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Michigan's Indigent Defense Grants: FY 2023-24 Update

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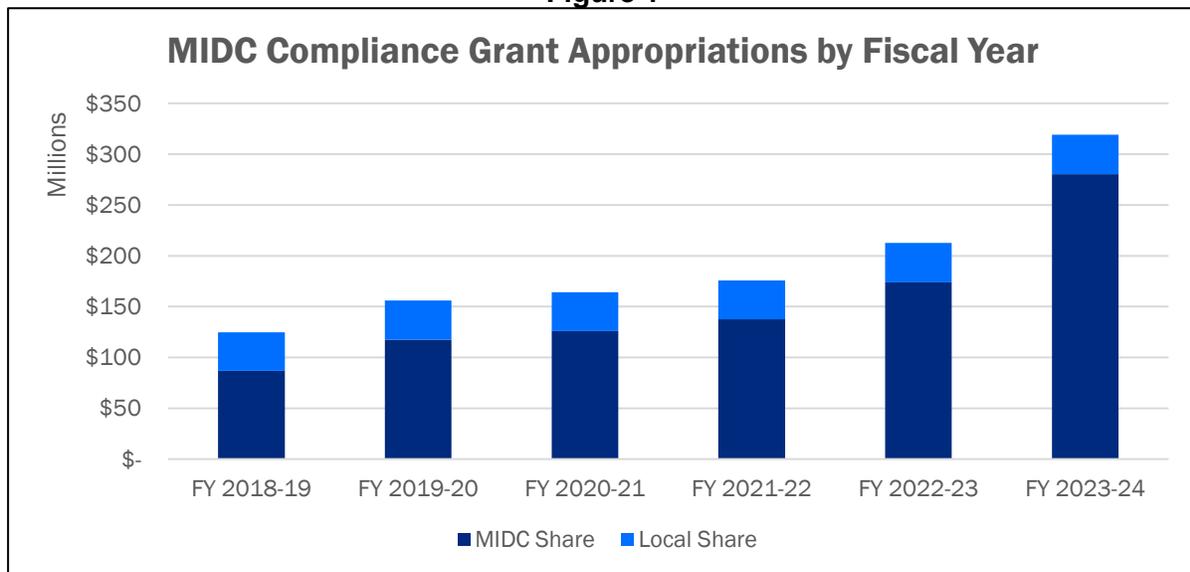
As of October 2023, the Department of Licensing and Regulatory Affairs (LARA) has approved all eight standards created by the Michigan Indigent Defense Commission (MIDC) to improve the delivery of indigent defense services by local court systems throughout the State of Michigan.<sup>1</sup> Under the Michigan Indigent Defense Commission Act, a defendant is indigent if they cannot obtain competent legal representation through their own means and resources without causing substantial hardship for themselves or their dependents. The Act further specifies that hardship is to be presumed if the individual receives certain forms of public assistance or if the individual is incarcerated or receiving residential treatment for mental health or substance abuse. A court may take other factors into consideration when determining indigency, including property ownership and employment history.

The Michigan Indigent Defense Commission Act (Public Act 93 of 2023) requires the State to cover most of the costs to bring local court systems into compliance with these standards. The remaining costs are paid by the local systems. Known as the local share, these costs are based on a given system's average indigent defense expenditures for the three fiscal years before fiscal year (FY) 2012-13. If the Consumer Price Index (CPI) has increased since November 1 of the previous fiscal year, the local share is increased from the base amount by that increase or by 3%, whichever is less (see the Senate Fiscal Agency July 2019 publication "Update on Indigent Defense Grant Funding and Appropriations" for more detail on the history of grant funding and associated calculations).

### History of Grant Appropriations

The chart below illustrates the appropriations history of the MIDC grants as of January 2024.

Figure 1



Source: Annual appropriations bills, 2018-2023.

<sup>1</sup> A detailed list and description of the MIDC Standards can be found at: <https://michiganidc.gov/wp-content/uploads/2023/10/MIDC-Standards-Complete-October-2023.pdf>

Funding for grants is appropriated annually via the budget process and is funded entirely with General Fund/General Purpose (GF/GP) dollars. Funding for MIDC operations is appropriated as a separate line item. The first State funding for grants was appropriated in FY 2018-19.

The FY 2023-24 omnibus appropriations bill, Public Act 119 of 2023, appropriated \$220.9 million in GF/GP. This sum represented 81.4% of the total GF/GP in the FY 2023-24 LARA budget and includes ongoing funding for Standards 1 through 5 and the first appropriation intended for grants to comply with Standard 8.

The final two of the original eight standards promulgated by the MIDC were approved by LARA in October 2023. These were Standards 6 and 7, which mandate appropriate workloads and training qualifications for defense attorneys, respectively. Funding for Standards 6 and 7 has not been appropriated, but the Commission has stated an estimated cost of \$12.8 million to fund these two standards, inclusive of local share. A list of the grants appropriated to each local unit is available on the Commission's website.<sup>2</sup>

Under PA 93, any unspent grant balance is carried forward to the subsequent fiscal year and reduces the latter year's grant by that amount. Because of the COVID-19 pandemic, many courts were closed or experienced a reduction in workload during FYs 2019-20 and 2020-21, causing some to fall behind on compliance projects. These delays did not delay the continual annual appropriation for the grants.

### **Recent Legislative Reporting Requirements**

In addition to retaining the MIDC's annual report, PA 119 of 2023 included two new reporting requirements. The first requires the MIDC to submit a report detailing the cost calculations for each standard for which grant recipients are receiving MIDC funding. Due by March 1 of each year, the report also must include a list of what funding each local unit is receiving for each separate standard and an explanation for any variation in cost projections from the FY 2023-24 appropriation level. An additional new section also requires the Commission to notify the chairs of the appropriations subcommittees with purview over the LARA budget after the Department adopts any new MIDC standards.

### **Future Outlook**

As shown in [Figure 1](#), the total appropriations made for MIDC compliance grants has increased each fiscal year since inception. With the adoption of the final standards in October 2023, it is likely that the growth in appropriations will slow within the next few fiscal years as projects are completed. However, it is unclear how much funding may be needed to address compliance with the standards on an ongoing basis.

Senate Bill (SB) 424 and House Bill (HB) 4630 of 2023 each propose requiring the MIDC to issue grants to local court systems to address the needs of indigent youths. The bills propose a new procedure for the release of grant funding for juvenile services, breaking the payments from the State to local systems into installments. If passed, this legislation also would add a member with expertise in juvenile justice issues to the MIDC and would require the Commission to issue new standards for determining whether an individual was indigent, among other changes.

Neither bill was enacted into law in the first year of the FY 2023-24 legislative session, although the House passed a substitute version of HB 4630 without further definitive action by the Senate. The cost of expanding the MIDC's purview to include compliance for indigent youth services is unknown, but the MIDC estimates that, in total, \$53.9 million may be needed over a period of several years. This funding would not be required for at least four fiscal years because of the time necessary to develop and implement the proposed changes and standards. As reported by the MIDC, the State Court Administrative Office indicated that there were 22,708 juvenile delinquency cases filed in 2022.

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<sup>2</sup> Michigan Indigent Defense Commission – Standards, <https://michiganidc.gov/standards/>. Retrieved December 12, 2023.