

60 Years after Gideon – the Landscape of Michigan Indigent Defense

By Tanya A. Grillo, Chair - Criminal Law Committee

The Sixth Amendment guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer, the right to an impartial jury, and the right to know who your accusers are and the nature of the charges and evidence against you. On March 18, 1963, the United States Supreme Court held in *Gideon v. Wainwright* that the right of an indigent defendant in a criminal trial to have the assistance of counsel is a fundamental right essential to a fair trial, and petitioner's trial and conviction without the assistance of counsel violated the Fourteenth Amendment. This landmark ruling guaranteed all defendant facing imprisonment a right to an attorney, not just those being charged with capital offenses. Sixty years later, how far have we come?

Michigan History – Where did the MIDC come from?

For decades, state bar officials including Chief Justice G. Mennen Williams and later Chief Justice Dorothy Comstock Riley called for equal justice and appropriate funding for indigent defense. Michigan knew it had a problem, but how bad was it? As a result of years of reduced attorney fees and inadequate trial services, the Michigan Coalition for Justice (MCJ) filed a class action lawsuit against Governor Granholm, for failing to provide adequate indigent defense services in 2007. In *Duncan v. State of Michigan*, MCJ argued that the “that the failure of the state to ensure an adequate constitutional right to counsel is so stark in Berrien, Genesee, and Muskegon Counties that it has asked the court to compel the state to make available to indigent defense attorneys the resources and oversight needed to provide constitutionally-adequate legal representation.”¹

Considering the *Duncan* case, a joint resolution was passed in the legislature where Michigan requested a study be completed by the National Legal Aid & Defender Association (NLADA) to examine its indigent defense systems and provide recommendations.

In 2008, (NLADA) authored a scathing 130-page report, *A Race to the Bottom, Speed & Savings Over Due Process: A Constitutional Crisis*, which evaluated the trial-level indigent defense systems in Michigan. After a year-long study which evaluated 10 Michigan counties– Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa, Shiawassee, and Wayne - NLADA concluded that “the state of Michigan fails to provide competent representation to those who cannot afford counsel in its criminal courts.”² Moreover, the report indicated that Michigan ranked 44th out of all 50 states in per capita indigent defense spending.

Governor Rick Snyder is elected Governor in 2010, and he created the Indigent Defense Advisory Commission in October 2011 to investigate the issues identified in the 2008 NLADA report and recommend reforms. The Indigent Defense Advisory Commission submitted a report and highlighted additional findings:

1. It is the State of Michigan's responsibility to ensure adequate defense representation for its residents who are able to afford an attorney.
2. The state has delegate at the constitutional responsibility to the counties in this county-based system has resulted in an “uncoordinated, 83-county patchwork quilt” of public defense systems.
3. Michigan's current public defense system often makes errors, and it's worse, results in the innocent been convicted, while the guilty are left free.
4. Money is currently spent at the county level with no data or transparency to show if those taxpayer dollars are being spent effectively or

efficiently. This problem exposes Michigan taxpayers to millions of dollars an unnecessary expense, wasteful spending, and government inefficiencies.

5. There are no statewide standards to either define or insure constitutional the adequate defense counsel for residents, unable to afford an attorney.³

After several years, much discussion and negotiation, PA 93 of 2013 was signed into law in July of 2013 and the Michigan Indigent Defense Commission was created.⁴ It's mission is “[t]o ensure that indigent defense services in Michigan are delivered in a manner that is fair, cost-effective and constitutional.” The MIDC is mandated “to develop and implement minimum standards for those providing indigent defense services and to collect data, support compliance, administer grants, and encourage best practices to accomplish our mission.” MCL 780.981; MCL 780.983; MCL 780.985; MCL 780.989; MCL 780.991; MCL 780.993; MCL 780.995; MCL 780.997; MCL780.999; MCL780.1001; MCL 780.1002.

In 2017, the MIDC proposed its first set of minimum standards which included Standard 1: Training and education of defense attorneys; Standard 2: The initial client interview; Standard 3: Access and use of experts and investigators; and Standard 4: Counsel at first appearance and other critical stages. LARA approved these minimum standards in May 2017, triggering the first 180-day deadline for counties and municipalities to draft and submit compliance plans and cost analysis for every indigent defense system in Michigan. The first year of MIDC funding, FY19, the state awarded \$86,759,934.75 to indigent defense systems in all 83 counties. In each year since, we have seen more changes and evolving which had increased the costs. FY20 \$117,424,880.77; FY21 \$126,743,000.64; FY22 \$176,495,252.43.

Attorney Michael Steinberg, who has been a board member for the Criminal Defense Attorneys of Michigan since 2002 and a practicing attorney for 33 years, provides a grim take on the landscape of indigent defense before the MIDC. “Our [indigent defense] delivery of services was very inept. We had to motion for experts and investigators. If we got one, it was at marginal money. There was a hodgepodge of resources for the accused. Lawyer did not go to trial [a] nd remained poorly educated on skill sets and trends in the law.”

Today's Landscape and the Future

While the state of indigent defense in Michigan has come a long way since 2008, we still have work to do!

Indigent defense systems across Michigan have been amping up and making big changes since 2013. When the MIDC began, Michigan had 10 public defender offices. As of today, there are 32 with more on the horizon.

The Macomb County Office of the Public Defender (MCOPD) was established in 2020 and is headed by Thomas Tomko which oversees the roster attorney rotation for all felony appointments in Macomb County and the FY23 plan calls for the office to take up to 25% of felonies once they are at full staffing. The MCOPD also oversees the county's 2nd Class district courts (42-1 District Court, 42-2 District Court) and 41-A Shelby Twp., while independent Managed Assigned Counsel Coordinators (MACCS) are contracted for the management of the 3rd class district courts which is required under Standard 5: Independence from the Judiciary.

37th District Court – Ricky Cervenak	40th District Court – Michael Kavanagh
38th District Court – Matt Licata	41A District Court– Michelle Lundquist
39th District Court – Mark Metry	41B District Court – Chase Robl

The MCOPD is continually making efforts to improve the process. Tomko indicates that steps are being taken to improve the fee structure for attorneys and create a functional process for attorney fee requests and review of these requests. In addition, MCOPD is considering methods of conducting attorney performance reviews and to determine proper attorney caseloads. This is in anticipation of Standards 6 (Caseloads) and Standard 7 (Qualifications and Review). “Collaboration is being sought for creation of uniform forms for use by attorneys to facilitate performance review, for attorneys to submit bills, for attorneys to request an expert/investigator, and for expert/investigator to submit bills.” And Fiscal Year 24 will be spent concentration of bringing a holistic approach to the office which will include a full time Investigator and Social Worker in the office to assist both the public defenders and roster attorneys with representation.

In 2021, Oakland County created an Indigent Defense Service Office (IDSO) and Pete Menna was appointed as its first Chief Attorney and oversees the implementation of the county’s criminal defense appointment system for the 6th Circuit court and all 52nd District Court divisions. In 2023, Oakland County is creating its first ever Public Defender’s Office. The county’s goal is to create an office of in-house attorneys who will be able to quickly target specific problem areas within its system in ways that are simply not possible when utilizing only independent contractors. The Public Defender’s Office will also act as a partner to the roster attorneys when they need assistance on their cases. Like Macomb, the 3rd class- District Courts are operated by MACCS.

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| 43-1 - Hazel Park – Eric Wilson | 46 – Tanya Grillo |
| 43-2 – Ferndale – Kari Miller | 47 - John Angott and Kari Miller |
| 43-3 – Madison Heights – Eric Wilson | 48 – Stephanie Anderbach |
| 44 – John Angott | 50 – Paulette Loftin |
| 45 – John Angott and Kari Miller | 51 – Paulette Loftin |

So, what does change cost? Menna, stated it best. “Changing entrenched practices is difficult, even when such change comes at little to no cost.” But costs are real and with budgets increasing by double

in less than 4 years, we must be mindful of the costs to taxpayers. Menna further stated “[t]he significant changes brought on by the MIDC Standards, and the desire of local indigent defense systems to radically transform, are expensive, plain and simple. These changes would not be possible without a dedicated funding mechanism, and the promise that all municipalities in the State will have the same access to that funding. Not only does the MIDC enforce heightened standards for indigent defense representation, which is a great thing on its own, the MIDC also provides the funding that is so critical to the real-world implementation of these changes.”

As we mark the 60th anniversary of *Gideon*, bond reform is a hot topic and one in which Steinberg believes needs attention from the state legislature. “Bond is still inconsistent amongst courts. Cash bonds for low level offenses is an insult to the Constitution.”

Kristen Stanley, the Executive Director of the MIDC, believes more change that is long overdue will happen soon. “Our state has decades to make up for since its obligation to support its indigent citizens was confirmed in 1963 and I personally believe the work of the MIDC has only just begun.” The reality is that the MIDC is only 10 years old and anything worth working for takes time – especially when government is at play. What does the future look like? “There are still unmet mandates in the MIDC Act as it is currently written, including full approval and eventual implementation of the minimum standards on attorney caseloads, qualifications, and vertical representation,” says Stanley. In addition, [t]here is also a strong push within the state to expand the MIDC’s work into other areas of the legal system including the juvenile legal system.”

1 *A Race to the Bottom, Speed & Savings Over Due Process: A Constitutional Crisis*, page 13, 2008, National Legal Aid & Defender Association

2 *A Race to the Bottom, Speed & Savings Over Due Process: A Constitutional Crisis, Executive Summary*, page i, 2008, National Legal Aid & Defender Association

3 www.house.mi.gov/sessiondocs/2011-2012/testimony/Committee14-9-13-2012-4.pdf

4 www.michigan.gov/-/media/Project/Websites/formergovernors/Folder10/Indigent_Defense_Advisory_Comm_Rpt.pdf?rev=df1a41f11aff4cae8c51e0d2a08266d3



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