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## State Appellate Defender Office FY 2025 – Executive Recommendation

The State Appellate Defender Office (SADO) fulfills the statutory requirements of Michigan’s Appellate Defender Act, the Sixth Amendment of the United States Constitution, and parallel provisions in the Michigan Constitution to represent poor people appealing their criminal convictions. SADO has three units: The public defender division, the Michigan Appellate Assigned Counsel System (MAACS), and the Criminal Defense Resource Center (CDRC).

Under the Appellate Defender Act, the SADO public defender division provides representation in 25% of pending felony appeals for people who cannot afford attorneys, and private attorneys overseen by MAACS represent the remaining people.

In Fiscal Year 2025, SADO’s budget priorities include implementing necessary public defender workload standards, adding a youth defense position to MAACS to replace an expiring grant, implementing SADO’s Collective Bargaining Agreement, and shifting certain grant and contract positions to FTEs. **These requests have all been included in the Executive Budget Recommendation.**

### Current Services Baseline Recommendations

#### 1. Collective Bargaining Agreement between SADO and UAW

SADO and the UAW recently negotiated their first ever Collective Bargaining Agreement. The Executive Budget recommendation for SADO’s Current Services Baseline implements the salary and wages article of the CBA. This contract accomplishes two critical goals for SADO employees:

- Parity for SADO employees with comparable civil service pay rates.
- Competitive attorney salaries with those of Michigan trial level public defenders stemming from implementation of Michigan Indigent Defense Commission (MIDC) Standard 8 on attorney compensation.

To accomplish these goals, the CBA includes two major wage increases effective at the start of Fiscal Year 2025:

- SADO employees currently receive salaries at 95% of equivalent civil service positions. A 5% across the board wage increase for employees eliminates this discrepancy.
- SADO attorneys have fifteen yearly steps between starting and maximum salaries. To allow this schedule to be competitive to other local trial level public defender and state government positions, the CBA constricts this scale to eleven yearly step increases. The CBA shortens the steps by providing an additional 8% increase for all attorneys *who have not yet reached the top step in the schedule*.
- Per the CBA, SADO will continue to implement existing salary step increases and any future Judicial Branch Cost-of-Living increases.

The Executive Recommendation includes \$1,061,700 to implement the CBA for Fiscal Year 2025 based on anticipated ending salaries on September 30, 2024. The adjustment also includes this same increase for non-bargaining unit employees, who face the same pay discrepancies.

SADO salaries suffer in comparison to both equivalent civil service positions and MIDC funded trial level public defense offices. SADO has seen the impact of this salary discrepancy through difficulties hiring new attorneys and retaining mid-level attorneys. These CSB recommendations resolve this issue by implementing SADO's first CBA and providing parallel increases for non-bargaining unit employees.

## **2. Shifting Certain Contractors to Full-Time Employees**

SADO has a series of contracts renewed every year, where employees could instead perform the contractor responsibilities. In 2023, the IRS completed a multi-year payroll audit of State of Michigan contracts. The audit reviewed Judicial Branch contracts and found three contractors implicated the definition of an employee and had improper classifications. Although the IRS made no negative findings against SADO, SADO contracts invited scrutiny during this audit. SADO joins the Judicial Branch in requesting that certain contractors transition to full-time employees to avoid any contracts that could create employee relationships.

SADO's internal review found that certain contracts might be better classified as 3.5 employees: two Research Attorneys and one Publications Attorney for the Criminal Defense Resource Center, and one part-time records specialist for the Juvenile Lifer Unit. The Executive Budget recommendation includes \$934,700 to shift all implicated contracts in the Judicial Branch to employees, including \$390,000 for these SADO positions.

## **Proposals for Change (See supplemental document)**

### **1. Implementing Appellate Defense Workload Standards**

On October 24, 2023, the Department of Licensing and Regulatory Affairs formally [approved](#) MIDC Standard Six on Indigent Defense Workloads. Per the process of the MIDC Act, this approval now triggers compliance plans from trial level public defender offices. These plans require Fiscal Year 2025 State of Michigan investments to respond to trial defender workloads. The State Appellate Defender Office (SADO) **requires a similar investment for challenging appellate workloads.**

The National Center for State Courts (NCSC) conducted a study in 2022 of SADO public defender and MAACS roster attorney workloads. According to the NCSC [Michigan State Appellate Defender Office Workload Assessment](#), “SADO’s current model for public defender appellate workloads is nearly forty years old and depends on obsolete case weights.” NCSC data showed that SADO attorneys worked significantly in excess of current workload expectations per client. The NCSC Assessment also noted that “MAACS does not have caseload caps and some private roster attorneys carry caseloads which greatly exceed SADO’s current caseload standards.”

SADO anticipates a multi-year plan to implement the new NCSC Workload Standards. The Executive Budget Recommendation starts this process: 23 FTEs for attorneys and core staff for \$3,259,000. These new attorneys will allow for both a decrease in current SADO attorney workloads, and an increase in overall appellate system intake to the SADO public defender division so the MAACS roster attorneys can start to see similar declines in workload.

Hiring new attorneys and core staff positions at SADO to reduce workloads accomplishes five goals – outstanding client representation, savings to the State of Michigan through a decrease in Department of Corrections housing costs, successful reentry and safer communities, improved morale and retention of SADO staff, and a parallel reduction in MAACS roster workloads through overall increased SADO intake.

### **2. Shifting the Necessary MAACS Youth Defense Position to the General Fund**

MAACS has a Department of Justice funded grant project to establish a youth defense initiative. SADO already has youth defense positions in the public defender division, but the corresponding MAACS position will lapse when the grant concludes later this year.

The Executive Budget Recommendation includes \$157,000 to replace this expiring grant position and make the youth defense position a permanent part of MAACS. This position implements the amendments expanding the Appellate Defender Act to include youth defense, [Senate Bill 425](#), and allows MAACS roster attorneys to best represent clients in the juvenile justice system.