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This report serves as a qualitative analysis of the implementation of the first four standards issued by the Michigan Indigent Defense Commission (MIDC) in various funding units. To conduct the survey, we interviewed MIDC staff members as well as local stakeholders working on the ground in the funding units on which we focus our analysis.

Our case studies covered the rural areas of Dickinson, Iron, Menominee, Clare, Gladwin, Lake, Mason, Mecosta, Oceana, Osceola, and Newaygo counties. Additionally, this report studies the systems in the mid-sized cities of Hazel Park, Ferndale, and Madison Heights. MIDC staff chose these systems after much deliberation.

There were several common themes between respondents. We divided those commonalities into challenges of complying with the new standards and opportunities to strengthen and assist regions. Many respondents articulated that change happens slowly often due to local control issues. Additionally, regionalization often fails because of issues like politics and cost debates. Our analysis also recognizes special considerations around maintaining attorneys who produce quality representation.

The potential opportunities to strengthen indigent defense in Michigan and assist with the implementation of the first four standards include streamlining communication, offering more resources for systems considering changes, and setting clear priorities for administrators in each system.
INDIGENT DEFENSE SYSTEMS IN MICHIGAN

Michigan's indigent defense system has historically been funded fully by local units; local voices have dominated discussions of indigent defense. There are several models for public defense, but in Michigan, the most common models are contract, assigned counsel, and public defender offices.¹

Contract models and assigned counsels both contract out defense work to private attorneys, but they vary by whether a certain amount of work is guaranteed. Contract models pay their attorneys a flat fee for a guaranteed amount of work; assigned counsels are paid by case and attorneys are assigned cases as they arise. Additionally, some regions have a managed assigned counsel system where a person is contracted as the manager for all the attorneys who provide indigent defense in that system. This managed assigned counsel coordinator (MACC) will dole out cases to attorneys and supervise their hourly reporting, as well as any documentation the attorneys need to complete.²

Public defenders are hired as full-time employees who work solely on indigent criminal defense cases. This is the least common model in Michigan; however, this system is becoming more common among other states and is implemented statewide in Wisconsin, Michigan's neighbor across the lake.³
There are 134 funding units in Michigan. Many of these systems operate at a city or county level. Some funding units have merged operations by sharing attorneys or other resources, in a process called regionalization. Regionalization can offer cost reductions because of the benefits in economies of scale. Following the first set of standards, some systems are considering regionalizing, but this is not common in Michigan.

INADEQUATE REPRESENTATION

In 2008, a report by the National Legal Aid and Defenders Association (NLADA) called “A Race to the Bottom” found that Michigan’s quality of indigent defense services ranked near the worst in the country. The NLADA determined that Michigan often failed to provide proper indigent defense services to those without the funds to pay for legal counsel in criminal proceedings. The NLADA concluded that Michigan’s indigent defense system was “constitutionally inadequate.”

This report, along with the American Civil Liberties Union of Michigan lawsuit *Duncan v. Granholm* led to Governor Snyder signing an executive order and creating a commission in 2011 to investigate and improve indigent legal representation in Michigan. The Governor’s Indigent Defense Advisory Commission concurred with “A Race to the Bottom” and set up steps to change how indigent defense ran in Michigan.

Following legislation, the Michigan Indigent Defense Commission (MIDC) formed in 2013, and MIDC released four standards for compliance in May of 2017: education and training of defense counsel, minimum standards for initial client interviews,
available investigation resources and experts, and required counsel at first appearance and other critical stages.\textsuperscript{8}

In the Fall of 2017, each funding unit had to submit a plan detailing how the system would comply with the new standards.\textsuperscript{9} Per the MIDC statute, the cost of implementing the compliance plan will be covered by a combination of local funds and state funds. The local share of the funding will be determined by a three-year average of the past local funds for indigent defense. The difference between the full cost for the compliance plan and the local share is covered by the state of Michigan.

\textbf{SCOPE AND METHODOLOGY}

This report follows the first set of compliance plans and the implementation of the first four standards. It uses interviews to identify difficulties in compliance thus far, regionalization efforts, and opportunities to assist systems in choosing the best models. Our guiding questions include the following: what does regionalization look like across the state, why have funding units chosen the models they are currently using, and what are some challenges funding units are facing after the release of the first four standards?

MIDC compiled a list of compelling case studies for analysis. These systems include the cities of Ferndale, Hazel Park, and Madison Heights; the counties of Dickinson, Iron, and Menominee; and the regionalized counties of Clare, Gladwin, Lake, Mason, Mecosta, Oceana, Osceola, and Newaygo.
We conducted interviews with MIDC’s regional managers who work with the specific systems identified as case studies in this report. From there, the regional managers suggested actors on the ground in their regions who could speak to the day-to-day operations of the compliance plans. We spoke with a judge and several managed assigned counsel coordinators (MACC), who were indigent defense attorneys. We also utilized a report conducted by attorneys in one region which analyzed the efficiencies and limitations of regionalizing with nearby systems.

Our most common interview questions followed our guiding questions noted earlier: what regionalization looks like in their system, why systems chose their model of indigent defense, and what resources would be helpful when implementing future standards. As we did preliminary research, we found that regionalization varies across the state, and resources are shared differently among regionalized areas. We wanted to know the extent of regionalization and how or which types of resources are shared. When we asked respondents why they chose their system, we primarily sought whether a specific cost or stakeholder created barriers to switching to a more efficient model. Finally, since changing indigent defense in Michigan is a large undertaking, we assumed some systems need more resources on how to best reach compliance, so we asked if there were any resources that were missing that would be helpful.

After these interviews, we wrote summaries identifying the themes in each interview. We analyzed these summaries, acknowledged repeat answers seen across all regions, and identified trends by location. This report comments on the commonalities addressed between sources.
Dickinson, Iron, and Menominee counties are located in the rural upper peninsula of Michigan. The three counties share a circuit court. Dickinson and Iron counties use the same district court, while Menominee County utilizes a separate district court.

The demographics of Iron, Dickinson, and Menominee are all very similar. According to 2017 U.S. Census Bureau estimates, Dickinson and Menominee counties have the highest populations at 25,415 and 23,046, respectively. Iron County is significantly smaller with a population of only 11,124. The region shares similar racial demographics, as all three counties are around 95 percent White; Menominee County is 94.4 percent White and Dickinson County is 96.4 percent White. Iron County has the highest White population at 96.1 percent and the lowest Black population at 0.3 percent. Menominee County is 0.7 percent Black while Dickinson County is 0.5 percent Black.

As of 2017, the median household income for those in Dickinson County was the highest at $45,681, and the percentage of people below the poverty line was 12.1 percent. Menominee County has the lowest poverty rate at 11.8 percent and a similar median income to Dickinson County at $44,480. Of the three counties, Iron County has the highest poverty rate (13.5 percent) and the lowest median income at $36,773. One interesting issue specific to the upper peninsula is drive time between counties and to courts (which can take up to 1.5 hours). Attorneys have to spend much of their time driving long distances to represent clients in court.
When “A Race to the Bottom” was published in 2008, Menominee, Dickinson, and Iron counties were all contact systems. Before the current compliance plans were submitted, the three counties paid their attorneys a flat contract rate each month. Dickinson and Iron counties both switched from contract systems to assigned counsel systems, as noted in their compliance plans. In Dickinson’s compliance plan, it is noted that the switch came after reading about the eighth standard which shows how an attorney’s payment can incentivize or disincentivize quality representation. They noticed that the standard recommended a defender’s office or a rotating assigned counsel model, but did not promote contract models. While Menominee County is continuing to pay their attorneys a flat monthly rate, the monthly rate has increased in order to meet compliance. Menominee County has 5 attorneys, Dickinson County has 6 attorneys, and Iron County has 7 attorneys that were accounted for in the compliance plans.

Menominee and Dickinson counties requested the largest amount of grant money in their compliance plans. Menominee County requested $406,047 while Dickinson County requested the most at $477,866. Iron County requested much less at $315,698. Menominee County proposed the largest local share funding amount at $113,000, followed by Iron and Dickinson counties at $71,498 and $67,176, respectively.

FERNDALE, HAZEL PARK, & MADISON HEIGHTS

The tri-city region of Hazel Park, Ferndale, and Madison Heights are three cities in Oakland County, which is part of metropolitan Detroit. The three-city region contains three court systems that together comprise the 43rd District Court.
court primarily handles criminal, civil, and traffic cases, with varying levels of each depending on the jurisdiction.

The population demographics paint a picture of the challenges and opportunities presented by regionalization, which we considered for this analysis. Ferndale, Madison Heights and Hazel Park can be considered urban population centers and mid-sized cities. Census data reports Madison Heights as the largest of the three cities, with a 2017 estimated population of 30,050. Ferndale has a population of 20,070 and Hazel Park has 16,489 residents. The three jurisdictions share similar racial demographics with around 80 percent White individuals. Ferndale has the largest share of White people at 86 percent. Hazel Park, while being the smallest of the three cities, has the highest share of Black residents at 12.3 percent.18

Ferndale has the highest median income of the three, at $61,060, and also has the lowest poverty rate among the three, at 14.4 percent. Hazel Park’s median household income is $35,148, the lowest of the three cities. It also has the highest poverty rate across the three cities at 25.8 percent. Madison Heights has a median income is $46,687, and it has a lower poverty rate than Hazel Park at 17.3 percent. Each of these cities is an outlier in the overall Oakland County, which averages only 7.8 percent poverty and a much higher median income at $73,369.19

According to the 2008 “Race to the Bottom” report, every unit in Oakland County operated an assigned counsel model.20 Each city uses an individual managed assigned counsel model after the implementation of the first four compliance standards.21 These funding units felt they were already providing quality
representation and did not need to switch to another model. The cities offer a long list of attorneys available for indigent defense work.

Compliance plans are reported to MIDC in order for systems to be eligible for state indigent defense funding. Hazel Park requested the most funding from the state, at $1,107,276; Madison Heights requested just over $460,000, and Ferndale requested $621,703. Their local shares vary dramatically. Madison Heights average local share was by far the smallest at $1,743. Hazel Park averaged the largest local share at just below $18,000. Ferndale laid in the middle at around $15,000.

EIGHT-COUNTY REGION

One special regionalized area lies in northern Michigan from Lake Michigan’s coast to the middle of the state. These counties include Clare, Gladwin, Lake, Mason, Mecosta, Oceana, Osceola, and Newaygo. Each county shares a district court with one other county in their region. Osceola shares with Mecosta; Oceana shares with Newaygo; Mason shares with Lake, and Gladwin does with Clare.

The population size of these counties varies drastically. Based on 2017 estimates, most of the counties have around 25,000 to 30,000 inhabitants, but Lake County has only 12,013. Additionally, Newaygo County hosts 48,242 people, which is the largest of the eight-county region.

Each county has a large percentage of White residents that averages in the high nineties. Lake County is the only one in the eighties at 86.5 percent. Their Black populations range from 0 to 2 percent. However, once again, Lake County is an outlier at 9.5 percent Black population. The average household incomes are
generally in the low-to-mid $40,000s and poverty rates are around 15 percent; however, Mecosta, Clare, and Lake all have their poverty rates in the low twenties.  

In 2008, the “A Race to the Bottom” report found that half of these counties had contract models (Mason, Lake, Oceana and Newaygo counties), and the other half of them used an assigned counsel system (Osceola, Mecosta, Clare, and Gladwin counties). In their compliance plans completed earlier this year, Mecosta, Clare, Gladwin, and Lake are continuing with their past delivery of indigent defense. Newaygo, Oceana, and Mason chose to switch to an assigned counsel method by altering their fee schedule to pay by event, not a flat fee for guaranteed work. Osceola has recently requested to return to a contract model because after some resistance from attorneys to switch to an assigned counsel model for the rest of this year until more attorneys are convinced of switching. These eight counties also hired a regional managed assigned counsel that handles administrative tasks for the whole region.

For such a large region, there is a relatively small number of attorneys available for indigent defense work. Based on compliance plans submitted earlier this year, each county has anywhere from four to eight attorneys with Lake County having zero. Compliance grant requests in this region go from $200,000 to almost half a million, with Clare requesting over $757,000 and Gladwin requesting over $665,000. Local shares can vary from just under $69,000 to about $197,000.
Part of our analysis focused on regionalization efforts across the case studies. Regionalization efforts varied, along with the rationale for regionalization. Some cared about sharing resources like attorneys; for others, they cared more about cost efficiencies.

**DICKINSON, IRON, & MENOMINEE**

Menominee, Dickinson, and Iron counties have begun discussing regionalization in order to gain certain benefits like shared attorneys and cost reductions. Sharing attorneys is beneficial to a region like the rural upper peninsula because of the lack of attorneys in the area that work on indigent defense.

Regionalization could be complicated when serving clients in nearby counties, however, because driving across counties to reach courts and clients takes longer. For example, it can take up to an hour and a half to drive from county to county. Mileage would have to be appropriately compensated because much of their time is spent on the road.

More attorneys have recently been willing to work on indigent defense in this area due to increased wages that resulted from the new compliance standards. When attorneys are shared and paid higher wages, it allows them to dedicate their all their time to indigent defense, rather than working part-time.
Though local stakeholders were generally positive about regionalization, they also detailed issues that may arise for areas of rural Michigan when aiming to regionalize. It was noted that less populated counties can feel like the “runt of the litter,” causing local administration to feel pressure to regionalize. When nearby counties have more resources, smaller districts must follow their lead for regionalization or system reform.

One judge has taken up much of the work for regionalization. Because they have been “taking the bull by the horns”, the process seems attainable and less resourced areas are on board. An attorney that supports regionalization is helping with the grant paperwork needed in order to initiate regionalization, and the judges are working to increase attorney buy-in. The judge is spearheading these conversations out of intrinsic motivation; this judge received no financial benefits for working on these plans.

Currently, there is a lack of models for regionalization within the upper peninsula. Therefore, those who have been initiating regionalization talks in Iron, Dickinson, and Menominee counties are contacting other regionalized areas in the lower peninsula. They have been asking primarily about how to share costs and resources, but one respondent noted that MIDC could assist by providing best practices during this large transition.

FERNDALE, HAZEL PARK, & MADISON HEIGHTS

Although two of our case studies are either considering regionalizing or have already done so, the three cities in District 43 are an example of stalled
regionalization efforts. In this region, some of the problems with regionalization can be identified as problems with cooperation.

One reason for this lack of cooperation could be due to the power of the MACCs in this region and the incentives to retain local control rather than regionalizing. Essentially, regionalization falters because the two MACCs have distinct ways to administer indigent defense in their city, and both believe their own system works best. Respondents said a major difference is their billing forms and recording hours. It would take someone changing their operations to regionalize with the other cities in their district court, and until there is an incentive to do so, there will be a perpetual standoff.

Additionally, both regions believe they were compliant before the first standards came out so they feel no reason to change. MACCs in these cities noted that their paperwork is beginning to be adopted in other systems, and they believe everyone in the state should adopt their model. This mentality makes it difficult for compromise.

However, there is some sharing of resources in this area; Hazel Park share arraignment attorneys with Madison Heights on Saturdays. These two funding units may share more resources now that the two cities share a MACC. However, if two separate MACCs ran each system, coordination may be impossible without incentives.
EIGHT-COUNTY REGION

Our case study of the eight-county system is one model for successful regionalization. The efforts began with two proactive attorneys, Jim Samuels and Paul Bullock. They requested funding from an innovation grant to create a feasibility study on whether regionalization is possible. Their study did not include Clare and Gladwin counties, but Gladwin and Clare counties joined their region after the feasibility study.

Bullock and Samuels drew conclusions on feasibility based on surveys sent to the regions and meetings in the counties. The participants included judges, defense attorneys, prosecutors, and other court administrators. They were all asked about their interests and concerns about regionalization.

The most common complaints for regionalization were about the role of the regional manager and the impartiality they should have. Attorneys also raised concerns that local control would be jeopardized by regionalization; for example, they did not want other attorneys taking over their local cases. Additionally, some noted that the regional manager needed to come from one of the counties regionalizing because “tax dollars should stay in their community.”

A major consideration was how costs should be shared by each county for this regional manager. There were three options for splitting costs. The first option divided costs evenly among each county. The second option weighted costs by number of cases in the county (with felonies and misdemeanors weighed differently). The last option combined the first and second option, and it is ultimately the option used today.
Today, regionalization is successful largely due to the regional manager. The regional manager for this region has reached out to each of the counties and made sure that their relationship with court administrators, judges, and defense attorneys was strong. The regional manager made it clear that this is a partnership, and that they were there to facilitate regionalization. They have also used MIDC resources well and are available if funding units have questions. They also attend MIDC meetings, join MIDC seminars, and has built a strong relationship with the MIDC regional manager in their region.
LOCAL CONTROL AND BARRIERS TO CHANGE

Michigan agencies and politics are dominated by local units. A statewide agency mandating a local unit to change their indigent defense can be considered an overstep of boundaries. To local actors, MIDC entering city and county areas seemed like an outsider coming in and changing everything without having firsthand experience in the region.³¹

One managed assigned counsel coordinator (MACC) noted the need for appropriate buy-in to ensure that local units will work toward compliance. One MACC created buy-in by pitching that local units can still retain independence. The MACC told local actors that if they were compliant with MIDC’s standards, they would have the freedom to develop their indigent defense models as they wished and conduct their business with some level of independence.³²

Additionally, local units were concerned about funding. The state is funding the gap between local shares and the total cost for compliance, but local actors are not sure if this funding will be steady in future years. Many of them noted that there have been stories of Michigan decreasing state funding and putting more onus on the local units.³³

Beyond local politics, change is difficult when regions have been using the same models for decades and have only recently been told that they need to change.
Local actors commonly responded that their system had been working before the first four standards, and they did not need or want to change. Additionally, stakeholders reported that they find it difficult to envision implementing more efficient models of public defense while they are primarily focused on compliance with the four standards. Many interviewees noted that they will not look into the feasibility of other models or of regionalizing until they get acclimated for at least a year.

Innovation in indigent defense services is hindered by a reliance on entrepreneurship of local actors. Across interviews, respondents have said that it has taken a progressive lawyer or judge to consider implementing a more efficient model of indigent defense. Additionally, it takes someone to fill out grant request forms, and whoever fills them out does not get paid. Essentially, there is little incentivizing innovation if individuals are intrinsically motivated. While respondents said there are systems willing to change, this is not common in many areas, and relying on these actors can limit reform.

DIFFICULTIES IN REGIONALIZATION

Although regionalization could offer cost savings and potentially enhance the quality of representation, it is often not a possibility for many areas. One barrier to regionalization is the territoriality of lawyers. Attorneys are very protective of their own regions and do not appreciate when attorneys from other systems take over some of their indigent defense work.

In rural areas, this issue is complicated by the fact that part-time work in indigent defense cases is critical for an attorney’s livelihood. Many of these attorneys have
private practices and work on issues other than criminal cases. This work is not enough to make a livable income, so they need to add indigent defense cases. Regionalizing could take work away from some attorneys and result in backlash.  

Political debates over who should pay more for shared resources also hinder the possibility of regionalizing. There are obvious size differences with regionalization, and it could cause conflict. For example, Iron County is smaller than Menominee and Dickinson counties. For the eight-county region, Paul Bullock and Jim Samuels created a report addressing this issue. As noted earlier, this region decided to pay their regional manager in a weighted scale with the areas with large caseloads paying more than those with small caseloads. While their talks ended well after some deliberation and that region has regionalized, the same cannot be said for other regions.

Some systems have discussed how their relatively small size has made it difficult to join talks or have a strong voice in them; one respondent said they have to be proactive on regionalization talks because they would be left behind if they were not. This region already uses attorneys from surrounding funding units and shares a district court so they were pressured into regionalization.

Additionally, discussions of regionalization do not start because of the reputations of other regions or other personal impediments to cooperation. One respondent said that a system was known for being disorganized, so the county in a nearby system did not want to work with them. In one case, regionalization is will not advance because each nearby system handles administrative issues differently, and none of the administrators want to concede. These administrative differences include
funding for MACCs, billing forms, and how systems report to MIDC. This also exposes how powerful certain actors are. Conversations will not start in nearby funding units because MACCs disagree, but judges and court administrators could also pose difficulties.43

Some regions would like to regionalize, but talks stall when communication between the systems are not being promoted. Communication is critical to regionalization, especially when handling delicate logistics such as dispersal of costs.44

**ATTORNEY-RELATED COMPLICATIONS**

The final theme from our interviews revolves around lawyers. One problem specific to rural areas is the lack of attorneys. Lawyer shortages are a particularly common occurrence in the upper peninsula, and respondents blame this on an inability to recruit qualified, or any, attorneys to the region.45

However, respondents lack consensus on how to attract attorneys to rural areas. Some believe attorneys would be willing to move to less populated areas for proper pay.46 A couple respondents felt that higher pay is not enough to attract attorneys due to a lack of amenities, such as 24-hour stores and restaurants. These amenities are often abundant in urban locations. Additionally, young attorneys are often attracted to larger cities and are sold on a “lifestyle” that does not exist in rural areas.47 While the mechanism for attracting lawyers is debated, the lack of attorneys in the upper peninsula is a very real concern.
Although the lack of attorneys is a serious problem for some rural regions, one respondent worried about the balance of recruiting younger attorneys while keeping more experienced and qualified attorneys in the area.\textsuperscript{48} The goal for attracting more attorneys should, therefore, be more nuanced than first thought.

Another common problem reported by respondents is that low pay can punish the quality of representation. Attorneys often have their own private practices and work in indigent defense part-time in order to maintain a livable income. When attorneys are paid poorly for indigent defense, they may be pressured to take on more cases, often to the detriment of quality representation. One respondent argued that well-paid attorneys will provide better indigent defense.\textsuperscript{49}

Beyond low pay and attorney shortages, attorneys overwhelmingly complained about the increase in paperwork since the first standards were released. Respondents commonly complained that tracking hours, completing billing forms, and reporting to MIDC takes up much of the attorneys’ time.\textsuperscript{50} One respondent even posited that the increase in hourly rates is offset by the time spent recording hours, filling out billing forms, and reporting to MIDC to reach MIDC compliance.\textsuperscript{51} The amount of time spent to reach compliance is not singular to attorneys, but it is also felt by court administrators and judges.\textsuperscript{52}

Another complaint related to paperwork is the lack of consistency between forms across systems. In some regions, including the mid-sized city cases, attorneys are often on indigent defense lists in multiple funding units. Each unit has a different way to deal with billing forms and reporting to MIDC. This can be frustrating to attorneys and take much more time than necessary.\textsuperscript{53}
The last concern of attorneys is particular to the mid-sized cities and deals with the large share of traffic misdemeanors in that region. Traffic offenses such as driving with a suspended license dominate criminal dockets. One respondent argued that these cases do not need the vertical representation warranted in other misdemeanors, yet they are paid the same. Although traffic misdemeanors could result in jail time, prosecutors often plea down to avoid overcrowding the jails. These cases overwork attorneys and leave less time for cases that require more attention. A respondent even suggested that these traffic cases should be paid differently than other misdemeanors.
RESOURCES AND COMMUNICATION

One question we asked respondents is what would they like from MIDC, and the overwhelming consensus was a desire for more resources. These resources varied from respondent to respondent and can be as simple as paying for paper.\textsuperscript{56} One respondent requested some sort of best practices manual, which will help systems who are thinking about switching models or processes.\textsuperscript{57} Best practices manuals can include setting up pay schedules, invoices, or other paperwork.

A respondent offered a concurrent request for MIDC to start standardizing some auxiliary paperwork. As noted earlier, inconsistency of forms is a problem for attorneys and can take up much of their time.\textsuperscript{58} Offering concise models of forms could resolve this problem. However, one important caveat to consider is the perception that MIDC is trying to control local units.

A popular resource sought by respondents is funding for feasibility studies.\textsuperscript{59} Other studies such as Marquette’s have been successful in identifying which models are promising for their own system and whether regionalization is possible. These studies should be available to other units to promote ingenuity and prioritize quality and efficiency in indigent defense.

One of the respondents wanted more input from MIDC. This individual felt like his/her system was underfunded and under-resourced relative to similar systems. They did not receive any feedback from MIDC on this potential problem, so they will
have to request more in their next plan and lose the opportunity for needed funding now.⁶⁰

Although many requested more resources, two respondents argued that the resources are already available but more people need to seek them out.⁶¹ For example, someone argued that there are multiple communication networks to MIDC, and MIDC does a good job at instituting seminars and setting up meetings. The respondent could have this opinion because the MIDC regional manager and the MACC for the area have a good relationship, but MIDC could still benefit from increased publicity of these events and even compulsory mandates.

This leads to a broader request for more communication between systems to understand how other systems are complying and which models are possible. One common question that MACCs and other stakeholders have for their regional managers is what similar systems are doing to reach compliance.⁶² This information could open minds to innovative models. However, communication does not need to mean sharing models; it could mean simply discussing pay schedules, MACC operations, and paperwork.

SETTING PRIORITIES

One particularly interesting response in the interviews is the need for clearer priorities from MIDC. One example given is that there needs to be assurance that funding will not disappear for local units, and that costs should be secondary to quality.⁶³ MIDC should also encourage increasing attorney fees because, as one respondent said, attorneys can feel valued by increased pay and it should lead to
more quality representation. However, increases in payment should be done responsibly and in a way that encourages better indigent defense work. A flat fee schedule tends to not encourage the best work.

One respondent also noted that their system would like more clearly defined expectations. This person shared that their system had filled out the compliance plan and had the approval of MIDC, but shortly after they implemented their plan, MIDC shared complaints about the system’s operations. MIDC should mitigate these problems by fully explaining what they would like to see from systems and offer best practices if the system is open to recommendations.

Additionally, MIDC could look into creating incentives for systems to regionalize. One problem repeated in interviews is the reliance on the intrinsic motivation of one actor to move to a more effective model of indigent defense. To mitigate this concern, MIDC could create financial incentives to regionalize or adopt models that produce higher quality representation.
There are some limitations to our analysis that are important to acknowledge for the potential application to policy reform for indigent defense. One limitation is the inability to generalize the themes and findings discussed above. It may be inappropriate to presume that each of the surveyed regions are representative of the state as a whole. As noted earlier, the cases studied were identified by MIDC as important examples of the varying degrees of indigent defense reform happening across the state.

These cases did expose us to the variety of responses to a statewide reform of this magnitude. Given that the cases we focused on were the ones most actively engaged in this space and exploring different approaches to compliance, studying these provided a good picture of the similarities between only those cities and counties in our case studies. We are unable to confirm whether our opportunities can be potentially applied to all cases or that the problems explored here are representative of the entire state.

Additionally, our sample size is small which greatly limits our ability to replicate the findings across the state. While we believe the sample represents some of the units at the forefront of indigent defense reform during the time of our survey, they nonetheless are not an exhaustive list of those doing work in this space. A more comprehensive analysis could focus on one system at a time and understand variances based on localities.
As we alluded to throughout the report, the rural and urban divide calls for a more detailed analysis. Throughout our analysis, both urban and rural stakeholders commented on the need for specificity of the needs of urban versus rural communities. Rural communities, like more urban ones, are addressing the new standards the best way they possibly can while juggling the challenges of their particular area.

Lastly our analysis focuses specifically on compliance with the first four MIDC standards. This means it fails to fully unravel the potential policy levers to address more deep seeded issues that fall outside of the scope of our analysis. There are several problems with indigent defense, and this report does not try to find solutions to those. It mainly tries to mediate between stakeholder and MIDC dialogue. Additionally, this report does not attempt to analyze how the next four standards will operate in these case studies.
This report is a qualitative analysis of a diverse pool of respondents to see how compliance is operating since the implementation of the first four standards. We found out that despite some problems listed earlier, many respondents have already noticed that the quality of representation has increased since the first four standards were implemented this year. Respondents repeatedly acknowledged the counsel at first appearance standard has particularly been important. Many have said the sheer presence of attorneys have helped with getting more favorable results for their clients.

In the future, MIDC should attempt to assess efficiencies of certain models or regionalization through quantitative studies. Although most respondents are concerned with quality first, MIDC is tasked to make sure the funds are spent responsibly and efficiently. Additionally, qualitative analyses should be continued and shared with local stakeholders to show that their opinions are important and signal that MIDC is committed to strengthening their partnerships with them.
This section provides more detail of the interviews we conducted with MIDC staff and local stakeholders. None of the interviews were recorded, so these are not transcripts from the interviews. We wanted to preserve the anonymity of the respondents, so we labeled them A, B, C, etc. However, we did identify the type of location they were in (urban or rural).

RESPONDENT A: URBAN AREA
INTERVIEWED ON MARCH 27, 2019

Themes:
- Quality means different things to different units; for some it is about cost efficiency, others it is about moving cases quickly
- Fee structures are important considerations given the incentives they can create
- Regionalization is not going to happen in their region, at least in the near future
- Local control is still a big consideration for any potential reforms
- Varying priorities across units; some focused on complying with current standards, others looking ahead at next year’s standards and beyond
- Judges still play a very big role in feasibility of regionalization and that is a good thing because of the institutional knowledge they bring

RESPONDENT B: URBAN AREA
INTERVIEWED ON APRIL 8, 2019

Themes:
- Compliance was never a problem; “compliant since January 2nd”
• Already looking at 2020 standards and working on compliance now by hiring sufficient attorneys (i.e. attorney present at 100% of arraignments)
• The individual managed assigned counsel model allows them to pay attorneys more and only hire the most qualified attorneys
• Mission-driven to provide adequate legal representation to all
• Resounding emphasis on quality over quantity
• Referenced one nearby unit it could potentially regionalize with that struggles due to a lack of coordination and capacity; did not mention the other nearby system
• Need for resources: pay guidelines, billing forms, administrative support, streamlined reporting, and payment for driving to jails
• Varying degree of difficulty of dockets, all attorneys qualified as Level-1 but not all communities need only Level-1 attorneys
• Vast improvement due to hourly pay scale vs. contract pay scale leading to more quality legal services, and allowing attorneys to do more: visit inmates, understand cases ahead of time, which is already proving helpful

RESPONDENT C: URBAN AREA
INTERVIEWED ON APRIL 11, 2019
Themes:
• There is a strong preference locally for not pursuing a public defender's office, though there is an indication that Michigan may go there in the future
• “Woefully missing” talks of regionalization
• Need for standardization of forms across jurisdictions
• Desire for a standardized pay schedule to make recruitment less challenging
• Unclear how much they could ask for, and as a result, confusion as to the extent of the opportunity given the new reforms and more state dollars
• Need for consistent standards from MIDC in reporting to reduce errors in reporting
• Too soon to gauge potential impacts on their region as a result of the new MIDC standards
• Many traffic cases take up attorneys’ time that does not require much representation
• Might be too early to tell, but suspects that attorneys at first appearance should help with representation

RESPONDENT D: RURAL AREA
INTERVIEWED ON APRIL 3, 2019

Themes:
• Regionalization came about because of two ambitious attorneys who applied for innovation grants to explore the potential regionalization with nearby funding units
• Cost efficiencies and economies of scale were the primary reason behind regionalization
• Regionalization is still in early stages, but more systems will be sharing attorneys in the future
• Costs were split based on both proportionate caseloads and equal shares
• Local control is still a big consideration for any potential reforms; people have felt historically like they have been given the short end of the stick when regionalizing
• One problem is a lack of attorneys, so it is hard to think about systemic change when they do not have attorneys available
• For a different region she represents, two nearby funding units will not work together because one system sees the other as dysfunctional
• There are plenty of resources available; it is up to people to take it up

RESPONDENT E: RURAL AREA
INTERVIEWED ON APRIL 10, 2019

Themes:
• Due to the arraignment standard, systems are starting to overlap attorneys
• The key to building good relationships is to show that you want to partner with them; people are sensitive to outsiders coming in and telling them what to do
• You need to explain what is in it for them to get buy-in; this respondent stressed that there was independence in compliance
• There were concerns over the permanence of the state funding
• For the region, there are relatively few attorneys and attracting attorneys is difficult when there are not the same lifestyles in urban as in rural areas
• Before they can consider new models, they need to have attorneys available to be able to switch
• Resources are available, including communication forums, but people need to take advantage of them
• Attorneys at first appearance is helping defendants already

RESPONDENT F: RURAL AREA
INTERVIEWED ON MARCH 25, 2019

Themes:
• Systems are more likely to regionalize when there is a person willing to “take the reins” and when judges and local stakeholders see the value in regionalization
• It is important to consider caseloads, number of available lawyers, and scheduling for arraignments in the next set of standards, especially for rural areas where driving can take up much time
• Systems typically look to regional managers to share feasibility studies and current efforts of other regions, as well as serve as a resource
• Areas are really able to consider quality, since the local share does not change much due to the funding from the state
• The lawyer shortage in rural areas can be addressed with a public defender system, regionalization, by enticing lawyers with an hourly mileage rate for travel between counties
• It is difficult to think about changing to a new system, right now, because the area is focused on implementing the new standards
• Some areas are hesitant to switch because they are used to their current system and do not want to track hours
• Many are also concerned that local governments will be stuck with funding these systems in the future
• Cases are getting dismissed at arraignments already; however, when people want to come back for more proceedings, it costs the court a lot of time

RESPONDENT G: RURAL AREA
INTERVIEWED ON APRIL 1, 2019

Themes:
• Attorneys are paid more with an hourly rate versus the previous monthly rate
• There was a fear that attorneys were not putting enough time into the cases with the monthly rate, but the hours put in were similar with a monthly rate and an hourly rate
• One lawyer quit after the changes, and they felt that the increase in wage was offset by the amount of time they were putting into paperwork for the MIDC
• Many were satisfied with the changes because they felt that the attorneys should be paid more and that individuals deserved good indigent defense
• There is an attorney shortage that could be addressed by both higher paid rates and sharing of attorneys through regionalization
• Some local governments are concerned that they will be burdened with increased costs in the future due to the changes
• Small regions have to be active in regionalization talks or else they could be left behind
• Issues in regionalization include finding someone who is willing to “take the bull by the horns” and organize it and fill out the grant paperwork
• The drive time between counties makes it difficult to find lawyers that are willing to drive to provide indigent defense services
• Moving to a public defense system would provide relief for judges in trying to find lawyers and Michigan’s system may begin to look more like Wisconsin’s
• Though MIDC has been responsive when they are contacted, resource kits with examples of regionalization in others areas of Michigan could be helpful
ENDNOTES

13 Respondent G. April 1, 2019. Phone Interview.

Respondent A. March 27, 2019. Phone Interview.
Respondent B. April 8, 2019. Phone Interview.
Respondent C. April 11, 2019. Phone Interview.

Compliance Plan for Indigent Defense Standards 1-4: Hazel Park
Compliance Plan for Indigent Defense Standards 1-4: Madison Heights
Compliance Plan for Indigent Defense Standards 1-4: Ferndale
Compliance Plan for Indigent Defense Standards 1-4: Clare, Gladwin, Lake, Mason, Mecosta, Oceana, Osceola, and Newaygo Counties.

“U.S. Census Bureau QuickFacts: Clare County, Michigan; Gladwin County, Michigan; Lake County, Michigan; Mason County, Michigan; Newaygo County, Michigan; Mecosta County, Michigan.” Census Bureau QuickFacts, www.census.gov/quickfacts/fact/table/clarecountymichigan,gladwincountymichigan,lakecountymichigan,masoncountymichigan,newaygocountymichigan,mecostacountymichigan/PST045218


“U.S. Census Bureau QuickFacts: Clare County, Michigan; Gladwin County, Michigan; Lake County, Michigan; Mason County, Michigan; Newaygo County, Michigan; Mecosta County, Michigan.” Census Bureau QuickFacts, www.census.gov/quickfacts/fact/table/clarecountymichigan,gladwincountymichigan,lakecountymichigan,masoncountymichigan,newaygocountymichigan,mecostacountymichigan/PST045218

Respondent E. April 10, 2019. Phone Interview.

Respondent C. April 11, 2019. Phone Interview.
Respondent E. April 10, 2019. Phone Interview.
Respondent F. March 25, 2019. Phone Interview.
Respondent G. April 1, 2019. Phone Interview.
Respondent F. March 25, 2019. Phone Interview.
Respondent G. April 1, 2019. Phone Interview.
Respondent F. March 25, 2019. Phone Interview.
Respondent E. April 10, 2019. Phone Interview.
Respondent E. April 10, 2019. Phone Interview.
Respondent F. March 25, 2019. Phone Interview.
Respondent G. April 1, 2019. Phone Interview.
Respondent G. April 1, 2019. Phone Interview.
Respondent F. March 25, 2019. Phone Interview.
Respondent E. April 10, 2019. Phone Interview.
Respondent E. April 10, 2019. Phone Interview.
Respondent C. April 11, 2019. Phone Interview.

MIDC Staff. MIDC Presentation: Questions. April 18, 2019.

Respondent C. April 11, 2019. Phone Interview.
Respondent G. April 1, 2019. Phone Interview.
Respondent F. March 25, 2019. Phone Interview.
Respondent G. April 1, 2019. Phone Interview.
Respondent E. April 10, 2019. Phone Interview.
Respondent C. April 11, 2019. Phone Interview.
Respondent E. April 10, 2019. Phone Interview.
Respondent A. March 27, 2019. Phone Interview.
Respondent B. April 8, 2019. Phone Interview.
Respondent G. April 1, 2019. Phone Interview.
Respondent F. March 25, 2019. Phone Interview.
Respondent B. April 8, 2019. Phone Interview.
MIDC Staff. MIDC Presentation: Questions. April 18, 2019.
Respondent C. April 11, 2019. Phone Interview.
Respondent C. April 11, 2019. Phone Interview.
Respondent C. April 11, 2019. Phone Interview.
Respondent B. April 8, 2019. Phone Interview.
Respondent C. April 11, 2019. Phone Interview.
Respondent C. April 11, 2019. Phone Interview.
Respondent A. March 27, 2019. Phone Interview.
Respondent B. April 8, 2019. Phone Interview.
Respondent F. March 25, 2019. Phone Interview.
Respondent A. March 27, 2019. Phone Interview.
Respondent B. April 8, 2019. Phone Interview.
Respondent F. March 25, 2019. Phone Interview.
Respondent C. April 11, 2019. Phone Interview.
Respondent B. April 8, 2019. Phone Interview.
Respondent E. April 10, 2019. Phone Interview.
Respondent F. March 25, 2019. Phone Interview.
Respondent B. April 8, 2019. Phone Interview.
Respondent A. March 27, 2019. Phone Interview.
Respondent B. April 8, 2019. Phone Interview.
Respondent F. March 25, 2019. Phone Interview.
Respondent B. April 8, 2019. Phone Interview.
Respondent A. March 27, 2019. Phone Interview.
Respondent C. April 11, 2019. Phone Interview.
Respondent B. April 8, 2019. Phone Interview.
Respondent E. April 10, 2019. Phone Interview.
Respondent F. March 25, 2019. Phone Interview.