

Panel: Indigent defense must change



Justin A. Hinkley, jhinkley@lsj.com 8:12 a.m. EDT August 19, 2015



(Photo: Getty Images/Tetra images)

LANSING – New protections for poor Michiganders accused of a crime are meant to upset the system and could be difficult for some jurisdictions to accept, members of the [Michigan Indigent Defense Commission](http://michiganidc.gov/) (<http://michiganidc.gov/>) said Tuesday.

Commissioners and commission staff heard concerns about their [first set of proposed standards](http://story/news/local/capitol/2015/06/09/indigent-defense-standards-proposed/28759239/) ([/story/news/local/capitol/2015/06/09/indigent-defense-standards-proposed/28759239/](http://story/news/local/capitol/2015/06/09/indigent-defense-standards-proposed/28759239/)) for court-appointed attorneys even before meeting in downtown Lansing on Tuesday to gather public input. But the commission was created to fix a broken system, and commission Executive Director Jonathan Sacks said that means things have to change.

"Some of these standards are very much a shift from the status quo," Sacks told about 20 people gathered at the Western Michigan University Cooley Law School in Lansing and a handful of others attending the meeting via video-conference from Cooley campuses in Auburn Hills and Grand Rapids.

But, Sacks added, the standards will not become unfunded mandates.

"The state will pay, and then things click into action," he said.

- **EXTRA:** [Read the proposed standards here \(http://michiganidc.gov/standards/\)](http://michiganidc.gov/standards/)

The commission will vote in October to recommend these standards to the Michigan Supreme Court, which is expected to give final approval in May or June. The commission would then work with counties to develop plans to comply. Commissioner Thomas Boyd, an Ingham County district judge, said getting 83 counties on board — plus all judges, prosecutors, sheriffs and defense attorneys in each county — is "going to be a wild ride."

And these first standards were ones commissioners deemed the easy ones, with more controversial topics such as case loads and public defender compensation still to come.

The handful of people who addressed the commission Tuesday were largely supportive of the effort but fretted over the specifics.

Traverse City attorney Kyle Trevas, speaking via speakerphone, said the first standard requiring appointed attorneys to know the law, technology and forensic science "can be read to require an encyclopedic knowledge" and "would make it so basically everybody's failing."

Elizabeth Weisenbach, an attorney working in Huron and Sanilac counties, said the proposed standard that "confidential communications between counsel and the client are conducted in private" could be problematic. She said, for example, she had been provided space in a jail's medical room to meet with clients but was forced into the hallway after somebody stole needles from that room.

Commissioners said they'd consider changes before their final vote on the standards in October. Many defenders worried about their ability to comply with the proposed standard that they meet with clients within 72 hours, for example, and commissioners entertained the idea of changing that to "three business days."

But Boyd, the Ingham County judge, echoed other commissioners when he stressed commissioners were "pushing the system to change," not individual attorneys. If an attorney needs a private meeting space to meet with clients, it's up to the courts, jails and counties running the public defense system to provide it, commissioners said.

"Change is hard; resistance is inevitable," said Commissioner John Shea, an Ann Arbor defense attorney. "What we're supposed to be doing is identify the problems and find a way to fix them."

- **BACKGROUND:** [Standards for defending the poor proposed \(/story/news/local/capitol/2015/06/09/indigent-defense-standards-proposed/28759239/\)](http://story/news/local/capitol/2015/06/09/indigent-defense-standards-proposed/28759239/)

And commissioners and others expressed the need for reforms. Noting her organization had helped exonerate numerous indigent defendants, Marilena David-Martin of the State Appellate Defender Office told commissioners "a system where the first investigation is taking place at the appellate level is not a good system at all."

Commissioners and several attendees on Tuesday put responsibility on the Legislature. The commission was birthed from a 2013 package of laws that came with a legislative promise — not an actual appropriation — that the state would fund the reforms.

Early estimates set the bill at \$50 million a year, but Rodd Monts, field director for the American Civil Liberties Union of Michigan, said at Tuesday's meeting "our legislators have a chance to do something that is both good and right."

Contact Justin A. Hinkley at (517) 377-1195 or jhinkley@lsj.com (<mailto:jhinkley@lsj.com>). Follow him on Twitter [@JustinHinkley](https://twitter.com/JustinHinkley) (<https://twitter.com/justinhinkley>).

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