



# Prosecuting Attorneys Association of Michigan

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June 12, 2018

Michigan Indigent Defense Commission  
200 N. Washington Square  
Lansing, Michigan 48913

Dear Chairman Puerner,

I wish to provide written comments on behalf of myself and other Michigan Prosecutors on proposed standards 5-8. As I have previously stated in person, and in my written comments, PAAM's Blueprint for a Safer Michigan, created in 2008 and updated in 2011, called for improved resources for indigent defense. Prosecutors believe the delivery of competent indigent defense services will strengthen the constitutionally required right to legal representation for the indigent. However, to improve indigent defense in one part of the criminal justice system, while not acknowledging the roles and duties of prosecutors, creates an uneven playing field.

Standard 5 - Independence from the Judiciary. Prosecutors work independently of the Judiciary and appreciate that this independence was created by design as a core principle of our constitutional system of checks and balances. Prosecutors support the adoption of this standard, and support the language found in the MIDC recommendation: "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)

Standard 6 - Indigent Defense Workloads. The prosecution and defense functions are obviously different. Prosecuting attorneys have many additional mandated responsibilities that indigent defense does not, such as: prosecuting cases by retained counsel, reviewing and considering warrants, assisting law enforcement with investigations, providing advice, preparing search warrants and subpoenas, and interviewing victims and witnesses, juvenile delinquency cases, abuse/neglect cases, child support collections, mental commitment hearings and appeals. Prosecuting attorneys across the State of Michigan regularly screen and do not file criminal charges in approximately 20-25% of the cases they review.

In addition to the above referenced duties, anecdotally - in my own office, including myself, there are four prosecutors that collectively handle over 500 felony files, over 2,000 misdemeanor files, and all criminal appeals. From discussions I have had with fellow prosecutors around the state this type of a case load is not uncommon. These caseload levels are well in excess of the recommended workloads recommended by the MIDC for indigent defense. I note from staff comment number 1 on this standard:

***The MIDC is mindful of caseload pressures on the prosecution and fully supports proper funding for prosecutors to have reasonable caseloads.*** Although the MIDC is mindful of these pressures, prosecutors recognize it is not part of the MIDC mandate or mission to be concerned with issues of parity for prosecutors.

Standard 7 - Qualifications and Review. Michigan prosecutors support the adoption and implementation of this standard.

Standard 8 - Economic Disincentives or Incentives. Michigan prosecutors agree that, "Economic disincentives or incentives that impair defense counsel's ability to provide effective representation shall be avoided." MCL 780.991(2)(b). Further, prosecutors agree that "fair compensation for assigned counsel may optimally be achieved through a public defender office." MCL 780.991(1)(b). However, in the absence of a public defender office, simply increasing the hourly compensation, without attention to supervision and oversight outlined in Standard 7, will not accomplish this goal. Simply increasing the "rate of pay" of court appointed counsel will not improve the quality of indigent defense services. The commentary under this standard seeks guidance from the levels of compensation provided to the Attorney General for Special Assistant Attorneys General. In most instances this is at a much higher rate of compensation than even the elected prosecuting attorneys for most jurisdictions. To apply a "state standard" for rate of compensation to most of the jurisdictions in the State is not appropriate. Especially when the local jurisdictions are required to fund the rest of the aspects of the criminal justice functions e.g. prosecutors, sheriffs, jails, etc.

The proposed rates of pay (\$100.00 on misdemeanors, \$110.00 on felonies, and \$120.00 per hour for life offenses) presumably for indigent defense systems that use a court appointed counsel system, are not reasonable under the status quo. Without appropriate oversight, and administration of quality control standards - systems that simply wish to implement an "administrator" model will not improve the quality of delivery of indigent defense service under a court appointed counsel system.

As to systems with public defender offices, prosecutors agree that reasonable salaries and benefits should be provided. MIDC recommends that salaries paid by the Attorney General to special assistant attorneys general serve as guidance. While those salaries are appropriate for their work responsibilities, unfortunately, it is not the norm for most assistant prosecutors statewide. As such, MIDC may wish to consider other salary comparisons, such as assistant prosecutors within the geographical area.

On behalf of Michigan's prosecutors, thank you for your consideration of these points and concern for the criminal justice system overall. We look forward to working with our partners at both the state and local levels on this issue that affects all of us.

Sincerely,

Matt Wiese



Marquette County Prosecuting Attorney