



COUNSEL AT FIRST APPEARANCE AND OTHER CRITICAL STAGES

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 2011-12⁷, 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 2012⁸ served as the basis for the legislation known as the Michigan Indigent Defense Commission Act, which the Governor signed into law in July 2013.⁹ 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..."¹⁰

STANDARD 4

The Michigan Indigent Defense Commission Act (“the MIDC Act”) allows the MIDC to establish minimum standards which “ensure the provision of indigent criminal defense services that meet constitutional requirements for effective assistance of counsel.”¹¹ The MIDC Act directs the agency to keep in mind certain principles when creating these standards, one being that “[t]he same defense counsel continuously represents and personally appears at every court appearance throughout the pendency of the case.”¹² This includes the defendant’s first time appearing in court to hear the charges against her. The presence of counsel at this first stage has a drastic impact on the rest of the defendant’s journey through the criminal justice system,¹³ and outcomes are radically different for defendants with counsel at first appearance and defendants who appear alone.¹⁴

The United States Supreme Court has repeatedly recognized that the right to counsel is implicated when the defendant’s liberty is jeopardized, which encompasses a criminal defendant’s first appearance in court.¹⁵ Advocating for the pretrial release of defendants at first appearance is so significant that doing so is a mandated professional standard for criminal defense attorneys nationwide.¹⁶ Prominent public interest groups have also emphasized the necessity for counsel’s appointment “as soon as feasible after accused persons are arrested, detained, or request counsel.”¹⁷ Despite the documented importance of legal guidance in these early stages, only 6% of Michigan’s district courts require attorneys to be present at both the bail hearing and at arraignment.¹⁸

A defendant’s very first appearance before the court takes place in the district court and provides formal notice of the charges pending against the defendant.¹⁹ During this arraignment, the court advises the client of the charge, tells him of the right to counsel, usually determines eligibility for appointed counsel and typically sets bail.²⁰ Nearly all criminal defendants in Michigan are entitled to bail,²¹ and judges are prohibited by law from setting excessively high bail amounts.²² Judges must fix bail based only on certain factors, such as the seriousness of the offense, the need to protect the public, the defendant’s criminal record, and the likelihood the client will appear at future proceedings.²³

As part of its first set of proposed standards, MIDC Standard 4 addresses counsel at first appearance and other critical stages.²⁴ Standard 4.A proposes the assignment of counsel immediately upon the finding of a defendant’s indigence.²⁵ Since this must be determined “as soon as the defendant’s liberty is subject to restriction by a magistrate or judge,”²⁶ Standard 4.A entails providing counsel at this initial stage. Standard 4.B calls for the presence of appointed counsel at pretrial appearances as well as for other critical stages of all criminal proceedings.²⁷ The Staff Comments suggest the possible solution of hiring an “on-duty arraignment attorney to

represent defendants”²⁸ at every arraignment in Michigan to ensure compliance with the Standard.²⁹

RATIONALE

THE IMPORTANCE OF COUNSEL AT FIRST APPEARANCE

Appearing for the first time in court without an attorney is a reality for indigent defendants in Michigan. Data collected through MIDC court watching showed over three quarters of arraigned clients were not accompanied by an attorney,³⁰ and over half the clients who pled guilty at their first appearance did so unrepresented.³¹ Whether counsel is present at these proceedings influences custody and bail decisions, the interests of the client, and overall efficiency. National and statewide observations of trial court systems show the advocacy of a lawyer at the first appearance stage has a net positive effect in all three areas.

CUSTODY AND BAIL DETERMINATIONS

In most jurisdictions, judges either set a bail amount at the initial arraignment proceeding or release the accused on his own recognizance.³² In Michigan, there is a presumption against pretrial detention and in favor of a defendant’s release as he or she awaits further proceedings. Michigan Court Rule 6.106 requires courts to release a defendant on his own recognizance, “unless the court determines that such release will not reasonably ensure the appearance of the defendant . . . or that such release will present a danger to the public.”³³ The court must provide reasons “state[d] on the record that the defendant’s appearance or the protection of the public cannot otherwise be assured” in order to lawfully deny a personal recognizance bond,³⁴ and those reasons must also be indicated on official court forms.³⁵

However, the presence or absence of a lawyer can be an unintended factor that makes the difference between release and custody. With a lawyer at first appearance, defendants across the country are more than twice as likely to be released without bail, and almost five times more likely to receive a reduction in bail at arraignment.³⁶ Overwhelmingly, judges imposed higher financial conditions on uncounseled defendants than on defendants who appeared with their lawyers.³⁷ Providing the accused the benefit of counsel at first appearance could make an enormous difference in the cost of and likelihood of getting out of jail while awaiting trial.³⁸

IMPACT ON DEFENDANTS

Lengthy pretrial incarceration is associated with excessively high bail, a common reality for clients without counsel at first appearance.³⁹ A study of courts in Harris County, Texas, showed that defendants able to afford bail saw substantially fewer days pass while awaiting trial, and saw

better chances their charges would ultimately be dismissed.⁴⁰ Also alarmingly, the probability a defendant will receive a conviction increases if he remains in jail until the trial.⁴¹

The effect of longer pretrial incarceration extends unmistakably into a defendant's sentencing. Defendants detained for the whole pretrial period are four times more likely to receive jail time – and three times likelier to receive a prison sentence – as defendants released before trial.⁴² Moreover, both state and federal studies demonstrate these defendants serve significantly longer sentences than defendants able to make bond.⁴³

Lacking the advocacy of a lawyer at the first stage can have enormous collateral impacts in the lives of clients and their families.⁴⁴ If he enjoys steady employment, it is unlikely he will keep it much longer as he sits behind bars, unable to report for work because he cannot make bail.⁴⁵ Defendants held on bail routinely lose their jobs during pretrial incarceration, and the consequences of this involuntary unemployment may mean an inability to make rent or pay a mortgage.⁴⁶ Eviction frequently becomes a reality for the families of defendants who remain in jail for long pretrial periods, and family dislocation tends to be another collateral repercussion of a high bail.⁴⁷

Counsel at first appearance sets the tone throughout the representation to ensure the most effective navigation of the legal intricacies of a defendant's case. The defendant and the court sees from the outset of the case the advocacy of appointed counsel. Further, to the extent reasonable conditions of bond can be set, in light of the charge, release decisions can be made in a more informed manner.

In sum, guaranteeing counsel at first appearance could affect a client's waiting time in jail, largely because of counsel's ability to argue in favor of lower bail amounts. Shorter pretrial incarceration periods could diminish collateral consequences for the client and her family, and might provide the client a better chance of acquittal.

INCREASED SYSTEM EFFICIENCY

Guaranteeing representation at first appearance would increase efficiencies throughout the criminal justice system. In terms of pretrial incarceration costs, taxpayers would spend less if lawyers were available to argue bail reductions for defendants at first appearance.⁴⁸ Michigan pilot programs (see below) showed less use of jail bed space and less jail time between arraignment and release as defendants were released earlier. Transport costs likewise would be expected to fall, with fewer in-custody defendants requiring secure escort between a jail and post-arraignment proceedings.

Courtroom efficiency likewise would increase. Counsel at first appearance could identify or inappropriate charges earlier on, and bring prosecution attention to these cases. Cases that

routinely are eligible for diversion or deferred sentencing programs likewise would be identified earlier on, and before a defendant pleads guilty to an offense that otherwise would be entered into such a program. Reducing court caseloads with appropriate resolutions along these lines eases dockets and permits courts to spend more time on the cases that need it. As further detailed in case studies below, two pilot projects in Michigan showed increased efficiencies through a decrease in hearings, quicker case dispositions, and an increase in cases resolved outside of the criminal justice system.

THE IMPORTANCE OF COUNSEL AT CRITICAL STAGES

The language of Standard 4 extends beyond counsel at first appearance by demanding provision of counsel to eligible defendants “at other critical stages, whether in court or out of court.”⁴⁹ The purpose of this requirement is to assure that each defendant is either represented or makes an “unequivocal and knowing, intelligent, and voluntary”⁵⁰ waiver of counsel when facing any critical stage during his or her case. Unfortunately, this is not a reality for many Michigan defendants. As reported in the 2008 NLADA report, members of the American Council of Chief Defenders observed district court proceedings in ten sample counties throughout Michigan. They observed that most misdemeanor defendants in Michigan are not afforded the right to counsel at all, in violation of established Supreme Court precedent.⁵¹ In *Argersinger v. Hamlin*, the Supreme Court held that, “[A]bsent a knowing and intelligent waiver, no person may be imprisoned for any offense . . . unless he was represented by counsel at his trial.”⁵² This broadened the defendant’s right to counsel under *Gideon* to include misdemeanor cases carrying potential imprisonment as well as felony matters. In 2002, the Supreme Court went further and required counsel for defendants given probation or suspended sentences that may become actual incarceration if the defendant violates the terms of her probationary or suspended sentence.⁵³

The NLADA conducted court watching in Michigan and reported several troubling anecdotes about misdemeanants sentenced to probation without attorneys and who also appeared without counsel at their probation violation hearings. These defendants were often sent to jail following the revocation of their probation and were never given a chance to meet with an attorney throughout any stage of the process.⁵⁴ One anecdote cataloged a woman who pled guilty without a lawyer even though she had not waived her right to counsel. The NLADA reported that the factual basis of this woman’s plea “would [have] raise[d] questions with a defense attorney,” yet the judge gave her delayed adjudication and a year of probation.⁵⁵ Because a probation violation can directly result in actual incarceration, a lawyer was constitutionally required to represent her unless she knowingly and intelligently waived counsel. NLADA concluded that District Courts in Michigan routinely failed to supply counsel to eligible misdemeanants. Standard 4’s requirement of counsel at all critical stages pushes Michigan jurisdictions to

eliminate these constitutional violations and provide misdemeanor defendants with counsel to avoid the unexpected consequences of guilty verdicts.

CONNECTED ISSUES

The MIDC encourages local funding units and communities to address other issues surrounding indigent defense as they work to provide counsel at first appearance and critical stages. There exist many national initiatives to improve trial-level indigent defense services that surround bail reform, risk assessment tools, and pretrial release. Indigent criminal defense systems throughout Michigan should contemplate the interplay between each of these services and guaranteeing counsel at first appearance.

BAIL REFORM

In recent years, there has been a nationwide push for bail reform as the disparate consequences of money bail on poor defendants have become increasingly apparent. Multiple successful lawsuits against money bail have been brought on behalf of defendants through many avenues.⁵⁶ In 2015, the nonprofit Equal Justice Under Law brought nine class action lawsuits to challenge money bail systems in several states,⁵⁷ and the organization's efforts in Alabama, Mississippi, Louisiana, and Missouri have deconstructed money bail systems throughout cities across those states.⁵⁸

Nonprofits are not the only players speaking out against money-driven bail systems. During the pendency of the 2015 case of *Varden v. City of Clanton*, the United States Department of Justice filed a statement of interest reminding the court, "Fundamental and long-standing principles of equal protection squarely prohibit bail schemes based solely on the ability to pay."⁵⁹ High bail amounts are imposed on indigent clients who are unable to pay, and those impoverished clients see disproportionately more time in custody before trial than their affluent counterparts just because their counterparts have the money for release.⁶⁰

DEFERRED SENTENCE PROGRAMS AND PROBLEM-SOLVING SYSTEMS

Counsel at first appearance could also help identify alternative resolution programs, including deferred sentence programs, earlier in the criminal process. Michigan has many statutory programs, including those for minors in possession of alcohol, youthful offenders under the Holmes Youthful Trainee Act, first-offenders in possession of personal use amounts of illegal controlled substances, and first-offenders charged with domestic violence. In addition, many counties have local programs involving mental health courts, drug courts for repeat offenders, and programs that address particular issues affecting the homeless, prostitutes, shoplifters, and

the like. A defendant charged with one of these offenses but without counsel very well might not know of these programs and plead guilty without their benefits.

PROSECUTOR PRESENCE

The MIDC has received a number of inquiries relating to the role of a prosecutor in this system of counsel at first appearance and critical stages. Many prosecutors ask if, like the indigent defense offices throughout the state, their offices would be required to have a prosecutor at first appearance under Standard 4. The answer to this question is no. The MIDC standards are binding on indigent defense systems only, and the choice to staff these arraignments that should be made by each individual prosecutor office after taking stock of its available resources.

CONFIDENTIALITY CONCERNS

The standard does not require an initial client interview to be in a completely confidential space if it is solely for purposes of arraignment. The information discussed at this preliminary stage will be focused primarily on information that would be given to the judge for his or her consideration for release (including conditional release) under MCR 6.106. It is not the occasion for Counsel to discuss a detailed strategy for defending the case. Counsel should have the time to familiarize himself or herself with the allegations underlying the complaint, as well as time and space to consult with the defendant about those allegations generally, and it is equally important to gather information relevant to pretrial release including ties to the community, support within the community, work and education history, physical and mental health, and prior criminal history. A consultation in a space that is semi-private but where steps are taken to ensure that the conversation is not overheard meets the standard's requirement.

Where the defendant intends to enter a guilty plea at arraignment, a confidential discussion would be required after counsel reviews discovery material. Once a defendant decides to enter a guilty plea, the nature of the information relayed would change.

COMPLIANCE MODELS – INGHAM, KENT, AND HURON COUNTY PILOT PROJECTS

Beginning operation in the spring of 2014, the 55th District Court in Ingham County and the 63rd District Court in Kent County instituted SCAO-funded programs designed to provide criminal defendants counsel at all arraignments.⁶¹ More recently, Huron County began a similar pilot project in the 73B District Court.⁶² These programs explored the benefits and challenges of counsel at first appearance in anticipation of future MIDC minimum standards. Transitioning into the programs presented logistical challenges and required collaboration between all

stakeholders, but the districts adapted to these challenges and implemented largely successful programs.

INGHAM COUNTY PILOT PROJECT

The 55th District Court in Ingham County implemented their First Appearance Project through a court appointed counsel system. One of the goals of this project was to determine the practicality of providing attorneys at first appearance, considering “Michigan indigent criminal defense systems will [potentially] be required to provide counsel at arraignment.”⁶³ The first phase of this project – FAP I – lasted from April 1 through September 30, 2014, and the second phase – FAP II – lasted from October 1, 2014, through March 31, 2015. During FAP I, four court appointed attorneys rotated in cycles of half-day shifts, representing each defendant needing a lawyer during that shift.⁶⁴ Case assignments arrived in this same way during FAP I, meaning a lawyer who covered a particular shift was required to follow each of those assigned cases to disposition.⁶⁵ This presented significant issues, however, if the attorney on duty had scheduling conflicts that prevented her from being at arraignment. During FAP I, Magistrates in this county saw people wait as long as four hours for an arraignment because their court-appointed attorney was tied up with other cases.⁶⁶ Because of this problem, the cases assigned during FAP II were distributed by the presiding judge based on the date of the case (even date to one attorney and odd dates to another) rather than based on which attorney was on duty for that day.⁶⁷

Data collected during FAP I indicates the program was largely a success when evaluating courtroom efficiency and jail population. The life of a typical case was twenty percent shorter than it had been in the same period of 2013.⁶⁸ The time defendants spent in jail between arraignment and release declined by twenty-eight percent, and within the same period of time jail bed utilization also saw a downturn.⁶⁹ Through the execution of this project, the 55th District resolved over thirteen percent of its cases even before arraignment, who often reduced the charge to a civil infraction or non-reportable misdemeanor.⁷⁰ Data for Ingham County’s program demonstrates that providing counsel at first appearance proceedings is possible and practical, so long as adjustments are made to accommodate attorney scheduling conflicts.

EXPERIENCES WITH INGHAM COUNTY PROGRAM

Those involved with the program in Ingham County had positive experiences in general, even though some felt the project demanded more time than expected. Stacia Buchanan has been a defense attorney with Ingham County for twelve years, and became involved in the program as soon as it was initiated.⁷¹ She was hopeful the court-appointed attorneys could assist defendants in better understanding the court system.⁷² Ms. Buchanan experienced firsthand the challenge of needing to be in two courtrooms at once during her arraignment rotations, which occasionally resulted in lengthy delays for her other non-arraignment clients.⁷³ On the whole, however, Ms.

Buchanan was able to settle cases while at a client's first arraignment, which cut down on the number of court appearances and the times the clerk had to handle a file.⁷⁴ "An attorney at first appearance is a valuable step towards providing the counsel guaranteed by the Constitution," she concluded.

Magistrate Mark Blumer also spoke of his opinion on the counsel at first appearance project after both FAP phases in the 55th District Court. He was pleased with how efficient all four on-duty attorneys have become at obtaining favorable outcomes before matters appear in court, especially in traffic cases, thereby decreasing docket size.⁷⁵ Magistrate Blumer also noticed a reduction in failures to appear, which he attributed to the increased familiarity the defendant gained with the process early on. A first appearance accompanied by counsel, he hypothesized, makes defendants less intimidated and more likely to come back.⁷⁶ The Magistrate also observed a dramatic difference between the number of people who pled guilty before counsel was guaranteed and the number who pled guilty during both FAP phases.⁷⁷ Significantly fewer defendants pled guilty if they were accompanied by counsel, and those who returned after a "not guilty" plea often saw reduced charges or sentences. "Logistical issues aside," he said, "it makes the system work better both for the court and for the defendant."⁷⁸

KENT COUNTY PILOT PROJECT

From March 2014 through September 2015, at least one attorney from the Kent County Office of the Defender worked each day as a court-appointed arraignment attorney.⁷⁹ Each participating attorney worked in this capacity for three week rotations.⁸⁰ The lawyer on duty represented each defendant appearing in court that day, meeting briefly with all walk-ins and in-custody clients beforehand to explain the proceeding and obtain bond information.⁸¹ The public defender conducted video conferences with the in-custody defendants scheduled for arraignment, which gave the public defender the chance to privately address the group and briefly counsel each person before his or her arraignment.⁸² On days where non-custodial arraignments were scheduled along with walk-in and in-custody proceedings, a second public defender would cover arraignments so both courtrooms could be in session at once.⁸³ For misdemeanors not requiring victim consultation, the 63rd District Court coordinated with the prosecutor's office and conducted pretrial conferences which resolved cases as quickly as possible, many times on the same day as a first appearance.⁸⁴

This program had three goals: improving the county's public defense system by providing lawyers as early as feasible after arrest;⁸⁵ improving the use of docket time by eliminating easily-resolvable court appearances;⁸⁶ and protecting defendants' rights against incrimination by utilizing Kent County's public defenders.⁸⁷ The program's original format provided all arrestees *Request for Court-Appointed Counsel* forms which, if approved, guaranteed vertical representation throughout the remainder of the case.⁸⁸ Since the appointment was made as

early in the process as possible, the logistical issue of collecting forms and reviewing eligibility information arose. To address this problem, the program provided “limited legal representation for arraignment purposes for everyone”⁸⁹ during its second year. Defendants now wait until after the arraignment to fill out the form to obtain another public defender for further representation if they are eligible for representation. The 63rd District Court found that this modification greatly increased the ease of access to public defenders in a case’s early stages.⁹⁰

The project also worked to increase utilization of docket time. March to September of 2014 saw an eleven percent decline in total hearings – encompassing arraignments, pretrials, and pleas – from the same time in 2013.⁹¹ That same period in 2015 saw a twenty percent decrease in the total number of hearings since 2013.⁹² Additionally, the 126-day disposition rate for misdemeanor matters rose slightly from 95.22% to 96.34%.⁹³ In terms of the project goals, Kent County saw less success for the second than for the first or third, perhaps because “progress toward goals #1 & #3 might have a negative impact on progress toward goal #2.”⁹⁴ The county found that providing representation earlier in the process did not always help move cases along to quicker dispositions.⁹⁵ Overall, however, the district found the program effectively protected the rights of the defendant, and that “sufficient progress [was] made on each of the stated goals of the grant project.”⁹⁶

EXPERIENCES WITH KENT COUNTY PROGRAM

On the whole, those who interacted with the Kent County First Appearance Pilot Project had positive experiences with the program. Its success seemed to help ease widely held concerns surrounding counsel at first appearance. MIDC Regional Manager Chris Dennie was a public defender on duty in Kent County during the project and spoke highly about his experience with the program. The new procedures, he believed, helped streamline the in-court arraignments. Because defendants had already spoken with a lawyer, judges spent less court time explaining the arraignment process to defendants, which allowed arraignments to move quicker than before.⁹⁷ He also spoke of how grateful defendants were for the assistance of a lawyer at first appearance.⁹⁸ “Overall,” commented Mr. Dennie, “I think [the program] was excellent because of the help it gave to the defendants; that’s the whole point. Courts want to be efficient and that’s great, but the additional help it provided defendants was an invaluable asset.”⁹⁹

In March of 2016, Chief Judge Sara Smolenski and Judge Jeffrey O’Hara for the 63rd District Court expressed their support for the MIDC’s Proposed Minimum Standards, and lent particular support to Standard 4.¹⁰⁰ Reflecting on the court’s provision of counsel at first appearance, Judges Smolenski and O’Hara outlined the details of the pilot program and its successes and challenges. The judges echoed the program’s singular critique: that considerable time was spent distributing and collecting forms from every defendant during the project’s first phase. Identified as a “significant burden on staff resources both at the county jail and the court,”¹⁰¹ the pre-

arraignment use of the forms was discontinued and “limited legal representation” for all defendants at first appearance was implemented during the second grant cycle, calling it “much more efficient and less burdensome for court and jail staff.”¹⁰² Both Judges endorsed counsel at first appearance as “the right thing for Michigan,” and as a “protect[ion of] criminal defendants’ constitutional rights.”¹⁰³ The 63rd District’s experience with the pilot project demonstrates the practicality and plausibility of implementing Standard 4 in funding units throughout Michigan.

HURON COUNTY PILOT PROJECT

Beginning in August of 2016, the 73B District Court began providing attorneys for defendants at arraignment,¹⁰⁴ wishing to take a “proactive approach to the MIDC proposed standard of counsel at first appearance.”¹⁰⁵ Each weekday at noon, one of the seven or eight arraignment attorneys arrives at court, receives “a confidential discovery packet from the prosecutor,” and has time to meet with defendants before the first appearance begins.¹⁰⁶ Arraignments start at 1:30 pm, with both the prosecutor and the defense attorney present (whether physically or virtually through a Polycom system at the jail).¹⁰⁷ The attorney on duty represents all defendants for the duration of the arraignment, and the court passes the file to a permanent court-appointed attorney if the case continues,¹⁰⁸ that permanent attorney is notified by email of the appointment by the end of the day.¹⁰⁹ Arraignment attorneys are paid \$65 hourly and receive compensation for a minimum of an hour if at least one arraignment takes place.¹¹⁰ During the project – August 2016 to January 2017 – the court saw 352 defendants, and 18% of those defendants had their matters resolved at the first appearance.¹¹¹ The court estimates that this represents an 8% increase in first appearance resolutions from 2015 numbers.¹¹²

Experiences with the pilot project in Huron County have been largely positive. Court personnel in 73B felt the administrative challenges they encountered at the beginning of the process had solutions that were simple to implement.¹¹³ These included creating “appropriate forms, intake procedures, and data entry [methods],”¹¹⁴ and court administrators and prosecutors felt these fixes “increased their overall efficiency.”¹¹⁵ In a series of focus groups, arraignment attorneys articulated the belief that defendants had lower anxiety about the court procedures after this project, mainly because an attorney provided clients “a better understanding of the process with which to make informed decisions.”¹¹⁶ Even defendants’ long-term attorneys saw positive changes, sharing in focus groups that subsequent hearings and client meetings “run more smoothly because . . . clients are now receiving clear and comprehensive information at the outset by the arraignment attorney.”¹¹⁷ The court plans to continue providing all defendants with counsel at arraignment.

Based on the data collected from each program and the experiences of the people involved, the first appearance projects in the 55th, 63rd, and 73rd District Courts were successful, and all three could serve as models for other local systems looking to provide counsel at arraignment.

SPECIFIC COMPLIANCE AREAS

It is probable that challenges will arise as each jurisdiction works to provide counsel at first appearance and critical stages as required by Standard 4. However, the MIDC believes innovative solutions can be crafted to allow each local indigent defense system to remain in compliance with the standard, while also prioritizing its individual needs. This section addresses the most anticipated compliance challenges and gives some guidance for working through them. Local systems will find some of the proposed tactics work better for certain areas than others, and these solutions are provided to present problem-solving ideas to offices throughout the state. This is by no means an exhaustive list of problems and potential solutions that may arise as compliance efforts begin.

RURAL AREAS AND LOW-VOLUME SYSTEMS

In a jurisdiction with a highly trafficked indigent defense system, there are typically more attorneys on staff or present in the courtroom on a day-to-day basis. In these areas, it may not be difficult to find enough attorneys to represent defenders at arraignment. However, compliance may be more difficult to achieve in rural jurisdictions with low-volume systems. These systems may not have enough attorneys to cover both the cases in court that day and the individuals who need to be arraigned. For instance, in some areas of the Upper Peninsula, criminal attorneys defending clients in the nearest courthouse must drive two hours one way to do so.¹¹⁸ This means visiting clients can also take four hours round-trip, as the jails are often housed in the same facility as the court. In these sparse areas, criminal defense accounts for only a portion of a lawyer's practice, and frequent periods of unpaid travel time detract from many lawyers' desire to participate in appointed counsel systems.¹¹⁹ As a result, there are very few defense attorneys in rural northern areas. Consider the structure in Keweenaw, Baraga, and Houghton counties, where a single defense attorney handles the misdemeanors for all three counties. Understandably, an attorney in this type of position might be unwilling or unable to serve as on-duty counsel at first appearance while maintaining his current caseload.

The challenges of travelling to a courthouse combined with the low number of defendants and attorneys moving through the courts in rural areas might make Standard 4 compliance seem unwieldy or impractical. Viable methods for overcoming such challenges are possible, however, and one potential solution was executed during the 63rd District's pilot program in Kent County. At the start of the program, the district "did not have the proper equipment for the attorney for the Kent County Office of the Defender to connect to the jail," reported Kevin McKay, Court Administrator for the 63rd District.¹²⁰ This meant an arraignment attorney had to find an open courtroom to confidentially speak with her in-custody clients, or phone in to the jail's video room

from the court.¹²¹ This issue was eliminated after the court obtained the license and equipment needed for Polycom videoconferencing technology that provided attorneys valuable facetime with their in-custody defendants.¹²² After the system was in place, the arraignment attorney on duty was able to converse with in-custody defendants before their court appearances. This allowed attorneys to talk to clients from the convenience of their office, and then travel to the courtroom to be present for in-court arraignments. This helped attorneys balance their caseloads and their arraignment duties.

The total cost of the license and video equipment was under \$200 for the 63rd District,¹²³ though it may be slightly more in jurisdictions that cannot provide easy access to a desktop computer in their courtrooms. The system – and other teleconferencing systems like it – provides for interactions between two or more parties who use the software from their laptop or desktop computer. A free mobile application is also available for attorneys using this equipment on their tablets or mobile devices. Based on the low cost and the relative ease of access of this tool, many rural areas could benefit from providing counsel at first appearance through a videoconferencing system.

WALK-IN ARRAIGNMENTS

Another issue that may stall compliance efforts surrounds walk-in arraignments. Standard 4 requires attorneys to be present to represent defendants regardless of whether the defendant is scheduled to appear, but in many places walk-in arraignments are few in number. Jurisdictions working to comply with Standard 4 might find arraignment attorneys sitting inactive as they await defendants who need on-the-spot representation. For example, attorneys involved in the 63rd District pilot program found themselves sitting in court waiting for walk-in arraignments after the scheduled arraignments were completed for the day, even though Kent County does not see many walk-in arraignments.¹²⁴ According to some attorneys who participated in the program, most of this walk-in time was down time that could have been better spent handling other matters.¹²⁵

Though the infrequency of walk-in arraignments is a reality for many places in Michigan, funding units that already utilize a walk-in system should not feel pressured to alter the structure if their current methods are successful.

Systems may adopt a plan where local attorneys serve as on-call counsel for walk-ins. In this hypothetical, a funding unit could contract with local attorneys to pay them for any walk-ins they see. This type of model would probably be most beneficial in areas where a lawyer's practice is within a reasonable distance from the courthouse, and the defendant could choose to wait for the lawyer to arrive or waive counsel at this stage. In one Southeast Michigan county, for instance, walk-in defendants who tell the judge they want to plead guilty can do so once the city

attorney comes to the courthouse from city hall.¹²⁶ For suburban or urban areas, it would likely present little inconvenience to call a nearby defense attorney for walk-ins in the same manner. However, the on-call system would not necessarily preclude attorneys from providing counsel to walk-in defendants remotely in more rural places, with attorneys again relying on teleconferencing to represent defendants at arraignment.

OVERNIGHT, WEEKEND, AND HOLIDAY ARRAIGNMENTS

Some district courts in Michigan only conduct arraignments on specific days or until the court closes, while others follow established procedures to provide arraignments after regular business hours and on the weekends. For the indigent criminal defense systems that already have preexisting overnight, weekend, or holiday arraignment structures, compliance with Standard 4 will require attorneys to represent all defendants who appear during these off-peak proceedings. These proceedings are just as critical as arraignments conducted during regular court hours, so defendants remain entitled to defense counsel during overnight, weekend, and holiday appearances. Jurisdictions with these systems already in place might achieve compliance by instituting some form of on-call rotation, perhaps utilizing nearby public defender offices or contract attorneys to staff the court as it is needed. Video arraignments may diminish compliance issues in this area as well. Though the timing of these arraignments may pose scheduling inconveniences to the defense attorneys involved, compliance can offer “greater protections for indigent defendants, and [can lead to] superior criminal justice outcomes.”¹²⁷

CONFLICTS

Many judges, court administrators, and defense attorneys often express concern over whether arraignment attorneys will be prone to client conflicts that interfere with their day-to-day practices. The MIDC believes conflicts can be minimized through the limited representation model seen in the 55th and 63rd District Courts, since the lawyer’s representation is for bond purposes only. In the Kent County program specifically, regional consultants for the MIDC have found a lack of conflict for arraignment lawyers representing codefendants within the 63rd District. Because of the limited nature of the representation at that stage, conflicts are thought to be minimal if they exist at all. In fact, the paperwork detailing the assignment of counsel in the 63rd District informs defendants that the lawyer they receive the day of their arraignment will not be the attorney for the entire case.¹²⁸ The clearly limited nature of the representation helped the program remain free of attorney conflict.

For rural areas with fewer attorneys, such as northern Michigan and the Upper Peninsula, it may be less plausible to provide one attorney for limited representation at arraignments and then another to carry the case through its disposition. In these environments, it may make sense for arraignment attorneys to provide entirely vertical representation in the event conflicts do not

arise at the initial arraignment. As with the other compliance methods, the effectiveness of any of these tactics will vary based on the characteristics of the local system, and each should determine which compliance plans will function most effectively in that jurisdiction.

DELAY

Another common concern among Michigan's indigent defense offices is the impact this standard will have on the use of court time and the potential for a delayed process that might result in more time in custody for indigent clients awaiting arraignment. The MIDC does not expect that well-structured compliance systems will slow down a jurisdiction's usual pace of arraignments. In a letter of support for the MIDC's proposed standards, Chief Judge Donald Allen for the 55th District celebrated the district's pilot program for its impact on courtroom efficiency.¹²⁹ "Having counsel available at first appearance resulted in efficient court proceedings," the Judge Allen wrote, noting the average life of a case age "decreased . . . from 32.65 days to 26.22 days"¹³⁰ during the program's lifetime. Moreover, Judge Allen saw his "court's failure to appear rate decrease[] from 124 to 113,"¹³¹ which also indicates the program's effective utilization of court time. With fewer no-show defendants, judges typically issue fewer bench warrants. Since bench warrants eventually force a court to spend extra time on a single defendant, a decrease in failures to appear allows for more effective use of docket time by eliminating the need to repeat pretrials for the same defendant.

Compliance with Standard 4 is not intended to keep people incarcerated longer as they await trial, and statistics for the 55th District program and similar programs in other states indicate this is not a consequence of counsel at first appearance. Chief Judge Donald Allen, Jr. praised the 55th District's program for its effect on defendants' times in jail, noting a decrease in the average time of arraignment from 8.99 days to 6.443 days.¹³² A similar first appearance project was implemented in a rural New York county, and the review study saw no increase in the length of pretrial incarceration over the program's two year duration.¹³³ If implemented properly, Standard 4 compliance plans should not increase the length of time a defendant spends in jail waiting for her trial.

Ideally, compliance plans will be created after thorough coordination with the local funding unit, judges, court administrators, and local attorneys to determine a model to meet everyone's needs while working to protect the rights of all defendants. As stated, these challenges represent only a few that local districts may face, and the corresponding solutions explore a limited number of ways to tackle them.

COMPLIANCE PROCESS

REQUEST GRANT FUNDING

The MIDC Act provides a process for the formation of state-funded compliance plans to meet the standards.¹³⁴ Compliance plans in all these areas will be submitted together with a request for any funding necessary beyond the local share.¹³⁵ 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 to be implemented through state funding.

COLLECT AND SUBMIT DATA TO THE MIDC

In order to comply with Standard 4, the MIDC will be collecting system and case data points from the local delivery systems. The system-wide data points seek information about the Delivery model(s) for provision of counsel at first appearance. The case-level data points will seek information about (1) the presence of counsel at first appearance, (2) the mechanism by which counsel at first appearance was provided, and (3) the type and amount of bail issued, if any. Information about such reporting will be detailed in the grant administration process.

CONCLUSION

The purpose of the standard is to ensure representation of counsel when a judge or magistrate makes an initial custody determination and other critical stages. An indigent defendant will be introduced to the criminal justice process by an attorney and will be less likely to be placed in custody. The presence of counsel or a proper informed waiver will ensure that far fewer indigent defendants plead guilty in Michigan without an understanding of the consequences. Compliance with Standard 4 will ensure that these fundamental principles of effective representation are met.

¹ The Commission wishes to thank Claire Corsey, Esq., Michigan State University College of Law, Class of 2016, for her invaluable research and contributions to this whitepaper.

² Nat'l Legal Aid and Defender Ass'n, *Evaluation of Trial Level Indigent Defense Systems in Michigan: A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis* (Jun. 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_tenp_rinciplesbooklet.authcheckdam.pdf [hereinafter *Ten Principles*].

⁵ *Id.* at Introduction p. 4.

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

⁷ Mich. Exec. Order No. 2011-12 (Oct. 13, 2011), http://www.michigan.gov/documents/snyder/EO_2011-12_366247_7.pdf.

⁸ 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>.

⁹ The MIDC Act is found at MCL §§ 780.981 et. seq.

¹⁰ MCL § 780.991(2).

¹¹ MCL § 780.985(3).

¹² MCL § 780.991(2)(d).

¹³ *The Colorado Bail Book: A Defense Practitioner's Guide to Adult Pretrial Release*, Colorado Criminal Defense Institute, Colorado State Public Defender, National Association of Criminal Defense Lawyers, Sept. 2015 (12) [hereinafter "*The Colorado Bail Book*"].

¹⁴ *See generally id.*

¹⁵ *See Brewer v Williams*, 430 U.S. 387, 398-99; 97 S.Ct. 1232, 1239; 51 L.Ed.2d 424 (1977); *Michigan v Jackson*, 475 U.S. 625, 629, n.3; 106 S. Ct. 1404, 1407, n. 3; 89 L.Ed.2d 631 (1986); *Rothgery v Gillespie County*, 554 U.S. 191, 194; 128 S.Ct. 2578, 2581-82; 171 L.Ed.2d 366 (2008).

¹⁶ *See* AM. BAR ASS'N CRIMINAL JUSTICE STANDARDS 4-2.3 (4th ed. 2015), available at http://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition.html ("A defense counsel should be made available in person to a criminally-accused person for consultation at or before any appearance before a judicial officer, including the first appearance."); Nat'l Legal Aid and Defender Ass'n, *Standards for the Administration of Assigned Counsel Systems*, Standards 2.1 and 2.3, available at http://www.nlada.org/Defender/Defender_Standards/Standards_For_The_Administration_Of_Assigned_Counsel#twoone (requiring that counsel be available to "provide quality representation in all relevant legal proceedings involving their clients," and that all criminal defendants "receive the assistance of assigned counsel in all situations in which a constitutional, statutory or other right to counsel exists.").

¹⁷ The Constitution Project Nat'l Right to Counsel Comm., *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*, THE CONSTITUTION PROJECT 1, 197 (2009), available at <http://www.constitutionproject.org/wp-content/uploads/2012/10/139.pdf>.

¹⁸ Jonah Siegel, *Snapshot of Indigent Defense Representation in Michigan's Adult Criminal Courts: The MIDC'S First Survey of Local Court Systems* (Feb. 2016) (on file with MIDC Staff).

¹⁹ 1A GILLESPIE MICH. CRIM. L. & PROC. § 16.4 (2d ed.).

²⁰ MCR 6.104(E).

²¹ MCL § 765.5 ("No person charged with treason or murder shall be admitted to bail if the proof of his guilt is evident or the presumption great.").

²² MCL § 765.6(1) ("[A] person accused of a criminal offense is entitled to bail. The amount of bail shall not be excessive.").

²³ MCL § 765.5(1)(a)-(d).

²⁴ MIDC Standard 4, available at <https://michiganidc.box.com/s/5ynapyh807j4zqs2o404ef3ehn3o5t2h>.

²⁵ MIDC Standard 4.A.

²⁶ *Id.*

²⁷ MIDC Standard 4.B.

²⁸ MIDC Standard 4, Staff Comments (explaining that representation will not be vertical and the attorney represents defendants at this first proceeding only).

²⁹ For many clients, then, the on duty arraignment attorney would differ from their attorney who represents them throughout the case, including the initial interview process required by MIDC Standard 2.

³⁰ *MIDC Court Watching Data Points* (on file with MIDC Staff). This data was collected by all six Regional Managers throughout all regions. A total of 441 court proceedings were observed over a three-month period.

³¹ *Id.*

³² MCR 6.106(A).

³³ MCR 6.106(C).

³⁴ Milton L. Mack, Jr., *Memorandum to All Judges, Court Administrators, and Magistrates: MC 240 – Order for Pretrial Release*, 1 (Jun. 7, 2016).

³⁵ MCR 6.106(B)(4).

³⁶ Douglas L. Colbert, Ray Paternoster, & Shawn Bushway, *Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail*, 23 CARDOZO L. REV. 1719, 1753 (2002).

³⁷ *Id.* at 1720 (“Without counsel present, judicial officers made less informed decisions and were more likely to set or maintain a pretrial release financial condition that was beyond the individual’s ability to pay.”).

³⁸ Colbert *et. al*, *supra* n. 36 (“...leaving the accused indigent defendant without an attorney when liberty is at stake and a lawyer’s advocacy could make the biggest difference in determining whether a judicial officer continues incarceration.”).

³⁹ *The Colorado Bail Book*, *supra* n. 13.

⁴⁰ Gerald R. Wheeler & Gerald Fry, *Project Orange Jumpsuit: Evaluation of Effects of Pretrial Status on Case Disposition of Harris County Felony & Misdemeanor A/B Defendants*, 4 (2013) (finding that in Harris County, Texas, “[s]tatistically identical defendants who make bond experience: 86% fewer pretrial jail days; 33.3% better chance of getting deferred adjudication; 30% better chance of having all charges dismissed; 24% less chance of being found guilty; and 54% fewer jail days sentenced.”).

⁴¹ Jeffrey A. Kruse, Note, *Substantive Equal Protection Analysis Under State v. Russell, and the Potential Impact on the Criminal Justice System*, 50 WASH. & LEE L. REV. 1791, 1824 (1993) (citing Brant Houston & Jack Ewing, Brant Houston & Jack Ewing, *Blacks and Hispanics Must Pay More to Get Out of Jail; Inequalities Are the Rule in the Bail System*, HARTFORD COURANT, Jun. 16, 1991, at A1).

⁴² See LAURA AND JOHN ARNOLD FOUNDATION, *Pretrial Criminal Justice Research Summary* (2013), available at http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FNL.pdf.

⁴³ *Id.*

⁴⁴ See Myles Braccio & Jessie Lundberg, Notes, 69 Mont. L. Rev. 463, 497 (2008).

⁴⁵ Douglas L. Colbert, *Thirty-Five Years After Gideon: The Illusory Right to Counsel at Bail Proceedings*, 1998 U. ILL. L. REV. 1, 43 (1998).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Colbert *et. al*, *supra* n. 36, at 10.

⁴⁹ MIDC Standard 4B.

⁵⁰ *People v Anderson*, 398 Mich. 361; 247 N.W.2d 857 (1976).

⁵¹ *A Race to the Bottom*, *supra* n. 2 at 15 (“Many district courts throughout Michigan simply do not offer counsel in misdemeanor cases at all, while others employ various ways to avoid their constitutional obligation to provide lawyers in misdemeanor cases.”).

⁵² *Argersinger v Hamlin*, 407 U.S. 25, 37; 92 S.Ct. 2006, 2012; 32 L.Ed.2d 530 (1972).

⁵³ *Alabama v Shelton*, 535 U.S. 654, 662; 122 S.Ct. 1764, 1770; 152 L.Ed.2d 888 (2002) (“Where the State provides no counsel to an indigent defendant, does the Sixth Amendment permit activation of a suspended sentence upon the defendant’s violation of the terms of probation? We conclude that it does not.”).

⁵⁴ *A Race to the Bottom*, *supra* n. 2, at 20.

⁵⁵ *Id.* at 18.

⁵⁶ *Ending the American Money Bail System*, EQUAL JUSTICE UNDER LAW, <http://equaljusticeunderlaw.org/wp/current-cases/ending-the-american-money-bail-system/> (last visited Apr. 1, 2016).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Director Lisa Foster of the Office for Access to Justice Delivers Remarks at ABA’s 11th Annual Summit on Public Defense, available at <https://www.justice.gov/opa/speech/director-lisa-foster-office-access-justice-delivers-remarks-aba-s-11th-annual-summit> (Feb. 6, 2016).

⁶⁰ *Id.* (“Today, roughly 60 percent of the jail population nationally is comprised of pretrial defendants – up from 50 percent in 1996 and 40 percent in 1986. And the overwhelming majority of those people are poor. Bail exacerbates and perpetuates poverty because of course only people who cannot afford the bail assessed . . . – people who are already poor – are held in custody pretrial.”).

⁶¹ These programs were possible through grant funding by the SCAO Court Performance Innovation Fund Grant.

⁶² Report from Judge David B. Herrington for MJI Regional Judicial Seminar, Feb. 2, 2017 (on file with MIDC Staff).

⁶³ Thomas P. Boyd, Chief Judge 55th District, *State Court Administrative Office Court Performance Innovation Fund Grant: Final Progress Report (FY 2015)* 1, 2.

⁶⁴ *Id.* at 1.

⁶⁵ *Id.*

⁶⁶ Interview with Magistrate Mark Blumer re: 55th District Pilot Program – Feb. 19, 2016.

⁶⁷ Boyd, *supra* n. 63, at 1.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Case Study: Ingham County First Appearance Project (FAP): Goal and Objectives*, 1.

⁷¹ Interview with Stacia Buchanan re: 55th District Pilot Project (Feb. 29, 2016).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Interview with Magistrate Mark Blumer re: 55th District Pilot Program (Feb. 19, 2016).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ J. Kevin McKay, *State Court Administrative Office Court Performance Innovation Fund Grant: Quarterly Progress Report (FY 2015)* 1, 2 (Mar. 1, 2015 – Jun. 30, 2015).

⁸⁰ Interview with Chris Dennie re: 63rd District Pilot Program (Feb. 23, 2016).

⁸¹ *Id.*

⁸² *Id.*

⁸³ McKay, *supra* n. 79.

⁸⁴ Hon. Sara J. Smolenski, Hon. Jeffrey J. O'Hara, *Letter from 63rd District Court in Support of Proposed Standards 1, 2*, available at <https://michiganidc.box.com/s/dcpsz6zp9i47ppdvdn3jgbh8onq8vwd8> (Mar. 2, 2016).

⁸⁵ McKay, *supra* n. 79, at 1.

⁸⁶ *Id.*

⁸⁷ *Id.* at 2.

⁸⁸ *Id.* at 1.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ J. Kevin McKay, *State Court Administrative Office Court Performance Innovation Fund Grant: Final Progress Report (FY 2015)* 1, 1 (July 1, 2015 – Sept. 30, 2015).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 2.

⁹⁵ *Id.* at 2-3.

⁹⁶ *Id.* at 3.

⁹⁷ Interview with Chris Dennie re: 63rd District Pilot Program (Feb. 23, 2016).

⁹⁸ *Id.* (Mr. Dennie mentioned on several occasions he was approached by former arraignment-only clients and thanked profusely for increasing their comfort with the court system. These defendants seemed to benefit mentally from being represented so early in the process.)

⁹⁹ *Id.*

¹⁰⁰ Smolenski & O'Hara, *supra* n. 84, at 1.

¹⁰¹ *Id.* at 2.

¹⁰² *Id.* at 2.

¹⁰³ *Id.* at 3.

¹⁰⁴ Report from Judge David B. Herrington for MJI Regional Judicial Seminar, Feb. 2, 2017.

¹⁰⁵ *Id.* at 1.

¹⁰⁶ *Id.* at 1 (“[The c]ourt receives a confidential discovery packet from the prosecutor and holds the packet for the defense attorney with the intake form.”).

¹⁰⁷ *Id.* at 2. (“The jail has a room for arraignments to be held by Polycom and also for attorneys to meet with the defendants that are incarcerated.”).

¹⁰⁸ *Id.* (“Packets are returned to the court to return to the prosecutor to forward to appropriate court appointed attorney in the case. The intake forms are forwarded to the new court appointed attorney . . .”).

¹⁰⁹ *Id.* at 2.

¹¹⁰ *Id.* at 3.

¹¹¹ *Id.* at 3 (“ . . . 18% of the cases result in arraignment and plea or arraignment, plea & sentencing . . .”).

¹¹² Communication with MIDC Research Director Jonah Siegel (Jan. 24, 2017).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Interview with Mike Naughton re: Compliance Challenges (Mar. 21, 2016).

¹¹⁹ *Id.*

¹²⁰ McKay, *supra* n. 91, at 2.

¹²¹ *Id.*

¹²² *Id.*

¹²³ Interview with Kevin McKay re: Polycom License (Apr. 4, 2016).

¹²⁴ Interview with Chris Dennie re: Compliance Challenges (Mar. 16, 2016).

¹²⁵ *Id.*

¹²⁶ Interview with 37th District Court Administrator Robert Curtis re: Walk-In Arraignments – Apr. 4, 2016.

¹²⁷ Hon. Donald J. Allen, *Letter from 55th District in Support of Proposed Standards 1, 2* (Mar. 21, 2016).

¹²⁸ 63rd District Court – CAA Notice (Noncustodial) (Mar. 2015), available at <https://michiganidc.box.com/s/sxxm0ooph5j7kc6pzpuy0en21vmj3tq8> (“If you do not have an attorney today, then an attorney from the Kent County Office of the Defender will be with you in court and represent you for today’s arraignment. **This is only for today’s purposes and is limited to the arraignment only.**” (emphasis in original)).

¹²⁹ Allen, *supra* n. 127, at 1-2. The Chief Judge noted the increase of court efficiency – with shorter average case ages, sooner resolutions of cases, and fewer no-show defendants – and the decrease in time spent in jail for defendants.

¹³⁰ *Id.* at 1.

¹³¹ *Id.* at 2.

¹³² *Id.* at 1.

¹³³ Kirstin A. Morgan, Andrew Davies, & Alissa Pollitz Worden, *Providing Counsel at First Appearance in a Semi-Rural County*, slide 17 (Nov. 21, 2014), available at <https://michiganidc.box.com/s/c5zjnnwx8x0cl106cbkmhqfrq3a9r20>.

¹³⁴ MCL § 780.993.

¹³⁵ MCL § 780.993.