



State Appellate Defender Office

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## FY 2020 Appropriations Request

### Overview

**The State Appellate Defender Office (SADO) is tasked with meeting the statutory and constitutional requirements to represent poor people appealing their criminal convictions.**

SADO consists of three divisions: The public defender division, the Michigan Appellate Assigned Counsel System (MAACS), and the Criminal Defense Resource Center (CDRC). The public defender division is the defense counterpart to the Appellate Division of the Michigan Attorney General's Office. It is charged with handling at least 25% of Michigan's pending criminal appellate caseload. The cost of handling these appeals is borne by the state as part of SADO's overall budget. The remainder of the state's criminal appeals are assigned to county-funded private attorneys, administered and overseen by MAACS. The CDRC provides training to the state's court-appointed trial and appellate counsel.

SADO's budget of approximately \$7.6 million funds a staff of 49, including attorneys, support staff, investigation and mitigation professionals, and MAACS roster administration. Repeated one-time funding of \$700,000 has covered a special unit for representation of clients serving unconstitutional life without parole sentences for offenses committed as youth.

The public defender division of SADO is a model office, achieving outstanding results for clients by relying on a holistic and client-centered approach to appellate advocacy. In contrast, MAACS roster attorneys face ongoing challenges to secure even minimal funding and resources from counties, and despite extensive improvements achieved in recent years, continue to suffer from many of the same structural impediments as trial-level indigent defense counsel in Michigan.

On June 21, 2018, Governor Snyder signed the FY 2019 Budget approving \$84 million to implement county and municipal compliance plans for improving trial level indigent defense and meeting minimum standards established by the Michigan Indigent Defense Commission (MIDC). SADO's Director, Jonathan Sacks served as the first Executive Director at the MIDC, and played an instrumental role in the compliance plan and standard setting process. **The FY 2020 Budget is an opportunity for a much more modest investment to also ensure effective representation of counsel on appeal, as required by the United States and Michigan Constitutions.**

## I. State Appellate Defender Office – Public Defender Division

**The public defender division of SADO has a staff of appellate defenders, investigators, and mitigation specialists, who are well-trained, supervised, and successful at identifying and correcting plea, trial, and sentencing errors.**

- In addition to success at remedying trial errors and injustices, SADO's post-conviction investigation and litigation has helped exonerate at least twenty wrongfully imprisoned clients in recent years, including:
  - *James Grissom*: Rape conviction vacated after investigation on appeal revealed that complainant had fabricated allegations.
  - *Derrick Bunkley*: Attempted murder conviction vacated where investigation of social media and cell phone evidence showed a definitive alibi.
  - *Konrad Montgomery*: Attempted murder conviction vacated when investigation revealed cell-tower evidence had been misrepresented and inadequately challenged at trial.
  - *Gregory Fisher*: Rape conviction vacated based on DNA exclusion.
- SADO's success in correcting sentencing errors has resulted in a reduction in prison terms by a total of nearly 319 years statewide for 2018 alone, 171 of those years are the result of SADO's work handling the resentencings of 14 people originally sentenced to life without parole as youth, and 148 years for other SADO clients.
- SADO regularly pursues successful and innovative grant-funded projects, such as a social worker sentencing project and special units to review cases involving the now closed Detroit Police Crime Lab and the discovery of untested Sexual Assault Kits.

**The work of SADO's public defenders and staff provide taxpayers with excellent return on investment.**

- SADO's work obtaining sentencing relief and correcting trial errors historically has reduced statewide prison costs by over \$5 million each year, about \$300,000 per staff attorney.
- SADO attorneys saved the state approximately \$11,170,791 in prison costs for 2018 alone, \$5,942,177 for reduced sentences for juvenile lifer clients, and \$5,228,614 for reduced sentences from error correction for clients appealing their convictions or sentences.



\* This chart reflects relief for both direct appeal clients and juvenile lifer clients. In 2018 there were far fewer sentencing hearings for juvenile lifers because of a wait for Michigan Supreme Court guidance and the shift to contested hearings, where prosecutors seek life without parole sentences after the Supreme Court rulings in June 2018.

**An essential part of SADO’s mission is to provide resources through support services and training to assigned criminal defense attorneys.**

- **Resources:** CDRC produces a wealth of resources for criminal justice professionals, all of which are accessible on SADO’s website. Some of the most popular resources include: defender books and manuals, appellate summaries, a brief bank, the Criminal Defense Newsletter, an online criminal defense attorney forum, databases containing expert witness transcripts, law enforcement misconducts, and reentry service providers, and self-help resources covering child support, expungement, collateral consequences, pro per manuals, sample pleadings, and more.
- **Trainings:** CDRC’s primary focus is to provide high-quality training to attorneys handling indigent appeals at SADO and MAACS. In addition to that target group, CDRC hosts dozens of complimentary trainings at various locations throughout the state and via online webinars for trial-level practitioners and other criminal justice stakeholders. Trainings are recorded and archived on the website for later viewing.
- Recognizing the training success and reputation of the CDRC, most of compliance plans submitted by local funding units to the Michigan Indigent Defense Commission request CDRC membership and services to meet new training requirements for attorneys.

## II. Juvenile Lifer Unit

Since FY 2016, SADO has received funding to build an in-house unit of lawyers, investigators, and mitigation specialists to represent clients serving life without parole sentences for offenses committed as youth. These clients require new sentencing hearings because they are now serving mandatory life sentences in violation of the constitutional prohibition against cruel and unusual punishment.

- A 2016 United States Supreme Court decision required new sentencing hearings for all individuals serving unconstitutional mandatory sentences of Life Without Parole. SADO's Juvenile Lifer Unit represents 193 of Michigan's 364 juvenile lifers and 85 of these clients have now received new sentences.
- These clients received new sentences with an average length of 30.5 years. 38 clients have been released on parole or discharged from MDOC. 96 clients now await new sentencing hearings, with the rest in other procedural postures.
- **Cost to the state:** For cases that proceed to hearings, an adequately-funded defense saves significant money for the State of Michigan:
  - Estimated cumulative number of reduced sentences for clients no longer serving life sentences: 1077 years
  - Estimated savings in incarceration costs for not quite three years of Juvenile Lifer Unit operations: \$36,893,427
  - **Return on Investment:** 20.1:1 (2070%)

## III. Michigan Appellate Assigned Counsel System

MAACS merged with SADO in 2014. MAACS is the system for appointing criminal appellate counsel in all Michigan circuit courts, from a roster of approximately 150 private attorneys and SADO attorneys. Approximately 75% of indigent felony appeals are assigned to the MAACS roster.

- **Reforms to benefit trial courts and assigned counsel:** In 2015, after decades of operating under an inefficient assignment model and inadequate resources, MAACS launched an innovative pilot project. The project used a regional assignment process to encourage the trial courts' voluntary adoption of a reasonable and standardized attorney fee policy. After beginning with 14 trial courts, the pilot grew to include 40 trial courts statewide – more than half. In November 2017, the Supreme Court approved these reforms permanently, and MAACS continues to

grow the new regional assignment lists and standard fee participation to the shared benefit of trial courts, appointed appellate counsel, and indigent criminal defendants.

- **Roster oversight and training:** MAACS personnel maintain oversight of the quality of the roster, conducting thorough and regular reviews of attorney work product. Attorney work is assessed both qualitatively and to determine compliance with the more objective measures set forth in the Minimum Standards for Indigent Criminal Appellate Defense Services. Partnering with CDRC, MAACS personnel also conduct three regular annual trainings, as well as other trainings on specific topics.
- **Litigation support:** MAACS staff provide regular litigation support to roster attorneys and provides MAACS roster attorneys with greater access to investigators and expert witnesses.
- **Despite these reforms, the MAACS roster still struggles to provide high-quality representation:**
  - Attorney incentives and funding. Counties that have adopted uniform fee schedules and regional lists compensate attorneys at a rate of \$50 or \$75 per hour, depending on the type and severity of the appeal. This amount falls far below new Michigan Indigent Defense Commission proposed rates of \$100 to \$120 per hour, which will be funded for trial level indigent defense in many counties starting in FY 2019. Counties that have not adopted uniform fee schedules pay even less. For example, several counties pay flat fees of less than \$500 or hourly rates of only \$40, even for the most complex and lengthy appeals.
  - Workloads. The Michigan Indigent Defense Commission has proposed workload controls for trial level indigent defense. SADO has established appellate weighted caseload standards at approximately 26.4 trials appeals or 72 plea appeals per year. Many MAACS roster attorneys maintain caseloads exceeding these standards, with some handling twice the appropriate number of appeals in addition to their private practices.
  - Quality. With some exceptions, the quality of representation provided by MAACS roster attorneys does not keep pace with SADO staffers.

#### IV. FY 2020

- **The Executive Budget provides continued funding for the Juvenile Lifer Unit, with an increase to \$841,900 now that contested hearings have started.** With most of the actual litigation just beginning, this is the absolute minimum needed. The Michigan Supreme Court recently resolved significant legal questions on the nature of resentencing hearings. The most contested, intricate and time-consuming sentencing hearings for juvenile lifers have now started. To represent these clients, SADO requests an increase of \$141,900 in this annual funding, for a total of \$841,900. This amount allows SADO to properly take on the work of the contested hearings and shift two part-time positions – a mitigation specialist and the reentry coordinator – to full-time.
- **The Executive Budget also provides an increase of \$457,200** to allow hiring of four attorneys for the public defender division to represent indigent clients appealing convictions they received after trial. This amount represents a fraction of what has been recently committed to trial-level indigent defense.
- These attorneys will allow the public defender division of SADO to represent more than 40% of clients appealing their trial court convictions and maintain representation of some plea appeal clients. Many of those cases would otherwise be handled by roster attorneys and paid for by individual counties.
- The adjustment to the number and type of appeals that SADO's public defender division handles shifts costs from the counties to the state. Counties would fund fewer expensive and unpredictable trial appeals. These savings would allow the counties to redirect appellate counsel reimbursement to approach recommended MIDC hourly rates of \$100 to \$120 per hour for attorney payments. This increased rate would then allow MAACS to recruit and retain roster attorneys with the resources necessary to provide the same high-quality representation as SADO's public defender office.
- **This investment is the first step in the creation of a model system for indigent appellate defense** whereby SADO represents 90% of clients appealing trial convictions and 25% of clients appealing plea convictions. Over the next few years, SADO ultimately seeks an increase of \$3,153,292 for hiring of eighteen attorneys, two investigators, two mitigation specialists, and eight support staffers. Shifting one-time Juvenile Lifer Unit funding to the general fund allows this process to begin because this money will be available for future public defender caseload enhancement.

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