



MICHIGAN INDIGENT  
DEFENSE COMMISSION

**GUIDE FOR REPORTING  
COMPLIANCE WITH STANDARDS  
AND  
DISTRIBUTION OF GRANT FUNDS**

**Revised as of December 2018**

**Revisions are indicated in red.**

All other text was originally published by the MIDC on August 21, 2018.

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## **Applicable Statutes**

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

The MIDC has the authority and duty to establish “rules and procedures for indigent criminal defense systems to apply to the MIDC for grants to bring the system’s delivery of indigent criminal defense services into compliance with the minimum standards established by the MIDC.” MCL §780.989(1)(g).

### ***Indigent Criminal Defense System Creates Compliance Plan***

“No later than 180 days after a standard is approved by the department, each indigent criminal defense system shall submit a plan to the MIDC for the provision of indigent criminal defense services in a manner as determined by the MIDC and shall submit an annual plan for the following state fiscal year on or before February 1 of each year. A plan submitted under this subsection shall specifically address how the minimum standards established by the MIDC under this act shall be met and shall include a cost analysis. The standards to be addressed in the annual plan are those approved not less than 60 days before the annual plan submission date. This cost analysis shall include a statement of the funds in excess of the local share, if any, necessary to allow its system to comply with the MIDC's minimum standards.” MCL §780.993(3).

### ***Approval of Compliance Plans***

“The MIDC shall approve or disapprove a plan or cost analysis, or both a plan and cost analysis, submitted under subsection (3), and shall do so within 60 calendar days of the submission of the plan and cost analysis. If the MIDC disapproves the plan, the cost analysis, or both the plan and the cost analysis, the indigent criminal defense system shall consult with the MIDC and submit a

new plan, a new cost analysis, or both within 30 calendar days of the mailing date of the official notification of the MIDC's disapproval." MCL §780.993(4).

### ***Compliance After Funding***

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

### ***Duty of Compliance with Approved Plan***

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

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

### ***Amendments to MIDC Act***

The MIDC Act was amended in the summer of 2018 as set forth in House Bill 5985. Those amendments will become effective on December 23, 2018.

## Overview of Compliance Plan Implementation

On May 22, 2017, the Department of Licensing and Regulatory Affairs approved the first four minimum standards for indigent criminal defense systems in the State of Michigan. These standards involve education and training, the initial client interview, experts and investigators, and counsel at first appearance in front of a judge or magistrate.

Under the Act, each trial court funding unit or local “system” was given the opportunity to select its desired indigent defense delivery method to comply with the MIDC standards. Multiple models ranging from a defender office, an assigned counsel list, contract attorneys, or a mix of systems were considered compliant.

Through the process described in the MIDC Act, all 134 trial court funding units in Michigan submitted plans for compliance with the first standards for indigent defense delivery systems together with a cost analysis seeking grant funding from the MIDC. As of June 2018, 129 of the 134 systems had their plan for compliance *and* cost analysis fully approved by the Michigan Indigent Defense Commission. The total funding for each system can be accessed on the MIDC’s website at <http://michiganidc.gov/grants/>. The Governor signed MIDC’s budget for implementing plans in the amount of \$84.1 million in June 2018.

While some systems have not received approval of their plan and/or cost analysis, that does not impact the timetable for distributing grant funds and implementing the approved plans to any other system.

In July and August of 2018, members of the MIDC staff’s regional team met with the points of contact for every approved plan to assess the system’s needs and discuss the general framework for compliance and reporting expectations. The MIDC staff will continue to provide support to systems for compliance through trainings and meetings this fall and winter.

## **Process for Implementation**

### ***Distribution of Grant Funds***

The Department of Treasury will establish the creation of a new fund within the local chart of accounts. The sole purpose of this fund shall be for accepting the grants funds from the MIDC and charging all plan-related costs to this fund. The system's "local share" should also be deposited in this fund during the course of the grant contract period. The local share contribution was determined by the funding unit through a certification process and approved as part of the total system costs.

This fund will allow for better management of the grant and monitoring by the local and state interested parties. The local fund description shall allow for any fund balance not to revert to the general fund at the close of a fiscal year. Rollover funds will be used for expenditures that cross fiscal years. Upon finalization of the grant contract with each local funding unit, the MIDC will distribute grants to the system consistent with the approved budget and as set forth in the system's approved plan.

The MIDC will distribute **50%** of the approved state grant in October 2018, and the timeframe for compliance with the approved plan will begin on the date of the initial distribution.

Each system will submit a progress report describing compliance with the plan on a quarterly basis, together with a financial status report detailing expenses incurred that quarter. ~~The MIDC will reimburse the systems for all approved expenses within 45 days after the program reports are received.~~

### ***Dates for Initial Distribution and Reports Due***

- **Within 15 days of executed agreement**  
**50%** of budget distributed
- January 15, 2019

Compliance plan progress report (PR) and financial status report (FSR) due for the timeframe covering October 1, 2018 – December 31, 2018.

- April 15, 2019  
25% of budget distributed. PR and FSR due for the timeframe covering January 1, 2019 – March 31, 2019.
- July 15, 2019  
25% of budget distributed. PR and FSR due for the timeframe covering April 1, 2019 – June 30, 2019. NOTE: Plans must be fully implemented during this quarter.
- October 15, 2019  
PR and FSR due for the timeframe covering July 1, 2019 – September 30, 2019.

Every system is required to annually submit a plan for compliance for the next state fiscal year, beginning in the spring of 2019.

### ***Financial Status Report (FSR)***

Each system is required to provide a report on the expenses incurred for implementing the plan for indigent defense delivery. The system should use a form provided by the MIDC to detail the total system costs and identify the source of funding: the local share, MIDC funding, or other sources (i.e. Michigan Department of Corrections). A report template is attached. All attorney services **should** be submitted on an MIDC invoice form, which will be available on the MIDC's website. This form requires tracking of time for each case, even in funding units where payment is not calculated on an hourly rate.

The FSR must be supported with documentation for the expenses to be eligible for reimbursement. Receipts for purchases, payroll, documentation, and vouchers from direct service providers should be attached to the FSR. It is not necessary to list every individual contractor (for example: attorneys) as long as the individual payments are detailed in appended documents.

Expenses are eligible for payment if incurred during the grant contract period (on or after October 1, 2018).

Eligible expenses for travel must be consistent with State of Michigan requirements, unless otherwise provided for in the approved budget.

### **Compliance Plan Progress Report (PR)**

A short program report detailing in narrative form the system's progress towards fully implementing the compliance plan is required quarterly. This report should complement the FSR and offer context about the expenses incurred during the specified timeframe. The funding units will be asked for basic information **in each report** to ensure the MIDC has the appropriate points of contact and authorizing officials, as well as a list of all attorneys assigned by the system to represent indigent adults charged with crimes.

Approved compliance plans addressed each standard individually, and reporting should track compliance with the standards according to the plan. The progress report will mirror this approach and collect information regarding new case filings, assignments to attorneys, and compliance with Standards 1, 2, 3, and 4 as set forth in the approved plan. A report template is attached.

### **Personnel**

Progress regarding all hiring as set forth in the plan must be included in the quarterly reports, and all hiring must be made within 180-days from the initial distribution of grant funds.

### **Hiring Direct Service Providers**

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

All attorneys identified by the funding unit to provide direct representation to indigent defendants must be licensed attorneys



in good standing with the State Bar of Michigan and are bound by the Michigan Rules of Professional Conduct.

Multiple systems have asked for sample “position descriptions” and application screening forms for public defenders and other service providers. Samples are available from the MIDC. MIDC staff members are able to assist systems with these considerations, but will not serve as a voting member in any employment decision-making process.

### **Hiring of Ancillary Staff**

Depending on the plan, many systems intend to hire indirect service providers to implement the standards. Most often these positions include jail staff to facilitate attorney-client communication pursuant to Standards 2 and 4. Other positions include clerks or court staff. Progress regarding all hiring as set forth in the plan must be included in the quarterly reports, and all hiring decisions must be made within 180-days from the initial distribution of grant funds.

### **Specific Standard Requirements**

Funding units wishing to use a “memorandum of understanding” to communicate requirements about standards compliance to attorneys can obtain sample language from the MIDC.

### **Standard 1 – Training and Education**

This standard requires that 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.

Pursuant to MIDC Standard 1.D, 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.

For all systems that included webinar or online-based programming through the National Association for Public Defense (NAPD) or

through the State Appellate Defender Office's Criminal Defense Resource Center (SADO/CDRC), the MIDC staff will coordinate annual enrollment in those programs as long as the system provides a current list of attorneys accepting assignments in the system.

Attorneys identified by the funding unit to represent adults charged with crimes in the particular system will receive communications from the MIDC's staff regarding training opportunities and requirements for compliance with Standard 1. The MIDC staff will work to efficiently coordinate the statewide roster of attorneys and assist with communicating progress towards compliance with the standard. All attorneys must complete their training and education requirements by December 31, 2019 to remain eligible to continue to receive assignments in the following compliance plan year.

Each system provided a plan for reporting CLE attendance to the MIDC for data collection purposes, pursuant to Michigan Supreme Court Administrative Order 2016-2. Documentation of attendance must be submitted to the MIDC no later than 30 days after completion of the course(s). This documentation should be sent to [cle@michiganidc.gov](mailto:cle@michiganidc.gov).

## Standard 2 – Initial Interview

This standard requires that 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. Attorneys should complete a voucher form for all assigned cases indicating time spent on the assignment, including when and where the initial interview occurred. Sample vouchers will be available on the MIDC's website.

This standard further requires a confidential setting for these interviews in both the courthouse and jail. For all systems

undergoing construction to create confidential space, a detail regarding progress on the project will be required quarterly.

### Standard 3 – Investigation and Experts

All funding units have an approved line item for using experts and investigators in the local court system. The funding unit should reimburse these service providers directly based upon a proper accounting of time spent during the grant reporting period.

Attorneys will also indicate on individual voucher forms whether an expert or investigator was used in a particular case to ensure compliance with the standard.

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

Every system in Michigan is required to have an attorney present for an adult charged with a crime facing the loss of his or her liberty. Each system must comply with the plan for providing this service within 180 days of receipt of funding from the MIDC. In virtually all systems, the attorney at the first appearance is not necessarily going to be the attorney appointed to the case. Attorneys providing this service should account for their time separately and, depending on the plan, be paid consistent with the approved costs for these services.

Systems will be required to report specific information about every arraignment including the number of total arraignments and breakdown of representation in any of the following categories: retained counsel, assigned counsel, waiver of counsel by defendant, or counsel not required.

## Adjustments to Approved Plans or Budgets

The MIDC is mindful that many systems submitted a plan for compliance and cost analysis nearly one year prior to funding

distribution. While adjustments to the cost analysis will be necessary in many instances, there should be no substantial changes to the delivery system method set forth in the plan itself without prior approval from the Michigan Indigent Defense Commission. A “substantial change” is one that alters the method of meeting the objectives of the standard(s) in the approved plan. For example: a system with an approved plan for a public defender office that would instead prefer to maintain a contract system would constitute a “substantial change” to the approved plan.

Any system seeking a substantial change to their **compliance plan** must contact their Regional Manager for guidance on that process, which will require a written request, justification for the change, and multi-level staff review prior to consideration by the Commission. Substantial changes to a compliance plan will not be recommended for approval to the Commission absent extraordinary circumstances.

Adjustments to a system’s approved **contract budget** must be communicated promptly to the MIDC staff. Please contact your Regional Manager for guidance with budget adjustments.

- If the adjustment involves redistributing **less than 5%** of the budget category total, (e.g., “equipment”), then the adjustment must be reported in the next quarterly FSA.
- A system must obtain *prior approval* for any adjustment to the contract budget involving **5% or more** within the budget category.
- A system must obtain prior approval for any adjustment between categories of funding.

The system is required to use the MIDC’s budget adjustment form for any budget adjustment request and must obtain approval of MIDC staff prior to making any changes to the contract budget.

All adjustments to the approved cost analysis will be reported to the MIDC during regularly-scheduled meetings, or as requested by the Commission.

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## **Resources and Contact Information**

MIDC website: [www.michiganidc.gov](http://www.michiganidc.gov)

MIDC main office: 200 N. Washington Sq, 3<sup>rd</sup> Floor, Lansing

Questions, anytime: email [info@michiganidc.gov](mailto:info@michiganidc.gov)

***To schedule a meeting with a Regional Manager,  
contact 517-657-3066***

# **Attachments**

**Year 1 Progress Reports**

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I. Narrative Report Questions

- a) Are appointments being made in the way described in your compliance plan?
  - Yes/No
  - If no, please elaborate on any variation that has occurred.
- b) Are you verifying that first interviews are occurring in a timely fashion and (for non-defender models) providing payment for these interviews in the way described in your compliance plan?
  - Yes/No
  - If no, please elaborate on any variation that has occurred. Please also describe any incidence of attorneys not completing/report on their first interview and how you have responded.
- c) If confidential meeting space does not yet exist in holding facilities and courthouses, please describe the steps you have taken this quarter towards resolving this concern, if any, including construction projects.
- d) Are investigators and expert witnesses being requested and granted in the way described in your compliance plan?
- e) Is counsel at first appearance now being provided in 100% of cases?
  - Yes/No
  - If yes, is there any variation from how this was described in your compliance plan?
  - If no, what obstacles have you encountered and what steps have you taken to resolve these obstacles? If your system has decided to issue PR bonds and not accept guilty pleas in lieu of CAFA, please indicate this below.
- f) Please describe any steps taken on construction projects not related to Standard 2.
- g) Please describe the progress your system has made on hiring employees this quarter. Hiring for all positions described in the plan should be detailed, including but not limited to attorneys, investigators, clerks, corrections staff, or court staff.
- h) Please summarize any problems or delays, real or anticipated, that were not already discussed above.

II. Compliance Reporting Template

See required tables below.

*Please remember that all answers should apply to adult, criminal cases and should not include civil infractions.*

*District Courts and Circuit Courts reporting within the same funding unit should submit separate compliance reporting templates.*

**REVISED DECEMBER 2018**

**Compliance Reporting Template**

A. Counsel at First Appearance

	<b># Retained</b>	<b># Appointed</b>	<b># Waived</b>	<b>Counsel Absent</b>	<b>Total</b>
Arraignments					

B. Assignments

Total number of new case filings in this reporting period: \_\_\_\_\_

Total number of new appointed cases assigned this reporting period: \_\_\_\_\_

C. Assigned Attorney Caseload

*\*Please attach table in the indicated format as necessary*

<b>Attorney Name</b>	<b>P Number</b>	<b>Number of New Assignments in Reporting Period</b>	<b>Total Payments to Attorney in Reporting Period</b>

D. Investigators and Expert Witnesses

Total number of appointed cases in which an investigator was used this reporting period: \_\_\_\_\_

Total number of appointed cases in which an expert was used this reporting period: \_\_\_\_\_

**Department of Licensing and Regulatory Affairs  
Michigan Indigent Defense Commission  
FINANCIAL STATUS REPORT AND/OR PAYMENT REQUEST**

1. Name and Address of Grantee	2. Funding Unit(s)			3. Grant Number	4. Grant/Contract Period From: _____ To: _____				
	5. Current Report Period From: _____ To: _____			6. Final Report YES _____ NO _____	7. Grant Amount State Grant _____ Local Share _____				
Contracts									
8. Cost Categories	Salaries Fringes	Attorneys	Experts Investigators	Construction	Other	Equipment	Travel Training	Supplies Services	Total
a. Expenditures this Report Period	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00
b. Local Share	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
c. State Grant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
d. Total Expenditures to date	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
e. Local Share Expenditures to date	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
f. State Grant Expenditures to date	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9. Request for Reimbursement									
g. State Share of Expenditures to Date (from line f above)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
h. Total Amount of State Payments/Reimbursements to date	0.00								0.00
i. Request Reimbursement (line g minus line h)	0.00								0.00
11. Funds withheld from request (see remarks below)									Adjusted Payment
12. Remarks	13. Certification: I certify that to the best of my knowledge and belief this report is correct and complete and that all expenditures are for the purposes set forth in the grant award/contract documents.				14. MIDC Approval				
					signature		date		Program Manager's Signature
	signature		date		Finance Manager's Signature		Date		



**Department of Licensing and Regulatory Affairs  
Michigan Indigent Defense Commission  
Request for Contract Adjustment**

<b>1. Name and Address of Grantee</b>	<b>2. Funding Unit(s)</b>	<b>3. Grant Number</b>	<b>4. Grant/Contract Period</b> From:_____ To:_____
<b>5. Requested Adjustment</b> ( ) Compliance Plan Modification ( ) Personnel Change ( ) Budget Revision ( ) Contract Extension			
<b>6. Requested Effective Date</b>			
<b>7. Explanation of Requested Revision:</b> Provide justification for the requested revision and attach additional documents or pages if necessary.			

**8. Budget Revision Request**

Budget Category	Current Approved Budget	Budget Revision	Revised Budget Request
Personnel			
Fringe Benefits			
Contracts Attorneys			
Contracts Experts and Investigators			
Contracts Construction			
Contracts Other			
Equipment			
Training/Travel			
Supplies/Services			
Total	0	0	0

Source of Funds	Revised Budget Request
State Grant	
Local Share	
Total	

Project Director Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Project Director Title \_\_\_\_\_