defense. This ensures that the rights of all citizens are protected...Our belief in justice for all should not become justice for only those who can afford to pay."¹²

In 2002, a Michigan Public Defense Task Force was formed to move conversations about reform toward action.¹³ The Task Force developed a plan based on the *ABA Ten Principles for Delivery of Indigent Defense Services* and led statewide public education and advocacy efforts to implement the plan.¹⁴ Ultimately, the plan was adopted by the State Bar of Michigan, who also began to encourage the state legislature to establish a

American Bar Association's Ten Principles of Public Defense

1. The public defense function, including the selection, funding, and payment of defense counsel is independent.
2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
5. Defense counsel's workload is controlled to permit the rendering of quality representation.
6. Defense counsel's ability, training, and experience match the complexity of the case.
7. The same attorney continuously represents the client until completion of the case
8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
9. Defense counsel is provided with and required to attend continuing legal education.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

American Bar Association. 2002 Ten Principles of a Public Defense Delivery System. See www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf

commission for the purposes of investigating indigent defense services in Michigan and making recommendations for improvement to the services provided. In 2011, Governor Rick Snyder established an Indigent Defense Advisory Commission, which made the recommendation to the state legislature to create a permanent commission on indigent defense, which has the authority to “establish and enforce minimum standards statewide for the delivery of constitutionally effective assistance of counsel to indigent criminal defendants.”¹⁵

The Advisory Commission’s recommendations served as the basis for the legislation known as the Michigan Indigent Defense Commission Act, which formally established the Michigan Indigent Defense Commission (MIDC).¹⁶ The MIDC’s Commissioners were appointed in 2014 and the first Executive Director and staff began working in 2015.

Minimum Standards of Indigent Defense

In keeping with its mandate, the MIDC has outlined nine standards of indigent defense.¹⁷ Standards 1, 2, 3, and 4, were released in 2015 and approved for implementation in 2017 after a series of public hearings and comment periods. The state appropriated over \$80 million in funding for FY2019 to support the implementation of the first four standards across the state. That funding has increased to \$117.5 million.

Standard 5, which requires independence from the judiciary was approved by the state in October 2020 and will be implemented by local systems in FY2022. Four additional standards, which focus on indigent defense workloads, indigent attorney qualification and review, attorney compensation, and indigency determination are still pending approval.¹⁸ (See **Table 1**)

This study focused on the implementation of Standards, 1, 2, 3, and 4. These standards emphasize indigent defense attorney training, initial meetings with clients and confidential meeting spaces, access to investigators and experts, and the provision of counsel at first appearances and all other critical stages.

Standard 1. Education and Training of Defense Counsel

The first standard of indigent defense outlines requirements for the training and continuing legal education (CLE) of assigned attorneys. The standard highlights three key areas of continuing education: 1) knowledge of the law, including federal, criminal, and constitutional law, criminal procedure, and rules of evidence; 2) knowledge of scientific evidence and applicable defenses, and; 3) knowledge of technology, including office technology and technology commonly used in court systems. Standard 1 requires 12 CLE hours for all assigned attorneys, and a “basic skills acquisition” class for attorneys with less than two years of experience.¹⁹ It also provides funding to cover the expenses associated with attending trainings.

Michigan is one of only five states across the country for which the State Bar does not require CLE for attorneys. While a few counties in Michigan required some form of training for defense attorneys prior to the implementation of Standard 1, over 80% of circuit or district courts had not established any formal training requirements.²⁰ As the NLADA stated in their 2008 report,

It is difficult, at best, to construct an in-depth analysis of the lack of training in Michigan when the bottom line is that there is no training requirement in virtually any county-based indigent defense system outside of the largest urban centers. Even the training provided in the large urban centers is inadequate. Criminal law is not static – and public defense practice in serious felony cases has become far more complex over the past three decades. Developments in forensic evidence require significant efforts to understand, defend against and present scientific evidence and testimony of expert witnesses.²¹

Continuing education, which includes quality and meaningful training opportunities for assigned attorneys, has been highlighted for decades as critical to ensuring that individuals who are accused of crimes are afforded their constitutional right to effective assistance of counsel. Properly trained defense attorneys can help eliminate unnecessary guilty pleas, wrongful convictions, and decrease the number of exonerations based on poor defense representation.

Standard 2. Initial interview

The second standard of indigent defense requires assigned attorneys to conduct an initial interview within three business days after appointment with clients who are in custody. For clients who are out of custody, attorneys are required to call or mail clients to request to set-up an initial meeting. If a client is detained in a different county or is in the custody of the Michigan Department of Corrections (MDOC), attorneys should arrange to meet with their client prior to the first pretrial hearing.²² The purpose of the initial interview is to: 1) establish rapport with clients; 2) review charges; 3) determine whether a motion for pretrial release is appropriate; 4) determine the need to begin an investigation; 5) assess mental and physical health, and interpreter needs; and, 6) advise the client not to discuss anything about their case with anyone unless the attorney is present.

The second standard also states that client interviews should be conducted in confidential settings, including in courts, jails, prisons, and other criminal justice facilities, and requires attorneys to obtain relevant case documents as available, including police reports and discovery materials.²³

Standard 2 highlights the need to move away from the practice of assigned attorneys meeting with clients for the first time on the day of the first court appearance. In a survey conducted by the MIDC in

2017, over 40 percent of attorneys indicated that they typically wait four days or more to meet with in-custody clients. One-third of the attorneys indicated that they would wait more than seven days to meet with in-custody clients. Common reasons associated with not meeting with clients sooner included not being reimbursed for making multiple visits to see clients in custody, not having police reports and discovery materials, and lack of a confidential meeting space. According to respondents of the survey, only 41 percent of courthouses and 56 percent of jails or other correctional facilities had confidential spaces for attorneys to meet with clients.²⁴

Table 1. Michigan’s Standards of Indigent Defense

	Focus	Summary	Status
Standard 1	Education and Training of Defense Counsel	Requires 12 continuing legal education hours for all assigned attorneys on an annual basis, and a “basic skills acquisition” class for attorneys with less than two years of experience	Implemented
Standard 2	Initial Interview	Requires assigned attorneys to conduct an initial interview with clients within three business days after appointment, and for client interviews to be conducted in a confidential setting	Implemented
Standard 3	Experts and Investigators	Requires assigned attorneys to conduct independent investigations and to consult with experts on cases at pretrial and trial, as necessary	Implemented
Standard 4	Counsel at First Appearance and other Critical Stages	Provides defense counsel to individuals at their first appearance and other critical stages	Implemented
Standard 5	Independence from the Judiciary	Requires that indigent defense services be independent of the judiciary	Early Implementation
Standard 6	Indigent Defense Workloads	Sets maximum caseloads for full-time assigned attorneys	Pending Approval
Standard 7	Qualification and Review	Requires assigned attorneys to meet basic requirements and case-type qualifications, and to be monitored and regularly assessed	Pending Approval
Standard 8	Attorney Compensation	Sets rates of payment for public defenders, compensation and expenses for assigned counsel, and terms of contract for contract and conflict counsel	Pending Approval
Indigency Standard	Indigency Determination	Provides procedures for making indigency determinations and the sets monetary amounts that courts can require indigent individuals to contribute to their defense.	Implementation Planned for FY2023

Importantly, the MIDC has approved funding for renovating space in courthouses and jails to comply with Standard 2 to ensure that attorneys and their clients are able to speak in private. Standard 2 also provides funding for attorney expenses associated with visits and travel to jails to meet with clients for both the initial interview as well as ongoing interviews.

Standard 3. Investigation and Experts

The third standard of indigent defense requires assigned attorneys to conduct independent investigations and consult with experts on cases at pretrial and trial, as necessary, to ensure effective assistance of counsel.²⁵

Historically, assigned attorneys in Michigan have not regularly relied on investigators and experts in defense strategies, particularly in misdemeanor cases. A report published by the *Lansing State Journal* in 2015 found that defense attorneys across three counties used outside investigators in only two percent of cases.²⁶ The MIDC reports that one district court in the south-central region of the state had not received a request for an investigator in over twenty years.²⁷

Over seventy percent of attorneys in the MIDCs most recent survey indicated that in order to hire an investigator or an expert for a case, they had to file a motion in court to request funding, which required the attorney to disclose their legal strategy to the court.²⁸

Because funding for investigators and experts in indigent defense cases has historically derived from court budgets, Standard 3 provides independent funding for investigators and experts and encourages an external approval process that removes courts and judges from being key decisionmakers for determining whether an investigator or expert should be utilized in cases. With the upcoming implementation of Standard 5, the administration of indigent defense will be even further removed from the judiciary, solidifying the independence of the defense function.

Standard 4. Counsel at First Appearance and other Critical Stages

The fourth standard that was implemented for the purposes of this evaluation provides defense counsel to individuals at their first appearance before the judge.²⁹ In Michigan, the first appearance before the judge occurs in the district court and is a time in which the accused individual is informed of the charges against them and of their right to counsel. The first appearance is also when bail is set by the judge.

Counsel at first appearance has historically not been provided in Michigan to individuals at their first appearance for a new charge, or for probation violation hearings. Prior to the implementation of Standard 4, counsel at first appearance was only provided in a handful of district courts throughout the state as

pilot projects; the vast majority of clients did not have the opportunity to consult with or be represented by counsel at this stage. In their 2008 report, the NLADA described the first appearance process in one county:

Felony defendants, including those participating in television/video arraignments from the county jail, receive quick, cursory, and perfunctory information from the judge regarding the charges, the setting of bail, and their preliminary hearing date. The judge is quick and perfunctory with the misdemeanor arraignments set for an initial appearance. Defendants are informed of the charges and asked how they want to plea. Only if they plead not guilty are they asked if they want counsel. Without the presence or advice of counsel and without any oral colloquy regarding waiver of counsel and without signing of a waiver of the right to counsel form, the judge accepts guilty pleas in misdemeanor cases.³⁰

Over the past decade, a growing body of research has shown that providing counsel at first appearance affects short and long-term incarceration and other outcomes. For example, individuals who do not have counsel at their first appearance before a judge are less likely to be released from jail before trial and are more likely to be sentenced to jail or prison and to receive longer sentences.³¹ Furthermore, individuals incarcerated pretrial are at a disadvantage for initiating investigations and preparing for trial, in addition to other collateral consequences, including loss of employment, housing, and the ability to support family.³²

Also, because of the racial disparities inherent in the criminal justice system, not providing counsel at first appearance means that people of color and their communities are negatively impacted more than white people and communities—although people of color comprise just over 25 percent of the national population, they represent over half of the U.S. jail population.³³ Individuals who are homeless and who suffer from substance and mental health issues, and whom are in more frequent contact with police and held in jails are also more affected by lack of defense counsel at first appearances before judges.³⁴

Research Goals

Goals of this study were to: (1) document the current state of indigent defense in Michigan as it relates to the four standards, (2) assess how implementation of the four standards proceeds across diverse court systems, (3) identify which standards were implemented most smoothly and which presented the most difficulties, and (4) understand what additional supports are necessary to bolster the implementation of indigent defense standards or improve the quality of indigent defense legal representation. This study also sought to gain insight into perspectives of the need for indigent defense reform, and perspectives of the benefits and challenges associated with public defense, appointed counsel, and contract models of

defense as they relate to the implementation of standards of indigent defense. Key research questions that guided this study included:

1. How do stakeholders, including attorneys, judges, and court administrators, perceive the need for standards of indigent defense?
2. What are the benefits associated with the implementation of the first four standards of indigent defense in Michigan?
3. What are the barriers and challenges associated with the implementation of the four standards of indigent defense?
4. What are considerations for how the implementation of standards of indigent defense could be improved upon in the future?
5. What are the pros and cons of diverse indigent defense delivery models in the context of implementing standards of indigent defense?

The sections that follow describe the methodology, the results and findings, and limitations of this study.

Methods

This research relies on data collected between 2018 and 2020. Data sources included semi-structured interviews and the review and coding of compliance plans submitted to the MIDC for FY2019 from 126 funding units.

Qualitative Data Collection and Analysis

Semi-structured interviews were conducted with 57 respondents across 41 Michigan counties who had either implemented or were in the process of implementing Standards 1, 2, 3, and 4. Interviews were conducted between May 2019 and June 2020. Interviewees included 18 chief and/or assistant chief public defenders, 13 attorneys, 12 judges, 7 managed assigned counsel administrators, and 7 court and county administrators (see **Table 2**). Prosecutors and jail administrators were not interviewed as a part of this study. Interview protocols were developed in collaboration with the MIDC and pilot tested with several respondents, after which the research team made necessary revisions prior to collecting data across the remaining respondents.

During interviews, the research team collected information on respondent roles and professional experience, indigent defense delivery systems, caseloads, indigency determination, as well overall perspectives about the background and need for implementing standards of indigent defense in Michigan. We also collected information on how each standard was implemented and associated challenges and barriers, as well as perceived benefits. Additionally, we asked for feedback on additional supports that could be provided, or other considerations for the implementation of standards in the future.

Interview respondents were identified in coordination with the MIDC and through snowball sampling, a non-probability sampling technique that relies on individuals to recruit or recommend additional respondents to the study. The first respondents to this study were identified through conversations with the MIDC regional managers (n = 6) who each provided names and contact information for stakeholders across their respective regions who might be responsive to the study and/or provide varying perspectives of the reforms. Additional participants were identified during interviews, in which respondents recommended other stakeholders who they thought might lend an interesting perspective to the study. For example, chief public defenders or managed assigned counsel administrators often recommended that we speak directly to one of their attorneys, or a court administrator might suggest that we speak with a judge or an administrator in another county.

Interviews with stakeholders occurred over the phone and lasted between 30 minutes to 1 hour. Most interviews were conducted by at least two interviewers from the research team: one to lead and one to provide support and take notes. Prior to beginning each interview, the research team administered informed consent to notify participants that the interview was confidential and that their participation was fully voluntary, meaning the respondent could choose to not answer a question or end the interview at any time. Most interviews were audio recorded. In cases in which the respondent was not comfortable being audio recorded a member of the research team took notes. After interviews were completed, audio files and interview notes were stored on a confidential drive at the Urban Institute; only members of the research team had access to the interview data collected.

Following data collection, all interviews were transcribed and uploaded to NVivo, a qualitative analysis software program. Interviews were coded by two researchers, based on a coding scheme that was derived from the research study's interview protocol. The coding scheme was organized into 7 primary families, each with respective subcodes. To ensure the quality of the coding scheme and the consistent coding of interviews, the researchers individually coded interviews and met to discuss coding decisions. Following this initial coding check, the coding scheme was refined, and a final codebook was generated.

Table 2. Respondent Characteristics (n = 57)

	N	%
Respondent Type		
Public Defender Chief or Assistant Chief	18	32%
Managed Assigned Counsel Administrator	7	12%
Indigent Defense Attorney	13	23%
Assigned Counsel	9	
Contract Attorney	1	
Public Defender	2	
Judge	12	21%
Court Administrator	7	12%
County Population		
<50,000	11	19%
50,001 – 100,000	7	12%
100,001 – 300,000	19	34%
300,001 – 700,000	4	7%
< 700,001	16	28%

Compliance Plan Data Collection and Analysis

After the first four standards of indigent defense were approved for implementation, local systems were required to submit a plan of compliance to the MIDC by November 2017. The plans outlined the type of indigent defense delivery model in place prior to the implementation of the standards, any plans to transition to a new delivery model as part of the implementation of the standards (i.e. from an assigned counsel system to a public defender office), how systems were planning to implement Standards 1, 2, 3, and 4, and costs requested to support the implementation of the standards. In sum, 126 funding units submitted compliance plans to the MIDC. The research team collected, reviewed, and coded these plans to understand how standards were implemented broadly across the state.

Findings

Perspectives of Standards of Indigent Defense in Michigan

To learn about court actors' perspectives of the implementation of the standards in Michigan, all individuals interviewed for this study were asked to discuss their perspectives of the need for indigent defense reform in Michigan, along with the benefits and challenges of implementing Standards 1, 2, 3, and 4.

Standard 1. Education and Training of Defense Counsel

Stakeholders interviewed for this study were overwhelmingly supportive of the need for Standard 1, which introduces training requirements for all attorneys who provide legal representation to adults who cannot afford to hire a private attorney. When asked about their perspective of required trainings for assigned attorneys, one attorney stated, "I love the fact that the training is mandatory." Another chief indicated, "I think it's critical, frankly."

The two most cited reasons for the need for Standard 1 was to ensure that assigned attorneys are 1) knowledgeable about local, federal, and criminal laws and procedures, and developments in forensic and scientific evidence and issues, and 2) compensated for the expenses required to attend trainings.

I've always been a huge fan of training...It just baffled me that a person who wants to be a heart surgeon has to go through an internship and residency before they're allowed to even go and do any kind of surgeries, but if you're a lawyer in Michigan, you could pass the bar and the next day take on a first-degree murder case without any training. It's crazy, so the training aspect is critical to the effectiveness. (attorney 8; April 2020)

I think that it is a very conscious decision on the part of the people who've gathered together to create the administrative staff at MIDC, and I'm going to help them. We are going to lead the charge to move Michigan into the majority where mandatory CLE is part of your licensing requirements because in this profession the technology and the laws just move very, very rapidly. If you don't have an organized system in place to keep up, it affects justice. (chief public defender 9; May 2019)

I think it's a relief because our attorneys are all solo practitioners, so money is always an issue, no matter what you're doing. I think knowing that, yes, we're requiring you to go to training, but we're also going to pay for it helps alleviate a lot of stress from the attorneys because when I was a criminal defense attorney, there were things I wanted to go and do. When it's a choice between going to a training and paying the light bill, the light bill wins. (managed assigned counsel administrator 3; July 2019)

One primary concern expressed by respondents regarding Standard 1 was that the training requirement was focused only on assigned attorneys and did not extend to all attorneys practicing in Michigan, including private attorneys and prosecutors. In this regard, some attorneys felt that they were being singled out, and that the standard suggested that only assigned attorneys needed focused training:

It is a training requirement for defense attorneys only. Prosecutors don't have a requirement or anything. Seems like if you wanted to reform your system, you'd be concerned about all of the attorneys... You're not going to change a system when you're only requiring one category to do trainings. For the defense attorneys it's a little insulting to them...they're being told because you're labeled a public defender, we can't trust that

you know the training that you need. We're going to monitor that for you...I think the reform should've taken place in collaboration with the State Bar of Michigan, and I think there should've been discussions about the criminal section, including both prosecution and defense...I don't think by virtue of my label as public defender that that means somehow I need to be regulated more and told what to do as far as my training. (attorney 2; December 2019)

Benefits. Individuals interviewed for this study were asked about their perceptions of the benefits associated with each standard. When asked about the benefits of Standard 1, respondents indicated that funding for Standard 1 was important because it provided reimbursement to attorneys to attend trainings, when they were previously not paid to do so: "Now we don't [have to pay for it] and it's amazing. It's amazing. I think it's cost-prohibitive for a lot of new attorneys, and now it is not." (attorney 5; June 2019)

More substantively, attorneys indicated that the trainings provided them with critical information about changes to criminal laws and scientific evidence procedures and advancements, as well as opportunities to network and learn from other practicing attorneys, share resources, build skills, and problem solve:

Every training course they go to, they come back with a skill. I have someone, one of the attorneys in my office right now, is in jury trial. She just came down at lunch and said, "I got to use some of these new techniques I learned." I'm very happy with it." (chief public defender 3; November 2019)

They shared a lot of good ideas and it was excellent for networking... What have you done? Have you been through this? I think that the ability for them to talk to other public defenders is tremendous. (court administrator 1; January 2020)

A lot of attorneys that have gone to [Criminal Defense Attorneys of Michigan] conferences or some type of training session, come back, and they are changing their motion practice, or they've got new ideas to do this, or do that. I'm like, "Well, see you guys should've done this years ago." It is having a positive impact. (chief public defender 8; January 2019)

Challenges. When discussing the challenges associated with the implementation of each standard, only one challenge was noted regarding Standard 1. This challenge was highlighted by attorneys, chief public defenders, and managed assigned counsel administrators who indicated that it could be hard to find the time needed to travel to and attend trainings. The most cited trainings that attorneys mentioned attending were those offered by the Criminal Defense Attorneys of Michigan (CDAM). Respondents indicated that it would be helpful if more online classes were offered by more training providers to help offset the need to physically travel to conferences and courses.³⁵

We don't really have the time to take three days off and just disappear to Traverse City to watch a CDAM thing. We can't roll out to the east side of the state and spend four days hearing about something. That's four days of people sitting in jail, four days of hearings not happening. (attorney 3; May 2020)

I do wish there was more online classes that we could take that would be worth so many credits. I think there are attorneys who do our conflicts who would appreciate that as well. (chief public defender 3; November 2019)

Standard 2. Initial Interview

Unlike Standard 1, stakeholders were not as overwhelmingly supportive of Standard 2, which outlines requirements for conducting initial interviews with clients within three business days, and confidential meeting spaces. Respondents who were supportive of the standard perceived it as important because many assigned attorneys were previously not meeting with their clients until the preliminary hearing and, in many cases, conversations were being conducted in hallways or stairwells. As one attorney stated, "there were many criminal defense attorneys that were waiting till the time of the pretrial or the preliminary hearing and talking to their clients for the first time." Another chief public defender stated,

As a matter, of course, I didn't let a client sit in jail without going to see them. What I like about [standard 2] is that I would see a lot of lawyers who didn't do that. I knew lawyers who never went to the jail. I always thought that was a horrible breach of duty. I'm very encouraged by that. I think that if somebody is sitting in jail, they have a right to see their lawyer and certainly, with the standards and in my office that's going to happen. (chief public defender 10; December 2019)

Stakeholders who were not supportive of Standards 2 questioned the feasibility of meeting a three-business day requirement while managing their normal caseload work, and for clients that were not detained, or not detained near where the attorney worked. As one contract attorney and public defender chief stated about their perspective on meeting the requirements of Standard 2,

The reality is that five to seven days is probably more realistic. It's just my opinion and just based on things that I've seen over the years, that I'm not entirely certain you could do it. Not to say that we shouldn't try, and not to say that it's not an appropriate thing. It's just, when you think about the schedule...Quite frankly, if I got 75 percent compliance within two years, I would count that as a huge win. (chief public defender 1; August 2019)

In terms of those of us on the contract, it was like, how the heck do you expect us to do that now, too? With the level of cases we had, and I'll be honest with you, we largely had to ignore them in terms of the standard for getting out, meeting with your client within 72 hours, which I still think is a ridiculous standard....To be frankly honest with you, I have multiple files on multiple people. When I got John Smith on a fifth [driving without a license], what's the point of me going out and seeing him? He knows the drill. He knows me. But

then the standard would still say I need to go out there and see him and waste valuable time that could be used on a different client whose case is much more serious. I don't think that there's that common sense of some cases are more serious than others and need more time devoted to them. I think that's the problem with this one size fits all standard. (attorney 2; December 2019)

Benefits. When asked about the benefits of conducting an initial interview with clients within three days after appointment, respondents indicated that the practice helped attorneys feel better equipped to advocate for their clients earlier in the court process, including an increased ability to refer clients to needed services for diversion programs or mental health or drug courts:

I think a lot of it plays to substance abuse issues and mental health issues. The attorneys are able to recognize those sooner, maybe divert them—already get them screened for drug court, something, before their first court appearance. The mental health issues, a couple of them that really stick out—I mean, some of these people were severely mentally ill. At their arraignment I could tell that they were severely mentally ill. We could immediately get an order for a competency exam, not have to wait two weeks for a first court hearing. (managed assigned counsel administrator 3; July 2019)

Attorneys and chief public defenders also indicated that they felt as if connecting with clients decreased the number of clients who absconded or missed court hearings because they were in contact with clients early on and frequently to inform them of their case. Furthermore, attorneys indicated that meeting with their clients very shortly after being appointed gave them more time to initiate investigations, consult experts, and negotiate with the prosecutor, as well as increased the potential for the case being disposed or for the client receiving a better outcome.

I certainly think it helps the attorney to have a better handle on at least having gotten some background information about the particular defendant before that first hearing so they're better able to advocate on their client's behalf at the pretrial or the probable cause conference. (chief public defender 1; August 2019)

Any information you can get, the sooner you can get it, the better you can do your job. To bring the prosecutors into it, to some extent...I make every effort to communicate as soon as possible with the prosecutor to try and streamline what happens on the day of court. The sooner we can get the information the sooner I can do that. (attorney 13; August 2020)

Stakeholders also highlighted benefits of the standard for their clients. Notably, attorneys indicated that their relationships with their clients were enhanced because they had more time to build rapport with their clients. Their clients also expressed feeling more informed about their cases, including the procedures and decisions made in their cases.

The whole plan for this was to have greater contact with the attorneys and the clients. The clients know what's going on with their cases, rather than seeing their attorney once or twice during the course of the case, which was also a major problem with the way it was done before. (chief public defender 8; December 2019)

They don't feel confused or left out and there's dignity with the way they've been treated...I think the most important thing is to make the client feel like they're followed-up with promptly and they're not feeling, "Okay, what's next?"—that the time period is minimized. Being at arraignment I think already helps dramatically in this regard. (chief public defender 11; December 2019)

I always think the clients feel better too. I've had multiple clients tell me that this is the best they've ever been represented. "I've been through the system many times, at least you guys are calling me now." That feels good. (chief public defender 3; November 2019)

Finally, when asked whether they were seeing any affects associated with attorneys meeting early with clients, one judge stated:

Yeah. Absolutely. I don't have the situation where I have defense attorneys walking into the courtroom going, "Joe Smith? Joe Smith? Is Joe Smith here?" I'm thinking, "Oh, my God. You've never even spoken to this person, and you're appointed counsel on this case." I think that it's working. (judge 10; November 2019)

With regard to Standard's 2 emphasis on ensuring that attorneys and clients were afforded confidential meeting spaces, a review of compliance plans submitted to the MIDC in 2018 indicated that more than half of the jails reported having spaces for attorneys and their clients to meet confidentially prior to the implementation of the standard. However, fewer courts reported having confidential spaces for attorneys to meet with their clients. Required renovations to ensure that confidential meeting spaces were available ranged from the construction of new and separate rooms in courts and jails, to only needing to install a door or, or white noise machine to ensure that space was confidential.

Challenges. Several challenges were noted regarding the implementation of Standard 2. These challenges included: 1) push-back from some attorneys who did not fully buy-in to the need for an initial meeting within the specified time frame of three business days after appointment; 2) difficulty obtaining police reports and discovery; 3) finding the time to meet with clients within the specified period; and, 4) logistical challenges associated with coordinating with jail staff to meet with clients.

Some leaders interviewed for this study, including chief public defenders and managed assigned counsel administrators, indicated that attorneys whom they supervised did not always see the need to meet with clients within three business days of appointment. Attorneys who have been working as an

indigent defense attorney for an extended period were more likely to push-back on this standard. As one leader stated,

We're still working on convincing the attorneys that this is needed. We're holding meetings and advocating for this...Some of them say, "I've always saw the people at pretrial, and what's really the need?"...Trying to convince them that we don't want them sitting in jail. We don't want their cases prolonged where they're doing extra time for things that they wouldn't have done that much time for on in the first place; it's challenging from that perspective. (chief public defender 1; August 2019)

In many cases, respondents questioned the value of visiting with clients when they had yet to receive police reports or discovery. Standard 2 requires assigned attorneys to obtain and review relevant documents prior to the initial meeting with clients; however, over half of the attorneys, chief public defenders, and managed assigned counsel administrators interviewed for this study indicated that they are rarely able to review discovery prior to the initial meeting. These respondents voiced concern over their ability to have meaningful conversations with their clients absent of this information.

I hate talking to people without knowing all the facts. I'm leery walking into a situation where I don't know the things I should know. When I have to say I don't know a bunch of times, it makes me feel like I'm not a professional. I should have the answers for them. I don't want it to cause them to doubt me because I don't know all this stuff at this first meeting. I'm just wondering how it makes the defendant view us because we're not really prepared for that first meeting. That's my concern. (attorney 4; October 2019)

The 72-hour rule in terms of going out and seeing your clients seems kind of useless to me because most of the time within 72 hours, all I had was a charging document which tells me little to nothing. It's unlikely you're going to get any kind of level of discovery that's going to be useful in terms of speaking with the client within 72 hours. Going out and seeing people and saying, "This is what you're charged with, it's nice to meet you," didn't really do us any good because they would ask about their case and I would say, "I don't know," and that made it worse...I think you have to have a working relationship with a client but that begins with having knowledge of what you're talking about. When you go out there and basically say, "I don't know anything about your case," it doesn't really help in any kind of working relationship going forward...There is already a stigma around public defenders that they don't know what they're doing. (attorney 2; December 2019)

However, when asked about this concern, one managed assigned counsel administrator responded,

The attorneys don't like it. And I did it for years, so I get it. We would have the mindset of, "Why would I have a conversation with a client before I had my discovery, before I could have an intellectual conversation about the facts of the case? Why would I spend my time doing that? At that point, all I'm doing is hearing someone else's version without having a police report." Well, again, I give MIDC, my regional [manager] a ton of credit on explaining this. I don't know if you've heard it, but she'd say, "Okay. If somebody is a defense attorney.

If somebody walks into your office with \$10,000 and says, 'I want to hire you to represent my son who's in jail on this bogus charge,' the first thing a defense attorney would do would be to deposit the money. The second is to go right to the jail to meet the client and say, 'Hey, I'm your attorney. Let's get working on this case.' Why is it any different with an indigent defendant?" (managed assigned counsel 7; October 2019)

Attorneys also reported it challenging to find the time to meet with clients in the specified period of time, and while maintaining their regular caseload, as well as reaching clients who were not in custody. As one chief public defender put it, "Do I meet with them within 72 hours? We certainly try to. That is one area where our overloading caseload is hampering us." Another chief stated, "Honestly, I don't think you can get to 100 percent on that. I think 100 percent is not realistic from a practicality standpoint."

Because phone numbers have not been a reliable means to reach clients, attorneys are required to send letters to clients who are not in custody; however, relying on postal mail introduces additional challenges related to incorrect addresses and the time required for letters to be received.

MIDC told us that they want a letter sent to the defendant. We're working on that and to get software to make it easier to implement that; the phone call is not good enough. They want a letter sent although by the time they get the letter, the court date is going to be the next day anyway—by the time it gets sent to the attorney and then the attorney puts a letter in the mail and then the defendant receives it. There's not enough time for it, but that's what they're insisting. It doesn't make sense to me. (court administrator 3; May 2019)

Most of the time, I would say the information on the sheet, the data sheet about our client, their address, their phone number, is wrong, most of the time it's wrong. You try to meet with your client. If they're not in jail, low-income defendants in [city], they don't have transportation. They don't own cars. They're not going to drive to your office to meet you in person. You're lucky if their burner phone is still turned on. They don't have Wi-Fi, or internet access. They don't pay big monthly bills like that. You can't email them. Communication is a challenge. (attorney 4; October 2019)

Additionally, attorneys noted the significant challenges of meeting with clients who are incarcerated in prison:

Our biggest problem is that we have a lot of prisoners that we deal with from the Department of Corrections. That is very difficult. You can't even find them most of the time. By the time you get the paperwork or whatever, they've moved prisons, and nobody tells you how to get a hold of them. They don't just let you in. There needs to be an exception with regard to prisoners. (chief public defender 17; December 2019)

The other complicating thing is we get a lot of people who have holds on them, and they're being held in other jail facilities that are not in county...—if they're in DOC custody or

they're in another county, it's hard to meet the 72 hours because in reality, they're being held against their will...We should get in touch with them and we should let them know about their rights and whatnot from the defense angle. By the same token if you're a public defender and they're somewhere like six to 10 hours away, it's not like I can just hop in my car and go visit that one person, and I'm not going to get paid very much to do that. And, MDOC doesn't really cooperate in terms of letting you have Polycom or other access to somebody? (court administrator 2; December 2019)

The final barrier to Standard 2 reported by attorneys was working with jails and staff to have access to clients. Attorneys reported push-back by jail staff who seemed frustrated with their increased requests to visit with clients, and commonly reported having to wait extended periods of time to see clients.

Visiting your clients in person became a waiting game because they only have four rooms now that you could go see your clients in. You would go and you would wait 45 minutes to an hour if there were people or they were full, and they had less staffing for that. (chief public defender 12; May 2020)

Everyone seems polite and everyone at the jail seems to be willing to help us. Then nothing gets better. I receive nothing but, "Oh, hey, yeah. We're happy to help." Then I tend to wait an awful lot—waste an awful lot of time in the jail." (chief public defender 13; August 2019)

Standard 3. Investigation and Experts

All individuals interviewed for this study were supportive of the implementation of Standard 3, which provides funding for and encourages the use of investigators and experts. Stakeholders perceived this standard as critical because assigned attorneys had previously not had direct access to investigators and experts, except in some public defender offices.

In most cases, and particularly for assigned counsel and contract attorneys, the hiring of an investigator or expert previously required (and in many cases, will continue to require until the implementation of Standard 5) approval from a judge and funding from the court. For this reason, investigators and experts have been largely underutilized throughout the state, and particularly in misdemeanor cases.

I feel like there needed to be better access to money for experts and investigators and that type of thing across the board because the system for that was pretty broken. We basically had to get permission from the court for funds. That request was then sent to the county and the county board of commissioners would decide whether they would pay it or not...the red tape and bureaucracy to actually get the money was ridiculous. In terms of that, did I think there need to be a reform of that system? Yes. (attorney 2; December 2019)

Historically, you'd have to ask the judge and in almost all communities in Michigan, if the judge says yes, that money comes out of his or her own budget. You're basically saying judge, can I help the defendant, or will you keep the money to buy a nicer chair in your office, or maybe not? Maybe it's healthcare for the court reporter's kid. I don't know. The point is that we don't have experts in Michigan because there's never been a system set up to provide them (judge 3; June 2019)

There was no ability to really hire the experts and investigators that you really needed in order to defend the case especially when you're thinking about some misdemeanor cases...We put in our budgets for court-appointed counsel *per se*, but there really was no line item for determining how many times they wanted an investigator on a drunk driving case, and then making sure that we had money for that. Lawyers then never really asked. At the felony level court I think it's stupefying. It's like you can ask, but I don't think that there was a pot sitting there...Now, you've got a central fund that's dedicated and earmarked for this kind of thing and that's really going to help the administration of justice from the defense side because they're up against prosecutors that have these resources and they never did. It was pretty clear that the system needed to be overhauled because it just wasn't really that fair when you think about it. (judge 10; November 2019)

Benefits. Because funding for investigators and experts was managed by the courts prior to the implementation of Standard 3, attorneys were required to submit a formal request or motion for use of an investigator and/or expert to the court, allowing the judge the discretion to refuse the request if they did not feel that the case merited the expense. Submitting a request or motion for the use of an investigator or expert also required the attorney to disclose their legal strategy to the court.

You have your budget for your experts. You have all these institutions and groups bending over backwards to testify for you. We deserve that too. I think the biggest relief for our attorneys, to where they feel more comfortable asking for funds and experts and investigators, is because the court has no say. The prosecutor's office doesn't get to know about it. (managed assigned counsel administrator 3; July 2019)

Attorneys who were not previously granted funds for investigators, or simply did not ask, would often fill the role themselves, reducing the time the attorney had to focus on preparing to represent a client. As one chief public defender said,

Oh my God, it's amazing. Now, we have somebody that serves subpoenas because before we were just doing it ourselves, [laughter] which is always fun. We have people to call witnesses now and interview them because sometimes witnesses will tell us something and then get on the stand and say something different. (chief public defender 2; May 2019)

Thus, because of the implementation of Standard 3, attorneys report having increased time to spend with clients and on cases since they are not responsible for completing their own investigations. Respondents also indicated that increased access to investigators has enhanced the quality of the case

and the evidence presented in court on the client's behalf. They have also decreased the time the cases, attorneys, and clients need to spend in the court because evidence has been uncovered more quickly and efficiently, leading to earlier case outcomes and dismissals.

At the pretrial level and the settlement level I've seen defense attorneys say, "Well, we've had an expert do this," or, "Our investigator did this," which has helped resolve an issue to make either the resolution of the case or the trial run smoother. (judge 4; January 2020)

The public defenders have been utilizing experts and investigators a lot more, and we've even had a couple of dismissals recently as a result of it, which they were happy about. (court administrator 2; December 2019)

Challenges. Two key challenges of implementing Standard 3 noted by individuals interviewed for this study were lack of access to and funding for investigators and experts. Attorneys often struggled to find investigators and experts to fill positions, and particularly in more rural areas. In many cases, rural jurisdictions or offices have had to rely on investigators working in parallel counties when a need arose. Additionally, some noted that the amount of funding provided by the MIDC and the state to support the implementation of the standard was not enough to incentivize investigators to move to more rural areas for work. Nor, was the funding high enough to hire specialty, or more expensive, experts:

We are tragically underserved by mental health professionals, psychologists, and psychiatrists in this community. Experts in this community are very, very hard to get, which means I need to go all over the State. For a lot of people that increases the cost. Quite frankly, some of the other people that I would deem experts here in the community specifically don't want to be involved with the court system. I think that they feel their practices are going to benefit by not being involved with the court. That leaves out a lot of the substance abuse professionals; they just don't want to deal with the courts. Unfortunately, no, I have not found a good stable of experts. (chief public defender 13; August 2019)

Although we had that resource in the community before we had the money for experts, now that we've got some money for investigators, we don't have investigators. This would've been much more helpful 10 years ago. Now, if we are going to hire somebody, we have to go out of the area, which just makes it a little more difficult, especially if you wanted to have somebody run out tomorrow and interview this person while something's still fresh in their mind. It's just much more difficult to do because we just don't have the resources available locally. (managed assigned counsel administrator 1; November 2019)

We struggle. Let me just say that. We just struggle to find money just to do it before the standards and even with the standards. The problem with it is that you have experts that are accustomed to being paid a certain amount and they don't understand just yet that this is an indigent defense system and that they are not going to get near close to what they might've gotten. (judge 10; November 2019)

Notably, over half of the counties included in this study indicated that experts and investigators were not consistently used by court appointed defense attorneys prior to the standards. Additionally, when asked, respondents did not indicate an increased use of investigators or experts since the implementation of the standards. While this was not noted as a specific challenge during interviews, many respondents suggested that Standard 3 introduces a large shift in practice, and that it will take time and additional training on how best to integrate experts and investigators into cases. Consistent communication among public defender chief public defenders and managed assigned counsel administrators has been improving access to these resources, from basic contact information being shared to databases being created for various specializations and locations.

Standard 4. Counsel at First Appearance and other Critical Stages

Standard 4 and the introduction of counsel at first appearance requirements was undoubtedly the largest change for courts and attorneys. A review of the compliance plans submitted to the MIDC indicated that roughly half of the courts across Michigan implemented a rotation system whereby attorneys would take turns covering the arraignment docket and providing counsel at first appearance in district courts; the other half of the courts implemented a program whereby certain attorneys were designated to continuously provide representation at arraignments in district court. Through implementation, systems continue to refine the delivery method and, in several systems, have started regionalizing services.

Because counsel at first appearance was previously provided in only a handful of courts in Michigan, Standard 4 requires changes in procedures which affects judges, administrators, jails, attorneys and other actors. It requires increased indigent defense attorney capacity to cover first appearances in misdemeanor courts, and probation violation hearings in circuit courts. Yet, per prior research, the reform also has the potential to significantly impact the number of individuals who are detained in jail pretrial and thereby decrease the costs associated with incarceration and reduce collateral consequences for clients.³⁶ As one attorney stated,

It always felt like you were behind the eight ball. The court didn't have an actual order of appointment until after the arraignment had occurred. I'm at the office, and I'm like, "Oh, okay. I got a pre-trial. This guy shouldn't be in jail. I could've pitched bond," and a much better argument than what was provided. (chief public defender 3; November 2019)

For this reason, attorneys who were in support of Standard 4, viewed it as the most significant reform among the four standards that were implemented:

The big one, of course, is counsel at first appearance. Just with the implementation of the standard, they created a new system. I think it's an amazing idea. The attorneys know what to address more specifically when it comes to bond, knowing to have the clients keep their mouth shut, so they're not saying something that could be used against them...I think they should absolutely have been entitled to have the public defender at the first appearance, so I think it's a phenomenal idea...I think it's essential that we have the attorneys there at arraignment, and it's a phenomenal practice, and even if there is some hindrances, or difficulties, or bumps in the road trying to get it implemented, it's well worth the compliance with the Sixth Amendment. (attorney 5; June 2019)

Benefits. The interviews conducted as part of this study lend support to prior research focused on the benefits of providing counsel at first appearance. For example, respondents reported that by providing counsel at first appearance fewer people were being held on bond, and bond amounts were lower, allowing more individuals the opportunity to be released from jail and return to their family and work.

All of them, I think down to and including the captain of the jail, have thanked me. He said that their numbers are down twenty people on an average because there's an attorney at the arraignment. (attorney 1; May 2020)

In the beginning the judges were handing out just ridiculous bonds...I've got them down to the point now where they're actually giving out some low bonds. I still haven't got to the point where they're going to give a lot of [personal recognizance] bonds, but they will get down to, maybe, \$1,000, or 10 percent cash surety bond...It's actually lowering the bonds, and I'm at least getting to a point where I think the district judge is amenable to lowering the bonds and releasing them from jail. (chief public defender 5; June 2019)

Respondents indicated that initial arguments for bail were more effective because attorneys were present, had met with the accused individuals, and were able to provide the information that the judge needed to make a decision about bail. As one judge stated,

I think it moves things along very nicely. I am always concerned about bond. And quite honestly, the kind of historic practice for bond—say, on particularly a probation violation—is everybody gets held without bond until the next adjourned hearing date. That was never a practice that I felt comfortable engaging in. And it really helps me when I have a lawyer there, who's making those arguments so that I can just make the decision. I really appreciate that. I think it took our probation agents by surprise when I would start asking questions about bond because again, it had always just been automatic-hold-without-bond-pending-the-next hearing. And we know what a ripple effect incarceration has on people. (judge 2; June 2019)

Some stakeholders also indicated that arraignments and court hearings were moving at a quicker speed because individuals had met with a defense attorney to discuss their cases and the purpose and

procedures of the hearings prior to standing before the judge. This alleviated the need for the judge to review this information unnecessarily with the client during the proceeding.

I think it's been more efficient for the court, too, to be honest with you. I think the arraignments move a little quicker than they may have in the past because the court's not in a position to try to respond to questions that have been asked by the individual defendant because those questions have already been posed to the attorney. I think it's actually sped up the arraignment process a little bit in terms of the actual time spent in court. (managed assigned counsel administrator 3; July 2019)

Whenever there's an unrepresented person, it's always a struggle because they're not given special court rules. They have to abide by all of the other rules, but you also want to make sure that they get a really fair process, which is just hard. There's a lot of walking' people through things and being really careful when somebody's unrepresented, because you really want to make sure they know what's going on. You really want to make sure that they're making the best decision they can make. So, I love it when they have an attorney. It makes it so much easier. (judge 1; October 2019)

Finally, respondents felt that providing counsel at first appearance increased client comfort with the first appearance, the outcome of the hearing, and their overall case moving forward because the procedures and options were explained to them by an attorney early on, and clients were able to make informed decisions.

I've actually had feedback from people. Some people are like, "Thank you so much, we just didn't know what to expect," and "we really appreciate that." I mean, honestly, one of the most significant comments I got was from a gentleman who I talked with briefly...What he actually said to me was, "I know this program's new and I think it's a really good idea because there's a lot of people who just don't understand the system." (managed assigned counsel administrator 5; June 2019)

There are a lot of advantages. From a defendant's perspective, immediately they have somebody by their side, which I think makes the system less scary and more comfortable for them—right away they have somebody by them; they are not alone. They get their options immediately known to them, as far as from a defense perspective. They know what's going to happen. (judge 1; October 2019)

Challenges. Respondents did note several challenges to implementing Standard 4. These challenges included: 1) staffing capacity; 2) providing meaningful counsel at first appearance; and, 3) working with judges and court administrators.

The most frequently cited challenge to implementing counsel at first appearance was the lack of staff or capacity to have an attorney present at arraignment. Because the standard was implemented simultaneously across the state, jurisdictions were all attempting to transition to a new arraignment

process and hire attorneys to support the new procedures at the same time. Multi-delivery model systems and rural jurisdictions expressed the most frustration. As one chief articulated,

It's going to be excruciatingly challenging trying to get attorneys to arraignments...and the reason being is that we don't have an all in-house staff. Trying to schedule, and keep fifty percent of the cases so that I'm meeting my budgetary considerations, and then farming out or assigning the other fifty percent of those cases. I have to try to balance getting one of the staff attorneys either to an arraignment where judges aren't really wanting to change their schedule, so just trying to fit into the already-established way things have been done for years and years and years, and then trying to recruit roster attorneys who kind of view this as maybe—I don't want to say unnecessary—view it as, it wasn't really broken in the first place. (chief public defender 1; August 2019)

Respondents in rural jurisdictions felt as if they were not able to adequately recruit or incentive younger attorneys away from employment offers in more urban offices and systems. When asked whether they were struggling with recruiting attorneys, one coordinator responded,

We do. Yeah. We're relatively a small community...we don't really get too many young attorneys that come to the area. Most of our younger folks that go off and practice law, generally, go do it somewhere else. There's not really jobs available, unfortunately, for younger folks to come and hang a shingle out, so to speak. Most of the ones that we have are family members, are sons or daughters of practicing attorneys in the area (managed assigned counsel administrators 1; November 2019)

Some attorneys who were actively engaged with arraignments noted that while the process was going smoothly, they often felt as if did not have enough information, or were rushed to provide counsel, and didn't always feel as if they were able to have meaningful engagement with individuals prior to standing before the judge.

It's hard for the attorneys that are doing the first arraignment to really advise the clients what to do because, although there was a plan to have police reports available and to have prosecutors available; that's fell by the wayside, unfortunately. When it becomes more difficult is when you have 12 guys and only 1 attorney available. Then it becomes a little more difficult for the attorney to spend an appreciable period of time with each one of those individual clients in terms of getting much background from them or having enough time to answer all of their questions. (managed assigned counsel administrator 1; November 2019)

There's a lot of pressure from criminal defense attorneys to hurry up, hurry up, hurry up. If it only takes about five minutes, you're not getting into the substance issues. I might need to get into the substance issues if I have to make an argument about why this defendant's not a danger to society. I need to talk to them about what actually happened to say, "You know, Your Honor, there are some very strong arguments of self-defense here that will come out once he's retained." I need to do that in order for me to make that

argument... If I am retained, I don't care what you say. I'm going to take the amount of time that I need with my client to make sure I perform their part—the best argument...If it is an indigent client, you want me to hurry, hurry, hurry, hurry, hurry. Now, I can hurry, the question is, should I? (attorney 11; June 2020)

Finally, respondents perceived local judges as an obstacle to implementing counsel at first appearance. Citing their interest in remaining in control of the docket, respondents suggested that judges have made and continue to make the transition difficult.

The courts have been a little less helpful of trying to change how they do anything because our court judge wants complete control of how everything works. We have to really watch what we say so that we can get what we want without offending them in a way. (managed assigned counsel administrator 6; October 2019)

The courts are kind of fiefdoms in and of themselves, right? Judges kind of have the control of their docket. They come and go as they please. They're really only answerable to the public from an electoral standpoint. Most of the electable or the people voting aren't really aware what goes on on a day-to-day basis, so they have a lot of freedom from that perspective. (chief public defender 1; May 2020)

Notably, in courts and counties where judges were presenting barriers, chief public defenders and managed assigned counsel administrators were working to try to increase buy-in and support from judges and other court actors. As one coordinator articulated,

I came in knowing what the judges would want to hear. They wanted to hear, "I don't like it either, so let's get through it together. Let's look at your court. Let's do what we can. Let's understand the standards. Let's not upset the applecart, but we need to."...I wouldn't talk negative. I wouldn't say the program sucks, but I would say, "Judge, I know you were running this court perfect. I know the defense bar was doing everything they needed to do. This program wasn't needed here. Because we have to implement it, let's do it the best we can." ... Again, I would be on their side. What's in it for us? What can we do? How can we do this? I'm not going to lie, it was doughnuts, it was cookies, it was lunch meetings. It was whatever we needed to do to build and establish those relationships, never lying to them. I never said, "Oh, we don't have to do this." I was like, "We have to do it. This is why." (managed assigned counsel administrator 7; October 2019)

Broad Challenges and Recommendations

Challenges

In addition to challenges specific to the implementation of the Standards 1, 2, 3, and 4, respondents discussed broader challenges related to the reform. These included challenges associated with needing to

work and coordinate across governmental entities and actors, including court administrators, judges, and jail staff, to agree upon plans and implement changes in court and jail procedures, and attorney practices. Furthermore, respondents noted that it was challenging and “awkward” having local city, county, and governmental agencies responsible for the oversight and administration of indigent defense planning and funding, and particularly in jurisdictions in which assigned attorneys did not feel as if the local government necessarily valued indigent defense.

Finally, some respondents who were in positions that were responsible for completing and submitting quarterly reporting to the MIDC found the process to be cumbersome and confusing. The MIDC requires quarterly reporting to be submitted by funding units to provide information on compliance with the implementation of the four standards. Specific information that is reported includes expenses incurred, hiring, narrative information regarding standards compliance, and data on counsel at first appearance, including case types, arraignment outcomes, numbers of cases in which a court appointed attorney was assigned, and attorney caseload, among other data. Some respondents reported challenges related to being able to track the data requested and requesting and receiving reliable data from courts.

One of the things that we've run into is that we don't have a data collection system in the office at this point in time. Some of the things that they're asking for in those reports are going to be impossible to get. For example, I have no way to collect any data on how many retained attorneys were at first appearance unless I'm sitting in court every day just collecting that data myself personally on a pad of paper. (chief public defender 1; August 2019)

The MIDC contracts with the County. They don't contract with the court. They are separate entities, so a lot of the questions the MIDC asks about can only be tracked at the court level. How many pleas by mails did you issue in court for, for instance? Well there's no way my office is going to know that because we don't really hand them any pleas by mails. If the district court's not tracking it, we'll never know. We'll never know. Even if they are tracking it, there's no way for me to verify the information is correct 'cause we don't have access to their systems. Even if they give me a number, I have no way of verifying it. There are some difficulties with one, getting the courts to track the information. Two, getting the courts to track it accurately. Three, getting a way for me, who's different from the courts, a way to verify that information. As far as the caseload stuff, and the actual numbers, yeah, that's very difficult to report. (chief public defender 3; November 2019)

I'm not a fan because it's hard to pull the information from our information system. I don't have the time to go pull files and manually tabulate the data. I just report it as best as I could and then would indicate that on my report. Because it's like a lot of the things the state does and this is a bias on my part, but they want us to measure things and to do things, but they have no understanding of how we keep track of it at the local level. I can't

create a whole new data-collection system just so I can comply with one grant. It's just impossible. (court administrator 2; December 2019)

Considerations

Individuals interviewed for this study were asked for their feedback on the statewide implementation of standards of indigent defense. Four key considerations included: 1) providing more guidance and communication; 2) staggering implementation across the state; 3) facilitating trainings for new chief public defenders and managed assigned counsel administrators; and 4) establishing uniformity in paperwork completed by courts, and practices related to data collection and the determination of indigency.

Communication. The first consideration offered by stakeholders interviewed for this study highlighted the initial and ongoing need for information, guidance, and communication about reforms such as the implementation of the first four standards. Many respondents articulated an interest in more communication prior to funding about timelines, expectations, and processes, and particularly more one-on-one communication between regional managers, or staff at the MIDC, and judges, court administrators, and attorneys. As one chief indicated,

You can't over communicate what the standards are going to be, when they're going to be implemented, and what's expected. I would just keep telling us what you're going to implement, tell us what it's going to look like, and then keep telling us until the rules are adopted. Because no matter how many times you do that, people are always going to freak out a little bit when something new in their life has to change a little bit. You're better off. Just keep communicating that as much as you can. (chief public defender 10; October 2019)

Furthermore, after the standards were passed, not all stakeholders felt that they received the degree of guidance that they were hoping for with regard to their local planning, including who should be involved in the planning process, best practices, and associated budget requests. Yet, the MIDC had to balance their role as a state oversight commission with efforts to provide local counties and jurisdictions a level of control over their work and plans for reform.

There really wasn't a process. Once they put the plan in place and said, "Okay, every county has to have a plan submitted to us by [a certain day] there were no guidelines. They had guidelines on their website. Here's what we want you to submit, but there was no methodology for how you go about doing that. There was nobody assigned within each county to bear the responsibility for putting this plan together. Some county administrators did it. Some judges took it on. Nobody knew who's supposed to do this. How do we go about doing this? It was just absolutely nothing...There's a lot of people you

have to get input from, and it would've helped to have a little bit more assistance there in terms of how we're supposed to do this. Well, I felt like every county was kind of creating their own wheel. (judge 8; November 2019)

Phased Implementation. Many stakeholders indicated that they thought that the standards should have been implemented in a slower and more staggered approach and particularly because there is such diversity across courts and models of indigent defense within the state. In practice, standards were rolled out in phases – multiple standards over multiple years, and a six month window for compliance – however, a phased implementation over multiple years for each individual standard was not possible under the statute.

Respondents indicated that that they felt that implementing the standards in a few jurisdictions to begin with, including some urban, rural, assigned counsel, contract, and public defense office models, and who could serve as demonstration sites, would help establish best practices, facilitate learning across jurisdictions, and decrease issues around recruitment. As one managed assigned counsel administrator indicated, “We’re all developing systems and what works somewhere else might work here too. It’s always better to not try to redevelop the wheel”. Another chief public defender suggested,

It would have been nice if they would have rolled this out in stages in various geographic locations over time. Because what happened was when you set one day for everybody in the state, there was a mad rush. That's no joke, and you had every County that was starting a public defender's office trying to hire an experienced criminal defense attorney and supervisors of experienced criminal defense attorneys all at the same time. There was just a dearth of people that really met the standards of somebody experienced enough to come in. (chief public defender 10; December 2019)

Training. As part of the implementation of the standards, transitions occurred within models of indigent defense and oversight of attorneys. In over a dozen locations across the state, assigned counsel and contract models transitioned to public defender models of indigent defense. In locations that retained assigned counsel and contract models, managed assigned counsel administrators were hired to supervise attorneys and oversee the provisions outlined by the standards (as well as to be compliant with Standard 5 when implemented). New chief public defenders who were tasked with establishing a public defense office indicated a need for training on the tasks and considerations for forming public defense offices, and chief public defenders and managed assigned counsel administrators alike expressed an interest in opportunities to come together to discuss the implementation of standards, challenges and responses, successes, and to share best practices.

When you become a judge in the state of Michigan, they send you to judge's school. I don't know why they wouldn't schedule a quarterly basic training for new PDs ... they should be

bringing in new PDs and new chief assistants and giving them tips on everything from hiring to locating a building to the budgeting issues and things like that. Then they should probably have something they send out to us in writing—for example, if you're putting together a budget, these might be things you might want to include in your line items. (chief public defender 10; December 2019)

Notably, in the time since the completion of these interviews, the MIDC has continually organized and rolled out information materials, webinars, video tutorials, working groups, and other forms of training and technical assistance to provide support to local systems.

Uniformity in Practices. The final consideration offered by individuals interviewed for this study was establishing some uniformity in protocols and practices across courts. For assigned counsel attorneys who work across counties, for example, the billing and paperwork required to report that they are following the requirements of the standards can vary: “I had one of my attorneys call me this afternoon and he was all flustered about the paperwork at my court and he’s confused with the other courts and the paperwork and what to do here and what he does here, he doesn’t do there” (managed assigned counsel administrator 4; May 2019). Again, such uniformity is difficult given how strongly the MIDC statute prioritizes local control, but the MIDC has attempted to promote as much consistency as is allowed.

The most frequently cited need for uniformity in practices was around the determination of indigency.³⁷ When asked how individuals were determined to be indigent and in need of court appointed counsel, responses varied depending on locations and judges. In several cases, respondents indicated that judges have no procedures for determining indigency and appoint assigned attorneys to all who requests one, significantly increasing their attorney caseloads and budget requirements.

I think the first thing is that indigency needs to be defined. There has to be some sort of process where it's defined, and some sort of screenings. Like I said, right now there's no screening. We're spending a lot of money on people that really aren't even indigent. (managed assigned counsel administrator 2; January 2020)

One, what's indigent and what isn't? There's talk about standards for what's called personally indigent. That hasn't really been fleshed out. We need a standard for that. It needs to be uniform and applied everywhere. Also, who's entitled to an attorney? Then it needs to be uniform. Right now, that's all over the place, both within our court system and between courts. It just depends on the magistrate...I think it's essential that gets flushed out in detail, and then it's uniform, and applied across the state. (chief public defender 6; December 2019)

Importantly, a standard which provides guidance for indigency determinations was approved by the state in October of 2021.

Perspectives of Indigent Defense Delivery Models

As previously mentioned, indigent defense in Michigan has historically been provided primarily through contract and assigned counsel systems. As part of the reform in recent years, over 20 funding units transitioned from an assigned counsel or contract system to a public defender office between 2018 and 2021. A component of this study was to understand perspectives of the benefits and challenges of public defender office, assigned counsel, and contract systems, including decisions to transition to public defender offices during the reform.

Assigned Counsel and Contract Delivery Models. Individuals interviewed for this study highlighted three key benefits to maintaining assigned counsel or contract systems of indigent defense. These included: 1) maintaining attorney independence, freedom, and flexibility over schedules; 2) being able to pursue multiple areas of interest in their work; and 3) increasing work and income capacity. The most discussed challenges to maintaining assigned counsel and contact systems included a lack of independence from the judiciary and challenges to holding underperforming attorneys accountable.

The most cited benefit to assigned counsel and contract indigent defense delivery models was the freedom it provided attorneys. Because assigned counsel and contract attorneys are private attorneys, they can set their own hours, decide how much work they would like to maintain, and work across multiple counties and a variety of cases. As one chief from a county that recently transitioned away from an assigned counsel system stated,

Some lawyers like the roster system because you can go from county to county and if you had your schedule set up, you'd do fairly robust business if you want that...we'll see how long these lawyers stay in the [new] office, because before they worked for themselves. I mean, they had set up their practice. They could do retained work. They could do probate work. They could do civil work, and they'd do just the amount of criminal work they'd like to do. Now, in the public-defender's office, they're not allowed to practice law outside of their [office] responsibility, and now—everybody's got a boss, too, and everybody has to work with another lawyer or two or three or whatever. It remains to be seen whether or not those lawyers are going to stick it out. (chief public defender 10; December 2019)

Several attorneys and managed assigned counsel administrators noted that the flexibility, along with diversity of work that assigned counsel and contract attorneys engage in is healthy and stimulating and eases the degree to which attorneys burn out.

When you look at having experienced attorneys, experienced attorneys don't necessarily want to be a full-time public defender in a public defender office...the most qualified people are people that you do hire contractually because they're going around doing what

their passion is about on a contract basis, and they don't care about the benefit. It doesn't make them a worse lawyer—it doesn't make them worse for it because they're somehow selling people down the river or something. In fact, it makes them better because they have a flexible schedule. They're able to pursue the other things they're passionate about. (court administrator 2; December 2019)

In many areas throughout the state, respondents indicated that there were not enough cases to support a public defender's office, and attorneys needed to be independent and capable of taking cases outside of indigency cases in order to make a sufficient salary. As one court administrator stated,

We put a lot of time and thought into [transitioning to a public defender's office] and because of the numbers and because it's a rural county, I can't even imagine how you would implement an actual public defender's office. One, I don't think there's enough work to sustain an actual public defender's office. Two, I don't think that you would have the community resources that you would need for something like that. The physical space. *[Laughter]* There's not a lot of buildings in [county]. The courthouse certainly doesn't have room for another group of people. (court administrator 2; December 2019)

Two critiques of assigned counsel and contract systems noted were perpetually low-performing attorneys, and favoritism and other unhealthy practices that occurred in the courtroom between judges and attorneys. For example, judges may choose to only assign cases to particular attorneys because of their approach to case procedures, plea bargaining, and trials. As one chief public defender explained it,

The district courts in the county had attorney contracts where the judges would hire one or two attorneys per court to handle all of their misdemeanor indigent work. They served at the pleasure of the judge, the individual judge with—yeah, that would be a correct statement. Basically, if you made the judge mad, theoretically you could have your contract terminated...we did have a couple of judges who kept attorneys for a long period of time because those attorneys were known to the judge as being people who never tried cases. The judges didn't wanna try cases, so they hired attorneys to manage their affairs who also didn't like to try cases. (chief public defender 9; May 2019)

Standard 5, which has been approved for implementation, directly responds to this critique by requiring indigent defense services be independent of the judiciary.

Public Defender Office Deliver Models. Individuals interviewed for this study highlighted four key benefits to opening and maintaining public defense offices. These included: 1) increased ability to collaborate on cases; 2) ability to establish a culture of practice and expectations around legal representation; 3) additional infrastructure and resources; and, 4) having a formal counterpart to the prosecutor's office.

The most cited benefit of organized public defense office models was the increased ability to collaborate, brainstorm, and work as a team on cases and broader advocacy objectives.

It also creates this collaborative effect. We have attorneys that can bounce stuff off people or can, "Oh, I had Officer Jones on this case last week and this is what he told me," or "This prosecutor gave me this misdemeanor offer under the same circumstances last week. Maybe you can talk to them". It has this integration that is really powerful in that regard. (chief public defender 4; July 2019)

I've been doing my job a long time and I think I've always carried through the same care and compassion with each client, but having an entire office and staff dedicated to assisting you, supporting you, backing you up, providing additional resources, that's the invaluable part. Like for example, if I had an issue I haven't had before, I can walk down the hall and grab two or three of my colleagues and in real time ask them if they have come across this or pick their brains and brainstorm. It's like having a team *versus* going solo. (attorney 6; October 2019)

We are able to pool ideas together. We can have staff meetings about a case and throw ideas back and forth... before we were in separate offices and you never knew what the other person was doing or you never had a chance to talk about judges, where here, we can put our heads together and say we need to attack it this way or that way or try to convince the jury of this. It's brought a whole big skillset all in one office... Having the office, you can combat the prosecutor and the police much more effectively. I don't think the administrator's way is going to work as good. You'll get attorneys covering, but you're just not going to have the specialization. We live and breathe it 24/7. That's all we do is criminal, so we're getting good at it fast. (chief public defender 15; January 2020)

The sharing of physical space promoted the exchange of ideas and co-learning, and promoted a culture whereby the importance of training, client-centered practices, and other inherent aspects of the standards of defense could be discussed and embedded in office protocols, practices, and philosophies.

Specifically related to Standard 4, chief public defenders and managed assigned counsel administrators argued that guaranteeing counsel at first appearance was not as challenging within organized public defender offices because attorneys' schedules were local and stable, and staff were able to cover for each other when necessary:

Because a lot of the attorneys that do appointed work also have other cases that they do, whether it's family law or bankruptcy or civil law, other things that make it more difficult for the assigning of cases and dealing with the counsel at first appearance. I create a schedule, but somebody could be in trial in another county and then I have to find coverage or handle arraignments myself. There just are sometimes where I think it would be much more beneficial for a public defender system. (managed assigned counsel administrator 5; June 2019)

Attorneys also found the support and resources provided through a public defender office as beneficial, including access to computers, printers, in-house investigators, social workers, and other staff. As one assigned counsel attorney stated, "I think that a public defender system office would be beneficial in that...it'd be nice to not have to worry about the overhead, the bills, the electricity, paper costs."

Most respondents interviewed for this study who favored an organized public defender model for providing indigent defense services felt that public defender offices were needed in order to provide a direct counterpart to the prosecutor's office.

My perspective was then and continues to be that in order to do this job, you need an office that is the direct counterpart to a prosecuting attorney's office. When you have managed assigned counsel they're not centrally located. There's not a culture that's being built. They are doubling in other practice areas. To me, if the idea was to try to deliver the best possible services to criminal defendants, the way to do that to me seemed logically that you would form an office that was doing defense work. (chief public defender 10; December 2019)

It should be an even playing field. I truly don't believe that until there is an office of indigent defense that is consistent across the board, that they are going to be on the same playing field. I think in having this individual counsel appointed system, that there is just inherent problems with it...Again, these are attorneys who are out there working and hustling and trying to make a living. They have different pressures than somebody that, say, works for a defender's office. I think that it's hard. It's hard to compare apples and oranges when you're talking about these individual attorneys who, again, are out there hustling, trying to make a living, and then comparing them against the County prosecutor's office, which is well-staffed and well-funded and has all these resources and everything. It's hard to compare those two. (judge 11; December 2019)

Finally, some systems that were struggling to recruit attorneys to support the additional staff needed to comply with the requirements of the standards indicated that they believed that public defender offices would assist in their ability to hire and retain new attorneys because of the benefits offered, including a yearly salary, health insurance, and school loan forgiveness. As one rural judge indicated,

I think it will help with recruitment, because you've got to attract [attorneys]. Right now, we don't have any attorneys that aren't already on the contract, or if they are in the area, they have no interest in doing criminal work. You have to go outside the area. The only place to go really is to get these people when they're young and go to the law schools or advertise and try to attract people from other areas to come here. It's not easy. People don't want to move to no man's land. The money from the MIDC contract does help because it's a decent chunk of money. I think it will help with the recruitment and with the benefits. The other attraction is if you do a public defender system, we can do a 501c3, which so that for these younger attorneys, if they have student loans, you can qualify for forgiveness after I think it's 10 years. (judge 8; November 2019)

Some respondents felt strongly that Michigan should be moving toward implementing a public defense delivery model throughout the state in an effort to decrease the significant differences in indigent defense models and practices within and across jurisdictions. As one managed assigned counsel administrator and court administrator stated,

I personally think that the best way to do this would have been to say, "Okay, we're gonna take all this money that we have, all this state money and we're going to open public defender offices," and then you would be able to staff public defender offices, you'd be able to provide in-house training, seminars, things to make sure that you're satisfying the continuing legal education standard. Then you would also be able to provide things like healthcare, paid vacation days, things like that. Then the defenders would be salaried it would be uniformed for every court. I think that's the wave of the future and I think it's what a lot of other states do and maybe one of the reasons why Michigan was hitting so low in indigent defense services was because there's no consistency. (managed assigned counsel administrator 4; May 2019)

We would love to see a full system of public defenders...because right now, the way things are it is so piecemeal. Lawyers have to obviously comply with the training, but the way the system works varies from city to city and from county to county. It's very confusing and it's very hard to get a full picture. It would be consistency wise, a better idea I think to form some kind of a public defender's system. (Court Administrator 5; November 2019)

Other respondents, however, did not appreciate what they perceived as increasing pressure to move away from their traditional assigned counsel or contract model to a public defense office model. As one court administrator in a contract system indicated,

It's like because we had a few bad attorneys on some contracts—I say that's the fault of the county. Why are they keeping bad attorneys on their contract? It's just like in regular employment in labor. If you have employees who aren't doing what they're supposed to do, it's your job as supervisors to get rid of them or to correct their action and make them toe the line. I feel that we've taken a situation that was poor management and turned it into now suddenly the best practice is to have a public defender office... I'd like to see some longitudinal studies that show that public defender offices actually equate to better outcomes for our defendants across the board because there's a lot of factors that go into representation and outcomes in criminal litigation. (court administrator 2; December 2019)

Limitations

There are some limitations of this study that should be considered when interpreting the findings and results. These include the following:

- The individuals included in this study were recruited using snowball sampling. A key disadvantage of snowball sampling is that it limits the representativeness of data collected. Thus, our sample does not comprise an even distribution of respondents across Michigan counties. However, when this study began, some funding units were in litigation or had not yet implemented the standards of indigent defense, and so the research team relied heavily on guidance from the MIDC, regional managers, and respondents to help identify counties and actors to reach out to.
- This study could be enhanced by including perspectives from stakeholders in more counties across the state. Stakeholders included in this study do represent approximately half of the counties in Michigan (41 out of 83 counties); however, perspectives in the other half of the counties could vary from those gleaned through the interviews included in this report.
- This study does not include the perspectives of clients of court appointed attorneys, the individuals most directly affected by the reforms discussed in this report. A small brief, which documents findings from conversations with ten individuals who were legally represented by an indigent defense attorney after the standards were implemented, can be found in Farrell and Hussemann's (2020); however, a more focused and rigorous study is needed to assess how individuals who are accused of crimes experience the Michigan indigent defense system after the implementation of the standards. A study of this nature could assist in understanding the perspectives of those who are affected by the changes mandated in the standards and assist in identifying additional modifications or changes in practices that can be made to further improve the quality of Michigan indigent defense services.
- Finally, this study could be enhanced by the inclusion of a rigorous outcome evaluation which examines how the indigent defense reforms in Michigan have affected case and client outcomes. An outcome study was originally pursued as part of this study but was not implemented due to challenges to collecting information related to counsel at first appearance and other court data. For example, in many counties, information about attorney presence at first appearances were not collected prior to the implementation of the standards, and may not be collected in the present, making the ability to measure the impact of counsel at first appearance on court outcomes difficult to measure. Additionally, many counties have not utilized case management systems in the past which can provide historical and present information about clients of assigned attorneys and their cases.

Conclusion

The goal of this study was to evaluate the implementation of the four minimum standards of indigent defense in Michigan. Relying on a review of compliance plans submitted to the MIDC and interviews with stakeholders, this report summarizes stakeholders' perspectives of Standards 1, 2, 3, and 4, the perceived benefits of each standard, as well as the barriers and challenges to their implementation. Additionally, this study offers stakeholders considerations for future planning and large indigent defense reform efforts, as well as their perspectives of indigent defense delivery models.

Overall, individuals interviewed for this study expressed support for the implementation of Standards 1, 2, 3, and 4, citing Michigan's low standing within the U.S. for providing reputable indigent defense services and the need for increased funding to improve the quality of services provided to individuals who are accused of a crime but who cannot afford to retain an attorney. As one managed assigned counsel administrator articulated, "My personal opinion is this was something very long overdue." Respondents were most supportive of standards 1 and 3, which focus on indigent defense attorney training requirements and funding for investigators and experts. Respondents were least supportive of Standard 2, which requires initial interviews with clients within three business days after appointment, due to concerns about attorney workload and not yet having received information to share with their clients, such as police reports and discovery. For the most part, respondents were supportive of Standard 4, providing counsel at first appearance and other critical phases; however, this standard was by far the hardest standard to implement because of logistical changes that needed to occur within courts and jails, lack of buy-in or support from some judges and jail staff, and a lack of attorney capacity to cover arraignments, including a shortage of attorneys and difficulties in recruiting across some areas of the state.

There are many perceived benefits associated with the implementation of the first four standards. For example, attorneys noted that Standard 1 has provided additional tools and resources to mount a high-quality defense, opportunities to network and learn from other practicing attorneys, and to share resources and problem solve. Standard 2 was noted for improving attorney-client relationships and clients' understanding of their cases, as well as decreasing the number of individuals who fail to appear in court and decreasing the length of cases because attorneys have more information about cases from their beginning. The benefits of Standard 3 includes the increased ability of assigned attorneys to use investigators and experts by providing external funding and decreasing their need to make requests to judges and disclose legal strategies to prosecutors. Investigators and experts can enhance the quality of the case and the evidence that the attorney is able to bring before the court on the client's behalf. Finally,

Standard 4 is associated with increased efficiency in the courts, increased client comfort with court proceedings, more effective initial arguments, and decreased numbers of individuals being held in jail on bond.

Overall, the significance of implementing standards of indigent defense in Michigan cannot be overstated. With an estimated 60 to 90 percent of the individuals who are accused of a crime in the U.S. requiring assigned attorneys, it is critically important to ensure that the constitutional requirements are met for individuals at risk of losing their liberty in Michigan and throughout the U.S.³⁸ The implementation of the first four standards of indigent defense in Michigan provides justice-involved individuals the opportunity to be more involved in their cases through increased interactions with their attorneys and decision-making opportunities which may increase their overall satisfaction with their court experience and perceptions of justice and legitimacy of the court's procedures and decisions. Also, increasing the number of individuals who are released from jail at earlier stages in court proceedings not only decreases costs to the county and state, but also provides justice-involved individuals with the ability to maintain employment and education commitments, as well as connections with family and friends. Finally, the standards support individuals' constitutional rights to quality defense counsel and provides additional opportunities to investigate police arrests and crimes committed, thereby decreasing the likelihood that an innocent individual will be wrongfully convicted.

Endnotes

¹ National Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis.* (p. i)

² See www.michiganidc.gov

³ Michigan Indigent Defense Commission. 2018. *Minimum Standards of Indigent Criminal Defense Services.*

⁴ Managed assigned counsel coordinators oversee assigned counsel systems, and are responsible for the ensuring that assigned counsel and contract attorneys (if applicable) are following the standards. Since the implementation of Standards 1 – 4, and in anticipation of Standard 5, which calls for independence from the judiciary, many funding units or counties included the hiring of a managed assigned counsel administrator to oversee the implementation of standards locally, and to remove attorney oversight from courts and the judiciary. Managed assigned counsel administrators are therefore typically responsible for ensuring that assigned counsel attorneys are in compliance with the standards, and for the submission of quarterly compliance reporting to the MIDC.

⁵ Strong, Suzanne. 2016. *State-Administered Indigent Defense Systems, 2013.* U.S. Department of Justice, Bureau of Justice Statistics.

⁶ See <https://assembly.state.ny.us/Press/20170408a/>

⁷ www.census.gov

⁸ The ten counties included: Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa, Shiawassee and Wayne. Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis.*

⁹ National Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis.*

¹⁰ National Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis.*

¹¹ National Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis.*

¹² National Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis.* (p. 12)

¹³ See www.sado.org/Page/204/Public-Defense-Resources-Michigan-Reform-Movement

¹⁴ American Bar Association. 2002 *Ten Principles of a Public Defense Delivery System.* See www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf

¹⁵ Michigan Advisory Commission on Indigent Defense. 2012. *Report of the Michigan Advisory Commission on Indigent Defense.* Pg. 9

¹⁶ The MIDC Act is found at MCL §§ 780.981 et. seq.

¹⁷ Michigan Indigent Defense Commission. 2018. *Minimum Standards of Indigent Criminal Defense Services.*

¹⁸ See www.michiganidc.gov

¹⁹ Michigan Indigent Defense Commission. 2017. *Education and Training of Defense Counsel.*

²⁰ Siegel, J. 2016. *Snapshot of Indigent Defense Representation in Michigan's Adult Criminal Courts: The MIDC's First Survey of Local Court Systems.* Michigan Indigent Defense Commission.

²¹ National Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis.* (p. iv)

²² Michigan Indigent Defense Commission. 2017. *Initial Interview.*

²³ Michigan Indigent Defense Commission. 2017. *Initial Interview.*

²⁴ N = 400; Siegel, J. 2017. *Attorney Perspectives on Michigan's Criminal Indigent Defense Systems.* Michigan Indigent Defense Commission.

²⁵ Michigan Indigent Defense Commission. 2017. *Investigation and Experts.*

²⁶ See <https://www.lansingstatejournal.com/story/news/local/watchdog/2016/11/03/court-appointed-attorneys-paid-little-do-little-records-show/91846874/>

²⁷ Michigan Indigent Defense Commission. 2017. *Investigation and Experts.* (p.3)

²⁸ Siegel, J. 2017. *Attorney Perspectives on Michigan's Criminal Indigent Defense Systems.* Michigan Indigent Defense Commission.

²⁹ Michigan Indigent Defense Commission. 2017. *Counsel at First Appearance and Other Critical Stages.*

³⁰ National Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis.* (p. 17)

³¹ Douglas, L. C., Paternoster, R., & Bushway, S. 2002. Do attorneys really matter? The empirical and legal case for representation at bail. *Cardozo Law Review*, 23: 1719-1793; Dobbie, W., Goldin, J. & Yang, C.S. 2018. The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American*

Economic Review, 108 (2): 201-240. Lowenkamp, C., VanNostrand, M., & Holsinger, A. 2013 *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*. Washington DC: Laura and John Arnold Foundation.

³² Aiken, J. 2017. *Era of Mass Expansion: Why State Officials Should fight Jail Growth*. Prison Policy Initiative.

³³ Fitzpatrick, K.M. and Myrstol, B., 2011. The jailing of America's homeless: Evaluating the rabble management thesis. *Crime & Delinquency*, 57, pp.271-297
Aiken, J. 2017. *Era of Mass Expansion: Why State Officials Should fight Jail Growth*. Prison Policy Initiative.

³⁴ Yang, C.S., 2017. Toward an optimal bail system, *N.Y.U. L. REV.* pp. 1399-1417; Swavola, E., Riley, K., Subramanian. 2016. *Overlooked: Women and Jails in an Era of Reform*. Vera Institute of Justice.

³⁵ During the COVID-19 pandemic, courses shifted entirely online for every topic and offering to comply with Standard 1. The need to stay informed about constantly-changing legal issues was strong and feedback from assigned counsel about the quality of the courses was positive.

³⁶ Douglas, L. C., Paternoster, R., & Bushway, S. 2002. Do attorneys really matter? The empirical and legal case for representation at bail. *Cardozo Law Review*, 23: 1719-1793; Dobbie, W., Goldin, J. & Yang, C.S. 2018. The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American Economic Review*, 108 (2): 201-240. Lowenkamp, C., VanNostrand, M., & Holsinger, A. 2013 *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*. Washington DC: Laura and John Arnold Foundation.

³⁷ Insert note about indigency determination as a standard that may be implemented in the future.

³⁸ Justice Policy Institute. 2011. *System Overload: The Costs of Under-Resourcing Public Defense*. Bureau of Justice Statistics. 2000. *Defense Counsel in Criminal Cases*.



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A division of the State Appellate Defender Office

Jonathan Sacks, Director

**Summary of the Legal and Policy Implications of MIDC Funding for
Private Appellate Assigned Counsel**

Bradley R. Hall, MAACS Administrator
December 2021

This document provides a summary of statutory and policy questions surrounding whether state grant funding under the authority of the Michigan Indigent Defense Commission (MIDC) can and should be made available to reimburse local systems for the payment of fees and expenses for private appellate counsel assigned through the Michigan Appellate Assigned Counsel System (MAACS).

A. The Appellate Defender Act and the SADO Mandate

Enacted in 1978, the Appellate Defender Act created the Appellate Defender Commission to “develop[] a system of indigent appellate defense services which shall include . . . the state appellate defender [SADO] . . . and locally appointed private counsel.”¹ It requires SADO to accept at least 25% of assigned appeals statewide, with the remainder assigned to private counsel.²

The statute directs the Commission to “compile and keep current a statewide roster of attorneys eligible for and willing to . . . serve as criminal appellate defense counsel for indigents,” and requires that “the appointment of criminal appellate defense services for indigents” must be made “from the roster provided by the commission or shall be referred to the office of the state appellate defender.”³ That is all the statute says about private appellate assigned counsel.

As to what services may be provided, the Appellate Defender Act makes clear that SADO may represent indigent defendants “only subsequent to a conviction or entry of a guilty plea or plea of nolo contendere at the trial court level,”⁴ and may only pursue an “appeal of a felony conviction or . . . other post conviction remedies . . .”⁵ No such limitations apply to private assigned appellate counsel.

¹ MCL 780.712(4).

² MCL 780.716(c).

³ MCL 780.712(6).

⁴ MCL 780.714(1)(d).

⁵ MCL 780.716(a).

B. The Supreme Court’s Creation of MAACS and the MAACS Mandate

MAACS was not established or even mentioned by statute. Rather, the Michigan Supreme Court established MAACS through a 1981 administrative order to fulfill one of the statutory obligations of the Appellate Defender Commission—specifically, to assemble and maintain the “statewide roster” of appellate lawyers approved by the Commission, take steps to enhance the quality of indigent appellate representation, and enforce a set of minimum performance standards adopted by the Court.⁶ In 1989, the Court issued another administrative order relying on its general power of superintending control to direct all trial courts to select felony appellate counsel under the MAACS Regulations.⁷

Today, the MAACS Regulations feature specific qualification, supervision, and training requirements including twelve hours of continuing legal education annually. The Regulations also require the independent selection and assignment of appellate counsel—typically by rotation of approved assignment lists, but with some discretion for deviation, including upon request by a trial court or defendant.⁸

Historically, trial courts have frequently turned to MAACS for the assignment of appellate counsel in matters that arguably fall outside the Appellate Defender Act mandate, or at least where the trial courts are not required to appoint through MAACS. These include, among other situations:

- Postconviction motions for relief from judgment under MCR 6.500
- Juvenile life-without-parole resentencing proceedings under MCL 769.25a
- Prosecution appeals from the dismissal of charges
- Interlocutory preconviction appeals by the defense or prosecution
- Criminal appeals from district to circuit court, including misdemeanors

While many of these matters are technically the responsibility of trial counsel under MCR 6.005(H), trial courts and counsel have always appreciated the availability of independent appellate specialists to step in when the need arises.

C. The MIDC Act and its Appellate Carveout

The MIDC Act, signed into law in 2013, establishes a new infrastructure and state funding stream for the enhancement of trial-level indigent defense services in Michigan. While the MIDC Act was intended to carve out at least some criminal appellate representation, the scope of that carveout is unclear.

⁶ Administrative Order No. 1981-7, 412 Mich lxv (1982).

⁷ Administrative Order No. 1989-3, 432 Mich cxxvi (1989).

⁸ See MAACS Regulations (approved September 20, 2017), http://www.sado.org/content/pub/11101_Amended-MAACS-Regulations-.pdf.

As amended in 2018, the MIDC Act’s “Definitions” section, MCL 780.983, limits the scope of its mandate as follows:

(f) “Indigent criminal defense services” means local legal defense services provided to a defendant and to which both of the following conditions apply:

(i) The defendant is being prosecuted or sentenced for a crime for which an individual may be imprisoned upon conviction, beginning with the defendant’s initial appearance in court to answer to the criminal charge.

(ii) The defendant is determined to be indigent under section 11(3).

(g) Indigent criminal defense services do not include services authorized to be provided under the appellate defender act, 1978 PA 620, MCL 780.711 to 780.719.

There should be no question that MCL 780.983(g) exempts SADO from the MIDC mandate, since SADO’s services are precisely what the Appellate Defender Act authorized. But MAACS presents a different question.

As noted above, the Appellate Defender Act does not authorize or even mention MAACS. Rather, it merely requires that criminal appellate counsel be appointed from a roster approved by the Appellate Defender Commission. As such, the *authorization* for those services arguably comes not from the Appellate Defender Act, but from the Constitution itself. The Appellate Defender Act merely establishes a qualification requirement for private service providers. As such, it is not clear that MCL 780.983(g) exempts private appellate assigned counsel representation from the MIDC mandate.

To be sure, MCL 780.983(f)(i) might provide an alternate basis to conclude that private appellate assigned counsel representation is excluded from the MIDC mandate—at least at the postconviction stages. That provision defines the MIDC scope as covering services in which “[t]he defendant is being prosecuted or sentenced,” but not on appeal after sentencing.

Under state and federal law, however, a conviction is not “final” until after direct appeal or the expiration of the time for seeking direct appeal.⁹ Indeed, the MIDC functions such that at least some direct appeals from criminal conviction fall squarely

⁹ See *People v Gomez*, 295 Mich App 411, 414 (2012), citing *Beard v Banks*, 542 US 406, 411, (2004) (convictions are final when the availability of direct appeal is exhausted and the time for seeking a writ of certiorari has also expired). See also 28 USC 2244(d)(1)(A).

within its mandate. In September 2021, the Michigan Supreme Court adopted significant changes to MCR 6.610(G) and MCR 6.625(B)-(D), dealing with indigent appeals from conviction in district court. The amendments were proposed by the MIDC to align appellate procedure and the appointment of appellate counsel with the requirements of MIDC Standard 5. If an appeal from a district court conviction meets the definition of “being prosecuted or sentenced for a crime,” MCL 780.983(f)(i), it is difficult to see how an appeal from a circuit court conviction would not.

Moreover, the MIDC already interprets its statute as allowing state funding for expert witnesses and investigators whose services are utilized in trial court evidentiary hearings. This has been immensely beneficial to the quality of appellate representation, trial courts, and local funding units. Other expenses on appeal such as attorney compensation for trial court resentencing, plea withdrawal, and postjudgment motions fall into a similar category.

D. Practical Implications under MIDC Standard 5

Until recently, the question whether MAACS appeals fall under the MIDC mandate was largely academic, as funding streams were identical and the appointment process took place in the courts regardless of case type. But as MIDC reforms have become entrenched, and especially since the enactment of Standard 5 on independence from the judiciary, several important practical implications have arisen. Four stand out.

First, in recent years, the demand for appellate counsel in trial court matters has ballooned to levels never seen before. This appears to be a result of trial-level indigent defense reform. Better representation and the establishment of many new public defender offices have led to a greater appreciation of the need for interlocutory appellate litigation and quality appellate counsel to handle it. And new state funding has made it possible to seek out this expertise through MAACS. The problem for MAACS and its roster is capacity: while the correct policy choice may be to funnel all or most appellate representation through MAACS—including matters that are technically the responsibility of trial counsel—MAACS has limited resources. Particularly as we face what could be a substantial increase in trial appeals post-COVID, MAACS is ill-equipped to handle the volume of interlocutory appellate matters now coming our way.

Second, MAACS cannot compete for talented appellate counsel against the MIDC Standard 8 rates now offered by some local indigent defense systems. MAACS has already secured over \$1 million in voluntary county investments to improve indigent appellate defense. These investments have funded a uniform fee structure of \$75 per hour for trial and capital plea appeals, and \$50 per hour for noncapital plea appeals. The rates were competitive and attractive until recently, but now present a real challenge to recruitment and retention efforts where MIDC Standard 8 calls for rates

of \$100 to \$120 per hour. County governments cannot be asked to fund even larger increases to appellate assigned counsel fees.

Third, MAACS is now the only indigent defense system in Michigan that does not enjoy complete independence from the judiciary. Although the selection and assignment of appellate counsel is independent under the MAACS regulations, the payment of attorney fees and expenses is not. Unlike SADO and trial-level indigent defense service providers, MAACS roster attorneys must rely on trial court judges and their staff to fund the representation of poor clients. This lack of independence inhibits quality representation. It also places a burden on trial courts, which must maintain control and funding of only a small remaining pocket of the indigent criminal defense system—control that many would prefer to relinquish.

Finally, trial courts and local indigent defense systems are faced with new inefficiencies and confusion over payment type and source depending on the nature of indigent defense representation. The payment of attorney fees and costs remains the responsibility of trial courts in most direct appeals from conviction, though there are growing exceptions to this dynamic as some local systems have chosen to consolidate all attorney fee payments in the same independent office, in compliance with MIDC Standard 5 requirements. This makes sense from an efficiency and good government perspective, but it might require that office to distinguish between funding streams based on case type.

And where indigent defense funding has not been consolidated into the same office, the problems can be worse. What if a trial court orders the appointment of appellate counsel through MAACS to handle an interlocutory appeal, the funding of which is appropriate through MIDC channels? Only the trial court has direct access to the MAACS system for appointment on the front end, but a separate, independent entity would be responsible for the payment on the back end. As the MAACS case management system was designed for the same entity to manage cases from assignment through voucher, this bifurcated structure is creating growing confusion and disharmony for MAACS and local systems.

For these and other practical reasons, the time has come to explore more closely whether, and to what extent, the same MIDC systems now responsible for the appointment and funding of trial-level indigent defense services should also be responsible for the appointment and funding of private appellate indigent defense services.

To: Michigan Indigent Defense Commission

**From: Marla R. McCowan
Interim Executive Director
Deputy Director/Director of Training**

**Re: Compliance planning and costs:
FY21 compliance update; FY22 status update**

Date: December 14, 2021

I. FY21 Funding Distribution Update; Q4 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 received the final distribution of funding in August unless the distribution exceeded the funds on deposit with the system or we were awaiting financial reporting from 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

The total system cost, local share, and state grant funds are listed for each system for each fiscal year can be found on our grants page, <https://michiganidc.gov/grants/>.

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

1. System Reporting - Progress Towards Compliance

Staff received the fourth quarter of reporting from systems for FY21 (covering July 1, 2021 – September 30, 2021) at the end of October. The reporting was composed of:

- A **program report**, detailing the progress towards compliance with the approved plan. All program reports are currently submitted online 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 July 1, 2021 – September 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 **actual balance of the funds** in the account as of September 30, 2021 used for all spending on adult indigent criminal defense services, due no later than October 31, 2021. See the MIDC Act, MCL 780.993(15).

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. Compliance Assessments

Consistent with the rubric approved by the MIDC and published in the Grant Manual, the Regional Managers have resumed field assessments when possible to assess compliance with the MIDC's standards. A

sample form reflecting these assessments is completed by the Regional Manager in coordination with the local system stakeholders and the MIDC Grants Director:

<i>FY21 Compliance Review –</i>			
STANDARD 1	Yes/No/Unsure	Verified by? *	COMMENTS
An updated, current attorney list was submitted in the most recent quarter.	Y	MKW	
There is a process to pay for and confirm attorney training (including skills training).	Y	MKW	
All attorneys have either completed 12 hrs of CLE or been removed from the list.	In Progress	MKW	
STANDARD 2	Yes/No/Unsure	Verified by? *	COMMENTS
There are confidential meeting spaces in holding facilities/jails.	Y	MKW	I observed the renovations to the jail space. The room is now adequate with the addition of the soundproof material. There are now 2 Standard 2 compliant rooms in the jail.
There are confidential meeting spaces in courtrooms - out-of-custody clients.	Y	MKW	
There are confidential meeting spaces in courtrooms - in-custody clients.	Y	MKW	
The confidential meeting spaces are adequate.	Y	MKW	Both the jail and courthouse spaces were newly renovated to comply with Standard 2
The defense attorneys are using the confidential meeting space.	Y	MKW	
Attorneys are being appointed and notified in a timely and effective fashion.	Y	MKW	The court notifies the attorneys the same day as arraignment
The system is verifying invoices/other documents to ensure timely client interviews.	Y	MKW	
Attorneys being paid for initial interviews.	Y	MKW	\$100/hr

Attorneys have been notified of the process to seek funding for experts and investigators.	Y	MKW	
Number of requests:	1	MKW	
Number of denials or partial denials:	0	MKW	
STANDARD 4	Yes/No/Unsure	Verified by? *	COMMENTS
Counsel is being provided in 100% of arraignments.	Y	MKW	
Counsel is being provided at 100% of other critical stages.	Y	MKW	
Waiver of counsel forms are reviewed with clients by an appropriate person.	Y	MKW	
Advice of rights for counterpleas and pleas by mail are utilized and tracked.	Y	MKW	Defendant must submit written waiver of counsel along with PBM or CP, along with signed advice of rights
Contact information is provided to the appointed attorney and the client after arraignment.	Y	MKW	
The contact information provided is adequate.	Y	MKW	
PLAN COMPLIANCE	Yes/No/Unsure	Verified by? *	COMMENTS
Quarterly PRs have been submitted FY20 through Q1 FY21.	Y	MKW	
Quarterly FSRs have been submitted FY20 through Q1 FY21.	Y	MKW	
FSRs include attorney assignment and payment information.	Y	MKW	
Concerns from court watching addressed	N/A		
List any areas of concern regarding contract compliance outside of the above.	N/A		
Overall: The system is fully compliant.			

3. Changes and Adjustments to Ppproved Plans and/or Cost Analysis

- a. Plan Change Request – City of Wyoming
(action item)

Total System Cost: \$647,885.74

Local Share: \$55,335.07

MIDC Funding: \$592,550.67

No anticipated change to total cost for FY 2021

Staff recommends approval of this request:

The City of Wyoming would like to amend its Compliance Plan and Cost Analysis to create an Indigent Defense Coordinator/MAC full time employee position for the regional plan that includes four funding units and three third class district courts (Grandville, Kentwood, Walker, and Wyoming). This new position will be included in the FY22 Compliance Plan and Cost Analysis which will be reviewed by the MIDC Commission at its February 2022 meeting.

Currently, this regional plan does not include the necessary infrastructure to manage the plan while also implementing Standard 5 and planning for the implementation of the Indigency Standard. Currently, the indigent defense services are managed by a patchwork of people, cities, and a nonprofit and this patchwork system is not sustainable.

Wyoming does not believe that this request will result in a budget shortage, because it has approximately \$400,000 in Unexpended Funds as of this date.

The Compliance Plan would now provide:

The Indigent Defense Coordinator will verify compliance with Standards 1 through 4, replace duties currently performed by the courts and the Wyoming City Attorney such as:

1. Notifying attorneys of their appointment to cases;
2. Verifying initial interviews; and
3. Reviewing requests for experts and investigators.

The duties currently performed by the Kent County Office of the Defender will continue to be performed by KCOD.

b. Budget adjustments – information item

The Grants Director processed the following budget adjustment requests pursuant to the process set forth in the [MIDC's Grant Manual](#) at pp. 27-28 (February 2021):

Approved budget adjustments:

- Alcona County
- Allegan/Van Buren Counties
- Benzie/Manistee Counties
- Calhoun County
- Charlevoix County
- City of Taylor
- Ingham County
- Marquette County
- Ottawa County
- Washtenaw County
- Wexford/Missaukee Counties

Denied budget adjustments:

- [Monroe County](#)
- [Muskegon County](#)

II. FY22 Compliance Planning Update

A. Overview

Statutory authority MCL §780.993 (as amended 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 Contracts

a. Approved plans and costs for FY22

As of the October 19, 2021 meeting, 113 of 120 systems have had their plans and cost analyses approved and all of those contracts have been distributed to those systems for review and signature. As of this writing, **100 contracts have been returned by these systems, signed by me, and finalized by LARA for distribution of initial funding (see table beginning on the next page)**. The remaining contracts are in various stages of identification of authorizing officials, signing and/or finalization.

- **FY22 total system cost approved** (to date): \$129,694,649.89
- **Local share** (increase of 1.2% from FY19): \$27,226,633.10
- **MIDC funding approved for compliance plans**: \$102,467,989.79
- MIDC funding approved to reimburse systems for the cost of planning: \$38,943.43

Most systems received their initial payment in early November 2021. The date of expected compliance with MIDC Standard 5, independence from the judiciary, is May 1, 2022 for these systems. The date of payment received and expected compliance is closely tracked for every system pursuant to MCL 780.993(11). The rubric used for system

assessments will be updated in the spring of 2022 to reflect the requirement of independence from the judiciary.

System	First Payment Amt.	Date to Treasury	180 days	Region
Alcona County	\$29,266.00	11/2/2021	5/1/2022	Mid
Alger County	\$101,471.00	11/12/2021	5/11/2022	Northern
Allegan County	\$531,807.00	11/2/2021	5/1/2022	Western
Alpena County	\$128,415.00	11/2/2021	5/1/2022	Mid
Antrim County	\$45,696.00	11/2/2021	5/1/2022	Northern
Arenac County	\$35,911.00	11/2/2021	5/1/2022	Mid
Barry County	\$148,851.00	11/2/2021	5/1/2022	Western
Bay County	\$225,470.00	11/2/2021	5/1/2022	Mid
Berrien County	\$877,094.00	11/2/2021	5/1/2022	Western
Branch County	\$239,861.00	11/30/2021	5/29/2022	Western
Calhoun County	\$769,008.00	11/2/2021	5/1/2022	Western
Cass County	\$61,228.00	11/2/2021	5/1/2022	Western
Charter Township of Shelby	\$80,543.00	11/2/2021	5/1/2022	LMOSC
Charter Township of Waterford	\$62,607.00	11/2/2021	5/1/2022	LMOSC
Cheboygan County	\$75,830.00	11/2/2021	5/1/2022	Northern
Chippewa County	\$89,210.00	11/16/2021	5/15/2022	Northern
City of Allen Park	\$39,019.00	11/2/2021	5/1/2022	Wayne
City of Birmingham	\$128,814.00	11/2/2021	5/1/2022	LMOSC
City of Dearborn	\$268,625.00	11/2/2021	5/1/2022	Wayne
City of Dearborn Heights	\$47,612.00	11/2/2021	5/1/2022	Wayne
City of Eastpointe	\$125,614.00	11/2/2021	5/1/2022	LMOSC
City of Farmington	\$83,696.00	11/16/2021	5/15/2022	LMOSC
City of Ferndale	\$135,595.00	11/2/2021	5/1/2022	LMOSC
City of Garden City	\$30,580.00	11/16/2021	5/15/2022	Wayne
City of Grand Rapids	\$244,646.00	11/2/2021	5/1/2022	Western

City of Grosse Pointe	\$3,024.00	11/2/2021	5/1/2022	Wayne
City of Grosse Pointe Farms	\$13,657.00	11/2/2021	5/1/2022	Wayne
City of Grosse Pointe Park	\$6,541.00	11/2/2021	5/1/2022	Wayne
City of Grosse Pointe Woods	\$13,200.00	12/9/2021	6/7/2022	Wayne
City of Hamtramck	\$27,147.00	11/2/2021	5/1/2022	Wayne
City of Lincoln Park	\$84,785.00	11/17/2021	5/16/2022	Wayne
City of Livonia	\$143,739.00	11/2/2021	5/1/2022	Wayne
City of Oak Park	\$102,023.00	11/16/2021	5/15/2022	LMOSC
City of Pontiac	\$150,783.00	11/2/2021	5/1/2022	LMOSC
City of Roseville	\$176,666.00	11/2/2021	5/1/2022	LMOSC
City of Southgate	\$51,486.00	11/2/2021	5/1/2022	Wayne
City of St Clair Shores	\$118,468.00	11/2/2021	5/1/2022	LMOSC
City of Sterling Heights	\$90,088.00	11/2/2021	5/1/2022	LMOSC
City of Taylor	\$90,250.00	11/2/2021	5/1/2022	Wayne
City of Warren	\$205,879.00	11/16/2021	5/15/2022	LMOSC
City of Wayne	\$31,244.00	11/2/2021	5/1/2022	Wayne
City of Westland	\$138,023.00	11/2/2021	5/1/2022	Wayne
City of Wyandotte	\$57,804.00	11/2/2021	5/1/2022	Wayne
Clare County	\$320,030.00	11/2/2021	5/1/2022	Mid
Clinton County	\$288,768.00	11/2/2021	5/1/2022	Central
Crawford County	\$173,352.00	11/2/2021	5/1/2022	Northern
Delta County	\$155,338.00	11/2/2021	5/1/2022	Northern
Dickinson County	\$126,274.00	11/2/2021	5/1/2022	Northern
Eaton County	\$418,434.00	11/2/2021	5/1/2022	Central
Emmet County	\$83,140.00	11/2/2021	5/1/2022	Northern
Genesee County	\$967,303.00	11/2/2021	5/1/2022	Central
Gogebic County	\$115,852.00	11/2/2021	5/1/2022	Northern
Grand Traverse County	\$279,025.00	11/2/2021	5/1/2022	Northern
Gratiot County	\$169,741.00	11/2/2021	5/1/2022	Central

Hillsdale County	\$68,441.00	11/2/2021	5/1/2022	Central
Houghton County	\$158,145.00	11/2/2021	5/1/2022	Northern
Huron County	\$143,859.00	11/2/2021	5/1/2022	Mid
Ingham County	\$1,391,693.00	11/2/2021	5/1/2022	Central
Iosco County	\$49,772.00	11/2/2021	5/1/2022	Mid
Iron County	\$133,351.00	11/2/2021	5/1/2022	Northern
Isabella County	\$337,952.00	11/2/2021	5/1/2022	Mid
Jackson County	\$903,313.00	11/2/2021	5/1/2022	Central
Kalkaska County	\$99,161.00	11/2/2021	5/1/2022	Northern
Kent County	\$1,499,916.00	11/2/2021	5/1/2022	Western
Lake County	\$58,886.00	11/2/2021	5/1/2022	Mid
Lapeer County	\$156,732.00	11/2/2021	5/1/2022	LMOSC
Leelanau County	\$51,684.00	11/2/2021	5/1/2022	Northern
Lenawee County	\$435,077.00	11/16/2021	5/15/2022	Central
Livingston County	\$348,170.00	11/2/2021	5/1/2022	Central
Luce County	\$65,548.00	11/2/2021	5/1/2022	Northern
Mackinac County	\$17,306.00	11/30/2021	5/29/2022	Northern
Manistee County	\$176,168.00	11/2/2021	5/1/2022	Northern
Marquette County	\$252,955.00	11/2/2021	5/1/2022	Northern
Mason County	\$153,891.00	11/2/2021	5/1/2022	Mid
Mecosta County	\$77,558.00	11/2/2021	5/1/2022	Mid
Menominee County	\$99,983.00	12/9/2021	6/7/2022	Northern
Midland County	\$76,072.00	12/9/2021	6/7/2022	Mid
Monroe County	\$241,593.00	11/16/2021	5/15/2022	Central
Montmorency County	\$59,998.00	11/2/2021	5/1/2022	Mid
Muskegon County	\$590,374.00	11/2/2021	5/1/2022	Western
Newaygo County	\$170,965.00	11/2/2021	5/1/2022	Mid
Oakland County	\$1,449,912.00	11/2/2021	5/1/2022	LMOSC
Oceana County	\$114,546.00	11/2/2021	5/1/2022	Mid
Ogemaw County	\$153,650.00	11/2/2021	5/1/2022	Mid
Ontonagon County	\$42,333.00	11/2/2021	5/1/2022	Northern
Osceola County	\$90,436.00	11/2/2021	5/1/2022	Mid
Oscoda County	\$38,718.00	11/2/2021	5/1/2022	Mid
Otsego County	\$68,831.00	12/9/2021	6/7/2022	Mid

Ottawa County	\$728,814.00	11/2/2021	5/1/2022	Western
Presque Isle County	\$40,674.00	11/2/2021	5/1/2022	Northern
Roscommon County	\$54,132.00	11/2/2021	5/1/2022	Mid
Saginaw County	\$1,156,584.00	12/9/2021	6/7/2022	Mid
Sanilac County	\$86,050.00	11/2/2021	5/1/2022	Mid
Schoolcraft County	\$50,724.00	11/2/2021	5/1/2022	Northern
Shiawassee County	\$289,098.00	11/2/2021	5/1/2022	Central
St. Clair County	\$587,670.00	11/2/2021	5/1/2022	LMOSC
Township of Redford	\$88,591.00	11/2/2021	5/1/2022	Wayne
Tuscola County	\$312,391.00	11/2/2021	5/1/2022	Mid
Wexford County	\$247,675.00	12/9/2021	6/7/2022	Northern
City of Highland Park	\$30,236.00	12/16/2021 (to be verified)	6/14/2022	Wayne

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

a. Plan Change Request – Oakland County (action item)

Total System Cost: \$7,650,353.49

Local Share: \$1,850,703.10

MIDC Funding: \$5,799,650.39

No anticipated change to overall costs for FY 2022

Staff recommends approval of this request:

Oakland County would like to amend its fee schedule to make clear that extraordinary fees are available to attorneys handling non-capital cases. Oakland does not believe that this request will result in a budget shortage because of continued reduced case levels and fewer trials due to the pandemic.

The fee schedule would now provide:

Any request for extraordinary fees must be submitted to the IDSO in the form of a detailed voucher, along with the attorney's explanation for why they believe such fees are warranted. Extraordinary fees are the exception, not the rule, and they will only be paid in limited circumstances. If the Chief Attorney of the IDSO finds extraordinary fees to be appropriate in a specific case, the presumptive payment to the requesting attorney will be calculated by multiplying the regular voucher amount by 1.5 and paying that amount to the attorney in lieu of the regular voucher amount. The Chief Attorney may make exceptions to this presumptive calculation, either higher or lower, if warranted by the specific facts of a case. If the Chief Attorney decides to grant more than 1.5 times the voucher amount, the amount to be paid shall not exceed the suggested payment amounts in MIDC Standard 8. If the Chief Attorney of the IDSO denies an attorney's request for extraordinary fees, the denial may be appealed to the Criminal Assignment Committee.

The amendment would apply to capital and noncapital cases.

C. Disapproved plans and/or cost analyses for FY22 (second submissions)

At the October 19, 2021 Commission Meeting, the MIDC rejected the plan and/or cost analysis from 7 systems for their second submission for FY22. Those systems were notified of the MIDC's action through our Grant Management System (EGrAMS), as well as an official mailing dated October 25, 2021. The deadline for resubmission is December 24, 2021. The final submission for these systems will be on the MIDC's February business meeting agenda pursuant to MCL 780.994(4).