

Michigan Indigent Defense Commission: Stakeholder Perspectives on Local Share

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Background

Michigan, like many other states across the country, historically struggled to provide effective, quality representation to underserved defendants. A 2008 study by the National Legal Aid & Defender Association (NLADA) evaluated trial-level indigent defense delivery systems across ten representative counties in Michigan and found that none of those counties provided constitutionally adequate services. Specifically, those counties failed to guarantee independence from the judiciary; supervise and enforce a reasonable workload; provide confidential meeting spaces; ensure that defense attorneys were qualified to take on these cases; and implement vertical representation.¹ To address these issues, in 2011, Gov. Rick Snyder’s administration convened an advisory commission that made specific recommendations to improve the state’s indigent defense system. In response to those recommendations, Governor Snyder signed the Michigan Indigent Defense Commission Act of 2013 into law, establishing the Michigan Indigent Defense Commission (MIDC).

By statute, the MIDC develops and oversees the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure trial-level defense services effectively assist all underserved adults in the state consistent with the safeguards guaranteed by the United States Constitution, the Michigan Constitution of 1963, and the MIDC Act. As part of this act, local jurisdictions must maintain statutorily defined annual spending, or the “local share” contribution. Indigent defense spending beyond the local share that is reasonably and directly related to compliance with the approved minimum standards is funded by the State.

In 2018, the legislature amended the act to include a provision that requires the MIDC to submit a report to the governor and state legislature by October 31, 2021, that makes recommendations relative to the appropriate level of local share. To develop informed recommendations, the MIDC contracted with Public Sector Consultants (PSC)—a research, policy, and project management firm based in Lansing—to evaluate the current local share funding contributions.

This report reflects PSC’s evaluation activities and recommendations. PSC conducted interviews and collected MIDC data to assess the current program’s functionality and better understand local jurisdictions’ potential funding contributions as the MIDC implements its standards. PSC’s evaluation and recommendations were further informed by additional data collection, focus groups, and a survey of local and state indigent defense system stakeholders that investigated themes, concerns, and ideas raised during interviews and initial data collection.

Evaluation Activities

Data Collection and Analysis

PSC collected and analyzed MIDC data related to state grant and local share funding by funding unit for fiscal years (FY) 2019, 2020, 2021, and 2022, with FY 2021 and 2022 data preliminary.^{2,3} PSC’s purpose

¹ National Legal Aid & Defender Association. June 2008. *Evaluation of Trial-Level Indigent Defense Systems in Michigan*. Accessed July 22, 2021. <https://www.in.gov/publicdefender/files/NLADA-Report-Michigan.pdf>

² FY 2019 and FY 2020 demonstrate 126 and 124 funding units, respectively. FY 2021 demonstrates 120 funding jurisdictions, which is a preliminary number due to potential consolidations in FY 2021.

³ FY 2022 funding is an estimate based on Gov. Gretchen Whitmer’s proposed budget recommendations for FY 2022.

was to complement interviews, surveys, and focus groups that discuss system funding by comparing funding models and exploring other relevant issues to the current local share formula. PSC integrated inflation because of its important role in setting future local share funding. PSC also included some initial analysis on attorney fee reimbursement collection from underserved defendants, as that fee was factored into the calculation of local share. PSC also developed state funding forecast scenarios through FY 2025.

Stakeholder Interviews

As part of the evaluation, PSC conducted 20 one-hour interviews with 22 diverse stakeholders, including MIDC members, county and municipal administrators, court administrators, current and former judges, prosecuting and defense attorneys, local government representatives, Michigan legislators, and representatives from national criminal defense organizations. Participants identified what works well under the current local share formula, as well as challenges, gaps, and opportunities for improvement. To gather diverse perspectives across Michigan's 83 counties and 124 systems, PSC selected participants who reflect Michigan's varied socioeconomic and geographic landscapes.⁴

After completing data analysis and stakeholder interviews, PSC presented a detailed interim report to Commission members at their April 20, 2021, meeting. The report findings were used to develop the materials for the next phases of the project, the survey questionnaire and the focus group discussion guide.

Focus Groups

PSC facilitated six two-hour focus groups to further explore concerns and ideas highlighted during interviews. While still valuing geographically and socioeconomically diverse perspectives, PSC gathered focus groups based on participants' direct involvement with their jurisdiction's indigent defense system operations. The focus groups consisted of county administrators, county commissioners and prosecutors, court administrators and public defenders, criminal defense attorneys, municipal administrators, and MIDC staff. Participants discussed the current formula's benefits, drawbacks, and impact as well as future funding considerations, reimbursement collection from partially indigent defendants, and the decision-making dynamic between the State and local jurisdictions.

Survey

While conducting focus groups, PSC released a brief six-question survey to organizations representing the many professions involved in Michigan's indigent defense system. Recipients included county and municipal administrators, county commissioners, criminal defense attorneys, judges, prosecutors, and public defenders.

⁴ Due to indigent defense systems regionalizing their services and merging, the total number of systems can fluctuate year to year and has steadily decreased over the last several years.

Current Program Operational Overview

The MIDC Act of 2013 established a formula for providing funding to all of Michigan’s jurisdictions based on their unique three-year spending averages (from 2010 to 2013). Every jurisdiction carries out its indigent defense duties according to standards instituted in statute. Recently, new requirements were adopted under standard five, independence from the judiciary, for the FY 2022 budget submission. As of October 29, 2020, five of the eight standards proposed by the MIDC have received final approval from the Department of Licensing and Regulatory Affairs Director, as required by the MIDC Act. It is anticipated that standards six through eight will soon be adopted. The formula is now in its third year of operation; funding units submit annual reimbursement plans for MIDC approval.

State and Local Share Funding: FY 2019, 2020, 2021, and 2022 Budgets

In fiscal years 2019, 2020, and 2021, MIDC state funding primarily focused on meeting standards one through four. State funding was \$86.7 million in FY 2019, followed by \$117.4 million in FY 2020, and \$134.7 million in FY 2021. Meanwhile, local share funding was \$37.9 million in FY 2019, and approximately \$38.5 million in each of the following fiscal years. Altogether, the total local share percentage of total system costs was 30 percent in FY 2019, 24 percent in FY 2020, and 22 percent in FY 21 (Exhibit 1). State funding increased by 35 and 15 percent, respectively, year over year, in FY 2020 and FY 2021, reflecting the large funding needs to help jurisdictions meet standards one through four.⁵

For FY 2022, the MIDC requested \$34.1 million in additional state funding, of which \$22.1 million of the request is attributed to increased costs of standards one through four and the remaining \$12 million for implementing standard five. The FY 2022 additional request of \$34.1 million, if approved, represents a 25 percent increase over total FY 2021 state funding, which was \$134.7 million. With FY 2022 local share funding reflecting a 1.2 percent inflation increase over FY 2019 funding—leading to FY 2022 funding of \$38.4 million—the total local share percentage would be 19 percent, down from 22 percent in FY 2021 (Exhibit 1).

EXHIBIT 1. FY 2019–2021 Budget Spending

Fiscal Year	State MIDC Grants	Local Share	Total System Costs	Total Local Share Percentage
FY 2019	\$86,759,934	\$37,925,642	\$124,685,577	30%
FY 2020	\$117,424,880	\$38,523,865	\$157,698,982	24%
FY 2021	\$134,689,367	\$38,486,189	\$173,175,556	22%
FY 2022	\$168,789,367	\$38,418,957	\$207,473,521	19%

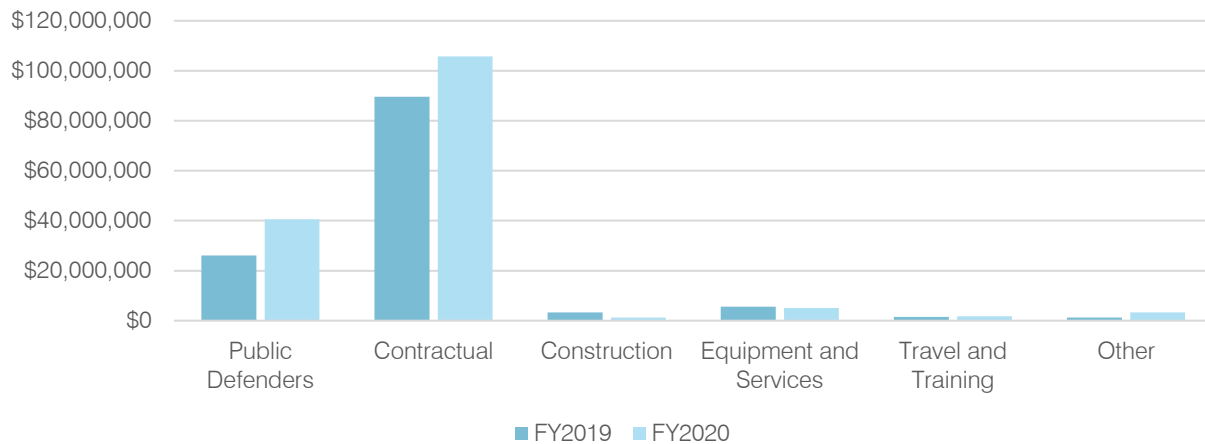
Source: PSC analysis of MIDC data.

Note: FY 2020 Total System Costs includes \$1.7 million in other funding sources from Macomb and Oakland jurisdictions. FY 2022 figures assume the \$34.1 million state budget request is approved.

⁵ It is important to note that the unspent balance from the previous fiscal year offsets the following fiscal year grant. In FY 2019, the estimated unspent balance of approximately \$47 million offsets the MIDC FY 2020 grant of \$117.4 million, leading a MIDC grant dispersion of \$70.4 million. In FY 2020, the estimated unspent balance of approximately \$53 million offsets the MIDC FY 2020 grant of \$135 million, leading a MIDC grant dispersion of \$82 million.

Jurisdictions’ highest cost was related to contractual attorneys, experts, and investigators, which represented 70 percent of total system costs in FY 2019 and 67 percent in FY 2020. In those same fiscal years, public defender offices represented the second highest costs of total system costs in each year, at 21 and 26 percent, respectively.⁶ Altogether, the contractual and public defender categories represented more than 90 percent of total system costs in each year, substantially above other categories (Exhibit 2). Within the contractual category, attorneys represented the largest cost at more than 90 percent of the total in each year.

EXHIBIT 2. Total System Costs by Category

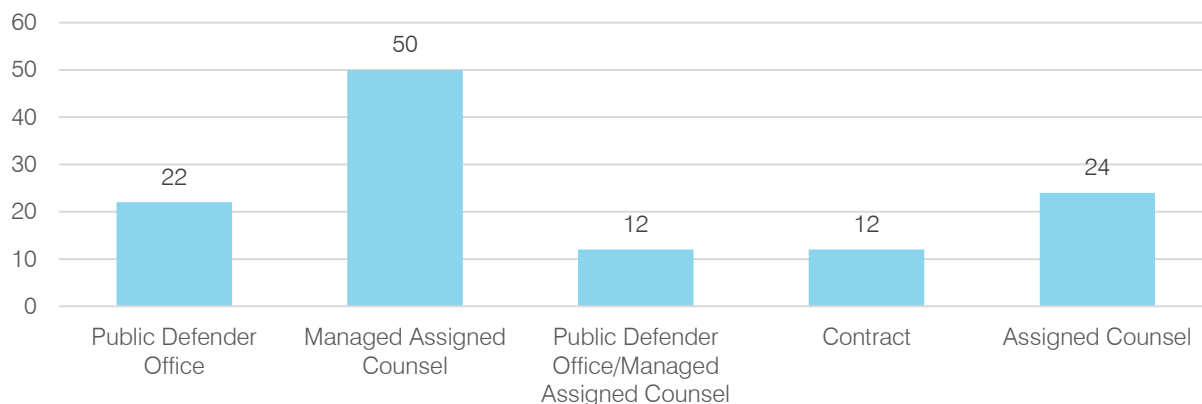


Local Indigent Defense Models

Within their annual budgets, jurisdictions have adopted indigent defense service delivery models, including public defender offices, managed assigned counsel, contract systems, or a combination of these. Exhibit 3 lists the types and number of legal defense systems in Michigan. Communities and models across Michigan that are known for their success rates and best practices were frequent topics of conversation throughout interviews. Though many participants identified a public defender office as the model to emulate, local jurisdictions’ expertise in and understanding of their own systems’ needs guided which model best fit each jurisdiction. Just as many participants noted that one defense system type will not necessarily work for all of Michigan’s regions due to population (caseload) and geographic (transportation logistics) concerns.

⁶ Detailed data for FY 2021 and FY 2022 is not currently available.

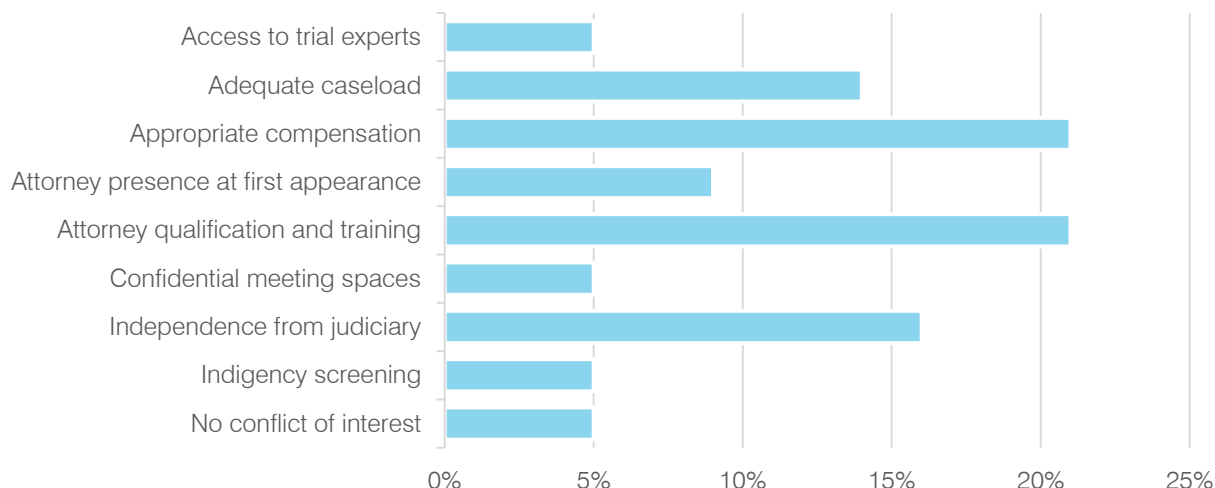
EXHIBIT 3. Michigan's Types of Legal Defense Systems



System Strengths and Challenges

Interviewees were asked to identify guiding principles that stood out in their indigent defense systems and experiences to ensure accurate program evaluation (Exhibit 4). Later, all participants offered retrospections on the indigent defense system's progress since state funding began three years ago. The following sections highlight both the strengths and challenges noted during these interviews.

EXHIBIT 4. Most Vital Principles Helping to Ensure Legal Access, According to Interviewees



When asked about system improvements related to standards adoption, focus group participants' and interviewees' responses aligned. MIDC staff indicated that requiring counsel at all critical stages in a defendant's case—including a defendant's first court appearance—represents an enormous improvement in client-attorney relationships. The requirement helps the defendant receive a fairer trial in two key ways. First, defendants develop a better understanding of their case, including sentencing options and potential effects on their future. Second, having assigned counsel at a defendant's first court appearance fosters better working relationships between MIDC and jails by closing the gap in defendants'

understanding of what happens next. Although jail administrators play a crucial role in the justice system, they do not typically have legal training or expertise; in this capacity, assigned counsel best serve defendants. MIDC staff and public defenders also cited attorney trainings as an opportunity to learn, network, and build a culture of defense within their respective communities.

System Strength: Standardizing Defense Services

Most participants, across varied industries and geographic locations, stated the current system is a considerable improvement for indigent defense over preceding systems. Though participants' definitions of program success differed, both MIDC members and non-MIDC members agreed that standards implementation has been successful. While non-MIDC members often cited the implementation of specific standards as the marker of success, MIDC members most frequently indicated the achievement of statewide standardization. One MIDC member noted the benefits of "standardizing indigent defense practices across the state and holding local units accountable," stating the act "helped push public defense a long way in a short period of time."

Since the MIDC came into being during the Snyder administration, more than 20 public defender offices formed, [which is] tremendous progress. Some areas up north—where they don't have adequate resources—are establishing regional offices [to] share resources.

—County commissioner from Michigan

One county commissioner highlighted the immensely positive impact of "bipartisan support and widespread understanding" of indigent defense. Commenting on stakeholders' gradual acceptance of the program, a prosecutor supported the formula being "enshrined in statute," noting that local jurisdictions' "pushback has subsided" since the MIDC Act was implemented. A Michigan Supreme Court representative echoed these sentiments, applauding system participants' "joint commitment to making indigent defense a high priority" within Michigan's criminal justice system.

In addition to systemic progress, the program's implementation has led to a greater understanding of the need for adequate indigent defense services at the local level. Several court administrators and public defenders affirmed that having all court staff "dedicated to the same proposition of proper indigent defense" was a strong factor in their funding units' success in providing these services. Other participants commended Michigan's progress in indigent defense improvements. One attorney from a national organization expressed that Michigan is a national model in terms of its dedication to a unique combination of state and local influence. This distinctive system structure is key to the program's success, according to county administrators, county commissioners, prosecutors, and others—striking a balance between rising system costs, proportionally greater state funding, and maintenance of local control is the challenge facing Michigan's indigent defense system in the coming years.

System Challenge: Disconnect Between Implementation and Desired Outcomes

Though participants acknowledged the benefits of a standardized system, many noted there remain obstacles to ensuring indigent defense practices are comparable to client-paid attorney work. Many municipal and county government representatives expressed concern about budget uncertainties at the local level related to uncertainties about the continued availability of state funding. One judge highlighted another major obstacle—legislators' uphill battle to secure more funding for a public program that is

largely unpopular with constituents. Defense attorneys highlighted MIDC staff's perceived lack of oversight in key regions of the state, noting regional support should play a larger role in standards enforcement. Multiple participants across professions agreed that greater resource regionalization would benefit jurisdictions needing access to trial experts.

Participants involved in the day-to-day operations at the local level, especially those working directly with the courts, highlighted that, while state standardization is beneficial, implementation has been slow. An attorney stated that indigent representation across Michigan is not yet equal, emphasizing that client-paid attorneys can spend greater time and resources on their cases than attorneys with underserved clients. A judge argued that the court system is still overloaded, and burnout is common among defense lawyers for underserved clients.

Several participants mentioned low hourly rates as potential deterrents in recruiting public defense attorneys. In addition to historically low pay rates—compared to non-public defender attorney fees—some jurisdictions struggle to entice qualified candidates. One court administrator emphasized their county's most significant problem is attracting “attorneys with a fire in their belly for legal defense work.” A prosecutor explained that the lack of qualified candidates is compounded by arduous travel demands for rural jurisdictions, especially those located in northern Michigan and the Upper Peninsula.

Attorneys who are the best can only do [criminal defense] for a few years . . . fighting so hard for so little is wearing.

—Judge from Michigan

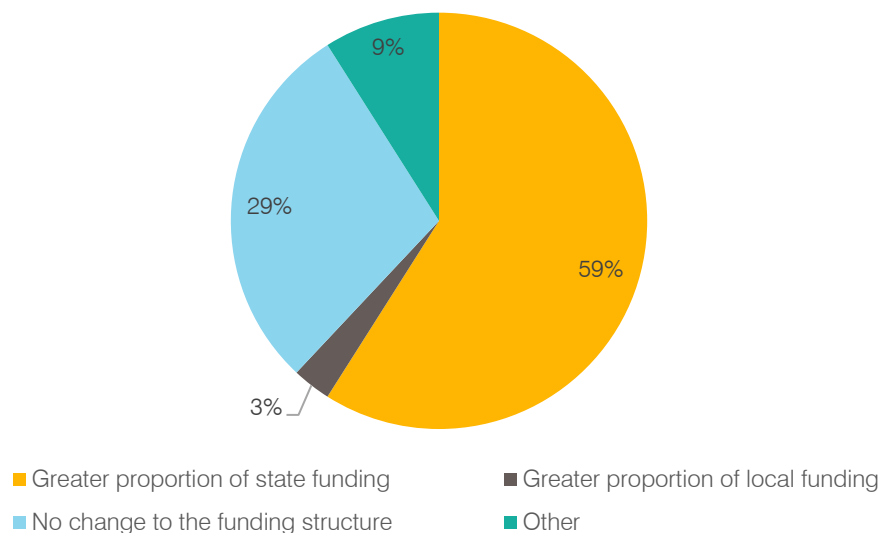
Perspectives on the Ideal Funding System

Participants provided a range of responses when asked to describe their ideal funding system. Most descriptions, however, fell into two categories:

- Support for full state funding
- Maintaining the current funding structure, in which funding is a combined effort between the State and local systems

A small group of combination-funding supporters promoted an alternative option in which the State funds jurisdictions to meet MIDC standards, and then local jurisdictions fund “above and beyond” that amount. Only one participant advocated for greater pressure on local jurisdictions to provide more funding than they do currently. The majority of participants, across profession and geographic location, favored maintaining the current combination-funding system to retain local control over decision making (Exhibit 5).

EXHIBIT 5. Survey Respondents' Ideal Future Funding Formula



Support for Full State Funding

In illustrating the ideal indigent defense funding system for Michigan, many participants referenced the MIDC Act's wording specifically, with several asserting that full state funding would comply with state statute. Several county administrators and commissioners went so far as to question the legality of a non-state-funded system according to the Sixth Amendment, which codifies legal defense services for underserved people as a state responsibility. From a national perspective, one defense attorney recognized that a fully state-funded program would have been too much of a shock initially when Michigan transitioned to this system in 2017; however, they stated this shift to state control would minimize the need for local control once the MIDC adopts the remaining standards. Other participants worried about the pressure that rising costs will place on the system statewide once the implementation of MIDC standards six through eight are underway. As long as state funding is provided, one prosecutor asserted, "the vast majority of [jurisdictions] will be comfortable with whatever amount of control they retain," asserting that funding was the crux of local jurisdictions' pushback against the system initially.

The prosecutor also voiced that funding courts largely through fines and costs at the local level is "highly problematic," and advocated reducing the financial burden for defendants with low incomes. Some states, like Kentucky, have shifted toward administrative frameworks to deal with certain types of misdemeanors; several participants suggested studying other states' indigent defense models and comparing their success to Michigan's. Despite expressing that state funding is preferable to the current arrangement of state and local partnership, one judge noted that a completely state-run system may be more susceptible to budget cuts than a combination-funding system.

Benefits of State/Local Combination Funding

Participants in favor of maintaining the combination-funding scenario are proponents of preserving local control in program administration. A defense attorney stated that "cutting out local [control] altogether is

somewhat problematic,” noting the importance for local jurisdictions to have a financial stake in providing these services. They acknowledged that “inequities [between jurisdictions] are the hitch,” stating preservation of local traditions works well, depending on the jurisdiction and the extent of their resources. Most focus group participants agreed with that sentiment—MIDC staff and prosecutors alike stressed that “one size does not fit all” when attempting to solve unique problems across Michigan’s socioeconomically, demographically, and geographically diverse jurisdictions.

Many municipal, county, and court administrators agreed that the predictability of the indigent defense line item within their annual county budget is the best benefit of the current formula. A few participants expressed gratitude for their jurisdiction’s increased budget (by way of state funding) and acknowledged their jurisdiction would likely never again increase their own budget contributions toward indigent defense.

We need to keep local control. [Local jurisdictions] wouldn’t have opened these new units if they thought they’d get stuck holding the bag.

—County administrator from Michigan

Many who supported continuing this funding approach specifically emphasized that local control is in local jurisdictions’ and defendants’ best interest. A Michigan Supreme Court representative further reinforced this notion by expressing that decision makers in local jurisdictions are better positioned than state stakeholders to understand the gaps and challenges in their own systems. Participants who favor this combination-funding model trust that jurisdictions are also better equipped to solve problems on their own.

[The current formula] is a good balance. Local costs haven’t gone up with the increased level of representation [because] our city couldn’t afford it.

—Court administrator from Michigan

Local Control: Finding a Balance

Municipal and county government representatives identified ongoing tension between proponents of local control and state regulation as another underlying obstacle. County administrators, county commissioners, and municipal administrators agreed that local jurisdictions’ decision-making authority is severely diminished by the MIDC’s recent implementation (and forthcoming consideration) of additional indigent defense standards. When asked whether local jurisdictions are perceived to be decision makers or system managers, MIDC staff, criminal defense attorneys, and public defenders mostly answered, “decision makers,” while prosecutors, county commissioners, and county and municipal administrators viewed jurisdictions as stewards of MIDC directives. Some local jurisdictions view the standards as mandates requiring rigid execution, with gradually less local input needed as the remaining standards are implemented.

Local control is like Thanksgiving Day. Everyone has turkey, stuffing, and potatoes, but each jurisdiction prepares it differently.

—Court administrator from Michigan

The varying levels of local match have created perceptions of inequality in funding. Several participants highlighted the perceived inequity of the State expecting local jurisdictions with means to implement these new standards, while those struggling with financial hardships will receive financial assistance from the State. A public defender supported this view, indicating how it will be “harder to tease out local components versus those that should be state funded” due to varying local share determination elements that are now part of the MIDC Act. A county commissioner agreed, highlighting local jurisdictions’ frustration with the perceived lack of clarity in determining what is funded by MIDC grants during annual budget reviews. The representative further explained that the current formula can “discourage innovation” in providing services, sometimes forcing jurisdictions to “stoop to the lowest common denominator” by prohibiting seemingly extraneous spending.

Some participants interpret the MIDC Act’s decision-making role differently from each other; for example, some county and municipal administrators questioned what measurable progress has been achieved since the MIDC Act’s implementation. It can be difficult for system participants not actively providing defense services to recognize the significant improvements for underserved defendants. When asked whether specific elements of Michigan’s indigent defense system have improved or worsened, survey respondents largely answered that defense services rendered and decision-making authority were either somewhat better or had not changed since the implementation of the MIDC standards. In addition to state oversight and local control power dynamics, responses detailing the current local share formula’s drawbacks were related to the perceived unfairness of vastly different contribution levels between local jurisdictions. While responses indicated that budget predictability got better, respondents were unsure about how fairly resources were distributed across jurisdictions.

[There is] an antipathy in local government to trust Lansing [officials]. That mistrust was probably a major reason for funding units to hang on to control of their systems.

—Prosecutor from Michigan

Regionalization

In an effort to bridge the gap between state control and local decision making, one judge advocated for greater regionalization of resources to help struggling jurisdictions meet the standards set forth by the MIDC. Multiple participants across professions also lauded regionalization as a solution to limited resources in rural areas and as a cost-savings measure in higher-resource areas without the demand to match. One defense attorney advocated for district court systems to continue their legacy of coordination to most efficiently serve larger communities with an abundance of resources. Municipal administrators supported this sentiment but noted that “regional approaches need to be designed by local jurisdictions” to best serve defendants.

Drawbacks of State/Local Combination Funding

When asked whether the current formula is equitable across all of Michigan’s 124 systems, most participants said it was not. The few who responded affirmatively described an equal system, noting the benefits of jurisdictions’ contributions being calculated equally according to the same formula. Those who responded negatively to the question of equitability largely echoed the issues raised earlier. One county administrator highlighted that communities who previously provided funding beyond the minimum

required are now being harmed when compared to jurisdictions who contribute less, noting an implicit disincentive for jurisdictions to contribute more. Other respondents agreed, with one defense attorney urging the State to release jurisdictions from the burden of contributing more than their counterparts, despite meeting and surpassing the MIDC standards, which they deemed “an unfair tax on counties who tried to [implement] defense the right [way].”

A former judge referenced the inequity resulting from some jurisdictions recouping what would be local funding through “aggressive [reimbursement] collection policies,” recommending that revenue should start to be tracked and analyzed. Drafters of the original legislation conceded that the current formula had faults dating back to its planning, but it had reached peak political palatability—it needed to pass as is or not pass at all to facilitate improvements in Michigan’s indigent defense system. In acknowledging certain jurisdictions that “did not pay enough” in 2010, a defense attorney noted that those same jurisdictions are still not contributing enough. One judge summarized participants’ frustrations best: “The system perpetuates inequities” that already exist across the state.

Most focus group participants agreed unequivocally that inequities existed prior to the MIDC Act, with one MIDC staff person pointing out that the formula was implemented inequitably, “with injustices built in.” To help combat the inequities of jurisdictions funding and/or allocating their indigent defense budgets differently, public defenders and county commissioners suggested that the State should contribute 100 percent. Participants supporting this initiative argued that the State should “stick to its promise” by fulfilling its responsibility outlined in statute. Some prosecutors, county commissioners, and defense attorneys advocated for greater regionalization of resources as an equalizer across counties—less dependence on individual jurisdictions’ budgets—and as a cost savings. Still other focus group participants across professions disagreed with the notion that equity in providing defense services should be a comparison of jurisdictions, instead stating that MIDC should reevaluate imbalances in funding between various branches of the criminal justice system, including juvenile and abuse/neglect defense.

The State needs to deal with escalating costs... [We] have to up our game with indigent defense, [it’s] fundamental; but we can’t do it on the counties’ dime.

—County commissioner from Michigan

Some participants felt this friction also extended to comparisons between local jurisdictions’ spending and varied statewide contributions to local share. One attorney noted the current formula is unfair to jurisdictions that are “trying to do better” for their underserved population by spending as much as their budget would allow during the three-year period (2010–2012). Similarly, the current system “rewards those who were not doing a good job in an arbitrary year,” stated a local government representative. Further, these inequities are bolstered by a system that enables “bad behavior” at the financial expense of “jurisdictions doing a good job,” according to one judge. The ideal solution, proposed by a defense attorney, would enact “a policy that requires those with means to pay more, but does not impose another burden on small jurisdictions who cannot afford it.”

In some jurisdictions, initial pushback has transformed into fervent support of the current formula apportionment. Multiple participants emphasized the benefit of having a “local carve-out” for system control. One defense attorney stated that “allowing local [jurisdictions] to deliver services without [directives] from Lansing” enables local jurisdictions to be the decision makers for their communities. Representatives from a national organization argued that initial onus on local jurisdictions to develop

innovative solutions to their community’s unique problems prodded investment and ingenuity in improving individual local systems.

How can it be okay for the State to have 100 percent responsibility in one jurisdiction compared to 60 percent in another?

—County administrator from Michigan

Local Share Variance and Inflation

There is considerable dispersion by jurisdiction in terms of local share spending as a percentage of total costs, from as low as zero to as much as 89 and 88 percent in FY 2019 and FY 2020. At the same time, the number of jurisdictions with local share percentages above 50 percent declined from 11 to six between FY 2019 and FY 2020, indicating less variance at the high end of local share funding. As time progresses, the share of jurisdictions with relatively high local share funding percentages will decline, in part due to a lack of annual compounding inflation (i.e., inflation indexation is only to FY 2019 local share funding levels.) As a result, inflation dynamics were an important variable to assess.

The MIDC Act guidelines require local jurisdictions to increase their local share funding each fiscal year by inflation, which in recent years has been between 1.0 and 2.0 percent on average, according to the accepted legal interpretation of MCL 780.983. However, the base year to which jurisdictions apply the inflation increase is fixed to FY 2019 funding levels, not the previous fiscal year. In other words, when jurisdictions apply the inflation increase to determine FY 2022 funding levels, inflation is applied to FY 2019 funding levels, *not* FY 2021 funding levels. All future local share increases only compound from FY 2019 funding levels. Jurisdictions deducted attorney fee reimbursements from *gross* spending on indigent defense services between FY 2010 and FY 2012, leading to average *net* spending in those three years. The local share funding for FY 2019 is based on the average *net* spending on indigent defense for FY 2010, FY 2011, and FY 2012. There were no inflation-based increases between FY 2010–2012 and FY 2019.

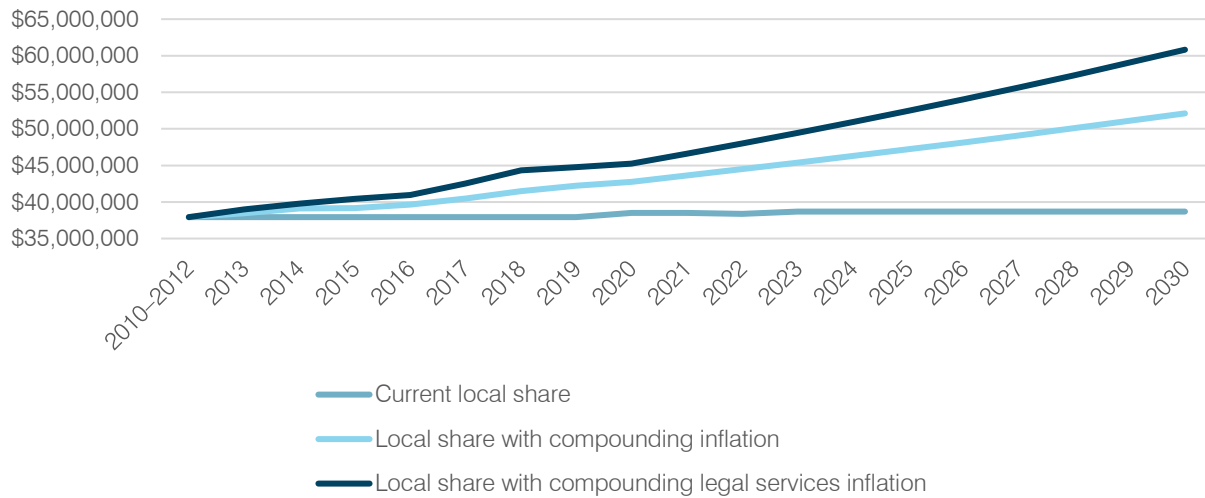
Given these rules, the potential for inflation-based increases in local spending was limited. In a scenario in which net spending was subject to inflation between FY 2010–2012 and FY 2019, local spending on indigent defense would have been higher by FY 2019. Additionally, after FY 2019, if inflation increases were applied to the previous year’s spending by the local unit, instead of to only FY 2019 levels, forecasted spending would likely be much higher for local units than the current projected path.

For example, in FY 2019, local share funding was \$37.9 million. If local share funding were subject to inflation between FY 2012 and FY 2019 the funding total would have increased to \$42.2 million by FY 2019. If local share funding were subject to the legal services component of inflation, the funding total would have been even greater, at \$44.8 million (Exhibit 6).⁷ Indeed, the legal services inflation rate has historically been slightly higher than overall inflation (Appendix A). In this context, PSC applied a 2 percent annual inflation rate and a 3 percent legal services inflation rate for fiscal years 2023–2030. While recent inflation in the U.S. has generally been below 2 percent on an annual basis, it is broadly

⁷ Inflation is based on Bureau of Labor Statistics data on Consumer Price Index for Urban Consumers, which represents 93 percent of the U.S. population. This includes the legal services component. For more information, please see question three of the [Consumer Price Index Frequently Asked Questions](#).

consistent with consensus forecasts of U.S. inflation.⁸ In these scenarios, by FY 2030, local share funding would exceed \$50 million and \$60 million, respectively. These totals are much higher than the expected funding under the current local share formula, which would remain around \$38 million by FY 2030 (Exhibit 6).

EXHIBIT 6. Inflationary Impact of Local Share Costs



Amending the Formula

When asked to provide suggestions or principles to guide changes to the current formula, most participants supported maintaining the current system. Those who supported formula change, according to one court administrator, are wary of its impact on the current funding structure, specifically over local jurisdictions’ contributions increasing. A defense attorney agreed with this sentiment, noting that any changes made to the formula at this point, given that the program is still in the early stages, “might undo progress.” Other participants used stronger language, labeling a reevaluation and potential formula amendment as a “reckless” undertaking that could “collapse” the current system. Even if some participants expressed support for eventually changing the formula—incorporating jurisdictions’ poverty rates and caseloads, for example—almost everyone agreed that amendments should not be made lightly or quickly. Many participants warned that significant changes right now may result in the state “not keeping its promise” to continue funding the majority of jurisdictions’ indigent defense budgets, leaving local jurisdictions to pay increased costs, which many are unable to do.

Participants including prosecutors, county commissioners, county administrators, and municipal administrators stated that the bigger issue to manage is the legality of the existing formula in relation to the Headlee Amendment. In 1978, Michigan voters amended the state constitution in an attempt to limit the growth of state government and preclude local governments from raising taxes without a vote of the people. The amendment added several provisions (sections 25 through 33) to Article IX of the state constitution and has significantly affected State-local finances. Section 29 prohibits the State from

⁸ Following the passage of the American Rescue Plan Act in 2021 and ongoing labor and supply shortages, there has been some concern among economists that inflation could increase. Indeed, inflation has increased in the first half of 2021. While PSC acknowledges this debate, for the purposes of the assessment, PSC assumes 2 percent inflation as a forecast.

mandating that local governments provide new services unless the State reimburses the locals for any necessary increased costs they may incur. As a result, representatives of local jurisdictions argue that some of the MIDC's requirements trigger violations of the Headlee Amendment, given that many jurisdictions expressed the need for greater transparency in the MIDC's approval of direct and indirect costs—costs which many local jurisdictions view as extraneous in the first place.

State and Local Share Funding Forecasts

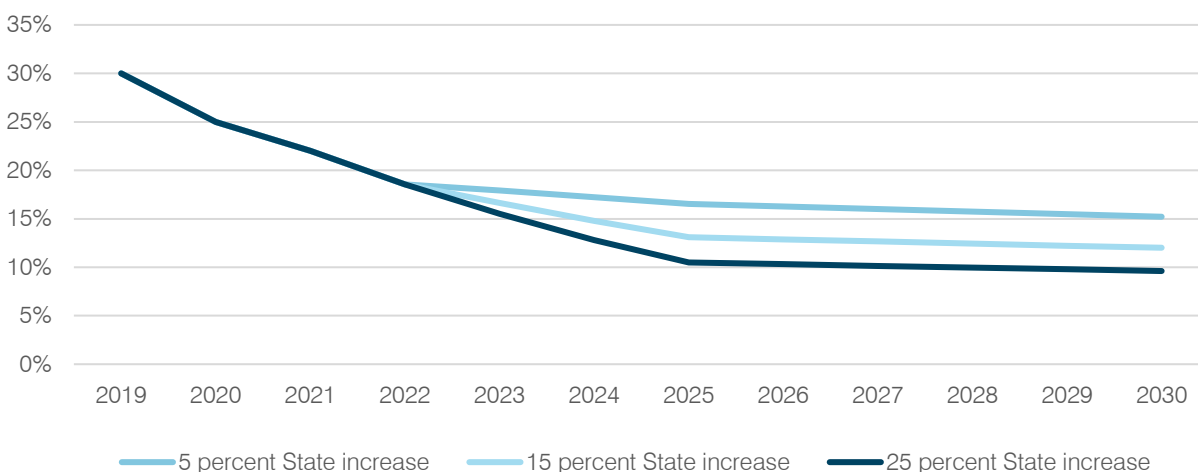
While jurisdictions have made significant progress in meeting standards one to four through FY 2021, several will require additional funding in future years. Indeed, the MIDC requested \$22.1 million in the FY 2022 Michigan budget for standards one through four. Additionally, in preparation for standard five's implementation—which addresses systems' independence from the judiciary—the MIDC has correspondingly requested \$12 million from the FY 2022 Michigan budget. Combined, the FY 2022 request is \$34.1 million, a 25 percent increase over FY 2021. Standards six and seven, which address attorney workload and qualifications, will be a focus in later years. Implementing standard six alone will likely be a costly endeavor. Some jurisdictions have already begun to implement the later standards (including standard eight, which regulates attorney compensation), but not all jurisdictions will be required to do so until the standard goes into effect at a later date. Implementation timelines for the standards depend on final standard approval by the director of the Department of Licensing and Regulatory Affairs and approval of the compliance plan submitted by the local jurisdiction.

These timing and funding uncertainties make it very difficult to generate a specific state funding forecast. However, PSC generated a range of possible state funding scenarios through FY 2025 when PSC assumes—for the purposes of the analysis—that all eight standards will have been met. Given the extensive efforts needed to meet standards one through four over FY 2019–FY 2022, standard five implementation in FY 2022, and the fact that some jurisdictions have already begun to implement standards six through eight, PSC assumed that standards six through eight should not take as long to implement as standards one through five. Therefore, PSC assumed an additional three fiscal years—FY 2023, FY 2024, and FY 2025—to meet all standards. It is possible that all standards may be met before FY 2025, so PSC has presented annual scenarios for each fiscal year. Additionally, forecasting local share funding is relatively straightforward, as local share increases are tied to consumer price inflation increases in each year and are only indexed to FY 2019 funding levels. As a result, it is possible to estimate scenarios on how the local share funding contribution could evolve over time.

PSC considered three state funding increases in fiscal years FY 2023, FY 2024, and FY 2025—5 percent, 15 percent, and 25 percent in each year—which are meant to illustrate possible scenarios and are not based on a specific methodology. Indeed, it is too early to speculate total resources needed to meet standards six through eight, though state funding increases are expected. Following FY 2025, state funding is assumed to be indexed to inflation.

Under these state funding increase scenarios, local share funding percentages will decline from 19 percent in FY 2022 to between 10 to 15 percent in FY 2025 and beyond (Exhibit 7). This would represent a marked decline from the initial FY 2019 local share percentage of 30 percent.

EXHIBIT 7. Local Share Funding Percentages Under State Grant Increase Scenarios (5 percent, 15 percent, 25 percent)



Attorney Fee Reimbursements

Participants were asked to discuss their system’s fee reimbursement collection practices and identify whether collection efforts were considered part of indigent defense system operation or as additional revenue earned by systems—responses were mixed. Prosecutors and public defenders confirmed that previously, defendants were assessed as “partially indigent” based on a combination of clerks’ evaluation of those individuals’ financial status and judges’ calculation of their attorney’s hourly fee. While one court administrator stated that courts do not view fee reimbursement collection as a revenue source, a prosecutor noted the need for implementing standard five (independence from the judiciary) given that judges seemed to have executive oversight in determining indigency. Participants from both groups called for greater uniformity and transparency in establishing defendants’ level of indigency to combat the significant range in collection practices across the state.

[The formula] was never really equitable. [Jurisdictions] performing poorly weren’t penalized.

—Judge from Michigan

Some local systems aggressively collect attorney fee reimbursement, while on the other end of the spectrum, some have completely foregone collection efforts to avoid compounding fees for people without the means to pay. Defense attorneys and MIDC staff shared defendants sometimes “decline representation because they cannot afford a court-appointed attorney” and that defense attorneys sometimes underreport their billable time to limit that exact financial burden on clients. One defense attorney questioned why local systems feel the need to collect at all, given that most of the systems’ funding is provided by the State (75 percent on average, according to one MIDC staff person). Prosecutors and municipal administrators pointed out that implementing the MIDC standards has unintentionally increased indirect costs related to indigent defense often not funded by the State, including additional weekend magistrates, prosecutorial staff, and staff and resources to conduct time studies. Participants

working in the indigent defense system outside of defense services communicated that their departments' needs are left out of the formula's considerations, ultimately to the defendants' and overall system's detriment.

While jurisdictions deducted attorney fee reimbursements under the local share formula in FY 2010–2012, reimbursements do not factor into local share payments in FY 2019 and beyond. The MIDC currently requests attorney fee reimbursement information, which jurisdictions should complete and certify. PSC and MIDC obtained available reimbursement data for FY 2020, but FY 2019 reports were unavailable. Of 124 systems, the majority (121) provided data on attorney fee reimbursements, and MIDC staff were able to verify figures for 45 jurisdictions. Three jurisdictions did not provide any information. As a result, the results of this analysis should be considered preliminary. (Appendix B has anonymized data on each system's FY 2020 local share spending, FY 2020 attorney fee reimbursements, and average FY 2010–2012 attorney fee reimbursement collections.)

Out of 124 systems in FY 2020, slightly less than half (59) reported zero attorney fee reimbursement collections in FY 2020, while half (62) reported collection of attorney fee reimbursements. Three did not provide any information. Compared to FY 2010–2012 attorney fee collection data, FY 2020 figures suggest that 45 jurisdictions have phased out attorney fee collection altogether (Exhibit 8). Meanwhile, 14 jurisdictions reported zero collections in FY 2010–2012 and continued to report zero collections in FY 2020.

EXHIBIT 8. Attorney Fee Reimbursement Collection Reporting Data

Number of Jurisdictions	FY 2020	FY 2010–2012 average	Difference
Did not collect reimbursement	59	14	-45
Reported collection	62	107	+45
No data provided	3	3	0
Total	124	124	0

Source: PSC analysis of MIDC data.

The evolution of attorney fee collections since FY 2010–2012 indicates that a minority of systems (20) have since increased attorney fee reimbursement collections. Another 40 systems have continued to collect attorney fee reimbursements, but at lower levels than in FY 2010–2012 (Exhibit 9). Finally, 59 reported zero collections, equivalent to data presented in Exhibit 8, while there were five jurisdictions without sufficient information for a comparison to FY 2010–2012 levels. Altogether, preliminary data indicates that a minority (16 percent) of jurisdictions have stepped up attorney fee reimbursement collections since FY 2010–2012, while a majority (80 percent) have either reduced or phased out collections.

EXHIBIT 9. Attorney Fee Reimbursement Collection Data—FY 2020 versus FY 2010–2012

Number of Jurisdictions	FY 2020
Greater than FY 2010–2012 average	20
Less than FY 2010–2012 average	40

Did not collect reimbursement	59
Not enough information	5
Total	124

Source: PSC analysis of MIDC data

Comparing FY 2020 attorney fee reimbursement data to FY 2020 local share funding by system also provides useful insight. In FY 2020, 14 systems collected more than their respective local share contribution, while 48 collected attorney fee reimbursements less than their local share contribution (Exhibit 10). Finally, 59 reported zero collections, while three did not provide sufficient information. Overall, a small minority (11 percent) collected more than their respective local share, while the majority collects less than their local share or zero.

EXHIBIT 10. FY 2020 Attorney Fee Reimbursement Data and Local Share

Number of Jurisdictions	FY 2020
Greater than local share	14
Less than local share	48
Did not collect reimbursement	59
Not enough information	3
Total	124

Source: PSC analysis of MIDC data.

Additionally, PSC examined hypothetical scenarios in which attorney fee reimbursements were incorporated into FY 2020 local share funding levels for all jurisdictions. In the first year of MIDC funding, FY 2019, systems deducted attorney fee reimbursement collections (i.e., revenues) from expenses to arrive at their local share contribution. State funding in FY 2019 and subsequent years accounts for that deduction. If jurisdictions *excluded* average FY 2010–2012 attorney fee reimbursement collection deductions from FY 2020 local share funding, the local share funding percentage of total system costs would increase from 24 percent to 32 percent (Exhibit 11). In this scenario, the calculation of local share funding was only based on expenses in FY 2010–2012 and did not allow for revenue deductions (i.e., attorney fee reimbursements). Overall, average FY 2010–2012 attorney fee reimbursements represented approximately 30 percent of FY 2020 local share funding.

Meanwhile, if systems *included* FY 2020 attorney fee reimbursement collections in the calculation of FY 2020 local share funding, the local share percentage of total system costs would increase from 24 percent to 29 percent. This represents a scenario in which systems account for revenues (i.e., attorney fee reimbursements) when calculating annual local share funding, which they are not required to do on an annual basis. Overall, FY 2020 attorney fee reimbursement collections represented approximately 17 percent of FY 2020 local share funding.

EXHIBIT 11. FY 2020 Local Share Percentage Incorporating Attorney Fee Reimbursements

	FY 2020
Local share	24%
Local share <i>excluding</i> FY 2010–2012 attorney fee reimbursement collection	32%
Local share <i>including</i> FY 2020 attorney fee reimbursement collection	29%

Source: PSC analysis of MIDC data.

Recommendations

Based on the evaluation activities conducted, PSC developed recommendations for MIDC to implement to gather additional data to reevaluate the formula in the future.

Delay Formula Amendments

Interviewees, focus group participants, and survey recipients across all professions participating in Michigan’s indigent defense system agreed the current formula should not be amended at this time. While the formula does not yet achieve equity among jurisdictions, adjusting the funding structure now would likely disrupt the progress made in improving Michigan’s indigent defense system thus far.

Explore Further Regionalization Efforts

While acknowledging the unique characteristics and needs of Michigan’s local government funding units, it must be noted that regionalization has proven successful in more rural, less densely populated communities and in communities with an abundance of resources coupled with lower demand. Where appropriate, MIDC should assess the feasibility and potential impact of further regionalizing and pooling of system resources and/or outright combining neighboring indigent defense systems. This type of resource coordination could streamline indigent defense operations and lower or avoid costs by decreasing duplicate or inefficient local funding requests. Further regionalization efforts should be encouraged at the state level and should be driven by local jurisdictions.

Require Reimbursement Collection Reporting

MIDC should require local systems to submit and verify reporting on appointed attorney fee reimbursement collection at the risk of their state system funding payments being delayed. Greater accountability for reimbursement collection reporting—and other data the MIDC sees fit to collect—will provide a better understanding of issues and gaps related to funding indigent defense. Collections, if any, as assessed and collected by the courts and the local indigent defense system for appointed attorney reimbursement should be clearly mandated to support the local indigent defense system to enhance the resources already provided by the state and the local share. In addition, the legislature should review and consider removing the average attorney fee collections from the current local share formula calculation, which will move the formula toward better equity between indigent defense systems’ local share contributions to indigent defense spending (Appendices B and C).

Establish Reevaluation Timeline

Following standards implementation and additional fiscal years of data collection, the MIDC should establish a reevaluation timeline for the funding formula for Michigan's indigent defense system. PSC advocates to resume reevaluation after all MIDC standards have been implemented for at least several budget cycles. Standards implementation includes realization of the indigency screening standard, to be approved by Orlene Hawks, Director of the Department of Licensing and Regulatory Affairs, in October 2021.

Conclusion

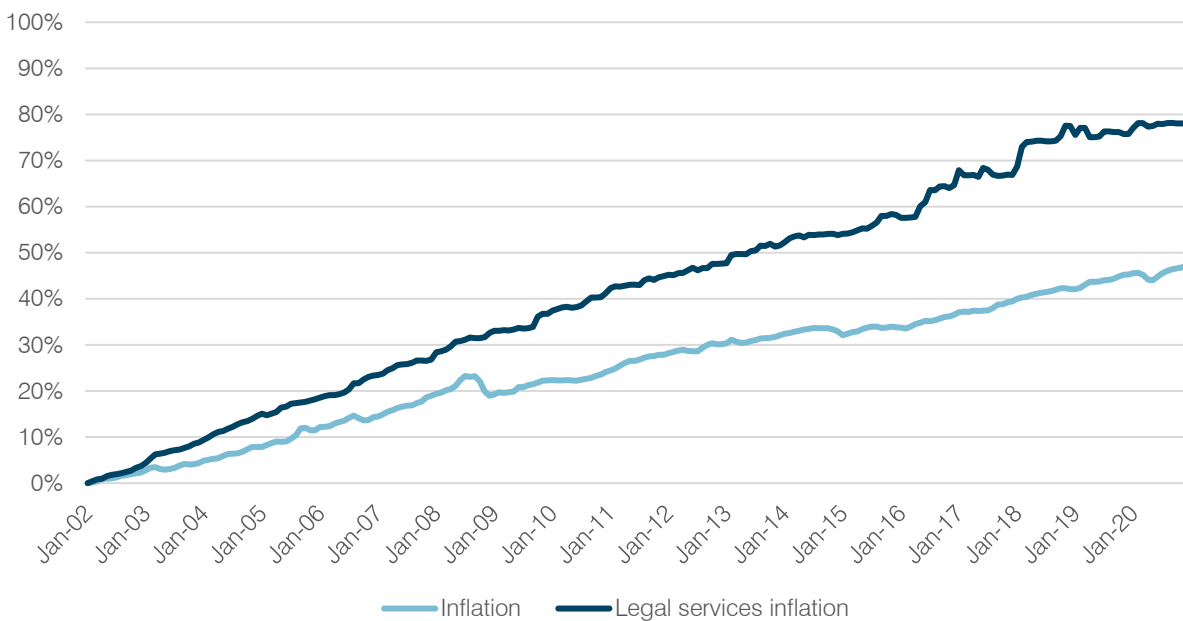
Despite the conversations ahead for state and local funding contributions, it is important to note this program is still in its early stages of implementation. In addition, this system review mandated by the Michigan legislature occurred during the COVID-19 pandemic—unprecedented in scope, its toll on Michigan's criminal justice system was severe and unpredictable. The difficulties and departure from normalcy that the pandemic wrought cannot be overstated, especially for a statewide program in its second year of operation. The work completed thus far is a preliminary analysis of the local share formula, consistent with the experiences of experts in the field, current MIDC data, and projections for future years. Overall, Michigan's indigent defense system is much better equipped to adequately provide effective, quality representation to underserved defendants than the previous locally funded system. Participants during all phases of this project have conceded that while the funding formula may not be perfect or final, altering it now would be a disservice to local jurisdictions and the defendants they serve. Following implementation and operationalization of the remaining standards, MIDC should again evaluate the benefits and drawbacks of the current formula—and its equitability—to assess whether the formula should be amended in the future.

Appendix A: Inflation and Legal Services Inflation

The U.S. consumer price index (CPI), as calculated and published by the U.S. Bureau of Labor Statistics,⁹ comprises many goods and services purchased by U.S. residents, including food, energy, healthcare, telecommunications, and education. Legal services is listed in the CPI and is approximately equivalent to the average price of legal services that U.S. residents consume. U.S. inflation has been fairly low in recent years, ranging between 1 and 2 percent year over year, on average, over the last decade, though it was slightly higher in the previous decade. Meanwhile, the legal services component of inflation has slightly outpaced overall U.S. inflation. There is no consumer price index for indigent legal services.

From January 2002 until December 2020, overall U.S. inflation cumulatively increased by almost 50 percent. Over the same period, legal services inflation rose by almost 80 percent (Exhibit A1). While legal services for underserved defendants may not exactly match the price dynamics of legal services inflation, it is still useful for PSC's analysis. Overall CPI is utilized to calculate the increase in local share spending on legal services for underserved defendants, and as such, it is useful to understand if local share spending would be higher if it were applied to legal services instead. To forecast local share spending following FY 2021, PSC used an overall inflation rate of 2 percent and a legal services inflation rate of 3 percent. These annual rates are broadly consistent with previous price dynamics and are reasonable assumptions.

EXHIBIT A1. U.S. Inflation versus Legal Services Inflation



Note: January 2002 = 0.

⁹ U.S. Bureau of Labor Statistics. n.d. "Consumer Price Index." *U.S. Bureau of Labor Statistics*. Accessed March 25, 2021. <https://www.bls.gov/cpi/>

Appendix B: FY 2020 Local Share Spending and Attorney Fee Reimbursements (Preliminary)

EXHIBIT B1. System Data on FY 2020 Local Spending, FY 2020 Attorney Fee Reimbursements, and Average FY 2010–2012 Attorney Fee Reimbursements

Local Systems	FY 2020 Local Spending	FY 2020 Attorney Fee Reimbursements	FY 2010–2012 Average Attorney Fee Reimbursements
1	\$41,012	\$0	\$30,526
2	\$53,464	\$0	\$7,504
3	\$540,904	\$0	\$268,438
4	\$163,361	\$0	\$0
5	\$80,156	\$0	\$58,413
6	\$114,336	\$0	\$0
7	\$158,449	\$0	\$0
8	\$231,302	\$0	\$27,912
9	\$606,199	\$0	\$29,576
10	\$283,151	\$48,889	\$55,700
11	\$575,097	\$154,106	\$178,485
12	\$154,707	\$0	\$18,829
13	\$698,290	\$0	\$88,707
14	\$254,342	\$44,924	\$22,902
15	\$168,477	\$3,332	\$9,021
16	\$144,515	\$0	\$20,485
17	\$224,374	\$74,905	\$36,877
18	\$236,526	\$2,926	\$129,253
19	\$147,842	\$19,445	\$1,047
20	\$15,030	\$35,485	\$57,361
21	\$206,507	\$600	\$144
22	\$17,591	\$72,442	\$83,700
23	\$52,617	\$660	\$8,602
24	\$62,957	\$5,990	\$41,550
25	\$78,855	\$0	\$6,842
26	\$9,831	\$18,188	\$23,805
27	\$8,938	\$0	\$7,249
28	\$45,990	N/A	\$0
29	\$40,370	\$0	\$40,894
30	\$14,832	\$1,059	\$14,137
31	\$10,736	\$0	\$15,611
32	\$1,462	\$0	\$28,010

Local Systems	FY 2020 Local Spending	FY 2020 Attorney Fee Reimbursements	FY 2010–2012 Average Attorney Fee Reimbursements
33	\$4,687	\$0	\$1,640
34	\$23,476	\$647,092	\$5,383
35	\$14,487	N/A	\$3,890
36	\$12,661	\$5,228	\$14,295
37	\$76,757	N/A	\$6,193
38	\$55,316	\$0	\$0
39	\$31,142	\$11,010	\$37,761
40	\$1,086,674	\$273,338	\$450,720
41	\$122,808	\$194,698	\$1,122,667
42	\$53,008	\$0	\$111,147
43	\$90,250	\$267,828	\$304,161
44	\$7,079	\$0	\$71,163
45	\$0	\$0	\$35,199
46	\$43,619	\$57,241	\$147,559
47	\$18,375	\$0	\$21,145
48	\$15,309	\$0	\$23,927
49	\$1,781	\$3,447	\$35,448
50	\$22,692	\$0	\$600
51	\$42,170	\$10,238	\$42,076
52	\$82,782	\$18,034	\$43,348
53	\$21,911	\$20,592	\$45,152
54	\$17,464	\$26,031	\$46,192
55	\$18,023	\$4,813	\$2,165
56	\$31,807	\$41,160	\$28,863
57	\$2,826	\$0	\$6,150
58	\$6,237	\$0	\$6,166
59	\$177,125	\$68,293	\$70,061
60	\$7,161	\$22,040	\$7,393
61	\$39,165	\$2,640	\$29,959
62	\$13,797	\$0	\$0
63	\$0	\$53,320	\$48,481
64	\$109,591	\$51,604	\$71,817
65	\$68,654	\$48,762	\$90,990
66	\$445,328	\$100	\$10,671
67	\$162,829	\$0	\$30,198
68	\$1,335,599	\$0	\$41,175
69	\$104,397	\$15,263	\$1,951
70	\$156,959	\$259,430	\$261,897

Local Systems	FY 2020 Local Spending	FY 2020 Attorney Fee Reimbursements	FY 2010–2012 Average Attorney Fee Reimbursements
71	\$83,401	\$16,615	N/A
72	\$10,185	\$0	\$0
73	\$3,233	\$0	\$1,653
74	\$15,015	\$970	\$0
75	\$3,151	\$0	\$10,008
76	\$113,756	\$0	\$0
77	\$81,183	\$0	\$56,094
78	\$921,865	\$38,526	\$166,908
79	\$223,413	\$0	\$46,202
80	\$171,806	\$13,192	\$0
81	\$73,071	\$0	\$8,181
82	\$238,440	\$0	\$140,799
83	\$567,334	\$99,534	N/A
84	\$1,176,108	\$53,796	\$264,914
85	\$39,853	\$0	\$36,553
86	\$2,449,097	\$43,340	\$310,833
87	\$77,894	\$0	\$0
88	\$109,845	\$2,284	\$156,521
89	\$52,833	\$0	\$26,635
90	\$214,815	\$152,606	\$83,048
91	\$936,856	\$0	\$204,509
92	\$30,176	\$3,922	\$4,491
93	\$136,830	\$0	\$4,792
94	\$2,242,139	\$1,260,801	\$1,122,180
95	\$229,920	\$0	N/A
96	\$156,856	\$14,519	\$0
97	\$166,910	\$0	\$139,941
98	\$116,201	\$5,317	\$6,477
99	\$259,599	\$26,452	\$22,204
100	\$215,997	\$43,111	\$243,435
101	\$225,180	\$12,896	\$16,093
102	\$16,915	\$0	\$0
103	\$676,864	\$0	\$634
104	\$201,412	\$0	\$1,603
105	\$1,868,991	\$1,029,655	\$1,321,217
106	\$92,954	\$0	\$1,603
107	\$147,850	\$0	\$88,666
108	\$27,774	\$14,355	\$8,989

Local Systems	FY 2020 Local Spending	FY 2020 Attorney Fee Reimbursements	FY 2010–2012 Average Attorney Fee Reimbursements
109	\$70,307	\$0	\$56,610
110	\$54,338	\$0	\$0
111	\$82,273	\$0	\$33,518
112	\$943,395	\$0	\$479,028
113	\$74,902	\$23,936	\$4,000
114	\$203,667	\$0	\$142,014
115	\$917,671	\$0	\$19,157
116	\$65,684	\$80,974	\$59,499
117	\$36,314	\$0	\$6,032
118	\$106,082	\$5,155	\$148,528
119	\$750,173	\$149,554	\$349,087
120	\$423,223	\$0	\$47,550
121	\$253,957	\$0	\$70,914
122	\$2,441,933	\$79,080	\$152,599
123	\$7,611,175	\$647,092	\$684,566
124	\$146,902	\$61,801	\$5,803
Total	\$38,523,884	\$6,464,638	\$11,343,271

Source: MIDC.

Appendix C: FY 2020 System Local Share Spending as a Percent of Total Local Share Spending

Total FY 2020 local share spending was \$38.5 million, and PSC calculated each system’s local share spending as a percent of \$38.5 million (Exhibit C1). To create a proxy for what each system would be spending if attorney fee reimbursement collections were not deducted, PSC also performed the same calculation, but excluded average FY 2010–2012 attorney fee reimbursement deductions from each system’s local share spending and from total local share spending. This was accomplished by adding each system’s average FY 2010–2012 attorney fee reimbursement deductions to their respective local share spending. This results in total local share spending of \$49.9 million, which is the sum of actual FY 2020 local share spending of \$38.5 million and total average FY 2010–2012 attorney fee reimbursements of \$11.4 million.

By excluding average FY 2010–2012 attorney fee reimbursement deductions, some systems have slightly larger percentage contributions to total local spending, which indicates average FY 2010–2012 attorney fee reimbursements were sizeable relative to FY 2020 local share (Exhibit C1). Meanwhile, some systems have smaller or equal percentage contributions to total local spending, which indicates average FY 2010–2012 attorney fee reimbursements were modest relative to FY 2020 local share. These small shifts suggest that excluding average FY 2010–2012 attorney fee reimbursement deductions from the local share formula may enhance equity between indigent defense systems’ local share contributions to indigent defense spending.

EXHIBIT C1. FY 2020 System Local Share Spending as a Percent of Total Local Share Spending

Local System	System Local Share as Percent of Total Local Share	System Local Share as a Percent of Total Local Share, Excluding FY 2010–2012 Average Attorney Fee Reimbursements
1	0.106%	0.143%
2	0.139%	0.122%
3	1.404%	1.623%
4	0.424%	0.328%
5	0.208%	0.278%
6	0.297%	0.229%
7	0.411%	0.318%
8	0.600%	0.520%
9	1.574%	1.275%
10	0.735%	0.680%
11	1.493%	1.511%
12	0.402%	0.348%
13	1.813%	1.578%
14	0.660%	0.556%
15	0.437%	0.356%
16	0.375%	0.331%

Local System	System Local Share as Percent of Total Local Share	System Local Share as a Percent of Total Local Share, Excluding FY 2010–2012 Average Attorney Fee Reimbursements
17	0.582%	0.524%
18	0.614%	0.734%
19	0.384%	0.299%
20	0.039%	0.145%
21	0.536%	0.414%
22	0.046%	0.203%
23	0.137%	0.123%
24	0.163%	0.210%
25	0.205%	0.172%
26	0.026%	0.067%
27	0.023%	0.032%
28	0.119%	0.092%
29	0.105%	0.163%
30	0.038%	0.058%
31	0.028%	0.053%
32	0.004%	0.059%
33	0.012%	0.013%
34	0.061%	0.058%
35	0.038%	0.037%
36	0.033%	0.054%
37	0.199%	0.166%
38	0.144%	0.111%
39	0.081%	0.138%
40	2.821%	3.083%
41	0.319%	2.498%
42	0.138%	0.329%
43	0.234%	0.791%
44	0.018%	0.157%
45	0.000%	0.071%
46	0.113%	0.383%
47	0.048%	0.079%
48	0.040%	0.079%
49	0.005%	0.075%
50	0.059%	0.047%
51	0.109%	0.169%
52	0.215%	0.253%
53	0.057%	0.134%

Local System	System Local Share as Percent of Total Local Share	System Local Share as a Percent of Total Local Share, Excluding FY 2010–2012 Average Attorney Fee Reimbursements
54	0.045%	0.128%
55	0.047%	0.040%
56	0.083%	0.122%
57	0.007%	0.018%
58	0.016%	0.025%
59	0.460%	0.496%
60	0.019%	0.029%
61	0.102%	0.139%
62	0.036%	0.028%
63	0.000%	0.097%
64	0.284%	0.364%
65	0.178%	0.320%
66	1.156%	0.914%
67	0.423%	0.387%
68	3.467%	2.761%
69	0.271%	0.213%
70	0.407%	0.840%
71	0.216%	N/A
72	0.026%	0.020%
73	0.008%	0.010%
74	0.039%	0.030%
75	0.008%	0.026%
76	0.295%	0.228%
77	0.211%	0.275%
78	2.393%	2.183%
79	0.580%	0.541%
80	0.446%	0.345%
81	0.190%	0.163%
82	0.619%	0.760%
83	1.473%	N/A
84	3.053%	2.890%
85	0.103%	0.153%
86	6.357%	5.535%
87	0.202%	0.156%
88	0.285%	0.534%
89	0.137%	0.159%
90	0.558%	0.597%

Local System	System Local Share as Percent of Total Local Share	System Local Share as a Percent of Total Local Share, Excluding FY 2010–2012 Average Attorney Fee Reimbursements
91	2.432%	2.289%
92	0.078%	0.070%
93	0.355%	0.284%
94	5.820%	6.747%
95	0.597%	N/A
96	0.407%	0.315%
97	0.433%	0.615%
98	0.302%	0.246%
99	0.674%	0.565%
100	0.561%	0.921%
101	0.585%	0.484%
102	0.044%	0.034%
103	1.757%	1.359%
104	0.523%	0.407%
105	4.852%	6.397%
106	0.241%	0.190%
107	0.384%	0.474%
108	0.072%	0.074%
109	0.183%	0.255%
110	0.141%	0.109%
111	0.214%	0.232%
112	2.449%	2.852%
113	0.194%	0.158%
114	0.529%	0.693%
115	2.382%	1.879%
116	0.171%	0.251%
117	0.094%	0.085%
118	0.275%	0.511%
119	1.947%	2.204%
120	1.099%	0.944%
121	0.659%	0.651%
122	6.339%	5.203%
123	19.757%	16.636%
124	0.381%	0.306%

Source: PSC analysis of MIDC data.



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