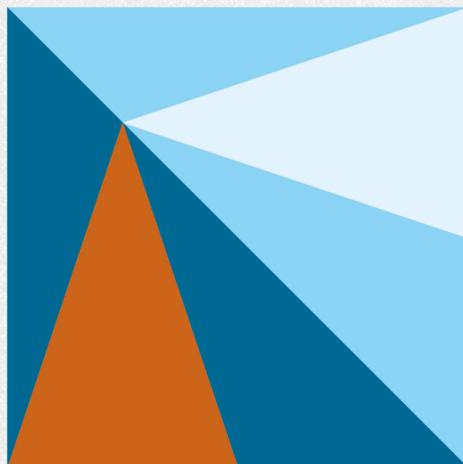


# MICHIGAN INDIGENT DEFENSE COMMISSION

2020 Annual Impact Report



**A global health pandemic presents opportunities for innovation  
as we continue to improve public defense statewide.**

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At the December 15, 2020 meeting, the MIDC presented the accomplishments of the Commission during the year in a short (4 1/2 minute) video available [here](#).

# Michigan's commitment to indigent defense reform was critical in 2020.

Being poor and accused of a crime is stressful and frightening at any time. When it happens during a world health pandemic it is even worse. The consequences for those accused were immeasurable this year: most jails were closed to in-person visits as infection rates soared, trials were halted, and everything from court hearings to support groups were conducted online, leaving accused people searching for proper equipment to connect to critical services.

We worked tirelessly to survey assigned attorneys about their needs and to provide systems with necessary resources and support to ensure access to counsel was never interrupted. Like many people, we did our work remotely. We spent several months with reduced staff capacity due to operational budget cuts and required furloughs.

Despite these challenges, we were still able to participate in local, statewide, and national conversations about public defense during a pandemic. We partnered to provide trainings to defenders, ensuring that the most critical constitutional rights remained protected during this unprecedented health crisis. We saw dedicated assigned counsel respond, adapt, and advocate in ways they never thought about before. This was achieved in large part through funding for indigent defense in every local system, and our work to distribute those funds in a timely manner. Through online tools, we were able to continue to observe and collect data about improvements in these systems.

We look forward to the day we can return to courthouses and in-person conversations. Until then, we are proud to be part of many efforts to reform the criminal legal system where the MIDC continues to be cited as a national example for public defense reform.

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

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

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

The MIDC met eight times in 2020, including a special meeting to address compliance with the MIDC's standards during the pandemic, and to conduct a public hearing on a new standard to screen clients for appointed counsel.



# Michael Puerner, Chair, Ada

## Represents the Senate Majority Leader

### **Joshua Blanchard, Greenville**

Represents the Criminal Defense Attorneys of Michigan

### **Tracey Brame, Grand Rapids**

Represents the Chief Justice of the Michigan Supreme Court

### **Kimberly Buddin, Novi**

Represents those whose primary mission or purpose is to advocate for minority interests

### **Jeffrey Collins, Detroit**

Represents the Senate Majority Leader

### **Nathaniel "Hakim" L. Crampton, Jackson**

Represents the general public

### **Andrew D. DeLeeuw, Manchester**

Represents the Michigan Association of Counties

### **Hon. Kristina Robinson Garrett, Detroit**

Represents the Michigan District Judges Association

### **Hon. James Fisher (Retired), Hastings**

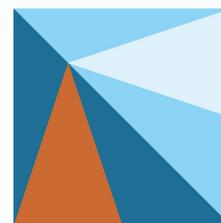
Represents the Michigan Judges Association

### **Christine A. Green, Ann Arbor**

Represents the State Budget Office

## **Loren Khogali**

### **Executive Director**



## MICHIGAN INDIGENT DEFENSE COMMISSION

### **Joseph Haveman, Holland**

Represents the Speaker of the House of Representatives

### **David W. Jones, Detroit**

Represents the State Bar of Michigan

### **James R. Krizan, Allen Park**

Represents the Michigan Municipal League

### **Margaret McAvoy, Owosso**

Represents the Michigan Association of Counties

### **Tom McMillin, Oakland Township**

Represents the Speaker of the House of Representatives

### **Cami M. Pendell**

Supreme Court Chief Justice Designee, ex officio member

### **John Shea, Ann Arbor**

Represents the Criminal Defense Attorneys of Michigan

### **William Swor, Grosse Pointe Woods**

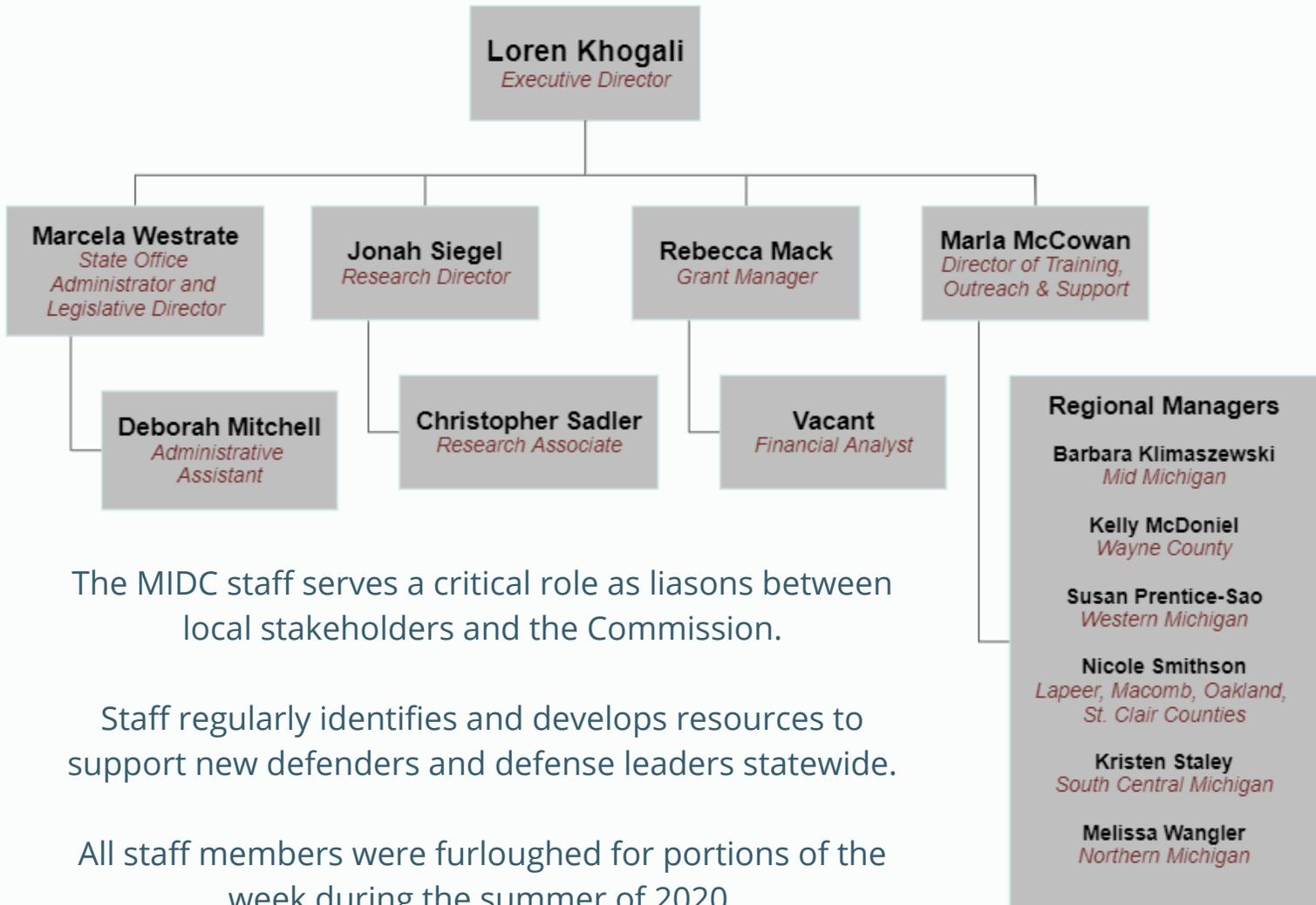
Represents the Criminal Defense Attorneys of Michigan

### **Gary Walker, Marquette**

Represents the Prosecuting Attorneys Association of Michigan

# Operations

In 2020, the MIDC was supported by Executive Director Loren Khogali and thirteen full time staff members. The organizational staff structure was prepared by the Executive Director pursuant to MCL §780.989(1)(d)(i).



# \$2,654,400

FY2020 APPROPRIATION

# FY2020 OPERATIONAL EXPENSES

**\$1,176,636**

*Salaries and Wages*

**\$806,254**

*Employee Benefits*

**\$13,900**

*Travel*

**\$11,493**

*Materials & Equipment*

**\$129,500**

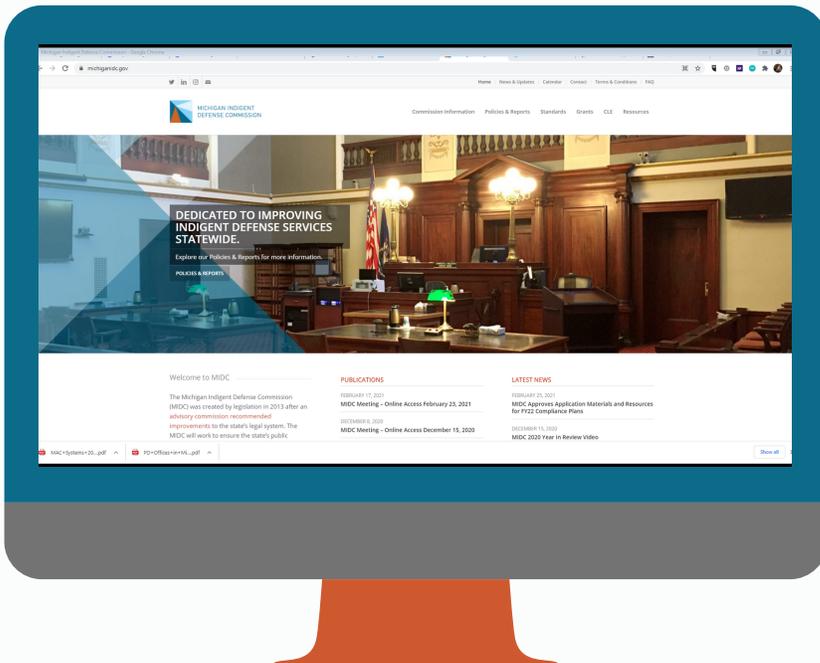
*Contracts – Public Sector Consultants and software subscriptions*

**\$211,098**

*Lease, IT, Telecommunications and other costs*

**\$97,841**

*Cost Allocations*



[www.michiganidc.gov](http://www.michiganidc.gov)

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

# Grant Funding Distributed

Fiscal Year 2020 marked the second year for trial court funding units in Michigan to submit plans for compliance with the MIDC's standards. The standards cover training for assigned counsel, initial interviews by attorneys within three business days from assignment, funding for experts and investigators, and counsel at first appearance and other critical stages of the proceedings. Under the MIDC Act, every system is given an opportunity each year to select its desired indigent defense delivery method to comply with the MIDC standards. Multiple models ranging from a defender office, an assigned counsel list, contract attorneys, or a mix of systems are considered compliant.

Pursuant to the MIDC Act, a local system is required to comply with its approved plan within 180 days after receiving funding through the MIDC's grant process. To comply with the standards, the State of Michigan distributed \$117,424,880.47 to local systems for indigent defense in fiscal year 2020. Funding units contributed an additional \$40,274,101.99 for public defense in their trial courts. At the end of each fiscal year, all systems are required to submit the balance of unspent funds distributed for indigent defense. This balance is used to offset the distribution for the following grant year.

A statutory provision allows the MIDC to carry forward any unspent appropriations for a maximum of four fiscal years. Each balance is placed within a specifically defined work project and can only be used to fund activities that fall within that project's definition. In 2020, these work projects served to fund compliance planning costs for funding units and projects related to best practices, data collection, and the development of the MIDC's grant management system.

# \$80,999,600

FY2020 APPROPRIATION

FY2020 FUNDING BY REGION

**\$11,518,019.30**

*Northern Michigan*

**\$17,541,585.82**

*Mid Michigan*

**\$28,854,585.75**

*Lapeer, Macomb, Oakland, St. Clair Counties*

**\$29,891,785.66**

*South Central Michigan*

**\$31,346,306.41**

*Western Michigan*

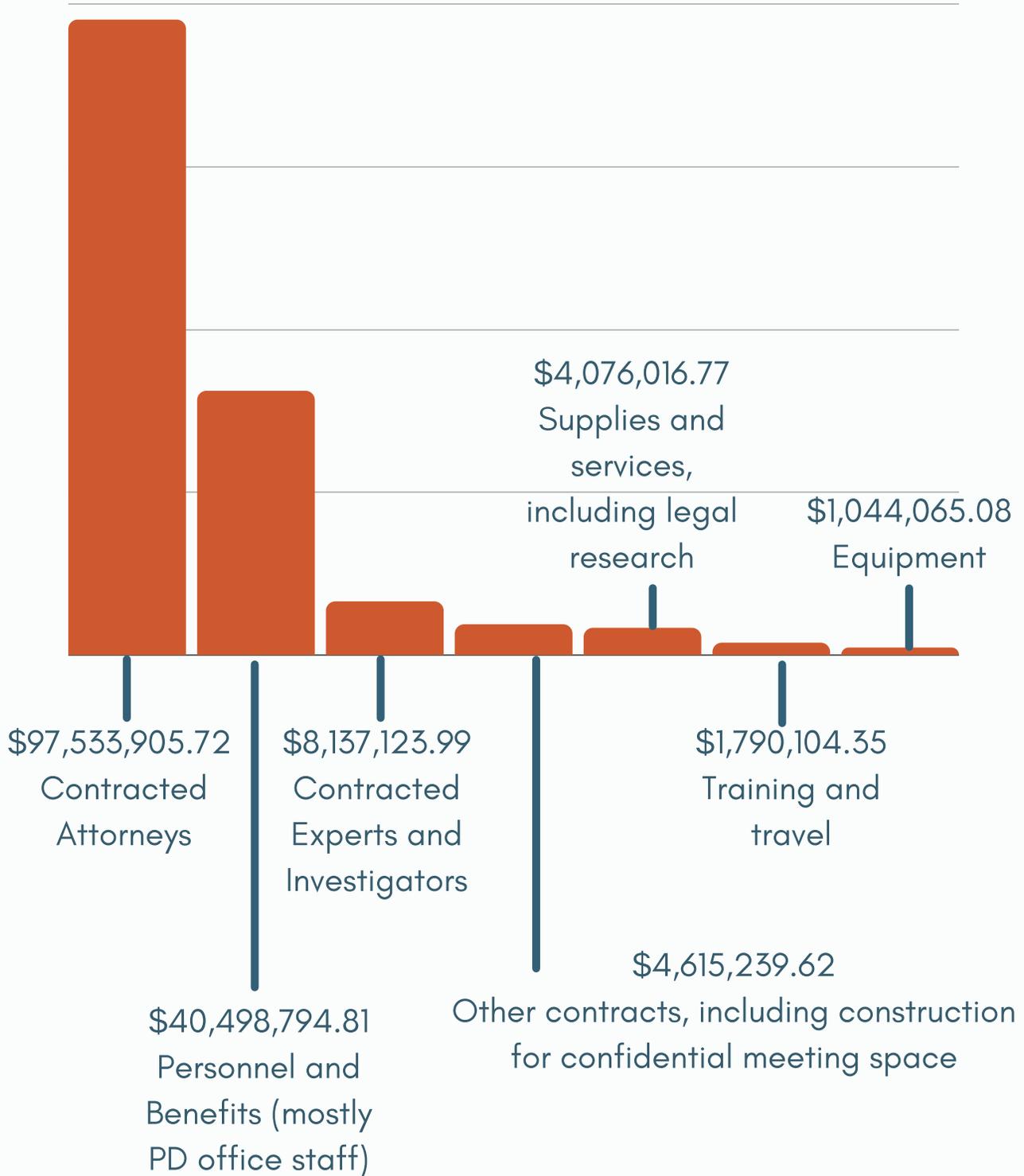
**\$38,546,699.52**

*Wayne County (all court funding units)*

**Every trial court funding unit's approved plan for compliance and cost analysis in FY2020 is available for review [at this link](#).**

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

# FY2020 FUNDING BY BUDGET CATEGORY



## FY2020 COMPLIANCE REPORTING AND REVIEW

**Local funding units provide reporting to the MIDC throughout the year.**

Each system is required to provide a quarterly report detailing progress on implementing the MIDC's standards and the expenses incurred for delivering indigent defense services. The MIDC staff reviews the quarterly program and financial reporting from systems in a multi-layered process to ensure that the funding approved is related to the MIDC's mandate. Data is collected to track progress with standards and identify best practices. Innovation is encouraged to promote high quality and efficient delivery of services.

All assessments were done remotely after February of 2020.

MIDC staff watched court online through platforms provided by Michigan trial courts, logging into over 570 virtual sessions to ensure the MIDC's standards were complied with during the pandemic.

**The MIDC assesses compliance with the standards through court watching and formal reviews with local partners.**

# Approved Standards

## Education and Training of Defense Counsel

\$1,790,104.35

Total funds awarded statewide, covering: registration, travel-related expenses including mileage to conferences, and for attorneys to visit clients who are not in local custody.

### **Requirement:**

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

### **Purpose:**

Criminal defense attorneys must have reasonable knowledge of the relevant law and be able to defend a client's case.

### **Value to Michigan's Legal System:**

Properly trained defense attorneys eliminate unnecessary trials, avoid inappropriate guilty pleas and sentences, and reduce the appellate caseload.

2,368

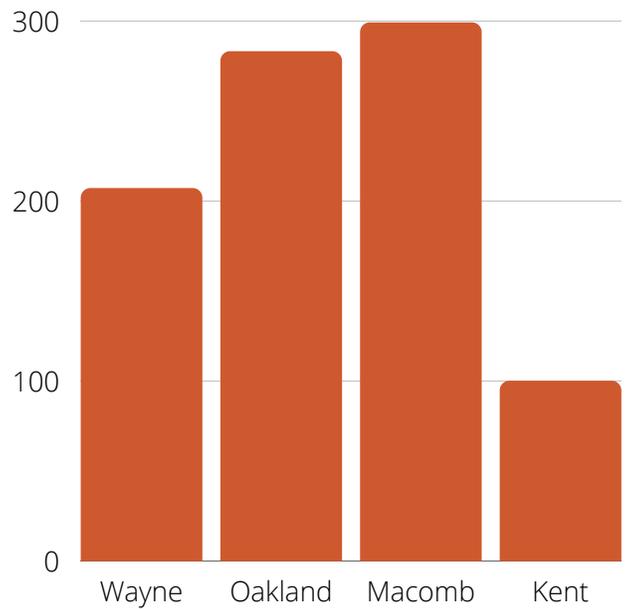
ATTORNEYS ACCEPTING ADULT  
CRIMINAL CASE ASSIGNMENTS IN  
MICHIGAN IN 2020



Over **300** courses offered to train assigned counsel



**2,468 hours** of hands-on skills training completed by 296 attorneys through a unique Byrne Jag funded program managed by the MIDC



Most attorneys **met or exceeded** the training requirements, including those practicing in counties with the highest caseloads.



# COVID-19

THE MIDC CREATED TRAINING PROGRAMS FOR DEFENSE ATTORNEYS TO COMPLY WITH THE STANDARDS DURING THE PANDEMIC, INCLUDING TECHNOLOGY TRAINING TO FACILITATE REMOTE, CONFIDENTIAL MEETINGS WITH CLIENTS DURING HEARINGS.

# Approved Standards

## Initial Interview

To comply with Standard 2, systems may receive grant funding for attorney and defense team personnel, ancillary personnel costs, virtual communication technology, and confidential meeting space construction, alterations, and equipment.

### Requirement:

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

### Purpose:

To be effective, counsel must have sufficient time for adequate case preparation and a confidential space to meet with their clients.

### Value to Michigan's Legal System:

A timely and confidential initial client interview is a crucial first step to defending a criminal case. It lays the groundwork for a positive and trusting relationship, allows time to start a prompt investigation, provides a possibility to decrease a client's pre-trial incarceration, and safeguards attorney-client privileges.

96% of  
systems

## Across all systems in Michigan

- 97% have confidential meeting space at court for out-of-custody clients.
- 94% have confidential meeting space for in-custody clients in courts and jails.



## COVID-19

SYSTEMS ADJUSTED MEETING SPACES TO ENSURE THE HEALTH AND SAFETY OF CLIENTS AND ATTORNEYS.

# Approved Standards

## Experts and Investigators

The MIDC awards grant funding under Standard 3 for investigator and expert expenses necessary to assist with a client's defense, including hourly fees or employment costs of licensed investigators, expert witnesses, and related travel costs.

### **Requirement:**

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

### **Purpose:**

Counsel has a duty to conduct independent investigations in all cases and to continually evaluate for any need of appropriate investigations or expert assistance in specialized areas beyond the lawyer's expertise.

### **Value to Michigan's Legal System:**

A well-defended case requires an attorney to use all reasonable strategies and resources to protect against wrongful criminal convictions.

# \$11,140,449

TOTAL AMOUNT OF FUNDING AWARDED  
STATEWIDE FOR EXPERT AND  
INVESTIGATOR SERVICES

## Across all systems in Michigan

- Budgets for investigators grew 58% from the prior year.
- Expert budgets expanded by 15% from the prior year.

# Pandemic concerns

RESOURCES FOR THE DEFENSE INCLUDING EXPERT AND INVESTIGATOR ASSISTANCE WERE INDISPENSABLE.

# Approved Standards

## Counsel at First Appearance & Other Critical Stages

To comply with Standard 4, systems receive funding for attorney and other defense team services, virtual communication technology, and any equipment necessary for direct representation of an indigent client facing criminal charges.

### Requirement:

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

### Purpose:

People facing criminal charges have a constitutional right to counsel as soon as their liberty is jeopardized by a judge or magistrate.

### Value to Michigan's Legal System:

Counsel at arraignments and all critical stages can provide an explanation of the criminal legal process to their clients, advise on what topics will be discussed in court, increase the possibility for pre-trial release, or help clients achieve dispositions outside of the criminal legal system such as civil infractions or dismissals.

# 100%

OF SYSTEMS PROVIDE  
COUNSEL AT ARRAIGNMENT  
AND OTHER CRITICAL STAGES

## Across all systems in Michigan

- Assigned counsel was present at over 230,000 arraignments in 2020 - serving clients at a rate of 77 times more than pre-MIDC years.
- Attorneys quickly learned to navigate virtual court, connect with clients in need, and engage in creative solutions to protect the rights of those accused of a crime.

### The Herald-Palladium

TOP STORY

#### Public Defender's Office, law enforcement finding creative ways to keep system moving during pandemic

By JULIE SWIDWA HP Staff Writer Aug 28, 2020

ST. JOSEPH -- Outside the Public Defender's Office in St. Joseph is a tent, several chairs strategically placed for social distancing, and a cooler filled with ice and bottles of water.

## COVID-19

COURTS AND JAILS CLOSED,  
CRIMINAL DOCKETS SLOWED, AND  
ASSIGNED COUNSEL GREW EVEN  
MORE RESILANT.

# Next Standards

## **Independence from the Judiciary**

In October 2020, LARA approved a standard proposed by the MIDC requiring that public defense function independently from the judiciary. Systems will submit plans for compliance with this and all approved standards in 2021 with implementation expected in 2022.

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

## **Determining Indigency and Contribution**

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

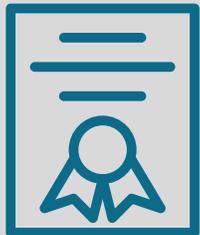
With this new standard, defendants are presumed to be indigent if they are receiving personal public assistance or earn an income less than 200% of the federal poverty guidelines. The standard also allows defendants to ask for re-screening at any time during the case due to a change in circumstances. The MIDC held a public hearing on this Standard in September 2020, and it is anticipated that it will be approved by LARA in 2021.

# Pending Standards



## Indigent Defense Workloads

**Attorneys must have manageable caseloads and sufficient time to effectively represent the clients whom they have been appointed to defend.**



## Qualification and Review of Assigned Counsel

**Defense counsel's ability, training, and experience match the nature and complexity of the case to which they are appointed.**



## Attorney Compensation

**Attorneys must have the time, fees, and resources to provide the effective assistance of counsel guaranteed by the United States and Michigan Constitutions.**

# Conclusion

As the COVID-19 pandemic continues, we will work to ensure that public defense services are delivered statewide, without interruption, and maintain Michigan's leadership in nationwide indigent defense reform. In support of these efforts, the MIDC will:

- Secure adequate funding for compliance plans and operational expenses;
- Assist local systems in identifying opportunities for institutionalizing best practices for indigent defense across multiple systems;
- Support local funding units while implementing the MIDC's new grant management system to enable efficient and accurate reporting of grant funds;
- Partner with the Office of Internal Audit services for document review and financial management protocol;
- Work with all stakeholders in the criminal legal system to identify and address any necessary statutory and court rule revisions as implementation of the standards occurs;
- Engage stakeholders in the criminal legal system to comply with standards for determining whether a defendant is partially indigent;
- Establish guidelines for grant funded training programs with an emphasis on client centered advocacy; and
- Undertake a strategic planning process to identify priorities of the Commission over the next several years.



MICHIGAN INDIGENT  
DEFENSE COMMISSION