

Annual Impact Report

2021

Michigan Indigent
Defense Commission

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Overview

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

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

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

The MIDC met ten times in 2021, including a series of special meetings to interview and select the next Executive Director.

At every meeting, the Commission received updates about the state of the criminal legal system during the ongoing global health pandemic and evaluated support necessary to bring local systems into compliance with the MIDC's Standards. Technical assistance was regularly provided by the MIDC's staff as plans for compliance were implemented through the distribution of over \$129 million in funding statewide for indigent defense services this fiscal year.

Commissioners

Christine A. Green, Ann Arbor *Represents the State Budget Office
Chair of the Michigan Indigent Defense Commission*

Joshua Blanchard, Greenville *Represents the Criminal Defense Attorneys of Michigan*

Tracey Brame, Grand Rapids *Represents the Chief Justice of the Michigan Supreme Court*

Kimberly Buddin, Novi *Represents those whose primary mission or purpose is to advocate for
minority interests*

Paul E. Bullock, Evart *Represents the Senate Majority Leader*

Nathaniel "Hakim" L. Crampton, Jackson *Represents the general public*

Andrew D. DeLeeuw, Manchester *Represents the Michigan Association of Counties*

Hon. James Fisher (Retired), Hastings *Represents the Michigan Judges Association*

Hon. Kristina Robinson Garrett, Detroit *Represents the Michigan District Judges Association*

David W. Jones, Detroit *Represents the State Bar of Michigan*

James R. Krizan, Allen Park *Represents the Michigan Municipal League*

Debra Kubitskey, South Lyon *Represents the Senate Majority Leader*

Margaret McAvoy, Owosso *Represents the Michigan Association of Counties*

Tom McMillin, Oakland Township *Represents the Speaker of the House of Representatives*

Cami M. Pendell *Supreme Court Chief Justice Designee, ex officio member*

John Shea, Ann Arbor *Represents the Criminal Defense Attorneys of Michigan*

William Swor, Grosse Pointe Woods *Represents the Criminal Defense Attorneys of Michigan*

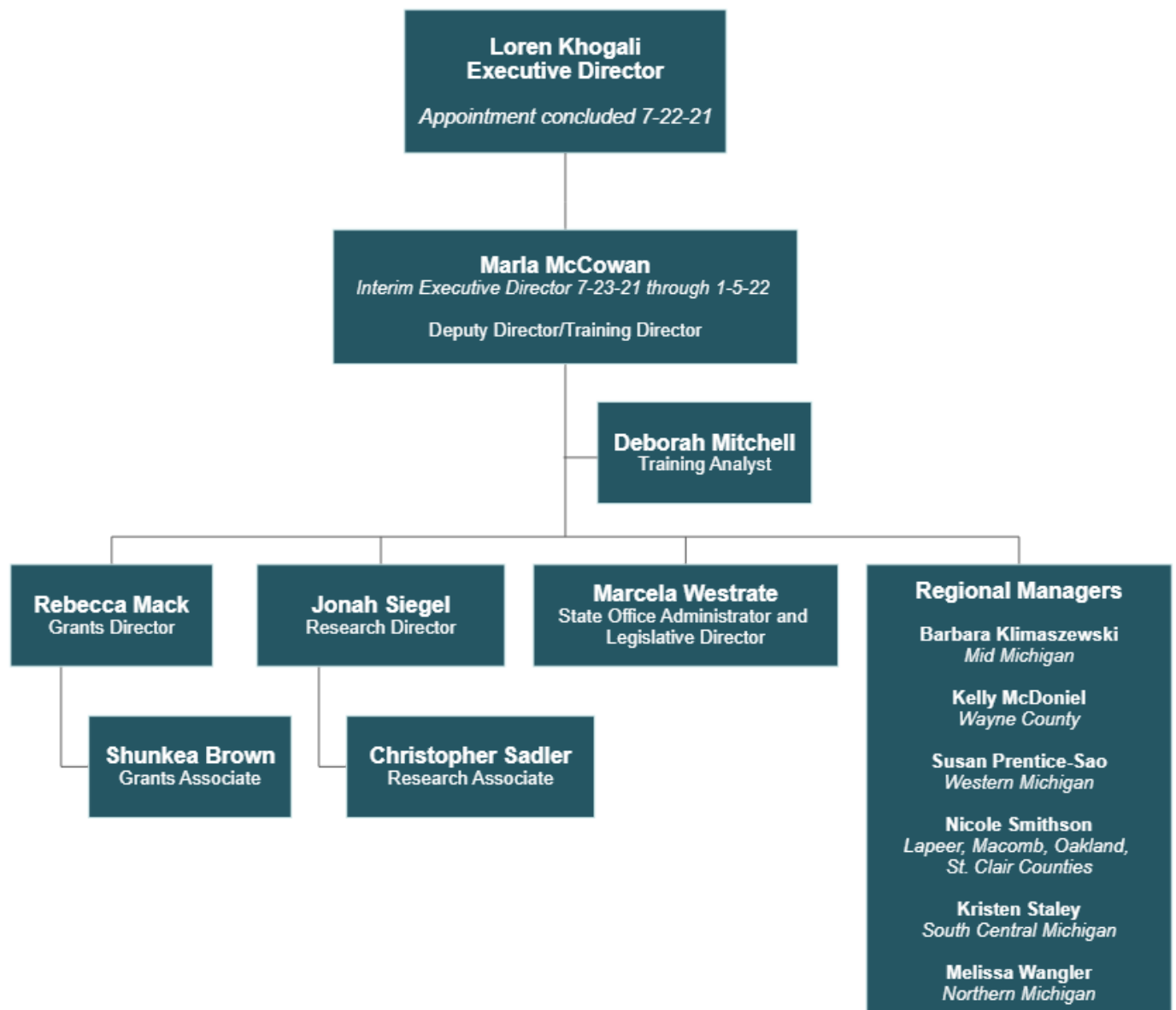
Robert VerHeulen, Walker *Represents the Speaker of the House of Representatives*


Gary Walker, Marquette *Represents the Prosecuting Attorneys Association of Michigan*



MIDC Staff

Executive Director Loren Khogali announced that she was stepping down from her role with the MIDC in June of 2021. At a special meeting in July, the MIDC presented Ms. Khogali with a Resolution of Appreciation to thank her for her extraordinary work with the Commission. Marla McCowan was assigned to be the Interim Executive Director as the Commission worked to fill the role permanently. Below is the organizational chart through the end of the calendar year.



A photograph of a woman with short dark hair, wearing a dark blazer and a pearl necklace, speaking at a podium. A microphone is visible in front of her. The background is a plain wall. The image is overlaid with a semi-transparent dark blue rectangle containing white text.

The MIDC spent several months reviewing applications and selecting candidates to interview for the Executive Director position. Interviews were conducted in October and at a special meeting on November 22, 2021, Kristen Staley was selected to be the next Executive Director. Immediately prior to this role, Ms. Staley served the MIDC as its South Central Michigan Regional Manager, where she oversaw the compliance of MIDC standards and development of best practices in public defense among twelve counties.

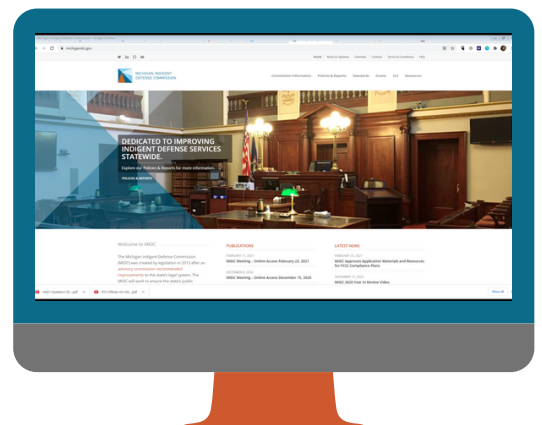
Ms. Staley's term as Executive Director begins in January 2022.

Operations

Fiscal Year 2021 (October 1, 2020 - September 30, 2021)

Salaries and Wages	\$1,292,818.00
Employee Benefits	\$910,495.00
Travel/Training/Memberships and Employee Reimbursements	\$6,740.77
Rent	\$43,400.44
Contracts	\$159,759.78
IT/Telecomm costs including cost allocation to DTMB	\$100,276.05
Office supplies, equipment, misc	\$11,058.48
Cost Allocation to SOM and LARA	\$3,987.48
Total	\$2,528,536.00

**Operational budget
information is updated on
the *Policies and Reports*
page of our website.**



www.michiganidc.gov

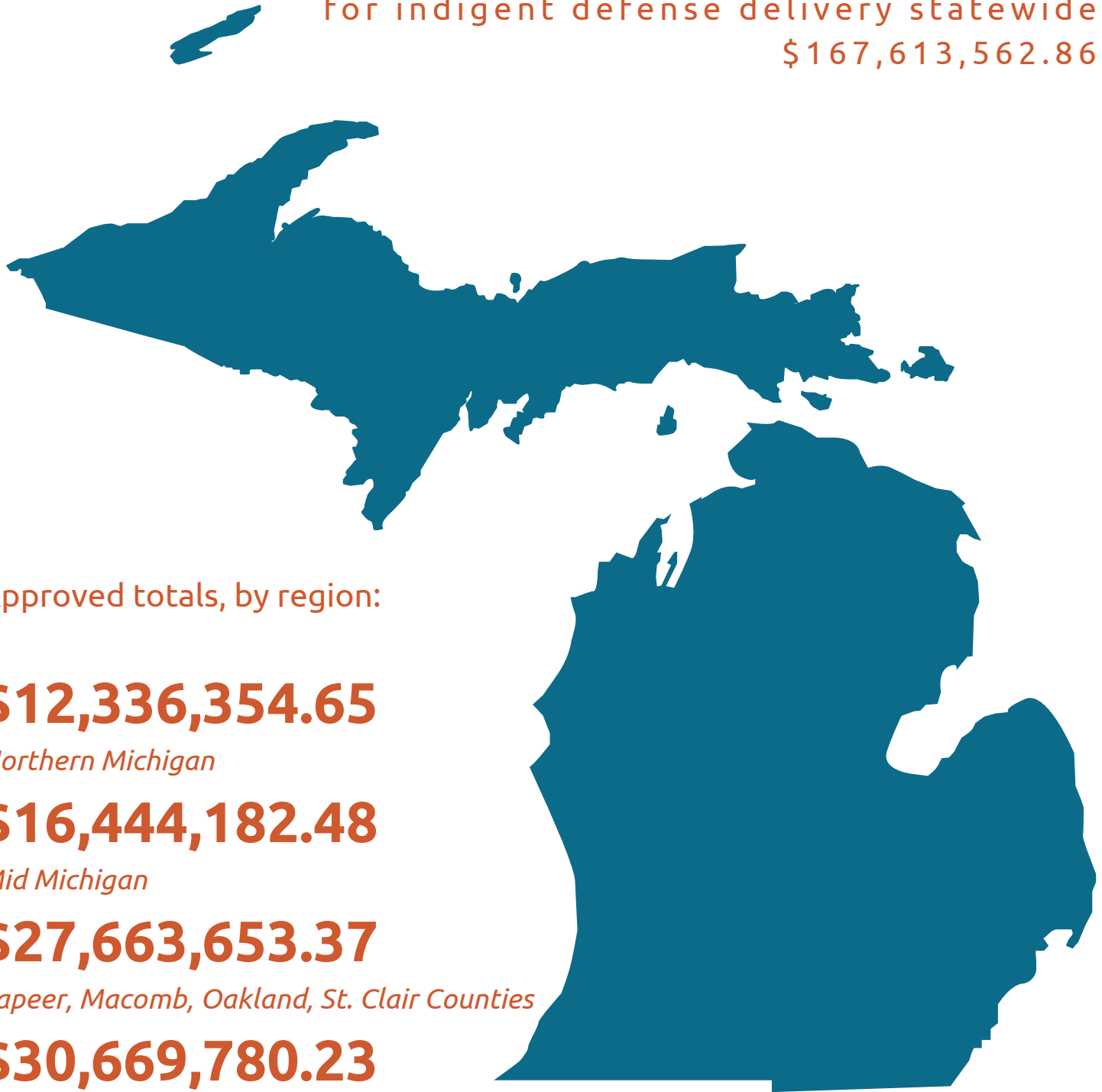
Grants Distributed

Fiscal Year 2021 marked the third year for trial court funding units in Michigan to submit plans for compliance with the MIDC's standards. The standards cover training for assigned counsel, initial interviews by attorneys within three business days from assignment, funding for experts and investigators, and counsel at first appearance and other critical stages of the proceedings. Under the MIDC Act, every system is given an opportunity each year to select its desired indigent defense delivery method to comply with the MIDC standards. Multiple models ranging from a defender office, an assigned counsel list, contract attorneys, or a mix of systems are considered compliant.

Pursuant to the MIDC Act, a local system is required to comply with its approved plan within 180 days after receiving funding through the MIDC's grant process. To comply with the standards, the State of Michigan distributed \$129,127,391.54 to local systems for indigent defense in Fiscal Year 2021. Funding units contributed an additional \$38,486,171.32 for public defense in their trial courts. At the end of each fiscal year, all systems are required to submit the balance of unspent funds distributed for indigent defense. This balance is used to offset the compliance grant distribution for the following grant year.

A statutory provision allows the MIDC to carry forward any unspent commission operation appropriations for a maximum of four fiscal years. Each balance is placed within a specifically defined work project and can only be used to fund activities that fall within that project's definition. As in prior years, these work projects served to fund compliance planning costs for funding units and projects related to best practices, data collection, and the development of the MIDC's grant management system.

FY2021 total system costs approved
for indigent defense delivery statewide
\$167,613,562.86



Approved totals, by region:

\$12,336,354.65

Northern Michigan

\$16,444,182.48

Mid Michigan

\$27,663,653.37

Lapeer, Macomb, Oakland, St. Clair Counties

\$30,669,780.23

South Central Michigan

\$32,876,405.34

Western Michigan

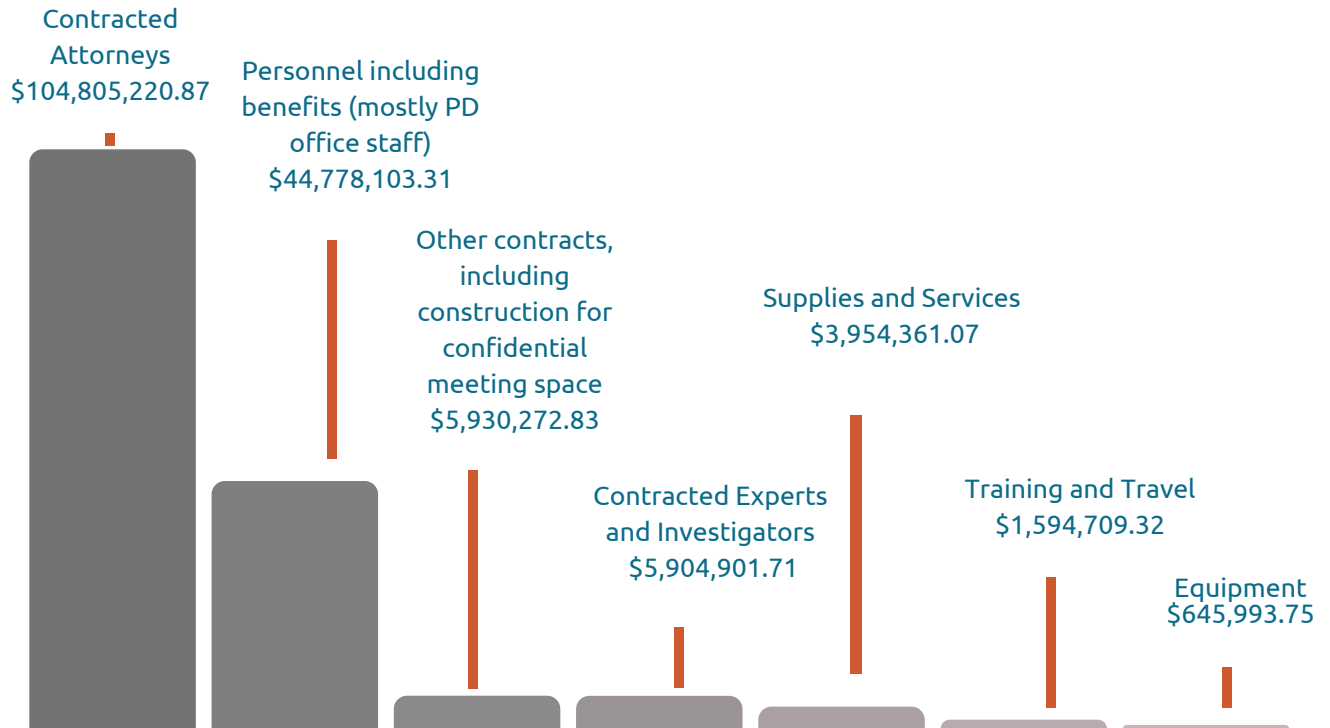
\$47,623,186.79

Wayne County (all court funding units)

Funding awarded to every system
each year is detailed on the *Grants*
page of our website.

www.michiganidc.gov/grants

FY2021 total system costs, by category:



Each funding unit is required to provide a quarterly report detailing progress on implementing the MIDC's standards and the expenses incurred for delivering indigent defense services. Throughout 2021, the MIDC worked diligently to increase the ease of quarterly reporting to the MIDC and improve the accuracy of data submitted by local systems. The MIDC researchers and grants team offered virtual trainings for reports submission and provided updated written documentation about how to track and submit relevant data points. The MIDC's *Grant Manual* is updated annually to offer guidance to systems about compliance and reporting through policy decisions adopted by the MIDC.

In 2021, the MIDC launched a new grant management system (EGrAMS) to submit compliance plans and track all reporting requirements, beginning in FY2022. This will promote transparency and efficiency in the compliance planning and reporting process.

Standards

All 120 trial court systems in Michigan had their compliance plans and costs approved by the MIDC this year. These plans address the MIDC's standards covering training for assigned counsel, initial interviews by attorneys within three business days from assignment, funding for experts and investigators, and counsel at first appearance and other critical stages of the proceedings. These standards have been fully funded and implemented statewide over the past three years.

Highlights from this past year are included below.

Education and Training of Defense Counsel

Attorneys must annually complete at least twelve hours of continuing legal education. Attorneys with fewer than two years of experience practicing criminal defense in Michigan are required to participate in one basic skills acquisition class (minimum of 16 hours).

- Most attorneys are continuing to meet this requirement by attending courses online, due to the ongoing health pandemic.
- The MIDC received a third year of funding to offer a unique hands-on training course, covering all trial skills and expanded this year to include sentencing advocacy.
- The MIDC approved and published *Guidelines for Trainers and Training Providers* pursuant to MCL §780.991(4) and will continue to work with local partners to develop training programs and evaluate the effectiveness of required training for assigned counsel.



ATTENTION
ATTORNEYS

Per MIDC standards, all communication with your client must be done privately. If you need to speak with your client, please ask court staff or an officer to direct you to the conference room.

Thank you!

Initial Interview

When a client is in local custody, counsel shall conduct an initial client intake interview within three business days after appointment. When a client is not in local custody, counsel shall promptly deliver an introductory communication. Systems must provide confidential settings for initial interviews in the courthouse and jail to the extent reasonably possible.

- 94% of systems now have confidential meeting space for in-custody clients in courts and jails.
- 96% of systems employ attorneys that meet with their incarcerated client within 3 business days.
- 97% of systems now have confidential meeting space at court for out-of-custody clients.

Experts and Investigators

When appropriate, counsel shall request funds to retain an investigator to assist with the client's defense. Counsel shall also request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution's case. All reasonable requests must be funded.

- Since FY19, local use of expert and investigative services has increased by 49% statewide.
- 16 systems employ 29 investigators on their public defender staff.
- 12 systems employ 21 social workers and client advocates on their public defender staff.

Counsel at First Appearance & Other Critical Stages

Counsel shall be assigned to every critical court proceeding, including arraignments, pre-trial proceedings, and plea negotiations, as soon as a person is determined to be eligible for indigent criminal defense services and their liberty is subject to restriction.

- Statewide, about 90% of people using counsel at arraignments are represented by indigent defenders.
- Michigan indigent defenders represent nearly three-quarters of all people charged with felony offenses.
- The MIDC partnered with the Right to Counsel (R2C) program at American University and the Urban Institute to select Barry County as a site for one of the first-ever, widescale cost-benefit analysis of counsel at first appearance. This study will continue through 2022.


Learn more about the MIDC standards on our website.
www.michiganidc.gov/standards

Independence from the Judiciary

In October 2020, LARA approved Standard 5 proposed by the MIDC requiring that public defense function independently from the judiciary. Funding units submitted plans for compliance with this and all approved standards beginning in April 2021.

The MIDC's approved budget for FY2022 included an additional \$12 million in grant funding to distribute to systems to comply with this new standard. Funding was distributed beginning in October 2021, with implementation expected in most systems by early May 2022.

Requiring assigned counsel and judges to operate independent of one another serves the court's role in protecting the constitutional right to counsel and enhances the ability of appointed counsel to effectively advocate for their clients.



"The public defense function, including the selection, funding, and payment of defense counsel, is independent."

First Principle
ABA 10 Principles of a
Public Defense Delivery System

Determining Indigency and Contribution

The Indigency Standard provides a framework for determining whether an individual qualifies for representation and other defense funding. It also provides guidance regarding the recoupment of defense costs from individuals with the ability to repay. In creating the standard, the MIDC surveyed hundreds of defense attorneys, conducted focus groups with numerous judges and attorneys, and sought feedback from the State Bar of Michigan and the State Court Administrative Office.

With this new standard, defendants are presumed to be indigent if they are receiving personal public assistance or earn an income less than 200% of the federal poverty guidelines. The standard also allows defendants to ask for re-screening at any time during the case due to a change in circumstances. This standard was approved by LARA on October 28, 2021, and plans for compliance are due in April 2022. Implementation is expected in the Spring of 2023.

Low-income defendants in Michigan get easier access to no-cost criminal defense



System Change

After a public hearing on Administrative Order 2021-12, the Michigan Supreme Court accepted the MIDC's proposed court rule changes necessary to fully implement the standard requiring independence from the judiciary. The court rule changes were also impacted by the standard on counsel at first appearance and all critical stages of the proceedings and the indigency screening standard. Most significantly, the Court Rules refer to an appointing authority rather than assignment by a trial court judge.



Under the MIDC Act, every funding unit is given an opportunity each year to select its desired indigent defense delivery method to comply with the MIDC's standards.

Prior to the implementation of the MIDC Standards, 8 counties had public defender offices. In 2021, there were 32 public defender offices in Michigan covering 38 counties and more than 70 funding units began using managed assigned counsel administrators. Most of the change is designed to prepare for the independence standard.

Beginning in 2022, the term "court appointed counsel" will be obsolete in Michigan.

Impact Studies

Michigan Indigent Defense Commission: Stakeholder Perspectives on Local Share

(Public Sector Consultants, August 2021)

In 2018, the legislature amended the MIDC Act to include a provision that requires the MIDC to submit a report to the Governor and Legislature by October 31, 2021, that makes recommendations relative to the appropriate level of local share.

To develop informed recommendations, the MIDC contracted with Public Sector Consultants (PSC)—a research, policy, and project management firm based in Lansing—to evaluate the current local share funding contributions. This report reflects PSC’s evaluation activities and recommendations. PSC conducted interviews and collected MIDC data to assess the current program’s functionality and better understand local jurisdictions’ potential funding contributions as the MIDC implements its standards. PSC’s evaluation and recommendations were further informed by additional data collection, focus groups, and a survey of local and state indigent defense system stakeholders that investigated themes, concerns, and ideas raised during interviews and initial data collection.

The report made the following recommendations:

- Delay formula amendments
- Explore further regionalization efforts
- Require reimbursement collection reporting
- Establish a reevaluation timeline

These recommendations were incorporated into the MIDC's Strategic Planning discussions.

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

(Urban Institute, December 2021)

In 2018, the Urban Institute was awarded a 24-month contract to conduct a rigorous process evaluation of the implementation of the first four indigent defense standards in Michigan. The evaluation aimed to build knowledge of how indigent defense reform was implemented across diverse delivery models, the challenges and barriers associated with implementing indigent defense reform, and how the implementation of indigent defense standards impacts courts, funding units, and attorney practices and procedures, as well as attorney-client relationships, and client outcomes.

The evaluation found the following:

- Standard 1 has provided additional tools and resources to mount a high-quality defense, opportunities to network and learn from other practicing attorneys, and to share resources and problem solve.
- Standard 2 was noted for improving attorney-client relationships and clients' understanding of their cases, as well as decreasing the number of individuals who fail to appear in court and decreasing the length of cases because attorneys have more information about cases from their beginning.
- Standard 3 has increased the ability of assigned attorneys to use investigators and experts by providing external funding and decreasing their need to make requests to judges and disclose legal strategies to prosecutors.
- Standard 4 was associated with increased efficiency in the courts, increased client comfort with court proceedings, more effective initial arguments, and decreased numbers of individuals being held in jail on bond.

Best Practices

Leadership

The MIDC connects Public Defender Chiefs and Managed Assigned Counsel Administrators statewide who share ideas through an online forum, monthly meetings, and an annual leadership conference.

Over 130 leaders participate regularly in these conversations.

Training

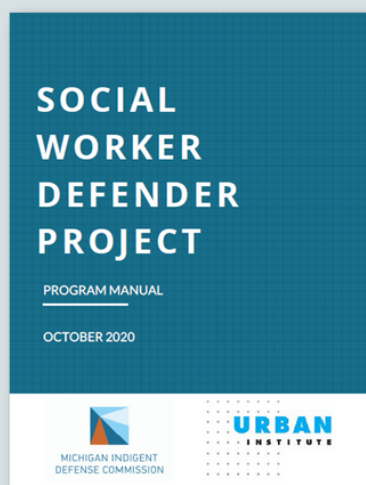
Together with the Bronx Defender's Center for Holistic Defense, the MIDC hosted a two-part online training series on holistic defense, a model that has been transforming case outcomes and clients' lives for 25 years.

The MIDC's Staff created a three-part series on best practices for complying with the approved standards. More than 300 attorneys registered and attended the events online via Zoom.



Resources

In concluding a grant-funded study of social workers in an assigned counsel system, the MIDC and Urban Institute found that the social workers were highly effective in partnering with attorneys, advocating for clients, and providing essential information to judges that shaped the outcomes of cases. In addition to detailed findings, we published a program manual that provides step-by-step guidance to designing and implementing a social worker intervention.



Conclusion

The Commission continued to conduct most business online through 2021. In-person meetings resumed during the summer with opportunities for members of the public to participate remotely. The MIDC continues to ensure public defense services are delivered statewide without interruption, and maintain Michigan's leadership in nationwide indigent defense reform.

In support of these efforts, the MIDC will:

- Secure adequate funding for compliance plans and operational expenses;
- Undertake a strategic planning process to identify priorities for the Commission over the next several years;
- Establish a framework for securing approval and implementation of the MIDC's pending standards covering caseloads, qualification and review of assigned counsel, and attorney compensation; and
- Review and make recommendations regarding funding approved by and appropriated to the MIDC for compliance planning but not distributed to local systems as described in MCL §780.993(15).



MICHIGAN INDIGENT
DEFENSE COMMISSION