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State Appellate Defender Office FY 2025 – Executive Recommendation Detail: Implementation of Appellate Defender Workload Standards

Introduction

The RAND Corporation released a comprehensive [National Public Defense Workload Study](#) in September 2023. The study found that public defense attorneys with excessive caseloads cannot give time and attention to each client; that excessive caseloads violate ethics rules; and that the result is an unreliable justice system. The study also found existing public defense workload standards outdated, not empirically based, and inadequate.

Michigan has anticipated this crisis. On October 24, 2023, the Department of Licensing and Regulatory Affairs formally [approved](#) Michigan Indigent Defense Commission (MIDC) Standard Six on Indigent Defense Workloads. Per the process of the MIDC Act, this approval now triggers compliance plans from trial level defender offices. These plans require Fiscal Year 2025 State of Michigan investments to help respond to trial defender workloads.

The State Appellate Defender Office (SADO) requires a similar investment for appellate workloads. **The Executive Budget Recommendation for Fiscal Year 2025 includes this investment.**

As with trial-level public defenders, SADO direct appeals attorneys suffer from workloads that are too high. In representing an average of three hundred people appealing criminal convictions each year, SADO attorneys operate under outdated and inaccurate workload standards that:

- (1) Presume many voluntary dismissals of appeals, where that hardly happens in current practice;
- (2) Fail to measure an increase in trial court motions and evidentiary hearings due to a recent amendment to Michigan Court Rule 7.208(B) on post-judgment motions;
- (3) Ignore the need for investigation, expert witnesses, and increased discovery practice on appeal;

- (4) Fail to account for new standards of practice including sentencing mitigation, representation at resentencing hearings, and increased client communication;
- (5) Fail to consider a more extensive Supreme Court practice with the increased grants of mini-oral arguments by the Michigan Supreme Court;
- (6) Do not consider the increasing complexity of trial practice cited in the RAND analysis due to forensic evidence, new technology, digital discovery, and other dynamics.

SADO Workloads

SADO seeks to implement a Michigan appellate workload standard, parallel to MIDC Standard Six. The National Center for State Courts (NCSC) conducted a study from 2022 to 2023 of SADO public defender and Michigan Appellate Assigned Counsel System (MAACS) roster attorney workloads. The NCSC project included review of case intake data for five years, a 16-week time study where attorneys were keeping track of their time in 10-minute increments, a comparison with MAACS attorney fee voucher data, a review of case intake data, a series of focus groups, and a quality adjustment Delphi Panel.

In February, 2024, the NCSC released the [Michigan State Appellate Defender Office Workload Assessment](#). The Assessment found that “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. For example, SADO’s current model allots 48.2 hours for a standard trial appeal, while the time-study found attorneys spent an average of 92.5 hours on these appeals. Based on the Workload Assessment, the NCSC developed a caseload standard, where the maximum number of cases per attorney is “14.8 weighted cases per year.”

SADO current workload standards call for 26.4 weighted cases per year, a number adjusted downward due to workload pressures in 2020 on an interim status by the Appellate Defender Commission to approximately 21.6 weighted cases per year. Even with this interim adjustment by the Appellate Defender Commission, SADO attorneys perform over 30% more work than the NCSC Standard.

Necessary Investment

As with the statutory funding commitment to implement MIDC workload standards, the State of Michigan must invest in attorneys and associated staff at SADO to begin implementing the workload standard calculated by the NCSC Study. SADO is anticipating a multi-year implementation plan, where Year One, Fiscal Year 2025, requires eight attorneys and associated core staff:

- Eight attorneys
- One managing attorney
- Three investigators
- Three mitigation specialists
- Three paralegals and one paralegal team lead

- Two reentry specialists
- One case coordinator
- One information technology technician

The addition of eight attorneys will allow for a reduction in SADO workloads in this first year of implementation to approximately 17 weighted cases per year, while taking 75 additional cases from the MAACS roster. This proposal is the start of a three-year plan to reach the NCSC recommendation of 14.8 cases per year.

Just as SADO needs more attorneys to implement reasonable workloads, SADO needs new staff to work with the total number of current and anticipated new lawyers. The numbers match recommended ratios for attorneys to support staff, investigators, and social workers (similar to SADO mitigation specialists), as recognized by MIDC guidelines, a Department of Justice evaluation of public defenders, the National Association for Public Defense, a National Legal Aid and Defender Ethics Opinion, and the Indiana Indigent Defense Commission. Indeed, for trial public defense, Kent County implemented a new contractual requirement that all capital cases must have a consultation done with a mitigation specialist and an investigator. The additional information technology staffer, reentry specialists, and case coordinator match internal SADO needs for these staffers per attorney.

SADO currently is understaffed as to these core staff members, and this Proposal ensures that there are adequate resources to best represent clients across the board: investigators to examine potential wrongful convictions and cases of actual innocence; mitigation specialists to assist with fair resentencing hearings; reentry specialists to help people successfully return to their communities from prison; and paralegals and other administrative and information technology staff to provide necessary support.

An investment of \$3.26 million allows SADO to hire attorneys and associated core staff to best serve the people SADO represents by creating reasonable workloads.

Impact of Investment

Hiring new attorneys and associated positions at SADO to reduce workloads accomplishes five goals – highest quality client representation, savings to the State of Michigan, successful reentry and safer communities, improved morale and retention, and a reduction in MAACS roster workloads. This Proposal falls within Governor Whitmer’s FY20 – FY25 strategic plan. Specifically, one of the core elements of the Governor’s goals of providing and improving public safety is to “implement and fund approved programs for indigent defense services, assuring equal access to justice.”

1. Highest quality client representation

The State Appellate Defender Office represents approximately 25% of people appealing criminal convictions after trial and a smaller percentage of people appealing guilty and no contest pleas. Through this representation, SADO has successfully:

- Exonerated more than twenty-two wrongfully convicted clients.
- Corrected sentencing errors resulting in a reduction in people's prison terms by 193 years in 2023.
- Worked with clients on reentry strategies and services to help ensure successful return to their communities after incarceration.
- Shaped the development of the law through representation of people in the Michigan Supreme Court on principles ranging from the right to a public trial, to privacy of cell phones, to ending lifelong sentences for children.

Adding eight new attorneys and associated staff in SADO's Direct Appeals Unit will reduce individual attorney workloads while increasing overall SADO capacity.

The result will be more sentencing reductions and successful reentry and parole counseling. Growing SADO by adding new attorneys and balancing attorney workloads will allow for focused and superior representation of more clients, equal access to justice, and safer communities through parole and reentry services.

2. Savings to the State of Michigan

The corrected sentencing errors of 193 years in 2023 resulted in savings of over \$8.7 million in Michigan Department of Corrections (MDOC) costs from reduced bedspace obligations. The 2023 amount is typical – since 2008, SADO has reduced sentences by 3,077 years and realized over \$112 million in savings to the State of Michigan.

On average, SADO direct appeal lawyers reduce prison sentence terms by 18.8 years per annual caseload. On a yearly basis, eight additional direct appeal lawyers should then reduce prison terms by 150.4 years. Based on the current cost of incarceration of \$44,946 per person per year, the approximate savings of these sentencing reductions are \$6,759.878 annually in MDOC costs for the State of Michigan, which is approximately double the entire amount of this Proposal.

3. Successful reentry and safer communities

This Proposal scales and applies the work of SADO's Project Reentry, currently focused on Michigan's juvenile lifers, to appellate clients. Project Reentry prepares clients for parole, develops Comprehensive Reentry Plans to assist with the return to the community, holds [monthly workshops](#), published a [Reentry Guidebook](#) and [quarterly newsletter](#), and offers a [Reentry Services Locator](#) to help individuals find assistance for their specific needs.

According to the MDOC, of 170 former juvenile lifers released, only three have reoffended, well below Michigan's standard recidivism rate of [22.1%](#). SADO has worked with dozens of these successful people as they return home: In a typical quarterly period, from June to September 2023, SADO's Project Reentry put together thirteen comprehensive reentry plans and worked with nineteen people on parole hearings. Part of the recidivism success relates to Project Reentry, and it will become

more pronounced with greater application of this work to SADO's direct appeal clients.

An increased number of SADO investigators could also result in exonerations of innocent individuals, further contributing to safer communities if actual perpetrators can be arrested and convicted.

4. Morale and retention

Workloads have an impact on morale and retention of SADO attorneys. From 2018 to 2023, seven new or mid-level attorneys voluntarily departed from SADO for different opportunities. This number represents a significant percentage of people from a Unit of twenty-one attorneys and two Managing Attorneys. From 2012 to 2017, before new trends made SADO workloads more challenging, only three new or mid-level attorneys voluntarily departed. SADO attorneys require an average of one year of training before taking on their caseloads, so the increased departures of new and mid-level attorneys have a pronounced impact.

In requesting interim workload relief from the Appellate Defender Commission in 2020, SADO surveyed staff attorneys for reactions to workloads. Here are two representative responses:

“Recently I’ve had a number of conversations with SADO lawyers struggling with caseload pressure . . . Really good lawyers, who work really hard, and who are talking about maybe not being able to keep it up much longer. Who wholeheartedly agree with our office imperative to adapt best practices and aspire to holistic representation but don’t know where to find the time. Who are starting to think about moving on.”

“Over the years at SADO, I have seen my caseload become much more crushing and the resource of my time stretched increasingly thinner. I’m not sure of the cause, because I don’t have the data. What I do know is that I am very concerned that my clients are not receiving the quality of representation they deserve and that I have historically provided because there are simply not enough hours in the day. I often use the analogy of Lucy in the chocolate factory shoving chocolates into her mouth and dress to describe how I feel about my workload. Only instead of being hilariously and deliciously buried in chocolate, I’m buried in a pile of paper. Our caseload numbers were developed in the 1970s. A lot has changed since then. Forensic science is more complicated, but our workload does not take into account any weight for the number of hearings and motions that may have happened in a case. We are getting more discovery and exhibits, all of which take time to review, none of which was considered in the 1970-era numbers calculations. I have been racing around the state from evidentiary hearing to evidentiary hearing, but again, that’s not part of the calculation.”

5. Reduction in MAACS workloads

The MAACS roster represents approximately 75% of people appealing trial convictions and a larger percentage of plea-based convictions for people not represented by SADO attorneys. In 2023, twenty-two MAACS roster attorneys had workloads higher than current SADO workload standards. The NCSC Workload Assessment noted that “MAACS does not have caseload caps and some private roster attorneys carry caseloads which greatly exceed SADO’s current caseload standards.”

Starting Fiscal Year 2024, SADO received appropriations to reimburse counties for a matching portion of MAACS roster attorney fees in exchange for payment of reasonable rates. This commitment marks the initial response for reducing MAACS workloads to reasonable levels – raising MAACS roster fees to MIDC rates of \$130-\$142 per hour incentivizes more attorneys to join the roster and allows for rebalancing workloads. However, the roster growth will be gradual, and with competition from MIDC created trial level public defender and trial assigned counsel opportunities throughout Michigan, it will continue to be a challenge to increase roster numbers.

In addition to decreasing current SADO workloads, adding eight new SADO attorneys will allow SADO to take on 75 more trial appeals or 200 new plea appeals per year, further reducing pressure on the roster and allowing for parallel reductions in roster attorney workloads.

An investment to implement reasonable appellate defender workloads is a necessity to comply with the constitutional requirement for proper representation of clients. This investment also guarantees a better criminal legal system – one that reduces wrongful convictions and improves public safety.