

FINAL REPORT

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

Jeanette Husseman, PhD

Lauren Farrell, BA

Urban Institute
500 L'Enfant Plaza SW
Washington DC 20024
jhusseman@urban.org
202-261-5626

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Table of Contents

Introduction	1
Background	2
Research Goals.....	9
Methods.....	10
Findings	12
Limitations	37
Conclusion.....	38

Introduction

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

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

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

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

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

Background

Indigent Defense in Michigan

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

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

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

Pushing Towards Reform

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

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

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

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

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

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

American Bar Association's Ten Principles of Public Defense

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

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

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

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

Minimum Standards of Indigent Defense

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

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

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

Standard 1. Education and Training of Defense Counsel

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

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

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

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

Standard 2. Initial interview

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

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

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

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

Table 1. Michigan's Standards of Indigent Defense

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

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

Standard 3. Investigation and Experts

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

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

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

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

Standard 4. Counsel at First Appearance and other Critical Stages

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

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

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

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

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

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

Research Goals

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

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

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

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

Methods

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

Qualitative Data Collection and Analysis

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

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

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

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

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

Table 2. Respondent Characteristics (n = 57)

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

Compliance Plan Data Collection and Analysis

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

Findings

Perspectives of Standards of Indigent Defense in Michigan

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

Standard 1. Education and Training of Defense Counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Standard 2. Initial Interview

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Standard 3. Investigation and Experts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Standard 4. Counsel at First Appearance and other Critical Stages

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Broad Challenges and Recommendations

Challenges

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

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

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

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

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

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

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

Considerations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Perspectives of Indigent Defense Delivery Models

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Limitations

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

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

Conclusion

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

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

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

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

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

Endnotes

- ¹ National Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis*. (p. i)
- ² See www.michiganidc.gov
- ³ Michigan Indigent Defense Commission. 2018. *Minimum Standards of Indigent Criminal Defense Services*.
- ⁴ Managed assigned counsel coordinators oversee assigned counsel systems, and are responsible for the ensuring that assigned counsel and contract attorneys (if applicable) are following the standards. Since the implementation of Standards 1 – 4, and in anticipation of Standard 5, which calls for independence from the judiciary, many funding units or counties included the hiring of a managed assigned counsel administrator to oversee the implementation of standards locally, and to remove attorney oversight from courts and the judiciary. Managed assigned counsel administrators are therefore typically responsible for ensuring that assigned counsel attorneys are in compliance with the standards, and for the submission of quarterly compliance reporting to the MIDC.
- ⁵ Strong, Suzanne. 2016. *State-Administered Indigent Defense Systems, 2013*. U.S. Department of Justice, Bureau of Justice Statistics.
- ⁶ See <https://assembly.state.ny.us/Press/20170408a/>
- ⁷ www.census.gov
- ⁸ The ten counties included: Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa, Shiawassee and Wayne. Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis*.
- ⁹ National Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis*.
- ¹⁰ National Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis*.
- ¹¹ National Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis*.
- ¹² National Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis*. (p. 12)
- ¹³ See www.sado.org/Page/204/Public-Defense-Resources-Michigan-Reform-Movement
- ¹⁴ American Bar Association. 2002 *Ten Principles of a Public Defense Delivery System*. See www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf
- ¹⁵ Michigan Advisory Commission on Indigent Defense. 2012. *Report of the Michigan Advisory Commission on Indigent Defense*. Pg. 9
- ¹⁶ The MIDC Act is found at MCL §§ 780.981 et. seq.
- ¹⁷ Michigan Indigent Defense Commission. 2018. *Minimum Standards of Indigent Criminal Defense Services*.
- ¹⁸ See www.michiganidc.gov
- ¹⁹ Michigan Indigent Defense Commission. 2017. *Education and Training of Defense Counsel*.
- ²⁰ Siegel, J. 2016. *Snapshot of Indigent Defense Representation in Michigan's Adult Criminal Courts: The MIDC's First Survey of Local Court Systems*. Michigan Indigent Defense Commission.
- ²¹ National Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis*. (p. iv)
- ²² Michigan Indigent Defense Commission. 2017. *Initial Interview*.
- ²³ Michigan Indigent Defense Commission. 2017. *Initial Interview*.
- ²⁴ N = 400; Siegel, J. 2017. *Attorney Perspectives on Michigan's Criminal Indigent Defense Systems*. Michigan Indigent Defense Commission.
- ²⁵ Michigan Indigent Defense Commission. 2017. *Investigation and Experts*.
- ²⁶ See <https://www.lansingstatejournal.com/story/news/local/watchdog/2016/11/03/court-appointed-attorneys-paid-little-do-little-records-show/91846874/>
- ²⁷ Michigan Indigent Defense Commission. 2017. *Investigation and Experts*. (p.3)
- ²⁸ Siegel, J. 2017. *Attorney Perspectives on Michigan's Criminal Indigent Defense Systems*. Michigan Indigent Defense Commission.
- ²⁹ Michigan Indigent Defense Commission. 2017. *Counsel at First Appearance and Other Critical Stages*.
- ³⁰ National Legal Aid & Defender Association. 2008. *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis*. (p. 17)
- ³¹ Douglas, L. C., Paternoster, R., & Bushway, S. 2002. Do attorneys really matter? The empirical and legal case for representation at bail. *Cardozo Law Review*, 23: 1719-1793; Dobbie, W., Goldin, J. & Yang, C.S. 2018. The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American*

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

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

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

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

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

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

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

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