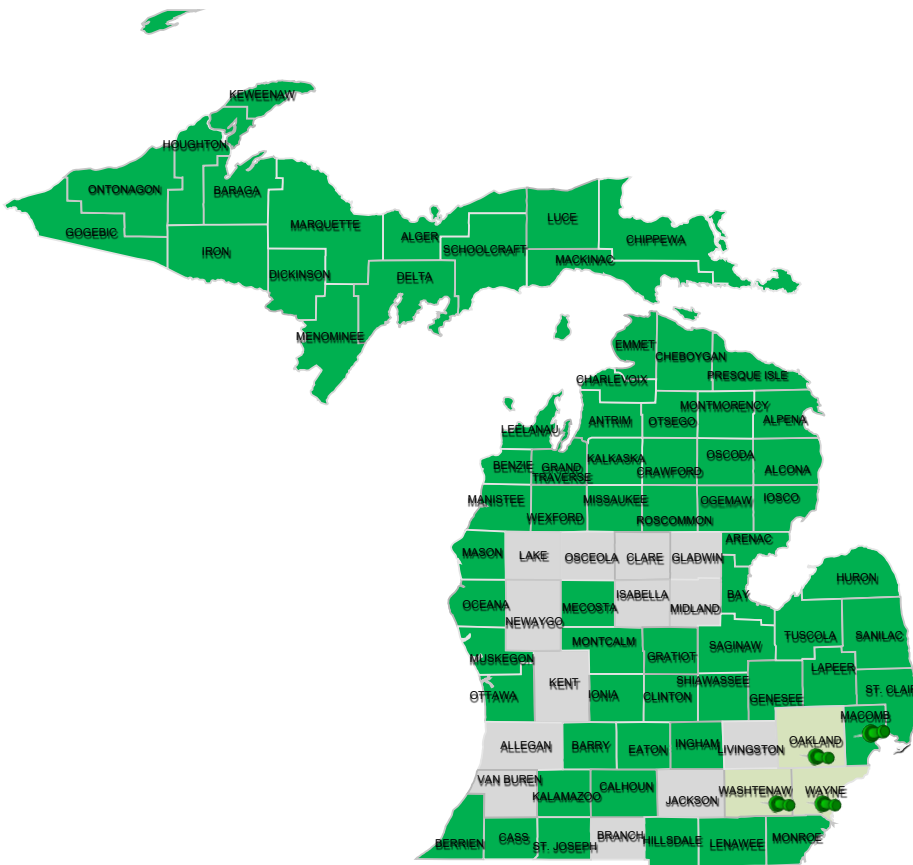




# MICHIGAN INDIGENT DEFENSE COMMISSION

The first compliance plans for indigent defense delivery systems were approved by the Michigan Indigent Defense Commission in 2018 have a total system cost of \$124,644,357.52 with a local share contribution totaling \$37,857,148.17 and state funding of \$86,828,428.75. These plans including funding for the MIDC’s first standards, which cover: training and education of counsel, the initial client interview, use of investigation and experts, and counsel at first appearance and other critical stages.

There are 134 trial court funding units in Michigan, many of which are partnering for implementation purposes, for a total of 125 grant contracts prepared for FY19.



As of February 7, 2019 **93 of the contracts have been finalized**, which call for 50% of the total distributed up front.

As this date, **\$24,124,290.77** in state funding has been distributed to the systems highlighted on this map.

Funding Unit(s) of Approved Plan	Total System Cost	Local Share	Grant Request
<b>Lapeer, Macomb, Oakland, St. Clair</b>			
D 37 - Warren and Centerline	\$1,031,580.03	\$120,164.14	\$911,415.89
D 38 Eastpointe	\$471,543.60	\$51,867.33	\$419,676.27
D 39 Roseville and Fraser	\$1,099,766.99	\$88,307.00	\$1,011,459.99
D 40 St Clair Shores	\$454,918.02	\$6,927.06	\$447,990.96
D 41a-1 Sterling Heights	\$241,233.53	\$0.00	\$241,233.53
D 41a-2 - Utica, Macomb, Shelby	\$434,214.00	\$0.00	\$434,214.00
D 41b - Mt Cl, Harris., Clinton	\$386,516.92	\$42,680.20	\$343,836.72
D 43-1 Hazel Park	\$1,121,167.96	\$17,979.33	\$1,103,188.63
D 43-2 Ferndale	\$636,682.12	\$14,979.00	\$621,703.12
D 43-3 - Madison Heights	\$463,791.17	\$1,743.02	\$462,048.15
D 44 - Royal Oak	\$390,210.00	\$22,204.00	\$368,006.00
D 45 - Oak Park	\$250,230.52	\$41,262.00	\$208,968.52
D 46 - Southfield	\$503,681.00	\$81,000.00	\$422,681.00
D 47 Farmington/Hills	\$189,674.28	\$21,439.28	\$168,235.00
D 48 Bloomfield	\$335,239.76	\$17,087.59	\$318,152.17
D 50 Pontiac	\$812,676.00	\$17,635.00	\$795,041.00
D 51 - Waterford	\$274,618.23	\$31,122.50	\$243,495.73
Lapeer County	\$483,783.49	\$107,480.42	\$376,303.07
Macomb C 16 & D 42-1, 42-2	\$4,762,401.00	\$2,193,874.00	\$2,568,527.00
Oakland C 6 & D 52-1, 2, 3, 4	\$6,741,014.00	\$1,828,758.00	\$4,912,256.00
St. Clair County	\$882,623.00	\$734,024.00	\$148,599.00
<b>Mid- Michigan</b>			
Alcona County	\$149,199.00	\$40,129.28	\$109,069.72
Alpena County	\$579,001.64	\$159,844.67	\$419,156.97
Arenac County	\$276,266.70	\$111,874.72	\$164,391.98
Bay County	\$1,046,774.01	\$593,149.49	\$453,624.52
Clare County	\$909,517.24	\$155,516.42	\$754,000.82
Gladwin County	\$739,236.18	\$75,917.90	\$663,318.28
Huron County	\$286,376.41	\$79,435.60	\$206,940.81
Iosco	\$189,425.91	\$168,107.94	\$21,317.97
Isabella County	\$1,518,690.57	\$233,306.88	\$1,285,383.69

## MIDC Approved totals FY2019

Lake County	\$278,946.70	\$76,217.60	\$202,729.10
Mason County	\$602,573.72	\$153,479.02	\$449,094.70
Mecosta County	\$449,896.00	\$163,317.00	\$286,579.00
Midland	\$521,259.00	\$254,010.60	\$267,248.40
Montmorency County	\$255,173.00	\$16,551.00	\$238,622.00
Newaygo County	\$683,256.40	\$197,076.43	\$486,179.97
Oceana County	\$445,811.00	\$160,924.00	\$284,887.00
Ogemaw County	\$458,830.00	\$144,667.00	\$314,163.00
Osceola	\$270,169.00	\$68,794.00	\$201,375.00
Oscoda County	\$275,237.00	\$53,168.00	\$222,069.00
Roscommon County	\$658,908.67	\$199,282.67	\$459,626.00
Saginaw County	\$3,472,776.00	\$897,917.00	\$2,574,859.00
Sanilac County	\$353,592.31	\$64,269.96	\$289,322.35
Tuscola County	\$993,507.00	\$248,490.00	\$745,017.00

## Northern Michigan

Alger County	\$387,497.25	\$52,313.04	\$335,184.21
Antrim County	\$232,000.00	\$78,431.00	\$153,569.00
Baraga, Houghton, Keweenaw Counties	\$606,495.82	\$197,128.41	\$409,367.41
Benzie and Manistee Counties	\$739,115.00	\$277,055.28	\$462,059.72
Charlevoix County	\$485,765.00	\$164,850.00	\$320,915.00
Cheboygan County	\$364,511.00	\$141,404.00	\$223,107.00
Chippewa County	\$505,268.22	\$219,544.00	\$285,724.22
Crawford County	\$286,999.00	\$14,706.00	\$272,293.00
Delta County	\$310,957.56	\$107,232.00	\$203,725.56
Dickinson County	\$545,042.00	\$67,176.00	\$477,866.00
Emmet County	\$457,360.00	\$159,324.00	\$298,036.00
Gogebic County	\$259,941.88	\$102,132.47	\$157,809.41
Grand Traverse County	\$782,258.00	\$153,580.00	\$628,678.00
Iron County	\$385,666.31	\$71,498.33	\$314,167.98
Kalkaska County	\$336,384.55	\$38,995.00	\$297,389.55
Leelanau County	\$199,258.65	\$51,695.36	\$147,563.29
Luce County	\$216,731.00	\$29,526.00	\$187,205.00
Mackinac County	\$200,099.61	\$133,885.00	\$66,214.61
Marquette County	\$905,912.00	\$224,971.00	\$680,941.00

## MIDC Approved totals FY2019

Menominee County	\$519,747.00	\$113,700.00	\$406,047.00
Ontonagon County	\$120,466.48	\$27,176.34	\$93,290.14
Otsego County	\$333,407.00	\$138,616.00	\$194,791.00
Presque Isle County	\$231,594.81	\$73,289.32	\$158,305.49
Schoolcraft County	\$224,907.76	\$35,532.48	\$189,375.28
Wexford and Missaukee	\$700,327.00	\$143,740.00	\$556,587.00

### South Central Michigan

Clinton County	\$804,874.23	\$144,659.00	\$660,215.23
D 15 - Ann Arbor	\$399,184.18	\$202,061.50	\$197,122.68
Eaton County	\$1,342,128.00	\$435,742.00	\$906,386.00
Genesee County	\$2,726,113.00	\$1,306,848.00	\$1,419,265.00
Gratiot County	\$576,974.00	\$154,059.00	\$422,915.00
Hillsdale County	\$276,348.00	\$111,307.00	\$165,041.00
Ingham County C30, D54, D55	\$5,422,508.00	\$902,021.00	\$4,520,487.00
Jackson	\$1,797,708.93	\$555,121.71	\$1,242,587.22
Lenawee County	\$908,451.30	\$210,191.25	\$698,260.05
Livingston County	\$1,390,173.00	\$916,689.00	\$473,484.00
Monroe County	\$634,839.00	\$211,347.00	\$423,492.00
Shiawassee	\$906,037.00	\$103,798.00	\$802,239.00
Washtenaw C 22 and D14	\$3,814,075.00	\$2,351,612.00	\$1,462,463.00

### Wayne County

D 16 - Livonia	\$414,151.82	\$17,211.86	\$396,939.96
D 17 - Redford	\$295,587.00	\$51,484.56	\$244,102.44
D 18 - Westland	\$447,220.00	\$61,602.00	\$385,618.00
D 19 - Dearborn	\$324,408.94	\$77,157.67	\$247,251.27
D 20 - Dearborn Heights	\$225,780.42	\$9,619.66	\$216,160.76
D 21 - Garden City	\$113,494.31	\$8,746.00	\$104,748.31
D 22 - Inkster	\$225,451.86	\$45,000.00	\$180,451.86
D 23 - Taylor	\$341,616.00	\$39,501.00	\$302,115.00
D 24 - Allen Park	\$189,153.00	\$14,512.33	\$174,640.67
D 25 - Lincoln Park	\$534,415.48	\$10,504.83	\$523,910.65
D 27 - Wyandotte	\$222,711.94	\$1,430.87	\$221,281.07
D 28 - Southgate	\$205,488.35	\$4,586.00	\$200,902.35

D 29 - Wayne	\$343,576.11	\$22,970.40	\$320,606.11
D 30 - Highland Park	\$96,227.90	\$13,500.00	\$82,727.90
D 31 - Hamtramck	\$215,502.00	\$14,175.00	\$201,327.00
D 32a - Harper Woods	\$183,325.42	\$12,388.26	\$170,937.16
D 33 - Trenton	\$267,749.80	\$75,104.67	\$192,645.13
D 34 - Romulus	\$440,679.00	\$54,125.00	\$386,554.00
D 35 - Plymouth	\$238,454.25	\$30,471.56	\$207,982.69
D 36 - City of Detroit	\$2,208,405.25	\$1,063,281.87	\$1,145,123.38
Grosse Pointe Park	\$39,180.00	\$9,966.00	\$29,214.00
Grosse Pte Farms, Shores	\$42,790.00	\$14,692.00	\$28,098.00
Grosse Pte City Municipal	\$29,176.69	\$3,163.00	\$26,013.69
Grosse Pte Woods	\$39,200.00	\$3,083.00	\$36,117.00
Wayne C3	\$24,722,505.00	\$7,447,334.00	\$17,275,171.00

#### Western Michigan

Allegan and Van Buren Counties	\$2,746,775.00	\$529,260.00	\$2,217,515.00
Barry County	\$653,696.67	\$226,323.33	\$427,373.34
Berrien County	\$2,078,992.80	\$562,717.07	\$1,516,275.73
Branch County	\$674,598.50	\$151,377.00	\$523,221.50
Calhoun County	\$2,001,712.67	\$683,258.00	\$1,318,454.67
Cass County	\$349,240.00	\$248,867.00	\$100,373.00
D 59-1 - Grandville	\$111,080.88	\$2,765.33	\$108,315.55
D 59-2 - Walker	\$151,380.88	\$6,102.33	\$145,278.55
D 61 - Grand Rapids	\$482,500.00	\$173,312.00	\$309,188.00
D 62 a - Wyoming	\$190,200.00	\$7,007.00	\$183,193.00
D 62 B - Kentwood	\$177,265.00	\$38,322.28	\$138,942.72
Kent - D 63	\$120,065.00	\$27,167.00	\$92,898.00
Kent - C 17	\$3,210,073.00	\$2,369,210.00	\$840,863.00
Ionia County	\$401,172.00	\$218,603.66	\$182,568.34
Kalamazoo County	\$4,517,800.00	\$1,176,974.54	\$3,340,825.46
Montcalm County	\$565,972.96	\$220,332.19	\$345,640.77
Muskegon County	\$1,580,029.00	\$662,294.00	\$917,735.00
Ottawa County	\$2,867,306.00	\$923,087.00	\$1,944,219.00
St. Joseph County	\$680,350.00	\$414,112.36	\$266,237.64
<b>Total For Plans/Costs Approved</b>	<b>\$124,685,576.52</b>	<b>\$37,925,642.17</b>	<b>\$86,759,934.75</b>



MICHIGAN INDIGENT  
DEFENSE COMMISSION

# Minimum Standards for Indigent Criminal Defense Services

---

SEPTEMBER 2018

Standards 1, 2, 3, and 4 were approved by the Department of Licensing and Regulatory Affairs on May 22, 2017.

This packet contains the complete text of the approved standards and the next set of standards which are being submitted to the Department of Licensing and Regulatory Affairs for approval.

**Michigan Indigent Defense Commission**

200 N. WASHINGTON SQUARE, 3RD FLOOR, LANSING, MICHIGAN, 48913 | [INFO@MICHIGANIDC.GOV](mailto:INFO@MICHIGANIDC.GOV)  
(517) 657-3066

FOR MORE INFORMATION, VISIT OUR WEBSITE AT [WWW.MICHIGANIDC.GOV](http://WWW.MICHIGANIDC.GOV)

## Standard 1 Education and Training of Defense Counsel

The MIDC Act requires adherence to the principle that “[d]efense counsel is required to attend continuing legal education relevant to counsel’s indigent defense clients.” MCL 780.991(2)(e). The United States Supreme Court has held that the constitutional right to counsel guaranteed by the Sixth Amendment includes the right to the effective assistance of counsel. The mere presence of a lawyer at a trial “is not enough to satisfy the constitutional command.” *Strickland v Washington*, 466 US 668, 685; 104 S Ct 2052, 2063; 80 L Ed 2d 674 (1984). Further, the Ninth Principle of The American Bar Association’s *Ten Principles of a Public Defense Delivery System* provides that a public defense system, in order to provide effective assistance of counsel, must ensure that “Defense counsel is provided with and required to attend continuing legal education.”

The MIDC proposed a minimum standard for the education and training of defense counsel. The version conditionally approved by the Court and submitted by the MIDC and approved by the department is as follows:

**A. Knowledge of the law.** Counsel shall have reasonable knowledge of substantive Michigan and federal law, constitutional law, criminal law, criminal procedure, rules of evidence, ethical rules and local practices. Counsel has a continuing obligation to have reasonable knowledge of the changes and developments in the law. “Reasonable knowledge” as used in this standard means knowledge of which a lawyer competent under MRPC 1.1 would be aware.

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

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

**D. Continuing education.** Counsel shall annually complete continuing legal education courses relevant to the representation of the criminally accused. Counsel shall participate in skills training and educational programs in order to maintain and enhance overall preparation, oral and written advocacy, and litigation and negotiation skills. Lawyers can discharge this obligation for annual continuing legal education by attending local trainings or statewide conferences. Attorneys with fewer than two years of experience practicing criminal defense in Michigan shall participate in one basic skills acquisition class. All attorneys shall annually complete at least twelve hours of continuing legal education. 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. The MIDC shall collect or direct the collection of data regarding the number of hours of continuing legal education offered to and attended by assigned counsel, shall analyze the quality of the training, and shall ensure that the effectiveness of the training be measurable and validated. A report regarding these data shall be submitted to the Court annually by April 1 for the previous calendar year.

*Comment:*

*The minimum of twelve hours of training represents typical national and some local county requirements, and is accessible in existing programs offered statewide.*

## Standard 2 Initial Interview

The MIDC Act requires adherence to the principle that “[d]efense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel’s client.” MCL 780.991(2)(a). United States Supreme Court precedent and American Bar Association Principles recognize that the “lack of time for adequate preparation and the lack of privacy for attorney-client consultation” can preclude “any lawyer from providing effective advice.” See *United States v Morris*, 470 F3d 596, 602 (CA 6, 2006) (citing *United States v Cronin*, 466 US 648; 104 S Ct 2039; 80 L Ed 2d 657 (1984)). Further, the Fourth Principle of The American Bar Association’s Ten Principles of a Public Defense Delivery System provides that a public defense system, in order to provide effective assistance of counsel, must ensure that “Defense counsel is provided sufficient time and a confidential space within which to meet with the client.”

The MIDC proposed a minimum standard for the initial client interview. The version conditionally approved by the Court and submitted by the MIDC and approved by the department is as follows:

**A. Timing and Purpose of the Interview:** Counsel shall conduct a client interview as soon as practicable after appointment to represent the defendant in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning counsel’s representation and the case proceedings. The purpose of the initial interview is to: (1) establish the best possible relationship with the indigent client; (2) review charges; (3) determine whether a motion for pretrial release is appropriate; (4) determine the need to start-up any immediate investigations; (5) determine any immediate mental or physical health needs or need for foreign language interpreter assistance; and (6) advise that clients should not discuss the circumstances of the arrest or allegations with cellmates, law enforcement, family or anybody else without counsel present. Counsel shall conduct subsequent client interviews as needed. Following appointment, counsel shall conduct the initial interview with the client sufficiently before any subsequent court proceeding so as to be prepared for that proceeding. When a client is in local custody, counsel shall conduct an initial client intake interview within three business days after appointment. When a client is not in custody, counsel shall promptly deliver an introductory communication so that the client may follow-up and schedule a meeting. If confidential videoconference facilities are made available for trial attorneys, visits should at least be scheduled within three business days. If an indigent defendant is in the custody of the Michigan Department of Corrections (MDOC) or detained in a different county from where the defendant is charged, counsel should arrange for a confidential client visit in advance of the first pretrial hearing.

**B. Setting of the interview:** All client interviews shall be conducted in a private and confidential setting to the extent reasonably possible. The indigent criminal defense system shall ensure the necessary accommodations for private discussions between counsel and clients in courthouses, lock-ups, jails, prisons, detention centers, and other places where clients must confer with counsel.

**C. Preparation:** Counsel shall obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports concerning pretrial release, and discoverable material.



#### **D. Client status:**

1. Counsel shall evaluate whether the client is capable of participation in his/her representation, understands the charges, and has some basic comprehension of criminal procedure. Counsel has a continuing responsibility to evaluate, and, where appropriate, raise as an issue for the court the client's capacity to stand trial or to enter a plea pursuant to MCR 6.125 and MCL 330.2020. Counsel shall take appropriate action where there are any questions about a client's competency.

2. Where counsel is unable to communicate with the client because of language or communication differences, counsel shall take whatever steps are necessary to fully explain the proceedings in a language or form of communication the client can understand. Steps include seeking the appointment of an interpreter to assist with pretrial preparation, interviews, investigation, and in- court proceedings, or other accommodations pursuant to MCR. 1.111.

#### *Comments:*

*1. The MIDC recognizes that counsel cannot ensure communication prior to court with an out of custody indigent client. For out of custody clients the standard instead requires the attorney to notify clients of the need for a prompt interview.*

*2. The requirement of a meeting within three business days is typical of national requirements (Florida Performance Guidelines suggest 72 hours; in Massachusetts, the Committee for Public Counsel Services Assigned Counsel Manual requires a visit within three business days for custody clients; the Supreme Court of Nevada issued a performance standard requiring an initial interview within 72 hours of appointment).*

*3. Certain indigent criminal defense systems only pay counsel for limited client visits in custody. In these jurisdictions, compliance plans with this standard will need to guarantee funding for multiple visits.*

*4. In certain systems, counsel is not immediately notified of appointments to represent indigent clients. In these jurisdictions, compliance plans must resolve any issues with the failure to provide timely notification.*

*5. Some jurisdictions do not have discovery prepared for trial counsel within three business days. The MIDC expects that this minimum standard can be used to push for local reforms to immediately provide electronic discovery upon appointment.*

*6. The three-business-day requirement is specific to clients in "local" custody because some indigent defendants are in the custody of the Michigan Department of Corrections (MDOC) while other defendants might be in jail in a different county from the charging offense.*

*7. In jurisdictions with a large client population in MDOC custody or rural jurisdictions requiring distant client visits compliance plans might provide for visits through confidential videoconferencing.*

*8. Systems without adequate settings for confidential visits for either in-custody or out-of-custody clients will need compliance plans to create this space.*

*9. This standard only involves the initial client interview. Other confidential client interviews are expected, as necessary.*

### **Standard 3 Investigation and Experts**

The United States Supreme Court has held: (1) "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v Washington*, 466 US 668, 691; 104 S Ct 2052, 2066; 80 L Ed 2d 674 (1984); and (2) "[c]riminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both." *Harrington v Richter*, 562 US 86, 106; 131 S Ct 770, 788; 178 L Ed 2d 624 (2011). The MIDC Act authorizes "minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel..." MCL 780.985(3).

The MIDC proposed a minimum standard for investigations and experts. The version conditionally approved by the Court and submitted by the MIDC and approved by the department is as follows:

- A. Counsel shall conduct an independent investigation of the charges and offense as promptly as practicable.
- B. When appropriate, counsel shall request funds to retain an investigator to assist with the client's defense. Reasonable requests must be funded.
- C. Counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution's case. Reasonable requests must be funded as required by law.
- D. Counsel has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance. Decisions to limit investigation must take into consideration the client's wishes and the client's version of the facts.

#### *Comments:*

1. *The MIDC recognizes that counsel can make "a reasonable decision that makes particular investigations unnecessary" after a review of discovery and an interview with the client. Decisions to limit investigation should not be made merely on the basis of discovery or representations made by the government.*
2. *The MIDC emphasizes that a client's professed desire to plead guilty does not automatically alleviate the need to investigate.*
3. *Counsel should inform clients of the progress of investigations pertaining to their case.*
4. *Expected increased costs from an increase in investigations and expert use will be tackled in compliance plans.*

### **Standard 4 Counsel at First Appearance and other Critical Stages**

The MIDC Act provides that standards shall be established to effectuate the following: (1) "All adults, except those appearing with retained counsel or those who have made an informed waiver of counsel, shall be screened for eligibility under this act, and counsel shall be assigned as soon as an indigent adult is determined to be eligible for indigent criminal defense services." MCL 780.991(1)(c); (2) "A preliminary inquiry regarding, and the determination of, the indigency of any defendant shall be made by the court not later than at the defendant's first appearance in court. MCL 780.991(3)(a); (3) ...counsel continuously represents and

personally appears at every court appearance throughout the pendency of the case.” MCL 780.991(2)(d)(emphasis added).

The MIDC proposed a minimum standard on counsel at first appearance and other critical stages. The version conditionally approved by the Court and submitted by the MIDC and approved by the department is as follows:

A. Counsel shall be assigned as soon as the defendant is determined to be eligible for indigent criminal defense services. The indigency determination shall be made and counsel appointed to provide assistance to the defendant as soon as the defendant’s liberty is subject to restriction by a magistrate or judge. Representation includes but is not limited to the arraignment on the complaint and warrant. Where there are case-specific interim bonds set, counsel at arraignment shall be prepared to make a de novo argument regarding an appropriate bond regardless of and, indeed, in the face of, an interim bond set prior to arraignment which has no precedential effect on bond-setting at arraignment. Nothing in this paragraph shall prevent the defendant from making an informed waiver of counsel.

B. All persons determined to be eligible for indigent criminal defense services shall also have appointed counsel at pre-trial proceedings, during plea negotiations and at other critical stages, whether in court or out of court.

*Comments:*

*1. The proposed standard addresses an indigent defendant’s right to counsel at every court appearance and is not addressing vertical representation (same defense counsel continuously represents) which will be the subject of a future minimum standard as described in MCL 780.991(2)(d).*

*2. One of several potential compliance plans for this standard may use an on-duty arraignment attorney to represent defendants. This appointment may be a limited appearance for arraignment only with subsequent appointment of different counsel for future proceedings. In this manner, actual indigency determinations may still be made during the arraignment.*

*3. Among other duties, lawyering at first appearance should consist of an explanation of the criminal justice process, advice on what topics to discuss with the judge, a focus on the potential for pre-trial release, or achieving dispositions outside of the criminal justice system via civil infraction or dismissal. In rare cases, if an attorney has reviewed discovery and has an opportunity for a confidential discussion with her client, there may be a criminal disposition at arraignment.*

*4. The MIDC anticipates creative and cost-effective compliance plans like representation and advocacy through videoconferencing or consolidated arraignment schedules between multiple district courts.*

*5. This standard does not preclude the setting of interim bonds to allow for the release of in-custody defendants. The intent is not to lengthen any jail stays. The MIDC believes that case-specific interim bond determinations should be discouraged. Formal arraignment and the formal setting of bond should be done as quickly as possible.*

*6. Any waiver of the right to counsel must be both unequivocal and knowing, intelligent, and voluntary. People v Anderson, 398 Mich 361; 247 NW2d 857 (1976). The uncounseled defendant must have sufficient information to make an intelligent choice dependent on a range of case-specific factors, including his education or sophistication, the complexity or easily grasped nature of the charge, and the stage of the proceeding.*

## Standard 5 - Independence from the Judiciary

The MIDC Act requires the agency to establish minimum standards, rules, and procedures to adhere to the following: "The delivery of indigent criminal defense services shall be independent of the judiciary but ensure that the judges of this state are permitted and encouraged to contribute information and advice concerning that delivery of indigent criminal defense services." MCL 780.991 (1)(a).

The United States Supreme Court addressed the issue of independence in *Polk v Dodson*, 454 US 312, 321-322; 102 S Ct 445, 451; 70 L Ed 2d 509 (1981):

First, a public defender is not amenable to administrative direction in the same sense as other employees of the State. Administrative and legislative decisions undoubtedly influence the way a public defender does his work. State decisions may determine the quality of his law library or the size of his caseload. But a defense lawyer is not, and by the nature of his function cannot be, the servant of an administrative superior. . . *Second, and equally important, it is the constitutional obligation of the State to respect the professional independence of the public defenders whom it engages.* (Emphasis added.)

The MIDC proposes a minimum standard to ensure that indigent criminal defense services are independent of the judiciary:

A. The indigent criminal defense system ("the system") should be designed to guarantee the integrity of the relationship between lawyer and client. The system and the lawyers serving under it should be free from political and undue budgetary influence. Both should be subject to judicial supervision only in the same manner and to the same extent as retained counsel or the prosecution. The selection of lawyers and the payment for their services shall not be made by the judiciary or employees reporting to the judiciary. Similarly, the selection and approval of, and payment for, other expenses necessary for providing effective assistance of defense counsel shall not be made by the judiciary or employees reporting to the judiciary.

B. The court's role shall be limited to: informing defendants of right to counsel; making a determination of indigency and entitlement to appointment; and, if deemed eligible for counsel and absent a valid waiver, referring the defendant to the appropriate agency. Judges are permitted and encouraged to contribute information and advice concerning the delivery of indigent criminal defense services, including their opinions regarding the competence and performance of attorneys providing such services.

### *Staff Comment:*

*Only in rare cases may a judge encourage a specific attorney be assigned to represent a specific defendant because of unique skills and abilities that attorney possesses. In these cases, the judge's input may be received and the system may take this input into account when making an appointment, however the system may not make the appointment solely because of a recommendation from the judge.*

## Standard 6 - Indigent Defense Workloads

The MIDC Act provides that “[d]efense counsel’s workload is controlled to permit effective representation.” MCL 780.991(2)(b). The United States Supreme Court has held that the constitutional right to counsel guaranteed by the Sixth Amendment includes the right to the effective assistance of counsel. The mere presence of a lawyer at a trial “is not enough to satisfy the constitutional command.” *Strickland v Washington*, 466 US 668, 685; 104 S Ct 2052, 2063; 80 L Ed 2d 674 (1984). Further, the Fifth Principle of The American Bar Association’s Ten Principles of a Public Defense Delivery System provides that a public defense system, in order to provide effective assistance of counsel, must ensure that “[d]efense counsel’s workload is controlled to permit the rendering of quality representation.”

The MIDC proposes a minimum standard for indigent defense workloads:

The caseload of indigent defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys, nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation.<sup>1</sup>

These workloads will be determined over time through special Michigan specific weighted caseload studies.<sup>2</sup> Until the completion of such studies, defender organizations, county offices, public defenders, assigned counsel, and contract attorneys should not exceed the caseload levels adopted by the American Council of Chief Defenders – 150 felonies or 400 non-traffic misdemeanors<sup>3</sup> per attorney per year.<sup>4</sup> If an attorney is carrying a mixed caseload which includes cases from felonies and misdemeanors, or non-criminal cases, these standards should be applied proportionally.<sup>5</sup>

These caseload limits reflect the maximum caseloads for full-time defense attorneys, practicing with adequate support staff, who are providing representation in cases of average complexity in each case type specified.

### *Staff comments:*

- 1. The MIDC is mindful of caseload pressures on the prosecution and fully supports proper funding for prosecutors to have reasonable caseloads.*
- 2. The MIDC is aware that the problem of excessive caseloads is one that needs to be resolved in tandem with compensation reform, so that attorneys do not need to take on too many indigent defense assignments to earn a living. The MIDC is concurrently proposing a standard on economic disincentives or incentives for representing indigent clients.*
- 3. The MIDC does not believe that caseload pressures should ever create a situation where indigent clients facing criminal charges do not receive the appointment of counsel.*
- 4. Compliance plans should include a means to account for and audit caseload calculations.*

---

<sup>1</sup> Language parallels Supreme Court of Washington, *In the Matter of the adoption of new standards for indigent defense and certification of compliance*, Standard 3.2, June 15, 2012.

<sup>2</sup> See e.g. *Guidelines for Indigent Defense Caseloads*, Texas Indigent Defense Commission, January 2015; *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards*, American Bar Association, June 2014. The MIDC has issued a Request for Proposals for a Michigan study.

<sup>3</sup> Non-traffic misdemeanors include offenses relating to operating a motor vehicle while intoxicated or visibly impaired. MCL 257.625.

<sup>4</sup> *American Council of Chief Defenders Statement on Caseloads and Workloads*, Resolution, August 24, 2007. “Per year” refers to any rolling twelve-month period, not a calendar year.

<sup>5</sup> *Id.* An example of proportional application might be 75 felonies and 200 non-traffic misdemeanors in a caseload.

## Standard 7 - Qualification and Review

The MIDC Act calls for a standard establishing that "Defense counsel's ability, training, and experience match the nature and complexity of the case to which he or she is appointed." MCL 780.991(2)(c). Further, the Act requires that "Defense counsel is systematically reviewed at the local level for efficiency and for effective representation according to MIDC standards." MCL 780.991(2)(f). The MIDC's conditionally approved Standard 1 sets forth the requirements for the Education and Training of assigned counsel, and should be considered a prerequisite to, and means to achieve, the standard for qualification and review of criminal defense attorneys appointed to represent indigent accused defendants. The United States Supreme Court has held that the constitutional right to counsel guaranteed by the Sixth Amendment includes the right to the effective assistance of counsel. *Strickland v Washington*, 466 US 668, 685; 104 S Ct 2052, 2063; 80 L Ed 2d 674 (1984). The right to effective assistance of counsel applies equally whether counsel was appointed or retained. *Cuyler v Sullivan*, 446 US 335, 344-45; 100 S Ct 1708, 1716; 64 L Ed 2d 333 (1980).

The MIDC proposes a minimum standard for qualification and review:

- A. **Basic Requirements.** In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications (hereafter "basic requirements"):
1. Satisfy the minimum requirements for practicing law in Michigan as determined by the Michigan Supreme Court and the State Bar of Michigan; and
  2. Comply with the requirements of MIDC Standard 1, relating to the Training and Education of Defense Counsel.
- B. **Qualifications.** Eligibility for particular case assignments shall be based on counsel's ability, training and experience. Attorneys shall meet the following case-type qualifications:
1. Misdemeanor Cases
    - a. Satisfaction of all *Basic Requirements*; and
    - b. Serve as co-counsel or second chair in a prior trial (misdemeanor, felony, bench or jury); or
    - c. equivalent experience and ability to demonstrate similar skills.
  2. Low-severity Felony Cases
    - a. Satisfaction of all *Basic Requirements*; and
      - i. Has practiced criminal law for one full year (either as a prosecutor, public defender, or in private criminal defense practice); and
      - ii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have reached a verdict, one of which having been submitted to a jury; or
      - iii. Have equivalent experience and ability to demonstrate similar skills.
  3. High-severity Felony Cases
    - a. Satisfaction of all *Basic Requirements*; and
      - i. Has practiced criminal law for two full years (either as a prosecutor, public defender, or in private criminal defense practice); and
      - ii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in four criminal cases that have been submitted to a jury; or

- iii. Has a significant record of consistently high quality criminal trial court representation and the ability to handle a high-severity felony case.
4. Life Offense Cases
- a. Satisfaction of all *Basic Requirements*; and
    - i. Has practiced criminal law for five full years (either as a prosecutor, public defender, or in private criminal defense practice); and
    - ii. Has prior experience as lead counsel in no fewer than seven felony jury trials that have been submitted to a jury; or
    - iii. Has a significant record of consistently high quality criminal trial court representation and the ability to handle a life offense case.
- C. **Review.** The quality of the representation provided by indigent defense providers must be monitored and regularly assessed. Productivity is a component of the review process. Review is a process to evaluate the quality of the representation after an attorney has established the minimum requirements for eligibility. For attorneys seeking qualification under sections B(1)(c) or B(2)(a)(iii), the review process can be used for that purpose. In some cases, the review will give notice to an attorney whose performance can be improved. In all cases, the evaluation of attorneys must be made by peers in the criminal defense community, allowing for input from other stakeholders in the criminal justice system including judges, prosecutors and clients.

*Staff Comments:*

1. *The Minimum Standard for Qualification and Review applies to all attorneys accepting assignments to represent defendants charged in adult criminal cases, including attorneys employed by a public defender office.*
2. *In public defender offices, equivalent experience in misdemeanor and low severity felony cases can include training programs or supervised assignments.*
3. *Misdemeanors, low-severity felonies and high-severity felonies are defined in the Michigan Legislative Sentencing Guidelines. A "life offense" for purposes of this Minimum Standard includes any case where the offense charged or enhancement sought subjects the accused defendant in a criminal case to life in prison.*
4. *The MIDC Act focuses on qualifications that relate to counsel's ability, training and experience. Other non-merit based qualifications that relate to counsel's membership in a bar association or maintaining a local business address shall not be given undue weight.*
5. *The MIDC discourages imposing a geographic limitation on counsel's practice area, so long as counsel can meet with a client on an as-needed basis without hardship to the client and can appear in court when required.*
6. *The appointing authority should maintain a list of qualified counsel, but has the discretion to reach outside of the list of locally qualified attorneys when required in order to appoint counsel with the ability, training and experience to match the nature and complexity of the case to be assigned.*

## **Standard 8 - Attorney Compensation (Economic Disincentives or Incentives)**

Attorneys must have the time, fees, and resources to provide the effective assistance of counsel guaranteed to indigent criminal defendants by the United States and Michigan Constitutions. The MIDC Act calls for a minimum standard that provides: "Economic disincentives or incentives that impair defense counsel's ability to provide effective representation shall be avoided." MCL 780.991(2)(b). Fair compensation for assigned counsel may optimally be achieved through a public defender office, and the MIDC recommends an indigent criminal defender office be established where assignment levels demonstrate need, together with the active participation of a robust private bar. MCL 780.991(1)(b). In the absence of, or in combination with a public defender office, counsel should be assigned through a rotating list and be reasonably compensated. Contracted services for defense representation are allowed, so long as financial disincentives to effective representation are minimized. This standard attempts to balance the rights of the defendant, defense attorneys, and funding units, recognizing the problems inherent in a system of compensation lacking market controls.

The MIDC proposes the following minimum standard regarding economic incentives and disincentives:

**A. Rates of Payment for Salaried Public Defenders.** Reasonable salaries and benefits and resources should be provided to indigent defense counsel. The rates paid by the Michigan Attorney General for Special Assistant Attorneys General, or other state offices serve as guidance for reasonable compensation.

**B. Compensation and Expenses for Assigned Counsel.** Assigned counsel should receive prompt compensation at a reasonable rate and should be reimbursed for their reasonable out-of-pocket, case-related expenses. Assigned counsel should be compensated for all work necessary to provide quality legal representation. Activities outside of court appearances, such as directing an investigation, negotiating, or tactical planning, etc., require no less legal skill and expertise than in-court appearances, and are equally important to quality representation.

Attorney hourly rates shall be at least \$100 per hour for misdemeanors, \$110 per hour for non-life offense felonies, and \$120 per hour for life offense felonies. These rates must be adjusted annually for cost of living increases consistent with economic adjustments made to State of Michigan employees' salaries. Counsel must also be reimbursed for case-related expenses as specified in Section E.

To protect funding units, courts and attorneys alike, local systems should establish expected hourly thresholds for additional scrutiny. Assigned counsel should scrupulously track all hours spent preparing a case to include with invoice submission. All receipts or documentation for out-of-pocket and travel-related expenses actually incurred in the case qualifying for reimbursement should be preserved. Fee requests which exceed expected hourly thresholds should not be paid until an administrative review indicates that the charges were reasonably necessary.

Event based, capped hourly rates, and flat fee payment schemes are discouraged unless carefully designed to minimize disincentives and provide compensation reasonably expected to yield an hourly rate of compensation equivalent to the required minimum rate. If utilized, these alternative schemes must be based on a compensation system that realistically assesses the cost of providing competent representation, including the costs of trial,



investigation, expert assistance, and extraordinary expenses, and should take into consideration objective standards of representation consistent with those set forth in other minimum standards for indigent defense. They should also follow all expense reimbursement guidelines in Section E.

**C. Contracting for Indigent Defense Services.** The terms of any indigent defense contract should avoid any actual or apparent financial disincentives to the attorney's obligation to provide clients with competent legal services. Contracts may only be utilized if:

- (1) They are based on reliable caseload data, and in conjunction with a method, specified in the contract, for compensation to account for increases or decreases in caseload size;
- (2) They are based on a compensation system that realistically assesses the cost of providing competent representation as described above in Section B;
- (3) They provide for regular, periodic payments to the indigent defense organization or attorney;
- (4) They include a mechanism to seek reimbursement for case-related expenses;
- (5) They include a provision allowing for counsel to petition for additional compensation for the assignment of co-counsel in any case where the offense charged or enhancement sought subjects the indigent defendant to life in prison;
- (6) They implement the MIDC required hourly rates; when hourly schemes are not utilized, local systems must demonstrate that compensation is at least equivalent to these rates.

**D. Conflict Counsel.** When any conflict of interest is identified by a public defender office or by assigned counsel, that case should be returned for reassignment to the designating authority. Payments to conflict counsel (fees or any other expenses incurred during the representation) shall not be deducted from the line item or contract negotiated with the primary providers (public defender office, house counsel, assignment system or through any agreement with private attorneys or law firms).

**E. Reimbursements.** Attorneys must be reimbursed for any reasonable out-of-pocket expenses they incur as a result of representation. Mileage should be reimbursed based on prevailing local norms and should not be less than State of Michigan standard published rates.

**F. Payments.** Vouchers submitted by assigned counsel and contract defenders should be reviewed by an administrator and/or her and his staff, who should be empowered to approve or disapprove fees or expenses. This is efficient, ensures the independence of counsel, and relieves judges of the burden of this administrative task. It also helps to equalize fees through a centralized fee-approval system. Vouchers should be approved in a timely manner unless there is cause to believe the amount claimed is unwarranted. In lengthy cases, periodic billing and payment during the course of representation should be allowed.

Expenditure of public dollars should be subject to control mechanisms and audits that verify expenditure accuracy. This should be accomplished by following generally accepted procedures that separate staff duties; establish billing policies; and ensure thorough review of vouchers, including benchmark setting and investigation where necessary. The approval process should be supported by an efficient dispute resolution procedure.

#### **Sources and Authority for Proposed Standard 8:**

*A Race to the Bottom: Speed & Savings Over Due Process: A Constitutional Crisis*, National Legal Aid & Defender Association (2008).

U.S.C.A. Const. Amend. 6; Mich. Const. 1963 Art. 1, § 20.  
ABA 10 Principles of a Public Defense Delivery System (Principle 8).  
American Bar Association Criminal Justice Standards for Providing Defense Services, Standard 5-2.4.

*Position Paper on Reasonable Fees After the Passage of the MIDC Act*, Michigan Indigent Defense Commission (Summer 2016).

*In re Atchison*, No. 292281, 2012 WL 164437 (Mich. Ct. App. Jan. 19, 2012).

*Staff Comments:*

1. *Attorneys should be reimbursed for expenses for investigators, expert witnesses, transcripts, and any reasonable out-of-pocket expenses incurred in the course of representation.*
2. *For hourly payments, local systems should establish protocol through which indigent defense administrators oversee the submission, review and approval of invoices for both assigned counsel and contract counsel. Attorneys should be directed to submit explanations for any invoices in which their hours exceed the expected maximum hours. After attorneys submit itemized bills, the administrator and/or staff should review and determine whether the case falls into the category of minimal scrutiny, meaning that it falls within the expected number of allotted hours, or the category of heightened scrutiny for exceeding an expected hourly threshold, meaning the administrator needs to further investigate the invoice. Bills should not be automatically approved or denied if they fall too far above or below the expected threshold, but rather the attorneys' explanations should be reviewed, and if the administrator does not find the explanation sufficient, the administrator should invite further explanation. Upon receiving additional details, the administrator then makes a final decision. All local systems should have policies in place that outline voucher review procedures, including the right for attorneys to appeal decisions and the right for administrators to remove attorneys from panel lists or terminate contracts for ongoing submissions that exceed the threshold. Other appropriate remedies or punishments for abusive billing practices should be developed by local systems.*
3. *Due to the potential to disincentivize quality representation, event based, capped hourly rates, and flat fee payment schemes will be subjected to increased monitoring and auditing as a condition of receiving MIDC funds.*
4. *The MIDC will collect data on event based, capped hourly rates, and flat fee payment schemes for the first year after implementation of this standard and revise the standard if these schemes are disincentivizing quality representation.*

# Ensuring Independence and Quality in a Managed Assigned Counsel System

## Lessons Learned in Four Decades of the Michigan Appellate Assigned Counsel System



By **Bradley R. Hall**  
and **Kathryn R. Swedlow**

Since its passage in 2013, the Michigan Indigent Defense Commission Act<sup>1</sup> is rapidly transforming the way in which trial-level indigent criminal defense counsel are trained, regulated, supported, and compensated. In response to the act's independence requirement<sup>2</sup> and a proposed related standard,<sup>3</sup> many Michigan trial courts are transitioning away from traditional assigned counsel systems in which the court itself manages and selects counsel from a list of private attorneys. Instead, the courts are gravitating toward managed assigned counsel systems in which an independent outside entity regulates the assignment list and selects counsel.<sup>4</sup> Along with the growth of public defender offices, this development has the potential to vastly improve the quality of indigent defense representation in Michigan.

This transformation will bring challenges. Trial courts must adjust to a loss of responsibility and control over panels and assignments, while counsel face heightened requirements for training, oversight, vouchering, and reporting. And although the act relies on state funding to alleviate local financial burdens,<sup>5</sup> budget uncertainty remains given the scope and complexity of reform.

The Michigan Appellate Assigned Counsel System (MAACS) has been confronting many of the same challenges in the appellate context since its inception in 1978,<sup>6</sup> and with renewed energy and success since its merger with the State Appellate Defender Office (SADO) in 2014.<sup>7</sup> Because SADO provides resources, training, and expertise that would otherwise fall outside the capacity of a pure administrative office, this partnership has enhanced MAACS's ability to engage more efficiently and effectively in its core function of ensuring the independent appointment of quality private appellate counsel.

The MAACS experience is timely and relevant for trial-level assigned counsel reform. This article shares four lessons we have learned as MAACS administrators on how an independently managed assigned counsel system can most effectively serve the needs of indigent defendants and the courts.

### Lesson 1: Be independent but flexible

The distinguishing feature of a managed assigned counsel system is its independence from the courts. But independence need not mean intransigence, and MAACS has learned that rotational assignment systems can best serve the interests of justice and efficiency when they maintain a level of receptiveness to the courts' concerns and flexibility in assignment decisions.

Historically, the appointment of felony appellate counsel in Michigan was similar to the appointment of trial counsel, with courts appointing whomever they wanted, however they wanted.<sup>8</sup> Some courts appointed counsel ad hoc or through assignment lists, but access to these assignments sometimes depended on personal relationships or patronage rather than merit.<sup>9</sup> Other courts contracted with a lawyer or firm to handle all appeals for a flat fee, which was cheap and predictable for the courts but discouraged attorney effort and time.<sup>10</sup> A common thread was the lack of independence and lawyers' natural reluctance to be critical of the judges who appointed them or spend too much time on appointed cases.

In 1978, the legislature addressed these concerns with the Appellate Defender Act, which established an Appellate Defender Commission and required courts to appoint appellate counsel either from a "roster provided by the commission" or from SADO, a state-funded office that would handle at least 25 percent of cases.<sup>11</sup> MAACS was established to assemble and manage a statewide roster, compile local assignment lists for each trial court, enforce minimum performance standards, and take steps to ensure quality private appellate assigned counsel representation.<sup>12</sup> MAACS was to be "coordinated with but separate from" SADO, with both agencies reporting to the commission.<sup>13</sup>

Although most courts immediately began appointing appellate counsel through MAACS, a few refused until the Supreme Court mandated compliance in 1989.<sup>14</sup> Since then, MAACS has

successfully insulated appellate counsel from excessive judicial influence, and courts have largely abstained from efforts to control assignment decisions or roster management.

This independence has evolved over time, providing important lessons about flexibility and control. The commission and Supreme Court originally envisioned a system of rigid list rotation with limited exceptions for cause (such as conflicts) and with SADO receiving exactly every fourth assignment.<sup>15</sup> By 1989, however, these requirements were relaxed to give the commission greater flexibility to assign SADO a more appropriate percentage and type of cases and allow the appointment of SADO or any other attorney out of sequence for geographic considerations or case complexity.<sup>16</sup>

In 2017, the commission extended that flexibility further. "In the interests of justice or judicial economy," MAACS may now bypass rotating assignment lists and "select SADO or any roster attorney" as appellate counsel in "exceptional circumstances" such as "a prior attorney-client relationship, the avoidance of potential breakdowns or conflicts..., geographic factors, the unique complexity of an appeal, [or] the subject

## At a Glance

As Michigan's trial courts and funding units look for new ways to deliver effective and efficient indigent defense services through Managed Assigned Counsel Systems, they may wish to look to the Michigan Appellate Assigned Counsel System (MAACS) for guidance. From its inception in 1978 through its recent reform and merger with the State Appellate Defender Office, MAACS has learned the value of flexible independence, trial court partnerships, public defender partnerships, and proactive oversight—all to the benefit of courts, assigned counsel, and indigent criminal defendants.



matter expertise of counsel.”<sup>17</sup> Since trial judges may have first-hand knowledge of these issues, it makes sense to account for such concerns in the counsel selection process. As such, the MAACS regulations recognize that the interests of justice, economy, and common sense are not always served by blind adherence to rotating assignment lists and that courts may play a role in informing assignment decisions. Ultimately, however, those decisions must fall to MAACS and not the appointing courts.

### Lesson 2: Partner with multiple trial courts

MAACS’s most significant structural reform began in 2015 with an innovative Regional Pilot Project that partnered MAACS with 14 trial courts in the Upper Peninsula and eastern Lower Peninsula to create two consolidated regional assignment lists operating under uniform fee and voucher policies. MAACS secured the courts’ voluntary participation—despite significant budgetary implications—by offering its own expertise and the economy of scale to absorb many of the frustrating administrative tasks otherwise required of trial court staff.

These interdependent reforms allowed MAACS to assume more responsibility in the assignment process, improving speed and efficiency while giving MAACS greater control over caseloads and the collection of meaningful productivity and fee data. Perhaps most importantly, the new scheme evened the playing field on fees, harmonized vouchering practices, and provided courts and attorneys alike with greater predictability and fairness while aiding recruitment and retention efforts.

The pilot’s popularity led to its expansion into most trial courts statewide and the establishment of five distinct regions. In 2017, the Supreme Court approved the permanent regional consolidation of assignment lists,<sup>18</sup> and MAACS continues its efforts to secure voluntary statewide participation.

This experience has shown that a managed assigned counsel system operates most effectively when it serves multiple jurisdictions with shared interests and geography. An agency with ample expertise and resources, and with data and participation from many attorneys and stakeholders across jurisdictional lines, can support and supervise attorneys on a scale that would be impossible for a part-time consultant. In short, trial court partnerships foster innovation, efficiency, and quality to the benefit of all stakeholders.

### Lesson 3: Partner with a public defender

Since its merger with SADO in 2014, MAACS has found that partnering with a public defender office has improved its capacity to provide necessary resources, training, and expertise to the private bar, resulting in better representation.

Most roster attorneys are solo practitioners or work in small offices, lacking access to many of the resources available to prosecutors or SADO attorneys. SADO’s training division, the Criminal Defense Resource Center, works to close that gap. For example, the center offers roster attorneys many online resources and tools that are available to SADO attorneys, and roster attorneys can also take advantage of video conferencing equipment at SADO’s Detroit and Lansing offices for confidential visits with incarcerated clients.<sup>19</sup>

The SADO partnership has also led to formation of the grant-funded Appellate Investigation Project under which experienced SADO staff attorneys team up with investigators to assist roster attorneys in developing and presenting extra-record claims in the same way that SADO is accustomed to doing.<sup>20</sup> By identifying and developing a record for meritorious claims and eliminating those lacking factual support, this model helps ensure justice for indigent defendants and confidence in case outcomes while saving the courts valuable time and resources. The project has achieved significant results

for MAACS clients, including new trials, remands for evidentiary hearings, and sentencing relief.<sup>21</sup> It also provides a broad range of litigation support, including briefing assistance, second-chair support at hearings, moot oral arguments, and strategic consultation.

Although Michigan does not have mandatory CLE, MAACS has long required CLE for roster attorneys.<sup>22</sup> Historically, its ability to provide live training seminars was limited and largely dependent on grant funding. MAACS administrative staff traditionally conducted trainings themselves or brought in external speakers for specific programs. But recent paradigm shifts in adult education demand more, as there is a significant difference between recognizing the need for CLE and producing quality programs for today's adult learner.<sup>23</sup>

Since its merger with SADO, MAACS has increased the annual CLE requirement from 7 hours to 12 hours and improved the scope and content of available training.<sup>24</sup> By collaborating with the Criminal Defense Resource Center and relying on SADO's large staff of attorney-trainers, MAACS has been able to provide better and more diverse training, including an annual orientation for new attorneys, an annual training for all attorneys, an annual multi-day Appellate Writing Workshop, and monthly virtual-case rounds. The result is a vibrant collection of training programs that transforms mandatory CLE from a chore to an exciting learning experience, all to the benefit of roster attorneys, indigent clients, and the judicial system.<sup>25</sup>

Finally, the SADO merger has provided MAACS with invaluable expertise. A managed assigned counsel system should be directed by attorneys "with substantial experience in the practice of criminal law and the ability to provide supervision and leadership for participating attorneys."<sup>26</sup> But just as practicing attorneys must stay abreast of the law, attorney supervisors must do so as well—even those who came into the job with subject-matter expertise. Knowledge and skills are not static, and even specialists require ongoing professional development. Just as roster attorneys benefit from the close affiliation with SADO, so too does the MAACS administration. This, in turn, aids in the effective supervision, training, and management of the roster.

#### Lesson 4: Engage in proactive oversight

Over time and through its partnership with SADO, MAACS has developed an approach to roster supervision that relies on a blend of formal periodic reviews and ongoing informal interaction and oversight. Formal reviews provide roster attorneys with notice of ongoing problems that require remediation, and informal supervision fosters communication and promotes the type of interaction more commonly seen in traditional public defender offices.

Before 2017, MAACS conducted formal performance reviews of roster attorneys every three years.<sup>27</sup> Those reviews



### Where possible, MAACS connects its new attorneys with SADO attorneys, which helps expand the attorneys' networks and demonstrates the importance of working collaboratively.

required significant work<sup>28</sup> and did not allow much opportunity for additional oversight. Since its merger with SADO, MAACS has greater access to SADO support and resources, expanding opportunities for informal supervision and improving quality.

As before, MAACS provides roster attorneys with formal performance reviews every three years.<sup>29</sup> Reviews are based on as wide a range of work as possible, so that no single piece of work skews the overall evaluation. Reviews are based on both a qualitative evaluation of written work and an objective review of performance metrics such as late filings or other violations of the minimum performance standards.

MAACS also supervises its new roster attorneys on their first several assignments so they can start their work on solid footing. Oversight at this point is flexible, designed to match the attorneys' needs and abilities and caseload demands. Where possible, MAACS also connects its new attorneys with SADO attorneys, which helps expand the attorneys' networks and demonstrates the importance of working collaboratively. Working with attorneys early in their tenure helps MAACS correct misconceptions, prevent bad habits, and identify attorneys' strengths and weaknesses.

This focus on early supervision has other benefits as well. First, as with any managed assigned counsel attorney, MAACS roster attorneys are private practitioners. In contrast to a public defender office where supervisors regularly interact with attorneys, MAACS administrators do not often see attorneys in person. With the new focus on early supervision, relationships with new attorneys continue after the supervision period ends. This leads to ongoing communication, which helps catch potential problems before they spiral out of control. An attorney who only receives a written evaluation every few years may be reluctant to reach out to little-known supervisors with a problem, but an attorney who has a good rapport with supervisors will ask for help much earlier.

Second, because MAACS has developed strong relationships with its attorneys, it is better able to respond to and resolve outside inquires. In 2016, roster attorneys were assigned

to almost 2,400 criminal appeals;<sup>30</sup> as might be expected, the clients in some of these cases wrote MAACS with questions and concerns about their attorneys and cases. MAACS also occasionally hears from judges. Each inquiry is investigated and resolved, especially those that suggest a violation of the minimum standards of representation. Because MAACS has developed strong relationships with its roster attorneys, many of these inquiries are quickly resolved, leading to better representation and greater confidence in the judicial process.

## Conclusion

The shift toward managed assigned counsel systems will present real challenges for courts, counsel, and funding units, but it will also present real opportunities for collaboration and innovation. As administrators who are familiar with the longstanding and deeply rooted problems with Michigan's indigent defense system, we are encouraged by the pace of reform and excited to see the fruits of this process. ■



*Bradley R. Hall has been administrator of the Michigan Appellate Assigned Counsel System since 2015. A graduate of Michigan State University and Northwestern University Pritzker School of Law, he began his career handling appeals and habeas corpus matters at the Federal Defender Office in Detroit. He has published articles on criminal procedure, sentencing, and wrongful convictions, and is chair-elect of the SBM Appellate Practice Section Council. He can be reached at [bhall@sado.org](mailto:bhall@sado.org).*



*Kathryn R. Swedlow is deputy administrator of the Michigan Appellate Assigned Counsel System. She is a graduate of Carnegie Mellon University and City University of New York School of Law. Before joining MAACS in 2016, she clerked in two federal appeals courts, represented death-row prisoners in Pennsylvania, and served as a professor and dean at Thomas M. Cooley Law School. She is widely published, especially on the topic of capital punishment. She can be reached at [kswedlow@sado.org](mailto:kswedlow@sado.org).*

## ENDNOTES

1. MCL 780.981 *et seq.*
2. MCL 780.991(1)(a).
3. Mich Indigent Defense Comm, *Proposed Standard 5, Independence from the Judiciary* <<http://michiganidc.gov/standards/#tab-id-5>> [<https://perma.cc/B9Z4-RGVH>]. All websites cited in this article were accessed November 20, 2018.
4. See generally Texas Indigent Defense Comm, *Primer on Managed Assigned Counsel Programs* (September 2017) <[http://www.tidc.texas.gov/media/57814/tidc\\_primer2017.pdf](http://www.tidc.texas.gov/media/57814/tidc_primer2017.pdf)> [<https://perma.cc/V744-QAWP>] and *Managed Assigned Counsels Programs in Operation* (February 2018) <[http://www.tidc.texas.gov/media/57919/tidc\\_primersup2017.pdf](http://www.tidc.texas.gov/media/57919/tidc_primersup2017.pdf)> [<https://perma.cc/P4BD-HE6Y>].
5. MCL 780.993(6).
6. MCL 780.712(4) and Administrative Order No. 1981-7, § 1(1) (February 1, 1982) <<https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/Documents/Administrative%20Orders.pdf>> [<https://perma.cc/2RCN-3TM7>], superseded by Administrative Order No. 2017-3 (November 15, 2017).
7. Administrative Order No. 2014-18 (amended January 21, 2015) <<https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/Documents/Administrative%20Orders.pdf>> [<https://perma.cc/2RCN-3TM7>].
8. MAACS, *A Decade of Challenges* (1995), p 3 (on file with authors). See also Hall, *Indigent Appellate Defense Reform: Michigan Appellate Assigned Counsel System (MAACS) Concludes Two-Year Pilot Project to Standardize Fees and Improve Efficiency*, 41 SADO Crim Defense Newsletter 3 (December 2017), p 2 <[http://www.sado.org/content/pub/10931\\_MAACS-Concludes-Two-Year-Pilot-Project.pdf](http://www.sado.org/content/pub/10931_MAACS-Concludes-Two-Year-Pilot-Project.pdf)> [<https://perma.cc/V2XC-BSXM>].
9. *Id.*
10. *Id.*
11. MCL 780.712(6).
12. AO 1981-7, §§ 1(1), 3(2)-(3), 4(6)(a).
13. *Id.* at § 1(1).
14. *A Decade of Challenges*, n 6, pp 11-12.
15. AO 1981-7, §§ 3(2)(c), (3)(3)(a).
16. Administrative Order No. 1989-3, §§ 3(6), (13), (14), (15) (March 15, 1989) <<https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/Documents/Administrative%20Orders.pdf>> [<https://perma.cc/2RCN-3TM7>], superseded by AO 2017-3.
17. MAACS Regulations, § III(B)(2) (approved September 20, 2017), p 8 <[http://www.sado.org/content/pub/10889\\_Regulations.pdf](http://www.sado.org/content/pub/10889_Regulations.pdf)> [<https://perma.cc/GT7R-R7SK>].
18. AO 2017-3.
19. For additional information about these resources from SADO, see *Video Visit Information* <<http://www.sado.org/Page/84/MAACS-Resources-Video-Visit-Information>> and *What types of products are you looking for?* <<https://www.sado.org/Products/Start>>.
20. For additional information about SADO's Appellate Investigation Project, see <<http://www.sado.org/Page/83/MAACS-Resources-Appellate-Investigation-Project>>.
21. *People v Jenkins*, unpublished per curiam opinion of the Court of Appeals, issued March 15, 2018 (Docket No. 329846) (remand for new trial); *People v Hope*, unpublished per curiam opinion of the Court of Appeals, issued October 16, 2016 (Docket No. 324703) (remand for new trial); and *People v Higley-Zuehlke*, unpublished order of the St. Clair Circuit Court, entered April 15, 2016 (Docket No. 14-000467-FH) (granting motion for new trial).
22. Sirota, *Making CLE Voluntary and Pro Bono Mandatory: A Law Faculty Test Case*, 78 La L Rev 547, 580 (2017) <<https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3062&context=facpub>> [<https://perma.cc/X25T-JG66>] and ABA, *Mandatory CLE* <[https://www.americanbar.org/cle/mandatory\\_cle.html](https://www.americanbar.org/cle/mandatory_cle.html)>. For a short while, Michigan required mandatory CLE for newer attorneys only, but that requirement was rescinded in 1994.
23. See, e.g., Shishkevish, *Continuing Legal Education: The Future is Now*, 96 Mich B J 36 (June 2017) <<http://www.michbar.org/file/barjournal/article/documents/pdf4article3143.pdf>>.
24. MAACS Regulations, § II(D)(2).
25. For additional information about SADO's trainings, see *Upcoming Events* <<http://www.sado.org/Calendar/>>.
26. Texas Indigent Defense Comm, *Primer on Managed Assigned Counsel Programs*, n 2, p 3.
27. Former MAACS Regulations, §§ 4(1), 4(6)(g) (on file with authors).
28. Roster size has fluctuated over the years; currently it has approximately 150 attorneys.
29. MAACS Regulations, § II(C)(1).
30. 2016 SADO/MAACS Annual Report, p 10 <[http://www.sado.org/content/commission/annual\\_report/10854\\_2016-Annual-Report.pdf](http://www.sado.org/content/commission/annual_report/10854_2016-Annual-Report.pdf)>.

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

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

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

*The People of the State of Michigan enact:*

**780.981 Short title.**

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

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

\*\*\*\*\* 780.983 THIS SECTION IS AMENDED EFFECTIVE DECEMBER 23, 2018: See 780.983.amended  
\*\*\*\*\*

**780.983 Definitions.**

Sec. 3. As used in this act:

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

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

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

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

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

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

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

(b) "Department" means the department of licensing and regulatory affairs.

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

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

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

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

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

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

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

(i) The local unit of government that funds a trial court.

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

(h) "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.

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

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2016, Act 439, Imd. Eff. Jan. 4, 2017.

\*\*\*\*\* 780.983.amended THIS AMENDED SECTION IS EFFECTIVE DECEMBER 23, 2018 \*\*\*\*\*



### **780.983.amended Definitions.**

Sec. 3. As used in this act:

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

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

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

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

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

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

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

(b) "Consumer Price Index" means the annual United States Consumer Price Index for all urban consumers as defined and reported by the United States Department of Labor, Bureau of Labor Statistics.

(c) "Department" means the department of licensing and regulatory affairs.

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

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

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

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

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

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

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

(i) The local unit of government that funds a trial court.

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

(i) "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. Beginning on November 1, 2018, if the Consumer Price Index has increased since November 1 of the prior state fiscal year, the local share must be adjusted by that number or by 3%, whichever is less.

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

(k) "Partially indigent" means a criminal defendant who is unable to afford the complete cost of legal representation, but is able to contribute a monetary amount toward his or her representation.

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2016, Act 439, Imd. Eff. Jan. 4, 2017;—Am. 2018, Act 214, Eff. Dec. 23, 2018.

\*\*\*\*\* 780.985 THIS SECTION IS AMENDED EFFECTIVE DECEMBER 23, 2018: See 780.985.amended \*\*\*\*\*

### **780.985 Michigan indigent defense commission; establishment; powers and duties; functions; carrying forward unexpended funds; delivery of services; minimum standards; final department action; judicial review; best practices.**

Sec. 5. (1) The Michigan indigent defense commission is established within the department.

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

(3) The MIDC shall propose minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel to adults throughout this state. These minimum standards shall be designed to ensure the provision of indigent criminal defense services that meet constitutional requirements for effective assistance of counsel. However, these minimum standards shall not infringe on the supreme court's authority over practice and procedure in the courts of this state as set forth in section 5 of article VI of the state constitution of 1963.

(4) The commission shall convene a public hearing before a proposed standard is recommended to the department. A minimum standard proposed under this subsection shall be submitted to the department for approval or rejection. Opposition to a proposed minimum standard may be submitted to the department in a manner prescribed by the department. An indigent criminal defense system that objects to a recommended minimum standard on the ground that the recommended minimum standard would exceed the MIDC's statutory authority shall state specifically how the recommended minimum standard would exceed the MIDC's statutory authority. A proposed minimum standard is final when it is approved by the department. A minimum standard that is approved by the department is not subject to challenge through the appellate procedures in section 15. An approved minimum standard for the local delivery of indigent criminal defense services within an indigent criminal defense system is not a rule as defined in section 7 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.207.

(5) Approval of a minimum standard proposed by the MIDC is considered a final department action subject to judicial review under section 28 of article VI of the state constitution of 1963 to determine whether the approved minimum standard is authorized by law. Jurisdiction and venue for judicial review are vested in the court of claims. An indigent criminal defense system may file a petition for review in the court of claims within 60 days after the date of mailing notice of the department's final decision on the recommended minimum standard. The filing of a petition for review does not stay enforcement of an approved minimum standard, but the department may grant, or the court of claims may order, a stay upon appropriate terms.

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

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2016, Act 439, Imd. Eff. Jan. 4, 2017.

\*\*\*\*\* 780.985.amended THIS AMENDED SECTION IS EFFECTIVE DECEMBER 23, 2018 \*\*\*\*\*

**780.985.amended Michigan indigent defense commission; establishment; powers and duties; functions; delivery of services; minimum standards; final department action; judicial review; best practices; performance metrics; annual report.**

Sec. 5. (1) The Michigan indigent defense commission is established within the department.

(2) The MIDC is an autonomous entity within the department. Except as otherwise provided by law, the MIDC shall exercise its statutory powers, duties, functions, and responsibilities independently of the department. The department shall provide support and coordinated services as requested by the MIDC including providing personnel, budgeting, procurement, and other administrative support to the MIDC sufficient to carry out its duties, powers, and responsibilities.

(3) The MIDC shall propose minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel to adults throughout this state. These minimum standards must be designed to ensure the provision of indigent criminal defense services that meet constitutional requirements for effective assistance of counsel. However, these minimum standards must not infringe on the supreme court's authority over practice and procedure in the courts of this state as set forth in section 5 of article VI of the state constitution of 1963.

(4) The commission shall convene a public hearing before a proposed standard is recommended to the department. A minimum standard proposed under this subsection must be submitted to the department for approval or rejection. Opposition to a proposed minimum standard may be submitted to the department in a manner prescribed by the department. An indigent criminal defense system that objects to a recommended minimum standard on the ground that the recommended minimum standard would exceed the MIDC's statutory authority shall state specifically how the recommended minimum standard would exceed the MIDC's statutory authority. A proposed minimum standard is final when it is approved by the department. A minimum standard that is approved by the department is not subject to challenge through the appellate procedures in section 15. An approved minimum standard for the local delivery of indigent criminal defense services within an indigent criminal defense system is not a rule as that term is defined in section 7 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.207.

(5) Approval of a minimum standard proposed by the MIDC is considered a final department action subject to judicial review under section 28 of article VI of the state constitution of 1963 to determine whether

the approved minimum standard is authorized by law. Jurisdiction and venue for judicial review are vested in the court of claims. An indigent criminal defense system may file a petition for review in the court of claims within 60 days after the date of mailing notice of the department's final decision on the recommended minimum standard. The filing of a petition for review does not stay enforcement of an approved minimum standard, but the department may grant, or the court of claims may order, a stay upon appropriate terms.

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

(7) The MIDC shall identify and implement a system of performance metrics to assess the provision of indigent defense services in this state relative to national standards and benchmarks. The MIDC shall provide an annual report to the governor, legislature, supreme court, and the state budget director on the performance metrics not later than December 15 of each year.

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2016, Act 439, Imd. Eff. Jan. 4, 2017;—Am. 2018, Act 214, Eff. Dec. 23, 2018.

\*\*\*\*\* 780.987 THIS SECTION IS AMENDED EFFECTIVE DECEMBER 23, 2018: See 780.987.amended  
\*\*\*\*\*

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

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

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

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

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

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

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

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

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

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

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

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

\*\*\*\*\* 780.987.amended THIS AMENDED SECTION IS EFFECTIVE DECEMBER 23, 2018 \*\*\*\*\*

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

Sec. 7. (1) The MIDC includes 18 voting members and the ex officio member described in subsection (2). The 18 voting members shall be appointed by the governor for terms of 4 years, except as provided in subsection (4). Subject to subsection (3), the governor shall appoint members under this subsection as follows:

- (a) Two members submitted by the speaker of the house of representatives.
  - (b) Two members submitted by the senate majority leader.
  - (c) One member from a list of 3 names submitted by the supreme court chief justice.
  - (d) Three members from a list of 9 names submitted by the Criminal Defense Attorneys of Michigan.
  - (e) One member from a list of 3 names submitted by the Michigan Judges Association.
  - (f) One member from a list of 3 names submitted by the Michigan District Judges Association.
  - (g) One member from a list of 3 names submitted by the State Bar of Michigan.
  - (h) One member from a list of names submitted by bar associations whose primary mission or purpose is to advocate for minority interests. Each bar association described in this subdivision may submit 1 name.
  - (i) One member from a list of 3 names submitted by the Prosecuting Attorneys Association of Michigan who is a former county prosecuting attorney or former assistant county prosecuting attorney.
  - (j) One member selected to represent the general public.
  - (k) One member representing the funding unit of a circuit court from a list of 3 names submitted by the Michigan Association of Counties.
  - (l) One member representing the funding unit of a district court from a list of 3 names submitted by the Michigan Township Association.
  - (m) One member representing the funding unit of a district court of the third class from a list of 3 names submitted by the Michigan Municipal League.
  - (n) One member from a list of 3 names submitted by the state budget office.
- (2) The supreme court chief justice or his or her designee shall serve as an ex officio member of the MIDC without vote.

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

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

appointed for a term of 1 year each.

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

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

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

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

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

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

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2018, Act 214, Eff. Dec. 23, 2018.

\*\*\*\*\* 780.989 THIS SECTION IS AMENDED EFFECTIVE DECEMBER 23, 2018: See 780.989.amended  
\*\*\*\*\*

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

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

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

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

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

(d) Assigning the executive director the following duties:

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

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

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

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

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

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

(2) Upon the appropriation of sufficient funds, the MIDC shall establish minimum standards to carry out

the purpose of this act, and collect data from all indigent criminal defense systems. The MIDC shall propose goals for compliance with the minimum standards established under this act consistent with the metrics established under this section and appropriations by this state.

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

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

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

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

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2016, Act 440, Imd. Eff. Jan. 4, 2017.

\*\*\*\*\* 780.989.amended THIS AMENDED SECTION IS EFFECTIVE DECEMBER 23, 2018 \*\*\*\*\*

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

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

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

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

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

(d) Assigning the executive director the following duties:

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

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

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

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

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

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

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

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

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

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

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

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2016, Act 440, Imd. Eff. Jan. 4, 2017;—Am. 2018, Act 214, Eff. Dec. 23, 2018.

\*\*\*\*\* 780.991 THIS SECTION IS AMENDED EFFECTIVE DECEMBER 23, 2018: See 780.991.amended  
\*\*\*\*\*

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

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

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

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

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

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

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

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

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

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

(e) Indigent criminal defense systems employ only defense counsel who have attended continuing legal education relevant to counsels' indigent defense clients.

(f) Indigent criminal defense systems systematically review defense counsel at the local level for efficiency and for effective representation according to MIDC standards.

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

(a) A preliminary inquiry regarding, and the determination of, the indigency of any defendant for purposes of this act shall be made as determined by the indigent criminal defense system not later than at the defendant's first appearance in court. The determination may be reviewed by the indigent criminal defense system at any other stage of the proceedings. In determining whether a defendant is entitled to the appointment of counsel, the indigent criminal defense system shall consider whether the defendant is indigent and the extent of his or her ability to pay. Factors to be considered include, but are not limited to, income or funds from employment or any other source, including personal public assistance, to which the defendant is entitled, property owned by the defendant or in which he or she has an economic interest, outstanding obligations, the number and ages of the defendant's dependents, employment and job training history, and his or her level of education. A trial court may play a role in this determination as part of any indigent criminal defense system's compliance plan under the direction and supervision of the supreme court, consistent with

section 4 of article VI of the state constitution of 1963. Nothing in this act shall prevent a court from making a determination of indigency for any purpose consistent with article VI of the state constitution of 1963.

(b) A defendant is considered to be indigent if he or she is unable, without substantial financial hardship to himself or herself or to his or her dependents, to obtain competent, qualified legal representation on his or her own. Substantial financial hardship shall be rebuttably presumed if the defendant receives personal public assistance, including under the food assistance program, temporary assistance for needy families, medicaid, or disability insurance, resides in public housing, or earns an income less than 140% of the federal poverty guideline. A defendant is also rebuttably presumed to have a substantial financial hardship if he or she is currently serving a sentence in a correctional institution or is receiving residential treatment in a mental health or substance abuse facility.

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

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

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2016, Act 439, Imd. Eff. Jan. 4, 2017.

\*\*\*\*\* 780.991.amended THIS AMENDED SECTION IS EFFECTIVE DECEMBER 23, 2018 \*\*\*\*\*

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

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

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

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

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

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

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

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

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

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

(e) Indigent criminal defense systems employ only defense counsel who have attended continuing legal education relevant to counsels' indigent defense clients.

(f) Indigent criminal defense systems systematically review defense counsel at the local level for efficiency and for effective representation according to MIDC standards.

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

(a) A preliminary inquiry regarding, and the determination of, the indigency of any defendant, including a



determination regarding whether a defendant is partially indigent, for purposes of this act must be made as determined by the indigent criminal defense system not later than at the defendant's first appearance in court. The determination may be reviewed by the indigent criminal defense system at any other stage of the proceedings. In determining whether a defendant is entitled to the appointment of counsel, the indigent criminal defense system shall consider whether the defendant is indigent and the extent of his or her ability to pay. Factors to be considered include, but are not limited to, income or funds from employment or any other source, including personal public assistance, to which the defendant is entitled, property owned by the defendant or in which he or she has an economic interest, outstanding obligations, the number and ages of the defendant's dependents, employment and job training history, and his or her level of education. A trial court may play a role in this determination as part of any indigent criminal defense system's compliance plan under the direction and supervision of the supreme court, consistent with section 4 of article VI of the state constitution of 1963. If an indigent criminal defense system determines that a defendant is partially indigent, the indigent criminal defense system shall determine the amount of money the defendant must contribute to his or her defense. An indigent criminal defense system's determination regarding the amount of money a partially indigent defendant must contribute to his or her defense is subject to judicial review. Nothing in this act prevents a court from making a determination of indigency for any purpose consistent with article VI of the state constitution of 1963.

(b) A defendant is considered to be indigent if he or she is unable, without substantial financial hardship to himself or herself or to his or her dependents, to obtain competent, qualified legal representation on his or her own. Substantial financial hardship is rebuttably presumed if the defendant receives personal public assistance, including under the food assistance program, temporary assistance for needy families, Medicaid, or disability insurance, resides in public housing, or earns an income less than 140% of the federal poverty guideline. A defendant is also rebuttably presumed to have a substantial financial hardship if he or she is currently serving a sentence in a correctional institution or is receiving residential treatment in a mental health or substance abuse facility.

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

(d) A determination that a defendant is partially indigent may only be made if the indigent criminal defense system determines that a defendant is not fully indigent. An indigent criminal defense system that determines a defendant is not fully indigent but may be partially indigent must utilize the screening process under subdivision (c). The provisions of subdivision (e) apply to a partially indigent defendant.

(e) The MIDC shall promulgate objective standards for indigent criminal defense systems to determine whether a defendant is indigent or partially indigent. These standards must include availability of prompt judicial review, under the direction and supervision of the supreme court, if the indigent criminal defense system is making the determination regarding a defendant's indigency or partial indigency.

(f) The MIDC shall promulgate objective standards for indigent criminal defense systems to determine the amount a partially indigent defendant must contribute to his or her defense. The standards must include availability of prompt judicial review, under the direction and supervision of the supreme court, if the indigent criminal defense system is making the determination regarding how much a partially indigent defendant must contribute to his or her defense.

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

(4) The MIDC shall establish standards for trainers and organizations conducting training that receive MIDC funds for training and education. The standards established under this subsection must require that the MIDC analyze the quality of the training, and must require that the effectiveness of the training be capable of being measured and validated.

(5) An indigent criminal defense system may include in its compliance plan a request that the MIDC serve as a clearinghouse for experts and investigators. If an indigent criminal defense system makes a request under this subsection, the MIDC may develop and operate a system for determining the need and availability for an expert or investigator in individual cases.

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2016, Act 439, Imd. Eff. Jan. 4, 2017;—Am. 2018, Act 214, Eff. Dec. 23, 2018.

\*\*\*\*\* 780.993 THIS SECTION IS AMENDED EFFECTIVE DECEMBER 23, 2018: See 780.993.amended

\*\*\*\*\*

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

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

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

(3) No later than 180 days after a standard is approved by the 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.

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

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

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

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

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

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

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

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

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

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2016, Act 441, Imd. Eff. Jan. 4, 2017.

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

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

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

(3) No later than 180 days after a standard is approved by the 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 October 1 of each year. A plan submitted under this subsection must specifically address how the minimum standards established by the MIDC under this act will be met and must include a cost analysis for meeting those minimum standards. The standards to be addressed in the annual plan are those approved not less than 180 days before the annual plan submission date. The cost analysis must include a statement of the funds in excess of the local share, if any, necessary to allow its system to comply with the MIDC's minimum standards.

(4) The MIDC shall approve or disapprove all or any portion of a plan or cost analysis, or both a plan and cost analysis, submitted under subsection (3), and shall do so within 90 calendar days of the submission of the plan and cost analysis. If the MIDC disapproves any part of the plan, the cost analysis, or both the plan and the cost analysis, the indigent criminal defense system shall consult with the MIDC and, for any disapproved portion, submit a new plan, a new cost analysis, or both within 60 calendar days of the mailing date of the official notification of the MIDC's disapproval. If after 3 submissions a compromise is not reached, the dispute must be resolved as provided in section 15. All approved provisions of an indigent criminal defense system's plan and cost analysis must not be delayed by any disapproved portion and must proceed as provided in this act. The MIDC shall not approve a cost analysis or portion of a cost analysis unless it is reasonably and directly related to an indigent defense function.

(5) The MIDC shall submit a report to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of representatives requesting the appropriation of funds necessary to implement compliance plans after all the systems compliance plans are approved by the MIDC. For standards approved after January 1, 2018, the MIDC shall include a cost analysis for each minimum standard in the report and shall also provide a cost analysis for each minimum standard approved on or before January 1, 2018, if a cost analysis for each minimum standard approved was not provided and shall do so not later than October 31, 2018. The amount requested under this subsection must be equal to the total amount required to achieve full compliance as agreed upon by the MIDC and the indigent criminal defense systems under the approval process provided in subsection (4). The information used to create this report must be made available to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of representatives.

(6) The MIDC shall submit a report to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of representatives not later than October 31, 2021 that includes a recommendation regarding the appropriate level of local share, expressed in both total dollars and as a percentage of the total cost of compliance for each indigent criminal defense system.

(7) Except as provided in subsection (9), an indigent criminal defense system shall maintain not less than its local share. If the MIDC determines that funding in excess of the indigent criminal defense system's share is necessary in order to bring its system into compliance with the minimum standards established by the MIDC, that excess funding must be paid by this state. The legislature shall appropriate to the MIDC the additional funds necessary for a system to meet and maintain those minimum standards, which must be provided to indigent criminal defense systems through grants as described in subsection (8). The legislature

may appropriate funds that apply to less than all of the minimum standards and may provide less than the full amount of the funds requested under subsection (5). Notwithstanding this subsection, it is the intent of the legislature to fund all of the minimum standards contained in the report under subsection (5) within 3 years of the date on which the minimum standards were adopted.

(8) An indigent criminal defense system must not be required to provide funds in excess of its local share. The MIDC shall provide grants to indigent criminal defense systems to assist in bringing the systems into compliance with minimum standards established by the MIDC.

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

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

(11) Within 180 days after receiving funds from the MIDC under subsection (8), 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. The terms of a grant may allow an indigent criminal defense system to exceed 180 days for compliance with a specific item needed to meet minimum standards if necessity is demonstrated in the indigent criminal defense system's compliance plan. The MIDC has the authority to allow an indigent criminal defense system to exceed 180 days for implementation of items if an unforeseeable condition prohibits timely compliance.

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

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

(14) The MIDC shall ensure proper financial protocols in administering and overseeing funds utilized by indigent criminal defense systems, including, but not limited to, all of the following:

(a) Requiring documentation of expenditures.

(b) Requiring each indigent criminal defense system to hold all grant funds in a fund that is separate from other funds held by the indigent criminal defense system.

(c) Requiring each indigent criminal defense system to comply with the standards promulgated by the governmental accounting standards board.

(15) If an indigent criminal defense system does not fully expend a grant toward its costs of compliance, its grant in the second succeeding fiscal year must be reduced by the amount equal to the unexpended funds. Identified unexpended grant funds must be reported by indigent criminal defense systems on or before October 31 of each year. Funds subject to extension under subsection (11) must be reported but not included in the reductions described in this subsection. Any grant money that is determined to have been used for a purpose outside of the compliance plan must be repaid to the MIDC, or if not repaid, must be deducted from future grant amounts.

(16) If an indigent criminal defense system expends funds in excess of its local share and the approved MIDC grant to meet unexpected needs in the provision of indigent criminal defense services, the MIDC shall recommend the inclusion of the funds in a subsequent year's grant if all expenditures were reasonably and directly related to indigent criminal defense functions.

(17) The court shall collect contribution or reimbursement from individuals determined to be partially indigent under applicable court rules and statutes. Reimbursement under this subsection is subject to section 22 of chapter XV of the code of criminal procedure, 1927 PA 175, MCL 775.22. The court shall remit 100% of the funds it collects under this subsection to the indigent criminal defense system in which the court is sitting. Twenty percent of the funds received under this subsection by an indigent criminal defense system must be remitted to the department in a manner prescribed by the department and reported to the MIDC by October 31 of each year. The funds received by the department under this subsection must be expended by the MIDC in support of indigent criminal defense systems in this state. The remaining 80% of the funds collected under this subsection may be retained by the indigent criminal defense system for purposes of reimbursing the costs of collecting the funds under this subsection and funding indigent defense in the subsequent fiscal year. The funds collected under this subsection must not alter the calculation of the local share made pursuant to section 3(i).

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2016, Act 441, Imd. Eff. Jan. 4, 2017;—Am. 2018, Act 214, Eff. Dec. 23, 2018.

\*\*\*\*\* 780.995 THIS SECTION IS AMENDED EFFECTIVE DECEMBER 23, 2018: See 780.995.amended

\*\*\*\*\*

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

Sec. 15. (1) Except as provided in section 5, if a dispute arises between the MIDC and an indigent criminal defense system concerning the requirements of this act, including a dispute concerning the approval of an indigent criminal defense system's plan, cost analysis, or compliance with section 13 or 17, the parties shall attempt to resolve the dispute by mediation. The state court administrator, as authorized by the supreme court, shall appoint a mediator agreed to by the parties within 30 calendar days of the mailing date of the official notification of the third disapproval by the MIDC under section 13(4) to mediate the dispute and shall facilitate the mediation process. The MIDC shall immediately send the state court administrative office a copy of the official notice of that third disapproval. If the parties do not agree on the selection of the mediator, the state court administrator, as authorized by the supreme court, shall appoint a mediator of his or her choosing. Mediation shall commence within 30 calendar days after the mediator is appointed and terminate within 60 calendar days of its commencement. Mediation costs associated with mediation of the dispute shall be paid equally by the parties.

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

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

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

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

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

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

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

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

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

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

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

(5) If a party refuses or fails to comply with a previous order of the court, the court may enforce the previous order through the court's enforcement remedies, including, but not limited to, its contempt powers, and may order that the state undertake the provision of indigent criminal defense services in lieu of the indigent criminal defense system.

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

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

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

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

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

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

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

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

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2016, Act 442, Imd. Eff. Jan. 4, 2017.

\*\*\*\*\* 780.995.amended THIS AMENDED SECTION IS EFFECTIVE DECEMBER 23, 2018 \*\*\*\*\*

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

Sec. 15. (1) Except as provided in section 5, if a dispute arises between the MIDC and an indigent criminal defense system concerning the requirements of this act, including a dispute concerning the approval of an indigent criminal defense system's plan, cost analysis, or compliance with section 13 or 17, the parties shall attempt to resolve the dispute by mediation. The state court administrator, as authorized by the supreme court, shall appoint a mediator agreed to by the parties within 30 calendar days of the mailing date of the official notification of the third disapproval by the MIDC under section 13(4) to mediate the dispute and shall facilitate the mediation process. The MIDC shall immediately send the state court administrative office a copy of the official notice of that third disapproval. If the parties do not agree on the selection of the mediator, the state court administrator, as authorized by the supreme court, shall appoint a mediator of his or her choosing. Mediation must commence within 30 calendar days after the mediator is appointed and terminate within 60 calendar days of its commencement. Mediation costs associated with mediation of the dispute must be paid equally by the parties.

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

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

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

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

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

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

(b) Within 60 days after the system receives grant funds under section 13(8), if the plan, cost analysis, or both, required a grant award for implementation of the plan.

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

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

(e) The action must not challenge the validity, legality, or appropriateness of the minimum standards approved by the department.

(4) If the dispute involves the indigent criminal defense system's plan, cost analysis, or both, the court may approve, reject, or modify the submitted plan, cost analysis, or the terms of a grant awarded under section 13(8) other than the amount of the grant, determine whether section 13 has been complied with, and issue any orders necessary to obtain compliance with this act. However, the system must not be required to expend more than its local share in complying with this act.

(5) If a party refuses or fails to comply with a previous order of the court, the court may enforce the previous order through the court's enforcement remedies, including, but not limited to, its contempt powers, and may order that the state undertake the provision of indigent criminal defense services in lieu of the indigent criminal defense system.

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

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

with the minimum standards established by the MIDC:

- (a) In the first year, 20% of the state's costs.
- (b) In the second year, 40% of the state's costs.
- (c) In the third year, 60% of the state's costs.
- (d) In the fourth year, 80% of the state's costs.
- (e) In the fifth year, and any subsequent year, not more than the dollar amount that was calculated under subdivision (d).

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

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2016, Act 442, Imd. Eff. Jan. 4, 2017;—Am. 2018, Act 214, Eff. Dec. 23, 2018.

\*\*\*\*\* 780.997 THIS SECTION IS AMENDED EFFECTIVE DECEMBER 23, 2018: See 780.997.amended \*\*\*\*\*

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

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

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

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

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2016, Act 443, Imd. Eff. Jan. 4, 2017.

\*\*\*\*\* 780.997.amended THIS AMENDED SECTION IS EFFECTIVE DECEMBER 23, 2018 \*\*\*\*\*

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

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

(2) A system's duty of compliance with 1 or more standards within the plan under subsection (1) is contingent upon receipt of a grant in the amount sufficient to cover that particular standard or standards contained in the plan and cost analysis approved by the MIDC.

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

**History:** 2013, Act 93, Imd. Eff. July 1, 2013;—Am. 2016, Act 443, Imd. Eff. Jan. 4, 2017;—Am. 2018, Act 214, Eff. Dec. 23, 2018.

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

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

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

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

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

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

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

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

\*\*\*\*\* 780.1002.added THIS ADDED SECTION IS EFFECTIVE DECEMBER 23, 2018 \*\*\*\*\*

#### **780.1002.added Michigan indigent defense fund; creation; administration; purpose.**

Sec. 22. (1) The Michigan indigent defense fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund, including private gifts, bequests, and donations. The state treasurer shall direct the investment of the fund.

The state treasurer shall credit to the fund interest and earnings from fund investments.

- (3) Money in the fund at the close of the fiscal year shall lapse to the general fund.
- (4) The commission shall be the administrator of the fund for auditing purposes.
- (5) The commission shall expend money from the fund to carry out its responsibilities under this act.

**History:** Add. 2018, Act 214, Eff. Dec. 23, 2018.

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

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

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

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

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

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

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