



Berrien County Indigent Defense Office
100 Church Street,
St. Joseph, MI 49085
(269) 983-7111 ext. 8550



Berrien County Indigent Defense Implementation Proposal

Introduction

- Purpose
 - Request formal Board approval of the IDIP
 - Provide high quality indigent defense for our community
 - Consider state and national ethics, standards, and systems
 - Conclusion: a Public Defender Office
- Background/Timeline
 - This process began in March of 2016
 - Part-time employee
 - Holistic view of the system
 - 90-120 days to survey (ongoing)
 - 60 days to review state and national ethics, standards, and systems

Data and Methods

- Criminal Justice System

- Reviewed contracts
- Met with individuals
 - Lawyers
 - Judges
 - Prosecutor
 - Court Staff
 - Sheriff
- Court observation
- Supervision
- State and National research

- The Community

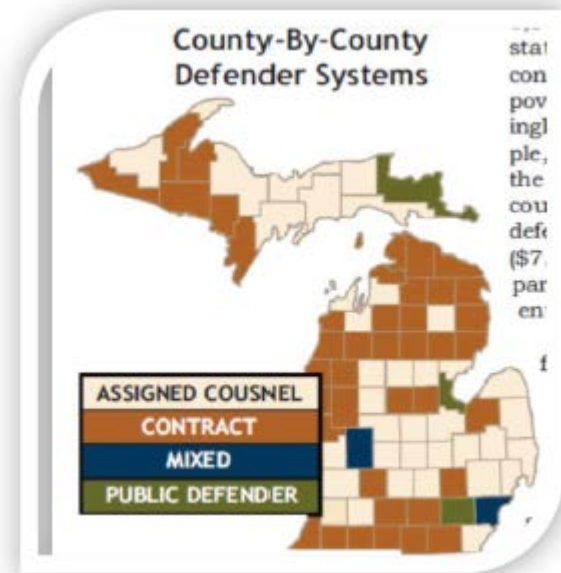
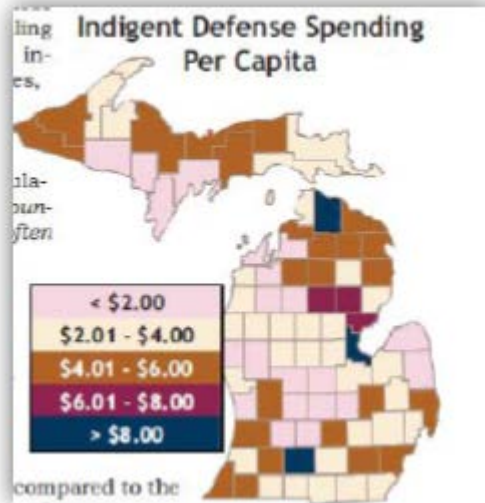
- Clients
- Family of clients
- Community members
- Surveys

State and National ID
Delivery Systems
representatives

Indigent Defense in Michigan (2008)

44th out of 50 States

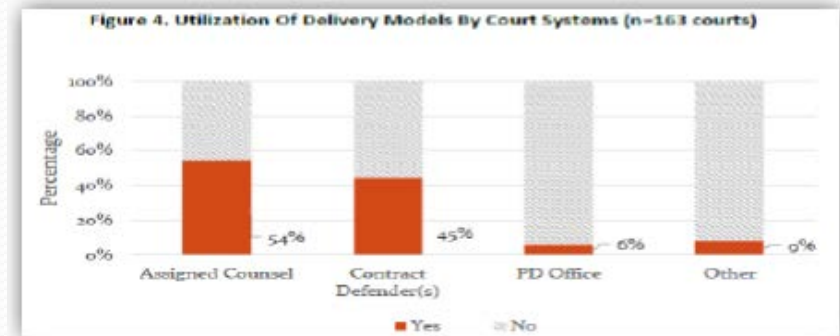
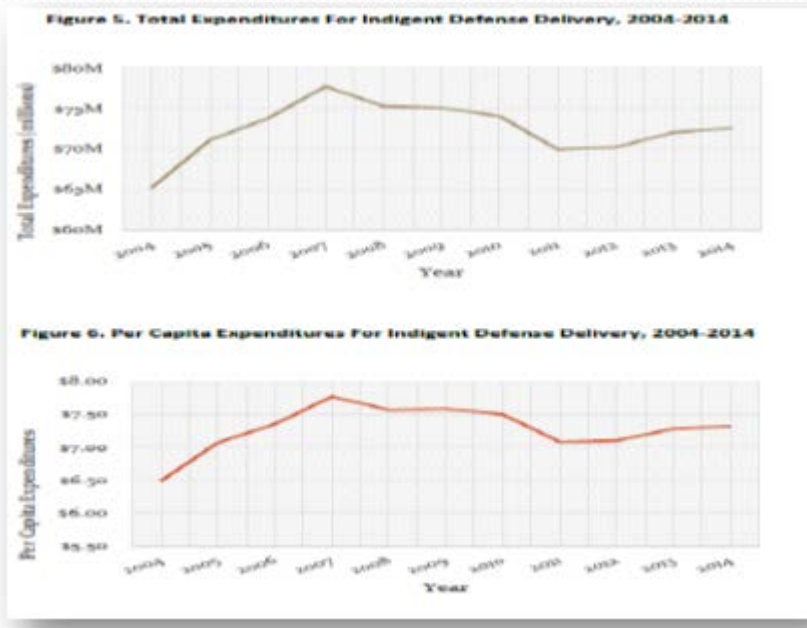
Roughly half of counties use contract systems



Indigent Defense in Michigan (2016)

Per capita expenditures declined since 2008

Use of Contract Delivery Systems similar to 2008



Current Status of Berrien ID

- 3 adult contracts: FDC (St. Joseph); Niles; Drug Court
- 15 attorneys
- Some have indicated they will likely not return after December 31, 2016
- High caseloads on par with much larger counties
- 77% of felonies are indigent clients
- Average number of total cases from 2013-15: 5,238
 - 349 per attorney on the contracts
- In 2015, 5,536 total cases:
 - 2,573 felonies (171.5 per attorney)
 - 2,963 misdemeanors (197.5 per attorney)

Main Considerations for IDIP

- Ethical Standards
- State and National Standards
- The various types of delivery systems
- Advantages and disadvantages of each model
- Economic and human cost of the criminal justice system
- Providing high quality legal representation to some of the most vulnerable members of our community

Professional Ethics

- Michigan Rules of Professional Conduct (MRPC)
- 1973 ABA caseload limits: 150 fel. OR 400 misd.
- ABA “Ten Principles of a Public Defense Delivery System”
- ABA Formal Opinion 06-441 (2006)
- ABA “Eight Guidelines of Public Defense Related to Excessive Workloads”

Main Aspects of Ethical Considerations

- Competence: knowledge of criminal defense; qualified
- Diligence: working for the client; preparation; timely
- Communication: promptly notify and explain
- Manageable caseloads
- Appropriate response if caseloads are excessive
- ID independence
- Parity in resources between ID and Prosecutor
- Supervision
- Properly addressing conflicts of interest

State Standards: MIDC

MIDC Act and proposed standards:

- 1. Education and Training: knowledge of law, science, technology, and 12 CLE's per year
- 2. Initial Interview: purpose, location, timing
- 3. Investigation and Experts: “counsel shall conduct an independent investigation”
- 4. Counsel at First Appearance and Critical Stages

Status of the MIDC

- June 1, 2016, MI Sup Ct *conditionally* approve the four proposed standards
- A legislative fix is required before Dec. 31, 2016 or the approval is withdrawn
- The County should not rely on the possibility of future state financial support at this time
- Future proposed standards will very likely include:
 - 1. Reasonable attorney fees
 - 2. Caseload guidelines

Types of ID Delivery Systems

States

- Contract attorneys
 - Individual or group
- Assigned counsel
 - List of eligible attorneys
- Public Defender offices
 - 7 in Michigan: Bay, Chippewa, Kent, Lenawee, Muskegon, Washtenaw, Wayne

Federal

- Public Defender offices
- Community Defender organizations
- Panel Attorneys
 - Similar to assigned counsel for States

Public Defender v.s. Contracts

Public Defender Office

- Accountability, oversight, and supervision
- Full-time, criminal defense specialists
- Representatives for the defense in the CJS
- Community outreach
- Reduction in incarceration
- Higher “up front” costs, but overall cost savings

Contracts

- Lower “up front” costs, but higher back end costs
- Encourages spending least amount of time possible on cases; part-time work
- Financial disincentive to investigate, file motions, try cases
- Lack of oversight, supervision
- Low bid, flat fee contracts are strongly disfavored

Overburdened, underfunded, inefficient and inadequate public defense systems lead to more incarceration, in the form of unnecessary pretrial detention, excessive sentences and wrongful convictions.

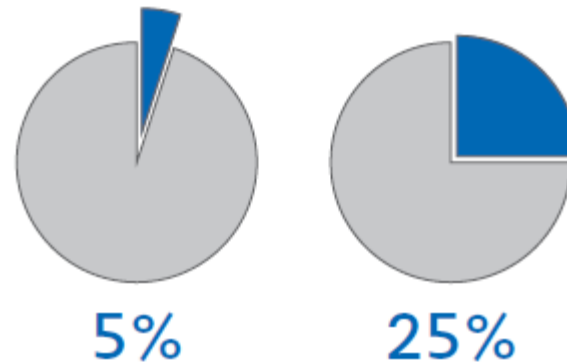
POOR QUALITY PUBLIC DEFENSE CAN INCREASE INCARCERATION IN FIVE WAYS.

There are five primary ways in which inadequate public defense systems can increase the number of people that are unnecessarily incarcerated:

1. more pretrial detention for people who do not need it;
2. increased pressure to plead guilty;
3. wrongful convictions and other errors;
4. excessive and inappropriate sentences that fail to take into account the unique circumstances of the case; and
5. increased barriers to successful re-entry into the community.

4. The criminal justice system is overwhelmed by mass incarceration and over-criminalization coupled with inadequate resources.

The U.S. Criminal Justice System



The U.S. has 5% of the world's population and 25% of the world's jail and prison population

BGA/CWC, JUNE 2011

PAYING FOR INJUSTICE

Illinois taxpayers, especially those living in Chicago, have paid a hefty price for wrongful convictions. Those painful payments are expected to continue.

85
WRONGFUL
CONVICTIONS

81 CASES INVOLVING
GOVERNMENT
MISCONDUCT OR ERROR

926 YEARS SPENT
IN PRISON
THE HIGH COSTS OF
WRONGFUL CONVICTIONS

\$214
MILLION
TOTAL COST
TO TAXPAYERS

As of 9/7/16:

1,879
exonerations

in the United States,

In Michigan:

66 exonerations

511 years lost

7.74 average years lost

National Registry of Exonerations,
A Project of the University of Michigan
Law School,

<https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx>

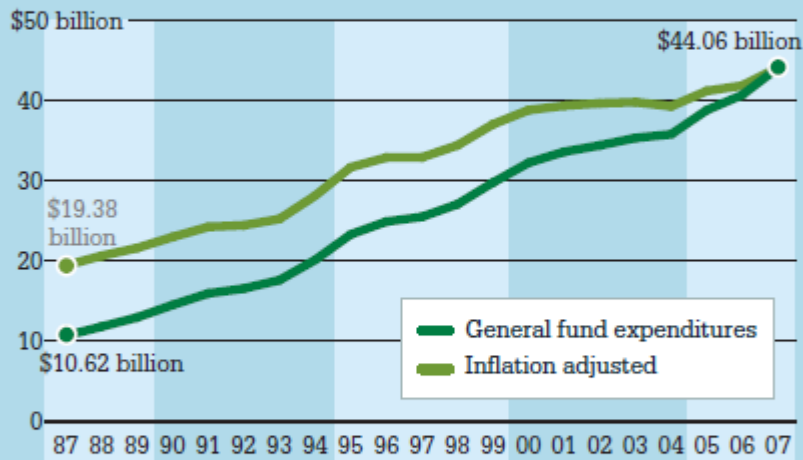


More Sources Showing that Quality Indigent Defense Reduces Costs

- Beyond incarceration costs, “there are additional costs to former inmates, their families and their communities. Those who have been incarcerated emerge from prisons and jails and work for fewer weeks per year, receive lower wages and take home smaller earnings.”
 - The Pew Charitable Trusts, *Collateral Costs: Incarceration’s Effect on Economic Mobility*, pg. 27 (2010), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf
- Represented defendants more than 2.5 times as likely to be released at arraignment and 2.5 times as likely to have bail reduced to amount they can post; delaying representation was the key factor in lengthy pre-trial incarceration for people charged with non-violent crimes
 - Colbert, Paternoster, and Bushway, *Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail*, 23 *Cardozo L. Rev.* 1719 (2001-02), http://digitalcommons.law.umaryland.edu/fac_pubs/291/
- Pre-trial detention leads to an increase in likelihood of conviction, an increase in pleas, longer sentences, and higher fines and costs
 - Stevenson, Megan, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, (May 2, 2016), www.law.upenn.edu/cf/faculty/mstevens/workingpapers/Distortion-of-Justice-April-2016.pdf
 - Phillips, Mary, *A Decade of Bail Research in New York City*, New York City Criminal Justice Agency, Inc., (August 2012), <https://static1.squarespace.com/static/546cc3c3e4boe3dbf861c974/t/54906416e4b02102b7c91376/1418748950483/CJA+-+DecadeBailResearch12.pdf>

TWENTY YEARS OF RISING COSTS

Between fiscal years 1987 and 2007, total state general fund expenditures on corrections rose 315 percent.



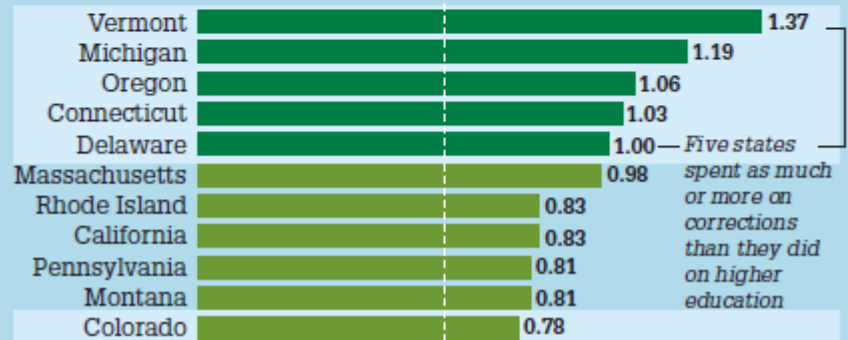
SOURCE: National Association of State Budget Officers, "State Expenditure Report" series; Inflation adjusted figures are based on a reanalysis of data in this series.

NOTE: These figures represent state general funds. They do not include federal or local government corrections expenditures and typically do not include funding from other state sources.

MAKING DECISIONS WHERE TO SPEND

While states don't necessarily choose between higher education and corrections, a dollar spent in one area is unavailable for another.

Ratio of corrections to higher education spending, 2007



Berrien County IDIP

- Must provide the best possible representation for some of the most vulnerable of our community
- Human lives at stake trumps numbers
- Key considerations:
 - Comparable resources with the Prosecutor
 - Manageable caseloads
 - Reasonable attorney fees (pay parity)

Comparable Resources with Prosecutor

North Carolina Indigent Defense Services Analysis:

During that presentation, representatives of the Conference stated that the prosecution is “outspent and outfunded every day in court,” and urged Legislators to “compare apples to apples” when looking at the budgets for the prosecution and defense functions. Based on that comparison, the DAs urged Legislators to reduce IDS’ budget, rather than the budgets for prosecutors and the courts.

The IDS Commission and Office support adequate funding for the entire criminal justice system, including the courts themselves, the prosecution, and the defense. However, the DAs’ comparison of their budget to the IDS budget is inappropriate and misleading, and it does not compare apples to apples.

A more accurate comparison of DA and indigent defense resources is shown in the following chart:

Budget Comparison 2009-2010	
District Attorneys:	Indigent Criminal Defense:
* DA Budget for Indigent Criminal Cases: \$55M	* Appropriation for Indigent Criminal Cases: \$90.6M
* Additional SBI Resources: \$30M	* Budgeted Recoupment Receipts: \$12M
* Additional Police Resources: \$200M	
* Additional Unquantifiable Resources (e.g., local crime labs, State Highway Patrol)	
Total Resources: More than \$285 million	Total Resources: \$102.6 million

Berrien County Comparison

Indigent Defense

- Budget: \$1,045,684 (2016)
- 2,573 felonies (77% of total)
- 2,963 misdemeanors
- 15 contract attorneys
 - Not designated full-time
 - Located in many offices

Prosecutor

- Budget: \$2,608,681 (2016)
- 3,378 felonies
- Estimated well over 5,500 misdemeanors
- Police resources
- 37.5 total positions
- 19 attorneys
- 10 support staff

Manageable Caseloads

Based on ABA's 1973 guidelines, which are likely outdated, we need 17 full-time lawyers to handle felonies, and 7.5 full-time lawyers to handle misdemeanors

Furthermore, we must consider the current research and national trends regarding the excessive caseload issue in the U.S. The Missouri Project, based on research and data, formulated expected hours, per attorney, per type of case, with consideration for ABA and ethical requirements:

	Client Communication	Discovery / Investigation	Case Preparation	Total Hours
Homicide	34.6	33.5	38.5	106.6
AB Felony	13.1	18.3	16.2	47.6
CD Felony	6.3	8.4	10.3	25
Sex Felony	22.5	17.8	23.6	63.8
Misdemeanor	3.5	4.1	4.1	11.7
Juvenile	5.4	6.8	7.3	19.5
Appellate/PCR	20.3	31.5	44.7	96.5
Probation Violation	2.9	2.6	4.2	9.8

RubinBrown, *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards*, On Behalf of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants (June 2014),

http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2014/lr_sclaid_5c_the_missouri_project_report.authcheckdam.pdf

Reasonable Attorney Fees

- No justification to pay indigent defense attorneys less than their counterparts
- Pay parity attracts quality attorneys

Five Options for Berrien County

- Option 1: Contract System
 - Add FT admin. asst.; increase the total for Arraignment coverage; provide legal research tools; provide PT investigator
 - Increases budget \$149,454
 - I STRONGLY RECOMMEND AGAINST THIS OPTION

- Option 2: Hybrid System
 - Add 5 FT attorneys for North County felonies
 - Add 1 FT attorney for in-custody arraignments
 - Add 2 FT admin. asst.
 - Add 1 PT investigator
 - Add \$200,000 for conflict and “overflow” counsel
 - Increases budget by \$475,867 to \$1,912,719

- Option 2A: County Administrator Wolf's Proposal
 - Add 6 FT attorneys and 1 PT attorney
 - Add 2 admin. asst.
 - Add 1 PT investigator
 - Increases budget by \$494,875 to \$1,931,727
 - A first step in moving toward a public defender office

- Option 3: Public Defender Office
 - Add 16 FT attorneys
 - Add 3 admin. asst.
 - Add 1 FT paralegal
 - Add 3 FT investigators
 - Add 2 FT social workers
 - Increases budget by \$1,355,799 to \$2,792,651

- Option 4: Model Public Defender Office
 - Add 23 FT attorneys
 - Add 4 FT admin. asst.
 - Add 1 FT paralegal
 - Add 4 FT investigators
 - Add 3 FT social workers
 - Increases budget \$2,003,824 to \$3,440,676
 - Model PD Office for the State of Michigan
 - Would be compliant with ABA, ethics, standards based upon current case assignment numbers

Canyon County, Idaho, Public Defender

- Historically, 80% of Idaho's 44 counties used flat-fee, low-bid contract systems: county-funded
- Canyon Co. pop. = 207,478
- 2009: Canyon Co. forms Canyon County Criminal Justice Planning Council (CCCJPC)
- July of 2012, Canyon Co. Bd. Of Commissioners sent letter to CCCJPC to 'explore the means by which the County might transition to an indigent defense delivery system whose framework reflects the *American Bar Association's "Ten Principles of a Public Defender Delivery System."*'

Canyon County, ID, Public Defender

- February 26, 2013: CCCPJC recommends PD Office with 21 attorneys and 13 support staff
- April 2014: ID State Legislature bans use of contracts in ID delivery and created a seven-person state ID commission
- October 1, 2014: PD Office opens
- 2015: 20 FT attorneys, 11 support staff, 3 FT investigators
- 2015: 8,154 total assigned cases, including:
 - 5,626 misdemeanors
 - 1,340 felonies
 - 617 juvenile delinquency
 - 248 civil commitments
- 2015 budget: \$3.2 million