



MICHIGAN INDIGENT
DEFENSE COMMISSION

**A GUIDE FOR SUBMISSION OF
COMPLIANCE PLANS,
COST ANALYSES,
AND LOCAL SHARE
CALCULATIONS**

Summer 2017

Table of Contents

Applicable Statutes	3
Local Share Definition	3
MIDC Creates Rules and Procedures for Compliance Plans for Indigent Criminal Defense Systems	3
Indigent Criminal Defense System Creates Compliance Plan....	3
Approval of Compliance Plans.....	4
Compliance After Funding	4
Introduction.....	5
Compliance Plan Components.....	6
Local Share	7
Funding Process.....	7
General Guidelines for Compliance Plans	8
Cross-Standard Principles	8
Administrator for Delivery Systems	8
Defense Attorneys – Direct Service Providers	8
Non-Lawyers – Direct Service Providers and Interdisciplinary Defense Teams	8
Public Defender and Managed Assigned Counsel Systems	8
Regional Cooperation.....	8
Travel	9
Standard 1 – Training and Education	9
Standard 2 – Initial Interview.....	10
Standard 3 – Investigation and Experts	10
Standard 4 – Counsel at First Appearance and other Critical Stages	11
Resources and Contact Information	12

Applicable Statutes

Local Share Definition

"Local share" or "share" means an indigent criminal defense system's average annual expenditure for indigent criminal defense services in the 3 fiscal years immediately preceding the creation of the MIDC under this act, excluding money reimbursed to the system by individuals determined to be partially indigent." MCL §780.983(g).

MIDC Creates Rules and Procedures for Compliance Plans for Indigent Criminal Defense Systems

"Establishing rules and procedures for indigent criminal defense systems to apply to the MIDC for grants to bring the system's delivery of indigent criminal defense services into compliance with the minimum standards established by the MIDC." MCL §780.989(1)(g).

Indigent Criminal Defense System Creates Compliance Plan

"Except as provided in subsection (2), every local unit of government that is part of an indigent criminal defense system shall comply with an approval plan under this act." MCL §780.997(1).

A system's duty to comply under the terms of its proposed plan as prescribed under subsection (1) is contingent upon receipt of a grant in the amount contained in the plan and cost analysis approved by the MIDC. MCL 780.997(2).

"No later than 180 days after a standard is approved by the department, each indigent criminal defense system shall submit a

plan to the MIDC for the provision of indigent criminal defense services in a manner as determined by the MIDC and shall submit an annual plan for the following state fiscal year on or before February 1 of each year. A plan submitted under this subsection shall specifically address how the minimum standards established by the MIDC under this act shall be met and shall include a cost analysis. The standards to be addressed in the annual plan are those approved not less than 60 days before the annual plan submission date. This cost analysis shall include a statement of the funds in excess of the local share, if any, necessary to allow its system to comply with the MIDC's minimum standards." MCL §780.993(3).

Approval of Compliance Plans

"The MIDC shall approve or disapprove a plan or cost analysis, or both a plan and cost analysis, submitted under subsection (3), and shall do so within 60 calendar days of the submission of the plan and cost analysis. If the MIDC disapproves the plan, the cost analysis, or both the plan and the cost analysis, the indigent criminal defense system shall consult with the MIDC and submit a new plan, a new cost analysis, or both within 30 calendar days of the mailing date of the official notification of the MIDC's disapproval." MCL §780.993(4).

Compliance After Funding

"Within 180 days after receiving funds from the MIDC under subsection (7), an indigent criminal defense system shall comply with the terms of the grant in bringing its system into compliance with the minimum standards established by the MIDC for effective assistance of counsel." MCL §780.993(10).

Introduction

On May 22, 2017, the Department of Licensing and Regulatory Affairs approved the first four minimum standards for indigent criminal defense systems in the State of Michigan. Systems, defined as trial court funding units or a collaboration of trial court funding units in certain circumstances, have until **November 20, 2017**, to submit to the MIDC their plans for addressing the implementation of the standards. These guidelines are designed to assist with the preparation of the cost analysis and compliance planning for delivering indigent criminal defense services. Efficient and cost effective models for delivering indigent criminal defense services are encouraged wherever possible.

The system should identify its desired delivery method. Multiple models ranging from a defender office, an assigned counsel list, contract attorneys, or a mix of systems are available. New public defender offices or managed assigned counsel systems are encouraged where appropriate. In some areas, more than one delivery method will need to be in place to comply with the minimum standards and to provide the highest quality of indigent defense to people who are poor and accused of crimes.

The MIDC Act states that if an indigent caseload is sufficiently high, then a mixed system combining a public defender office and an appointment system may be used. For more information about creating a new system, please see *Delivery System Reform Models: Planning Improvements in Public Defense* (MIDC, December 2016) available on the MIDC's website: <http://bit.ly/midcguide> Whether implementing a new model, or maintaining an existing delivery system, the compliance plans must address how the minimum standards will be met. Efficient models of indigent defense delivery systems that can partner with multiple court funding units where feasible are desired.

Systems are encouraged to include all relevant stakeholders in addressing the new standards, proposing changes to existing

systems, and analyzing the cost of meeting the new standard requirements. Suggestions for stakeholders include, but are not limited to: representatives from the trial court funding unit's administration (i.e. county administrators/controllers, city managers, township supervisors, or their designees), trial court judges, court administrators, members of the local defense bar and local prosecutors. In the case where the system's funding unit is a county, it is strongly recommended that plans submitted are inclusive of the indigent defense services in both the circuit and all of the district courts of the county.

Compliance Plan Components

All compliance plans will need to address the following general information;

- The local system contact for the submitted plan (phone, email, address)
- A local financial contact for the post award fiscal administration
- Trial court funding unit(s) and court(s) included in the plan
- The identification of stakeholders or committee members involved in the planning process
- Collaborative plans must list all systems and trial courts associated with the plan

The submitted plan will address each standard individually. A statement is required to identify and expand on the current or existing state of the system's process or work in subject the area of the standard. The submission will then need to highlight the changes or enhancements needed to achieve the standard, if any. A cost analysis for the implementation issues related to each standard is required. Reasonableness will be stressed and a list or guideline for allowable costs will be provided. **Costs cannot be excessive.** It will be difficult for this guideline to be exhaustive of all possible financial scenarios. To minimize rejections after official

submission, systems should contact their MIDC Regional Manager, before submissions, to discuss compliance plan costs that pose situations not addressed in guidelines.

Local Share

The MIDC Act requires maintenance of a certain level of funding by the local system(s), defined as the local share. The calculation of the local share involves the capture of expenditures for adult indigent defense costs for the three fiscal years preceding enactment of Public Act 93 of 2013. The costs are then offset by the corresponding collections or payments for court appointed counsel services in the same time period on behalf of defendants made by either an individual or an agency.

The submission shall identify a methodology employed to achieve the local share. A certification of the local share calculation, acknowledged through local official authorization, shall be a requirement of the plan. Awards will then be calculated as the sum of the approved cost analysis per standard offset by the local share.

Funding Process

A condition of award to the local system(s) shall include the grantee securing and supplying to the MIDC a resolution from the local legislative branch (board of commissioners, city council) for the creation of a new fund within the local chart of accounts. The sole purpose of this fund shall be for accepting the grants funds from the MIDC and charging all plan-related costs to this fund. As a condition or assurance upon accepting the award, this fund will allow for better management of the grant funds and monitoring by the local and state interested parties. The local fund description shall allow for any fund balance not to revert to the general fund at the close of a fiscal year. Rollover funds will be used for expenditures that cross fiscal years as well as unexpended funds to be used for future compliance expenditures.

General Guidelines for Compliance Plans

Cross-Standard Principles

Administrator for Delivery Systems

A funding unit considering the use of a managed assigned counsel system or public defender administrator must use a licensed attorney in good standing with the State Bar of Michigan for all duties involving management or oversight of attorneys or cases within the system.

Defense Attorneys – Direct Service Providers

All attorneys identified by the funding unit to provide direct representation to indigent defendants must be licensed attorneys in good standing with the State Bar of Michigan and are bound by the Michigan Rules of Professional Conduct. Until approval of Minimum Standard 8, Economic Disincentives or Incentives, funding unit employees or contract providers shall be given reasonable compensation.

Non-Lawyers – Direct Service Providers and Interdisciplinary Defense Teams

Provided they are used to comply with minimum standards, grant funds can be used to hire employees or independently contract with licensed private investigators, or experts in any field recognized in the criminal justice community, to assist the defense.

Public Defender and Managed Assigned Counsel Systems

Systems may choose to set up regional or local delivery system reform models such as public defender offices or managed assigned counsel programs to meet the minimum standards. Set-up and operational costs should be included.

Regional Cooperation

The Commission urges efficient models of providing indigent defense. In some communities, multiple funding units may collaborate to deliver indigent defense services. The statutory authority for multiple counties cooperating in a regional delivery

system model can be found in the Urban Cooperation Act of 1967, at M.C.L. § 124.501 et. seq.

Travel

Any travel related expenses requested for compliance planning shall not exceed the allowable rates provided by the "Schedule of Travel Rates" and the general policies for reimbursement of travel adopted by the State of Michigan. Rates can be found online at http://www.michigan.gov/dtmb/0,5552,7-150-9141_13132---,00.html

Absent extraordinary circumstances, no grant funds for out-of-state travel will be awarded for compliance plans.

Standard 1 – Training and Education

Pursuant to MIDC Standard 1.D, system practices that require assigned counsel to subsidize mandatory training will not be approved. Training shall be funded through compliance plans submitted by the local delivery system or other mechanism that does not place a financial burden on assigned counsel.

In the compliance plan, provide the names and P#s of all attorneys who will provide indigent defense in the year covered by the compliance plan. Further identify in that category how many of those attorneys have practiced criminal defense for two years or less.

In the plan and cost analysis, describe whether the training is part of the 12 hours of annual continuing legal education (CLE) and/or skills training for new lawyers.

For **new training programs**, identify the cost of set-up and implementation including personnel, contractors, equipment, supplies, and operating expenses. For **existing training programs**, identify the number of attorneys to be trained, the courses or programs that will be attended with a cost of registration/tuition (using a rate of no more than \$25 per credit hour), travel, and other expenses.

For webinars, such as the National Association for Public Defense, use an annual rate of \$20/per criminal defense attorney for membership and access to programming.

For the Michigan State Appellate Defender Office's (Criminal Defense Resource Center) online resources, use an annual rate of \$50/per criminal defense attorney for membership and access to programming.

Standard 2 – Initial Interview

If public defender offices need additional attorneys to comply with the initial interview standard, funding units may seek grant funds for personnel.

Other systems may need to change contracting or assigned counsel compensation policies. Funding units, using a contract or rotating assignment system, shall pay attorneys for the initial interview in all assigned criminal cases. Attorneys shall be compensated a reasonable fee for the initial interview. Confidential video visits are permissible for initial interviews with in-custody defendants.

Efficient use of technology (such as the use of PolyCom systems) and existing space in courthouses and jails in lieu of construction projects is encouraged to ensure and facilitate confidential interview space. Equipment can be included in the cost analysis of the compliance plan.

Standard 3 – Investigation and Experts

Funding units may seek grant funds to employ licensed investigators as needed to comply with Standard 3, and/or seek grant funds to contract with investigators or any expert witness identified as necessary to assist with the defense of an indigent client. Funding Units may seek grant funds for a **line item expense** for this purpose. A forthcoming MIDC publication on

allowable expenses will describe the maximum funding for this purpose.

Standard 4 – Counsel at First Appearance and other Critical Stages

Funding Units with public defender systems may seek grant funds to hire defense attorneys to comply with the standard for counsel at first appearance.

Funding units using a contract or rotating assignment system shall pay attorneys for the first appearance in a criminal case. A flat-rate can be paid to an attorney to be available on an on-call basis; until the approval of Standard 8 providing more specific guidelines, counsel shall be paid a reasonable fee.

Resources and Contact Information

MIDC website: www.michiganidc.gov

MIDC main office: 200 N. Washington Sq, 3rd Floor, Lansing
517-657-3066

Questions, anytime: email info@michiganidc.gov

Information about standards <http://michiganidc.gov/standards/>

White Papers to assist with compliance planning:

http://michiganidc.gov/wp-content/uploads/2017/03/White-Papers_Complete-Set-with-Standards.pdf

Delivery System Reform Models: Planning Improvements in Public Defense (MIDC, December 2016): <http://bit.ly/midcguide>

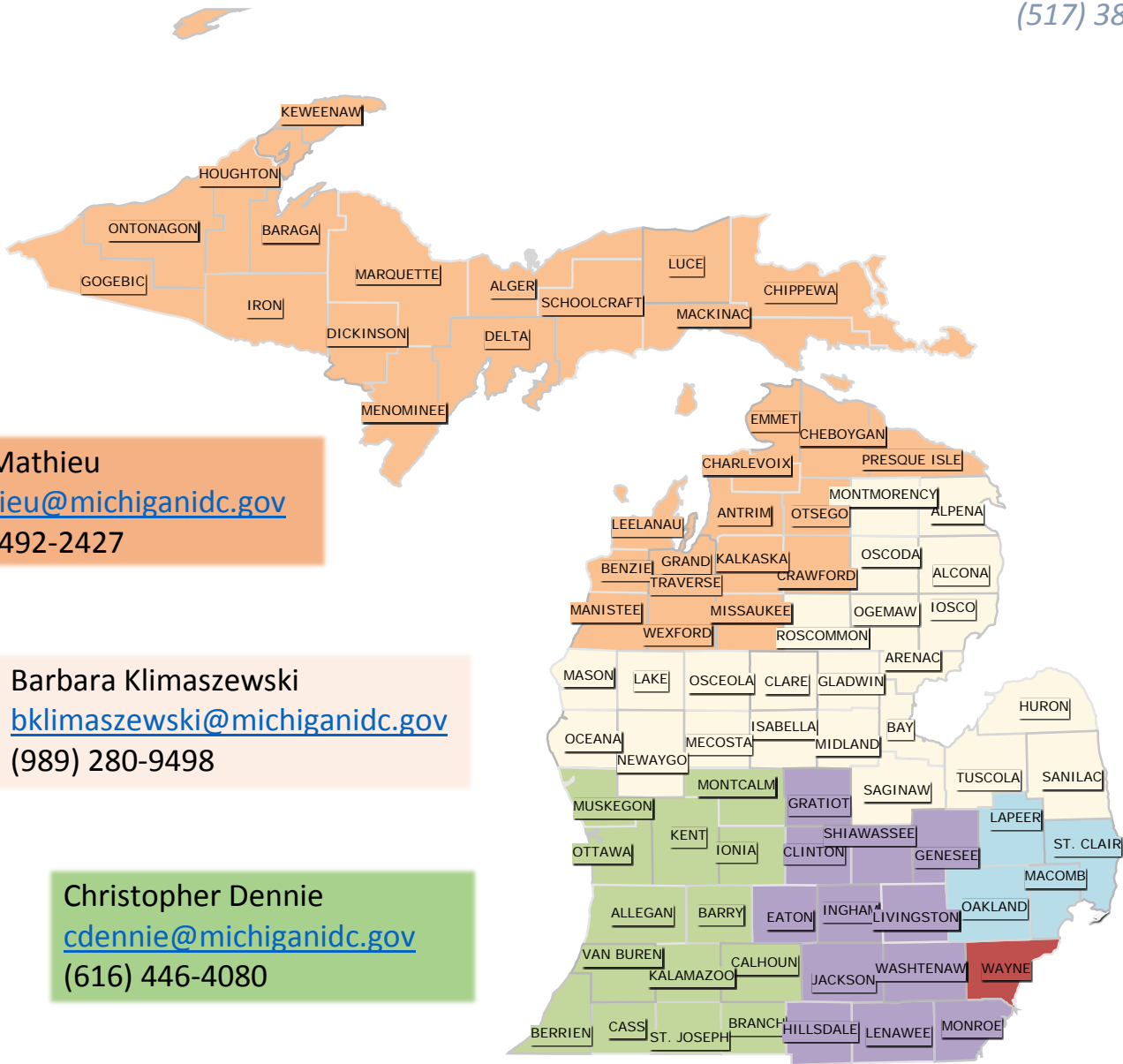
***To schedule a meeting with a Regional Manager,
see the attached map for details and contact
information, also available online at:***

<http://michiganidc.gov/midc-regional-consultant-assignment-and-contact-information/>

Michigan Indigent Defense Commission

Regional Manager Assignments

Contact: Marla McCowan
Director of Training, Outreach & Support
mmccowan@michiganidc.gov
(517) 388-6702



Jana Mathieu
jmathieu@michiganidc.gov
(231) 492-2427

Barbara Klimaszewski
bklimaszewski@michiganidc.gov
(989) 280-9498

Christopher Dennie
cdennie@michiganidc.gov
(616) 446-4080

Ashley Carter
acarter@michiganidc.gov
(517) 582-2427

Kelly McDoniel
kmcdoniel@michiganidc.gov
(313) 319-4431

Tanya Grillo
tgrillo@michiganidc.gov
(586) 638-6546