

State Appellate Defender Office 2021 Annual Report



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2021 Appellate Defender Commission and Leadership Team

Commissioners:

Thomas W. Cranmer, Chair, Supreme Court Designee
Thomas G. McNeill, Vice-Chair, Supreme Court Designee
Darryl J. Woods, Governor's Designee
Honorable Thomas Solka, Michigan Judges Association Designee
Judith Gracey, State Bar Designee
Doug Mains, State Bar Designee
Douglas Messing, Court of Appeals Designee

Leadership Team:

Jonathan Sacks, Director
Marilena David, Deputy Director
Bradley R. Hall, MAACS Administrator
Patricia Maceroni, Deputy MAACS Administrator
Katherine Marcuz, Tina Olson, Jessica Zimbelman, Managing Attorneys
Julianne Cuneo, Chief Investigator
Wendy Dealca, Office Administrator
Bryan Vance, Budget and Finance Administrator

Introduction

In 2021, the State Appellate Defender Office (SADO) continued to provide high quality appellate representation to almost 2,000 people convicted of crimes who could not afford their own attorneys through either the public defender division or the Michigan Appellate Assigned Counsel System (MAACS). SADO's public defender division successfully represented clients in the Michigan Supreme Court and Michigan Court of Appeals, saved clients years of their lives and the State of Michigan millions of dollars through sentencing error corrections, and represented youth serving life sentences, who had their first opportunity for freedom. SADO's assigned counsel division, the Michigan Appellate Assigned Counsel System, extended the successful regional list and uniform fee policy, increased the quality of assigned appellate counsel representation, and continued to show success through roster attorney support and training. SADO's Criminal Defense Resource Center served as a training and education model for all levels of the criminal defense bar. All these accomplishments took place in the shadow of the continued COVID-19 pandemic.

As Michigan's indigent defense trial system continues critical reforms, SADO serves as a model to achieve the best possible indigent defense.

State of Michigan Appellate Framework

Under Michigan's Appellate Defender Act, indigent defense services in felony appeals are provided by both "the state appellate defender . . . and locally appointed private counsel." MCL 780.712(4). The Act defines SADO's workload as "not less than 25% of the total criminal defense appellate cases for indigents pending before the appellate courts of this state," though the office may "[a]ccept only that number of assignments and maintain a caseload which will insure quality criminal defense appellate services consistent with the funds appropriated by the state." MCL 780.716. Intake is adjusted to reflect SADO's public defender division capacity, namely the number of cases all attorneys can handle under established case weighting standards.

For non-SADO public defender cases, the Act directs the establishment of "a statewide roster of attorneys eligible for and willing" to accept the remainder of assignments. MCL 780.712(6). In 1981, the Michigan Supreme Court established MAACS to "compile and maintain" that roster and maintain the system for selecting counsel and preparing appointment orders in all assigned appeals. AO 1981-7. In 2014, the Court consolidated MAACS with SADO for management and administrative purposes. AO 2014-18.

SADO Public Defender Division: Navigating the Pandemic Year Two - SADO attorneys persevere and achieve

2021 brought many of the same challenges as 2020: closed offices, Zoom court, clients' lives in danger in prison and jails, and the constant pressures of being public defenders in a pandemic. As in 2020, SADO attorneys persisted in holding prosecutors and courts accountable and giving a voice to our clients. That persistence paid off with remarkable results in courts throughout the state, including the Michigan Supreme Court, where SADO obtained many oral arguments and favorable dispositive opinions. Our team of attorneys¹, an investigator,² a mitigation specialist,³ our Wrongful Conviction Unit,⁴ and our paralegals⁵ worked hard to make sure our clients were not forgotten and continued to fight a system stacked against them.

Highlights of SADO Courtroom Advocacy

SADO in the Michigan Supreme Court

SADO attorneys helped make significant improvements in the law, to the benefit of our clients and to people throughout the state:

Shane Hawkins (Adrienne Young, Maya Menlo): The Court reversed the Court of Appeals opinion affirming Mr. Hawkins' conviction and remanded to the trial court for a new trial. The Court found that the failure to object to improper vouching testimony by the lead detective deprived Mr. Hawkins of a fair trial.

Joseph Fox (Katherine Marcuz): The Court granted a new trial for Mr. Fox where the trial court erroneously denied his request for a jury instruction on assault and

¹ At the time of this report, our Direct Appeal Assistant Defenders are: Doug Baker, Jason Eggert, Steven Helton, Jacqueline McCann, Angeles Meneses, Maya Menlo, Michael Mittlestat, Matthew Monahan, Jacqueline Ouvry, Lindsay Ponce, Mike Waldo, and Adrienne Young. We have three Assistant Defenders in training: Erin Bartels, Garrett Burton, and Rasheed Gilmer. Marilena David, Katherine Marcuz, Jonathan Sacks, and Jessica Zimbelman also directly represent clients.

² Julianne Cuneo

³ Monique Dake

⁴ Attorney Tabitha Harris and Investigator Angie Jackson

⁵ Cynthia Carter, Jean Downey, Tonia Frazier-Akins, Rita Jajjoka, Lisa Lamarre, Frank Rodriguez, and Heather Waara

battery. Here, the Court assumed without deciding that assault and battery is a lesser-included offense of AWIGBH. It found that the trial prosecutor's concession that assault and battery is a lesser-included offense of AWIGBH waived appellate argument to the contrary.

Lonnie Arnold (Marilena David): The Court granted resentencing to Mr. Arnold, holding that the sentencing guidelines do not apply to persons being sentenced as a sexually delinquent person. Mr. Arnold may see the outside of a prison one day, thanks to Mari's many years of advocacy.

Erick Allen (Lindsay Ponce): The Court held that people are entitled to credit spent while in jail, even if on parole, if no parole detainer was issued.

Paul Betts (Jessica Zimbelman): The Court held that the 2011 SORA is unconstitutional ex post facto punishment. The Court pointed out many punitive portions of the registry, including the public nature on the Internet, the in-person reporting requirements, the lack of an individualized assessment of risk, and the geographic exclusion zones. Mr. Betts preserved these issues 9 years ago on his own.

Ernesto Uribe (Mike Waldo): The Court granted a new trial for Mr. Uribe, finding that the prosecution expert impermissibly vouched for the credibility of the complainant and that the error was so egregious that it was not cured by the curative instruction given.

Treshaun Terrance (Angeles Meneses, Jackie McCann): After oral argument, the Court denied leave to appeal thus affirming the dismissal of Mr. Terrance's torture charge on double jeopardy grounds.

Robert Propp (Steven Helton): The Court remanded to the Court of Appeals for reconsideration of Mr. Propp's request for expert funding under *People v Kennedy* and for consideration of whether other acts evidence was properly admitted under the rules of evidence.

Jocque Nolan (Jackie McCann): The Court reversed Mr. Nolan's conviction for failing to comply with SORA, per the Court's decision in *People v Betts*.

David Snyder (Sofia Nelson): The Court reversed Mr. Snyder's conviction for failing to comply with SORA, per the Court's decision in *People v Betts*.

By the numbers:

- 158 clients represented in the Michigan Supreme Court
- 10 clients obtained relief from the Michigan Supreme Court
- The Court heard oral arguments for 12 SADO clients.

SADO in the Michigan Court of Appeals

Through their work in the Court of Appeals, SADO attorneys protected important rights and improved the system. Their successes include:

New trials/convictions vacated:

Octavius Hall (Christine Pagac): The Court granted reconsideration, vacated its prior opinion, and reversed Mr. Hall’s conviction for intentionally discharging a firearm causing serious injury due to trial counsel’s failure to object to the jury instruction which omitted an essential element. The Court also granted resentencing on the other counts where PRV 2 and PRV 5 were misscored.

Tonya Peterson (Christine Pagac): The Court reversed Ms. Peterson’s involuntary manslaughter conviction, which was premised on the theory that she failed to perform a legal duty as the owner of the home where a child died. The Court held that the jury was improperly instructed on the duty Ms. Peterson owed the decedent (invitee vs. licensee).

Aaron Mienkwic (Katherine Marcuz): The Court remanded for a new trial before a different judge due to prosecutorial misconduct. The misconduct was that the prosecutor—when a defense attorney—represented Mr. Mienkwic’s co-defendant and co-conspirator in the same matter.

Brandon Drendall (Lindsay Ponce): The Court remanded for a new trial where the prosecutor repeatedly elicited inadmissible, irrelevant, and highly prejudicial evidence. The other acts evidence was not noticed by the prosecutor and defense counsel did not object. The Court found the failure to provide notice itself was plain error, the admission of this evidence was plain error, and that the trial court abused its discretion in refusing to give a curative instruction.

Jay Yensen (Mike Waldo): The Court remanded for a new trial due to hearsay, bolstering, and improper expert testimony – all raised as plain error and ineffective assistance of counsel. The Court also conducted a cumulative error analysis and held that the errors together operated to deny Mr. Yensen a fair trial.

Jerome Morgan (Matt Monahan, Jackie McCann): The Court found ineffective assistance of counsel from errors apparent on the record where trial counsel introduced prior consistent statements and remanded for a new trial.

Jennifer Hammerlund (Jason Eggert): The Court affirmed the trial court’s order suppressing the evidence and granting a new trial. It held that the arresting officer

deliberately disregarded Ms. Hammerlund's Fourth Amendment rights and the violation demands application of the exclusionary rule to deter such behavior.

Steven Goodman (Michael Mittlestat): The Court vacated Mr. Goodman's felon in possession and felony firearm charges on sufficiency grounds. The prosecution presented no evidence that Mr. Goodman was ever seen with a gun or in proximity to a gun, nor was the alleged gun ever seen by anyone.

Kristopher Hughes (Jason Eggert): After remand from the Michigan Supreme Court, the Court, in a published opinion, granted Mr. Hughes a new trial, finding ineffective assistance of counsel for failing to object on Fourth Amendment grounds to the introduction of cell phone evidence.

Todd Small (Erin Van Campen, Jonathan Sacks): The Court reversed Mr. Small's convictions and remanded for a new trial after trial counsel failed to obtain a transcript of the interrogation of Mr. Small and to use it when cross-examining a detective. There was prejudice given that it was reasonable to conclude Mr. Small's purported confession as recounted by the detective was "significant or even decisive to the jury's conclusions."

Nathan McWherter (Steven Helton): The Court granted a new trial because the prosecution improperly elicited irrelevant other-acts evidence.

Glenn Zantello (Steven Helton): The Court reversed Mr. Zantello's conviction for illegal entry finding that the trial court plainly erred because it did not provide the jury with an option of a general not guilty verdict on the verdict form, or the option to find Mr. Zantello not guilty of the lesser included offense of entering without owner's permission.

Remands for resentencing/rearticulation:

Jennifer Maynard (Jackie McCann): Remanded for rearticulation or resentencing where the trial court failed to adequately articulate reasons for the departure and consecutive sentences.

William Kurcharski (Marilena David): Remanded for resentencing based on errors in the scoring of Offense Variables 4 and 19.

Michael Palmer (Steven Helton): Remanded for resentencing on two of Mr. Palmer's convictions based on errors in the scoring of PRV 5.

David Hult (Christine Pagac): Remanded for resentencing due to errors in scoring the offense variables based on acquitted conduct.

Ramon Logan II (Jackie McCann, Maya Menlo, Lindsay Ponce): Remanded for resentencing or rearticulation of reasons for a departure sentence.

Jawaad Reese (Adrienne Young): Remanded for rearticulation or resentencing where the trial court’s justification for consecutive sentencing was insufficient.

David McNees, Jr. (Michael Mittlestat): Remanded for resentencing due to an error in scoring OV 11.

Tony Kingsley (Katherine Marcuz, Jessica Newton): Remanded for rearticulation or resentencing where the trial court’s justification for consecutive sentencing was insufficient.

Zicary Carpenter (Jason Eggert, Steven Helton): Remanded to give the trial court the opportunity to justify its departure sentence without relying on acquitted conduct or to resentence Mr. Carpenter. The court also ordered the trial court to “revisit its decision” on consecutive sentencing under *Norfleet*.

Raymond Stokes (Steven Helton): Remanded for resentencing because the trial court did not give trial counsel an opportunity to allocute on Mr. Stokes’ behalf.

Dayshun Spears (Doug Baker): Remanded for resentencing because of errors in scoring Offense Variable 13 based on dismissed charges.

Lamon Pore (Lindsay Ponce): Remanded for resentencing due to errors in scoring PRV 5 and PRV 6.

Robert Miles (Angeles Meneses): Remanded for resentencing due to errors in scoring OV 3 and OV 12 based on acquitted conduct.

Curtis Dickerson (Michael Mittlestat): Remanded for resentencing due to the court relying on acquitted conduct to score OV 11.

Telvin White (Christine Pagac): Remanded for resentencing where the trial court relied on acquitted conduct and failed to explain the extent of the departure.

Isaiah Buckner (Lindsay Ponce): Remanded for resentencing due to multiple PRV scoring errors.

Henry Moore (Michael Mittlestat): Remanded for resentencing where the trial court’s reasoning related to its upward departure was based on inaccurate information. Mr. Moore was on Swift and Sure probation at the time of the offense and is a veteran who has had significant difficulties returning to civilian life. Judge

Rick concurred in the result to underscore the importance of recognizing the “mental health wounds” many veterans face.

Jacob Murphy (Jason Eggert): Remanded for resentencing where the trial court sentenced Mr. Murphy based on an erroneous belief that he was convicted on all counts as charged.

Mendel Moore (Katherine Marcuz): Remanded for resentencing where OV 3 was scored based on acquitted conduct.

Other:

Lawrence Mosher (Angeles Meneses): Remanded for a *Ginther* hearing to determine if trial counsel was ineffective for failing to call a witness.

Davonte Watson (Steven Helton): Remanded for an evidentiary hearing regarding trial counsel’s failure to introduce evidence of complainant’s prior inconsistent statements and failure to consult with an expert in child forensic interviews.

Sherry Dunn (Jackie McCann, Angeles Meneses): Reversed the trial court’s denial of the appointment of appellate counsel and remanded for entry of an order appointing appellate counsel and to allow Ms. Dunn’s appeal to proceed as of right.

Shaun Lydic (Jackie McCann): In a published opinion, the Court upheld the trial court’s downward departure after the prosecutor appealed.

Dwayne Deal (Jackie McCann, Brad Hall, Kathy Swedlow): Affirmed the trial court’s order dismissing the charges with prejudice after the prosecutor goaded the defense into consenting to a mistrial.

Dennis Swenor (Steven Helton): Affirmed the trial court order granting Mr. Swenor’s motion to suppress evidence obtained as the result of an improper inventory search.

Jeremy Fall (Erin Van Campen): Remanded for correction of the judgment of sentence which erroneously stated Mr. Fall was convicted of assaulting a pregnant individual.

Joshua Moore (Doug Baker): Remanded for the trial court to amend Mr. Moore’s judgment of sentence where the trial court clearly erred by ordering him to serve his felony-firearm sentences consecutively with his CCW sentence.

Phil Parke (Michael Waldo): Remanded for a restitution hearing.

Kenneth Hayes (Lindsay Ponce): Remanded for a reduction in restitution by over \$2,000.

Thomas Meeker (Maya Menlo): The Court, in a published decision, affirmed the trial court's dismissal of drug possession charges.

Joshua Dufek (Maya Menlo): The Court held the trial court committed plain error when it ordered Mr. Dufek to pay costs without establishing a factual basis and imposed a late fee without giving notice of a due date.

Eric Vanzant (Lindsay Ponce): Vacated the \$60 DNA fee.

Michael Estelle (Erin Van Campen, Matt Monahan): On interlocutory appeal, the Court reversed the trial court's order denying Mr. Estelle's motion to suppress and held that driving 10 miles under the speed limit is not in itself a traffic violation and was not sufficient to warrant a lawful traffic stop. It further held that any evidence that flowed from the stop was inadmissible and remanded for further proceedings.

Kristyn Sigler (Erin Van Campen, Jason Eggert): Affirmed Ms. Sigler's downward departure sentence after the prosecutor appealed.

By the numbers:

- 683 pleadings filed in the Court of Appeals
- SADO attorneys conducted oral argument for 161 clients.
- 23 clients obtained relief from the Court of Appeals.

SADO in Michigan's Trial Courts

SADO attorneys traversed the state—by car and by Zoom—and fought for our clients in the local trial courts, including:

New trials:

Lemond Boyd (Jackie McCann, Maya Menlo): The trial court granted a new trial for Mr. Boyd where trial counsel failed to call Mr. Boyd to testify in a self-defense case and prior appellate counsel failed to meet with Mr. Boyd and get an offer of proof supporting a claim of ineffective assistance of trial counsel.

Tommie Craig (Doug Baker): The trial court granted a new trial for Mr. Craig because there were missing trial transcripts and after an evidentiary hearing, the

trial court reasoned that a new trial was necessary because “the Court [was] unable to complete the record to afford any meaningful appellate review.”

Rashaun Wilcox (Steven Helton): The trial court granted a new trial to Mr. Wilcox. The prosecutor admitted that a witness had committed perjury.

Menayetta Yeager (Adrienne Young): After an evidentiary hearing, the trial court granted Ms. Yeager a new trial because trial counsel failed to request a manslaughter instruction.

Shane Chupa (Katherine Marcuz): After an evidentiary hearing, the trial court granted a new trial, finding ineffective assistance of counsel for opening the door to impermissible vouching testimony, failing to object to improper hearsay, and failing to object to improper remarks during closing that argued facts not in evidence.

Resentencings:

Zachary Schwark (Sofia Nelson): The trial court resentenced Mr. Schwark to HYTA. Mr. Schwark is autistic and was a high school senior at the time of the offense.

Andre Brown (Jonathan Sacks, Mitigation Specialist Monique Dake): At resentencing for an OV 13 error, the trial court reduced the minimum sentence from 72 months to 30 months.

James Lockmiller (Jason Eggert): On remand from the Court of Appeals for resentencing due to an error in the scoring of OV 7, the trial court reduced Mr. Lockmiller’s minimum sentence from 38 months to 17 months, making him immediately parole eligible.

Munjel Ayers (Katherine Marcuz): On remand from the Court of Appeals for resentencing due to error in scoring OV 9, the trial court gave Mr. Ayers a 15-month time cut making him almost immediately parole eligible.

David Turner (Doug Baker, Mitigation Specialist Monique Dake): On remand from the Court of Appeals so that the trial court could determine whether there was actual notice of the habitual offender enhancement, the prosecutor conceded they could not prove actual notice. The trial court resentenced Mr. Turner to 3 to 5 years (down from 6 to 15) making him immediately parole eligible.

Gerald Fuller (Doug Baker, Mitigation Specialist Monique Dake): On remand from the Court of Appeals due to the trial court’s consideration of acquitted conduct in departing from the guidelines, the trial court reduced the minimum term by one year and reduced the maximum by five years. In doing so, the trial court made clear that his change of mind about the appropriate sentence was influenced by Monique’s mitigation memo and the presentation at resentencing.

Shokelle McKay (Jackie McCann, Maya Menlo, Julianne Cuneo, Reentry Coordinator Allison Gorine, law student Mary Harrington): After a double *Ginther* hearing, a motion for plea withdrawal, the prosecutor's confession of error, and a renegotiation of the plea, the trial court sentenced Mr. McKay consistent with the plea agreement. Mr. McKay received a two-year time cut, does not have to register under SORA, and is not subject to Lifetime Electronic Monitoring. Mr. McKay wrote a [moving op-ed](#) about being incarcerated during a pandemic.

David Mercer (Jackie McCann, law student Mary Harrington): Mr. Mercer filed a pro per 6.500 motion and SADO was appointed. The prosecutor stipulated to allowing Mr. Mercer to withdraw his plea because he was not advised of lifetime electronic monitoring. Jackie and Mary negotiated a new plea agreement and Mr. Mercer received an 8-year reduction on his minimum sentence.

David Hult (Christine Pagac): The trial court resentenced Mr. Hult from a minimum term of 72 months to a minimum term of 46 months.

Tony Eaton (Erin Van Campen, Julianne Cuneo, U of M clinic students Timothy Leake and Brenna Ferris): The trial court had granted resentencing for an error in scoring OV 15. Mr. Eaton originally had a minimum sentence of 12.5 years in prison. He was resentenced to time served with no probation and came home from prison later that night.

Octavius Hall (Christine Pagac, Mitigation Specialist Monique Dake): After the Court of Appeals granted a new trial on one count due to bad jury instructions, Mr. Hall entered into a plea and sentence agreement that resulted in a four-year reduction in his minimum sentence.

Jacob Schlottman (Jackie McCann, Mitigation Specialist Monique Dake, Reentry Specialist Marcus Williams): Mr. Schlottman received a 5-year cut on his minimum sentence, down from 15 years to 10 years.

Jeremy Mix (Matt Monahan, Monique Dake, Chief Investigator Julianne Cuneo): At resentencing due to an error in scoring the PRVs, Mr. Mix was given a 2-month time cut.

Deandre Harris (Lindsay Ponce, Monique Dake): On remand from Court of Appeals for resentencing, Mr. Harris received a two-year time cut on his minimum sentence.

Kenneth Colbert-Brand (Jacqueline Ouvry, Monique Dake, Cynthia Carter): Mr. Colbert-Brand received a four-year reduction in his minimum sentence.

Daniel Gross (Erin Van Campen, Michigan Law Criminal Appellate Practice students Mary Novakovic, TJ Butler, Julianne Cuneo, and the Project Reentry team): Mr. Gross was originally convicted of assault with intent to rob unarmed and received 25 years as a minimum sentence. Erin raised several issues in the trial court in a motion for new trial. Erin negotiated with the prosecutor and Mr. Gross to come to agreement to plead no contest to attempt assault with intent to rob unarmed with no habitual enhancement. He was resentenced to a minimum sentence of two years in prison.

Freddie Chase: (Matt Monahan supported by a big team: Melissa Salinas and her students, Casey D'Alessandro and Rebecca Wasserman; Monique Dake; Marcus Williams; Julianne Cuneo; Jessica Zimbelman, Maya Menlo): The trial court resentenced Mr. Chase, and his minimum term was reduced by 31 years.

Marquel Sadler (Jason Eggert): The Court of Appeals had previously remanded for resentencing due to an error in the scoring of OV 3. The trial court gave Mr. Sadler a two-month time cut in his minimum sentence.

Lonnie Arnold (Marilena David, Jose Burgos, Monique Dake): Mr. Arnold was originally sentenced to a prison term of 25 years to 70 years. After the Michigan Supreme Court held that was an invalid sentence, Mr. Arnold was resentenced to a prison term of one day to life and was immediately parole eligible. Jose prepared a fantastic reentry plan and Monique wrote a very compelling life history report.

Taranada Carson (Jackie McCann, Monique Dake): At resentencing, the trial court reduced Mr. Carson's minimum sentence from 40 years to 20 years. Monique obtained a support letter and prepped Mr. Carson on his excellent allocution.

Telvin White (Christine Pagac): Mr. White was resentenced, his minimum term was reduced from 40 months to 17 months, and he was immediately parole eligible.

Other:

Gregory Berry (Mike Waldo): Mike worked with the Wayne County Conviction Integrity Unit to secure a new trial and a favorable plea offer. Mr. Berry entered the plea, was sentenced, and discharged from prison.

Jerome Watson (Jessica Zimbelman): The trial court vacated one count of assault with intent to do great bodily harm based on *People v Barber* which held that it violates double jeopardy to be convicted of AWIGBH and AWIGBH-strangulation in the same trial.

Keino Nabors (Maya Menlo): The trial court granted appellate bond for Mr. Nabors.

Forest Hathaway (Maya Menlo): The trial court granted plea withdrawal for Mr. Hathaway where the court failed to provide counsel or obtain a valid waiver of counsel.

Hooman Hooshyar (Maya Menlo): Mr. Hooshyar was supposed to be paroled in the summer of 2020, but the prosecutor appealed. Maya negotiated a stipulation to lift the stay on parole and Mr. Hooshyar was released to the custody of ICE and returned to his home country of Iran, consistent with his wishes.

Gary Gilmore (Steven Helton): Restitution reduced from \$18,000 to zero.

Taiten Polly (Jacqueline Ouvry): 18-year-old Mr. Polly pled guilty to sex with a 15-year-old and was sentenced to 3 years in prison. The prosecutor agreed that Mr. Polly was eligible for HYTA and is entitled to resentencing.

Michael Parnell (Matthew Monahan): The trial court restored Mr. Parnell's appellate rights after a contested hearing.

Jeremy Fall (Erin Van Campen): At resentencing, restitution was reduced from over \$1,700 to zero.

Sonya Cody (Jason Eggert): After the trial court granted a restitution hearing, the prosecutor offered a \$6,000 reduction of restitution owed, which Ms. Cody agreed to.

Alvin Williams (Michael Mittlestat): Reduction in restitution from \$6,000 to zero.

Shane Hawkins (Maya Menlo, Adrienne Young): After the Michigan Supreme Court remanded to the trial court for a new trial, Maya secured a bond pending retrial for Mr. Hawkins.

Taranada Carson (Jackie McCann): Jackie filed a motion for reconsideration that the trial court granted. The trial court held that Mr. Carson's previously labeled 6.500 motions were not, in fact, 6.500 motions and he could file a 6.500 motion when his appeal was final.

Charles Moody (Jackie McCann): The trial court granted Jackie's motion to vacate approximately \$2,000 in court fees and late fees where Mr. Moody has no ability to pay.

Avin Williams (Michael Mittlestat): Restitution reduced from \$5,988.19 to \$80.

Jeffrey Nye (Jackie McCann): Jackie and MAACS roster attorney Alona Sharon worked out a broad stipulation that Oakland County will no longer attempt to collect attorney fees incurred prior to January 1, 2006, if the attorney fees were not in the

original judgment of sentence. Mr. Nye's balance was reduced to \$0 (from over \$26,000) and the county will refund Mr. Nye any money already collected.

Mykeal Norfleet (Angeles Meneses): Every day matters. The prosecutor stipulated to an additional day of jail credit for Mr. Norfleet.

Brent Geesey (Jackie McCann): The trial court granted plea withdrawal for Mr. Geesey given that his plea was not knowing or understanding due to his "intellectual deficits and 'overall functioning capacity.'"

Jerral People (Christine Pagac): Mr. People's presentence report was corrected to remove a probation violation for someone with a similar name.

Cornelius Mayfield (Maya Menlo): In an issue of first impression, the trial court granted Mr. Mayfield's motion that he was entitled to counsel to represent him in his parole revocation appeal.

Erin Justice (Angeles Meneses, Garrett Burton): After an evidentiary hearing, the trial court granted Mr. Justice's motion to reissue his judgment of sentence, which restarted his clock to file a claim of appeal.

Derrick Mosby (Angeles Meneses): After the Court of Appeals remanded for an evidentiary hearing on a double jeopardy issue, the prosecutor conceded error and the resisting and obstructing conviction at issue was vacated and dismissed.

By the numbers:

- 334 pleadings filed in trial courts across Michigan.
- 260 hearings held across the state, including motion hearings, evidentiary hearings, and resentencing hearings.
- 86 clients obtained relief from trial courts.

In 2021, SADO attorneys obtained 201.2 years of cumulative sentence reduction for direct appeal clients

While the human cost is immeasurable, there was close to \$8 million in potential savings to the state from reduced incarceration costs from these sentence reductions (based on average incarceration costs of \$37,080 per year, per person)

SADO Attorneys Outside the Courtroom

SADO attorneys continued to contribute their talents to improving the criminal legal system and the defense bar. Some things SADO attorneys did in 2021:

Matthew Monahan: Authored an [blog post](#) on implicit bias and jury decision making.

Jessica Zimbelman: Testified before the House Judiciary on behalf of the Criminal Defense Attorneys of Michigan (“CDAM”) about CDAM legislative priorities and against a bill that would hamper defense attorneys’ abilities to do their jobs.

Jacqueline Ouvry, Sofia Nelson, Jessica Zimbelman: Faculty at sentencing advocacy skills workshops with the Michigan Indigent Defense Commission.

Adrienne Young: Presented several case law updates to the defense bar.

Angeles Meneses: Appointed to the State Court Administrative Office Foreign Language Board of Review.

Jacqueline Ouvry: Appointed to the Protect Michigan Commission, which works to educate Michiganders about the COVID-19 vaccine.

Michael Mittlestat, Erin Van Campen, Jacqueline Ouvry, Angeles Meneses, Doug Baker: Taught criminal appellate practice clinics at the University of Michigan Law School and Wayne State University Law School.

Sofia Nelson: Coordinated the State Bar of Michigan’s Criminal Law Section’s Spring Conference.

Marilena David: Appointed by Michigan Supreme Court to Michigan Judicial Council.

Jonathan Sacks: Appointed by the Governor to the Forensic Science Commission.

Matt Monahan: Appointed to the Court Forms Committee

Angie Jackson, Wrongful Conviction Unit Investigator: Named the Detroit Chapter of the Society of Professional Journalists Young Reporter of the Year and awarded second place in the racial justice reporting category for her story “Penalized for Being Poor.”

Jason Eggert, Adrienne Young, Katherine Marcuz, Matt Monahan, Angeles Meneses, Marilena David, and Brad Hall and Patricia Maceroni of MAACS: Organized a fantastic fall training for appellate defenders. Several SADO attorneys offered informative sessions.

Juvenile Lifer Unit Year in Review

The Juvenile Lifer Unit (JLU) continues to successfully represent clients sent to prison for life without parole (LWOP) for crimes committed as children. These individuals became eligible for resentencing under the United States Supreme Court's decisions in *Miller v Alabama* and *Montgomery v Louisiana*. The JLU was formed in 2016 and has been funded by year-to-year allocations and in-kind contributions from SADO's regular budget.

In 2016, SADO was appointed to represent 193 "juvenile lifers." That number has not remained fixed, as some clients received other counsel and other juvenile lifers were assigned to SADO.

In 2021, the JLU was staffed by six full-time attorneys⁶ and four full-time mitigation specialists. This represents a change from 2020. Positions have shifted back to direct appeals from the JLU as cases have been litigated, negotiated, and ultimately resolved.

JLU Progress in 2021

2021 found ongoing problems with the pandemic, such as continuing difficulties with curtailed access to clients, access to witnesses, access to courts, and more. Despite these challenges, the JLU was able to accomplish outstanding work and significantly reduced the number of clients serving LWOP.

In calendar year 2021 the JLU:

- Had 22 clients resentenced from LWOP to a term of years. 20 of these were cases where the prosecution withdrew motions seeking LWOP after extensive mitigation and negotiation. Two of the cases were TOY results following *Miller* hearing.

⁶ That number is now five, with the departure of JLU attorney Sofia Nelson. Due to the significant number of resolutions of cases pending, an additional attorney has not been added.

- Conducted four *Miller* hearings, one via Zoom and three in person.⁷
- Two resentenced clients discharged from prison following resentencing. Another six were paroled.

Mitigation Internship Program

The mitigation internship program established by Mitigation Specialist Chelsea Richardson has continued to be beneficial to both JLU clients and the students participating in the program. Students learn interviewing skills, how to find and collect records, and gain experience drafting bio-social history reports. Summer interns also participate in training in conjunction with law student interns and are given an overview of SADO's functions.

Appeals

The JLU and SADO direct appeal attorneys continue to aggressively litigate cases where LWOP was re-imposed following *Miller* hearing or was imposed for convictions occurring after the *Miller* decision. JLU attorneys also litigate other matters on appeal that affect our clients, such as imposition of fines and fees, denial of funding, and other interlocutory matters.

The JLU continues to take an active role in appellate litigation which may affect our clients. For example, in December of 2021, attorneys Claire Ward and Tina Olson authored an amicus brief on behalf of SADO in the cases of *People v Boykin* and *People v Tate*, currently pending in the Michigan Supreme Court.

⁷ The number of *Miller* hearings would have been significantly higher, but for the Omicron surge and ongoing effects of the pandemic. In-person access to courts continued to be a challenge throughout 2021.

Publications and Training

In 2021, the Criminal Defense Resource Center published the book “Representing Individuals Facing Juvenile Life Without Parole.” This resource for practitioners was authored by attorneys Sofia Nelson and Erin Van Campen. Deputy Director Marilena David edited and oversaw the project, with contributions from Tina Olson. Staff, including Bill Moy, Eric Buchanan, and Heather Waara were all integral to the success of the project.

In January 2021, the Ingham County Briefs issue was devoted to SADO/MAACS. Managing Attorneys Jessica Zimbelman and Tina Olson authored much of the content and edited the issue. The issue explained the work and mission of the Juvenile Lifer Unit, the Direct Appeals Division, Project Reentry, and MAACS. Art created by SADO clients, such as the pictures below, was highlighted throughout the issue.



Throughout the year, JLU staff participated in a variety of trainings, ranging from SADO’s annual fall training to mitigation webinars hosted by outside organizations. JLU staff also trained and spoke in many forums. For example, Mitigation Specialist Jazmine Wells, MSW, was a guest lecturer at University of Michigan’s Project Outreach in the Psychology and Sociology departments.

Staff Changes

The JLU experienced some staffing changes in 2021. JLU attorney Rebecca Hahn left SADO, and attorney Ashley Craythorne joined the JLU.

Project Reentry

In 2021, SADO's Project Reentry served over 100 clients at various stages of litigation while in prison and after coming home. SADO's 2021 Project Reentry team included: full-time Reentry Coordinator Allison Gorine, MSW, and two grant-funded Reentry Specialists—Jose Burgos and Marcus Williams. The project was managed by Deputy Director Marilena David. The Project Reentry team assisted clients with building comprehensive reentry plans, assisting with parole preparation, and providing post-incarceration support. Project Reentry hosted 10 reentry workshops for formerly incarcerated individuals on topics such as goal setting, tuition assistance, wage and hours, gratitude, and a workshop with the MDOC. Project Reentry published 4 volumes of *The Drum*, a newsletter containing information relevant to formerly incarcerated individuals.

Assigned Counsel System Highlights

The Michigan Appellate Assigned Counsel System (MAACS) oversees the selection and appointment of appellate counsel for indigent people challenging their convictions or sentences in Michigan courts, as well as the roster of approximately 150 private attorneys handling over 75% of appellate assignments statewide. The MAACS team includes:

Bradley R. Hall, *Administrator*
Patricia A. Maceroni, *Deputy Administrator*
Stephanie Farkas, *Litigation Support Counsel*
Joshua M. Pease, *Youth Defense Project Director*

Emily Swanson, *Mitigation Specialist*
MariaRosa Palmer, *Assignment and Office Manager*
Terry Huhn, *Assignment Coordinator*
Sabrina Schneider, *Roster Coordinator*

Growth and Innovation

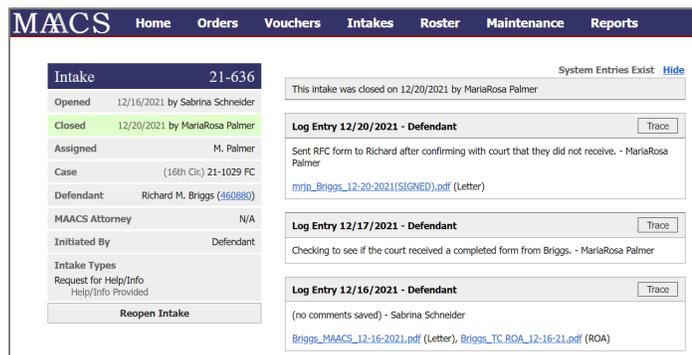
While 2021 presented significant challenges for private appellate assigned counsel, it was also a year of tremendous innovation and growth. MAACS expanded its support and advocacy roles with new team members and grant-funded projects. Highlights include:

- **Attorney Fees and Regionalization:** In 2021, MAACS’s regional assignment and uniform fee model grew to include Wayne County and its 40% share of Michigan’s appointed felony appeals. This model features a more efficient regional assignment model, higher quality representation, greater control over attorney caseloads, and more predictable and reasonable attorney fees at hourly rates of \$50 or \$75 depending on case type and complexity. All but seven of Michigan’s 83 counties are voluntarily participating in the regional assignment model—and contributing over \$1 million annually in local funding to support these reforms.
- **Youth Defense Project Grant.** MAACS was awarded a substantial three-year grant from the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention. The grant will fund a Youth Defense Project to develop a system for appellate and post-disposition representation of indigent youth in delinquency proceedings. The Project will expand the successful MAACS model for the qualification, training, assignment, oversight, and compensation of private assigned counsel. It will also improve access to counsel



and independence from the judiciary. The Project will be led by Joshua M. Pease, an accomplished youth advocate and leader in Michigan’s juvenile justice reform efforts, with the support of a Volunteer Advisory Board of judges, lawyers, administrators, academics, and policy experts.

- Sentencing Mitigation Support.** MAACS was also awarded a federal Byrne Justice Assistance Grant to provide direct mitigation support to MAACS roster attorneys and their clients. The grant supports the addition of a full-time Mitigation Specialist—an expert in developing and crafting compelling life histories of indigent clients on direct appeal and at resentencing. Emily Swanson, LLMSW, joined MAACS in late 2021 as its first Mitigation Specialist. Emily is a graduate of the Holistic Defense Program at Wayne State University’s School of Social Work. She has sentencing mitigation experience at the Federal Community Defender Office in the Eastern District of Michigan, as well as a history of working with youth impacted by trauma.
- Trial-Level Support.** With growth and improvements to trial-level indigent defense systems, there is a growing need for specialized representation in matters that fall beyond MAACS’s traditional role, including preconviction appeals and misdemeanor appeals from district courts. In 2021, MAACS began working with public defender offices and managed assigned counsel systems throughout Michigan to assign capable appellate counsel in these types of cases—many of which otherwise might not have been appealed at all.
- Remote Practice Support.** As the COVID pandemic dragged through its second year, MAACS continued its efforts to accommodate remote practices and facilitate client-centered advocacy in spite of obstacles. This included enhancements to online assignment and voucher processes, growth and improvements in the use of Zoom video technology to meet securely and confidentially with incarcerated clients, and advocacy in support of court rule amendments and other administrative reforms.
- New Correspondence Intake System.** In January 2021, MAACS launched a new correspondence intake system, which streamlines the correspondence process and helps ensure that no inquiry or complaint goes unanswered. The web-based system accommodates scanned correspondence, photographs, and audio recordings such as voicemail messages. It associates intakes related to the same individuals or cases, provides updated client contact information from the MDOC website, and ensures a smooth and reliable lineage of all correspondence history between MAACS and clients or



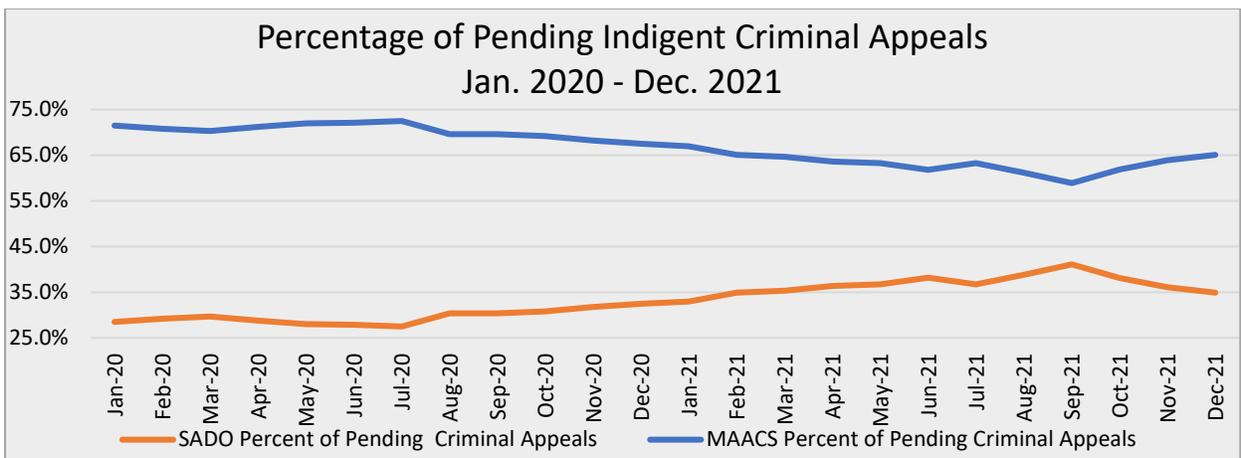
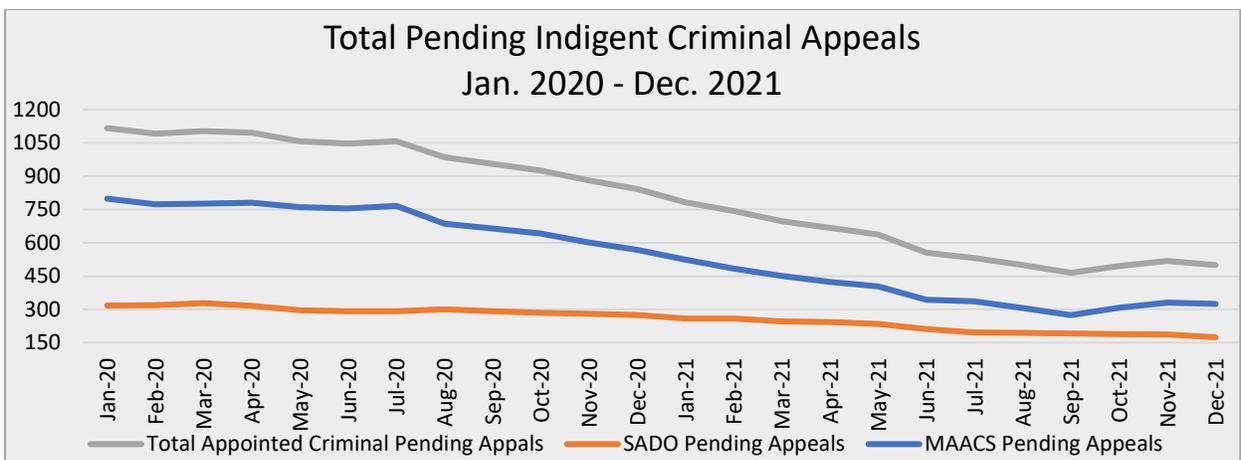
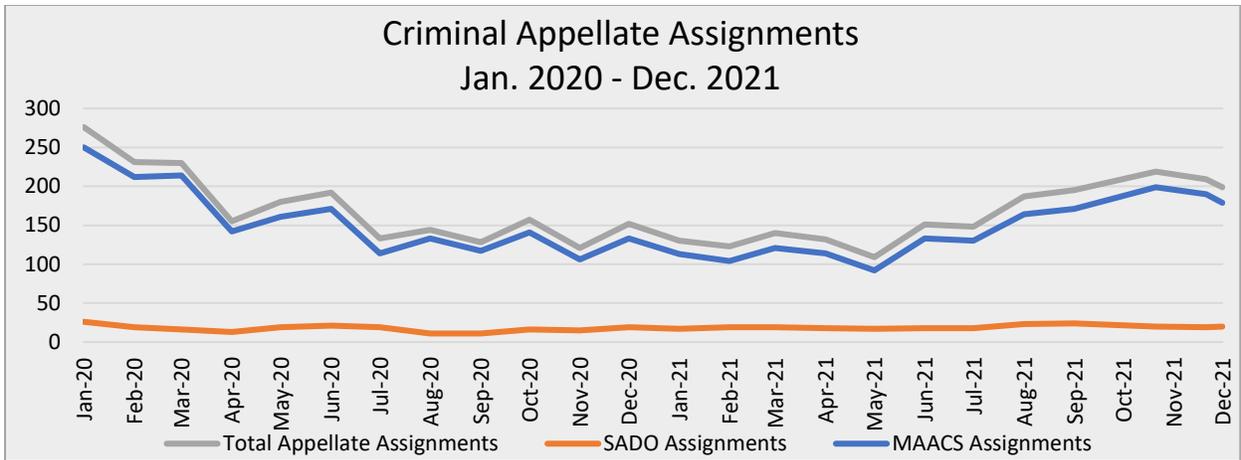
other interested individuals or organizations. A new dashboard lists all intakes requiring action for each MAACS team member.

- **Expanded Litigation Support.** MAACS’s Litigation Support Counsel continued to assist all roster attorneys throughout 2021, with an emphasis on the 19-lawyer class admitted in late 2020. Under a new protocol implemented in 2021, new roster attorneys must consult closely with the Litigation Support Counsel immediately upon receiving their first two MAACS assignments—and even longer if appropriate. This close mentorship has been welcomed by virtually all new roster attorneys, many of whom find the complexity of a new MAACS practice overwhelming without guidance. The Litigation Support Counsel also hosts biweekly Case Rounds sessions by Zoom. Described as a “virtual walk down the office hallway,” these meetings provide an engaging forum to discuss litigation strategies, appellate decisions, client communication, and any other matter of importance to MAACS roster attorneys and their clients. The Litigation Support Counsel also hosts moot oral arguments, provides second-chair assistance where appropriate, and responds daily to requests for advice and assistance.

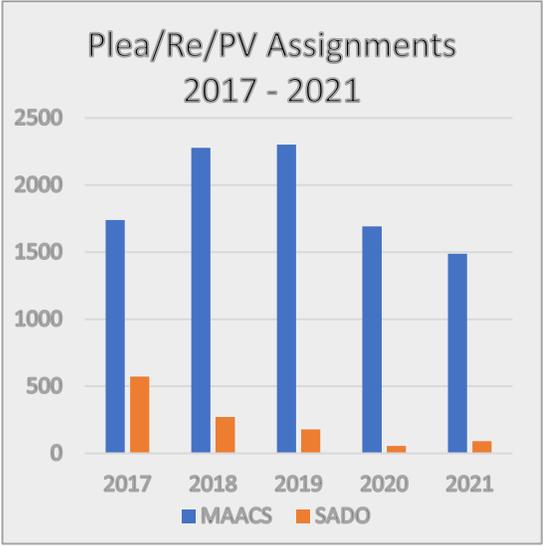
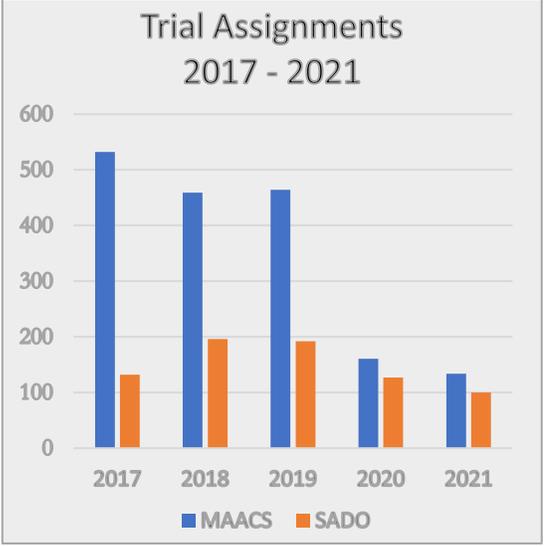
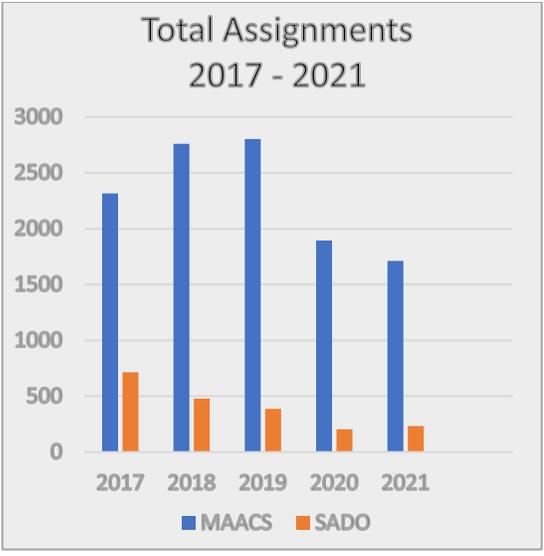


COVID’s Impact on Assignments and Workloads

The number of felony appellate assignments remained historically low throughout 2021. From an average of 266 assignments per month in 2019, assignments fell to a low of 114 in May 2021 before beginning a steady rebound, exceeding 200 assignments per month by the end of 2021. The number of appellate assignments continues to grow as courts reopen and jury trials resume, bringing the potential that monthly assignments could soon eclipse the pre-pandemic volume. SADO public defender assignments remained relatively constant per attorney, but less overall for the office due to new attorneys in training, continued in-kind attorney support for the Juvenile Lifer Unit, a continuously high Michigan Supreme Court practice, and the Appellate Defender Commission decision in 2018 to decrease higher volume plea assignment plea appeal intake to SADO in favor of pending trial appeals.



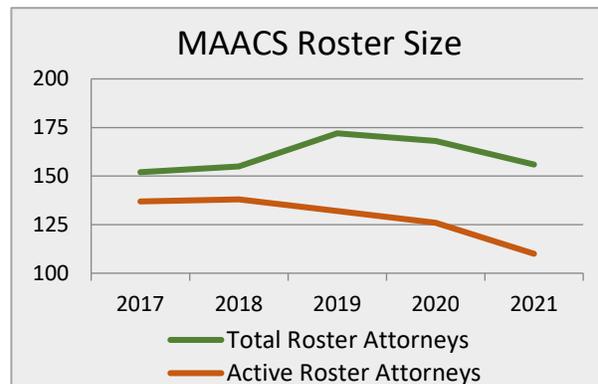
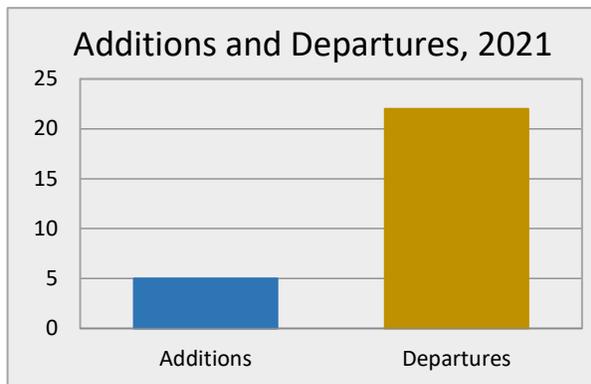
Total Appellate Assignments 2021			
	MAACS	SADO	TOTAL
Jury Trial	121	90	211
	57.35%	42.65%	
Waiver Trial	13	10	23
	56.52%	43.48%	
Plea	1218	65	1283
	94.93%	5.07%	
Resentencing	81	20	101
	80.20%	19.80%	
PV	189	6	195
	96.92%	3.08%	
6.500	55	13	68
	80.88%	19.12%	
Interlocutory	19	12	31
	61.29%	38.71%	
PPO	4	5	9
	44.44%	55.56%	
Evid Hrg.	3	1	4
	75.00%	25.00%	
JLWOP	4	4	8
	50.00%	50.00%	
Parole	3	6	9
	33.33%	66.67%	
Total	1710	232	1942
	88.05%	11.95%	



Recruitment and Retention

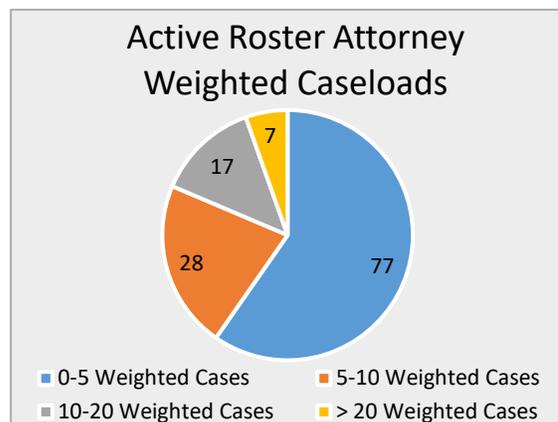
MAACS began 2021 with 168 roster attorneys. Through active recruitment, a competitive application process, and by following its Recruitment and Diversity Plan, MAACS added five new roster attorneys on regular rotation and another five for special assignments only. Throughout 2021, MAACS lost 22 attorneys through ordinary attrition. At the end of 2021, the roster consisted of 156 attorneys.

Significantly, nearly a third of these roster attorneys are on standby status or otherwise do not accept regular rotational assignments, leaving only 110 “active” MAACS roster attorneys—the lowest number since at least 2014. While several factors contribute to this trend, one stands out: MAACS struggles to compete with better funded indigent defense systems for talented and conscientious lawyers, particularly given trial-level indigent defense reforms and funding. Michigan is home to more than 25 new public defender offices several dozen managed assigned counsel systems—most paying hourly fees that far exceed MAACS uniform rates. MAACS has lost scores of its best roster attorneys to more lucrative indigent defense work, and those who remain are increasingly likely to decline MAACS assignments in lieu of better-paying trial level work. Without substantial state funding to support private assigned counsel fees, MAACS faces a looming crisis.



Weighted Caseload Distribution

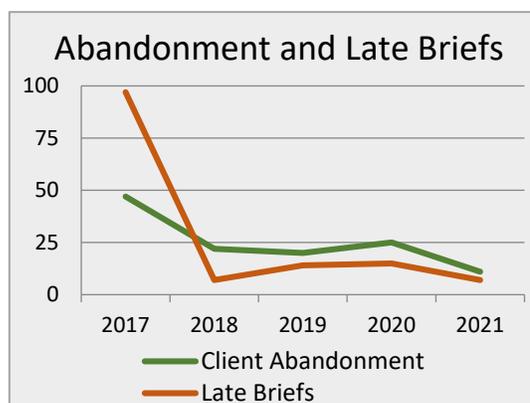
129 MAACS roster attorneys accepted at least one appellate assignment in 2021. Relative roster attorney workloads can be assessed by adjusting these assignments by case weight (i.e., 1.0 for trial appeals and 0.375 for plea/resentencing appeals, etc.), revealing an average MAACS caseload of 6.2 weighted assignments (6.2 trial appeals or 16.5 plea appeals).



But the workload is unevenly distributed. For example, the ten highest-volume roster attorneys handled more of the total cases (287 weighted assignments) than the 100 lowest-volume roster attorneys (283 weighted assignments), and substantially more than all of SADO (179 weighted assignments). This imbalance threatens the quality and consistency of assigned appellate representation. It is exacerbated by the resource challenges discussed above. Substantial resources are necessary to confront this challenge.

Evaluation and Oversight

MAACS conducted 15 performance reviews in 2021, including attorneys with widely varying levels of experience. Work product reviews consist of evaluating and summarizing the attorneys' history at MAACS, critiquing a wide representative sample of pleadings, and surveying case assignments for problems. Each review addresses multiple years of work, helping identify trends, correct shortcomings, and provide concrete direction for improvement. These comprehensive reviews also help MAACS determine training priorities.



MAACS also continued its efforts to reduce the number of Minimum Standards violations, particularly those associated with Minimum Standards 5 (client abandonment) and 6 (preservation of oral argument). Focused

training and proactive mentoring reduced these violations and kept them relatively low for several years.

Minimum Standards Violations, 2021	Violations
Standard 1: Failure to collect the entire record	0
Standard 2: Absence of proper client consultation	2
Standard 3: Failure to raise claims of arguable merit	5
Standard 4: Failure to file client’s Standard 4 brief	1
Standard 5: Client abandonment	11
Standard 6: Failure to preserve oral argument by filing timely	7

A Sampling of MAACS Successes

Randall Karfonta, *People v Boykin*, 507 Mich 960; 959 NW2d 532 (2021) granting oral argument on the application as to “(1) whether the Court of Appeals correctly held in *People v Wines*, 323 Mich App 343 (2018), rev’d in nonrelevant part 506 Mich 954 (2020), that trial courts must consider the distinctive attributes of youth, such as those discussed in *Miller v Alabama*, 567 US 460 (2012), when sentencing a minor to a term of years pursuant to MCL 769.25a; (2) if *Wines* was correctly decided, whether sentencing judges have an obligation to explicitly set forth their analysis of how the defendant’s age impacted their sentencing discretion when proceeding under MCL 769.25a or MCL 769.25; and (3) if *Wines* applies to this case, whether the trial court complied with its requirements, and if it did not, what more the court was required to do”.

Richard Goodman, *People v Edwards*, 507 Mich 952; 959 NW2d 176 (2021) granting oral argument on the application as to whether “the lower courts erred by holding that the suppressed October 16, 2007 interview transcript was not material to their guilt such that they were not entitled to relief under *Brady v Maryland*, 373 US 83, 87 (1963), and *People v Chenault*, 495 Mich 142, 149-150, 155 (2014);” case is consolidated with Nos. 162354 and 162374.

Michael Horowitz, *People v Pagano*, 507 Mich 26; 967 NW2d 590 (2021) officer lacked reasonable suspicion to stop driver when stop was based on anonymous tip that driver was being “obnoxious” and yelling at her kids in a parking lot.

Michael A. Faraone, *People v Mead*, 507 Mich 925; 957 NW2d 44 (2021) denying prosecutor’s application for leave to appeal; case had been to Court of Appeals and Supreme Court twice, resulting in four separate opinions.

Rachel Helton, *People v Berridge*, 507 Mich; 955 NW2d 486 (2021) vacating judgment of Court of Appeals and remanding to trial court for resentencing due to error in scoring OV6.

Danielle Cadoret, *People v Reynolds*, MSC Docket 162331, Decided December 7, 2021, in lieu of granting the application, in a unanimous opinion the Court orders the case remanded to the trial court for resentencing. The COA erred in upholding the defendant’s sentence because the circuit court erroneously rejected defendant’s argument that the PSIR must include the applicable sentencing grid and minimum sentencing guidelines range for his Child Sexually Abuse Activity and CSC-III convictions because both are Class B crimes. The circuit court also erred by assuming that the offense variables and prior record variables would be scored the same for each offense and by basing defendant’s CSAA sentences on the guidelines range for his CSC-III conviction. The PSIR must be corrected and defendant resentenced.

Ian Kierpaul, *People v Stock*, 961 NW2d 214 (2021) (reversed the Court of Appeals and held that defendant’s convictions for operating a motor vehicle while intoxicated causing death and operating a motor vehicle while intoxicated causing a serious impairment were not supported by sufficient evidence. The prosecution failed to identify the metabolite or demonstrate that the metabolite itself was a “controlled substance” for purposes of MCL 257.625(8). Mere presence of an unidentified metabolite was not sufficient to prove that the defendant had any amount of cocaine in her body at the time of the accident).

MAACS Roster attorneys continued to aggressively challenge the scoring of Offense Variables and restitution and costs assessed, resulting in remands for resentencings in at least 35 cases before the Michigan Court of Appeals. Along with sentencing issues, MAACS Roster attorneys continued to aggressively represent their clients on multiple issues and winning reversals for these individuals. A sampling includes:

Lee Somerville, *People v Smith*, __ Mich App __; __ NW2d __ (2021) (Docket No. 346044) (remanding for resentencing on AWIM conviction and to restore original 40-50 year sentence for that conviction).

Susan McKeever & Derek Linkous, *People v Bennett*, __ Mich App __; __ NW2d __ (2021) (Docket No. 350649) (remanding for resentencing “with all deliberate speed” because trial court’s “unfounded speculation” that JLR defendant’s treated and controlled mental illness “might...cause a problem” violated his due process rights).

Laurel Kelly Young, *People v Rogers*, __ Mich App __; __ NW2d __ (2021) (Docket No. 336000) (vacating trial court order and remanding for new trial; noting that the case against defendant rested “largely, if not wholly” on complainant’s credibility and that since remand evidence discredited complainant, the case had “collapse[d].”)

Mark Butler, *People v Brown*, _____ Mich App ____ (2021), released for publication on November 23, 2021, defendant’s sentence is vacated and case remanded for resentencing as trial court considered acquitted conduct in imposing sentence, violating *People v Beck*.

Joel Kershaw, *People v Stoner*, _____ Mich App ____ (2021), released for publication on December 2, 2021, trial court erroneously scored 25 points under OV 12 as defendant’s act of waving a gun at a group of individuals cannot be scored as contemporaneous criminal acts. Remanded for resentencing.

Michael Faraone, *People v Martin*, unpublished opinion of November 17, 2021, (COA #348584) set aside several convictions for Assault with Intent to Commit Great bodily harm less than murder and remanded for new trial as trial counsel was ineffective for failing to request self-defense and defense of others jury instructions.

Mark Hugger, *People v Swilling*, unpublished opinion of November 9, 2021, (COA #352860) remanded to the trial court to strike one of defendant’s convictions and sentence for Home Invasion First degree, as it violated Double Jeopardy principles.

Robert Malesko, *People v Snyder*, unpublished opinion of November 9, 2021, (COA #354747), trial court’s sentence four times the high end of the advisory guideline range not supported in the record. Vacate sentence and remand for resentencing.

Ronald Ambrose, *People v McMichael*, unpublished opinion of November 17, 2021, vacated defendant’s guilty pleas as unknowing given that trial court failed to inform defendant of mandatory consecutive sentencing due to his parole status.

Neil Leithauser, *People v Vanbennekorn*, unpublished opinion of November 17, 2021 (COA #352554), vacated defendant’s sentence and remanded for resentencing as OV 11 was erroneously scored 50 points.

Kristina Joseph, *People v Schlaff*, unpublished opinion of November 23, 2021, (COA 356095) trial court failed to articulate reasons for imposition of sentence above guideline range. Vacate sentence and remand for resentencing.

Finally, MAACS roster attorneys also enjoyed multiple successes throughout the circuit courts in 2021, including but not limited to:

Brad Lyerla, Berrien County Circuit Court #19-003122-FY. Parties had agreed on a plea resolution on a Friday, in writing, and attempted to put it on the record Friday afternoon, no judge available. Saturday morning, Counsel gets an email from the prosecuting attorney saying she had changed her mind and was withdrawing the offer-case was set for trial on Tuesday morning. Counsel files a motion to enforce plea agreement, which the trial court refuses to decide-tells Counsel to show up Tuesday to pick his jury. Counsel files a motion for superintending control in the COA, *In re Lee*, COA 358945, which is GRANTED, and COA remands with an order to trial court to decide motion within 24 hours. Trial Court grants the motion, the plea is accepted and jury discharged.

Ronald Ambrose, *People v Green*, Wayne Circuit Court No. 19-7230 (granting motion for new trial in CSC case because of prosecutor's use of "judge shopping" violated his due process rights).

Charles Covello, *People v Park*, Wexford Circuit Court No. 19-12694 (granting motion for resentencing).

Nacole Evans, *People v Miller*, Wayne Circuit Court No. 18-1626-02 (resentencing defendant, to 19 months from 36 months).

Michael Faraone, *People v Richey*, Genesee Circuit Court No. 03-32825 (resentencing juvenile lifer – who has already served 38 years in prison – to 40-60 years).

Joshua Feasel, *People v Stamper*, Washtenaw Circuit Court No. 87-21574 (resentencing juvenile offender—who has already served 34 years and who originally received parolable life sentence—to 34-51 years).

Leonid Feller, *People v Abbatoy*, Berrien Circuit Court No. 97-403846 (granting resentencing in juvenile lifer case).

Mitchell T. Foster, *People v Williams*, Berrien Circuit Court No. 19-1072 (granting motion for new trial).

Rachel Helton, *People v Jones*, Lenawee Circuit Court No. 17-18953 (resentencing defendant to time served due to error in scoring OV 15, where original sentence was 6-20 years).

Kathy Swedlow, *People v Timmreck*, Oakland Circuit Court No. 20-274504 (after prosecutor stipulated to resentencing without habitual offender enhancement, resentencing defendant to 21 months to 5 years, from 47 months to 20 years).

SADO's Criminal Defense Resource Center

Training Trial and Appellate Assigned Counsel

Deputy Director Marilena David administers SADO's Criminal Defense Resource Center. In 2021, CDRC conducted virtual trainings throughout the state and administered approximately 46 hours of training for defense attorneys. All of CDRC's training programs are complimentary for attendees. Video recordings of the trainings and the training materials are made available to subscribers on www.SADO.org. CDRC offered the following trainings throughout the year:

1. February 11, 2021, Juvenile Justice in Michigan: What's Next? (1.5 hours)
2. February 4, 2021, Defending Parole Violations and Parole Appeals (2 hours)
3. April 21-23, 2020, 3-Day Virtual Appellate Writing Workshop (12.5 hours)
4. June 8, 2021, Through the Eyes of a Child: Miranda and Statement Suppression in Juvenile Court (2 hours)
5. May 18, 2021, Jail & Pretrial Task Force: Update on New Laws for Defenders (1 hour)
6. June 2, 2021, Cultural Mindfulness Storytelling: Capturing the Lived Experiences of our Clients (1.5 hours)
7. June 22, 2021, Ethical Conundrums on Appeal (1.5 hours)
8. October 7, 2021, MAACS Town Hall (1 hour)
9. October 7, 2021, Litigating Forensic Science Issues on Appeal (1 hour)
10. October 7, 2021, Race, Trauma, and the Fourth Amendment (2 hours)
11. October 7, 2021, Ethical Conundrums on Appeal (1.5 hours)
12. October 15, 2021, Improper Vouching in CSC Cases and Michigan Supreme Court Precedent (1 hour)
13. October 15, 2021, Cell phones and Fourth Amendment (1 hour)

14. October 15, 2021, Our Perspective: Voices of Appellate Clients, Darryl Woods, Sr., DeAndre Carter, Kenneth Nixon (1.5 hours)
15. October 15, 2021, Secondary Trauma Awareness (2 hours)
16. October 21, 2021, Preparing for the PSIR Interview (1 hour)
17. October 21, 2021, Using Story Structure in Sentencing Arguments (1 hour)
18. October 21, 2021, Feedback Loops (1 hour)
19. October 21, 2021, U.S. Supreme Court Update (1 hour)
20. October 22, 2021, Michigan Case Law Update (1 hour)
21. October 22, 2021, Sentencing Case Law Update (1 hour)
22. October 22, 2021, Post-Conviction Remedies (1 hour)
23. October 22, 2021, The Importance of Cultural Competency in Appellate Work – Why it Matters (1.5 hours)
24. October 6, 2021, Understanding the Michigan Sentencing Guidelines (1 hour)
25. October 6, 2021, What to do After Your First Assignment (1 hour)
26. October 6, 2021, Summary of Minimum Standards and Plea Deadlines (.5 hours)
27. October 6, 2021, Spotting Issues (or Reviewing the Record) in Plea Cases (1 hour)
28. November 9, 2021, Meeting and Communicating with your Client (1 hour)
29. November 9, 2021, Found the Issues. Now What? (1 hour)
30. November 9, 2021, Challenging the PSIR (1 hour)
31. November 9, 2021, “Help me help you!” (1 hour)

Publishing Print and Web Resources for the Defense Bar and Community

CDRC continues to host a resourced website and online criminal defense forum and publishes an updated series of Defender Books each year. In 2021, 12 issues of the Criminal Defense Newsletter were published and included approximately 255 summaries of notable state and federal appellate cases. In 2021, CDRC published a new Defender Manual: Representing Individuals Facing Juvenile Life Without Parole.

New Projects

SADO started the implementation of two major new projects in 2021:

A workload study for SADO public defenders and MAACS roster attorneys. Both SADO defenders and MAACS roster attorneys face workload challenges. In 2020, the Appellate Defender Commission set-up interim workload adjustments for SADO public defender attorneys so their workloads could more accurately reflect requirements of appellate representation in Michigan. Meanwhile, the MAACS roster workload is unevenly distributed among lawyers and certain roster attorneys have higher workloads than their SADO counterparts. After an RFP process, SADO contracted the National Center for State Courts to properly measure and set standards for indigent appellate defense workloads. Through surveys, focus groups, review of roster billing, a timekeeping review, and a Delphi Panel, the workload study will update now obsolete workload standards.

SADO Case Management System. SADO has contracted LegalServer to redesign and implement a modern caseload management system for the public defender division. MAACS already has a state-of-the-art system designed by SADO's in-house programmer.

Awards

Gary Strauss Presented with Barbara R. Levine Award

The Appellate Defender Commission presented MAACS roster attorney Gary Strauss with the 2021 Barbara R. Levine Award for Excellence in Appellate Advocacy. Named



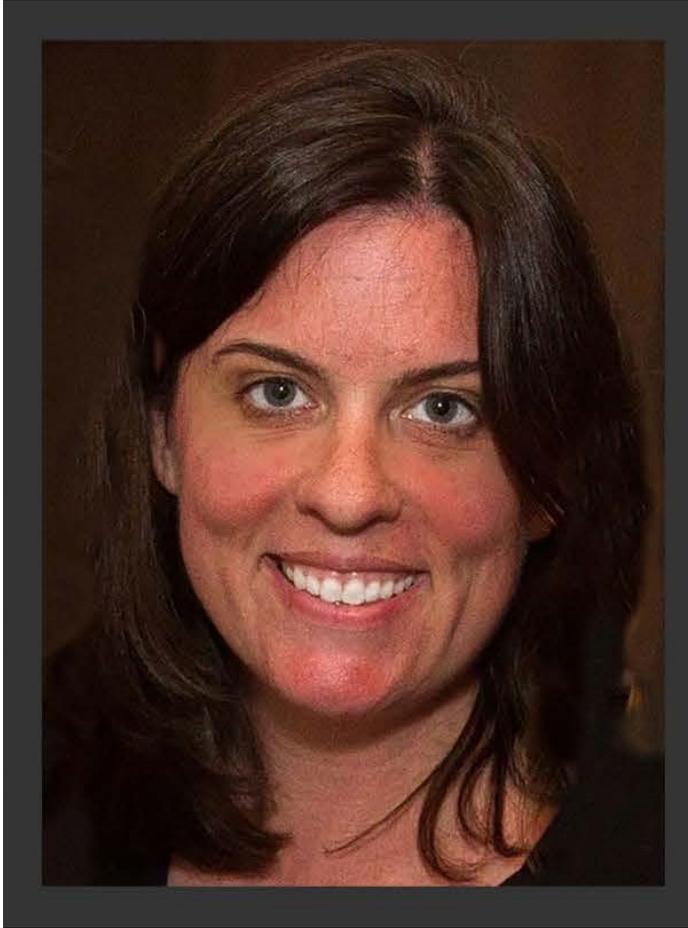
for the architect and first Administrator of MAACS, the award is presented annually to a roster attorney who demonstrates extraordinary commitment on behalf of appellate assigned clients and the criminal justice system.

Gary was born and raised in Detroit. After careers as a professional musician and teacher with the Detroit Public Schools, he graduated from the Detroit College of Law. He has been a MAACS Roster Attorney since 2003, providing his clients with aggressive and intelligent appellate advocacy. He is especially tenacious litigating sentencing issues; from 2016-2021 alone, Gary obtained 26 remands from the Court of Appeals based on various sentencing errors.

Gary is a creative and client centered appellate advocate. When COVID swept through correctional facilities, he filed a motion for bond pending appeal on behalf of his client David Barber. Although the motion was promptly denied by both the trial and appellate courts, Gary pursued it to the Michigan Supreme Court. That court reversed, finding that the trial court “clearly erred in its factual determinations regarding the public health emergency and failing to consider defendant’s documented health conditions.” *People v Barber*, 505 Mich 1058; 942 NW2d 348 (2020). The *Barber* decision was used extensively throughout Michigan to help secure release from jails and prisons during the height of the COVID pandemic.

Katherine Root Posthumously Receives Norris J. Thomas Award

The Appellate Defender Commission presented the 2021 Norris J. Thomas Award posthumously to Katherine Root. Katherine tragically passed away in her sleep in February, 2022.



Katherine first came to SADO as a volunteer, helping to represent two fourteen-year-old boys serving life without parole sentences – Dakotah Eliason and Dontez Tillman. SADO did not yet have a fully funded juvenile lifer unit and she volunteered every week to work with Dakotah and Dontez, their families, and expert witnesses. She prepared them and collected mitigation for Michigan’s first contested hearings where these life sentences could be replaced with new sentences offering an opportunity for release. Katherine spent hundreds of hours on this work and as a result, both Dontez and Dakotah will one day return to their communities.

Her volunteer work demonstrated Katherine’s hallmark features that marked her entire career at SADO – a quiet dedication and an

unselfish commitment. To Katherine, the mission and impact mattered most, not her status as an attorney, social worker, contractor, or volunteer. Nevertheless, Katherine became SADO’s first mitigation attorney and created a model for the holistic defense of her clients. She conducted mitigation investigations, advocated for people in court, and worked on their return to the community.

Today dozens of people sentenced to life without parole as youth have already been released or will one day be released. It is these individuals who best describe Katherine’s impact:

“Ms. Katherine Root for all your hard work, I will value your friendship for a lifetime.”

“Thank you for your humor and profound wisdom. You will be missed for life.”

“Katherine to me was a monarch and a voice for the voiceless. Despite my past Katherine always helped me find ways to focus on the present and my future and not be a

prisoner of the past. She was selfless and relentlessly passionate about helping people. Katherine was someone you could talk to whenever you needed about whatever was on your mind, I used to tease her about being my shrink, lol! Because she could talk me back to my senses at times. I always reminded Katherine how important she was to me and how much I appreciated her work and her passion.”

“Normally speaking about these things made me uncomfortable from the fear of being judged but Katherine made me feel at ease. When she found out my nickname was “Jonny,” she always addressed me as that.” This made me feel like a person and not a prisoner...She was a great attorney, mentor, and friend. She will be greatly missed and I deeply appreciate the time I was allowed to have with her.”

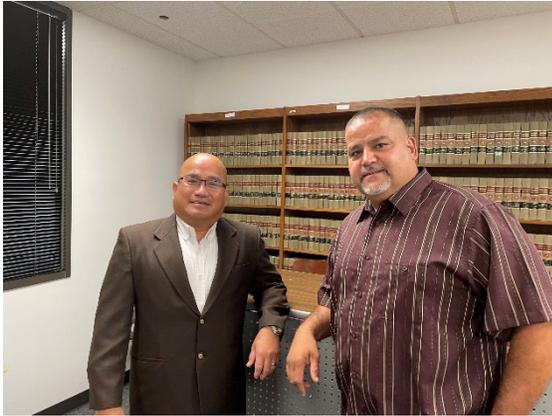
“I just received the news about Ms. Root. She was one of the most sincere and endearing people I’ve EVER met. This is a loss to the entire human race.”

“I come from a place where help is hard to find and it’s not hard to point out the ugly in people. I came to prison at 17 years old with only a few people by my side and no clear knowledge of what I was heading into. Katherine Root was a blessing to me as an educator and friend.”

“I don’t have to ask you to watch over us, because that’s just the type of person you were. The world seems worse without you, a loss we were forced to take. But you’ll always be remembered as one of the world’s greats.”

SADO will always be a richer, more compassionate, and more understanding place because of Katherine.

Fernando Gaitan and Frank Rodriguez receive the 2020 SADO Staff Award



SADO staff members Fernando Gaitan and Frank Rodriguez were nominated by their colleagues and received SADO's first non-attorney staff award to acknowledge their heroic efforts that kept SADO operational and serving clients during the pandemic.

Agency Operating Budget

SADO's operating budget is comprised mainly of a general fund appropriation and special revenue funds collected throughout the year. Approximately 80% of the budget is allocated for Salaries. The remaining 20% includes Travel, Contractual Services Supplies & Maintenance (CSSM), and Rent.

SADO had several challenges from 2019 through 2021, the largest relocating the office from the Penobscot building to a temporary work location in Cadillac Place. This occurred during the start of the pandemic.

SADO made the decision to move all staff to virtual status during this time and close the temporary space. We undertook preparations the remaining fiscal months of 2020 to prepare for our move to New Center One in November of 2020.

During fiscal year 2021, we had unplanned expenses such as counsel for commercial real estate matters connected to the termination of the Penobscot Building lease, counsel for the management representation for labor relations, and one-time adjustments for work projects. These expenses were covered with remaining funds from a negotiated settlement with the Penobscot building.

Additional one-time expenses included workstations for the New Center One office as it was not cost-effective to move some of the old workstations. SADO also contracted with IT companies to assist with relocating the network and other individuals to assist with moving office furniture. Other contracts for service include counsel for labor relations and expert witness expenses.

IT infrastructure costs include fiber connections for both offices along with all software and security licenses. Also included are all hardware costs for servers, employee computers, and subscriptions for virtual meeting software which is now vital for daily applications.

FY 21 Appropriation		\$ 7,909,300
Payroll		
	Salaries & Wages	3,692,668
	Retirement & FICA	2,130,600
	Employee Insurance	647,427
Travel		
	In State & Out of State	22,973
CSSM		
	Legal Research Subscriptions	118,112
	Liability Insurance	16,838
	IT Infrastructure	186,270
	Workstations	34,826
	Office Supplies	29,466
	Equipment Lease (copiers, misc.)	22,289
	Commercial Real Estate Counsel	15,831
	Expert Review & Other Contracts	72,913
	Professional Memberships	3,850
	Shipping & Postage	33,493
	Utilities	20,472
	Communications	21,253
	Misc.	5,791
Rent		
	Detroit	163,561
	Lansing	178,794
Training		
	Criminal Defense Resource Center Services	32,030
Adjustments		
	Caseload Study	172,484
	Case Management System	180,000
	Labor Relations Counsel	40,000
	Grant Charges	9,563
	Revenue Adj.	12,843
	Transfers (Revenue/JLWOP)	34,073
Remaining Appropriation		10,880

The Bill of Rights

The Sixth Amendment

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in favor, and to have the Assistance of Counsel for his defense.”