



FY 2018 Budget Enhancement Request

State Appellate Defender Office and Michigan Appellate Assigned Counsel System

Contact: Dawn Van Hoek, State Appellate Defender, dvanhoek@sado.org

For FY 2018, SADO (now merged with MAACS) has requested an ongoing increase (\$1.4 million requested, \$750,000 recommended by Governor Snyder) to support its representation of juvenile lifers facing resentencing proceedings. As work on juvenile lifer cases decreases over time, SADO will continue to increase its share of the regular statewide appellate caseload.

Background

In the four years preceding FY 2017, SADO steadily increased its budget and capacity to provide "no less than 25%" of the statewide criminal appellate caseload, as required by statute. SADO was on track to handle nearly 30% of the workload in FY 2017 until an extraordinary decision of the United States Supreme Court in January of 2016 created a one-time compliance effort limited to 364 cases in Michigan. The decision required courts, prosecutors and defense attorneys to add complex litigation to their normal caseloads. *Montgomery v Louisiana*, 577 US ___ (2016) requires resentencing of "juvenile lifers" to either "term of years (TOY)" or "life without parole (LWOP)" prison terms. SADO represents 203 of the 364 Michigan juvenile lifers: the agency received a supplemental \$300,000 (FY 2016) and \$700,000 (FY 2017) to add staff on the cases. Boilerplate language in SADO's FY 2017 budget indicated the legislative intent to continue funding in the FY 2018 budget.

Why should the requested enhancement for SADO be funded on an ongoing basis?

- **Compliance work is not done.**

In the year since the *Montgomery* decision, work has proceeded according to the statutory priorities set forth in MCL 769.25a. Over the summer of 2016, prosecutors filed motions seeking either TOY or LWOP treatment. Negotiations have proceeded in TOY cases where clients have already served lengthy sentences. As of March 1, 2017, 32 of SADO's 203 juvenile lifer clients have been resentenced. Investigation and litigation preparation are well underway on the remaining 171 cases.

- **Compliance resources are needed by both defense and prosecution.**

Governor Snyder has recommended a funding increase for FY 2018 of \$750,000 for SADO, and \$750,000 for the Attorney General, to address the compliance need.

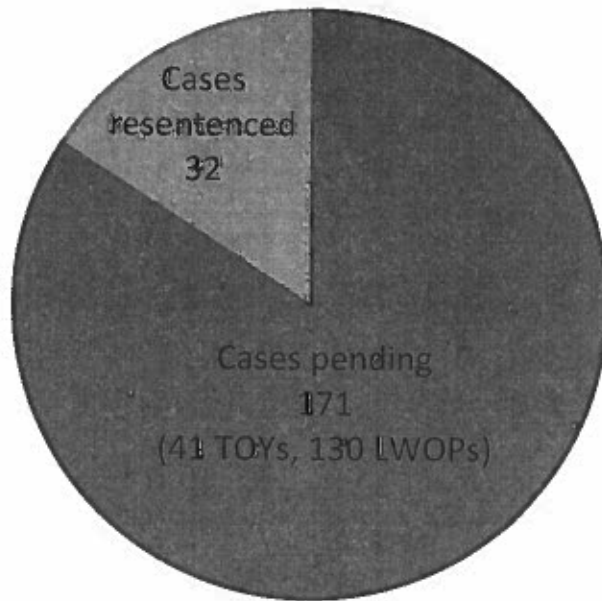
- **The compliance efforts are expected to take approximately five years.**

Juvenile lifer cases are both complex and serious, requiring a team approach to document collection, assessments, in-depth investigation, court filings, and court hearings. Many cases were prosecuted decades ago, further complicating the work. While the high stakes alone cause all parties to proceed only after adequate preparation, litigation over the process has placed most cases on hold for court hearings, while investigations and negotiations continue.

- Michigan prosecutors filed for LWOP in an exceptionally high percentage of cases.**
 The biggest impact on workload came from the decisions of Michigan prosecutors to seek life without parole (LWOP) sentences in 229 of the 364 juvenile lifer cases, or 65 percent. Michigan is an outlier nationally on this point, as the U S Supreme Court has repeatedly stressed that only the “rare” case qualifies for such treatment. Like death penalty hearings, proceedings for juvenile lifers listed for life without parole treatment carry the risk of the ultimate penalty: death in prison. Most (nearly 70%) of SADO’s cases fall into this most serious category. This unexpected action by Michigan prosecutors significantly increased the costs for defense representation, and is one reason for the requested increase from FY 2017 funding.
- Continuation of SADO funding is the most cost-effective and efficient way to get the work done**
 Failure to provide continuation funding will have extreme effects, impacting both the juvenile lifer clients and Michigan counties. If the juvenile lifer cases are turned back to counties for appointment of new counsel, much of the first year’s work will be lost and new counsel will be slow to get up to speed. Attorneys qualified and able to take the cases from SADO simply don’t exist in any substantial number at the county levels. If SADO keeps the juvenile lifer cases, without additional funding, it will have to turn back regular appeals in criminal cases. Since SADO is state-funded and non-SADO appointments are paid directly by the counties, either option will force counties to pay significantly more in counsel costs.
- Because doing compliance right will save money in the long term.**
 If SADO is adequately funded now on an ongoing basis, juvenile lifer cases will be done right, lessening the risk of appeals and repeat proceedings. A rush to dispose of juvenile lifer cases quickly and cheaply in Arizona recently led to Supreme Court reversal and remand of at least five cases to the state, with instructions to treat them more seriously and with adequate resources. For cases that proceed to hearings, an adequately-funded defense saves significant money for the State of Michigan. A conservative estimate of savings in prison costs for SADO’s 32 resentenced clients is \$15,339,556: with expenses prorated (June, 2016 – February, 2017) for the funded period, the ROI for the project is currently 18 to 1. For each client paroled at his earliest release date (satisfying the Parole Board that he doesn’t present a risk to the public), the State of Michigan saves an average of \$568,132 in prison costs.
- An ongoing enhancement will ensure competent counsel in more cases, over time, continuing the incremental increase in SADO’s caseload share.**
 As work on the juvenile lifer cases is completed in coming years, project staff will transition to felony direct appeal SADO caseloads, increasing capacity of the office from to 40% of the statewide workload. This upward budget trajectory has been underway for several budget years, and is widely supported by system stakeholders. The return on investment for SADO representation in felony appeals is exceptional (about 3 to 1), with over \$6 million dollars in reduced prison costs achieved annually through resentencing of clients.

**Compliance Results
SADO's Juvenile Lifer Clients
Resentenced to Term of Years**

June, 2016 – February, 2017



**Expenditures
\$851,620**

**ROI of
18 to 1**

