

A New Paradigm: Michigan Indigent Defense 2015-2018



Jonathan Sacks
Director
October 1, 2024

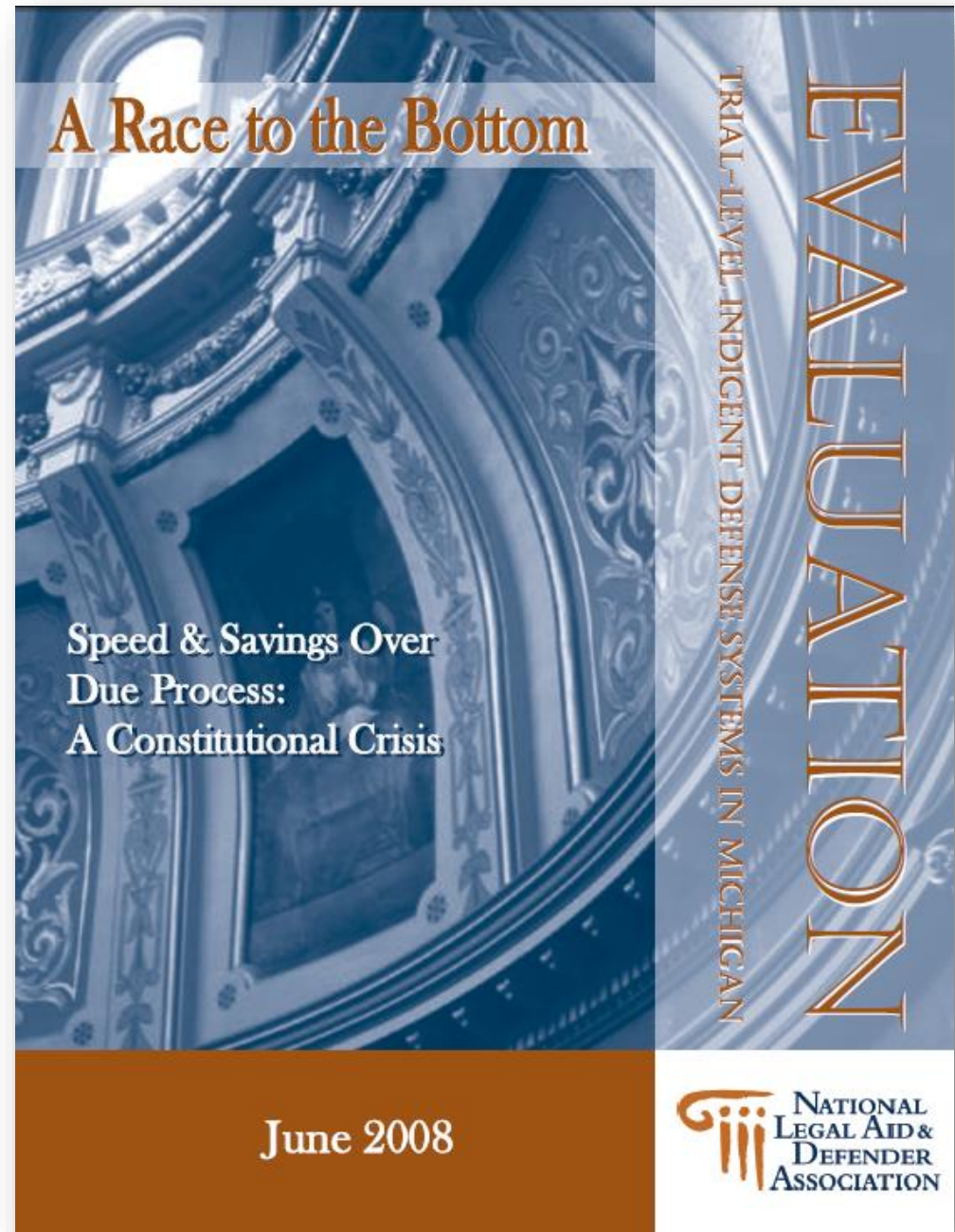
6th Amendment



“That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries.”

Gideon v Wainwright (1963)

Michigan Background



Counties Studied:

Alpena, Bay, Chippewa, Grand
Traverse, Jackson, Marquette,
Oakland, Ottawa, Shiawassee and
Wayne

ABA Ten Principles of a Public Defense Delivery System *with commentary* (2002)

ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

Black Letter

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



Per-Capita Spending

33.	Tennessee	\$9.30
34.	Alabama	\$9.17
35.	North Dakota	\$8.80
36.	Rhode Island	\$8.67
37.	Kansas	\$8.53
38.	Hawaii	\$8.26
39.	Maine	\$8.20
40.	Pennsylvania	\$8.10
41.	Oklahoma	\$8.02
42.	Idaho	\$7.83
43.	South Carolina	\$7.65
44.	Michigan	\$7.35
45.	Texas	\$7.04
46.	Indiana	\$6.77
47.	Arkansas	\$6.65
48.	Utah	\$5.22
49.	Missouri	\$5.20
50.	Mississippi	\$4.15
	NATIONAL AVERAGE	\$11.86

Comparing indigent defense systems across state lines is difficult, at best, given jurisdictional variances related to: delivery model, population, geographical expanse, prosecutorial charging practices, crime rates, county versus state funding, three strikes laws, and the death penalty (among others). For example, the state of Alaska has the highest cost per capita indigent defense spending (\$40.96) due almost entirely to the fact that public defenders must travel by air for many court appearances. So, whereas a high cost per capita may not necessarily guarantee that a state is providing adequate representation, a low indigent defense cost per capita certainly is an indicator of a system in trouble. Michigan ranks 44th of the 50 states.

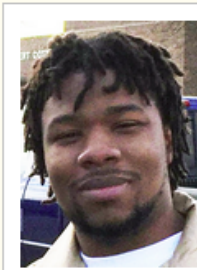
In the year-long study of ten representative counties, NLADA concluded that none are constitutionally adequate and Michigan ranked 44th out of all 50 states in per capita indigent defense spending.

What does this mean?

Convictions and imprisonment
of the actually innocent.

DERRICK BUNKLEY

[Other Michigan Attempted Murder Cases](#)



Derrick Bunkley

At about 11:50 p.m. on May 3, 2014, 51-year-old Paris Ainsworth parked her car outside her home at 15423 Beaverland in Detroit, Michigan. Seeing two men approaching on foot, she took out her .45-caliber pistol and put it in her jacket pocket.

When she turned to go into her home, one man standing six or seven feet away confronted her, saying, "Don't pull it" and then shot her in the abdomen. She pulled out her pistol and shot back.

In the ensuing gunfire, she was struck four times—three times in the side and once in the hand. When police arrived, she said both men had shot her and she thought she had wounded one of them.

Ainsworth was taken to Sinai Grace Hospital where she told police that one gunman was a black man with a dark complexion in his 20's, about 5 feet, 7 inches tall, and weighed 200 pounds. The other man had a caramel complexion, also in his 20's, was about 5 feet, 3 inches tall and had a medium build.

At about 2 a.m. Charles Knox, Sr., was brought to the emergency room of the same hospital. He had been shot twice in the leg.

Police concluded that Knox was the man that Ainsworth had wounded and when Knox's son, 22-year-old Derrick Bunkley, arrived to check on his father's condition, Bunkley became a suspect in the shooting. Police showed Ainsworth a photographic lineup containing Bunkley's photograph and she identified him as one of the gunmen.

State:	Michigan
County:	Wayne
Most Serious Crime:	Attempted Murder
Additional Convictions:	Gun Possession or Sale, Illegal Use of a Weapon
Reported Crime Date:	2014
Convicted:	2014
Exonerated:	2016
Sentence:	17 to 32 years
Race:	Black
Sex:	Male
Age at the date of crime:	22
Contributing Factors:	Mistaken Witness ID, Inadequate Legal Defense
Did DNA evidence contribute to the exoneration?:	No



Human and financial cost of
sentencing errors.



Denial of counsel for
misdemeanor offenses.

Excessive caseloads.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

CHRISTOPHER LEE DUNCAN, BILLY
JOE BURR, Jr., STEVEN CONNOR,
ANTONIO TAYLOR, JOSE DAVILA,
JENNIFER O'SULLIVAN, CHRISTOPHER
MANIES, and BRIAN SECREST, on behalf
of themselves and all others similarly situated,

Plaintiffs,

Case No.

vs.

Hon.

STATE OF MICHIGAN and JENNIFER M.
GRANHOLM, Governor of the State of
Michigan, sued in her official capacity,

Defendants. /

Michael J. Steinberg (P43085)
Kary L. Moss (P49759)
Mark P. Fancher (P56223)
American Civil Liberties Union
Fund of Michigan
60 West Hancock
Detroit, MI 48201
(313) 578-6800

Frank D. Eaman (P13070)
Frank D. Eaman PLLC
Penobscot Building, Suite 3060
645 Griswold Street
Detroit, MI 48226
(313) 962-7210 /

COMPLAINT

There is no other pending or resolved
civil action arising out of the same
transaction or occurrence as alleged in
this Complaint.



<http://www.aclumich.org/duncan-v-granhholm>

Advisory Commission findings – June 2012

- Michigan's counties offer an “uncoordinated, 83-county patchwork quilt” of public defense systems.
- There is no data or transparency to show if taxpayer dollars are spent efficiently or effectively.
- There are no statewide standards to define or ensure constitutionally adequate defense counsel.

Michigan Indigent Defense Commission Act

Collects and compiles data for the review of indigent defense services in Michigan.

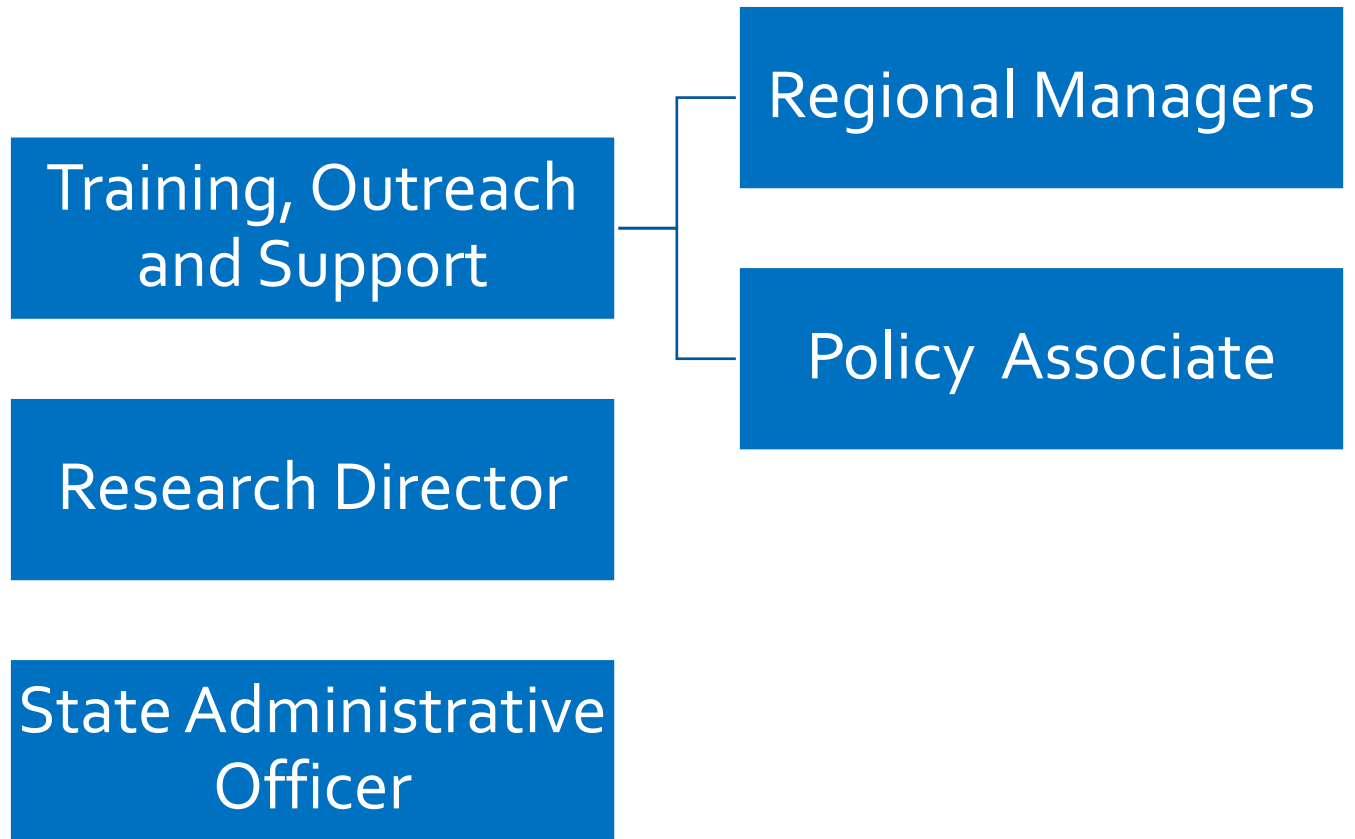
Creates minimum standards.

Works with counties to design plans to meet the standards and measures the performance of counties in providing public defense services.

Awards **state funded** grants to county systems to fund the compliance plans and bring systems into compliance with the new minimum standards.

Staff

Supervised by
Executive Director



Minimum Standards

Bulletproof

Supported by Data

Constitutionally Mandated

Required by Statute

Public Defender Office



Data Collection

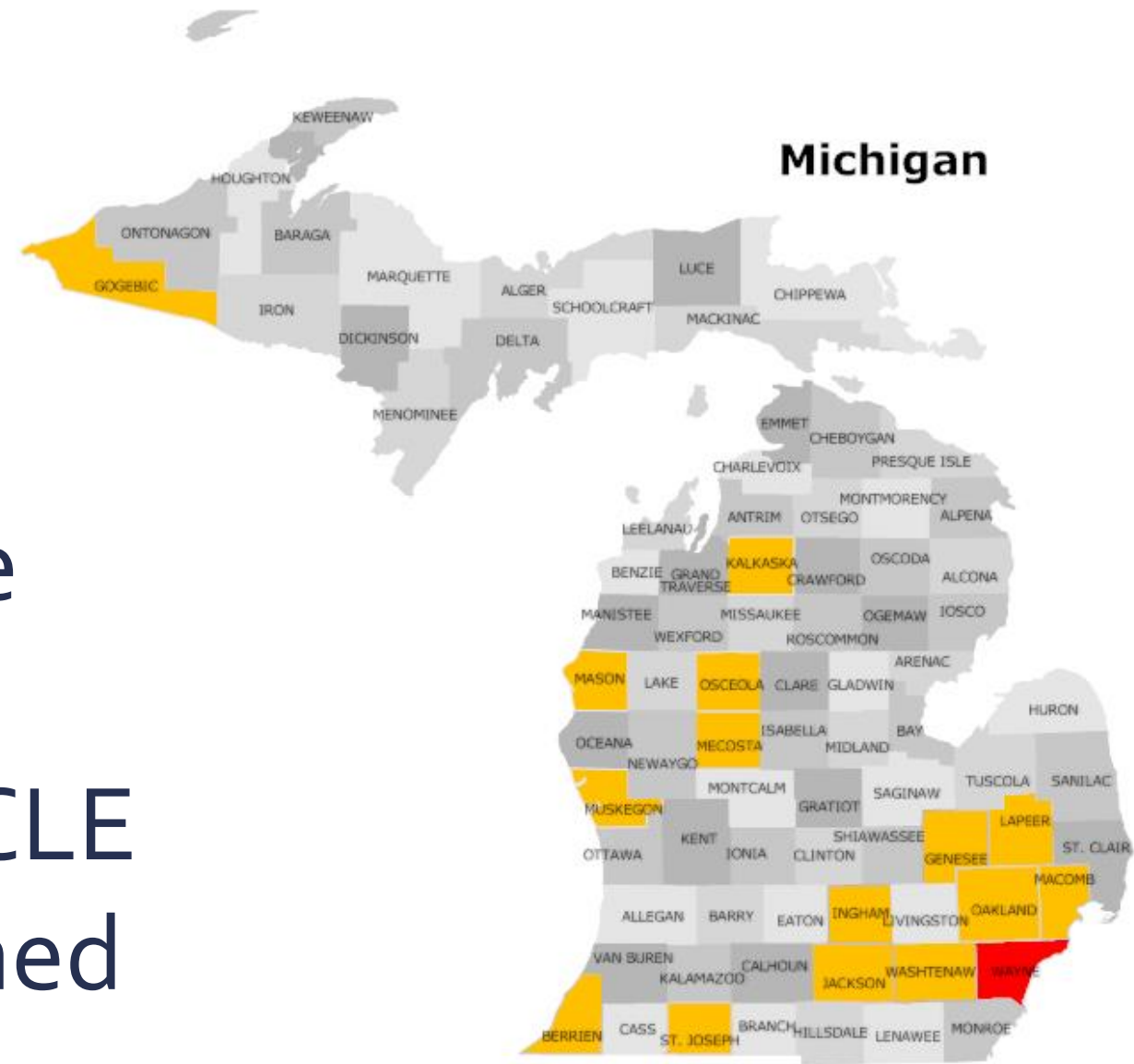


**Snapshot of Indigent Defense Representation in
Michigan's Adult Criminal Courts: The MIDC'S
First Survey of Local Court Systems**
A REPORT OF THE MICHIGAN INDIGENT
DEFENSE COMMISSION

Jonah A. Siegel | Research Director | February 2016

Standard 1 – Education and Training

The counties highlighted have reported some requirement of CLE to stay on assigned counsel list.



Standard 2 – Initial Interview

“Initial interviews with defendants (particularly those in custody) are frequently conducted in court (or in the “bullpen” – a cell behind the courtroom), just prior to a hearing held within days of the district court arraignment.”

MIDC – First
Survey of Local
Court Systems
February 2016

26% of courts no confidential space in either courthouse or holding facility.



9% of courts no confidential space in either location.

Standard 3 – Investigation / Experts

Standard 4 – Counsel at First Appearance

MIDC – First Survey of Local Court Systems
February 2016

- Only 6% of district courts require attorneys to be present at both the bail hearing and at arraignment, despite the documented importance of legal guidance in these early stages.

Order

**Michigan Supreme Court
Lansing, Michigan**

June 1, 2016

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2015-27

Stephen J. Markman
Brian K. Zahra

Administrative Order No. 2016-2

Bridget M. McCormack
David F. Viviano

Regulations Governing a System for
Appointment of Counsel for Indigent
Defendants in Criminal Cases and
Minimum Standards for Indigent
Criminal Defense Services

Richard H. Bernstein
Joan L. Larsen,
Justices

Pursuant to the Michigan Indigent Defense Commission Act, 2013 PA 93, the Michigan Indigent Defense Commission submitted to this Court proposed standards that would regulate the manner in which counsel would be appointed to represent indigent

Gov. Rick Snyder signs legislation improving Michigan's indigent criminal defense system

Wednesday, Jan. 4, 2017

LANSING, Mich. – Gov. Rick Snyder today signed legislation to ensure the [Michigan Indigent Defense Commission](#) meets state constitutional obligations and maintains independences from the judiciary while continuing its work to maintain a fair indigent criminal defense system in Michigan.

The Commission will now be housed within the Michigan Department of Licensing and Regulatory Affairs. In 2013, Snyder [signed legislation](#) that set statewide standards and accountability measures for public defense attorneys representing indigent criminal defendants.

“Ensuring that every Michigander has access to affordable and competent legal counsel is critical to our public defense system and our democracy,” Snyder said. “These bills help us continue to make sure those who have been accused of crimes receive the fair and capable legal representation they are guaranteed under the Constitution.”

House Bills 5842-5846 and Senate Bill 1109, sponsored by state Reps. Kurt Heise, Martin Howrylak, Klint Kesto, Vanessa Guerra, David LaGrand and state Sen. Rick Jones, respectively, moves the Michigan Indigent Defense Commission from the judicial branch to the Department of Licensing and Regulatory Affairs. The measures are now Public Acts 439-444 of 2016.

For more information on this and other legislation, visit www.legislature.mi.gov.

New MIDC Process

LARA approves MIDC standards

Systems submit compliance plan and grant funding request within 180 days of standards approval

MIDC approves plan and cost analysis within 60 days of submission

MIDC seeks state funding for compliance plans

Systems must comply with standards within 180 days of receiving funds.



MICHIGAN INDIGENT
DEFENSE COMMISSION

Minimum Standards for Indigent Criminal Defense Services

SUMMER 2017

Standards 1, 2, 3, and 4 were approved by the Department of Licensing and Regulatory Affairs on May 22, 2017. All indigent defense delivery systems in Michigan are required to submit compliance plans and cost projections to the MIDC **no later than November 20, 2017**.

This packet also contains the next set of standards which have been proposed by the Commission. The MIDC invites comments on proposed Standards 5, 6, and 7 from all members of the public and the criminal justice community through October 6, 2017.

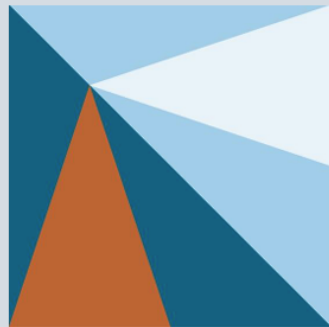
Michigan Indigent Defense Commission

SEND COMMENTS TO: 200 N. WASHINGTON SQUARE, 3RD FLOOR, LANSING, MICHIGAN, 48913 |
COMMENTS@MICHIGANIDC.GOV
(517) 657-3066

FOR MORE INFORMATION, VISIT OUR WEBSITE AT WWW.MICHIGANIDC.GOV

APPROVED:

- ✓ Training and Education
- ✓ Initial Interviews
- ✓ Experts and Investigators
- ✓ Counsel at First Appearance and Critical Stages



White Papers

To accompany Standards 1, 2, 3 and 4

Education and training, client interviews, the use of experts and investigators, and counsel at first appearance and other critical stages.

Prepared and published by the
Michigan Indigent Defense Commission

March 2017

200 N. Washington Square, 3rd Floor, Lansing, MI 48913

info@michiganidc.gov

517-657-3066



MICHIGAN INDIGENT
DEFENSE COMMISSION

DELIVERY SYSTEM REFORM MODELS

PLANNING IMPROVEMENTS IN PUBLIC DEFENSE

December 2016



MICHIGAN INDIGENT
DEFENSE COMMISSION

Minimum Standards for Indigent Criminal Defense Services

SUMMER 2017

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Proposed by MIDC:

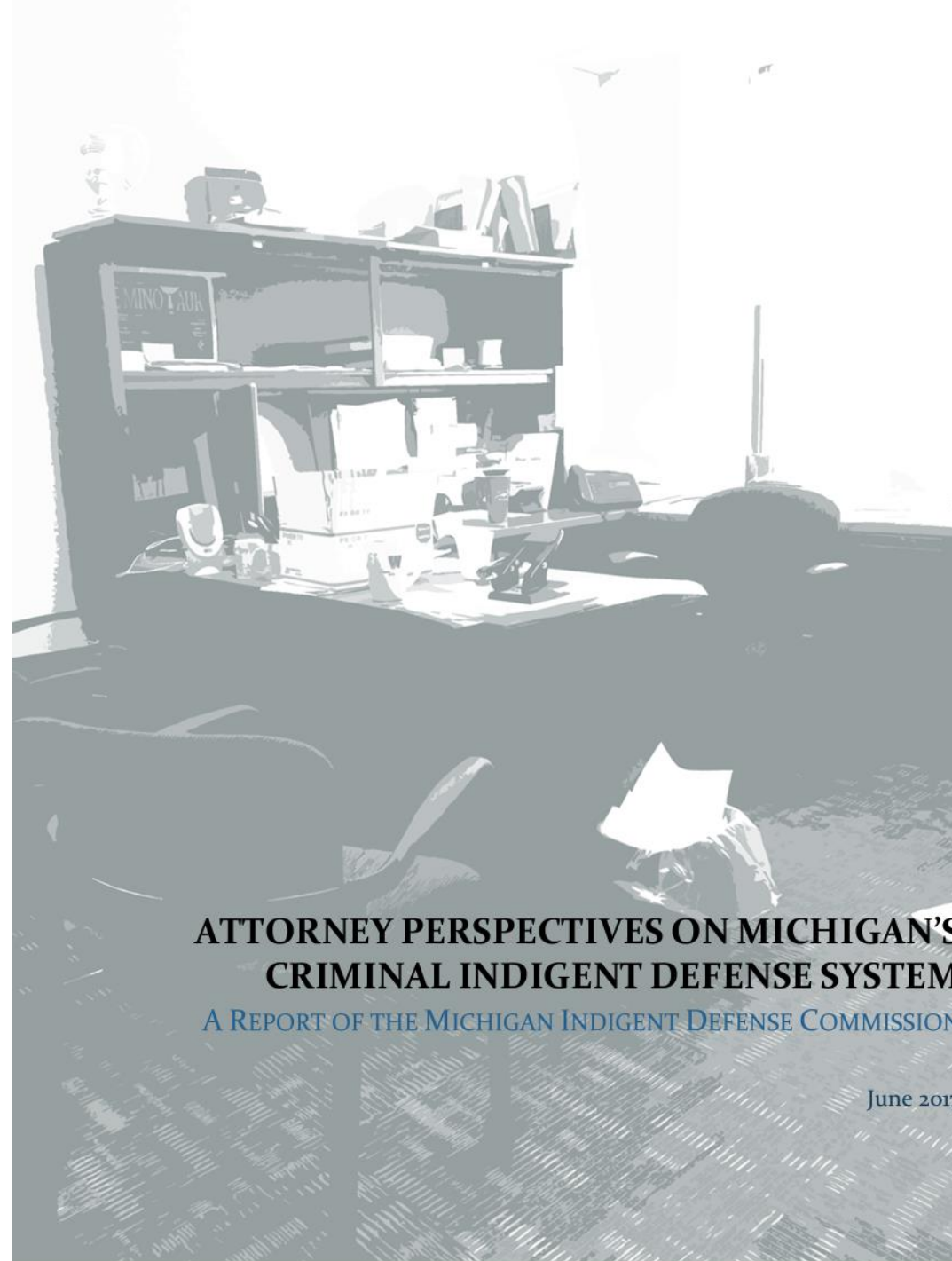
- Independence from Judiciary
- Indigent Defense Workloads
- Qualification and Review
- Economic Disincentives or Incentives



MICHIGAN INDIGENT
DEFENSE COMMISSION

Attorney Caseload Distribution in Michigan's Assigned Counsel Systems

Research Brief - June 2017



ATTORNEY PERSPECTIVES ON MICHIGAN'S CRIMINAL INDIGENT DEFENSE SYSTEM

A REPORT OF THE MICHIGAN INDIGENT DEFENSE COMMISSION

June 2017

First Compliance Plans



Compliance plans from 134 different counties and municipalities.



15 new public defender offices, regional cooperation.

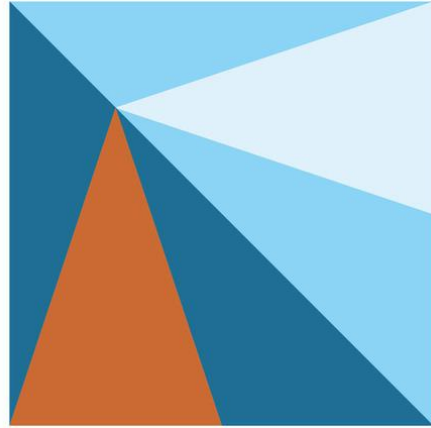


Thousands of CLE credits; counsel at first appearance statewide.



Over \$86 million per year funded.

Questions?
What's Next?



MICHIGAN INDIGENT DEFENSE COMMISSION

Pennsylvania Commission on Crime and Delinquency

Indigent Defense Advisory Committee

October 1, 2024

Kristen Staley

Executive Director

www.michiganidc.gov

517-657-3066

staleyk@michigan.gov

The MIDC Act

Public Act 93 of 2013
MCL 780.981 et seq.



The MIDC is required by statute to:

- **Develop and oversee implementation** of minimum standards on the delivery of indigent trial-level defense services
- **Administer grants** for local systems to come into compliance with standards
- **Monitor and ensure compliance** of standards
- **Collect and analyze** data from local indigent defense systems
- **Encourage best practices** in indigent defense services.

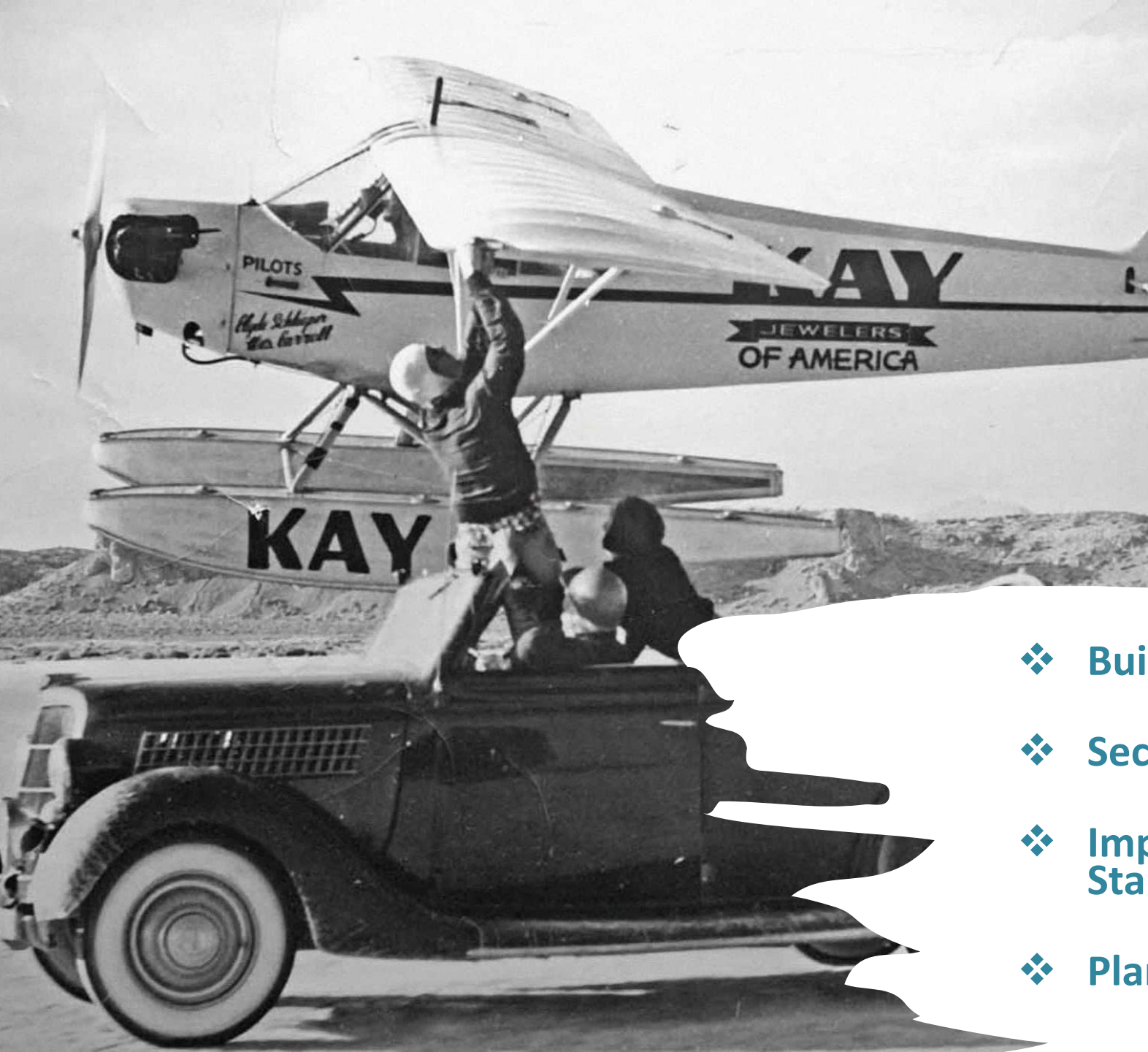
The MIDC Act

Public Act 93 of 2013
MCL 780.981 et seq.



Local Trial Court Funding Units must:

- “[C]ooperate and participate with the MIDC in the investigation, audit, and review of their indigent criminal defense services.”
- “[S]ubmit a plan to the MIDC . . . [to] specifically address how the minimum standards established by the MIDC under this act will be met.”
- “[M]aintain no less than their local share.”
- **Comply with MIDC Standards** and grant terms 180 days after receiving grant funds (exceptions allowed).



- ❖ Building New Systems
- ❖ Securing Support and Resources
- ❖ Implementing and Complying with Standards
- ❖ Planning for Long-Term Investments

Michigan Supreme Court

Michigan House of Representatives

Michigan Senate

State Budget Office

Michigan Judges Association

Michigan District Judges Association

State Bar of Michigan

Criminal Defense Association of Michigan

Prosecuting Attorney Association of Michigan

Michigan Association of Counties

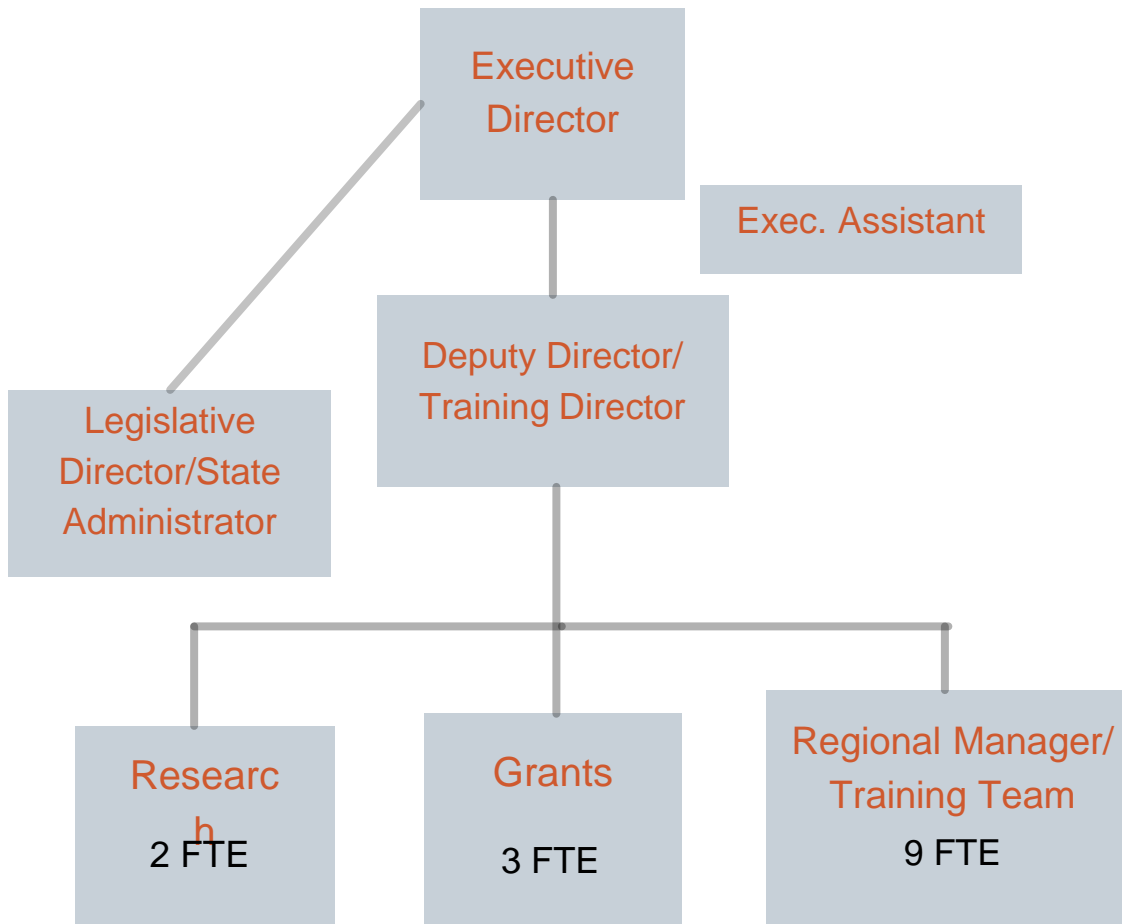
Michigan Municipal League/Michigan Township Assn.

General Public



MIDC Commissioners include 19
stakeholders from the criminal
legal community

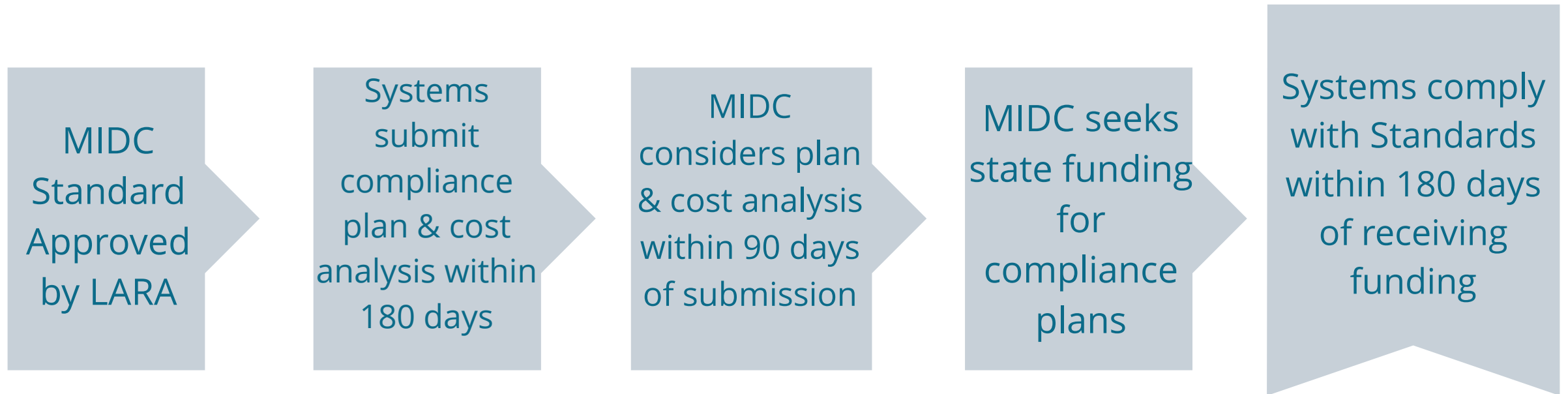
The MIDC's Staff serves a critical role



- 18 staff members support 19 Commissioners and 133 funding units across Michigan.
- Senior regional manager and 6 regional managers are experienced defenders who provide TA, monitor compliance, and support innovations in public defense.
- Grants director and 2 analysts oversee all aspects of compliance grant administration, financial data oversight, and annual auditing.
- Training director, grant-funded project manager, and compliance analyst host training events and oversee annual education requirements for all defenders.
- Research director and analyst help with case management systems, collect and assess compliance data to improve local practices.

MIDC Statutory Plan to Implementation Process

"The MIDC shall not approve a cost analysis or portion of a cost analysis unless it is reasonably and directly related to an indigent defense function." MCL § 780.993(4)



Fully Approved MIDC Standards



1. Education and Training of Defense Counsel

Approved May 17, 2017, implemented in 2019



2. Initial Interviews

Approved May 17, 2017, implemented in 2019



3. Investigation and Experts

Approved May 17, 2017, implemented in 2019



4. Counsel at First Appearance and All Critical Stages

Approved May 17, 2017, implemented in 2019



5. Independence from the Judiciary

Approved October 29, 2020, implemented in 2022



6. Indigent Defense Workloads

Approved October 24, 2023, to be implemented in 2025



7. Qualification and Review of Counsel

Approved October 24, 2023, to be implemented in 2025



8. Attorney Compensation

Approved October 28, 2022, being implemented in 2024



Determining Indigency and Contribution

Approved October 28, 2021, implemented in 2023

Appropriation Guard Rails in the MIDC Act

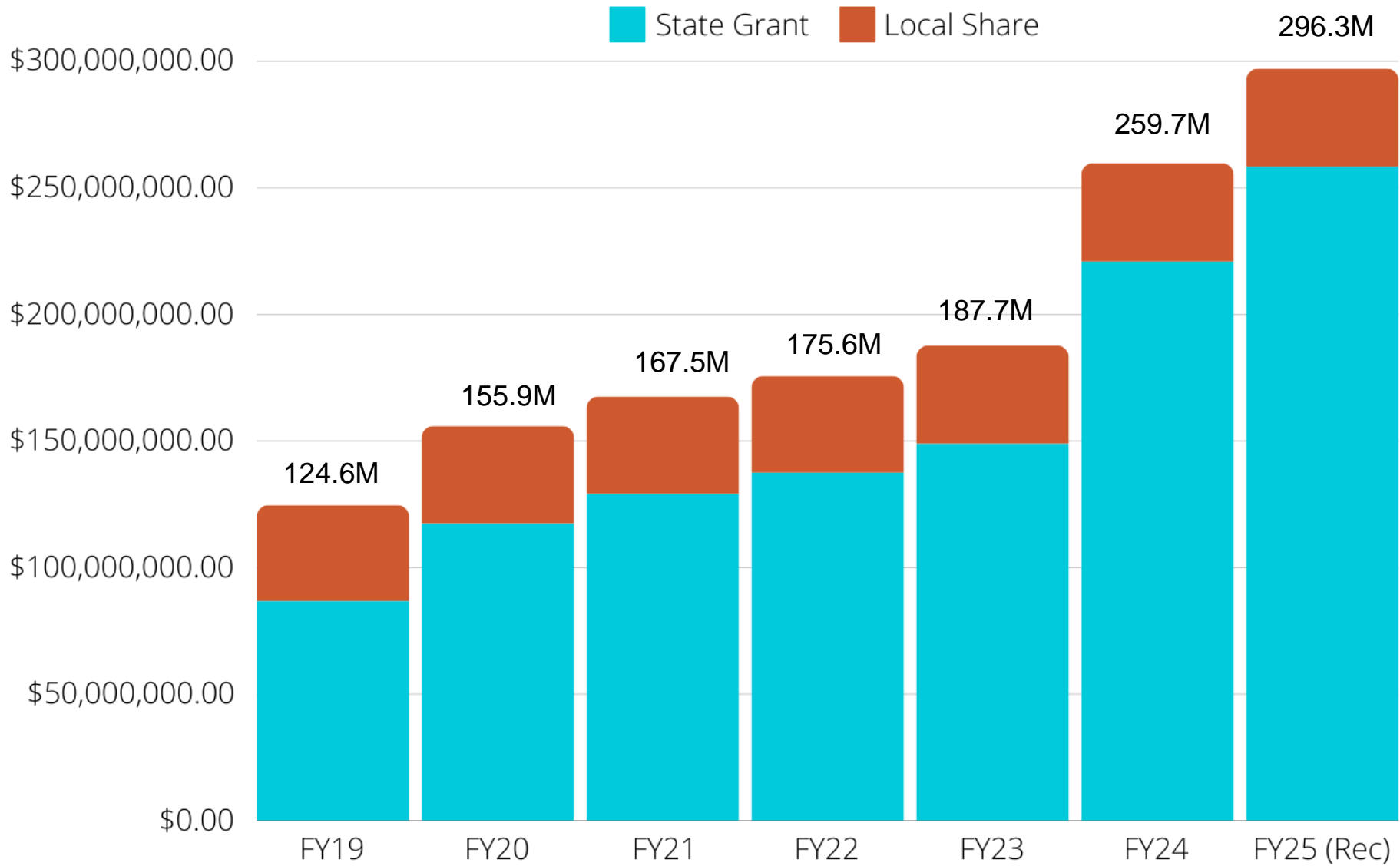
“A system's duty of compliance with 1 or more standards . . . is contingent upon receipt of a grant in the amount sufficient to cover that particular standard or standards contained in the plan and cost analysis approved by the MIDC.”

MCL 780.997(2)

“The legislature shall appropriate to the MIDC the additional funds necessary for a system to meet and maintain those minimum standards. The legislature may appropriate funds that apply to less than all of the minimum standards and may provide less than the full amount of the funds requested. . . .”

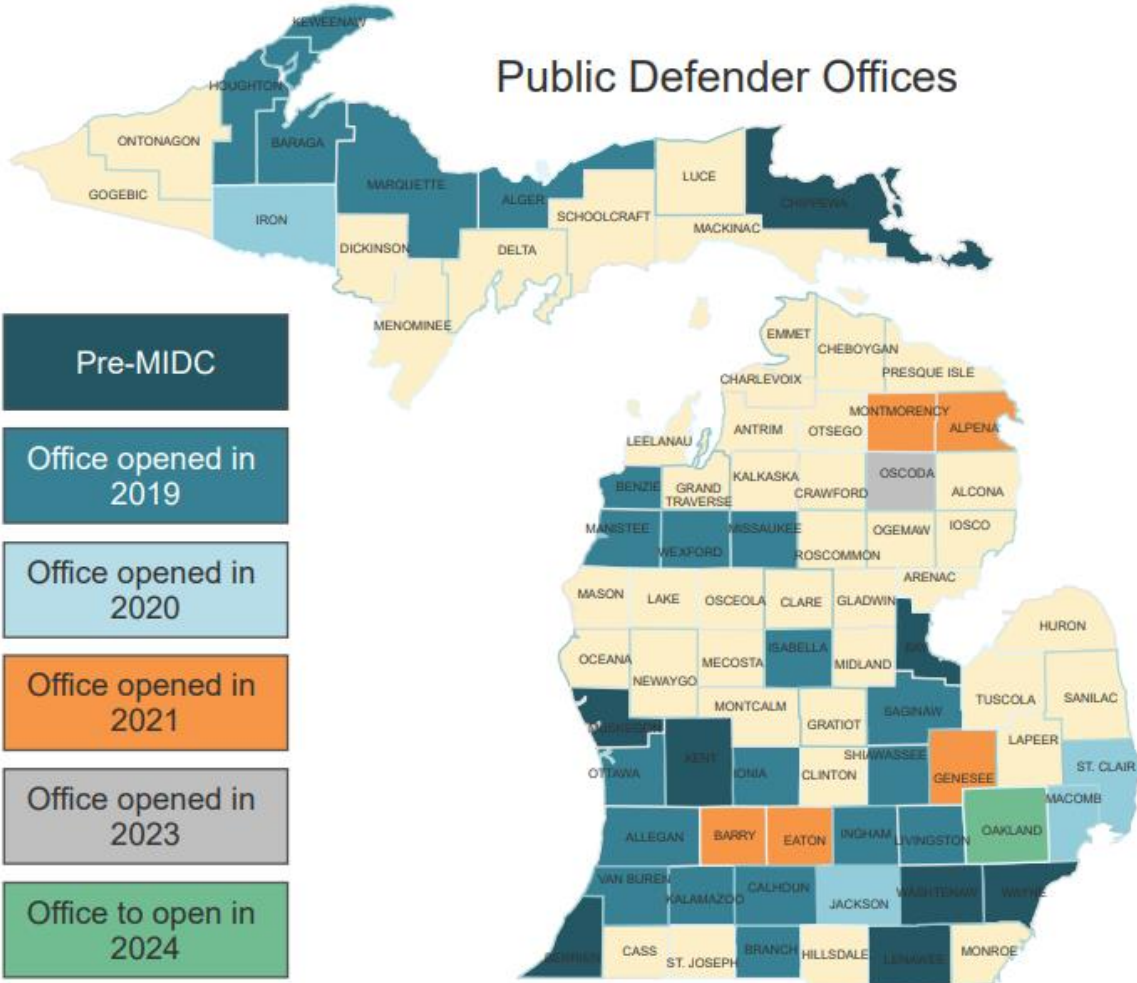
MCL 780.993(7)

State & Local Appropriations

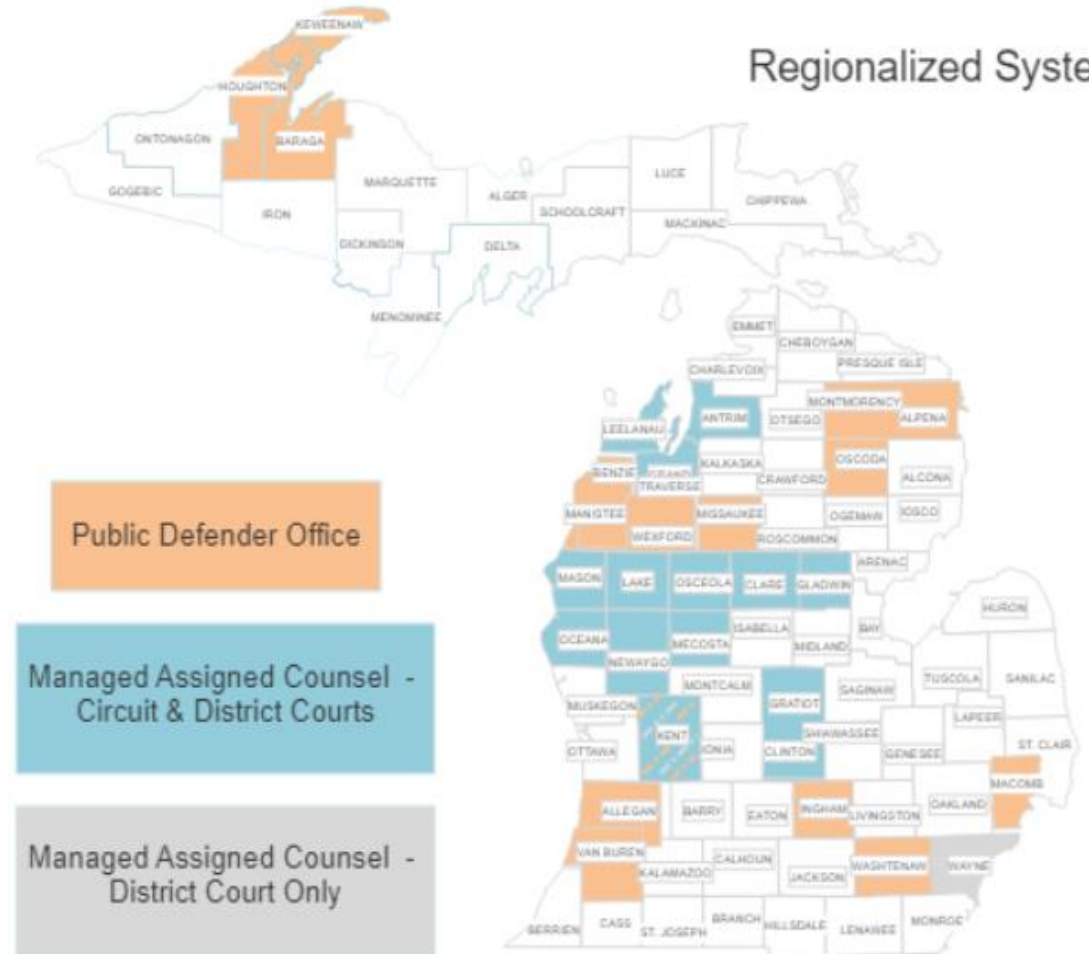


Local Share:
Average local cost prior to enactment of MIDC, increased by 3% or CPI, whichever is less. Hovers around \$38M annually.

Public Defender Offices



Regionalized Systems



Training & Technical Assistance



Best Practices

SOCIAL WORK DATA POINTS


Manual

June 2022

MIDC TRIAL SKILLS SIMULATION PROGRAM




Michigan Holistic Defense Fellowship Program Manual



MICK TRIAL

MICHIGAN HIGH SCHOOL MOCK TRIAL SERIES INCLUDING COURTROOM, ATTORNEY & JOURNALISM



Michigan Center for Civic Education
www.micced.org
Championing education for future professionals engaged in the practice of law.

Michigan Center for Civic Education
Mock Trial Info Session

Friday, May 12
MIDC Leadership Conference 2023

Building Public Defense Community

Innovations



Training & Technical Assistance



MIDC's grant oversight and approval process is continuous and thorough, with many levels of review.

OCT - DEC

- FY24 Grant year begins; grant contracts and funding issued locally
- Final reporting from FY23 due; staff conducts year-end compliance reviews
- End of FY23 report to MIDC for Dec. mtg

JAN - MAR

- FY24 Q1 reports due; staff conduct compliance reviews
- MIDC finalizes FY25 grant application; systems begin planning for next year

APR - JUNE

- FY25 Grant applications due Apr. 22
- FY24 Q2 reports due; staff conduct compliance reviews
- 3-layered staff review, MIDC committees review of FY25 applications
- MIDC begins approving grants at June mtg

JULY - SEPT

- FY24 Q3 reports due; staff conduct compliance reviews
- Staff continues review of any non-approved grant applications; MIDC continues approving grants.
- Local compliance with standards for FY24 grant required by year end

Compliance monitoring of MIDC standards and policy is multifaceted and year-round.



- **MIDC Grant Agreement** with local systems requires quarterly Financial Status Reports, Program Reports and Atty Payments and Workloads.
- **MIDC Grant Manual** compiles all allowable uses of grant funds, updated annually and publicly available on MIDC website.
- **EGrAMS grant management system** required for all reporting and grant applications.
- **Court watching and site visits** conducted at all locations, twice a year.
- **Graded rubrics** are used to measure compliance with standards.
- **Financial audits** are conducted annually of local systems, led by contracted CPA firm and overseen by Grants Director.

MIDC is having an impact on the statewide criminal legal system.

From 2019 to 2022 trial verdicts on felony cases increased by 54%.

Data shows many felony and misdemeanor trial increases occurring specifically in systems with public defender offices that opened starting in 2019, i.e., Allegan, Shiawassee, Jackson, Baraga/Houghton/Keewenaw.

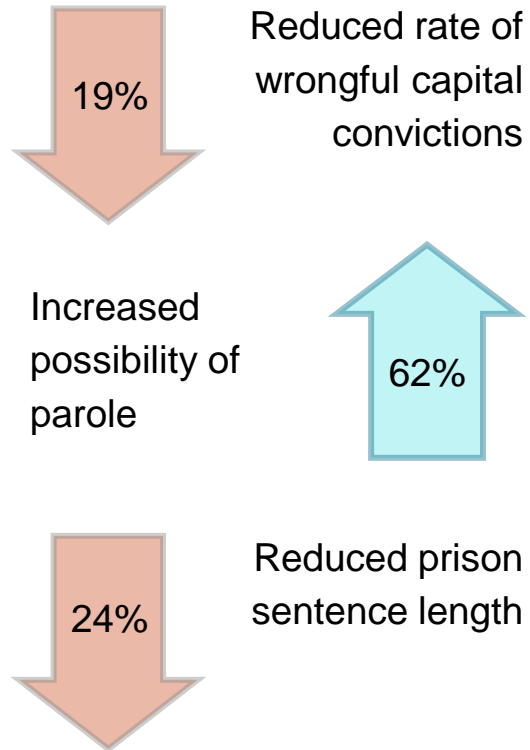
From 2019 through 2023, interlocutory appeals initiated by indigent defenders increased by 250%.

Traditionally trial attorneys rarely engaged in interlocutory appeals due to lack of training, little to no resources, or time to conduct the work.



MIDC grants are changing the culture of public defense.

Nationally, defense teams with investigators, social workers and experts are more likely to produce better client outcomes.



Statewide use of experts in 1,654 cases, an increase of about 25% from last year.

280% increase in requests for experts and investigators for indigent clients in Wayne County from 2020 - 2023.

MIDC Grants support 77 non-attorney client advocates or social workers in 39 counties.

Holistic defense (use of social workers) is shown to reduce the chance of incarceration by 16% and sentencing length by 24%.

In partnership with Wayne State University Law School, the MIDC developed a Holistic Defense Fellowship Program, the first of its kind in the US.

Counsel at first appearance saves money and improves lives.

When counsel is present . . .

Clients are more than 2 times as likely to be released without bail



Clients are almost 5 times more likely to receive a reduction in bail at arraignment



“[The clients] are more comfortable, less nervous, and better prepared for not only the arraignment but also when and if they move ahead in the court

Michigan Defender Leader, ~~process~~ process.”

“Pretrial incarceration of even just a few days increases a defendant’s risk of recidivism, nonappearance in court, and loss of employment and housing.”

Michigan Joint Task Force on Jail and Pretrial Incarceration, 2019

Quality public defense directly impact incarceration costs.

The MIDC grants cost about 25% of the \$900 million State Police budget and 11% of the \$2 billion MI Dept. of Corrections budget.



In Michigan, every \$1 spent on hiring a new public defender to reduce caseloads is estimated to save \$6.31 in incarceration costs.

MIDC To-Do List

Guaranteed Investment

Indigent Defense Fund?
Regional/State Structural
Change?

Pipeline projects

Higher-Ed Partnerships

Addressing Defender
Burn-Out

Leadership Development

Student loan forgiveness

Youth Defense

Staff innovations

Training Directors
Recruit/Retention
Specialists
Social Worker/Client
Advocate

Revisit the Standards



Contact me anytime!

Kristen Staley
Executive Director



www.michiganidc.gov

517-657-3066

staleyk@michigan.gov