



State Appellate Defender Office

3031 W. Grand Blvd. Ste. 450, Detroit, MI 48202
(Phone) 313.256.9833 (Client calls) 313.256.9822
(Fax) 313.263.0042 www.sado.org

Jonathan Sacks
Director

Marilena David
Deputy Director

Bradley R. Hall
MAACS Administrator

Patricia Maceroni
MAACS Deputy Administrator

Michigan Appellate Assigned Counsel System

200 N. Washington Square, Suite 250
Lansing, MI 48913
(Phone) 517.334.1200
(Fax) 517.334.1228 www.sado.org/maacs

State Appellate Defender Office FY 2024 Appropriations Requests

The State Appellate Defender Office (SADO) fulfills the statutory requirements of Michigan's Appellate Defender Act, MCL 780.712, the Sixth Amendment of the United States Constitution, and parallel provisions in the Michigan Constitution 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).

Under the Appellate Defender Act, SADO provides representation in 25% of pending felony appeals for people who cannot afford attorneys. MCL 780.716(c). A staff of twenty attorneys with a social worker and two investigators provides direct legal services to about 300 SADO clients per year. The remaining indigent felony appeals, up to 3,000 people per year, are represented by private attorneys overseen by MAACS. MCL 780.712(4), (6). Since its inception in 1985, MAACS has struggled to ensure constitutionally adequate representation for clients of private appellate assigned counsel. The biggest reason is inadequate attorney fees.

For Fiscal Year 2024, the Executive Recommendation includes three requests:

- New decisions by the Michigan Supreme Court found that mandatory and parolable life sentences for youth violated the Michigan Constitution. These decisions require significant expansion of SADO's Juvenile Lifer Unit.
- To salvage past reforms to MAACS and ensure constitutionally adequate appellate representation into the future, a state investment is essential. This proposal seeks state appropriations to support 1:1 matching funds for reasonable hourly attorney fees consistent with new Michigan Indigent Defense Commission standards.
- Implement the Michigan Task Force on Juvenile Justice recommendations to "Expand the State Appellate Defender Office to include appellate services to juveniles."

Contact: **Jonathan Sacks / Director / 313-402-5382 / jsacks@sado.org**

1. Expansion of Juvenile Lifer Unit: \$2.6 million

On July 28, 2022, the Michigan Supreme Court issued multiple decisions on youth sentencing. In [People v. Parks](#), the Court held that a mandatory sentence of life imprisonment without the possibility of parole for 18-year-old youth constituted cruel or unusual punishment under the Michigan Constitution. In [People v. Stovall](#), the Court held that a parolable life sentence for a youth convicted of second-degree murder violates Michigan's constitution. These cases significantly expand the impact of a prior United States Supreme Court decision that banned mandatory life without parole sentences for youth 17-years-old and younger.

Taken together, these decisions will require 351 new sentencing hearings, many where prosecutors will request severe sentences and courts will hold multi-day hearings with significant mitigation evidence and multiple experts. The current staff of SADO's Juvenile Lifer Unit will gradually transition to this work over the next two to three years as they finish up outstanding sentencing hearings, appeals, and new case appointments. This existing staff is insufficient and cannot take on this scope of new representation.

The need is immense – even if trial level systems and retained counsel take on half of the necessary representation, the total work would be almost equal to the entire output of the Juvenile Lifer Unit with 193 clients since 2016. Representation of 175 of the 351 people provides a conservative estimate of SADO's contribution.

The current budget of \$962,900 for SADO's Juvenile Lifer Unit funds two attorneys, four mitigation specialists, and one reentry coordinator. Three additional SADO lawyers provide in-kind Juvenile Lifer Unit representation through the general fund, for a total of ten positions. The new Supreme Court decisions creates two immediate budget needs beyond this funding:

1. **Almost doubling the current work of the Juvenile Lifer Unit through 175 new sentencing hearings.** To take on this new mandate, SADO's Juvenile Lifer Unit requires eight additional positions: four new attorneys, two mitigation specialists, one paralegal, and one reentry specialist.
2. **Filling in-kind positions.** Three appellate attorneys continue to work for the Juvenile Lifer Unit. With the new Supreme Court decisions, the three positions will continue their Unit work rather than serve SADO's core direct appeal function. With courts reopening, appeals are increasing, and SADO must fill these three positions.

2. Protecting Enhancements to Private Appellate Assigned Counsel Services: \$3.2 million

Background: MAACS was established in 1985 to oversee qualifications, training, and performance of private appellate counsel handling about 75% of indigent felony appeals in Michigan. Unlike their counterparts at the State Appellate Defender Office (SADO), who are state employees, MAACS roster attorneys are paid by counties. This decentralized model has been plagued by inadequate fees, excessive caseloads, inferior quality, and inefficiencies.

Beginning in 2014 with the merger of MAACS with SADO, MAACS has adopted a series of reforms to encourage standard court and county practices, a regional assignment process, and the adoption of a uniform attorney fee policy featuring rates of \$50-\$75 per hour. To date, 76 of Michigan's 83 counties have voluntarily adopted these reforms with local investments totaling over \$1 million annually. This has been a significant policy [success](#), leveraging minimal state operational costs to achieve greater administrative efficiency, more reasonable attorney fees, higher qualification and performance standards, and improved representation.

The emerging crisis in appellate representation: These achievements are in serious jeopardy. County funding alone cannot compete with parallel reforms and state investments under the Michigan Indigent Defense Commission Act, including [now mandatory](#) felony trial-level attorney fees of \$130-\$142 per hour. These dynamics have quickly given rise to a crisis:

- Despite enhanced recruitment and retention efforts, the active MAACS roster now consists of just 110 lawyers, down from 146 just five years ago.
- Delays in the appointment of counsel routinely violate court rule requirements.
- The system lacks the capacity to manage the growing post-pandemic workload.

Solution: There is an urgent need to salvage past reforms and solidify the appellate indigent defense system. MAACS proposes a 1:1 formula for state and county funding of private assigned counsel fees and expenses, harnessing existing county investments while providing state support for current and future increases.

Appeals and billing data show an estimated cost of \$3 million annually in state reimbursements, combined with one MAACS finance staffer, can fund attorney fees consistent with new MIDC standards. By participating in this voluntary funding mechanism, counties will secure state matching funds, protection from litigation, access to ample appellate counsel, and the assurance of high-quality representation.

3. Youth Defense Proposal: \$556,900

In 2020, the Gault Center (then the National Juvenile Defender Center) released [Overdue for Justice](#), an assessment of Michigan’s system of indigent defense representation in juvenile delinquency cases. This report noted that “Michigan’s current service delivery for delinquency representation is inadequate to ensure constitutional guarantees for children are protected... [it] is not subject to any state standards, receives no state funding, and has no consistent, effective monitoring or enforcement mechanism in place to ensure youth receive effective counsel at all critical stages.”

In 2021, Governor Whitmer created the Michigan Task Force on Juvenile Justice Reform, in-part to address the concerns raised in *Overdue for Justice*. The Task Force released its [recommendations](#) in July 2022. One recommendation is to “Expand the State Appellate Defender Office to include appellate services to juveniles, which will include post-dispositional services.” The Task Force recommendations showed a consensus from a group of diverse stakeholders that included judges, prosecutors, and juvenile justice experts.

Meanwhile, in late 2021, MAACS and SADO received a three-year federal grant to expand indigent appellate representation for youth, particularly an expansion of appellate practice in juvenile delinquencies. This grant has been used to establish a Youth Defense Project. SADO now hopes to permanently add representation of youth to the public defender division and MAACS mandate.

This Proposal would add three new positions at SADO. First, a new Assistant Defender would handle a full caseload of youth trial and plea appeals through direct representation. Next, a new CDRC Youth Defense Program Manager would help produce and distribute resources for youth defense attorneys. Finally, a new programmer would expand the MAACS roster assignment Case Management System to include youth appeal appointments. The current MAACS Youth Defense Program manager position would continue as part of the three-year federal grant funded Youth Defense Project. The Proposal also includes a request for \$163,625 for reimbursement to MAACS roster attorneys handling youth defense appeals.

Michigan’s system of appellate defense for youth is practically non-existent. There are approximately 20 appeals from delinquency cases per year despite 2019 caseload data showing more than 7,000 trial-level cases reaching the disposition phase that year alone. The near-complete lack of appeals in delinquencies deprives some of the most vulnerable people in the justice system of appellate review and error correction, a fundamental function of appeals. Without a robust system of appeals in delinquencies, it is impossible to gauge how often serious errors negatively affecting youth go unaddressed. An expansion of SADO’s services to represent youth addresses these concerns.