



# MICHIGAN INDIGENT DEFENSE COMMISSION

Date: Tuesday, December 20, 2022, Time: 11:00 a.m.  
Michigan Bankers Association  
507 S. Grand Ave, Lansing, MI 48933

## MEETING AGENDA

1. Call to Order
2. Roll call and opening remarks
3. Introduction of Commission members and guests
4. Public comment
5. Additions to agenda
6. Consent agenda (**action item**)
  - October 11, 2022 Meeting Minutes
7. Chair Report
8. Executive Director Report
9. Commission Business
  - a. Standing Committee Report
    - Executive – *Christine Green, Chair*
  - b. Ad Hoc Committee Reports
    - Data – *Kim Buddin, Committee Chair*
    - Local System Communication – *Paul Bullock, Committee Chair*
    - Nominations – *Andrew DeLeeuw, Committee Chair (action item)*
  - c. Report: Mecosta County/Northern Michigan Pilot Project – *Michael Naughton, Traverse City (action item)*
  - d. Report: *The Right to Counsel in Oakland County, Michigan: Evaluation of Trial-Level Indigent Defense Services in Adult Criminal Cases (October 2022)* – *Jon Mosher, 6<sup>th</sup> Am. Center*
  - e. Regional Update: Lapeer, Macomb, Oakland, St. Clair Counties – *Nicole Smithson, Regional Manager*

~ break for lunch ~

- f. MIDC Standards Implementation – FY 22 Year in Review
    - o Overview of Compliance with MIDC Standards for all funding units, covering:
      - Compliance Assessments and Court Watching
      - Attorney Lists and CLE
      - Quarterly Program Reports
      - Financial Status Reports and Unexpended Balances
    - o Update on system compliance – Muskegon County
    - o Notice of noncompliance – City of Detroit
    - o Budget adjustments (information items)
  - g. FY23 Compliance Planning
    - o FY23 Plans and Costs
      - o Contract Distribution status
      - o Plan Changes
        - City of Birmingham (action item)
        - City of Farmington (action item)
        - Saginaw County (action item)
        - City of Dearborn (information item)
      - o Budget adjustments (information items)
10. 2023 Meeting Schedule:  
 February 7, 2023  
 April 18, 2023  
 June 13, 2023  
 August 15, 2023  
 October 17, 2023  
 December 19, 2023
11. Adjourn

*Online Access: For members of the public who wish to join the meeting online, please email Marcela Westrate at [WestrateM1@michigan.gov](mailto:WestrateM1@michigan.gov) or call (517) 648-3143 to request a Zoom link. This link will be provided in the morning before the meeting begins.*

## **Michigan Indigent Defense Commission Meeting Minutes**

The meeting was held in person at the Michigan Bankers Association building in Lansing, Michigan. Remote access via Zoom was available for Commissioners and, upon request, for members of the public. The MIDC website and meeting notice included information for members of the public on how to contact the MIDC to obtain the Zoom link for participation. Commissioners were able to participate remotely if they qualified for an exemption under the Open Meetings Act or if they requested an accommodation under the Americans with Disabilities Act, 42 USC 12131 *et. seq.*, and Rehabilitation Act, MCL 395.81 *et. seq.*, pursuant to Attorney General Opinion No. 7318.

**October 11, 2022**

**Time: 11:00 am**

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

### **Commission Members Participating**

The following members participated in person:

- Chair Christine Green
- Tracy Brame
- Kimberly Buddin
- Paul Bullock
- Hakim Crampton
- Andrew DeLeeuw
- David Jones
- James Krizan
- Deborah Kubitskey
- Judge Paula Mathes
- Margaret McAvoy
- John Shea
- Rob VerHeulen

The following member requested an accommodation under the Americans with Disabilities Act to participate via Zoom:

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

The following member attended the meeting via Zoom, but was not counted for purposes of determining a quorum and did not participate in the discussions:

- Joshua Blanchard

The following Commissioners were absent:

- Judge Jim Fisher
- Tom McMillin
- Cami Pendell
- William Swor

Chair Green called the meeting to order at 11:04 am.

### **Public Comment**

The following people provided public comment:

- Angela Peterson
- Daniel Eichinger
- Jill Tines
- Robin Dillard-Russaw
- Jill Tines

### **Approval of Agenda**

Commissioner VerHeulen moved that the agenda be adopted as presented. Commissioner Kubitsky seconded. The motion carried.

### **Consent Agenda**

Commissioner McAvoy moved that the consent agenda containing the minutes from the June 21, 2022 meeting be adopted. Commissioner Kubitsky seconded. The motion carried.

### **Chair Report**

Chair Green welcomed Judge Mathes to the Commission, representing the Michigan District Judges Association. Judge Fisher and Commissioner Jones were reappointed to their positions.

Commissioner Buddin chaired the new Data Committee, which had its first meeting recently. Judge Fisher and Commissioner DeLeeuw also participated.

### **Executive Director Report**

Ms. Staley introduced new Research Analyst Neil Weinberg.

The MIDC held its first Upper Peninsula Public Defender Conference. Ms. McCowan, Ms. Wangler, and Ms. Klimaszewski presented during the meeting. Commissioner Walker attended and provided an update.

### **Commission Business**

#### **Standing Committee Report**

Executive Committee

Chair Green provided an update on the committee's meeting. She will reconvene the Nominating Committee and will contact members to see if they are able to serve.

### **Legislative and Court Rules Changes Committee**

The Commission was asked for input on a draft of the youth defense changes to the MIDC Act. The committee met to discuss these changes. Commissioner Shea chaired the committee and provided an overview of the changes and the committee's discussion.

### **Line Item Veto Committee**

Commissioner VerHeulen provided an update in the absence of Commissioner McMillin, who chairs the committee. The committee considered two plans, the City of Farmington and Saginaw. The Committee supports the staff recommendations for both systems.

### **FY23 Budget Request and FY24 potential spend plan**

Ms. Staley updated the process for requesting FY24 appropriations.

Ms. Staley presented the FY23 budget. Commissioner VerHeulen moved to adopt the FY23 budget, Commissioner Brame seconded. The motion carried, Commissioners McAvoy and Kubitskey voting no.

### **Mecosta County/Northern Michigan Pilot Project Update**

Michael Naughton updated the Commission on the project.

### **Regional Update**

Barbara Klimaszewski, Regional Manager for Mid-Michigan, presented on the work she is doing in her region.

### **MIDC Standards Implementation**

#### **FY22 Compliance Planning**

Jackson County requested a change to its FY22 and FY23 compliance plans to incorporate circuit court Adult Treatment Court specialty court defense services. There is no anticipated change to overall costs for FY22 or FY23. Staff recommends approval.

Commissioner McAvoy moved that the plan changes to Jackson County's FY22 and FY23 compliance plans be adopted. Commissioner Shea seconded. The motion carried, Commissioner Kubitskey abstained from the vote.

Isabella County requested a change to its FY22 and FY23 compliance plans to allow the Isabella County Public Defender's Office to take over responsibilities related to indigency screening. There is no anticipated change to overall costs for FY22 or FY23. Staff recommends approval.

Commissioner McAvoy moved that the plan changes to Isabella County's FY22 and FY23 compliance plans be adopted. Commissioner Shea seconded. The motion carried.

#### **FY23 Compliance Planning**

#### **FY23 Contract Distribution**

MIDC staff provided a draft FY23 contract for the Commission's review and approval. Funding units using a non-profit vendor model for services will receive the modified language for FY23. Staff recommends adopting this new language.

Ms. McAvoy moved that the staff recommendation be adopted and the contract language be approved. Commissioner Krizan seconded. The motion carried.

### **Cost Analysis Revision**

Alcona County requested an increase to its cost analysis. The total increase requested is \$94,850. Staff recommends approving the increase.

Commissioner Walker moved that the cost analysis revision request submitted by Alcona County be approved. Commissioner VerHeulen seconded. The motion carried.

### **Senior Staff Recommendations for resubmissions**

Staff recommends that the cost analyses submitted by the systems listed below be approved, the compliance plans were previously approved:

- Charlevoix County
- Crawford County
- 22<sup>nd</sup> District Court - Inkster
- 30<sup>th</sup> District Court - Highland Park
- 40<sup>th</sup> District Court - City of St Clair Shores
- Newaygo County
- Oceana County

Commissioner Bullock moved that the staff recommendation be adopted and the cost analyses resubmitted by the seven systems listed above be approved. Commissioner Kubitskey seconded. The motion carried, Commissioner Jones abstained from the vote with respect to the 22<sup>nd</sup> District Court – Inkster.

Staff recommends that the compliance plans and cost analyses submitted by the systems listed below be approved:

- |                    |                              |
|--------------------|------------------------------|
| • Alger County     | • Iron County                |
| • Cheboygan County | • Muskegon County            |
| • Chippewa County  | • Oakland County             |
| • Delta County     | • Otsego County              |
| • Emmet County     | • Wexford/Missaukee Counties |

Commissioner VerHeulen moved that the staff recommendation be adopted and that the compliance plans and cost analyses submitted by the 10 systems listed above be approved. Commissioner Krizan seconded. The motion carried.

Staff recommends that a portion of the cost analysis resubmitted by Saginaw County be approved, the compliance plan was previously approved. Without documentation to support the increases for

misdeemeanor and capital representation included in the resubmission, the recommendation is to fund at the requested levels from the first submission.

Commissioner McAvoy moved that the staff recommendation be adopted and that the cost analysis resubmitted by Saginaw County be partially approved. Commissioner Crampton seconded. The motion carried.

Staff recommends that the compliance plan and a portion of the cost analyses resubmitted by the 4<sup>th</sup> District Court in the City of Farmington be approved. Staff does not recommend approving the funding for the clerk time for weekend arraignments should be eliminated completely.

Commissioner Kubitskey moved that the staff recommendation be adopted and that the compliance plan be approved and the cost analysis be partially approved. Commissioner Bullock seconded. The motion carried.

Commissioner Bullock moved that the meeting be adjourned. Commissioner Crampton seconded. The motion carried. The meeting was adjourned at 2:30 pm.

The next meeting will be December 20, 2022 at 11:00 am in Lansing.

MIDC Ad Hoc Committee – Local Systems Communication  
December 6, 2022  
1-2pm via Teams

**Members present:**

- Paul Bullock, Committee Chair
- Christine Green
- David Jones
- Debra Kubitskey
- John Shea

**Members absent:**

*None*

The Committee met on December 6<sup>th</sup> and considered three basic items:

- A potential policy recommendation regarding Commissioner to local stakeholder communications.
- Local stakeholder requests to participate in MIDC meetings outside of public comment
- And possible refresher training for Commissioners on rules/guidelines surrounding appointed officials.

On the first matter, we discussed the fact that Commissioners are sometimes contacted by local stakeholders, often people the Commissioners know well and who they have worked with over the years. We do not see that as a problem, as long as such communications are limited to simple questions we might be asked by any member of the public about the overall working of the Commission. When the questions get down to specific issues of compliance or policy we believe that referring them to their regional representatives or the administrative staff would be appropriate. However, we know that that will not always result in the questioner being satisfied with the exchange. So on to the second matter we discussed.

On the second matter, the Committee discussed the value of open dialogue vs the monologue that tends to come with limiting participation to public comment. We offer this committee as a possible forum for such open dialogue with local stakeholders who have concerns. The Committee and staff will be working on a proposed policy that would enable local stakeholders to come before the committee, for a dialogue/discussion, but only after they have worked with the regional representatives, the regional supervisor, and the Executive Director to resolve the matter. We would anticipate the Executive Director and appropriate staff attending any such meeting. We do not see this as being a common occurrence, but rather a rare one. We will be proposing that following any such meeting the Committee will make a report, and possible recommendation, to the full MIDC at the next meeting.



Regarding the third matter, the Committee has asked the Executive Director to inquire about the availability of a member of the AG's office to attend one of our full Commission meetings and present a short refresher on the rules and guidelines that pertain to Commissioners in their official capacity. A final decision on that would be a matter for the full Commission.

## **Nominations Committee Report and Recommendation**

### **December 2022**

Committee Members:

- Andrew DeLeeuw, Chair
- Josh Blanchard
- Rob VerHuelen

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The Committee nominates the following Commissioners to serve as Officers for the term beginning January 1, 2023 and concluding December 31, 2023:

- 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.

REPORT PREPARED FOR THE  
MICHIGAN INDIGENT DEFENSE  
COMMISSION

# MICHIGAN'S LEGAL TUNDRAS: CRIMINAL DEFENSE ATTORNEY SHORTAGES IN RURAL COMMUNITIES

OCTOBER 2022

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# Michael Naughton

## NORTH COAST LEGAL, PLC

### INTRODUCTION

**R**ural communities across both the Upper and Lower Peninsulas of Michigan are experiencing criminal defense attorney shortages. Data collected from across the country, the state of Michigan, and from stakeholders in rural communities all suggest that an overall attorney shortage is steadily increasing and will compound social problems in these communities if left unaddressed.

The attorney population in most rural communities in Michigan is composed of a generation of attorneys on the precipice of exiting the full-time practice of law. For a multitude of reasons, younger generations of attorneys have not migrated to rural Michigan communities in sufficient quantity to replace the number of exiting attorneys. To compound this problem, since 2013, there has been a sharp decline in the number of students entering law schools. Accordingly, the pool of qualified criminal defense attorneys is quickly depleting. The diminishing numbers of criminal defense attorneys in rural communities will have a lasting and continued impact on access to justice for Michigan residents in these areas, especially as Proposed Standards 6 and 7 are implemented.

This report seeks to identify the rural criminal defense attorney shortage, highlight factors that have contributed to this shortage, examine rural communities impacted, and provide options for this Commission to address and ameliorate this situation.

The Michigan Indigent Defense Commission is uniquely positioned to address this growing statewide crisis.

## RURAL COMMUNITIES ACROSS THE UNITED STATES ARE FACING A SHORTAGE OF PRACTICING ATTORNEYS

Access to justice is recognized as a “pervasive rural social problem” that is being experienced in rural communities across the country.<sup>1</sup> In 2018, the Harvard Law & Policy Review published Legal Deserts: A Multi-State Perspective on Rural Access to Justice. Lisa Pruitt and her co-authors argued that the rural American experience poses common challenges such as suffering “disproportionately from poverty, poor health outcomes, the opioid epidemic, educational devices, and environmental degradation, among other challenges.”<sup>2</sup> The researchers surmise that the “problems are clearly interconnected,” and stem from socio-economic factors. It was further found that “[i]f a lack of rural lawyers results in disproportionate percentage of rural legal issues going unaddressed, then these already-disproportionate rural social problems will be compounded.”<sup>3</sup>

The states surveyed in Legal Deserts research “run the political gamut from very blue California, the most urban and left-leaning among the states studied, to very red South Dakota, the most rural among our six states.”<sup>4</sup> Despite the political differences, the researchers found “that rural populations generally have little political clout when it comes to advocating successfully for their own justice system needs.”<sup>5</sup> As a consequence, although many initiatives to address rural lawyer shortages (as well as other rural justice system deficits) have been proposed, “few have been funded and implemented.”<sup>6</sup>

Recent data suggest that such social problems are already being compounded. The Vera Institute of Justice found that a shortage of defense counsel, along with other deficits in the justice system, was leading to an increase in rural jail populations, which

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<sup>1</sup> Pruitt, Lisa R.. (Legal Deserts: A Multi-State Perspective on Rural Access to Justice) <https://harvardlpr.com/wp-content/uploads/sites/20/2019/04/4.-Legal-Deserts.pdf>, at page 19.

<sup>2</sup> Id. at page 18.

<sup>3</sup> Id.

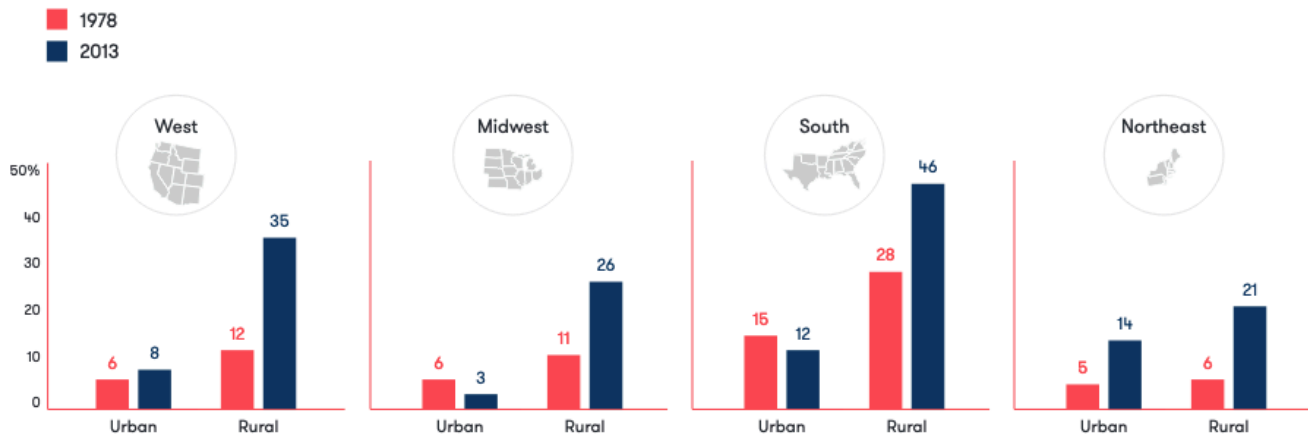
<sup>4</sup> Id. at page 128.

<sup>5</sup> Id., citing How Red or Blue is Your State?, The Hill, Oct. 24, 2014, <https://perma.cc/WDB8-HCFE>.

<sup>6</sup> Id. at page 129.

consequently increased the national incarceration rate.<sup>7</sup> Research has shown that local incarceration rates are increasing in rural areas and that “[p]retrial incarceration rates grew the most in America’s 1,936 rural counties”.<sup>8</sup>

### Percent share of jail held for other authorities



Out of Sight: The Growth of Jails In Rural America, Figure 6 on page 15.

In 2017, the ACLU of Nevada brought a class action lawsuit against ten (10) rural counties on behalf of criminal defendants entitled to received public funded defense.<sup>9</sup> The suit, brought against both the State of Nevada as well as the governor, alleged that the defendants failed to provide constitutionally required representation in these rural communities. Sherry Royster, Legal Director for the ACLU of Nevada, stated “Nevadans have the right to receive equal treatment from the criminal justice system whether they are in an urban or a rural area.”<sup>10</sup> Pursuant to a settlement agreement, the Nevada Board on Indigent Defense Services was required to establish and implement caseload standards, which included hiring attorneys and support staff, as well as create plans to improve the quality of public defense in the ten (10) rural counties involved in the suit.

<sup>7</sup> *Id.* at note 15 at page 7.

<sup>8</sup> Kang-Brown, Jacob and Subramanian, Ram, *Out of Sight: The Growth of Jails in Rural America*, The Vera Institute, 2017, at <https://perma.cc/DGV6-Z4FE> at pages 7 and 11.

<sup>9</sup> Brink, M. (2021). Public Defense Reform Work Continues Despite Pandemic. *ABA Criminal Justice Magazine*, 35(4), 42 - 44.

<sup>10</sup> *Id.* at page 42.



## RURAL ECONOMIES ACROSS THE UNITED STATES HAVE STEADILY DECLINED

The economies of rural communities have been in distress for decades. The United States Department of Agriculture (USDA) recognized that although rural areas were originally settled for natural resources such as croplands and mining, these industries “yielded lower total earnings in 2000 than they had a decade earlier.”<sup>11</sup> The USDA further found that employment in “agriculture and mining has a long history of decline, and areas dependent on these industries have lost population.”<sup>12</sup> While rural America’s “time-honored assets are natural amenities, natural resources, and low-cost labor and land for manufacturing, most rural jobs are not directly related to these assets.”<sup>13</sup>

Researchers at the University of New Hampshire found that the population of rural counties “are aging as young adults leave, older residents remain, and reproduction rates fall.”<sup>14</sup> Further, the report found that fiscal problems are widespread in rural communities as these counties attempt to transition to new economies, while simultaneously relying on outdated systems set up to support (and be supported by) failing industries.<sup>15</sup>

As a consequence of the vanishing population, “public funding is no longer adequate to shore up key community institutions and facilities such as housing, schools, healthcare, transportation, and telecommunications systems.”<sup>16</sup>

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<sup>11</sup> Whitener, Leslie A., McGranahan, David A., Rural America Opportunities and Challenges, Economic Research Service, United States Department of Agriculture, 2003, page 19.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at page 18.

<sup>14</sup> Hamilton, Lawrence C., Place Matters Challenges and Opportunities in Four Rural Americas, Reports on Rural America, vol 1, no. 4, 2008 at page 3.

<sup>15</sup> *Id.* at page 5.

<sup>16</sup> *Id.* at page 3.

The Legal Services Corporation published its 2022 Justice Gap Report.<sup>17</sup> This report found that approximately 74% of low income households experienced one or more legal problem in the past year.<sup>18</sup> About 55% of low-income Americans who experienced a problem reported that the problems “substantially impacted their lives — with the consequences affecting their finances, mental health, physical health and safety, and relationships.”<sup>19</sup> Additionally, approximately 33% of low-income Americans reported experiencing at least one legal problem linked to the COVID-19 pandemic in the past year.<sup>20</sup> Respondents stated that they did not receive enough legal help for an astounding 92% of the problems that have had a substantial impact on them.<sup>21</sup>

## YOUNGER PEOPLE ARE MIGRATING AWAY FROM RURAL COMMUNITIES

The lack of opportunities in survey data reveals that fewer younger people and a higher number of older people are relocating to declining areas.<sup>22</sup>

*Net migration to and from rural areas has always been age selective. In virtually every migration stream, the incidence of migration is highest for young adults. This flow has traditionally been from rural to urban areas, with young adults most likely to be attracted to a metro area’s social and economic advantages, especially given the diminishing demand for labor in farming and mining and low wages in many rural industries.*<sup>23</sup>

The migration trends “have not produced an age structure in many rural counties that includes few young adults of childbearing age and many older adults at greater risk of

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<sup>17</sup> Legal Services Corporation, 2022 Justice Gap Study at <https://justicegap.lsc.gov/resource/executive-summary/>

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at page 4.

<sup>23</sup> Johnson, Kenneth, Demographic Trends in Rural and Small Town America, Reports on Rural America, vol. 1, no. 1, 2006, at page 11.

mortality.”<sup>24</sup> Since 1990, an increasing number of rural counties “actually experience natural decrease, where deaths in a county exceed births.”<sup>25</sup> The report stated that the “ultimate demographic consequence” of decades of younger people migrating away from rural communities, and older people either staying or relocating to rural communities is a decrease in the overall population.<sup>26</sup>

State surveys performed by the authors of Legal Deserts found “dwindling attorney numbers in rural areas,” but also that attorneys in rural communities “are aging and retiring, and too few new lawyers are stepping forward to take their place.”<sup>27</sup>

## HOW OTHER STATES ARE ATTEMPTING TO ADDRESS RURAL ATTORNEY SHORTAGE

### CALIFORNIA

California is the most populous state in America and covers nearly 156,000 square miles. It is the third largest state in the nation and is divided into fifty-eight (58) counties.<sup>28</sup> Rural communities in California exist in the central, far northern and eastern portions of the state. The population of rural California exceeds the entire population of a few states.<sup>29</sup>

However, a diminishing number of attorneys practicing in rural California has led to a search for solutions to bridge this gap.<sup>30</sup> Some of the obstacles identified were apprehension by law students to locate to rural areas because of the high cost of legal education, an unwillingness to give up urban amenities, and a desire to not leave urban-based friends and family.<sup>31</sup>

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<sup>24</sup> Id. at page 12.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Pruitt, Lisa R., (Legal Deserts: A Multi-State Perspective on Rural Access to Justice) <https://harvardlpr.com/wp-content/uploads/sites/20/2019/04/4.-Legal-Deserts.pdf>, at page 121.

<sup>28</sup> Id. at page 32.

<sup>29</sup> Id.

<sup>30</sup> Id. at page 37.

<sup>31</sup> Id. at page 60.

The California Commission on Access to Justice sought new funding for rural communities be allocated from the Legal Services Trust Fund. Several California law schools provide opportunities for law students to engage in rural communities. Law students at UC Irvine’s Community and Economic Development represented farmworkers living in low-income mobile home parks.<sup>32</sup>

Additionally, the State Bar of California supported incubator projects in rural areas to encourage lawyers to enter practice in rural communities. However, the results from the incubator projects have been mixed. One incubator closed due to the lawyer referral service that housed the incubator closed. Another incubator project was not able to proceed as it was unable to identify candidates who needed support from the incubator as the candidates did not need assistance to find jobs in rural communities.

## GEORGIA

In Georgia, most lawyers are consolidated in the metropolitan Atlanta region.<sup>33</sup> Researchers found that “as the state bar grays, few young lawyers are willing to relocate and practice in the state’s most rural areas . . . infrastructural factors—such as limited internet, vehicle, and public transportation access—create problems.”<sup>34</sup>

The report states that retired Judge Ronnie Joe Lane, former executive director of the Georgia Judicial Qualifications Commission, attempted to encourage law students on the benefits of practicing in a rural communities.<sup>35</sup> The pitch included being a part of a closer-knit community, lower cost of living and an easier commute. However, the judge found that young lawyers simply did not respond to the pitch, deciding it was not a good business opportunity to relocate to rural Georgia.<sup>36</sup>

In 2015, a former State Bar President sought to address the attorney shortage in rural Georgia by seeking the state legislature to enact a loan repayment assistance program for

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<sup>32</sup> *Id.* at page 61.

<sup>33</sup> *Id.* at page 64.

<sup>34</sup> *Id.* at pages 64-65

<sup>35</sup> *Id.* at page 72.

<sup>36</sup> *Id.*

young lawyers committed to working in rural communities for at least five years. That attempt, though, was also unsuccessful.<sup>37</sup>

## **MICHIGAN RURAL COMMUNITIES ARE FACING A DRAMATIC SHORTAGE OF ATTORNEYS**

Michigan is a massive state that encompasses 56,804 square miles and is composed of two peninsulas: the Upper Peninsula (U.P.) and the lower “Mitten.”<sup>38</sup> The 2021 estimated population of the State of Michigan is 10,050,811 people.<sup>39</sup> Of this total, an estimated 1,809,152 live in rural areas and 8,241,659 live in urban locations.<sup>40</sup> Michigan’s largest cities are Detroit, Grand Rapids, and Warren.<sup>41</sup>

## **THE VAST MAJORITY OF MICHIGAN ATTORNEYS PRACTICE IN POPULATION DENSE COUNTIES**

According to data from the State Bar of Michigan, there are currently 35,114 active Michigan resident members in the State Bar. Of the 83 counties in Michigan, almost 80% of practicing attorneys are saturated in the seven (7) metropolitan counties of Oakland (32.3%), Wayne (18.9%), Kent (7.8%), Ingham (6.9%), Macomb (5.3%), Washtenaw (5.3%), and Genesee (2.1%) (for a total of 78.6%). Accordingly, 21.4% of the balance of the attorneys are dispersed throughout the remaining 76 counties.<sup>42</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> Rural Health Information Hub at <https://www.ruralhealthinfo.org/states/michigan>

<sup>39</sup> U.S. Department of Agriculture, Economic Research Service at <https://data.ers.usda.gov/reports.aspx?StateFIPS=26&StateName=Michigan&ID=17854>

<sup>40</sup> *Id.*

<sup>41</sup> Rural Health Information Hub at <https://www.ruralhealthinfo.org/states/michigan>

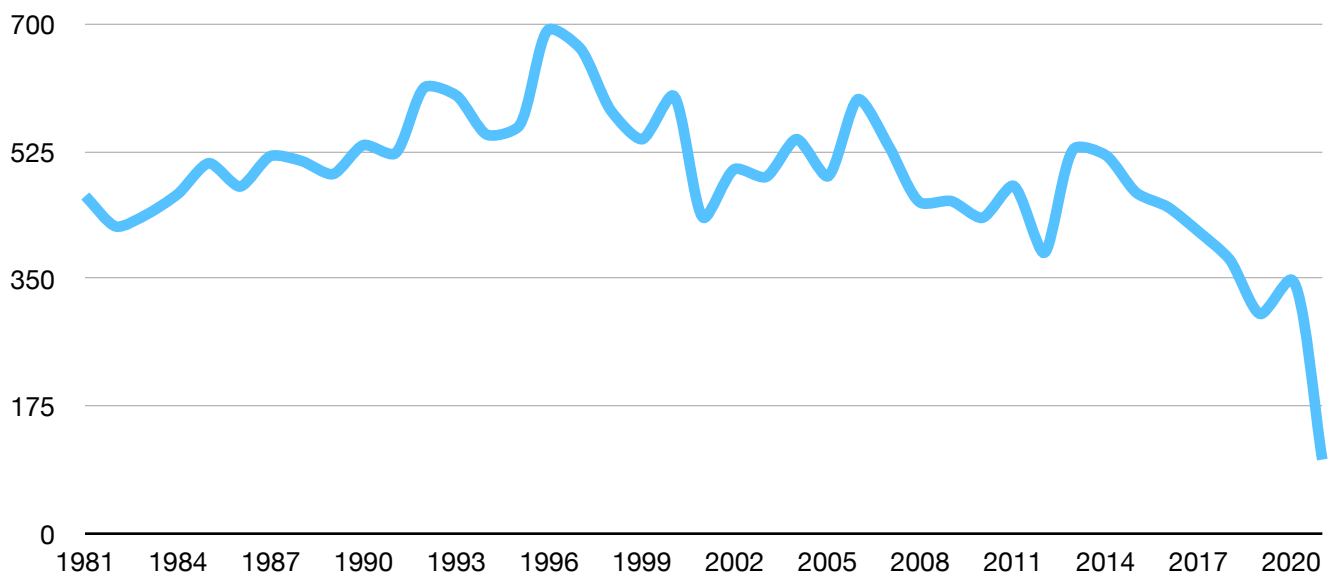
<sup>42</sup> State Bar of Michigan, State & County Demographics, 2021-2022, pages 10 - 12.

## SHARP DECLINE IN MICHIGAN OF NEW ATTORNEYS SINCE 2013

In 2016, the State Bar of Michigan’s 21st Century Task Force published its report titled Envisioning a New Future Today. The Task Force found an alarming drop in attorneys available to provide legal representation in Michigan, finding:

*Since 2013, there has been a sharp drop in the number of students entering law school. At the same time, the baby boomer generation of lawyers, who have swelled the ranks of the profession for four decades, are beginning to exit the full-time practice of law.<sup>43</sup>*

**New Michigan Bar Admissions Per Year  
1981 - 2020**



As a consequence of the diminishing number of attorneys, the task force found that the “number of litigants going to court without a lawyer has exploded, creating logjams in court dockets.”<sup>44</sup>

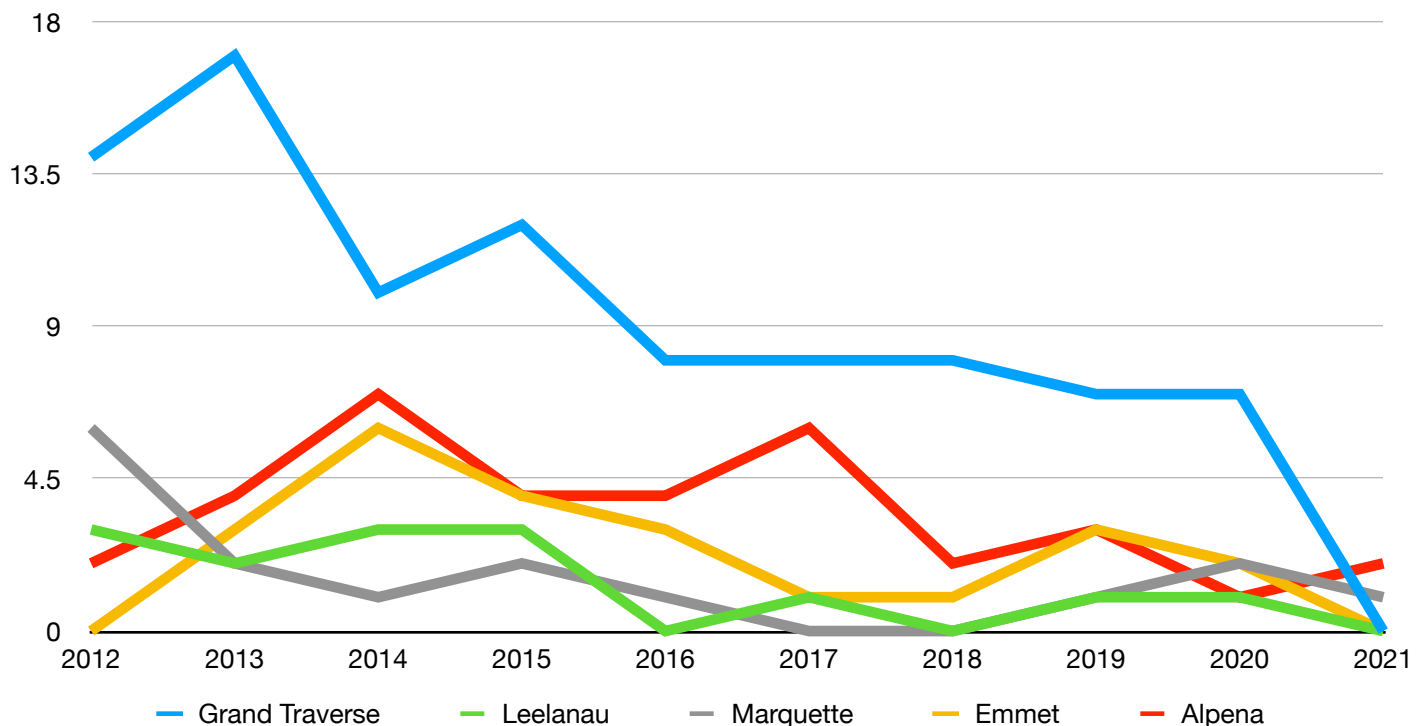
<sup>43</sup> Envisioning a New Future Today, State Bar of Michigan, 21st Century Task Force, 2016, page 3.

<sup>44</sup> Id.

## FEWER ATTORNEYS ARE MIGRATING TO RURAL MICHIGAN COUNTIES

Data reported by the State Bar of Michigan illustrates the lack of attorneys migrating to rural counties. Some of the most populous counties in Northern Michigan are Grand Traverse, Leelanau, Marquette, Emmet and Alpena. These counties all report a decrease in attorneys joining each county.<sup>45</sup>

**Michigan Attorneys Joining Most Populous Counties in Northern Michigan  
2012 - 2021**



The dramatic drop in Grand Traverse County is particularly alarming. Grand Traverse County is the most populous county in northern Michigan. Grand Traverse County is classified as a “micropolitan” regional hub centered around Traverse City, its county seat. Grand Traverse County has many amenities not found in other rural communities such as a large regional hospital, public transportation and multiple public and private schools.

Similarly, the numbers of attorneys joining counties in the Upper Peninsula is also anemic. In 2018, only three (3) attorneys were reported to joined all of the Upper Peninsula

<sup>45</sup> State Bar of Michigan, State & County Demographics, 2021-2022, pages 10 - 12.

counties. That number rose to six (6) in 2019, but then dropped to four (4) attorneys in 2020 and dropped to three (3) again in 2021.<sup>46</sup>

**Michigan Attorneys Joining Upper Peninsula Counties By Year\*  
2012 - 2021**

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
<b>Alger</b>	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>Baraga</b>	0	1	0	0	0	2	0	0	0	0	<b>3</b>
<b>Chippewa</b>	0	1	0	1	2	1	0	3	0	0	<b>8</b>
<b>Delta</b>	1	1	1	1	0	0	0	1	1	0	<b>6</b>
<b>Dickinson</b>	0	0	2	0	0	1	0	0	1	0	<b>4</b>
<b>Gogebic</b>	0	0	0	0	2	2	0	0	0	0	<b>4</b>
<b>Houghton</b>	0	2	2	1	1	1	0	0	0	1	<b>8</b>
<b>Iron</b>	0	0	1	1	1	0	1	0	0	0	<b>4</b>
<b>Mackinac</b>	0	0	1	0	1	1	2	0	0	0	<b>5</b>
<b>Marquette</b>	6	2	1	2	1	0	0	1	2	1	<b>16</b>
<b>Menominee</b>	1	1	0	2	1	0	0	1	0	0	<b>6</b>
<b>Ontonagon</b>	0	0	0	1	0	0	0	0	0	0	<b>1</b>
<b>Schoolcraft</b>	0	0	1	0	0	0	0	0	0	1	<b>2</b>

\* Luce and Keewenaw provided no data.

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<sup>46</sup> State Bar of Michigan, State & County Demographics, 2021-2022, pages 15 - 17. Note that the State Bar of Michigan's data pertaining to attorneys joining counties does not take into account attorneys who have left the county. Therefore, these numbers cannot be taken as net gains. It is simply a reflect of the number of attorneys who joined a county in a given year.



## RURAL MICHIGAN COUNTIES HAVE A HIGHER PROPORTION OF RETIREMENT AGE ATTORNEYS AND LOWER PROPORTION OF YOUNGER ATTORNEYS

Data from the State Bar of Michigan Statewide and County Memberships report shows a looming trend: an aging population of practicing attorneys in rural areas at or near the age of retirement.

With the exception of public defenders, most rural criminal defense attorneys provide a multitude of services beyond criminal defense. Although the Michigan State Bar does not have criminal defense as an “occupational area” category, it is telling that the highest proportion of attorneys in Michigan are private practice attorneys (48.2%).<sup>47</sup>

The State Bar of Michigan breaks generations in four (4) categories: Traditionalists (born prior to 1944), Boomers (born between 1944 and 1960), Gen X (born between 1961 and 1980), and Millennials (born after 1981).

Across the state, the largest generational proportion is Gen X, at 39.4%.<sup>48</sup> In Oakland County, the State’s most lawyer-saturated county, a full 40% of the practicing attorneys are Gen X.<sup>49</sup> There are similar proportions of Gen X attorneys reflected in Wayne, (38.7%), Kent (42.2%), Ingham (41.7%), Macomb (40.9%), Washtenaw (41.0%), and Genesee (39.6%) counties, respectively.<sup>50</sup>

In many rural counties, however, these proportions are not similarly reflected. In Baraga County, for example, 16.7% of the attorneys are Gen X. Similar low proportions of Gen X attorneys are found in Cheboygan (22.6%), Delta (23.4%), Dickinson (30.8%), Iron (21.7%), Kalkaska (23.1%), Leelanau (23%), Mackinac (29.4%), Menominee (14.3%), Montmorency (16.7%), Ontonagon (25%), Presque Isle (16.7%), and Schoolcraft (14.3%).<sup>51</sup>

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<sup>47</sup> *Id.* at page 8.

<sup>48</sup> *Id.* at page 1.

<sup>49</sup> *Id.* at page 31.

<sup>50</sup> *Id.* at pages 30 - 32.

<sup>51</sup> *Id.*

The number of attorneys in the Millennial category are much lower, registering 6.5% in Cheboygan, 14.8% in Gogebic, 0.0% in Keewenaw, 10.0% in Leelanau, 7.8% in Mecosta, 0.0% in Montmorency, 0.0% in Ontonagon, 8.6% in Otsego, 0.0% in Presque Isle, 12.5% in Roscommon, and 9.6% in Wexford county.<sup>52</sup>

Compounding the low numbers of young attorneys migrating to rural communities in Michigan is missing infrastructure involving housing, healthcare, transportation and internet access. These factors culminate in making it much more difficult for attorneys to migrate to rural communities.

## **INFRASTRUCTURE DEFICITS IN RURAL MICHIGAN**

### **SHORTAGE OF AFFORDABLE HOUSING IN RURAL MICHIGAN COUNTIES LEADS TO A LABOR CRISIS**

Affordable housing has become a bottleneck for rural Michigan Counties. Northwest Michigan residents pay up to 50% of their income on transportation and housing.<sup>53</sup> In Mecosta County, Big Rapids Housing Commission Executive Director Mark Sochocki stated “I think every rural community, there’s a need for more housing, specifically affordable housing and single family housing...[i]t certainly has an economic impact having single family homes available.”<sup>54</sup>

### **LIMITED ACCESS TO MEDICAL FACILITIES IN RURAL MICHIGAN**

Access to medical care is an important consideration for any individual choosing a community. In urban areas, there are a full range of specialized medical centers. Conversely, in rural areas the question is often “whether there are any health care facilities and provider to access at all.”<sup>55</sup>

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<sup>52</sup> Id.

<sup>53</sup> See <https://www.9and10news.com/2022/02/25/lack-of-affordable-housing-affects-tc-labor-shortage/>

<sup>54</sup> See <https://www.9and10news.com/2021/11/22/special-report-the-affordable-housing-crisis-in-northern-michigan/>

<sup>55</sup> Johnson, Kenneth, Demographic Trends in Rural and Small Town America, Carsey Institute University of New Hampshire, 2006 at page 29.

Research has shown that large metropolitan counties have almost four times as many physicians per 100,000 people compared to rural counties with small towns.<sup>56</sup> Further, rural counties have only one-sixth as many health care specialists per 100,000 people compared to metropolitan regions.



The lack of health care professionals in rural communities is exacerbated by the longer distances that rural residents routinely have to travel in order to receive health services. In 2001, the National Center for Health Statistics found that there were higher fatality rates in rural regions for infants, young adults, middle-aged adults and victims of motor vehicles accidents.<sup>57</sup>

## LIMITED HIGH-SPEED BROADBAND INFRASTRUCTURE

Rural America continues to lag behind urban and suburban regions in terms of broadband adoption. Many rural counties still have large portions of their population that lack access to high speed broadband.<sup>58</sup> Research has shown that “relationships do exist between rural areas with higher levels of broadband availability/adoption and various measures of jobs and income.”<sup>59</sup>

This Commission should support efforts, both federal and state, to increase access to high-speed broadband to rural communities.

## MICHIGAN OFFICE OF RURAL DEVELOPMENT

There is an increased effort by the State of Michigan to address rural economic development and infrastructure issues discussed above. On January 4, 2022, Governor

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Whitacre, Brian, Does Rural Broadband Impact Jobs and Income? Evidence from Spatial and First-Differenced Regressions, *The Annals of Regional Science*, 2014 at page 18.

<sup>59</sup> *Id.*

Gretchen Whitmer signed an executive directive creating the Office of Rural Development (ORD) in the Michigan Department of Agriculture and Rural Development (MDARD).<sup>60</sup> The Office of Rural Development is tasked to:

- Work with the Michigan Economic Development Corporation on rural economic development;
- Collaborate with the Michigan State Housing Development Authority to address affordable housing development in rural communities;
- Provide guidance on education-related issues in rural counties; and
- Help facilitate the expansion of high-speed internet.

There are currently no law schools located in northern Michigan. Accordingly, those individuals from northern Michigan attending law school must migrate “down state” to pursue a law degree. The infrastructure available in these populous communities should be made to be comparable in rural communities in order to reasonably encourage younger generations of criminal defense attorneys to either return or migrate to rural communities to practice.

Increased and long-term investment, development, and partnership in rural infrastructure by ORD may help Michigan’s rural communities be a more compelling destination in the to attorneys going forward.

## **THE MICHIGAN INDIGENT DEFENSE ACT**

The Michigan Indigent Defense Commission Act mandates the Michigan Defense Commission to develop and implement standards for the appointment of legal counsel; for those providing indigent defense services as well as collect data, support compliance, administer grants and encourage best practices to accomplish the Commission’s mission.

Additionally, the Act requires that Commission “identify and encourage best practices for delivering the effective assistance of counsel to indigent defendants charged with crimes” and “identify and implement a system of performance metrics to assess the provision of indigent defense services in this state relative to national standards and benchmarks.”<sup>61</sup>

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<sup>60</sup> Press release from the Office of the Governor of the State of Michigan at <https://www.michigan.gov/whitmer/news/press-releases/2022/01/04/gov--whitmer-delivers-on-promise-to-create-new-office-of-rural-development-to-boost-economic-opport>

<sup>61</sup> MCL 780.985.

The Commission's statutory authority is set forth under MCL 780.989. Under paragraph (1) (a), the focus of the Commission is to ensure that all indigent adults in Michigan are provided effective assistance of counsel through indigent criminal defense systems across the entire State of Michigan. To this end, the Commission has broad authority to develop and administer the "implementation, enforcement, and modification of minimum standards, rules, and procedures."<sup>62</sup> Further, the Commission has the authority to investigate, audit and review "the operation of indigent criminal defense services to assure compliance with the commission's minimum standards, rules, and procedures."<sup>63</sup>

To the extent statutory amendments may be required to implement the following recommendations, this Commission should encourage such amendments be made as soon as possible.

## **RURAL COMMUNITIES WILL STRUGGLE WITH PROPOSED STANDARDS 6 AND 7**

Proposed Standard 6 pertains to indigent defense workloads. This standard states that an assigned counsel's workload shall permit each lawyer to provide each client the "time and effort necessary to ensure effective representation." Further, the proposed standard states that assigned counsel should not accept workloads that, due to their size, would "interfere with the rendering of quality representation."

Proposed Standard 7 sets forth the basic requirements for assigned counsels. This proposed standard establishes qualifications for misdemeanor cases, low-severity felony cases, high-severity felony cases, and life offense cases (including capital offenses). Proposed Standard 7 imposes a review of the quality of representation provided by assigned counsels. The review includes factors such as productivity. The evaluation of assigned counsels includes input from judges, prosecutors, clients, and peers in the criminal defense community.

Given the present distribution of attorneys, rural counties will find it nearly impossible to comply with MIDC Standards 6 and 7. Given the already low number of attorneys practicing in rural communities, coupled with the depressed economic state of many of these communities, the caseloads standards for attorneys is approaching unsustainable. It is increasingly difficult for rural communities to identify and recruit capital-qualified attorneys to practice indigent defense. Infrequency of high-severity felony and life offense trials make it even more difficult for attorneys to obtain the requisite experience to qualify under Proposed Standard 7.

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<sup>62</sup> MCL 780.989(1)(a).

<sup>63</sup> MCL 780.989(1)(b).

My communications with stakeholders in these communities suggests that all participants are feeling the stretch of fewer attorneys. Prosecuting attorneys are having difficulty recruiting new attorneys to fill positions. There are fewer criminal defense attorneys practicing in rural communities. Court dockets are increasingly backed up by an overflow of cases.

Given the increasing shortages of attorneys in rural counties, implementation of Proposed Standard 6 and 7 there will create a commensurate decrease in access by indigent individuals to defense attorneys to represent them in criminal cases

## **PROPOSED SOLUTIONS**

The MIDC has options available to address the looming criminal defense attorney shortage before it becomes a much more acute problem. These proposed solutions, though not an exhaustive list, are intended to provide the MIDC with some frameworks to consider when addressing how to approach this issue. These proposed solutions vary from an immediate and temporary fix to a more global solution.

### **SPECIAL ASSIGNMENT TRIAGE ADMINISTRATION**

The MIDC should immediately establish a contract with a designated Special Assignment Administrator. The Special Assignment Administrator would function as a Managed Assigned Counsel administrator for this program. Duties must include assigning cases; overseeing the work and needs of the attorneys; approving expert and investigator funds; and review and approval of attorneys' invoices. The Special Assignment Administrator should maintain information such as contact information for each attorney, open cases assigned to the triage attorney, and CLE hours obtained by the triage attorney.

The Special Assignment Administrator must be a practicing criminal defense attorney, have a strong working knowledge of each of the rural counties, the public defender offices, the Managed Assigned Counsels, court appointed attorneys practicing in these counties, the volume of cases for each of the courts, and the ability to manage a high volume of overflow dockets. The Special Assignment Administrator must create and compile a list of triage attorneys who would be willing to accept work in remote rural counties for an hourly fee.

Focus group discussions were conducted with attorneys who expressed interest in taking cases in rural communities. Criminal defense attorneys who would participate in this

triage system would either be solo practitioners or attorneys working at a law firm. The overwhelming consensus from these attorneys is that there is interest in taking cases if the hourly rate matches the federal Criminal Justice Act (CJA) panel rate. Currently, the hourly rate for non-capital cases is \$158.00 per hour and \$202.00 per hour for capital cases.<sup>64</sup> In the focus group, the attorneys also stated an expectation that hours for travel would also be compensated at the CJA hourly rate. Additionally, travel expenses such as airfare, meals, and lodging must be paid.

It is anticipated that this is a short-term but financially expensive proposition. Triage administration is temporary by nature. The purpose of this proposed solution would be short-term until a more robust system is put in place. Given that each of the triage attorneys would be separate and independent contractors from the MIDC, special care would need to be taken to analyze, review and approve speedy payment to triage attorneys. Support structures will need to be created for these attorneys to recruit, supervise and maintain attorneys in this program.

## **NETWORK OF REGIONAL RURAL PUBLIC DEFENDERS**

This Commission may consider creating networks of regional public defenders (NRPD). The goal of this network would be a backstop to cover cases with conflicts and overflows of some of the rural counties. The structure could be accomplished by either contracting with a non-profit corporation or establishing this under the MIDC. Utilizing a non-profit corporation may provide the opportunity for the non-profit to seek out and obtain new forms of grant funding for projects outside of the MIDC Act. The use of an internal position will increase transparency and accountability.

Currently, there are funding units that are already utilizing regional models with the Commission's permission. The difference with this proposed framework is that a series of compliance related requirements would be imposed on the funding unit, giving it the choice to either opt in or opt out of an NRPD. In turn, the funding unit would submit to this Commission for its approval a compliance plan as part of its annual plan.

For instance, as part of compliance, counties would elect to opt into a regional public defender network with other counties to partner in covering any cases with conflicts, overflow, or attorney shortages in a county. Each NRPD would engage in the recruitment,

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<sup>64</sup> See 2022 Increases to CJA Hourly Rates at <https://www.fd.org/news/2022-increases-cja-hourly-rates>.

retention and hiring of criminal defense attorneys to cover criminal matters in the regional network. Participating counties in an NRPD would pool funding, resources, and qualified attorneys for the regional public defender network.

An example would be a pan-Upper Peninsula regional network of public defenders. Marquette is the most populous county in the Upper Peninsula and it is centrally located. Marquette County is home to the most criminal defense attorneys practicing in the Upper Peninsula. Marquette County has a staffed public defender office. Upper Peninsula counties that opt in to a regional Upper Peninsula Public Defender Office could, in theory, provide expansive coverage to all of the fifteen (15) counties in the UP.

Similarly, NRPDs could be established in clusters of counties in the Lower Peninsula. The Thirteenth Circuit encompasses the counties of Leelanau, Antrim and Grand Traverse. Similarly, the 46th Circuit is composed of Kalkaska, Crawford and Otsego counties. Many rural counties in Michigan already share resources and courts such as these examples. An NRPD could overlay and compliment the managed assigned counsel systems already in place.

In order to effectuate an NRPD, the MIDC should create a rural attorney compliance plan. Counties would be required to adhere to representation requirements, consistent with the MIDC Standards, to ensure that indigent residents of rural counties are provided competent representation with adequate numbers of attorneys to fulfill a county's caseload. Failure by a county to meet its compliance obligation by having too few attorneys to cover caseloads would trigger a mechanism to compel a county to join an NRPD.

## **STATEWIDE PUBLIC DEFENDER SYSTEM**

The MIDC could create the Michigan Public Defender's (MPD) office. The MPD would provide legal representation for individuals — across the State of Michigan — accused of crimes who meet statutorily defined financial eligibility criteria.

As a first step, the Michigan Public Defender Services Commission (MPDSC) would be organized. The Governor of the State of Michigan would appoint a chairperson to this the Commission. Both the Michigan Supreme Court and the Michigan Legislature would have the power to appoint members to the MPDSC.



The Michigan Public Defender's Office would report to the Commission and the position of Chief Public Defender would be in the Michigan Public Defender's Office. A Deputy Chief Public Defender would report to the Chief Public Defender. The MPD could encompass administrative staff, specialized units, and regional MPD offices.

A statewide public defender system would have a much more centralized hierarchy, transparency, and accountability. An MPD would have an annual budget, staff of attorneys, and the ability to assign cases and regions to staff attorneys. Instead of individualized compliance plans with counties, the MPD would have a much broader view of indigent criminal defense across all of Michigan.

## ATTRACTING YOUNGER DEFENSE TEAM MEMBERS TO RURAL MICHIGAN

One major reason for the drop in student enrollment in law school is the extremely high cost of a legal education. Adding three years of schooling before acquiring the ability to earn in the legal profession, compounded by the massive debt acquired makes the profession unattractive or impracticable, especially to underprivileged or minority students. Any steps possible to alleviate this problem should be considered for immediate action.

The MIDC should consider actively cultivating and recruiting younger defense team members to rural Michigan defense programs. These measures should include paralegal and social work team members.

Some actions that could be taken are:

- Promoting **improved tuition repayment programs** to alleviate student debt in exchange for public service work (shorten times to qualify, simplify process, increase amounts forgiven in exchange for service)
- Working to establish a **prepaid tuition program** for candidates who are willing to make commitments to work for a period of time in a rural defense program. Many prospective law students cannot take on the tuition debt, even if they will qualify for a loan repayment program. Gen Z students tend to be interested in social justice programs and could potentially be willing to commit to a 4-5 year stint in a rural

program if it allows them to avoid racking up the substantial debt load that burdens law school graduates. A law school graduate facing the typical loan repayment burden cannot think about starting a family, buying a house or getting a new car. A prepaid tuition program could attract students interested in public service and contribute to solving rural attorney shortage issues. In addition, making the period of service attainable will help insure an ongoing supply of staff members to these programs.

- **Initiate high school and college participatory programs** to cultivate interest in the legal profession in general and public service practice in particular. Mock trial programs, job shadowing and internship opportunities (both volunteer and paid) could help bring dedicated, socially aware young people into the criminal justice system.

## CONCLUSION

A growing access to justice crisis is developing because fewer criminal defense attorneys are migrating to rural Michigan communities. The problems facing rural communities in Michigan are also being experienced in rural communities across the United States.

All is not lost, though. The great expanse of Michigan is both a weakness and a strength for rural communities. Smart investment in a rural public defense infrastructure can help narrow the access to justice gap many in rural Michigan are experiencing. In response to the COVID-19 pandemic, our Michigan Supreme Court has taken expansive steps to modernize district and circuit courts' remote across Michigan. Remote technologies have been put in place to allow clients and criminal defense attorneys to interface with each other, prosecutors, and the court in realtime regardless of physical location. To be sure, innovative approaches will be necessary to encourage attorneys to practice in rural communities.

Like in Nevada, Michiganders also have the right to receive equal treatment from the criminal justice system whether they are in an urban or a rural area. The MIDC must take action to ensure best practices for the delivery of effective assistance of counsel to indigent defendants in rural communities across of Michigan. Bold action by the MIDC will continue to enshrine Michigan's position as the national leader in addressing indigent defense for the 21st Century.

# THE RIGHT TO COUNSEL IN OAKLAND COUNTY, MICHIGAN

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EVALUATION OF  
TRIAL-LEVEL INDIGENT DEFENSE SERVICES  
IN ADULT CRIMINAL CASES

*OCTOBER 2022*



SIXTH  
AMENDMENT  
CENTER

The Right to Counsel in Oakland County, Michigan: Evaluation of Trial-Level Indigent Defense Services in Adult Criminal Cases

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**Prepared by**

The Sixth Amendment Center (6AC) is a non-partisan, non-profit organization providing technical assistance and evaluation services to policymakers and criminal justice stakeholders. Its services focus on the constitutional requirement to provide effective assistance of counsel at all critical stages of a case to the indigent accused facing a potential loss of liberty in a criminal or delinquency proceeding. See SIXTH AMENDMENT CENTER, <https://sixthamendment.org/>.

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**Prepared for**

The County of Oakland, Michigan, commissioned this evaluation and report using grant funds provided by the Michigan Indigent Defense Commission.

This report solely reflects the opinions of the authors and does not necessarily reflect the views of Oakland County or the Michigan Indigent Defense Commission.

Cover photo credit: Oakland County, Michigan

## EXECUTIVE SUMMARY

In 1963, the U.S. Supreme Court held in *Gideon v. Wainwright* that providing and protecting the Sixth Amendment right to effective assistance of counsel for indigent people accused of crimes in state trial courts is a constitutional obligation of the states under the due process clause of the Fourteenth Amendment. Today, the State of Michigan delegates to its counties, cities, townships, and villages the responsibility for establishing and administering indigent defense systems to effectively represent indigent adult defendants who face possible incarceration for crimes in the trial courts.

The state has accepted a portion of the responsibility for funding the right to counsel of those defendants, while continuing to delegate a portion of the funding responsibility to its local governments. The State of Michigan created the Michigan Indigent Defense Commission (MIDC) to promulgate and oversee the implementation of statewide standards, rules, and procedures to meet the requirements of the Sixth Amendment for adult criminal indigent defense representation in the trial courts and to distribute state funds to local governments to comply with those standards.

The State of Michigan is not the focus of this report. This study, funded through MIDC at the request of Oakland County, evaluated Oakland County's system for providing the right to counsel in those trial courts for which the county government is fiscally responsible – the Sixth Judicial Circuit Court and the 52nd District Court – to aid the county in determining the feasibility of creating a public defender office. The findings and recommendations of this report are addressed to Oakland County.

Indigent defense services in Michigan were created to service individual courts. Within Oakland County, there are 12 separate indigent defense systems, administered and funded by at least 11 different county and municipal governments, providing right to counsel services in 31 courtrooms at 14 separate court locations. This decentralization of right to counsel services impedes the ability of any of the 12 indigent defense systems within Oakland County to ensure the effective representation of indigent adult criminal defendants in the trial courts. For example:

- Each of the 12 indigent defense systems within Oakland County maintains its own list of private attorneys whom they appoint to represent indigent defendants. An individual private attorney may be available for appointment through more than one of these lists. Of the 287 attorneys who accept appointed cases in trial courts in the county at the time of this study, 217 of them are appointed by multiple indigent defense systems. Yet there is no means for the heads of those indigent defense systems to know how much work each attorney is appointed to do by the other indigent defense systems within the county.
- The same private attorneys who are appointed in the trial courts within Oakland County are frequently also appointed through indigent defense systems in other Michigan counties (most notably, in Macomb and Wayne counties), as well as accepting appointments to represent indigent defendants for state appeals and in the federal courts. Additionally, each private attorney is also free to represent privately retained clients.

There is no way for the manager of each indigent defense system within Oakland County to know how much work these attorneys are trying to handle.

MIDC is required by state law to promulgate standards addressing many aspects of indigent defense representation, and it has not yet completed that work. Of the nine standards proposed by MIDC as of October 2021, six have been approved by LARA and funded by the state thus far. There are not yet any statewide standards, for example, regarding reasonable indigent defense caseloads, preventing conflicts between the financial interests of attorneys and the legal interests of their appointed clients, and the need for continuous representation of a defendant by a single attorney, among others. Because the State of Michigan has delegated its constitutional responsibilities to local governments, the local governments – including Oakland County – have exposure to liability for structuring their indigent defense systems in ways that currently violate defendants’ rights to effective assistance of counsel, as discussed in the first three findings of this report.

**FINDING 1: Oakland County’s assigned counsel compensation method creates economic disincentives that impair defense counsel’s ability to provide effective representation.**

The Oakland County indigent defense system compensates attorneys according to a fee schedule that pays a flat fee per half-day in misdemeanor cases and a flat fee per event in felonies. Both payment methods pit the lawyer’s financial interests against the client’s legal interests. To understand how, consider the following hypothetical. Shortly after being appointed to represent a felony defendant at the preliminary stages of the case in district court, the appointed lawyer sees that one or more elements of the crime cannot be proven and points that out to the assistant prosecuting attorney handling the case. If the prosecutor offers a plea to a reduced misdemeanor offense and if the defendant accepts the offer and pleads guilty, the appointed attorney is paid \$375 (the standard fee for entering a plea to a misdemeanor in district court). However, if the attorney convinces the prosecutor to dismiss the felony charge altogether in district court – a better outcome for the defendant, which may require several more hours and several rounds of discussion between the appointed attorney and the prosecutor – the attorney earns only \$275 (the standard fee for a felony dismissal in district court).

Because attorneys are paid exactly the same amount for an event, no matter how few or how many hours they devote to carrying out that event, it is in the attorney’s own financial interest to spend as little time as possible on each individual defendant’s case. Furthermore, because attorneys are paid almost exclusively for events that occur inside the courtroom, attorneys are not compensated at all for much of the work that is necessary to provide effective representation. For example, aside from the initial client interview (a fee of \$100), an attorney is not compensated for meeting with a defendant in the office or at the courthouse, or anywhere outside of the jail. The attorney is not compensated for speaking to the defendant’s family to inform them about the case. Attorneys receive no pay for any investigation, reviewing discovery produced by the prosecution, interviewing witnesses, conducting legal research, seeking out sentencing alternatives and social services, or for any time spent in trial preparation, no matter the number of hours spent preparing for trial.

Compensating attorneys with a fixed rate for mostly in-court lawyer activities creates economic disincentives that impair defense counsel's ability to provide effective representation. Being paid the same amount whether an attorney does an effective job or not incentivizes the attorney to dispose of cases with as little work as possible. Although MIDC has promulgated a standard that will rectify this, it has not yet been adopted or funded. The absence of a statewide standard does not relieve local governments from the constitutional obligation to provide representation free from financial conflicts of interest.

**FINDING 2: Oakland County indigent defense attorneys' workloads are not controlled to permit effective representation.**

Oakland County has taken no steps to limit the number of cases that an attorney representing indigent clients may handle in a year. From October 1, 2021 through June 30, 2022, Oakland County's indigent defense services office appointed 190 different private attorneys to represent indigent defendants in the Sixth Judicial Circuit Court and 52nd District Court. A significant portion of those appointed attorneys have caseloads far above the proposed Michigan-specific caseload standards and many attorney caseloads also exceed the national caseload limits. Of the 50 attorneys with the largest caseloads, 39 of them have caseloads in excess of the proposed MIDC annual caseload maximums. In fact, those 39 attorneys are handling a caseload requiring *more than 52 full time attorneys* under the proposed MIDC standard.

For example, one attorney's total annual caseload is 211% of the recommended, but not yet approved, MIDC caseload maximums even before factoring in cases handled as "house counsel" (Oakland County schedules attorneys as "house counsel" for arraignment dockets and pretrial conference dockets in district court, where the house counsel attorney represents all defendants who are scheduled for their initial appearance or pretrial conferences during that house counsel shift). That is, the attorney is handling the work of more than two full time attorneys from cases assigned by the Oakland County indigent defense services office alone, before considering that attorney's other appointed and retained work. Oakland County has no way of knowing the full caseload of an attorney who represents indigent clients because those attorneys can also handle cases outside of Oakland County's purview (i.e., privately retained clients, indigent clients with cases in other district courts in Oakland County, indigent clients with cases in courts outside of Oakland County) or may have other jobs in the criminal justice system (i.e., managed assigned counsel coordinator, magistrate, municipal prosecutor).

Additionally, indigent defense system attorneys in Oakland County do not have adequate support staff, such as secretaries, paralegals, and social workers. When an attorney lacks support resources, the attorney must personally perform work that is not only outside the attorney's expertise, but also takes up valuable time that should be devoted to developing legal arguments and preparing the client's case.

**FINDING 3: Oakland County indigent defense attorneys do not continuously represent and personally appear at every court appearance throughout the pendency of the case.**

In all case types, Oakland County uses “horizontal representation,” whereby appointed clients are represented by a series of attorneys, rather than a single attorney representing a client from appointment through disposition of the case. In felony cases, many defendants are represented at their arraignment by an attorney appointed by some other indigent defense system within the county and then by a different attorney who is assigned by the Oakland County government for preliminary stages in district court and the trial stage in circuit court. Indigent defense attorneys in Oakland County seem to operate from the belief that, because they are not individually appointed as trial counsel when staffing arraignment hearings, no confidential attorney-client relationship exists between the scheduled arraignment attorney and defendants at their initial court appearances, creating a systemwide constructive denial of the right to effective assistance of counsel at critical stages of the criminal case.

In systems that rely on horizontal representation, the delay in appointing the actual trial lawyer has negative consequences for the client as promising investigative leads can go cold, critical evidence can be destroyed if not timely preserved, witnesses can become harder and harder to track down, and memories can fade.

Two further findings are just as troubling.

**FINDING 4: Oakland County’s indigent defense services office is not appropriately staffed and resourced to provide qualitative oversight of indigent defense services.**

The Oakland County indigent defense services office is responsible for the oversight of the indigent defense system in the Sixth Judicial Circuit Court and the 52nd District Court. Yet, the indigent defense services office lacks sufficient staff members qualified to ensure proper oversight of indigent defense services. For example, the indigent defense services office currently has ten full-time staff members, of which the chief attorney is the only attorney position on staff. The majority of non-attorney staff time is devoted to coordinating coverage by panel attorneys at court hearings and reviewing attorney vouchers submitted for payment. These are important functions, but non-lawyers are ill-equipped to provide *qualitative* reviews of criminal defense lawyers.

Proper oversight also requires access to timely, comprehensive, and relevant information. Not only does Oakland County government lack access to centralized information regarding all indigent defense systems within Oakland County and the services provided by the attorneys handling cases in each system, but what data Oakland County currently collects does not permit county policymakers to make informed policy decisions.

**FINDING 5: Oakland County chills the right to counsel in the 52nd District Court by publicly announcing that all misdemeanor defendants will be required to contribute a monetary amount towards their representation without considering an individual**



**defendant’s ability to pay, and the practices of some 52nd District Court judges to deny some defendants’ requests for appointed counsel may violate the right to counsel.**

Misdemeanors matter. For most people, misdemeanor courts are the place of initial contact with the Oakland County justice system. Much of a citizenry’s confidence in the courts as a whole – their faith in the county’s ability to dispense justice fairly and effectively – is framed through these initial encounters. Although a misdemeanor conviction carries less incarceration time than a felony, the collateral consequences can be just as great. Going to jail for even a few days may result in a person’s loss of professional licenses, exclusion from public housing, inability to secure student loans, or even deportation. A misdemeanor conviction and jail term may contribute to the break-up of the family, the loss of a job, or other consequences that may increase the need for both government-sponsored social services and future court hearings (e.g., matters involving parental rights) at taxpayers’ expense.

Collectively, these five findings lead to two principal recommendations.

**RECOMMENDATION A: Oakland County should advocate for statutory changes to allow the county to create a unified indigent defense system serving all of the courts within its geographic boundaries. In the meantime, Oakland County should seek to negotiate with the municipalities responsible for the other indigent defense systems in Oakland County and come to an agreement where all indigent defense services in the county are provided by Oakland County.**

The people who work and reside in Oakland County would be best served by a single indigent defense system that can provide uniform administration and oversight of attorneys representing indigent defendants in adult criminal cases throughout all trial courts within the county. After all, the level of justice one receives should not be dependent on which side of a municipal line a crime is alleged to have been committed. The promulgation of MIDC standards made binding on all indigent defense systems starting in fiscal year 2019 sparked a years-long effort to “change the culture” among attorneys providing indigent defense services within Oakland County. But the absence of a single indigent defense system means the culture change being sought must be addressed separately within each indigent defense system within the county, each occurring at its own pace, and with Oakland County lacking power and authority to guarantee to its citizenry the creation of a uniform standard of practice that complies with constitutional commands. Unfortunately, Oakland County currently lacks the statutory authority to create such a unified indigent defense system without obtaining the consent of the various local governments within Oakland County.

Moreover, there is no longer any reason that indigent defense should remain attached to each trial court jurisdiction. The local share of indigent defense funding in many jurisdictions within the boundaries of Oakland County is less than 5% of total annual spending. In one system, the local government’s share is less than 0.5% of total spending. Each year the State of Michigan comes closer and closer to providing 100% of all indigent defense funding, and yet the state gains no additional decision-making authority over each local system.

The policy choice to maintain local control of indigent defense services under the state's general supervision, made at the time the MIDC Act of 2013 was passed into law, was a legitimate choice in the aggregate to maintain local control until such time as the state began putting money into indigent defense services. But with judges now removed from responsibilities for the indigent defense systems, and with the state funding the majority of indigent defense costs in the trial courts, that decision warrants revisiting. The philosophy of local control can be maintained by moving the administration and local share funding of indigent defense services to the county level of government.

Therefore, Oakland County officials should advocate for the Michigan legislature to enact the following statutory changes:

- The consolidation of responsibility for providing indigent defense services under the auspices of county government in each county, thereby eliminating the district court-level indigent defense systems;
- The reformation of criminal procedure to make all felony prosecutions commence in the circuit courts, and to abolish horizontal representation within and/or across different indigent defense systems;
- A resolution of the conflict caused by the separate statutory provisions authorizing indigent defense systems to collect contribution only from defendants determined to be partially indigent, while also permitting trial courts to assess attorney fees at conviction regardless of the defendant's indigency status; and
- A requirement that court-generated revenue from attorneys fee assessments is counted as indigent defense system income that is reported annually to MIDC and that 100% of revenues collected locally from indigent defendants are disbursed to the State of Michigan in support of local indigent defense services through future MIDC grants.

While these statutory changes are being debated by state lawmakers, there is nothing that precludes Oakland County from pursuing a local memorandum of agreement with all the other local governments currently providing indigent defense services to create a unified countywide indigent defense system. Indeed, there is precedent already within Oakland County for such an effort. Since fiscal year 2019, the county and all district court funding units have agreed to share the administrative burden of providing training to indigent defense system attorneys through a coordinated method – a contract with the Oakland County Bar Association, funded by MIDC annual grants to the government of Oakland County – rather than each devising a training program of its own. Similarly, as permitted by Michigan law and MIDC policies, Oakland County should convene all necessary stakeholders to develop plans for creating a single indigent defense system providing the right to counsel in all criminal trial courts within Oakland County under a single annual compliance plan, with MIDC annual grant support to Oakland County directly.

**RECOMMENDATION B: Oakland County should seek MIDC grant funding to redesign its indigent defense services office. Specifically:**

- **The county should create a new position of executive director of indigent defense services.**

- **The executive director should be appointed to a four-year term of office, removable only for just cause and eligible for reappointment.**
- **The executive director should oversee a central office staff to provide centralized services that produce economies of scale (e.g., training, finance, information technology, etc.).**
- **Representation in adult criminal cases should be provided by a combination of:**
  - **a public defender office staffed by government employees, funded at a level to provide for a sufficient number of attorneys, support staff, and supervisors to meet MIDC proposed workload standards; and**
  - **a managed assigned counsel system in which private attorneys are paid at least \$100 per hour for misdemeanors, \$110 per hour for non-life offense felonies, and \$120 per hour for life offense felonies.**
- **The executive director should be authorized to explore offsetting the costs of these higher assigned counsel rates by creating an alternate defender office to provide representation in a portion of conflict cases.**



**To: Michigan Indigent Defense Commission**

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

**Re: Compliance Planning and Costs:  
FY22 and FY23 status updates and staff recommendations**

**Date: December 13, 2022**

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**I. Funding Awards by Fiscal Year**

	MIDC Funding	Local Share	Total System Costs
FY 2019	\$86,722,179.85	\$37,963,396.67 <sup>1</sup>	\$124,685,576.52
FY 2020	\$117,424,880.47	\$38,523,883.90	\$157,698,982.46
FY 2021	\$129,127,391.54	\$38,486,171.32	\$167,613,562.86
FY 2022	\$138,348,406.27	\$38,146,920.09	\$176,495,326.36
FY 2023	\$172,424,423.47	\$38,825,422.67	\$211,249,846.14

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

We have begun distributing funding for all systems to implement the plans and costs in FY2023. The initial payments reflect 25% of the MIDC grant funded portion of the total; the 2<sup>nd</sup> disbursements will be offset by any unexpended balances on deposit with the local system as of September 30, 2022. The MIDC annually collects information about

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

the balance in a form completed by the local funding units due no later than October 31, 2022. See the MIDC Act, MCL 780.993(15).

## II. FY22 Compliance Planning Update

### A. Overview

As of the June 2022 meeting, all 120 systems have had their plans and cost analyses approved and contracts were fully executed reflecting the grant terms.

In accordance with the contract, most systems received their initial payment in early November 2021 and their second distribution in January 2022, a third disbursement in April 2022, and the final distribution was issued in July. The date of expected compliance with MIDC Standard 5, independence from the judiciary, was on or after May 1, 2022 for all of these systems.

#### 1. Implementation of Plans and Compliance

The date of first payment received and the date of expected compliance is closely tracked for every system pursuant to MCL 780.993(11). The rubric used for system assessments has been updated to reflect the new requirement of independence from the judiciary. The rubric is included in the MIDC's grant manual and is available for systems to review.



### **a. System Reporting - Progress Towards Compliance**

Staff received the final/fourth quarter of reporting from systems for FY22 (covering June 1, 2022 through September 30, 2022) at the end of October 2022. Funding units were required to enter the following reporting in EGrAMS:

- Attorney List
- Financial Status Report
- Quarterly Program Report
- Unexpended Balance

MIDC Staff offered online training sessions in mid-January and posted a recording of the training on the MIDC's YouTube page for anyone to review at any time throughout the year. Staff also conducted multiple "office hours" or drop-in online support sessions for technical assistance, and has "help desk" services advertised on the EGrAMS homepage. A [self-guided tutorial](#) for the final quarter of financial reporting was distributed in early October 2022 and posted to the MIDC's website on the grants page.

As of this writing, over 90% of the reporting has been successfully submitted by funding units and approved by staff. All requests for corrections are processed through EGrAMS; local system project directors are able to review the status of reporting, payments, adjustments, and contract terms at any time.

## **b. Notice of Noncompliance Issued**

### **1. Muskegon County**

On April 11, 2022, notice advising that the Compliance Resolution Process was being initiated was sent to the funding unit via U.S. Mail and electronic mail for the following reasons:

- Failure to provide verification and documentation of compliance with Standard 2 – initial interviews of in-custody clients and initial contact with out-of-custody clients;
- Failure to provide verification and documentation of compliance with Standard 4 – walk-in arraignments taken into custody without the opportunity to consult with an attorney; and
- Failure to comply with the approved cost analysis.

Muskegon stakeholders have made significant efforts toward compliance, with the assistance of Regional Manager Susan Prentice-Sao and Grants Director Rebecca Mack. I have received several written reports from the system detailing these efforts. Staff has extended the time for full compliance and will continue to provide support to the funding unit during this process.

Meetings with the local stakeholders have been held as recently as the week of December 12<sup>th</sup> covering pending financial reporting and a line item transfer request, quarterly program data questions, and a system assessment request made by the funding unit to the National Association for Public Defense.



## 2. City of Detroit

On December 9, 2022, notice advising that the Compliance Resolution Process was being initiated was sent to the funding unit via U.S. Mail and electronic mail for failing to provide FY22, 4<sup>th</sup> quarter financial reports and for a pattern of consistently late reporting that must not continue. This chart shows the reports, due dates, submitted dates, and status of each report:

REPORT	FREQUENCY	DUE DATE	SUBMIT DATE	STATUS
Attorney List	Quarterly	10/30/2022	10/31/2022	On time
Attorney List	Quarterly	7/31/2022	8/18/2022	Late
Attorney List	Quarterly	5/1/2022	6/8/2022	Late
Attorney List	Quarterly	1/31/2022	5/20/2022	Late
Financial Status Report	Quarterly	10/30/2022		No submission
Financial Status Report	Quarterly	7/31/2022	8/18/2022	Late
Financial Status Report	Quarterly	5/1/2022	5/19/2022	Late
Financial Status Report	Quarterly	1/31/2022	4/30/2022	Late
Quarterly Program Report	Quarterly	10/30/2022	10/31/2022	On time
Quarterly Program Report	Quarterly	7/31/2022	8/25/2022	Late
Quarterly Program Report	Quarterly	5/1/2022	6/8/2022	Late
Quarterly Program Report	Quarterly	1/31/2022	5/25/2022	Late
Report of Unexpended Grant Funds	Yearly	10/31/2022		No submission

The funding unit has until January 9, 2023 to work with the MIDC Regional Manager to resolve these compliance issues.

## 2. Budget Adjustments (information items)

The Grants Director processed and approved the following budget adjustment requests (line item transfer requests) pursuant to the process set forth in the MIDC's Grant Manual at p. 29 (February 2022):

- Alger County (2 requests)
- Berrien County
- Branch County
- Calhoun County
- City of Grand Rapids
- City of Southfield
- City of Taylor
- City of Wayne
- City of Wyandotte
- Clare County
- Ingham County
- Ionia County
- Iron County
- Jackson County
- Kalamazoo County
- Kent County
- Lake County
- Leelanau County
- Mason County
- Muskegon County
- Newaygo County
- Ottawa County
- Presque Isle County

The following requests were denied by the Grants Director as unnecessary or withdrawn by the funding unit:

- City of Lincoln Park
- Marquette County

### III. FY23 Compliance Planning

#### A. Overview of process and submissions received

All funding units were required to submit a plan for compliance with all approved MIDC Standards no later than April 26, 2022, pursuant MCL §780.993. Funding units used the MIDC's Grant Management System (EGrAMS) to do so. Training on submission was conducted by MIDC Staff at the end of March 2022, and a [recording](#) is linked on our website along with resources and materials for planning, including:

- An [application](#) for systems to address how they will comply with the MIDC's Standards. [This Word document is offered for convenience in planning; the application must be submitted through the MIDC's grant management system (EGrAMS)].
- A [cost analysis template](#) identifying funding required to comply with the Standards [This Excel document is for convenience in planning; the cost analysis must be submitted through the MIDC's grant management system (EGrAMS)].
  - If a system contracts with a vendor operating as a public defender office, a [this template](#) for planning purposes [Excel document].
- [Answers to Frequently Asked Questions about the Indigency Screening Standard](#) to assist with compliance planning, along with decision trees for [indigency screening](#), [contribution](#), and [reimbursement](#).
- Systems are welcome to incorporate language from sample plans for compliance with the indigency screening standard, using a [public defender model \(non-attorney employee\)](#), [MAC system](#), or if the [court will continue screening](#).
- [Tips from Staff](#) [.pdf document] about FY23 planning.

## B. Status of submissions to date

### 1. Approved Plans and Costs for FY23

As of the October 11, 2022 meeting, all 120 systems have had their plans and cost analyses approved and are in the following stages for contract approval as of this date:

Stage	Number of funding units
<b>Fully executed contracts, initial (25%) funding distributed</b>	101
<b>Contracts issued, pending with funding unit for signature</b>	15
<b>Contracts pending with LARA for final signature (funding unit and MIDC approved already)</b>	2
<b>Contracts not issued yet, awaiting identification of authorized official by funding unit for inclusion on the contract to be distributed</b>	2

Two funding units had their FY23 Compliance Plans approved by the MIDC, and their cost analyses partially approved, pursuant to MCL 780.993(4):

- Saginaw County
  - FY22 approved total system cost: \$5,535,030.51
  - FY23 requested total system cost: \$7,507,142.75
  - FY23 MIDC Approved total: \$6,891,142.75
- D47 City of Farmington
  - FY22 approved total system cost: \$356,483.14
  - FY23 requested total system cost: \$467,713.19
  - FY23 MIDC Approved total: \$452,600.00

Both systems received notification by way of an official mailing of the MIDC's action and options for proceeding sent via U.S. Mail on October 14, 2022. Both systems opted to accept the MIDC's approved cost analysis and have fully executed contracts in place as of this writing.

## 2. Revisions to Compliance Plans

- **City of Birmingham (action item)**

Total System Cost: \$514,700.00

Local Share: \$17,600.22

MIDC Funding: \$497,099.78

No anticipated change to overall costs for FY 2023

The City of Birmingham would like to increase the rate of pay for its arraignment attorneys from \$250 per half-day shift to \$300 per half-day shift effective January 1, 2023. The City would like to increase the arraignment rate because it is having trouble staffing these shifts at the current rate—this rate is \$50 less than the LMOS market rate. The expected cost of this increase is \$16,200.00 (\$50 x 36 shifts per month x 9 months). The City believes that this change can be absorbed without impact to the budget because caseloads still have not returned to pre-pandemic levels.

Staff supports this request because it would bring the shift payment more in line with Standard 8. It also recognizes the importance of having a large list of attorneys available to meet the court's sizeable arraignment needs.

The City of Birmingham would also like to increase the hourly rate of pay for its managed assigned counsel coordinator (MACC) from \$50.00 an hour to \$60.00 effective January 1, 2023. The City would like to increase the MACC's pay because she has never had a pay increase, she frequently handles the most difficult cases at the court, and, due to a lack of roster attorney interest, she has had to perform more shift work

than contemplated in her contract. The expected cost of this increase is \$13,500.00 (\$10 per hour x 150 hours per month x 9 months). The City believes that this change can be absorbed without impact to the budget because caseloads still have not returned to pre-pandemic levels.

Staff supports this request because, even with the increase, the MACC's hourly compensation rate is the lowest in the region and she provides a large number of representation services as part of her contract.

- **City of Farmington (action item)**

Total System Cost: \$452,600.00

Local Share: \$22,082.46

MIDC Funding: \$430,517.54

No anticipated change to overall costs for FY 2023

The City of Farmington Hills would like to change its compliance plan so that its managed assigned counsel coordinators screen for indigency. The City believes this change will best promote and implement the standards. The City does not believe that this modification will result in a budget shortage, and is therefore not requesting any change in the budget. The managed assigned counsel coordinators will be able to do both their previously required tasks and the indigency screening within the amount of hours allocated in the cost analysis.

Staff supports approving the request because appointed counsel is routinely denied to defendants charged with offenses like driving while license suspended. Based on court observations, it appears that some unrepresented defendants have been subjected to pay or stay sentences.

- **Saginaw County (action item)**

Total System Cost: \$6,891,142.75

Local Share: \$924,854.51

MIDC Funding: \$5,966,288.24

No anticipated change to overall costs for FY 2023

Saginaw County is seeking to implement a contract for traffic cases Handled by the Managed Assigned Counsel in FY23. The MAC is prepared to offer contracts to two attorneys to handle MAC's share of the traffic cases in FY23. The proposal is based on the projected case volume from FY22. For FY22, the Saginaw Defender Office (SDO) and MAC handled approximately 1701 traffic cases. Based on the FY2022 case volume and the current 50/50 case distribution between MAC and SDO, the MAC is projected to handle approximately 850 traffic cases in FY23.

The funding unit seeks permission to offer a contract to two independent attorneys who will each handle approximately 425 cases in FY23. Each attorney would be offered a contract in the range of \$63,750 - \$74,375 (i.e., 425 cases x 1.5hrs x \$100 = \$63,750; 425 cases x 1.75hrs x \$100 = \$74,375) for an estimated cost between \$127,500 - \$148,750. The MAC spent \$447,718 on traffic cases in FY22. If the proposal is accepted, the MAC is estimated to spend approximately 30% of what was spent last year on traffic cases.

The SDO intends to use law students/interns with a supervising attorney present. There is a chance that they will be able to persuade the prosecutor to prepare offers before arraignment, which will make the proposal even more time-saving for the client and cost-saving for the system.

- **City of Dearborn (information item)**

Total System Cost: \$932,922.58

Local Share: \$79,472.40

MIDC Funding: \$853,450.18

No anticipated change to overall costs for FY 2023

The funding unit is adjusting personnel to change an Office Assistant II to additional time for an attorney, ultimately becoming a full time position. With the anticipated passing of Standard 8, invoicing will become more complicated and each of the 150 attorneys' invoices will need to be looked at with more scrutiny. This will require more time. Attorney invoicing is one of the tasks that can only be completed by a licensed attorney. The time that will be added to attorney invoicing calls for a full-time attorney to help instead of a part time attorney. In addition to invoicing only an attorney can handle the scheduling of attorneys for the 20 systems in the Regional Office as well as assisting with investigators and experts. To this point the office has used a part time attorney to help the Regional MACC to fulfill these obligations but time has shown that a part time attorney is unable to provide the assistance needed. In addition, a full time attorney is necessary to fulfill the office's obligation in the absence of the Regional MAAC while out of the office on vacation or in the field.

### 3. **Budget Adjustments (information items)**

The Grants Director processed and approved the following budget adjustment requests (line item transfer requests) pursuant to the process set forth in the MIDC's Grant Manual at p. 29 (February 2022):

- Branch County
- City of Dearborn (to facilitate plan change/info item above)
- Gratiot County
- Ingham County
- Kent County
- Oakland County