



INITIAL INTERVIEW

A GUIDE TO IMPLEMENTATION OF THE MINIMUM STANDARDS FOR DELIVERY SYSTEMS
PREPARED BY THE MICHIGAN INDIGENT DEFENSE COMMISSION¹

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BACKGROUND

In 2008, Michigan was the subject of a report by the National Legal Aid and Defender Association entitled: *A Race to the Bottom Speed & Savings Over Due Process: A Constitutional Crisis*.² The NLADA study involved an evaluation of trial-level indigent defense delivery systems across ten representative counties in Michigan.³ The NLADA analyzed Michigan's compliance with the ABA Ten Principles of a Public Defense Delivery System.⁴ "The Principles were created as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney."⁵ At the conclusion of the year-long study, the NLADA found that none of the counties studied in Michigan were constitutionally adequate and that Michigan ranked 44th out of all 50 states in per capita indigent defense spending.⁶

In October 2011, Governor Rick Snyder issued Executive Order 2011-12, establishing the Indigent Defense Advisory Commission, a group of stakeholders that were responsible for recommending improvements to the state's legal system. The Advisory Commission's recommendations in 2012⁷ served as the basis for the legislation known as the Michigan Indigent Defense Commission Act, which the Governor signed into law in July 2013.⁸ Commissioners were appointed in 2014 and the first Executive Director and Staff began working in 2015.

The statute creating the Commission 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..."⁹

STANDARD 2

The Michigan Indigent Defense Commission Act (MIDC Act)¹⁰ includes the principle that “[d]efense counsel [must be] provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel’s client.”¹¹ The MIDC Act also recognizes the importance of effective representation and of a strong attorney-client relationship.¹² The initial client interview is a crucial step both in beginning to investigate the case, and in laying the groundwork for a positive relationship. The American Bar Association (ABA) expounds on the principle requiring sufficient time and space for attorney-client meetings by stating that “[c]ounsel should interview the client as soon as practicable.”¹³

Effective representation requires that an attorney investigate a case thoroughly, from the very beginning. That investigation must start as soon as the lawyer is appointed, with the initial client interview. Effective representation also requires frequent and frank communication between the attorney and the client.¹⁴

MIDC Standard 2,¹⁵ conditionally adopted by the Michigan Supreme Court and submitted to the Department of Licensing and Regulatory Affairs for approval, establishes minimum standards for client interviews. This standard only involves the initial client interview and other confidential client interviews are expected, as necessary. Standard 2 addresses the timing and content of the interview, the confidential setting, counsel’s responsibilities to prepare for the interview, and counsel’s ongoing responsibilities to monitor issues relating to the client’s participation in the representation and trial process. Standard 2’s approach to each of these issues is consistent with national standards, constitutional requirements, and Michigan law.

Standard 2.A establishes two general requirements for the timing of initial interviews. The interview must occur “as soon as practicable after appointment,” and “sufficiently before any subsequent court proceeding.”¹⁶ For clients held in local custody—that is, clients not held by the Michigan Department of Corrections (MDOC) or in another county¹⁷—Standard 2.A further specifies that the initial interview shall take place within three business days after the appointment of counsel.¹⁸ The general requirement of a prompt interview and the specific three business day requirement match national standards.¹⁹ Standard 2.A also requires defense attorneys to “conduct subsequent client interviews as needed.”²⁰

Standard 2.B requires a confidential setting for all client interviews.²¹ This requirement is essential to protect the attorney-client privilege.²² Since client interviews might take place in a variety of facilities—including “courthouses, lock-ups, jails, prisons, [and] detention centers”²³—Standard 2.B requires adequate facilities for interviews in all of those locations, among others. Finally, Standard 2.B recognizes that defense counsel cannot singlehandedly create spaces for confidential interviews, and so places the burden of compliance on “the indigent criminal defense system” as a whole.²⁴ Nonetheless, defense lawyers have an important role to play in identifying where confidential interview spaces are necessary and advocating for change. Defense lawyers should not accept a status quo that prevents them from maintaining confidentiality.

A confidential setting for interviews is essential to protect attorney-client privilege.

Standard 2.C requires the defense lawyer to obtain relevant documents before the initial client interview, if possible.²⁵ This includes “charging documents, recommendations and reports concerning pretrial release, and discoverable material.”²⁶ Implicit in this part of the Standard is the requirement that counsel adequately review the materials before the interview, in order to make the interview effective. In particular, counsel should be familiar with facts bearing on pretrial release,²⁷ with facts that may be relevant to initial investigation,²⁸ and with any facts suggesting that pretrial diversion may be available.²⁹

Standard 2.D has two parts. Standard 2.D.1 requires the defense lawyer, both at the initial interview and on a continuing basis, to evaluate the client’s competency under Mich. Ct. R. 6.125 and M.C.L. § 330.2020.³⁰

Standard 2.D.2 requires defense lawyers to take “whatever steps are necessary” to overcome language barriers or other “communication differences.”³¹ Such steps include seeking the appointment of an interpreter to assist with every step of the criminal process, including “pretrial preparation, interviews, investigation, and in-court proceedings.”³²

RATIONALE

PRETRIAL RELEASE ADVOCACY

The first priority of the initial interview, especially for an in-custody client, is to obtain information for pretrial advocacy, particularly pretrial release and bail arguments.³³ The information that is relevant to a release argument will vary by client, and the attorney should be flexible in the interview, actively listening to the client and asking for more information where necessary. Some

Critical information cannot be learned in a rushed interview conducted immediately before a hearing.

aspects of the interview will be consistent across clients, however. The attorney should ask about significant medical issues, education, work history, financial resources, marital status, dependents, other family and community ties, housing situation, criminal history and ongoing cases, parole or probation status, and citizenship or immigration status.³⁴

In addition to gathering information to use in pretrial release arguments, the attorney should have a frank discussion with the client about compliance with the conditions of release.³⁵ Pretrial release advocacy that is guided by the client's particular needs is an aspect of client-centered representation in which the attorney "remain[s] mindful that it is the client's case, and it is the client who determines the goals of the representation."³⁶ An in-depth interview will help the attorney know which conditions to contest. This information cannot be learned in a rushed interview conducted immediately before the hearing.³⁷

PROMPT INVESTIGATION

In order to be effective, investigation should begin promptly.³⁸ Such investigation can locate evidence that would otherwise disappear and witnesses who would otherwise forget important facts.³⁹ It also gives the defense lawyer more time to locate difficult-to-find witnesses and complete multiple rounds of interviews, as necessary.⁴⁰ Because "[c]ounsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant,"⁴¹ the initial client interview is an important step in investigation.⁴²

The importance of prompt investigation is illustrated by the case of Ashly Smith.⁴³ Mr. Smith was charged in Wayne County with armed robbery and associated charges.⁴⁴ His lawyer was appointed on May 21, 2012, but had not met with Mr. Smith as of June 4, 2012.⁴⁵ Until the night before trial, Mr. Smith's lawyer only ever spoke to him in court or in the bullpen of the jail.⁴⁶ While Mr. Smith gave his lawyer information about several potential alibi witnesses, the lawyer did not speak to any of those witnesses until the day of trial.⁴⁷

The American adversarial system of justice relies on the assumption that an independent, vigorous defense investigation will ferret out errors and omissions in the government's investigation.⁴⁸ It is impossible to determine what investigation will be necessary solely by reading police reports and other discovery, and investigation must begin promptly, to prevent information, witnesses, or physical evidence from being lost. Even when the government does not insist on an immediate response to a plea offer, an in-custody client's interests will be best served by an attorney who is able to assess the strength of the government's case as quickly as

possible. A prompt initial interview, at which the attorney can learn what the client knows about the charges that is relevant to investigation, is thus crucial to fulfilling the ethical obligation to investigate, and to preventing wrongful convictions.

BUILDING A STRONG ATTORNEY-CLIENT RELATIONSHIP

“Nothing is more fundamental to the lawyer-client relationship than the establishment of trust and confidence.”⁴⁹ The initial client interview is the first opportunity to start building trust,⁵⁰ and building trust is especially important for attorneys representing indigent defendants, because “[o]ur clients don’t choose us, they have little reason to trust us, and they have likely heard tales about the inadequacies of court-appointed counsel.”⁵¹ A trusting relationship is difficult when the client meets the attorney for the first time in court. One South-Central Michigan defense attorney noted: “It’s really impossible to establish a rapport with your client in that short of a time frame.”⁵² When an attorney meets with the client promptly, it demonstrates to the client that the attorney cares about the case and is invested in the client.⁵³ The longer the attorney goes without meeting with the client, the more the client will resent the attorney, and the more the client will hear from other detainees that appointed attorneys cannot be trusted. **This is the status quo, where a Lansing State Journal report recently found this “scenario in nearly a quarter of criminal cases it reviewed, where indigent defendants met their attorneys for the first time on the day of their first court appearance.”**⁵⁴

This relationship and communication is important in cases where the government makes a plea offer that requires immediate action by the defendant. Richard Morris was charged in Wayne County with weapons and drug charges.⁵⁵ On the same day that he first met with his attorney, Mr. Morris was told that if he did not plead guilty immediately, the state charges would be dismissed and he would be recharged in federal court.⁵⁶ Mr. Morris’s attorney had received only partial discovery at the time of the offer, and was only able to speak to him in the “bull pen,” a cell behind the courtroom that did not allow for confidential conversations.⁵⁷ The attorney had no opportunity to conduct an independent investigation or to interview witnesses.⁵⁸ Further, the attorney incorrectly advised Mr. Morris about the sentencing guidelines range he would face in federal court, underestimating by about forty months.⁵⁹ Based on this incorrect advice, from an attorney who had no idea how strong the government’s case was, Mr. Morris rejected the plea offer.⁶⁰ The federal appeals court concluded that “the lack of time for adequate preparation and

A strong attorney-client relationship will help the lawyer foster a sense of loyalty and fidelity to the client and will allow the client to develop respect and trust for the advocate.

-Jonathan Rapping

the lack of privacy for attorney-client consultation, would have precluded any lawyer from providing effective advice.”⁶¹

ADVISING THE CLIENT ABOUT THE PROCESS

An attorney is more familiar with and knowledgeable about the criminal justice system than the client.⁶² Educating the client about the attorney-client relationship and the stages of the case is an important function of the initial interview.⁶³ The nature, and limits, of attorney-client privilege are particularly important for the client to understand,⁶⁴ as are the methods by which the client can contact the attorney.⁶⁵ To the extent that the attorney has the initial discovery materials before the interview,⁶⁶ he or she should also explain the charges, the possible penalties, and the potential defenses.⁶⁷

Sometimes, the attorney will not be able to obtain much, or any, discovery before the initial interview.⁶⁸ However, the initial interview is still valuable in these circumstances. While the factual allegations are part of pretrial release advocacy, the lawyer also needs to obtain a variety of information about the client’s personal, family, and employment situation that is not affected by the particular case.⁶⁹ Client-specific challenges, such as language barriers and competency issues, can also often be ascertained at an initial interview even without reviewing any discovery.⁷⁰

Crucially, an attorney need not have received any discovery in order to begin building an effective attorney-client relationship,⁷¹ or to advise the client about crucial aspects of the process.⁷² The attorney should be up front with the client about how information is obtained, what the delays are, and what information the attorney needs from the client in the meantime. An initial interview that demonstrates “commitment to [the client’s] case, and concern for their well-being” may, in the long run, save the attorney time that would otherwise be spent “constantly reassur[ing the client] that [the attorney is] working on his case.”⁷³ Ultimately, the attorney-client relationship will be stronger if it is grounded in honesty and communication, than if the client is left to wait in custody for several days without meeting or hearing anything from his lawyer.

It is also important for the attorney to warn the client, as soon as possible, not to discuss the case with anyone other than the attorney, particularly when the client is in custody.⁷⁴ Any information the client reveals could be harmful, either because it is directly incriminating, or because it includes facts that enable someone to fabricate a false incriminating statement. It can be very tempting for clients—especially in-custody clients—to discuss their case. This temptation makes it all the more necessary for counsel—a counsel whom the client trusts⁷⁵—to issue firm warnings against discussing the case, early and often.

ADDRESSING CLIENT-SPECIFIC CHALLENGES EARLY

The initial client interview is also an important opportunity for the defense lawyer to become aware of any specific issues that require special attention in representing the client, issues that may not be reflected in paperwork. Two examples of such issues are language or cultural barriers that impede effective communication between the client and the lawyer, and the client's mental state and competency. Other individual challenges may arise, however, and the only effective method for the defense lawyer to become aware of them is through a prompt client interview.

Cultural issues and language barriers can impair an effective attorney-client relationship. Clients from certain cultural backgrounds, especially immigrant clients who are unfamiliar with the criminal justice system in the United States, may be particularly distrustful of attorneys.⁷⁶ The lack of trust is important for the lawyer to overcome, and doing so may require frequent attorney-client interaction.⁷⁷

Language barriers are an obvious obstacle to effective communication, but identifying an appropriate interpreter is not a simple task: it may require considering dialect, cultural biases, and the political situations in home countries.⁷⁸ Hearing and speech impairments or disabilities also create language barriers that attorneys must overcome.⁷⁹ Early identification of cultural or language barriers or other communication difficulties through a prompt initial client interview will give the defense lawyer more time to address such issues in the best possible way for their client.

The defense lawyer's duty to investigate extends to investigating the client's mental state at the time of the offense and the client's competency to proceed in the criminal justice system.⁸⁰ The defense lawyer's role in this regard is crucial, "because, where such a condition exists, the defendant's attorney is the sole hope that it will be brought to the attention of the court."⁸¹ Personal interaction with the defendant will often be the first indicator for the defense lawyer that such a reason exists. Competency is a central issue at all stages of the process, because it affects the defendant's ability to understand the proceedings and assist in his defense.⁸² Therefore, the information that can be ascertained about the defendant's mental state at an early client interview is important to protecting the client's rights.

A third area is immigration consequences. The initial interview is an opportunity to evaluate whether there will be immigration or deportation consequences to a conviction.⁸³

EXPLORING THE POTENTIAL FOR PRETRIAL DIVERSION OR SPECIALTY COURTS

Various pretrial diversion programs or specialty courts are available to avoid criminal adjudication.⁸⁴ While eligibility for some programs can be determined based on the charging paperwork and the client's criminal history, other programs are designed to address underlying issues that may not be evident from the paperwork, such as mental health and substance abuse. Meeting with and interviewing the client is an important step for the attorney in determining whether any such program is a feasible alternative to criminal prosecution. Even when program eligibility is based only on the client's criminal history, the attorney should discuss that history with the client in order to ensure that the information provided is accurate. The earlier the attorney pursues pretrial diversion or specialty court eligibility, the more helpful it is to the client. A prompt initial interview is therefore an important opportunity to screen clients for eligibility for these programs.

INITIAL INTERVIEWS WITH OUT-OF-CUSTODY CLIENTS

When a client is not in custody, the prime focus of the initial interview shifts. Bail and pretrial release advocacy are not as central, though counsel should still determine if any conditions of release can be modified. However, the importance of the initial interview for all the other reasons is unchanged if the client is not in custody.

Standard 2 recognizes that initial interviews with clients who are not in custody cannot be unilaterally scheduled by the attorney, and so the standard limits the attorney's obligation to initiate contact.⁸⁵ Attorneys should encourage out-of-custody clients to schedule the meeting as soon as possible, and should take reasonable measures to schedule meetings at times that are feasible for their clients.

COMPLIANCE

Pursuant to the MIDC Act, the local delivery system will determine the best methods for compliance with Standard 2. Some of the change for funding units will be through the establishment of an effective notification process for appointment of counsel. However, compliance with Standard 2 will also require counties or other funding systems to ensure that there is a confidential space for attorney-client interviews in both the holding facilities and courthouses, and to make any necessary arrangements to facilitate the initial interview within three business days for clients in local custody. These measures including paying counsel for the visit, reimbursing counsel for travel, and making accommodations for video visits by counsel to clients held in various detention facilities. This compliance only involves the initial client interview, and other confidential client interviews are expected, as necessary. The following is

a guide for the most critical components of compliance. It is by no means exhaustive. Proper compliance will require cooperation with every stakeholder in the criminal justice system.

1. *Appointment and Notification Process*
 - a. *The notification must be timely*

When an attorney is appointed to represent an indigent defendant, the local indigent defense system must promptly notify the attorney of the appointment.⁸⁶ There should be established procedures in place for notification to public defender offices, administrators, or individual attorneys, depending on the local practice. In any case, notice should be provided electronically, with physical copies of the relevant paperwork following the initial notification. In jurisdictions where the court directly appoints attorneys, staff should maintain up-to-date contact information for the attorneys on the list to facilitate prompt notice. Where assignment to specific attorneys is handled by a separate office, that office should promptly notify the assigned attorney of the new case.

Connecting the time of the initial interview to the time of appointment presumes that defense counsel will receive prompt notice of appointment. Defense attorneys may receive delayed notice of appointment,⁸⁷ and sometimes notice is delayed for several days.⁸⁸ In a forthcoming MIDC survey of attorneys, 21% of over 400 respondents reported notification of appointment up to 72 hours or later.⁸⁹ One county reported a system where attorneys have to pick up their assignments in a box at the courthouse and never receive direct notification. If an attorney does not know that he or she has been appointed to represent a client, a prompt initial interview is clearly impossible. Compliance plans will need to require immediate notification.

- b. *The notification should contain as much information as possible.*

The standard requires defense attorneys to prepare for an initial interview by obtaining available reports and discoverable material.⁹⁰ Public comments on MIDC Standard 2 demonstrate a concern that initial discovery will not be available.⁹¹ While defense attorneys can take some steps to secure earlier access to discovery, compliance with this part of the standard will require the cooperation of other stakeholders. Close to 40% of Michigan attorneys practicing indigent defense reported that they do not timely receive discovery.⁹² Electronic delivery of the discovery, with physical copies following, is one way to speed up the process.

Although Standard 2 does not and cannot require the provision of discovery beyond the timeline established by Mich. Ct. R. 6.125, the MIDC is hopeful that adoption of this standard will result in prosecutor's offices, police departments or other investigatory units supplying discovery in a prompt manner. This is already happening in certain jurisdictions.

The initial order notifying counsel of the appointment must also contain complete information about how to contact the client, including the full legal name, telephone number, and a current address. Counsel cannot be required to spend precious time after appointment investigating or in other ways gathering basic information to contact a client.

2. *Facilities*

Compliance with Standard 2 may mean that funding units and detention facilities will seek grant funding from the MIDC for purposes of renovations. These requests will be necessary in order to create adequate spaces for confidential client interviews.

a. Confidential space for attorney-client meetings in courthouses

Counties must ensure that they have adequate on-site court facilities for confidential attorney-client interviews for both in-custody and out-of-custody clients. Interview rooms should be sufficiently numerous that there is no need to have multiple attorneys interviewing clients in the same room, and sufficiently private that attorneys and clients can converse freely and effectively. In particular, the security procedures for in-custody interview rooms must be efficient enough that attorneys have time to utilize the rooms, and designed in such a way that law enforcement agents cannot overhear the conversation.

Space for a confidential interview in the courthouse is important, because sometimes counsel's first opportunity to interview the client will take place at the courthouse.⁹³ Some courthouses do not have confidential interview spaces available.⁹⁴ The MIDC's first comprehensive survey of local indigent defense systems found that only 37% of counties had a confidential meeting space available in both the court and holding facility, while a full 9% of systems had a confidential space in neither location.⁹⁵ Over 60% of Michigan attorneys reported a lack of designated confidential meeting spaces in courts, and close to 50% reported a lack of confidential space in holding facilities.⁹⁶ In one county in the Thumb, neither the in-court meeting space nor the holding facility is confidential; the deputies are able to watch and listen in both scenarios without giving the client or counsel any sense of privacy.⁹⁷ Interviews in courtrooms or in hallways are not sufficiently confidential, and thus do not protect the attorney-client privilege.⁹⁸ Even where space is available, it is often overcrowded and thus not truly confidential.⁹⁹ Confidential interview spaces must generally be separately provided for both in-custody and out-of-custody clients.¹⁰⁰ In addition, even ostensibly private rooms can pose challenges for confidential communication if they are not sufficiently soundproofed, especially if security procedures require law enforcement officers to be standing guard nearby.¹⁰¹

The MIDC anticipates that certain compliance plans will require cost-effective courthouse renovations. For example, Oakland County Circuit Court has discussed shifting an open holding area with artificial dividers into two separate confidential meeting spaces. Other compliance

plans will need to shift court scheduling or transport process for in custody defendants. For example, if a county's holding facility does not allow for confidential space and renovations are not a realistic or cost-effective possibility, then the confidential communication might instead take place in a jury room or other space next to the courtroom.

b. Confidential space for attorney-client meetings in detention facilities

Detention facilities must provide adequate facilities, both physical and virtual, for attorneys to efficiently and confidentially meet with their clients. Attorney-client visiting rooms must be designed to enable effective attorney-client communication and sharing of documents, and they must be soundproof so that confidential conversations can take place without staff overhearing. There must also be enough visiting rooms so that attorneys do not have unreasonably long waits to meet with their clients.

Detention facilities should also have long enough attorney-client visiting hours so that attorneys can schedule time for visits without interfering with court schedules or other commitments.

The availability of confidential interview rooms varies significantly between detention facilities. Almost a quarter of attorneys reported a lack of confidential meeting space in detention facilities. At some jails, there is an open room with no privacy where deputies may watch and listen. In others, the phones used to communicate with in-custody clients do not properly function.

Even when rooms exist, they are not always available. One comment to the MIDC proposed standards described a jail where confidential interview rooms are typically booked at least one day in advance, creating an additional delay before counsel can conduct a client interview. Less serious overcrowding problems can still result in waits for confidential interview rooms, which further increases the time that must be spent on initial interviews. Obstacles to efficient client meetings at a jail can discourage defense lawyers from their work.

As the standard requires interviews to be confidential "to the extent reasonably possible," a local system's compliance plan should be cost-effective and sensible. Reasonable renovations should be part of compliance plans, but the MIDC may not fund construction of new jails or courthouses.

3. Costs for initial interview

a. Payment for initial interview

Public comments expressed concerns about the effects of funding limitations on the feasibility of conducting initial interviews. Some counties may only provide funding for a limited number of attorney-client visits. Almost 40% of attorneys representing indigent clients in Michigan reported

payment for only one visit. Compliance plans will need to provide funding for both the initial visit and additional visits as needed.

b. Travel expenses for initial interview

In rural parts of the state, lawyers sometimes serve multiple counties. This can mean that clients are housed in facilities spread over a significant geographic area. Attorneys should be reimbursed for case-related travel expenses (such as mileage) for traveling to visit with their clients in compliance with Standard 2.

4. Video-conferencing

Clients are sometimes housed in MDOC custody or in jails in distant jurisdictions rather than in local jails. Several public comments expressed particular concern about the difficulties of conducting initial interviews with clients in MDOC custody. One comment indicated that MDOC does not allow defense counsel to communicate with clients in MDOC custody by confidential video-conference. In some areas, prompt and frequent in-person visits with clients who are not in local custody may not be feasible. In rural and Northern Michigan, attorneys with practices that encompass multiple counties can find themselves traveling at least an hour to appear in court.¹⁰² To overcome this challenge, other methods of confidential communication such as video-conferencing will need to be available for attorney-client interviews when in-person interviews are not feasible. MDOC has confidential video-conferencing facilities for appellate attorneys and the MIDC anticipates working to implement procedures for trial attorneys to use this equipment.

Detention facilities in more rural areas may need to seek MIDC grant funding for compliance to purchase and maintain the technology necessary for secure videoconferencing to allow attorneys from outside the area to interview clients held in those facilities.

Defense attorneys who rely on video-conferencing to interview clients in distant detention facilities are responsible for keeping up to date with the software and procedures used by the detention facilities. Attorneys must make sure that the software is secure in order to maintain attorney-client privilege, and that their hardware and network capabilities are sufficient to enable effective communication.

Since video-conferencing as a means of communication is less personal and more prone to distractions than face-to-face client interviews, best practices warrant use of this tool only when distance makes a timely and effective in person interview impossible. It is also expected that counsel follow the video-conference with a confidential in-person visit when the client has been brought to local custody or the court.

5. *Systems for Compliance*

Multiple systems of indigent defense delivery may satisfy the initial interview requirement if they provide sufficient notification to attorneys, confidential meeting spaces, and sufficient funding for the interviews. Larger counties may consider establishment of a public defender office to ensure an in-custody client visit within three business days, where a team of attorneys working together may efficiently interview clients in local jails. A salaried office of public defenders may also prove more cost effective than additional hourly reimbursements for an initial client interview.

The MIDC Act provides a process for the formation of state-funded compliance plans to meet the standards.¹⁰³ Compliance plans for the initial confidential interview will be submitted together with those for other MIDC minimum standards and a request for any funding necessary beyond the local share.¹⁰⁴ For that reason, the standards should not be examined in the framework of *status quo* indigent defense delivery. Rather, they establish requirements for system changes allowing for a proper initial interview as implemented through state funding.

6. *Collect and Submit Data to the MIDC*

To show that the funding units are in compliance with Standard 2, the MIDC will be collecting system and case data points from the local delivery systems. The system-wide data points seek information about the (1) mechanism(s) and timeline for notifying attorneys of new appointments and (2) existence of confidential space for attorney-client interviews in holding facilities and courthouses. The case-level data points will seek information about (1) the date that the Defendant requested appointed counsel, (2) whether court-appointed counsel was granted, (3) the date of appointment of counsel (4) the date assigned counsel was notified of the appointment, and (5) the date of an in-custody client visit. Information about such reporting will be detailed in the grant administration process.

CONCLUSION

The purpose of the standard is to ensure prompt and confidential communication between the lawyer and client. Effective representation requires that an attorney investigate a case and maintain a client relationship thoroughly from the start. That process must start as soon as the lawyer is appointed, with the initial client interview. Effective representation also requires frequent and frank communication between the attorney and the client. Compliance with Standard 2 will ensure that these fundamental principles of effective representation are met.

¹ The Commission wishes to thank Andrew MacKie-Mason, *J.D. Candidate, Class of 2017, The University of Chicago Law School*, for his invaluable research and contributions to this whitepaper.

² National Legal Aid & Defender Association, *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis* (June 2008), available at http://www.mynlada.org/michigan/michigan_report.pdf [hereinafter *A Race to the Bottom*].

³ The counties studied were Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa, Shiawassee and Wayne.

⁴ See ABA Standing Comm. on Legal Aid and Indigent Defendants, *Ten Principles of a Public Defense Delivery System*, AMERICAN BAR ASSOCIATION 3 (Feb. 2002), http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf [hereinafter *Ten Principles*].

⁵ *Id.* at Introduction p. 4.

⁶ *A Race to the Bottom*, *supra* n. 2, Executive Summary.

⁷ The Advisory Commission's report is available on the Michigan Indigent Defense Commission's website, at <http://michiganidc.gov/wp-content/uploads/2015/05/Final-Report-Advisory-Commission.pdf>.

⁸ The MIDC Act is found at MCL §§ 780.981 et. seq.

⁹ MCL § 780.991(2).

¹⁰ MCL §§ 780.981 et seq.

¹¹ MCL § 780.991(2)(a).

¹² See MCL § 780.991(2)(b) ("Defense counsel's workload is controlled to permit effective representation."); MCL § 780.991(2)(d) ("The same defense counsel continuously represents and personally appears at every court appearance throughout the pendency of the case.").

¹³ *Ten Principles*, *supra* n. 4.

¹⁴ See MODEL RULES OF PROF'L CONDUCT R. 1.4 (2013); *Strickland v Washington*, 466 U.S. 668, 688; 104 S. Ct. 2052, 2065; 80 L. Ed. 2d 674 (1984); see also Jonathan A. Rapping, *You Can't Build on Shaky Ground: Laying the Foundation for Indigent Defense Reform Through Values-Based Recruitment, Training, and Mentoring*, 3 HARV. L. POL'Y REV. 161, 165 (2009) ("Without effective communication, the lawyer's duties to provide zealous and loyal representation, to advocate for the client's cause, and to thoroughly study and prepare are severely hampered."); J. Nick Badgerow, *Can We Talk? The Lawyer's Ethical, Professional and Proper Duty to Communicate with Clients*, 7 KAN. J. L. & PUB. POL'Y 105, 105 (Spring/Summer 1998) ("[C]ommunication is a two-way street, and communication is essential to good representation of client by lawyer.").

¹⁵ See generally MIDC Standard 2.

¹⁶ MIDC Standard 2.A.

¹⁷ MIDC Standard 2, Staff Comments.

¹⁸ MIDC Standard 2.A.

¹⁹ See, e.g., FLORIDA PUBLIC DEFENDER ASSOCIATION, FLORIDA PERFORMANCE GUIDELINES FOR CRIMINAL DEFENSE REPRESENTATION § 2.1(A), at 12 (Aug. 7, 2013) (on file with MIDC staff); *Assigned Counsel Manual: Policies and Procedures, Chapter IV: Criminal: Performance Standards and Complaint Procedures*, COMMITTEE FOR PUBLIC COUNSEL SERVICES 3, https://www.publiccounsel.net/private_counsel_manual/CURRENT_MANUAL_2012/MANUALChap4CriminalStandards.pdf (last visited Jan. 30, 2016); State Bar of Texas, *Performance Guidelines for Non-Capital Criminal Defense Representation*, 74 TEX. B.J. 616, 621 (2011); *In re Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*, ADKT No. 411, Exhibit A, at 23 (Nev. Oct. 16, 2008), available at <http://nvcourts.gov/AOC/Templates/documents.aspx?folderID=9993>; North Carolina Commission on Indigent Defense Services, *Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level*, THE NORTH CAROLINA COURT SYSTEM: OFFICE OF INDIGENT DEFENSE SERVICES 2 (Nov. 12, 2004), <http://www.ncids.org/Rules%20%20Procedures/Performance%20Guidelines/Trial%20Level%20Final%20Performance%20Guidelines.pdf>. See also Committee on Assigned Counsel Standards, *Standards for Assigned Counsel*, 74 MICH. B.J. 674, 675 (July 1995) ("Counsel shall conduct a timely interview of the client after being appointed and sufficiently before any court proceedings so as to be prepared for that proceeding."); ABA STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION FUNCTION AND DEFENSE FUNCTION § 4-3.2, at 152 (3d ed. 1993) [hereinafter DEFENSE FUNCTION] ("As soon as practicable, defense counsel should seek to determine all relevant facts known to the accused.").

²⁰ MIDC Standard 2.A.

²¹ MIDC Standard 2.B.

²² See, e.g., FLORIDA PUBLIC DEFENDER ASSOCIATION, *supra* n. 19, § 1.3(E)(3), at 9 (“Counsel should not discuss the case or any confidential information when others are present and able to hear.”).

²³ MIDC Standard 2.B.

²⁴ MIDC Standard 2.B.

²⁵ MIDC Standard 2.C.

²⁶ MIDC Standard 2.C.

²⁷ See below, “Pretrial Release Advocacy.”

²⁸ See below, “Prompt Investigation.”

²⁹ See below, “Exploring the Potential for Pretrial Diversion.”

³⁰ See MIDC Standard 2.D.1.

³¹ MIDC Standard 2.D.2.

³² *Id.* See also MICH. CT. R. 1.111.

³³ See Committee on Assigned Counsel Standards, *supra* n. 19, at 675:

The most obvious function of the client interview is gathering information necessary to provide representation at the early stages of the case. . . . Counsel should [] obtain information such as family and community ties, employment and educational history, prior criminal record, pending charges, present probation or parole status, physical and emotional health, and the financial resources available for posting bail.

See also ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES § 5-6.1, at 79 (3d ed 1992) [hereinafter PROVIDING DEFENSE SERVICES] (“Where the accused is incarcerated, defense counsel must begin immediately to marshal facts in support of the defendant’s pretrial release from custody.”); *Guidelines for Representation*, MISSOURI STATE PUBLIC DEFENDER § 2.1(d), at 5 (Nov. 1, 1992), <http://www.publicdefender.mo.gov/contracts/Guidelines%20for%20Representation.pdf> [hereinafter *Guidelines for Representation*].

³⁴ For a general overview of areas to cover in the initial interview, see MICHIGAN INDIGENT DEFENSE COMMISSION, THE INITIAL INTERVIEW (on file with MIDC staff). For a detailed questionnaire to guide the initial interview, see MICHIGAN INDIGENT DEFENSE COMMISSION, INITIAL INTERVIEW GUIDELINES (on file with MIDC staff). See also FLORIDA PUBLIC DEFENDER ASSOCIATION, *supra* n. 19, § 2.1(D)(2), at 13 (listing information for counsel to obtain in the initial interview); *id.* § 2.2(E), at 14 (“Counsel should be prepared to present to the judge the facts and legal criteria supporting the least restrictive release conditions.”); *id.* § 2.2(G), at 15 (“[I]f appropriate and with the client’s express permission, counsel should alert the court, to any special medical, psychiatric and/or security needs of the client and request that the court direct the appropriate officials to take steps to meet such special needs.”); *id.* § 2.2(K), at 15 (“Counsel should be prepared to present witnesses in support of the request for release.”).

³⁵ See WASHINGTON STATE BAR ASSOCIATION, PERFORMANCE GUIDELINES FOR CRIMINAL DEFENSE REPRESENTATION § 2.1 at 5 (June 3, 2011), available at

http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on%20Public%20Defense/Performance%20Guidelines%20for%20Criminal%20Defense%20Representation%20060311.ashx (“The attorney has an obligation to attempt to secure the pretrial release of the client under the conditions most favorable and acceptable to the client.”) (emphasis added).

³⁶ Rapping, *supra* n. 14, at 164–65. See also *id.* at 167, quoting Rodney J. Uphoff & Peter B. Wood, *The Allocation of Decisionmaking Between Defense Counsel and Criminal Defendant: An Empirical Study of Attorney-Client Decisionmaking*, 47 U. KAN. L. REV. 1, 9 (1998) (“[M]ost [clients] are in a better position to make case decisions [than attorneys] because so many decisions ultimately turn on the values and priorities that the client alone best appreciates.”).

³⁷ It is expected that in many cases the initial interview will take place after bond is initially set at arraignment with an on-duty attorney present (see MIDC Standard 4). A client’s attorney will use the initial interview to evaluate whether there is an argument to change bond or custody status at a pretrial hearing.

³⁸ See DEFENSE FUNCTION, *supra* n. 19, § 4-4.1, at 181 (“Defense counsel should conduct a prompt investigation of the circumstances of the case.”).

³⁹ See Committee on Assigned Counsel Standards, *supra* n. 19, at 676 (“Timely investigation is crucial, since witnesses and objects may disappear and memories fade rapidly.”); see also FLORIDA PUBLIC DEFENDER ASSOCIATION, *supra* n. 19,

§ 1.3(B)(1)(a), at 7 (“Counsel must [t]ake early and prompt action after initial appointment to preserve necessary physical evidence.”).

⁴⁰ See DEFENSE FUNCTION, *supra* n. 19, § 4-4.1, at 182:

Considerable ingenuity may be required to locate persons who observed the criminal act charged or who have information concerning it. After they are located, their cooperation must be secured. It may be necessary to approach a witness several times to raise new questions stemming from facts learned from others. The resources of scientific laboratories may be required Neglect of any of these steps may preclude the presentation of an effective defense.

⁴¹ *Strickland v Washington*, 466 U.S. 668, 691; 104 S Ct 2052, 2066; 80 L Ed 2d 674 (1984).

⁴² See FLORIDA PUBLIC DEFENDER ASSOCIATION, *supra* n. 19, § 2.1(E), at 14 (noting that, “[w]henver possible, counsel should use the initial interview and subsequent client interviews to gather additional information relevant to preparation of the defense,” and providing a non-exhaustive list of information for counsel to obtain to assist in investigation).

⁴³ See *People v Smith*, 497 Mich 1003; 861 N.W.2d 630 (Mich. 2015) (denying leave to appeal).

⁴⁴ *People v Smith*, No. 312721, 2014 WL 1320243 at 1 (Mich. Ct. App. Apr. 1, 2014).

⁴⁵ *Id.* at 2 (Gleicher, P.J., dissenting).

⁴⁶ *Smith*, 861 N.W.2d at 631 (Kelly, J., dissenting).

⁴⁷ *Id.* at 631–32.

⁴⁸ See *A Race to the Bottom*, *supra* n. 2, at 68.

⁴⁹ DEFENSE FUNCTION, *supra* n. 19, § 4-3.1, at 149. See also FLORIDA PUBLIC DEFENDER ASSOCIATION, *supra* n. 19, § 1.3(E)(1), at 9; Rapping, *supra* n. 14, at 171 (“A strong attorney-client relationship will help the lawyer foster a sense of loyalty and fidelity to the client and will allow the client to develop respect and trust for the advocate.”).

⁵⁰ See Committee on Assigned Counsel Standards, *supra* n. 19, at 675.

⁵¹ Jonathan Rapping, *Building a Relationship with Your Client*, THE ADVOC.: J. OF CRIM. JUST. EDUC. & RES. 4, 4 (Nov. 2005). See also NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES: REPORT OF THE NATIONAL STUDY COMMISSION ON DEFENSE SERVICES 460 (1976) [hereinafter GUIDELINES FOR LEGAL DEFENSE SYSTEMS] (“A large part of the difficulty inherent in the relationship of defenders and assigned counsel with the client community whom they serve can be traced to the overriding problem of the clients’ association of the defense system with other components of the criminal justice system.”).

⁵² Justin A. Hinkley & Matt Mencarini, *Court-appointed attorneys paid little, do little, records show*, The Lansing State Journal, available at <http://www.lansingstatejournal.com/story/news/local/watchdog/2016/11/03/court-appointed-attorneys-paid-little-do-little-records-show/91846874/> (Nov. 3, 2016).

⁵³ See GUIDELINES FOR LEGAL DEFENSE SYSTEMS, *supra* n. 51, at 460 (“[S]tudies indicate that the most common complaint of defender clients was the infrequency of contact with and communication from the defender.”).

⁵⁴ See Hinkley & Mencarini, *supra* n. 52.

⁵⁵ *United States v Morris*, 377 F. Supp. 2d 630, 632 (E.D. Mich. 2005), *aff’d in part, rev’d in part*, 470 F.3d 596 (6th Cir. 2006).

⁵⁶ *United States v Morris*, 470 F.3d 596, 598 (6th Cir. 2006).

⁵⁷ *Id.* at 599.

⁵⁸ *Id.*

⁵⁹ *Id.* at 598–99.

⁶⁰ *Id.* at 599.

⁶¹ *Id.* at 602.

⁶² See Rapping, *supra* n. 51, at 5.

⁶³ See Committee on Assigned Counsel Standards, *supra* n. 19, at 675 (“Among the other important tasks that can be accomplished at that point are the following: Explaining the attorney-client privilege and the necessity of full disclosure by the client of all potentially relevant facts; . . . explaining the procedures involved in a criminal case, how and when counsel can be reached, and when counsel will see the client next; and attempting to answer the client’s most urgent questions realistically”); FLORIDA PUBLIC DEFENDER ASSOCIATION, *supra* n. 19, § 2.1(D)(3), at 13 (listing information for the attorney to provide the client at the initial interview).

⁶⁴ See Rapping, *supra* n. 51, at 5.

⁶⁵ See, e.g., *A Race to the Bottom*, *supra* n. 2, at 77–78:

[A]s there is no funding available for accepting collect calls from the jail to the public defender's office [in Chippewa County], the agency has made it a policy not to accept such calls. In-custody clients who wish to communicate with counsel between in-person meetings will write notes addressed to the public defender's office. The note cannot be sealed, per jail security regulations, and is therefore tri-folded and handed to the deputy on duty who then places the note in a drop box at the jail designated for inmate-to-public defender correspondence It was noted that under both circumstances, client-to-attorney and attorney-to-client mail, sensitive information relating to a case had from time to time been read by a sheriff's deputy.

(citations omitted).

⁶⁶ See *above*, "Exploring the Potential for Pretrial Diversion;" see also *above* "Prompt Investigation."

⁶⁷ See Rapping, *supra* n. 51, at 5.

⁶⁸ See *above*, "Exploring the Potential for Pretrial Diversion."

⁶⁹ See *above*, "Pretrial Release Advocacy."

⁷⁰ See *above*, "Addressing Client-Specific Challenges Early."

⁷¹ See *above*, "Building a Strong Attorney-Client Relationship."

⁷² See *above*, "Advising the Client About the Process."

⁷³ Rapping, *supra* n. 51, at 4.

⁷⁴ See Committee on Assigned Counsel Standards, *supra* n. 19, at 675 ("Among the other important tasks that can be accomplished at that point are the following: . . . advising the client not to discuss the case with police officers, cellmates, co-defendants, or anyone else . . .").

⁷⁵ See *above*, "Building a Strong Attorney-Client Relationship."

⁷⁶ See AMA N. APPIAH, CULTURAL ISSUES IN CRIMINAL DEFENSE § 1.1(a), at 7 (4th ed. 2015) ("[M]any immigrants are mistrustful of attorneys and many times cannot understand or believe in the concept of attorney-client privilege. . . . For clients who have been abused, either in terms of domestic violence or persecuted in their home countries, the issue of trust may be the single greatest obstacle to an advocate.").

⁷⁷ See *id.* ("[M]ultiple interviews with immigrant clients may be needed to gain trust.").

⁷⁸ See *id.* § 1.1(b), at 8.

⁷⁹ See generally, e.g., National Consortium of Interpreter Education Centers, *Best Practices: American Sign Language and English Interpretation within Court and Legal Settings*, DEAF INTERPRETER INSTITUTE (2009), <http://www.diinstitute.org/wp-content/uploads/2012/06/Best-Practices-Legal-Interpreting.pdf>.

⁸⁰ See, e.g., *Bouchillon v Collins*, 907 F.2d 589, 597 (5th Cir. 1990) ("To do no investigation at all on an issue that not only implicates the accused's only defense, but also his present competency, is not a tactical decision. . . . It must be a very rare circumstance indeed where a decision not to investigate would be 'reasonable' after counsel has notice of the client's history of mental problems."). See also DEFENSE FUNCTION, *supra* n. 19, § 4-3.1, at 149 ("During his or her initial or early discussions with the client, defense counsel should also take care to observe whether the client appears to be suffering from any mental disability."); *Guidelines for Representation*, *supra* n. 33, § 2.1(f), at 6.

⁸¹ *Bouchillon*, 907 F.2d at 597.

⁸² See State Bar of Texas, *supra* n. 19, at 623 ("The client must be able to understand, assist counsel, and participate in the proceedings against the client in order to stand trial or enter a plea.").

⁸³ See *Padilla v Kentucky*, 559 US 356; 130 S.Ct. 1473; 176 L.Ed.2d 284 (2010).

⁸⁴ See, e.g., *Wayne County Prosecutor: Diversion Section*, WAYNE COUNTY, MI, <http://www.waynecounty.com/prosecutor/359.htm>, (last visited Jan. 30, 2016) (listing pretrial diversion programs available in Wayne County).

⁸⁵ See MIDC Standard 2.A.

⁸⁶ MIDC here presumes that the Standard 2 attorney is often not the same person as the on-duty attorney for MIDC Standard 4, counsel at first appearance.

⁸⁷ See, e.g., *A Race to the Bottom*, *supra* n. 2, at 75 ("[O]ne [Oakland County] district court judge indicated that the delay in the assignment of an attorney by the circuit court frequently results in late notice to the attorney and inadequate time to prepare for the preliminary examination in district court."); *id.* at 76 ("[I]n some cases [in Marquette County] the notice of assignment is mailed to the defense attorney's office, ensuring additional delay beyond the arraignment date.").

⁸⁸ See E-mail from Janet M. Mistele to Marla McCowan, Director of Training, Outreach and Support, Michigan Indigent Defense Commission (Aug. 20, 2015) [hereinafter E-mail from Janet M. Mistele], *available at* http://michiganidc.gov/wp-content/uploads/2015/04/Janet-Mistele-8_20_15.pdf; Letter from Kyle Trevas to the

Michigan Indigent Defense Commission 1 (Aug. 7, 2015) [hereinafter Letter from Kyle Trevas], *available at* http://michiganidc.gov/wp-content/uploads/2015/04/Kyle-Trevas-8_7_15.pdf; Letter from Thomas J. Seger to the Michigan Indigent Defense Commission 1 (Aug. 7, 2015) [hereinafter Letter from Thomas J. Seger], *available at* http://michiganidc.gov/wp-content/uploads/2015/04/Thomas-J-Seger-8_7_15.pdf; Letter from Fred Johnson, Jr. to the Michigan Indigent Defense Commission Chair 1 (Jul. 13, 2015) *available at* <https://michiganidc.box.com/s/n28kmrmc3493qeibja5dsciv2wt1lljz> [hereinafter Letter from Fred Johnson, Jr.].n.

⁸⁹ Forthcoming MIDC survey of attorneys.

⁹⁰ MIDC Standard 2.C.

⁹¹ See Letter from Kyle Trevas, *supra* n. 90, at 1–2; Letter from Thomas J. Seger, *supra* n. 90, at 1; E-mail from Barbara Bosler to the Michigan Indigent Defense Commission 4 (July 29, 2015) [hereinafter E-mail from Barbara Bosler], *available at* http://michiganidc.gov/wp-content/uploads/2015/04/Barbara-Bosler-7_29_151.pdf; Letter from Fred Johnson, Jr., *supra* n. 90, at 5; E-mail from Andrew D. Stacer to the Michigan Indigent Defense Commission (June 24, 2015), *available at* http://michiganidc.gov/wp-content/uploads/2015/04/Andrew-Stacer-recd-6_24_151.pdf.

⁹² *Snapshot of Indigent Defense Representation in Michigan’s Adult Criminal Courts: The MIDC’S First Survey of Local Court Systems*, February 2016.

⁹³ See *A Race to the Bottom*, *supra* n. 2 at 72 (noting that initial interviews of defendants in Wayne County Circuit Court “are frequently conducted in court (or in the ‘bullpen’—a cell behind the courtroom”).

⁹⁴ See, e.g., Letter from The Honorable John Chmura, Chief Judge, 37th Dist. Ct., to Jonathan Sacks, Executive Director, Michigan Indigent Defense Commission 1 (Dec. 7, 2015), *available at* http://michiganidc.gov/wp-content/uploads/2015/04/37th-District-Court-Judges-12_7-15.pdf.

⁹⁵ *Snapshot of Indigent Defense Representation in Michigan’s Adult Criminal Courts: The MIDC’S First Survey of Local Court Systems*, February 2016.

⁹⁶ *Id.*

⁹⁷ Communication with MIDC Regional Manager Cheryl Carpenter.

⁹⁸ See *A Race to the Bottom*, *supra* n. 2, at 72 (“[M]ost attorneys spoke to their non-custody clients . . . in the hallway outside the courtroom or in the back of the courtroom. These conversations could be overheard by anyone within 10 feet or so. Similarly, most of the in-custody clients were interviewed while they were sitting in the jury box (next to other defendants, bailiffs, and court personnel).”); *id.* at 75 (“For clients who are incarcerated, the lack of confidential space for attorney-client discussions is a serious and significant problem [in Oakland County].”).

⁹⁹ See *id.* at 72 (describing interview rooms in Wayne County Circuit Court, and noting that “frequently several attorneys are using the same room simultaneously, either to meet with their own clients or to make phone calls”).

¹⁰⁰ See, e.g., *id.* at 74 (noting that Grand Traverse County Circuit Court has confidential interview rooms for out-of-custody clients, but not for in-custody clients).

¹⁰¹ See *id.* at 77 (describing interview rooms at Chippewa County Circuit Court in which the attorney “must talk softly” because “it is possible to hear through the door and a sheriff’s deputy will usually stand guard outside the door”); see also *id.* (describing interview rooms at the Chippewa County jail in which “eavesdropping by sheriff’s deputies was reported to be a problem”).

¹⁰² Communication with MIDC Regional Manager Mike Naughton.

¹⁰³ MCL § 780.993.

¹⁰⁴ MCL § 780.993.