



Michigan Indigent Defense Commission

Update and Answers to Frequently Asked Questions,
prepared by Commission Staff

December 2016

We are pleased to provide these updates to the public, which includes information about amendments to our enabling statute, a new resource that the MIDC published for planning delivery system reform, a career posting for a Regional Manager position and the date of an upcoming Commission meeting.

Amendments to Enabling Legislation

During the fall of 2016, a series of bills were introduced in the Michigan House of Representatives and the Michigan Senate to amend the Michigan Indigent Defense Commission Act and related statutory provisions. The primary legislative amendments (1) move the MIDC from the Judicial Branch to the Department of Licensing and Regulatory Affairs (LARA); (2) clarify the definition of local systems as trial court funding units; and (3) require LARA to approve proposed minimum standards for indigent defense and specifies that these minimum standards should not infringe on Supreme Court authority. A companion bill was introduced in the Senate to amend the Administrative Procedures Act to make clear that the MIDC standards are not part of the APA's rulemaking process. The primary bills amending the MIDC Act passed in the House on September 22, 2016 and were unanimously approved by the Senate on December 14, 2016. The legislation is awaiting the Governor's signature at the time of this writing. A detailed description of House Bills 5842-5846 and Senate Bill 1109 can be found on the Michigan Legislature's website.

- *Why did the MIDC Act need to be amended?*

The Michigan Supreme Court *conditionally* approved the first set of standards for indigent defense delivery systems in Michigan on June 1, 2016. The Court conditioned this approval on

legislative revisions to the MIDC Act to address certain constitutional questions implicated by the statute. These questions involved the placement of the MIDC within the judicial branch, separation of powers concerns, and the authority to regulate the legal profession. The Commission worked closely with the Governor's Office and the Supreme Court as the amending legislation was developed and introduced. It is anticipated that amendments resolve the constitutional concerns raised in the Supreme Court's Order.

- *What happened to the MIDC's first four conditionally approved standards?*

In 2015, the MIDC proposed four initial standards for indigent defense delivery systems to address: training and education of counsel, the initial client interview, use of investigation and experts, and counsel at first appearance and other critical stages. Both the MIDC and the Michigan Supreme Court held public hearings on the first four minimum standards and changes were made to those standards reflecting concerns expressed at those hearings. The Standards are set forth in detail on the MIDC's website at <http://michiganidc.gov/standards/>. The MIDC discussed the changes made by the Michigan Supreme Court in the June 1, 2016 Order and formally adopted those changes during the MIDC's regularly scheduled meeting on December 20, 2016. At that meeting the MIDC also voted to submit those first four standards to LARA pursuant to the process detailed through the legislative amendments. That submission will occur in January, after the Governor signs the legislation.

- *When will the indigent defense delivery systems have to comply with the standards?*

Systems are required to submit a plan for complying with the standards within 180 days after they are formally approved. MCL 780.993(3). The approval process has shifted from Supreme Court approval to Department (LARA) approval as detailed in the legislative amendments. Approval from LARA has not happened yet, so as of this writing the timeframe has not started running. The MIDC anticipates that the 180-day clock will begin to run in 2017.

- *Do systems have to comply with the Standards?*

All indigent defense delivery systems must submit a plan for compliance with the standards enacted by the MIDC. See M.C.L. 780.993. Compliance will then depend upon state funding.

- *How much will it cost local systems to comply with the standards?*

The MIDC Act makes clear that counties will not have to pay additional funds for compliance. The counties are only required to maintain their “local share”, which is the average annual expenditure for indigent adult criminal trial defense services in the 3 fiscal years prior to the MIDC Act (July 1, 2013) excluding money reimbursed to the system by individuals determined to be partially indigent. See MCL 780.983. Any amount of money needed to comply with the standards above the local share will be part of a grant request submitted with a compliance plan. The funds will be provided by the State and distributed to systems through grants administered by the MIDC. If the grant funds are not provided to the systems, then compliance with the standards is not required. See MCL 780.993.

- *What about systems that want to go beyond implementing just the first four standards?*

Each county will select its desired indigent defense delivery method, and multiple models ranging from a defender office, an assigned counsel list, contract attorneys, or a mix of systems will be available. The MIDC’s responsibility and authority is to work with the counties and courts to ensure compliance with minimum standards, not to select a particular system. The MIDC has been contacted by several systems interested in improving their models for delivering indigent defense – for example, by setting up a public defender office. The MIDC is pleased to offer a guide for consultation, *Delivery System Reform Models: Planning Improvements in Public Defense* (December 2016). This resource is available on the MIDC’s website at <http://michiganidc.gov/training-resources/>.

- *How can systems start planning for compliance now?*

The MIDC has Regional Managers on staff to provide direction and guidance to indigent defense delivery systems around the state on compliance with MIDC-enacted standards. They serve as liaisons between local systems and the MIDC. The Regional Managers have been working in every county in Michigan in the past year, learning about local systems and gathering information and ideas for complying with standards. They have answers to all of the most common questions, they can provide technical information about how to determine spending on indigent defense, and they are prepared to offer practical solutions for compliance to maximize the impact of improvements. All stakeholders are welcome to contact the Regional

Managers to discuss the standards and how to implement them locally. See the MIDC's website for the managers assigned to a particular region, <http://michiganidc.gov/midc-regional-consultant-assignment-and-contact-information/>

- *Does the MIDC have any positions available?*

The MIDC is currently accepting applications for the staff position of Regional Manager for the region covering Lapeer, Macomb, Oakland and St. Clair Counties. Please see the MIDC's website for more information about this career opportunity, including the full job posting and application submission requirements: <http://michiganidc.gov/position-available-regional-manager-lapeer-macomb-oakland-st-clair-counties/>.

- *How can I learn more about the Michigan Indigent Defense Commission?*

The MIDC will meet on February 21, 2017 for a regularly scheduled meeting. The Commission meets at 1:00 p.m. in Lansing and all meetings are open to the public. Information about upcoming meetings, or agendas and minutes from prior meetings can be found on our website at <http://michiganidc.gov/michigan-indigent-defense-commission/commission-meetings/>. We will continue to post progress about our work and any other developments about indigent defense in Michigan on our website as well.

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