



# MICHIGAN INDIGENT DEFENSE COMMISSION

**Wayne County CAP Seminar  
September 11, 2015**

Materials

Overview

Frequently Asked Questions

Proposed Minimum Standards

Process Chart

2013 Public Act 93  
(MCL 780.981 et. seq)

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MICHIGAN INDIGENT  
DEFENSE COMMISSION

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## THE EXTENT AND IMPACT OF THE FAILURE OF MICHIGAN'S INDIGENT DEFENSE SYSTEM AT TRIAL.

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National Legal Aid and Defender Association, 2008 - *A Race to the Bottom Speed and Savings over Due Process: A Constitutional Crisis.*

[http://www.mynlada.org/michigan/michigan\\_report.pdf](http://www.mynlada.org/michigan/michigan_report.pdf)

In a study requested by Senate Concurrent Resolution 39 of 2006, the National Legal Aid and Defender Association (NLADA) found that Michigan failed to provide competent representation to poor people in its criminal courts. In the year-long study of ten representative counties, NLADA concluded that none are constitutionally adequate and Michigan ranked 44<sup>th</sup> out of all 50 states in per capita indigent defense spending.

**IMPACT:**

**Convictions and imprisonment of the actually innocent.**

The Michigan Law School National Registry of Exonerations shows there have been 55 exonerations of actually innocent people in Michigan. Nineteen involve inadequate assistance of counsel at trial. Many more shed light on work that should have been done at trial. In at least a dozen, expert witnesses were able to demonstrate innocence after the conviction, and for twenty-nine different people, proper investigations showed their innocence.

- *In total, there have been over 250 years wrongful imprisonment, and at least \$7.6 million in lawsuit settlements.*
- *This year the city of Detroit has agreed to pay \$2.5 million to Walter Swift, who spent 26 years in prison for a rape he did not commit, and \$2.1 million to Dwayne Provience, wrongly imprisoned eight years for murder.*

**IMPACT:**

**Human and financial cost of sentencing errors.**

The State Appellate Defender Office measures average annual savings to the Department of Corrections of \$6.5 million from error corrections in sentencing guidelines calculations made by SADO attorneys. These errors, which could have been prevented by capable trial counsel translated directly into 185 years extra incarceration for the poorest criminal offenders.

IN OCTOBER 2011, GOVERNOR SNYDER CREATED THE INDIGENT DEFENSE ADVISORY COMMISSION TO INVESTIGATE PROBLEMS AND RECOMMEND REFORMS.

<http://michiganidc.gov/wp-content/uploads/2015/05/Final-Report-Advisory-Commission.pdf>

**THE COMMISSION FOUND:**

- *Michigan's counties offer an "uncoordinated, 83-county patchwork quilt" of public defense systems.*
- *There is no data or transparency to show if taxpayer dollars are spent efficiently or effectively.*
- *There are no statewide standards to define or ensure constitutionally adequate defense counsel.*

## THE RESPONSE: THE MICHIGAN INDIGENT DEFENSE COMMISSION

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THE MICHIGAN INDIGENT DEFENSE COMMISSION WAS CREATED BY PA 93 OF 2013, SIGNED INTO LAW BY GOVERNOR SNYDER IN JULY OF 2013. THE COMMISSION IS AN INDEPENDENT AGENCY, HOUSED WITHIN THE JUDICIAL BRANCH OF STATE GOVERNMENT AND COMPRISED OF 15 MEMBERS APPOINTED BY THE GOVERNOR WITH RECOMMENDATION OF THE LEGISLATURE, SUPREME COURT, THE STATE BAR, AND REPRESENTING INTERESTS FROM THE CRIMINAL JUSTICE SYSTEM.

THE COMMISSION HAS A MANDATE TO:

- Collect and compile data for the review of indigent defense services in Michigan;
- Create minimum standards, submitted to the Michigan Supreme Court, to ensure all systems providing indigent defense meet constitutional obligations for effective assistance of counsel;
- Work with counties to implement plans to meet the standards and measure the performance of counties in providing public defense services;
- Award state funded grants to county systems to bring their system in compliance with the new minimum standards;
- Standards should make sure delivery of services is independent of the judiciary, workload is controlled to permit effective representation, and an attorney has the training and experience that matches the complexity of the allegations against their client.

## WHAT THE COMMISSION HAS DONE AND FUTURE PLANS:

- On June 19, 2014, Governor Snyder announced 15 appointments to the Indigent Defense Commission. On December, 22, 2014, the Commission announced the appointment of Jonathan Sacks, the Deputy Director of the State Appellate Defender Office, and a former major trials attorney for the Defender Association of Philadelphia as the agency's founding Executive Director.
- Mr. Sacks started in this role on February 3, 2015. He has hired a State Office Administrator/Legislative Director, a Director of Training, Outreach & Support, and a Research Director.
- The Commission has released the first set of proposed minimum standards for indigent defense. These standards involve education and training, the initial client interview, experts and investigators, and counsel at first appearance and other critical stages in front of a judge.
- The MIDC held a public hearing on these standards on August 18th at 1:00 PM at the Lansing campus of Western Michigan University Cooley Law School. Video conference equipment allowed participation from the Cooley Auburn Hills and Grand Rapids locations.
- The initial set of standards will be submitted to the Michigan Supreme Court later this year. Following approval by the Supreme Court, the MIDC will work with local jurisdictions to put together compliance plans for implementation of the standards. The state **must** fund all compliance plans.
- The MIDC Act requires mandatory collection of data. The State Court Administrative Office distributed the first MIDC survey on indigent defense to all courts on behalf of the MIDC this summer.
- The MIDC Act requires posting on a website the annual report, budget, and policy manual. The MIDC website, [www.michiganidc.gov](http://www.michiganidc.gov) will display this information, data and reports, and proposed minimum standards.
- Funding for comparable models. For FY 2016-2017, the Texas Indigent Defense Commission received \$64 million in General Revenue-Dedicated funding and \$7.5 million in General Revenue for a total of \$71.5 million. In FY 2013-2014, the Indiana Public Defender Commission allocated \$18 million to county systems from a dedicated Public Defender Fund. The New York State of Indigent Legal Services received an allocation of \$57 million for FY 2015-2016.



MICHIGAN INDIGENT  
DEFENSE COMMISSION

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### **Frequently Asked Questions**

The MIDC website, [www.michiganidc.gov](http://www.michiganidc.gov), includes FAQ from indigent clients, their family members, attorneys who provide indigent defense, and courts.

Please e-mail Marla McCowan, Director of Training, Outreach, and Support with any additional questions or suggestions. [mmccowan@michiganidc.gov](mailto:mmccowan@michiganidc.gov)

## **For attorneys**

### ***Who is running the MIDC?***

The MIDC is composed of fifteen members appointed by the Governor. The MIDC meets multiple times throughout the year to create and implement standards for indigent defense delivery services. A full time staff works in Lansing, Michigan under the supervision of the Executive Director, Jonathan Sacks. Mr. Sacks is a career public defender, first working as a public defender at the trial level in Philadelphia then at the appellate level in Michigan, including serving as the Deputy Director for eight years at Michigan's State Appellate Defender Office. Jonathan was appointed by the MIDC pursuant to MCL §780.989(c) and began his work in February of 2015. [See our website](#) for information about the entire staff and our Commissioners.

### ***What exactly is the MIDC supposed to doing?***

The MIDC is statutorily required to develop and oversee the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure that indigent criminal defense services providing effective assistance of counsel are delivered to all indigent adults in this state consistent with the safeguards of the United States constitution, the state constitution of 1963, and with the Michigan Indigent Defense Commission Act. The MIDC will identify and encourage best practices for delivering the effective assistance of counsel to indigent defendants charged with crimes. The MIDC will collect data, support compliance and administer grants to achieve these goals.

### ***Does the MIDC have enough money to make all of the improvements?***

The MIDC Act provides that the legislature shall appropriate to the MIDC the additional funds necessary for a system to meet and maintain those minimum standards. The MIDC will then distribute those funds to indigent defense delivery systems through grants. See MCL §780.993.

### ***Will the MIDC be able to increase the fees paid to assigned counsel?***

The MIDC will be reviewing all aspects of a court's compliance plan for delivering indigent defense consistent with the minimum standards, and data is currently being collected regarding rates of pay for assignments to inform future minimum standards proposed. Rates of pay for assigned counsel remain problematic. The MIDC strongly encourages that assigned counsel thoroughly document all time spent on an appointed case and seek extraordinary fees and expenses whenever appropriate.

### ***If I don't comply with the "minimum standards", what will happen to me?***

The MIDC is charged with developing procedures for the receipt and resolution of complaints regarding compliance with the minimum standards. MCL 780.989. Future proposals will involve the review and removal of assigned counsel from the roster, and failure to comply with the minimum standards will feature largely in that evaluation. Failing to comply with the standards alone will not automatically result in a formal grievance or legal claim of error, but the

performance standards are derived in large measure from the constitutional right to the effective assistance of counsel and claims may arise from deficient performance. *Compare* MCL 780.1003(5).

### **What sort of minimum standards can we expect?**

The MIDC Act specifically requires the establishment of minimum standards that ensure indigent defense delivery that is independent of the judiciary, defense counsel has confidential meetings with their clients, defense counsel has reasonable workloads, defense counsel is properly qualified for a particular case, the same defense counsel represent a client throughout the process, defense counsel attend continuing legal education classes, and defense counsel is evaluated and reviewed. MCL 780.991. This is not a complete or exclusive list – ultimately the MIDC will recommend standards to the Supreme Court that it feels are necessary. The first set of standards under consideration by the MIDC involve education and training requirements, the initial client interview, use of expert witnesses and investigators, and appointment of counsel at first appearance in front of a judge or magistrate.

### **Does the MIDC look at the process for appointment of counsel and indigency determinations?**

The MIDC Act sets out basic requirements for application for and appointment of counsel. MCL 780.991(3). The MIDC intends to work with courts in the future on this process in relation to implementation of minimum standards and best practices.

### **How can we follow the activities and plans of the MIDC?**

The MIDC is subject to both the Open Meetings Act and the Freedom of Information Act. The MIDC annual report, budget, policy manual, meeting minutes, and proposed minimum standards will all be available on our website, [www.michiganidc.gov](http://www.michiganidc.gov).

### **Will the MIDC force a court to adopt a public defender office or another kind of particular system for indigent defense?**

The local courts and county will select their desired indigent defense system, and multiple models ranging from a public defender office to a court appointed system to a mixed system will be available. The MIDC Act suggests that if an indigent caseload is sufficiently high, then a mixed system combining a public defender office and an appointment system may be used. MCL 780.991(1)(b). The MIDC's responsibility and authority is to work with the county and court's to ensure compliance with minimum standards, not to select a particular system.

## **For courts**

### ***What is the mandate of the MIDC?***

The MIDC is statutorily required to develop and oversee the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure that indigent criminal defense services providing effective assistance of counsel are delivered to all indigent adults in this state consistent with the safeguards of the United States constitution, the state constitution of 1963, and with the Michigan Indigent Defense Commission Act. The MIDC will identify and encourage best practices for delivering the effective assistance of counsel to indigent defendants charged with crimes. The MIDC will collect data, support compliance and administer grants to achieve these goals.

### ***When will the first minimum standards be implemented?***

The MIDC hopes to submit a first set of minimum standards to the Michigan Supreme Court this winter. The Court then has 180 days to approve these standards. MCL 780.985(3).

### ***How much time is there to comply with minimum standards?***

The MIDC Act permits local systems to provide compliance plans within 180 days after the Supreme Court approves the standards. MCL 780.993(3). The MIDC intends to start working with the systems on compliance plans before this clock starts, while the Court is evaluating the standards. Following submission of the compliance plan, the system needs to actually comply with the standards within 180 days of receiving funding from the MIDC. MCL 780.993(10).

### ***Will either the county or courts need to pay more money to comply with the standards?***

The MIDC Act requires the state to pay for any increased funding that is necessary to meet minimum standards. The Act requires the state to fund the MIDC to provide grants to comply with the standards, and a local system's duty of compliance is dependent on this funding. MCL 780.993(6-7), MCL 780.997(2).

### ***Does the MIDC Act create an incentive for courts to maintain problematic systems until the state funds plans to comply with minimum standards?***

The statute measures base funding from Fiscal Year 2009 – three years prior to the creation of the MIDC. MCL 780.983(g). This means that any improvements in indigent defense that require increases in funding above this base can be covered by the state when grants are made to ensure compliance with minimum standards.

### ***What sort of minimum standards can we expect?***

The MIDC Act specifically requires the establishment of minimum standards that ensure indigent defense delivery that is independent of the judiciary, defense counsel has confidential meetings with their clients, defense counsel has reasonable workloads, defense counsel is properly

qualified for a particular case, the same defense counsel represent a client throughout the process, defense counsel attend continuing legal education classes, and defense counsel is evaluated and reviewed. MCL 780.991. This is not a complete or exclusive list – ultimately the MIDC will recommend standards to the Supreme Court that it feels are necessary. The first set of standards under consideration by the MIDC involve education and training requirements, the initial client interview, use of expert witnesses and investigators, and appointment of counsel at first appearance in front of a judge or magistrate.

### **Does the MIDC look at the process for appointment of counsel and indigency determinations?**

The MIDC Act sets out basic requirements for application for and appointment of counsel. MCL 780.991(3). The MIDC intends to work with courts in the future on this process in relation to implementation of minimum standards and best practices.

### **What if a county or court does not comply with a minimum standard?**

The MIDC Act sets up a mediation process to resolve disputes concerning the approval of a compliance plan, a cost analysis of compliance, or compliance with the standards. The MIDC Act also sets up a process for a civil action seeking equitable relief for failure to comply. MCL 780.995.

### **How can we follow the activities and plans of the MIDC?**

The MIDC is subject to both the Open Meetings Act and the Freedom of Information Act. The MIDC annual report, budget, policy manual, meeting minutes, and proposed minimum standards will all be available on a website, [www.michiganidc.gov](http://www.michiganidc.gov).

### **If the delivery of indigent criminal defense services “shall be independent of the judiciary,” who is responsible for developing, implementing, and overseeing the delivery of indigent criminal defense services?**

There will be several different available models and compliant plans for implementation and oversight of an independent system of indigent defense ranging from a public defender office, to an appointment system on a random rotation, to a regional system, or to a mixed system. Each of these models could be "independent" in terms of ultimate oversight and delivery, but in each, judges could still input to help maintain quality and voice concerns.

### **Will the MIDC force a court to adopt a public defender office or another kind of particular system for indigent defense?**

The local courts and county will select their desired indigent defense system, and multiple models ranging from a public defender office to a court appointed system to a mixed system will be available. The MIDC Act suggests that if an indigent caseload is sufficiently high, then a mixed system combining a public defender office and an appointment system may be used. MCL 780.991(1)(b). The MIDC’s responsibility and authority is to work with the county and court’s to ensure compliance with minimum standards, not to select a particular system.



## MICHIGAN INDIGENT DEFENSE COMMISSION

June 22, 2015

The Michigan Indigent Defense Commission (MIDC) is proud to announce the release of our first set of proposed minimum standards for the local delivery of indigent criminal defense services. These standards involve education and training, the initial client interview, experts and investigators, and counsel at first appearance in front of a judge.

We selected these initial standards because they are either required by the statute or supported by United States Supreme Court precedent. MCL 780.989(1). We also wanted to start with a set of standards that would be amenable to the creation of lasting and measurable improvements in the criminal defense of poor people. Among other topics, future standards will tackle caseloads, qualifications, compensation, and independence of the indigent defense function from the judiciary.

The MIDC strives for collaboration, transparency and accessibility in our work, and we look forward to feedback. We encourage everyone who is interested to e-mail comments on the standards to [info@michiganidc.gov](mailto:info@michiganidc.gov) or mail them to 200 N. Washington Square, Lansing, MI 48933. MIDC staff will post the comments on our website.

The MIDC will hold a public hearing on these standards on August 18<sup>th</sup> at 1:00 PM at the Lansing campus of Western Michigan University Cooley Law School. Videoconference equipment will also allow participation from the Cooley Auburn Hills and Grand Rapids locations. All comments received prior to 5:00 p.m. Friday August 7, 2015 will be considered by Commissioners. Please check our website, [www.michiganidc.gov](http://www.michiganidc.gov) for more information.

Following the public hearing, the MIDC will submit standards to the Michigan Supreme Court, who will conduct their own review and comment process. When the Court approves standards, the MIDC will work with courts and government units to select compliance plans for these standards. We expect the compliance plans to be due in late 2016 based on deadlines set in the MIDC Act. The State of Michigan is then required to fund the plans. We look forward to watching this important process succeed.

Judge James H. Fisher  
Chairperson



MICHIGAN INDIGENT  
DEFENSE COMMISSION

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**PROPOSED MINIMUM STANDARDS SET 1  
FOR DISTRIBUTION – June 22, 2015**

## **Introduction**

The statute creating the Michigan Indigent Defense Commission (MIDC) provides: “The MIDC shall implement minimum standards, rules, and procedures to guarantee the right of indigent defendants to the assistance of counsel as provided under amendment VI of the constitution of the United States and section 20 of article I of the state constitution of 1963...” M.C.L. §780.991(2).

The MIDC proposes the following standards for implementation in accordance with the statutory mandate:

## **Standard 1**

### **Education and Training of Defense Counsel**

The Michigan Indigent Defense Commission Act requires adherence to the principle that “[d]efense counsel is required to attend continuing legal education relevant to counsel’s indigent defense clients.” M.C.L. §780.991(2)(e). The United States Supreme Court has held that the constitutional right to counsel guaranteed by the Sixth Amendment includes the right to the effective assistance of counsel. The mere presence of a lawyer at a trial “is not enough to satisfy the constitutional command.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Further, the Ninth Principle of The American Bar Association’s *Ten Principles of a Public Defense Delivery System* provides that a public defense system, in order to provide effective assistance of counsel, must ensure that “Defense counsel is provided with and required to attend continuing legal education.” The MIDC proposes a minimum standard for the education and training of defense counsel to effectuate *Strickland*, the MIDC Act, and the Ninth Principle:

**A. Knowledge of the law.** Counsel shall know substantive Michigan and federal law, constitutional law, criminal law, criminal procedure, rules of evidence, ethical rules and local practices. Counsel has a continuing obligation to know the changes and developments in the law.

**B. Knowledge of scientific evidence and applicable defenses.** Counsel shall know all forensic and scientific issues that can arise in a criminal case, know all legal issues concerning defenses to a crime, and be able to effectively litigate those issues.

**C. Knowledge of technology.** Counsel shall know how to utilize office technology commonly used in the legal community, and technology used within the applicable court system. Counsel shall be able to thoroughly review materials that are provided in an electronic format.

**D. Continuing education.** Counsel shall annually complete continuing legal education courses relevant to the representation of the criminally accused. Counsel shall participate in skills training and educational programs in order to maintain and enhance overall preparation, oral and written advocacy, and litigation and negotiation skills. Lawyers can discharge this obligation for annual continuing legal education by attending local trainings or statewide conferences. Attorneys with fewer than two years of experience practicing criminal defense in Michigan shall participate in one basic skills acquisition class. All attorneys shall annually complete at least twelve (12) hours of continuing legal education.

*Staff comments:*

- *The quality of the training should be analyzed through evaluations, and the effectiveness of the training shall be measurable and validated.*
- *The minimum of twelve hours of training represents typical national and Michigan requirements, and is accessible in existing programs offered statewide.*

## **Standard 2**

### **Initial Interview**

The Michigan Indigent Defense Commission Act requires adherence to the principle that “[d]efense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel’s client.” M.C.L. §780.991(2)(a). United States Supreme Court precedent and American Bar Association Principles recognize that the “lack of time for adequate preparation and the lack of privacy for attorney-client consultation” can preclude “any lawyer from providing effective advice.” See *United States v. Morris*, 470 F.3d 596, 602 (CA6, 2006). Further, the Fourth Principle of The American Bar Association’s *Ten Principles of a Public Defense Delivery System* provides that a public defense system, in order to provide effective assistance of counsel, must ensure that “Defense counsel is provided sufficient time and a confidential space within which to meet with the client.” The MIDC proposes a minimum standard for the initial client interview to effectuate the MIDC Act and the Fourth Principle:

- A. Timing of the Interview:** Counsel shall conduct a client interview as soon as practicable after appointment to represent the defendant in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning counsel’s representation and the case proceedings. Counsel shall conduct subsequent client interviews as needed. Following appointment, counsel shall conduct the initial interview with the client sufficiently before any court proceeding so as to be prepared for that proceeding. When a client is in custody, counsel shall conduct an initial client intake interview within 72 hours of appointment. When a client is not in custody, counsel shall promptly deliver an introductory communication so that the client may follow-up and schedule a meeting.
- B. Setting of the interview:** All client interviews shall be conducted in a confidential setting. Counsel shall ensure that confidential communications between counsel and the client are conducted in private. Counsel and the indigent criminal defense system shall ensure the necessary accommodations for private discussions between counsel and clients in courthouses, lock-ups, jails, prisons, detention centers, and other places where clients must confer with counsel.
- C. Preparation:** Counsel shall obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports concerning pretrial release, and discoverable material.
- D. Client status:**
  - 1. Counsel shall evaluate whether the client is competent to participate in his/her representation, understands the charges, and has some basic comprehension of criminal procedure. Counsel has a continuing responsibility to evaluate the client’s capacity to stand trial or to enter a plea pursuant to Mich. Ct. R. 6.125 and M.C.L. §330.2020. Counsel shall take appropriate action where there are any questions about a client’s competency.

2. Where counsel is unable to communicate with the client because of language or communication differences, counsel shall take whatever steps are necessary to fully explain the proceedings, including seeking the appointment of an interpreter to assist with pre-trial preparation, interviews, investigation, and in-court proceedings, or other accommodations.

*Staff comments:*

- *The Commission recognizes that counsel cannot ensure communication prior to court with an out of custody indigent client.*
- *The 72 hour requirement is typical of national requirements.*
- *The Commission recognizes that certain indigent criminal defense systems currently only pay counsel for limited client visits in custody. In these jurisdictions, compliance plans with this standard will need to guarantee funding for multiple visits.*

### **Standard 3**

#### **Investigation and Experts**

The United States Supreme Court has held: (1) “counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland v. Washington*, 466 U.S. 668, 691 (1984); and (2) “[c]riminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both.” *Harrington v. Richter*, 562 U.S. 86, 106 (2011).

The MIDC proposes a minimum standard for investigations and experts:

- A. Counsel shall conduct an independent investigation of the charges and offense as promptly as practicable.
- B. When appropriate, counsel shall request funds to retain an investigator to assist with the client’s defense.
- C. Counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution’s case.
- D. Counsel has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance.

*Staff comments:*

- *The Commission recognizes that counsel can make “a reasonable decision that makes particular investigations unnecessary” after a review of discovery and an interview with the client.*
- *The Commission emphasizes that a client’s professed desire to plead guilty does not alleviate the need to investigate.*

## **Standard 4**

### **Counsel at First Appearance**

The MIDC Act provides that standards shall be established to effectuate the following: (1) “All adults, except those appearing with retained counsel or those who have made an informed waiver of counsel, shall be screened for eligibility under this act, and counsel shall be assigned as soon as an indigent adult is determined to be eligible for indigent criminal defense services.” M.C.L. §780.991(1)(c); (2) “A preliminary inquiry regarding, and the determination of, the indigency of any defendant shall be made by the court not later than at the defendant's first appearance in court. M.C.L. §780.991(3)(a); (3) ...counsel continuously represents and personally appears at *every court appearance* throughout the pendency of the case.” M.C.L. §780.991(2)(d), emphasis added. The United States Supreme Court has held that assistance of counsel is required at critical stages of proceedings, and that the right to counsel attaches when a defendant’s liberty is subject to restriction by the court. *Rothgery v. Gillespie County*, 554 U.S. 191 (2008).

The MIDC proposes a minimum standard on counsel at first appearance:

- A. Counsel shall be assigned as soon as the defendant is determined to be eligible for indigent criminal defense services. The indigency determination shall be made and counsel appointed and made available to provide assistance to the defendant as soon as the defendant’s liberty is subject to restriction by a magistrate or judge. The representation includes, but is not limited to the arraignment on the complaint and warrant or the setting of a case specific interim bond while defendant is in custody. Nothing in this paragraph shall prevent the defendant from making an informed waiver of counsel.
- B. All persons determined to be eligible for indigent criminal defense services shall also have appointed counsel at pre-trial proceedings, during plea negotiations and at other critical stages, whether in court or out of court.

#### *Staff comments:*

- *The proposed standard addresses an indigent defendant’s right to counsel at every court appearance and is not addressing vertical representation (same defense counsel continuously represents) at this time. M.C.L. §780.991(2)(d) also addresses vertical representation, which will be the subject of a future minimum standard.*
- *One of several potential compliance plans for this standard will be an on duty arraignment attorney who will not necessarily represent the indigent client at later proceedings.*
- *Standard 4 is written to make sure that interim bonds may be set to allow release from custody so that the requirement for counsel at first appearance does not lengthen any jail stays. The Standard only applies to case-specific interim bonds set by a judge or magistrate while a defendant is in custody, not those set by police or implemented by the jail staff.*

## Sources and Authority

### **Standard 1 - Education and Training of Defense Counsel**

*Sources:*

ABA 10 Principles of a Public Defense Delivery System (Principles 6 and 9)  
Florida Performance Guidelines for Criminal Defense Representation (Section 1.2)

*Authority:*

M.C.L. §780.991(2)(c) and (2)(e)

### **Standard 2 - Initial Interview**

*Sources:*

ABA 10 Principles of a Public Defense Delivery System (Principle 4)  
Florida Performance Guidelines for Criminal Defense Representation (Section 2.1)  
Committee for Public Counsel Services, Assigned Counsel Manual Policy and Procedures (Part IIB)  
Supreme Court of Nevada, *In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases* (Standard 4-4)

*Authority:*

*Strickland v. Washington*, 466 U.S. 668 (1984)  
*US v. Morris*, 470 F.3d 596 (CA6, 2006)  
M.C.L. §780.991(2)(a)  
Mich. Ct. R. 1.111B  
Mich. Ct. R. 6.125  
MRPC 1.6

### **Standard 3 - Investigation and Expert Witnesses**

*Sources:*

Florida Performance Guidelines for Criminal Defense Representation (Section 4.2)  
Committee for Public Counsel Services, Assigned Counsel Manual Policy and Procedures (Parts IVA, VIA)  
Supreme Court of Nevada, *In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases* (Standard 4-7)

*Authority:*

*Strickland v. Washington*, 466 U.S. 668 (1984)  
*Harrington v. Richter*, 562 U.S. 86 (2011)  
*Ake v. Oklahoma*, 470 U.S. 68 (1985)  
*Hinton v. Alabama*, 134 S. Ct. 1081 (2014)  
*People v. Trakhtenberg*, 493 Mich. 38 (2012)  
*Wiggins v. Smith*, 539 U.S. 510 (2003)  
*Avery v. Prelesnik*, 548 F.3d. 434 (2008)

#### **Standard 4 - Counsel at First Appearance**

*Sources:*

*ABA Ten Principles of a Public Defense Delivery System - Principle 3*

*Authority:*

*Rothgery v. Gillespie County*, 554 U.S. 191 (2008)

*United States v. Cronin*, 466 U.S. 648 (1984)

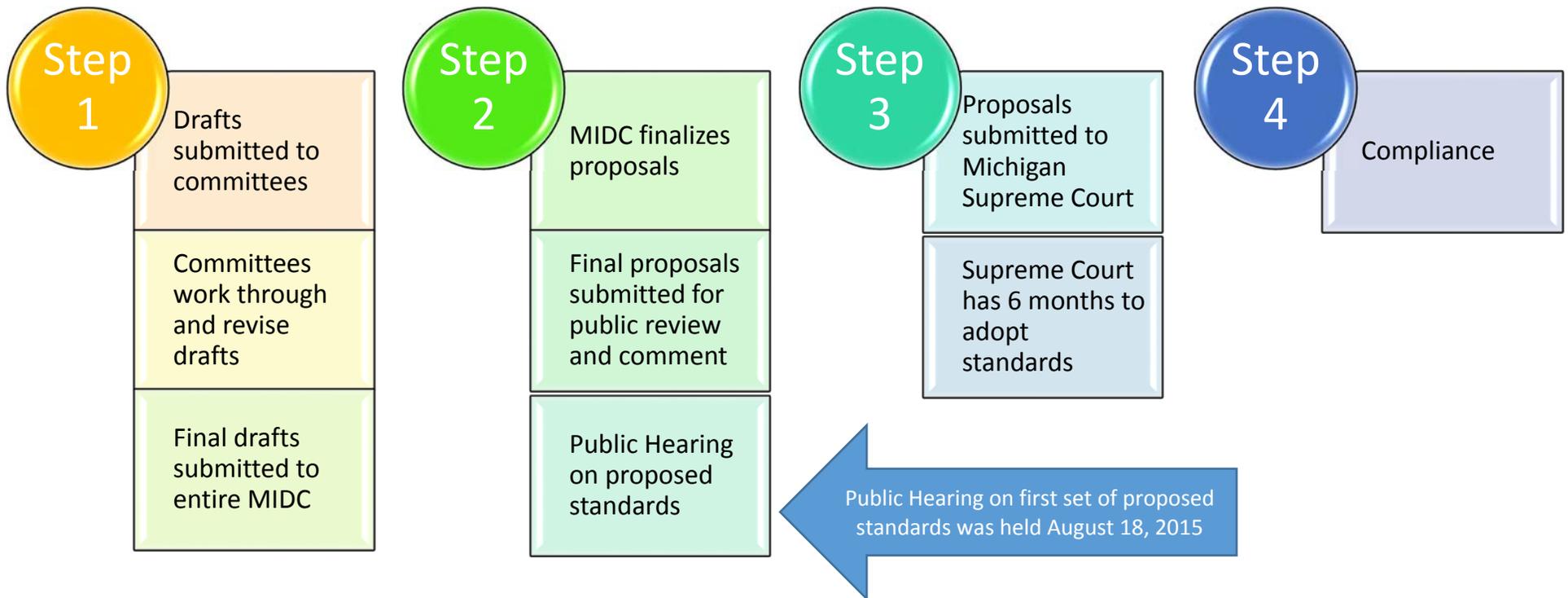
*Powell v. Alabama*, 287 U.S. 45 (1932)

*US v. Morris*, 470 F.3d 596 (CA6, 2006)

M.C.L. §780.991(1)(c), (2)(a), (3)(a, d)

Mich. Ct. R. 6.005(A)

# Standards Proposed by MIDC



**MICHIGAN INDIGENT DEFENSE COMMISSION ACT**  
**Act 93 of 2013**

AN ACT to create the Michigan indigent defense commission and to provide for its powers and duties; to provide indigent defendants in criminal cases with effective assistance of counsel; to provide standards for the appointment of legal counsel; to provide for and limit certain causes of action; and to provide for certain appropriations and grants.

**History:** 2013, Act 93, Imd. Eff. July 1, 2013.

*The People of the State of Michigan enact:*

**780.981 Short title.**

Sec. 1. This act shall be known and may be cited as the "Michigan indigent defense commission act".

**History:** 2013, Act 93, Imd. Eff. July 1, 2013.

**780.983 Definitions.**

Sec. 3. As used in this act:

(a) "Adult" means either of the following:

(i) An individual 17 years of age or older.

(ii) An individual less than 17 years of age at the time of the commission of a felony if any of the following conditions apply:

(A) During consideration of a petition filed under section 4 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.4, to waive jurisdiction to try the individual as an adult and upon granting a waiver of jurisdiction.

(B) The prosecuting attorney designates the case under section 2d(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d, as a case in which the juvenile is to be tried in the same manner as an adult.

(C) During consideration of a request by the prosecuting attorney under section 2d(2) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d, that the court designate the case as a case in which the juvenile is to be tried in the same manner as an adult.

(D) The prosecuting attorney authorizes the filing of a complaint and warrant for a specified juvenile violation under section 1f of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.1f.

(b) "Effective assistance of counsel" or "effective representation" means legal representation that is compliant with standards established by the appellate courts of this state and the United States supreme court.

(c) "Indigent" means meeting 1 or more of the conditions described in section 11(3).

(d) "Indigent criminal defense services" means local legal defense services provided to a defendant and to which both of the following conditions apply:

(i) The defendant is being prosecuted or sentenced for a crime for which an individual may be imprisoned upon conviction, beginning with the defendant's initial appearance in court to answer to the criminal charge.

(ii) The defendant is determined to be indigent under section 11(3).

(e) Indigent criminal defense services do not include services authorized to be provided under the appellate defender act, 1978 PA 620, MCL 780.711 to 780.719.

(f) "Indigent criminal defense system" or "system" means either of the following:

(i) The local unit of government that funds a trial court combined with each and every trial court funded by the local unit of government.

(ii) If a trial court is funded by more than 1 local unit of government, those local units of government, collectively, combined with each and every trial court funded by those local units of government.

(g) "Local share" or "share" means an indigent criminal defense system's average annual expenditure for indigent criminal defense services in the 3 fiscal years immediately preceding the creation of the MIDC under this act, excluding money reimbursed to the system by individuals determined to be partially indigent.

(h) "MIDC" or "commission" means the Michigan indigent defense commission created under section 5.

**History:** 2013, Act 93, Imd. Eff. July 1, 2013.

**780.985 Michigan indigent defense commission; creation; powers and duties; functions; carrying forward unexpended funds; delivery of services; minimum standards; best practices.**

Sec. 5. (1) The Michigan indigent defense commission is created in the judicial branch of state government.

(2) The MIDC shall retain as an autonomous entity all statutory authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, and other functions, including the functions of budgeting, personnel, locating offices, and other management functions. Any portion of funds appropriated to the MIDC that is not expended in a state fiscal year shall not lapse to the general fund but shall be carried forward in a work project account that is in compliance with section 451a of the management and budget act, 1984 PA 431, MCL 18.1451a, for use in the following state fiscal year.

(3) The MIDC shall propose minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel to adults throughout this state. These minimum standards shall be designed to ensure the provision of indigent criminal defense services that meet constitutional requirements for effective assistance of counsel. The commission shall convene a public hearing before a proposed standard is submitted to the supreme court. A minimum standard proposed under this subsection shall be submitted to the supreme court. Opposition to a proposed minimum standard may be submitted to the supreme court in a manner prescribed by the supreme court, but a minimum standard that is approved by the supreme court is not subject to challenge through the appellate procedures under section 15. A proposed minimum standard shall be final when it is approved by the supreme court. If the supreme court neither approves nor disapproves a proposed minimum standard within 180 days of its submission, then the standard is not approved.

(4) The MIDC shall identify and encourage best practices for delivering the effective assistance of counsel to indigent defendants charged with crimes.

**History:** 2013, Act 93, Imd. Eff. July 1, 2013.

**780.987 MIDC; membership; terms; appointment by governor; qualifications; staggered terms; vacancy; chairperson; compensation; removal; quorum; official action; confidential case information; exemption from freedom of information act.**

Sec. 7. (1) The MIDC includes 15 voting members and the ex officio member described in subsection (2). The 15 voting members shall be appointed by the governor for terms of 4 years, except as provided in subsection (4). Subject to subsection (3), the governor shall appoint members under this subsection as follows:

- (a) Two members submitted by the speaker of the house of representatives.
  - (b) Two members submitted by the senate majority leader.
  - (c) One member from a list of 3 names submitted by the supreme court chief justice.
  - (d) Three members from a list of 9 names submitted by the criminal defense attorney association of Michigan.
  - (e) One member from a list of 3 names submitted by the Michigan judges association.
  - (f) One member from a list of 3 names submitted by the Michigan district judges association.
  - (g) One member from a list of 3 names submitted by the state bar of Michigan.
  - (h) One member from a list of names submitted by bar associations whose primary mission or purpose is to advocate for minority interests. Each bar association described in this subdivision may submit 1 name.
  - (i) One member from a list of 3 names submitted by the prosecuting attorney's association of Michigan who is a former county prosecuting attorney or former assistant county prosecuting attorney.
  - (j) One member selected to represent the general public.
  - (k) One member selected to represent local units of government.
- (2) The supreme court chief justice or his or her designee shall serve as an ex officio member of the MIDC without vote.

(3) Individuals nominated for service on the MIDC as provided in subsection (1) shall have significant experience in the defense or prosecution of criminal proceedings or have demonstrated a strong commitment to providing effective representation in indigent criminal defense services. Of the members appointed under this section, the governor shall appoint no fewer than 2 individuals who are not licensed attorneys. Any individual who receives compensation from this state or an indigent criminal defense system for providing prosecution of or representation to indigent adults in state courts is ineligible to serve as a member of the MIDC. Not more than 3 judges, whether they are former judges or sitting judges, shall serve on the MIDC at the same time. The governor may reject the names submitted under subsection (1) and request additional names.

(4) MIDC members shall hold office until their successors are appointed. The terms of the members shall be staggered. Initially, 4 members shall be appointed for a term of 4 years each, 4 members shall be appointed for a term of 3 years each, 4 members shall be appointed for a term of 2 years each, and 3 members shall be appointed for a term of 1 year each.

(5) The governor shall fill a vacancy occurring in the membership of the MIDC in the same manner as the

original appointment, except if the vacancy is for an appointment described in subsection (1)(d), the source of the nomination shall submit a list of 3 names for each vacancy. However, if the senate majority leader or the speaker of the house of representatives is the source of the nomination, 1 name shall be submitted. If an MIDC member vacates his or her commission before the end of the member's term, the governor shall fill that vacancy for the unexpired term only.

(6) The governor shall appoint 1 of the original MIDC members to serve as chairperson of the MIDC for a term of 1 year. At the expiration of that year, or upon the vacancy in the membership of the member appointed chairperson, the MIDC shall annually elect a chairperson from its membership to serve a 1-year term. An MIDC member shall not serve as chairperson of the MIDC for more than 3 consecutive terms.

(7) MIDC members shall not receive compensation in that capacity but shall be reimbursed for their reasonable actual and necessary expenses by the state treasurer.

(8) The governor may remove an MIDC member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

(9) A majority of the MIDC voting members constitute a quorum for the transaction of business at a meeting of the MIDC. A majority of the MIDC voting members are required for official action of the commission.

(10) Confidential case information, including, but not limited to, client information and attorney work product, is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

**History:** 2013, Act 93, Imd. Eff. July 1, 2013.

### **780.989 MIDC; authority and duties; establishment of minimum standards, rules, and procedures; manual.**

Sec. 9. (1) The MIDC has the following authority and duties:

(a) Developing and overseeing the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure that indigent criminal defense services providing effective assistance of counsel are consistently delivered to all indigent adults in this state consistent with the safeguards of the United States constitution, the state constitution of 1963, and this act.

(b) Investigating, auditing, and reviewing the operation of indigent criminal defense services to assure compliance with the commission's minimum standards, rules, and procedures. However, an indigent criminal defense service that is in compliance with the commission's minimum standards, rules, and procedures shall not be required to provide indigent criminal defense services in excess of those standards, rules, and procedures.

(c) Hiring an executive director and determining the appropriate number of staff needed to accomplish the purpose of the MIDC consistent with annual appropriations.

(d) Assigning the executive director the following duties:

(i) Establishing an organizational chart, preparing an annual budget, and hiring, disciplining, and firing staff.

(ii) Assisting the MIDC in developing, implementing, and regularly reviewing the MIDC's standards, rules, and procedures, including, but not limited to, recommending to the MIDC suggested changes to the criteria for an indigent adult's eligibility for receiving criminal trial defense services under this act.

(e) Establishing procedures for the receipt and resolution of complaints, and the implementation of recommendations from the courts, other participants in the criminal justice system, clients, and members of the public.

(f) Establishing procedures for the mandatory collection of data concerning the operation of the MIDC, each individual attorney providing indigent criminal defense services, each indigent criminal defense system, and the operation of indigent criminal defense services.

(g) Establishing rules and procedures for indigent criminal defense systems to apply to the MIDC for grants to bring the system's delivery of indigent criminal defense services into compliance with the minimum standards established by the MIDC.

(h) Establishing procedures for annually reporting to the governor, legislature, and supreme court. The report required under this subdivision shall include, but not be limited to, recommendations for improvements and further legislative action.

(2) Upon the appropriation of sufficient funds, the MIDC shall establish minimum standards to carry out the purpose of this act, and collect data from all indigent criminal defense systems and individual attorneys providing indigent criminal defense services to adults. The MIDC shall propose goals for compliance with the minimum standards established under this act consistent with the metrics established under this section and appropriations by this state.

(3) In establishing and overseeing the minimum standards, rules, and procedures described in subsection (1), the MIDC shall emphasize the importance of indigent criminal defense services provided to juveniles under the age of 17 who are tried in the same manner as adults or who may be sentenced in the same manner as adults and to adults with mental impairments.

(4) The MIDC shall be mindful that defense attorneys who provide indigent criminal defense services are partners with the prosecution, law enforcement, and the judiciary in the criminal justice system.

(5) The commission shall establish procedures for the conduct of its affairs and promulgate policies necessary to carry out its powers and duties under this act.

(6) Commission policies shall be placed in an appropriate manual, made publicly available on a website, and made available to all attorneys and professionals providing indigent criminal defense services, the supreme court, the governor, the senate majority leader, the speaker of the house of representatives, the senate and house appropriations committees, and the senate and house fiscal agencies.

**History:** 2013, Act 93, Imd. Eff. July 1, 2013.

**780.991 MIDC; establishment of minimum standards, rules, and procedures; principles; application for, and appointment of, indigent criminal defense services; requirements.**

Sec. 11. (1) The MIDC shall establish minimum standards, rules, and procedures to effectuate the following:

(a) The delivery of indigent criminal defense services shall be independent of the judiciary but ensure that the judges of this state are permitted and encouraged to contribute information and advice concerning that delivery of indigent criminal defense services.

(b) If the caseload is sufficiently high, indigent criminal defense services may consist of both an indigent criminal defender office and the active participation of other members of the state bar.

(c) Trial courts shall assure that each criminal defendant is advised of his or her right to counsel. All adults, except those appearing with retained counsel or those who have made an informed waiver of counsel, shall be screened for eligibility under this act, and counsel shall be assigned as soon as an indigent adult is determined to be eligible for indigent criminal defense services.

(2) The MIDC shall implement minimum standards, rules, and procedures to guarantee the right of indigent defendants to the assistance of counsel as provided under amendment VI of the constitution of the United States and section 20 of article I of the state constitution of 1963. In establishing minimum standards, rules, and procedures, the MIDC shall adhere to the following principles:

(a) Defense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel's client.

(b) Defense counsel's workload is controlled to permit effective representation. Economic disincentives or incentives that impair defense counsel's ability to provide effective representation shall be avoided. The MIDC may develop workload controls to enhance defense counsel's ability to provide effective representation.

(c) Defense counsel's ability, training, and experience match the nature and complexity of the case to which he or she is appointed.

(d) The same defense counsel continuously represents and personally appears at every court appearance throughout the pendency of the case. However, indigent criminal defense systems may exempt ministerial, nonsubstantive tasks, and hearings from this prescription.

(e) Defense counsel is required to attend continuing legal education relevant to counsel's indigent defense clients.

(f) Defense counsel is systematically reviewed at the local level for efficiency and for effective representation according to MIDC standards.

(3) The following requirements apply to the application for, and appointment of, indigent criminal defense services under this act:

(a) A preliminary inquiry regarding, and the determination of, the indigency of any defendant shall be made by the court not later than at the defendant's first appearance in court. The determination may be reviewed by the court at any other stage of the proceedings. In determining whether a defendant is entitled to the appointment of counsel, the court shall consider whether the defendant is indigent and the extent of his or her ability to pay. The court may consider such factors as income or funds from employment or any other source, including personal public assistance, to which the defendant is entitled, property owned by the defendant or in which he or she has an economic interest, outstanding obligations, the number and ages of the defendant's dependents, employment and job training history, and his or her level of education.

(b) A defendant is considered to be indigent if he or she is unable, without substantial financial hardship to himself or herself or to his or her dependents, to obtain competent, qualified legal representation on his or her

own. Substantial financial hardship shall be rebuttably presumed if the defendant receives personal public assistance, including under the food assistance program, temporary assistance for needy families, medicaid, or disability insurance, resides in public housing, or earns an income less than 140% of the federal poverty guideline. A defendant is also rebuttably presumed to have a substantial financial hardship if he or she is currently serving a sentence in a correctional institution or is receiving residential treatment in a mental health or substance abuse facility.

(c) A defendant not falling below the presumptive thresholds described in subdivision (b) shall be subjected to a more rigorous screening process to determine if his or her particular circumstances, including the seriousness of the charges being faced, his or her monthly expenses, and local private counsel rates would result in a substantial hardship if he or she were required to retain private counsel.

(d) A defendant shall be responsible for applying for indigent defense counsel and for establishing his or her indigency and eligibility for appointed counsel under this act. Any oral or written statements made by the defendant in or for use in the criminal proceeding and material to the issue of his or her indigency shall be made under oath or an equivalent affirmation.

**History:** 2013, Act 93, Imd. Eff. July 1, 2013.

**780.993 Investigation, audit, and review of indigent criminal defense services; cooperation and participation with MIDC; development of plan and cost analysis; award of grant; submission of plan; annual plan; approval or disapproval of plan and cost analysis by MIDC; report to governor; maintenance of local share; necessity for excess funding; appropriation of additional funds; grants to local units of government; funds received by MIDC as state funds.**

Sec. 13. (1) All indigent criminal defense systems and, at the direction of the supreme court, attorneys engaged in providing indigent criminal defense services shall cooperate and participate with the MIDC in the investigation, audit, and review of their indigent criminal defense services.

(2) An indigent criminal defense system may submit to the MIDC an estimate of the cost of developing the plan and cost analysis for implementing the plan under subsection (3) to the MIDC for approval. Upon approval, the MIDC shall award the indigent criminal defense system a grant to pay the approved costs for developing the plan and cost analysis under subsection (3).

(3) No later than 180 days after a standard is approved by the supreme court, each indigent criminal defense system shall submit a plan to the MIDC for the provision of indigent criminal defense services in a manner as determined by the MIDC and shall submit an annual plan for the following state fiscal year on or before February 1 of each year. A plan submitted under this subsection shall specifically address how the minimum standards established by the MIDC under this act shall be met and shall include a cost analysis. The standards to be addressed in the annual plan are those that the supreme court approved not less than 60 days before the annual plan submission date. This cost analysis shall include a statement of the funds in excess of the local share, if any, necessary to allow its system to comply with the MIDC's minimum standards.

(4) The MIDC shall approve or disapprove a plan or cost analysis, or both a plan and cost analysis, submitted under subsection (3), and shall do so within 60 calendar days of the submission of the plan and cost analysis. If the MIDC disapproves the plan, the cost analysis, or both the plan and the cost analysis, the indigent criminal defense system shall consult with the MIDC and submit a new plan, a new cost analysis, or both within 30 calendar days of the mailing date of the official notification of the MIDC's disapproval. If after 3 submissions a compromise is not reached, the dispute shall be resolved as provided in section 15.

(5) The MIDC shall submit a report to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of representatives requesting the appropriation of funds necessary to implement the plan for each system approved by the MIDC. The information used to create this report shall be made available to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of representatives.

(6) Except as provided in subsection (8), an indigent criminal defense system shall maintain not less than its local share. If the MIDC determines that funding in excess of the indigent criminal defense system's share is necessary in order to bring its system into compliance with the minimum standards established by the MIDC, that excess funding shall be paid by this state. The legislature shall appropriate to the MIDC the additional funds necessary for a system to meet and maintain those minimum standards, which funds shall be provided to indigent criminal defense systems through grants as described in subsection (7).

(7) An indigent criminal defense system shall not be required to provide funds in excess of its local share. The MIDC shall provide grants to indigent criminal defense systems to assist in bringing the systems into

compliance with minimum standards established by the MIDC.

(8) An indigent criminal defense system is not required to expend its local share if the minimum standards established by the MIDC may be met for less than that share, but the local share of a system that expends less than its local share under these circumstances is not reduced by the lower expenditure.

(9) This state shall appropriate funds to the MIDC for grants to the local units of government for the reasonable costs associated with data required to be collected under this act that is over and above the local unit of government's data costs for other purposes.

(10) Within 180 days after receiving funds from the MIDC under subsection (7), an indigent criminal defense system shall comply with the terms of the grant in bringing its system into compliance with the minimum standards established by the MIDC for effective assistance of counsel.

(11) If an indigent criminal defense system is awarded no funds for implementation of its plan under this act, the MIDC shall nevertheless issue to the system a zero grant reflecting that it will receive no grant funds.

(12) The MIDC may apply for and obtain grants from any source to carry out the purposes of this act. All funds received by MIDC, from any source, are state funds and shall be appropriated as provided by law.

**History:** 2013, Act 93, Imd. Eff. July 1, 2013.

### **780.995 Dispute between MIDC and indigent criminal defense system.**

Sec. 15. (1) If a dispute arises between the MIDC and an indigent criminal defense system concerning the requirements of this act, including a dispute concerning the approval of an indigent criminal defense system's plan, cost analysis, or compliance with section 13 or 17, the parties shall attempt to resolve the dispute by mediation. The state court administrator, as authorized by the supreme court, shall appoint a mediator agreed to by the parties within 30 calendar days of the mailing date of the official notification of the third disapproval by the MIDC under section 13(4) to mediate the dispute and shall facilitate the mediation process. The MIDC shall immediately send the state court administrative office a copy of the official notice of that third disapproval. If the parties do not agree on the selection of the mediator, the state court administrator, as authorized by the supreme court, shall appoint a mediator of his or her choosing. Mediation shall commence within 30 calendar days after the mediator is appointed and terminate within 60 calendar days of its commencement. Mediation costs associated with mediation of the dispute shall be paid equally by the parties.

(2) If the parties do not come to a resolution of the dispute during mediation under subsection (1), all of the following apply:

(a) The mediator may submit his or her recommendation of how the dispute should be resolved to the MIDC within 30 calendar days of the conclusion of mediation for the MIDC's consideration.

(b) The MIDC shall consider the recommendation of the mediator, if any, and shall approve a final plan or the cost analysis, or both, in the manner the MIDC considers appropriate within 30 calendar days, and the indigent criminal defense system shall implement the plan as approved by the MIDC.

(c) The indigent criminal defense system that is aggrieved by the final plan, cost analysis, or both, may bring an action seeking equitable relief as described in subsection (3).

(3) The MIDC, or an indigent criminal defense system may bring an action seeking equitable relief in the circuit court only as follows:

(a) Within 60 days after the MIDC's issuance of an approved plan and cost analysis under subsection (2)(b).

(b) Within 60 days after the system receives grant funds under section 13(7), if the plan, cost analysis, or both, required a grant award for implementation of the plan.

(c) Within 30 days of the MIDC's determination that the indigent criminal defense system has breached its duty to comply with an approved plan.

(d) The action shall be brought in the judicial circuit where the indigent criminal defense service is located. The state court administrator, as authorized by the supreme court, shall assign an active or retired judge from a judicial circuit other than the judicial circuit where the action was filed to hear the case. Costs associated with the assignment of the judge shall be paid equally by the parties.

(e) The action shall not challenge the validity, legality, or appropriateness of the minimum standards approved by the supreme court.

(4) If the dispute involves the indigent criminal defense system's plan, cost analysis, or both, the court may approve, reject, or modify the submitted plan, cost analysis, or the terms of a grant awarded under section 13(7) other than the amount of the grant, determine whether section 13 has been complied with, and issue any orders necessary to obtain compliance with this act. However, the system shall not be required to expend more than its local share in complying with this act.

(5) If a party refuses or fails to comply with a previous order of the court, the court may enforce the previous order through the court's enforcement remedies, including, but not limited to, its contempt powers,

and may order that the state undertake the provision of indigent criminal defense services in lieu of the indigent criminal defense system.

(6) If the court determines that an indigent criminal defense system has breached its duty under section 17(1), the court may order the MIDC to provide indigent criminal defense on behalf of that system.

(7) If the court orders the MIDC to provide indigent criminal defense services on behalf of an indigent criminal defense system, the court shall order the system to pay the following amount of the state's costs that the MIDC determines are necessary in order to bring the indigent criminal defense system into compliance with the minimum standards established by the MIDC:

(a) In the first year, 10% of the state's costs.

(b) In the second year, 20% of the state's costs.

(c) In the third year, 30% of the state's costs.

(d) In the fourth year, 40% of the state's costs.

(e) In the fifth year, and any subsequent year, not more than the dollar amount that was calculated under subdivision (d).

(8) An indigent criminal defense system may resume providing indigent criminal defense services at any time as provided under section 13. When a system resumes providing indigent criminal defense services, it is no longer required to pay an assessment under subsection (7) but shall be required to pay no less than its share.

**History:** 2013, Act 93, Imd. Eff. July 1, 2013.

#### **780.997 Duty of compliance with approved plan.**

Sec. 17. (1) Except as provided in subsection (2), every local unit of government and every trial court that is part of an indigent criminal defense system shall comply with an approved plan under this act.

(2) A system's duty of compliance with the terms of the plan as prescribed under subsection (1) is contingent upon receipt of a grant in the amount contained in the plan and cost analysis approved by the MIDC.

(3) The MIDC may proceed under section 15 if an indigent criminal defense system breaches its duty of compliance under subsection (1).

**History:** 2013, Act 93, Imd. Eff. July 1, 2013.

#### **780.999 Annual report, budget, and listing of expenditures; availability on website.**

Sec. 19. The MIDC shall publish and make available to the public on a website its annual report, its budget, and a listing of all expenditures. Publication and availability of the listing of expenditures shall be on a quarterly basis, except for the annual report and salary information, which may be published and made available on an annual basis. As used in this section, "expenditures" means all payments or disbursements of MIDC funds, received from any source, made by the MIDC.

**History:** 2013, Act 93, Imd. Eff. July 1, 2013.

#### **780.1001 Applicability of freedom of information act and open meetings act.**

Sec. 21. Both of the following apply to the MIDC:

(a) The freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except as provided in section 7(10).

(b) The open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

**History:** 2013, Act 93, Imd. Eff. July 1, 2013.

#### **780.1003 Effect of United States or state supreme court cases; failure to comply with statutory duties; grounds for reversal or modification of conviction.**

Sec. 23. (1) Nothing in this act shall be construed to overrule, expand, or extend, either directly or by analogy, any decisions reached by the United States supreme court or the supreme court of this state regarding the effective assistance of counsel.

(2) Nothing in this act shall be construed to override section 29 or 30 of article IX of the state constitution of 1963.

(3) Except as otherwise provided in this act, the failure of an indigent criminal defense system to comply with statutory duties imposed under this act does not create a cause of action against the government or a system.

(4) Statutory duties imposed that create a higher standard than that imposed by the United States constitution or the state constitution of 1963 do not create a cause of action against a local unit of government, an indigent criminal defense system, or this state.

(5) Violations of MIDC rules that do not constitute ineffective assistance of counsel under the United States constitution or the state constitution of 1963 do not constitute grounds for a conviction to be reversed or a judgment to be modified for ineffective assistance of counsel.

**History:** 2013, Act 93, Imd. Eff. July 1, 2013.