



**REPORT PREPARED FOR THE
MICHIGAN INDIGENT DEFENSE
COMMISSION**

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

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INTRODUCTION

Rural 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.¹ 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.”² 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.”³

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.”⁴ 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.”⁵ 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.”⁶

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

¹ 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.

² Id. at page 18.

³ Id.

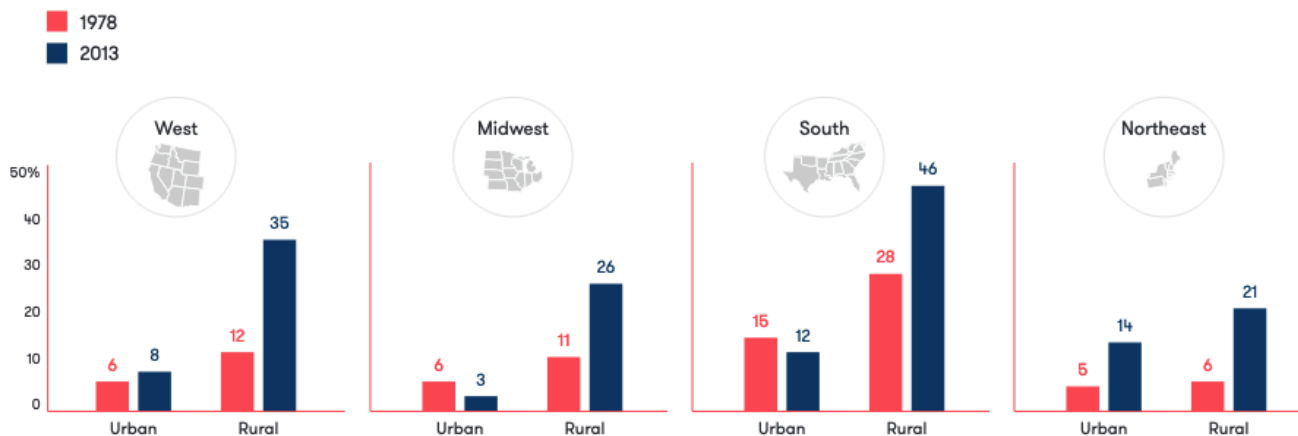
⁴ Id. at page 128.

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

⁶ Id. at page 129.

consequently increased the national incarceration rate.⁷ 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”.⁸

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.⁹ 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.”¹⁰ 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.

⁷ *Id.* at note 15 at page 7.

⁸ 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.

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

¹⁰ *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.”¹¹ 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.”¹² 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.”¹³

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.”¹⁴ 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.¹⁵

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.”¹⁶

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

¹² Id.

¹³ Id. at page 18.

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

¹⁵ Id. at page 5.

¹⁶ Id. at page 3.

The Legal Services Corporation published its 2022 Justice Gap Report.¹⁷ This report found that approximately 74% of low income households experienced one or more legal problem in the past year.¹⁸ 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.”¹⁹ Additionally, approximately 33% of low-income Americans reported experiencing at least one legal problem linked to the COVID-19 pandemic in the past year.²⁰ 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.²¹

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.²²

*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.*²³

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

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

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at page 4.

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

mortality.”²⁴ Since 1990, an increasing number of rural counties “actually experience natural decrease, where deaths in a county exceed births.”²⁵ 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.²⁶

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.”²⁷

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.²⁸ 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.²⁹

However, a diminishing number of attorneys practicing in rural California has lead to a search for solutions to bridge this gap.³⁰ 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.³¹

²⁴ Id. at page 12.

²⁵ Id.

²⁶ Id.

²⁷ 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.

²⁸ Id. at page 32.

²⁹ Id.

³⁰ Id. at page 37.

³¹ 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.³²

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.³³ Researchers found that "as the state bar grows, 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."³⁴

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.³⁵ 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.³⁶

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

³² *Id.* at page 61.

³³ *Id.* at page 64.

³⁴ *Id.* at pages 64-65

³⁵ *Id.* at page 72.

³⁶ *Id.*

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

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.”³⁸ The 2021 estimated population of the State of Michigan is 10,050,811 people.³⁹ Of this total, an estimated 1,809,152 live in rural areas and 8,241,659 live in urban locations.⁴⁰ Michigan’s largest cities are Detroit, Grand Rapids, and Warren.⁴¹

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.⁴²

³⁷ *Id.*

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

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

⁴⁰ *Id.*

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

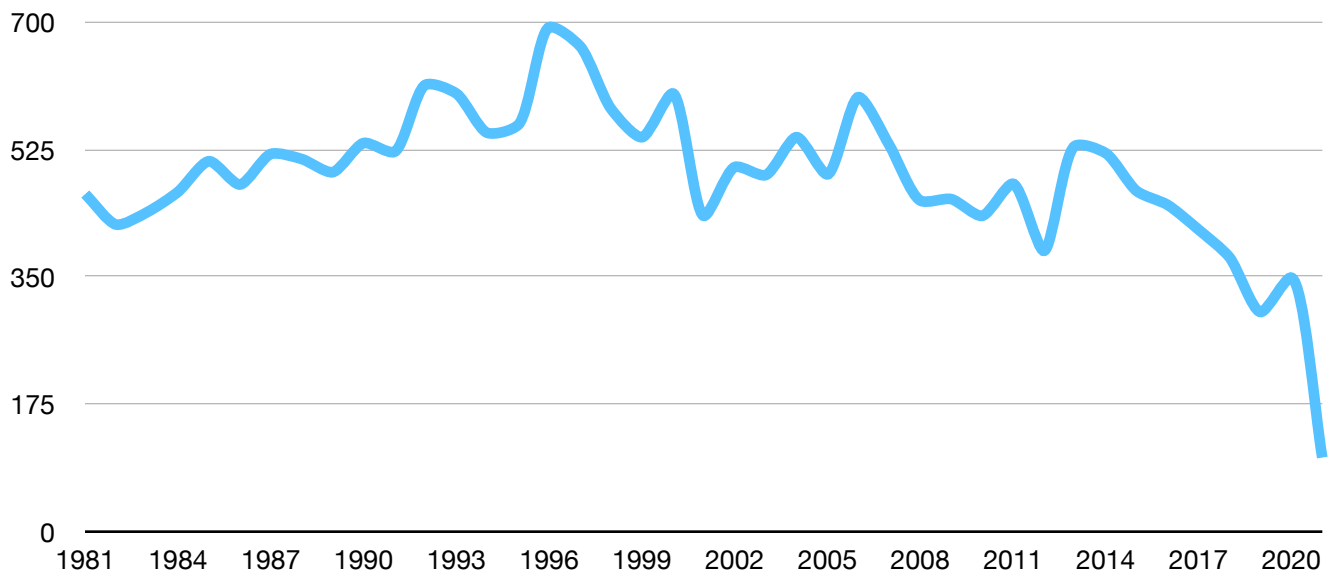
⁴² State Bar of Michigan, State & County Demographics, 2021-2022, pages 10 - 12.

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.⁴³

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



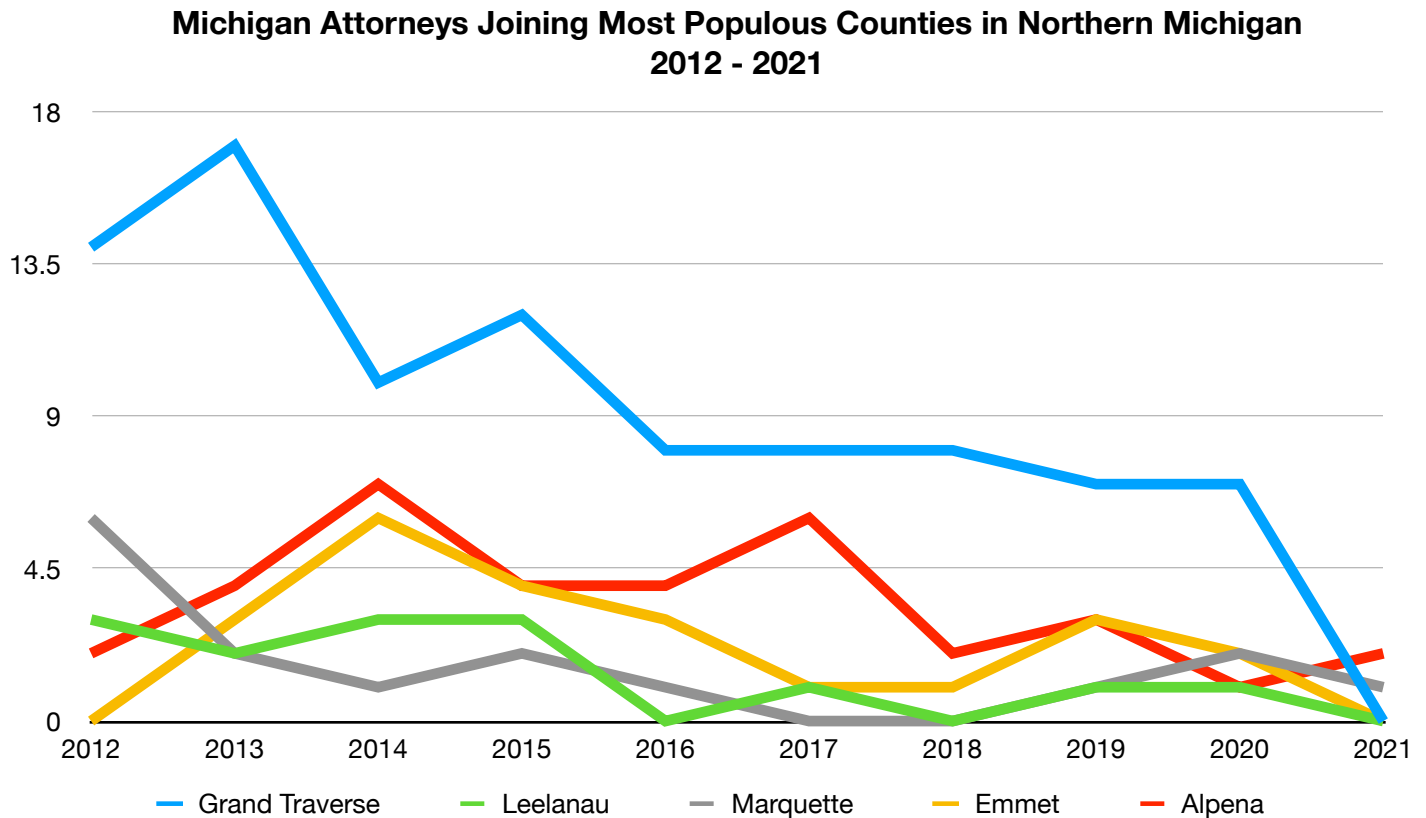
As a consequence of the diminishing number of attorneys, the task force found that the “number of litigants going to court without a lawyer has exploded, creating logjams in court dockets.”⁴⁴

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

⁴⁴ 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.⁴⁵



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

⁴⁵ 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 2021.⁴⁶

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

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

* Luce and Keewenaw provided no data.

⁴⁶ 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%).⁴⁷

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%.⁴⁸ In Oakland County, the State’s most lawyer-saturated county, a full 40% of the practicing attorneys are Gen X.⁴⁹ 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.⁵⁰

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%).⁵¹

⁴⁷ *Id.* at page 8.

⁴⁸ *Id.* at page 1.

⁴⁹ *Id.* at page 31.

⁵⁰ *Id.* at pages 30 - 32.

⁵¹ *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.⁵²

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.⁵³ 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.”⁵⁴

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.”⁵⁵

⁵² Id.

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

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

⁵⁵ 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.⁵⁶ 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.⁵⁷

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.⁵⁸ Research has shown that “relationships do exist between rural areas with higher levels of broadband availability/adoption and various measures of jobs and income.”⁵⁹

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

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ 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.

⁵⁹ *Id.*

Gretchen Whitmer signed an executive directive creating the Office of Rural Development (ORD) in the Michigan Department of Agriculture and Rural Development (MDARD).⁶⁰ 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.”⁶¹

⁶⁰ 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>

⁶¹ 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."⁶² 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."⁶³

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.

⁶² MCL 780.989(1)(a).

⁶³ 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.⁶⁴ 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,

⁶⁴ 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.