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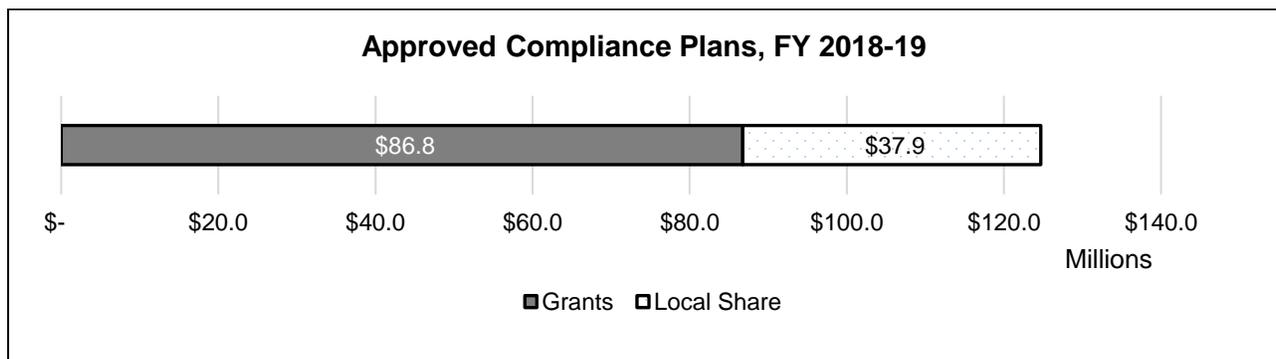
Update on Indigent Defense Grant Funding and Appropriations

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Background

The Michigan Indigent Defense Commission (MIDC) was established by Public Act (PA) 93 of 2013, also known as the Michigan Indigent Defense Commission Act. The Commission was tasked with developing a list of minimum standards for Michigan's local indigent criminal defense systems, which provide legal counsel and assistance to defendants who cannot afford to hire and retain their own attorneys. The State's services in this area were evaluated as inadequate by a 2008 National Legal Aid & Defender Association report. (For more background on the development of the Commission, see the Senate Fiscal Agency Summer 2013 article *Indigent Criminal Defense in Michigan: A New Approach*). Public Act 93 requires the State to cover the costs of bringing local court systems into compliance with the standards developed by the MIDC. The mechanism for this assistance is through the issuance of Michigan Indigent Defense Commission Grants. Local governments submit compliance plan proposals to the MIDC, which then approves or disapproves these costs.

The MIDC has established a total of eight minimum standards for indigent defense services in Michigan. As of June 2019, the MIDC has approved compliance plans for Standards 1-4 for all 134 local systems. Costs for fiscal year (FY) 2018-19, which were associated with only these first four standards, totaled \$124.7 million. The remaining four standards, Standards 5-8, will cost an additional unknown amount. The figure below shows the portion of that total paid for by the State through MIDC grants (\$86.8 million) and the share paid for by the local systems (\$37.9 million).



Local Share and Partially Indigent Collections

Public Act 93 of 2013 set each indigent criminal defense system's local share equal to its average yearly spending for indigent defense services for fiscal years 2009-10, 2010-11, and 2011-12, the three fiscal years before enactment, minus any money the system collects from partially indigent defendants. A partially indigent defendant is a defendant who cannot afford to pay for the entirety of his or her legal representation, but who is able to contribute some monetary amount to his or her defense. The local system is charged with determining the amount the defendant can reasonably contribute toward the cost of their representation and associated expenses. Public Act 214 of 2018, which amended the original MIDC Act, specifies that this determination is subject to judicial review.

Under PA 214 of 2018, each system's local share is determined on the same basis as under the original legislation. However, if the Consumer Price Index increases from November 1 of the previous fiscal year, the local share is adjusted by the lesser of that number or 3.0%.

In his FY 2018-19 Executive Recommendation, Governor Snyder proposed requiring local systems to remit 90.0% of funds collected from indigent defendants to the State. This money would have been used to fund appropriations for MIDC grants to locals. (For in-depth discussion of this proposal, see the Senate Fiscal Agency publication *Funding Michigan Indigent Defense Commission Grants*, Spring 2018.)

Instead, the revised law requires local systems to pursue collections from partially indigent defendants, and that 20.0% of these reimbursements be remitted to the State and used to fund MIDC grants. The remaining partially indigent defense collections are retained by the local systems. Determination of local shares are not affected by this retention.

The State is required to pay the difference between a system's local share and the total cost of bringing that system to meet and maintain MIDC standards. Funds appropriated by the Legislature for this purpose must be provided through the grants described under the law. The Act permits the Legislature to appropriate less funding than the total required, but states that the intention of the Legislature is to fully fund all standards within three years of their adoption.

MIDC Grant Appropriations

The table below identifies the funding sources for the FY 2018-19 and the proposed FY 2019-20 State appropriations for MIDC grants.

Appropriations for MIDC Grants		
	FY 2018-19*	FY 2019-20†
Gross	\$86,850,100	\$80,999,600
Local	200,000	---
Restricted	100	200,000
GF/GP	\$86,650,000	\$80,799,600
* Includes both original and supplemental appropriations.		
† Executive, Senate, and House recommendation.		

Public Act 214 of 2018 specifies that if a system spends less than its approved costs in a given fiscal year, that amount will be deducted from the total grant issued in the following year. Conversely, if costs determined to be reasonable and necessary for compliance are in excess of a grant amount, the MIDC must include those additional funds in a subsequent grant.

Conclusion

The enactment of PA 214 of 2018 provided local systems with greater certainty regarding compliance plan funding and the retention of partially indigent defense collections. The Act also made numerous other changes related to the MIDC and local indigent defense systems, including changing the composition of the Commission's membership and requiring it to promulgate standards for determining whether an individual is partially indigent.

Currently, the Legislature has appropriated funding for Standards 1-4. Cost estimates for the remaining four standards are unknown.