

April 12, 2024

Senate Appropriations Subcommittee on LARA/DIFS

Senator Mary Cavanagh, *Chair*
Senator Sylvia Santana, *Majority Vice Chair*
Senator Lana Theis, *Minority Vice Chair*

House Appropriations Subcommittee on LARA/DIFS

Representative Phil Skaggs, *Chair*
Representative Julie Brixie, *Majority Vice Chair*
Representative Bill Schuette, *Minority Vice Chair*
Representative Christine Morse, *Member*
Representative Jasper Martus, *Member*
Representative Donovan McKinney, *Member*
Representative Ken Borton, *Member*
Representative Nancy DeBoer, *Member*

The State Bar of Michigan strongly supports the Governor’s FY 2025 executive budget recommendation for the Michigan Indigent Defense Commission (“MIDC”). We urge the Senate and House Appropriations Subcommittees on LARA/DIFS to include full funding for MIDC at the executive recommendation level to ensure that Michigan meets its constitutional obligation to provide indigent individuals with effective assistance of legal counsel in criminal proceedings. We also wish to remind the Subcommittees about the potential impact of pending legislation regarding indigent defense services for juveniles.

FY 2025 Executive Budget Recommendation for MIDC

The Governor’s executive budget recommends \$258.3 million for MIDC grants to 133 local trial court funding systems to fund implementation of the minimum standards developed by MIDC for the delivery of trial-level defense services. This recommendation is an increase of \$37.3 million over FY 2024. \$12.85 million of that increase will support local implementation of recently approved MIDC standards on attorney qualifications and workloads. The remaining \$24.57 million will support continued implementation of all other MIDC standards.

Both the state and federal constitutions guarantee a right to counsel for indigent criminal defendants. Const 1963, art 1, § 20; US Const, Am VI. Michigan ensures its compliance with this constitutional obligation via the provisions of the Michigan Indigent Defense Commission Act, 2013 PA 93. The Act requires MIDC to establish, oversee, and enforce minimum standards “to ensure that indigent criminal defense services providing effective assistance of counsel are consistently delivered to all indigent adults in this state.” MCL 780.989. It’s often forgotten during annual budget discussions that the MIDC was established in the wake of a scathing [report¹](#) published by the National Legal Aid & Defender Association and a class-action lawsuit challenging the constitutionality of Michigan’s indigent defense system or lack thereof.

¹ *A Race to the Bottom: Speed & Savings Over Due Process: A Constitutional Crisis* (<https://www.in.gov/publicdefender/files/NLADA-Report-Michigan.pdf>)



Since 2013, MIDC has developed and overseen the implementation of minimum system standards, ensuring that Michigan provides effective assistance of counsel consistent with the Constitution. In its first decade of operation, the MIDC has been widely recognized as an exemplary model and a national leader in indigent defense. In 2023, the National Institute of Justice, the research and evaluation agency of the U.S. Department of Justice, wrote in a [report](#)² on state public defense systems that: “Michigan stands apart as a state that, in the past 15 years, has transformed its public defense system and continues to sustain its progress.” That success is due in no small part to the fact that the Legislature has never shied away from its responsibility to adequately fund local implementation of standards developed by MIDC. In fact, since MIDC grants began in FY 2019, the Legislature has never once failed to ensure that funds were available at the executive recommendation or above.

The Bar believes that it is important for legislators to understand the unique consequences of failing to adequately fund MIDC, which are quite different than underfunding other state programs. The executive budget recommendation is established each year based on plans developed by local defense systems and reviewed by MIDC, who in turn works with LARA and the State Budget Office to ensure that plans are adequately funded. When the Legislature enacted the MIDC Act, it provided that a local defense system’s obligation to implement mandatory standards is “contingent upon receipt of a grant in the amount sufficient to cover that particular standard or standards contained in the plan and cost analysis approved by the MIDC.” MCL 780.997. In short, if the Legislature appropriates insufficient funds, local systems are no longer required to implement the mandatory standards.

The State Bar of Michigan supported 2013 PA 93 to create the Michigan Indigent Defense Commission and has supported every executive budget recommendation for MIDC grants to local systems since they began in FY 2019. We recognize that these funds are critically important to the administration of justice and urge the Legislature to support full funding for MIDC at the executive recommendation level for FY 2025.

Juvenile Defense Services: HB 4630

The Governor’s Executive Budget Summary states that the FY 2025 budget “also invests in juvenile justice reforms to ensure that our minors have fair representation . . .” Unfortunately, the work necessary to ensure fair representation remains unfinished by the Legislature and in this budget. In December, nineteen of twenty bills introduced based on the consensus recommendations of the Michigan Task Force on Juvenile Justice Reform were signed into law. This included SB 425 (now 2023 PA 299), which expanded the statutory mandate of the State Appellate Defender Office to include appellate juvenile defense. While appellate defense was expanded to include juveniles, trial-level defense was not. HB 4630, which would expand the statutory mandate of MIDC to include juvenile defense, was passed by the House and advanced to third reading in the Senate, but is still awaiting a final vote. The State Bar of Michigan supports this legislation and is hopeful that the Seante will send HB 4630 to the Governor for her signature before the Legislature breaks for the summer. For further background information, I have also attached the open letter sent to the Senate in December by fifteen stakeholder organizations calling for Senate passage of HB 4630.

Because HB 4630 has not yet been passed by the Senate, the FY 2025 executive budget recommendation does not include funding for MIDC to begin the process of developing indigent defense standards for juveniles. Like most of the components of this legislative package, HB 4630 has

² *Gideon at 60: A Snapshot of State Public Defense Systems and Paths to System Reform* (<https://www.ojp.gov/pdffiles1/nij/307325.pdf>)

an effective date of October 1, 2024 (the first day of fiscal year 2025). MIDC projects that it will cost \$1.2 million in FY 2025 to hire the initial employees necessary to implement the provisions of HB 4630. This cost will either need to be incorporated into the FY 2025 budget or addressed in a supplemental. The State Bar of Michigan urges the Senate to give final approval to HB 4630 and urges the Legislature to provide the required funding for the development of minimal standards for juvenile defense in the FY 2025 budget.

We appreciate your consideration of the Bar's position and would be more than happy to answer any questions from any member of the subcommittees as the budget process moves forward.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Nathan Triplett', with a long horizontal flourish extending to the right.

Nathan Triplett
Director of Governmental Relations
State Bar of Michigan