



MICHIGAN INDIGENT
DEFENSE COMMISSION

Date: February 23, 2021, Time: 9:00 a.m.
Location: Zoom

MEETING AGENDA

1. Roll call and opening remarks (5 mins)
2. Introduction of Commission members and guests (3 mins)
3. Public comment
4. Additions to agenda
5. Consent agenda (1 min)
 - December 15, 2020 Minutes
 - Revised 2021 Meeting Dates
6. Chair Report (5 mins)
7. Executive Director Report (5 mins)
8. Commission Business
 - a. FY22 Appropriation and Legislative Report (10 mins)
 - [House Bill 4174](#)
 - b. Committee Reports
 - i. Executive Committee Report (20 mins)
 - Discussion of Strategic Planning Process
 - ii. Compliance Planning Committee (10 mins)
 - FY22 Compliance Plan Application
 - Changes to Grant Manual
 - iii. Selection Standards Committee (Standard 5) (10 mins)
 - iv. Court Rules Committee
 - Proposed Changes to Court Rules (10 mins)
 - MCR 8.120 (5 mins)
 - v. Training and Evaluation Committee (5 mins)
 - c. FY21 Compliance Plan Updates
 1. Wayne County Update (5 mins)
 2. Plan Change Requests (10 mins)
 - Shiawassee
 - Warren
 3. First Quarter Reporting
 - Budget adjustments
 - d. Review of FY21 Compliance Plan Submissions (action item) (10 mins)
 - Staff recommendation:
 - Highland Park
 - Inkster
 - Redford
9. Annual Review of Executive Director
10. Next meeting – **April 20, 2021 (Location TBD)**
11. Adjourn

Michigan Indigent Defense Commission Meeting Minutes

The meeting was held remotely via Zoom in compliance with the Open Meetings Act and Public Act 228 of 2020 to reduce transmission of COVID-19 and protect the health of Commissioners, MIDC staff and members of the public interested in attending the meeting. The MIDC website and meeting notice included information for members of the public on how to participate.

December 15, 2020

Time: 9:00 am

Commission Members Participating

Consistent with Public Act 228 of 2020, during roll call Commissioners were asked to identify the county, city, town or village and state from which they are attending, that information is reflected below in parentheses following each Commissioner's name.

- Michael Puerner, Chair, (Ada, Kent County, Michigan)
- Tracy Brame (Grand Rapids, Kent County, Michigan)
- Kimberly Buddin (Novi, Michigan)
- Judge Jeffrey Collins (Wayne County, Michigan)
- Nathaniel Crampton (Jackson, Jackson County, Michigan)
- Andrew DeLeeuw (Washtenaw County, Michigan)
- Judge James Fisher (Grand Rapids, Kent County, Michigan)
- Christine Green (Washtenaw County, Michigan)
- David Jones (Detroit, Wayne County, Michigan)
- James Krizan (Allan Park, Wayne County, Michigan)
- Cami Pendell (non-voting member) (Lansing, Ingham County, Michigan), joined at 10:40 am
- Margaret McAvoy (Mount Pleasant, Isabella County, Michigan)
- Tom McMillin (Benzonia, Michigan)
- Judge Kristina Robinson Garrett (Detroit, Wayne County, Michigan)
- John Shea (Dexter Township, Washtenaw County, Michigan)
- William Swor (Detroit, Wayne County, Michigan)
- Gary Walker (Chocolay Township, Marquette County, Michigan), joined at 10:00 am

Commission Members Absent:

Joshua Blanchard and Joseph Haveman

Staff Members Participating

Loren Khogali, Barbara Klimaszewski, Marla McCowan, Kelly McDoniel, Rebecca Mack, Deborah Mitchell, Susan Prentice-Sao, Christopher Sadler, Jonah Siegel, Nicole Smithson, Kristen Staley, Melissa Wangler and Marcela Westrate

Chair Puerner called the Michigan Indigent Defense Commission (“MIDC” or “the Commission”) meeting to order at 9:03 am.

Introduction of Commission members and guests

Chair Puerner welcomed attendees to the meeting. Guests were invited to introduce themselves.

Public Comment

Lillian Diallo offered comments on behalf of the Wayne County Criminal Defense Bar Association.

James Heath offered comments on behalf of Wayne County.

Radric Davis submitted a written comment which was read to Commissioners by Loren Khogali.

Additions to agenda

Commissioner Krizan moved that the agenda be approved as presented. Judge Collins seconded the motion. The motion carried.

Consent Agenda

Commissioner DeLeeuw moved that the consent agenda containing the October meeting minutes and 2021 meeting dates be adopted. Commissioner Jones supported. The motion carried.

Chair Report

Chair Puerner provided an overview of the agenda and materials provided to commissioners. He highlighted the Commission’s successes over the last year.

Executive Director Report

Ms. Khogali provided a written report to the Commission prior to the meeting. She expressed her gratitude for the opportunity to do this important work with the Commission. She acknowledged the work of staff, commissioners, local funding units and public defenders.

Commission Business

Nominations Committee

Chair Puerner provided an overview of the Nominating Committee’s meeting. He thanked Commissioners Buddin and Shea for their participation on the committee. The Nominations Committee recommends that Judge Collins serve as Chair of the Commission, Commissioner Green serve as Vice Chair and that Commissioner Walker continue serving as Secretary.

Chair Puerner opened the floor for additional nominations. There were no additional nominations.

Commissioner Shea moved that the Commission adopt the Nominating Committee's Report. Commissioner Swor seconded. The motion carried.

The Ad Hoc Nominating Committee was discharged having completed its charge.

Judge Fisher moved that Chair Puerner remain on the Executive Committee as immediate past Chair and that Judge Fisher step off of the Committee. Commissioner Shea supported. The motion carried.

Ms. Khogali expressed her appreciation for the support the Executive Committee has provided her over the last three years. She welcomed Commissioner Green and Judge Collins and thanked Judge Fisher for his longstanding commitment and to indigent defense reform, including serving as Chair of the Indigent Defense Advisory Commission, the inaugural permanent Michigan Indigent Defense Commission, and continued work as a member of the Executive Committee.

Year in Review Presentation

Ms. Khogali and Ms. McCowan presented a year in review video highlighting the work of the staff, Commission and local public defense systems in 2020.

FY 20 Legislative Wrap-Up

Ms. Westrate provided an update about the legislature's activities and the upcoming appropriations process.

Research Report

Dr. Siegel provided an overview of research and data initiatives and updated the Commission on progress on research projects.

CREW Report

Chair Puerner invited Linda Rexer and MaryAnn Sarosi to present an overview of the Citizens for Racial Equality in Washtenaw (CREW) Report.

FY 20 Compliance Updates

City of Inkster

Ms. McCowan provided an update on the contact MIDC staff has had with the City of Inkster. The system has not completed FY 19 reporting requirements and has not submitted any reports for FY 20. The staff recommendation is that staff be authorized to activate the mediation process if the City of Inkster does not have complete reporting by the end of January 2021.

Judge Fisher moved that the staff recommendation be adopted, and that staff be authorized to activate the mediation process if there is not complete reporting from the City of Inkster by the end of January 2021. Commissioner Green seconded the motion. The motion carried.

FY 20 Fourth Quarter Budget Adjustments

Ms. Mack approved budget adjustment requests for the systems listed below. The adjustments did not impact the total system cost.

- Allegan and Van Buren Counties
- Berrien County
- 32A District Court – City of Harper Woods
- 50th District Court – City of Pontiac
- Huron County
- Isabella County
- Ogemaw County
- Ontonagon County
- Saginaw County
- Sanilac County
- Tuscola County
- Washtenaw County
- Wexford and Missaukee Counties

The Commission recessed from 11:00 until 11:15 am.

Following the recess, Chair Puerner called for a roll call vote. Ms. Westrate called the roll and a quorum of members was still present.

FY 21 Approved Plans and Cost Analysis – request to increase approved MIDC grant funding award by way of reimbursement

Clinton and Montcalm Counties submitted requests to receive reimbursement by revising their cost analyses to reflect overspending in FY 20. Clinton County overspent by \$98,962.01 and Montcalm County by \$72,884.99.

The staff recommendation is that each FY 21 cost analysis be increased by the amount overspent in FY 20 and that the total system cost be adjusted accordingly. Commissioner Swor moved that the staff recommendation be adopted. Commissioner Walker seconded. The motion carried.

Review of FY 21 Compliance Plans and Cost Analyses - Resubmissions

Ms. McCowan provided an overview of the committee work completed prior to the Commission meeting.

The Increase to Direct Costs Committee, chaired by Commissioner Swor, met December 10. The committee considered the following plans: Alger County, 43-1 District Court in Hazel Park and Wayne County.

The General Increase to Plan Committee, Chaired by Commissioner Green, met on November 20 to discuss the request to fund construction at the criminal justice complex in Wayne County.

Substantive Review of Resubmissions

The 22nd District Court in the City of Inkster and the 30th District Court in Highland Park failed to resubmit plans and/or cost analyses. The staff recommendation is that the failure to resubmit be treated as a disapproval of both the plans and cost analyses for these two systems. Judge Collins moved that the staff recommendation be adopted. Commissioner Swor seconded. The motion carried.

The 43-1 District Court in Hazel Park provided a resubmission for the staff's review. The staff recommendation is to disapprove the compliance plan and disapprove the cost analysis for this system. Commissioner Swor moved that the staff recommendation be adopted for the 43-1 District Court in Hazel Park. Commissioner Krizan seconded the motion. The motion carried.

Ms. McCowan provided an overview of the revised plan and cost analysis submitted by the 27th District Court in Wyandotte. The staff recommendation is to approve both the plan and cost analysis resubmitted by the system. Commissioner Green moved that the staff recommendation be adopted. Ms. McAvoy seconded. The motion carried.

Ms. McCowan provided an overview of the four systems whose plans were previously approved but whose cost analyses were disapproved. The systems submitted revised cost analyses.

The staff recommendation is that the revised cost analyses for the following systems be approved. (these systems' compliance plans are already approved):

- Alger County
- 43-3 District Court - Madison Heights
- Kalamazoo County
- Roscommon County

Judge Fisher moved that the staff recommendation be adopted for the four systems listed above. Judge Collins seconded. The motion carried.

Ms. McCowan provided an overview of the plans submitted by Wayne County to date. Commissioner Green summarized the work of the General Increase to Plan Committee. Chair Puerner provided an overview of the materials distributed to the Commissioners for their review.

The staff recommendation is that the resubmitted compliance plan and resubmitted cost analysis be approved with the exception of the costs in line 109 of the cost analysis. This line item totals \$4.9 million and is for new construction at the criminal justice complex. Commissioners discussed the proposal.

Judge Fisher moved that the staff recommendation be adopted. Commissioner Green seconded the motion.

Commissioner DeLeeuw moved to amend Judge Fisher's motion by including approval of the full plan and the full cost analysis as submitted by the County, including the \$4.9 million for new construction at the criminal justice complex. Commissioner McAvoy seconded the amended motion.

After discussion, Chair Puerner called for a roll call vote. The amended motion failed with 4 yeas (DeLeeuw, Jones, McAvoy and Robinson Garrett) and 12 nays (Puerner, Brame, Buddin, Collins, Crampton, Fisher, Green, Krizan, McMillin, Shea, Swor and Walker).

The Chair placed Judge Fisher's original motion before the Commission for its consideration. The Chair called for a roll call vote. The motion prevailed with 15 yeas and 1 nay (Jones). The following members voted yea with an objection to the omission of the funding for the local jail being excluded from the approved cost analysis: Commissioners DeLeeuw, McAvoy, and Judge Robinson Garrett.

The Commission reviewed the meeting dates for 2021. Judge Fisher thanked Chair Puerner for his hard work and dedication and welcomed Judge Collins as the new MIDC Chair. Commissioners Crampton and Walker offered closing observations regarding systemic racism as it relates to the criminal legal system.

Judge Fisher moved that the meeting be adjourned. Commissioner Walker seconded. The meeting adjourned at 1:02 pm.

Respectfully submitted,
Marcela Westrate



MICHIGAN INDIGENT
DEFENSE COMMISSION

Date: February 16, 2020
To: MIDC Commissioners
From: Loren Khogali, Executive Director

Dear Commissioners:

I am looking forward to seeing you via Zoom on February 23rd at 9:00 a.m. If you are not able to attend the meeting, or have any questions about materials, please let me know. My cell phone is (517) 275-2845 and my email is khogalil@michigan.gov.

FY22 Executive Budget Recommendation

This will be the Commission's first meeting of 2021. I am pleased that the Governor's Executive Budget Recommendation for FY22 reflects the State of Michigan's commitment to continued partnership with local funding units and indigent defense systems to ensure that the fundamental constitutional rights of those charged in the state's criminal legal system are protected and preserved.

I have included the pages of the budget presentation that reflect the total recommendation of \$148.9 million for fiscal year 2022 indigent defense grants. This includes continuing support for compliance with minimum standards 1-4 and anticipated funding needed for minimum Standard 5, which will be included in planning for the first time in April 2021.

Over the next few weeks, we will begin the legislative appropriations process. We have already begun coordinating with LARA's Director of the Office of Policy and Legislative Affairs. I anticipate requesting Commissioners' participation in legislative meetings and testimony as we prepare for committee hearings.

FY21 Compliance Plans and Grant Contracts

We have received FY21 compliance plans from all but one funding unit, the City of Inkster. The Commission will review the third and final FY21 submissions for the

remaining four funding units at its February (Highland Park, Inkster, Redford) and April (Hazel Park) meetings.

To date, the MIDC has provided grant contracts to all 116 indigent defense systems with approved plans. With the exception of Wayne and Kalamazoo counties, which have not returned executed contracts, all other contracts have been processed for distribution of funds. Four systems' plans are pending review and approval by the Commission.

FY21 first quarter reporting was due February 1, 2021 for all local systems with fully executive grant contracts. As part of quarterly reporting, all systems are required to provide:

- A revised quarterly program report detailing compliance with current minimum standards;
- A financial status report with information about spending during the reporting period;
- A list of the attorneys providing services.

In an effort to provide ongoing and easily accessible support to local systems, staff provided a series of videos describing changes and reporting requirements. If you are interested in viewing the videos, you can see them on MIDC's [YouTube channel](#).

Mediation with Wayne County

On February 8, 2021, State Court Administrator Tom Boyd appointed attorney Pam Enslin as mediator with respect to the disapproved portion of Wayne County's FY21 cost analysis. Pursuant to the MIDC Act, mediation must begin within 30 days of appointment of a mediator and conclude within 60 days of initiation of the mediation.

FY22 Compliance Planning

Fiscal year 2022 compliance plans and cost analyses are due April 27, 2021. These plans will include minimum standards 1-5. Regional Managers have begun meeting with local systems to support compliance planning for fiscal year 2022, especially with respect to Standard 5.

In the meeting materials, you will find the following items related to FY22 planning:

- FY22 compliance plan application;
- FY22 cost analysis for indigent defense systems and non-profit defender offices;
- Frequently Asked Questions related to Standard 5;
- Tips for FY22 Planning.

The Commission will begin reviewing FY22 plans at the June meeting. In order for the Commission to review plans consistent with statutory time constraints, we will need to add a July meeting, as we have in past years. I propose **July 20, 2021**. I've included a revised meeting schedule. If you have any concerns about this additional meeting, please let me know.

Grant Management System

MIDC remains on target to receive fiscal year 2022 plans through its new grant management system, EGraMS, at the end of April 2021. Staff will begin to train on the system next month and we have notified systems that training for local funding units will be held March 22-29.

Local Share Evaluation by Public Sector Consultants

Public Sector Consultants (PSC) has completed interviews of stakeholders and continues its research and analysis of the local share. Thank you again to the Commissioners and local system stakeholders who participated in interviews. Rebecca and I continue to meet every other week with PSC regarding the project. The next steps of the process include a survey and focus groups. I anticipate inviting PSC to present at the Commission's April meeting.

3rd Annual Leadership Conference

The MIDC will hold its third annual Public Defense Leadership Conference April 14-15th. The session will be open to public defender chiefs and leaders within public defender offices and managed assigned counsel administrators. We are excited to expand the conference this year to include investigators and social workers in public defender offices. The conference will be held online and will span two days. The first day will consist of plenary sessions and the second day will provide the opportunity to participate in workshops centered around a specific topic.

Justice for All Commission

Last month, the Michigan Supreme Court announced the establishment of the [Justice For All Commission](#) (JFA), which will focus on creating 100% access to the civil legal system. The JFA is a collaborative body led by the State Court Administrative Office, the State Bar and the State Bar Foundation. Michigan Supreme Court Justice Zahra and Michigan Legal Help Director Angela Tripp will co-chair the JFA. I am excited to participate as an appointee to the JFA, as there is significant intersection of the criminal legal system and the civil legal system that impacts clients that rely on our states' indigent defense systems.

MIDC Positions

If you recall, MIDC posted shortly after the Commission's December meeting for two positions, Grant Analyst and Training Analyst. These are positions previously approved by the Commission but unfilled due to the statewide hiring freeze put in place in 2020. Interviews have been completed for the Training Analyst position and we expect to make an offer imminently. We anticipate scheduling interviews for the Grant Analyst position in the next few weeks.

It is always a joy to celebrate the very deep bench of commissioners and staff with which the Commission fulfills its mission:

- **Commissioner Tracey Brame** was named [Director of the WMU-Cooley Law School Innocence Project](#). In the course of court-watching, we saw one of her students successfully expunge a client's previous conviction!
- **Commissioner Hakim Crampton** helped to lead the push for the [Clean Slate expungement reform](#) passed by the state legislature and signed into law by the Governor in December. Michigan is a leader in expungement law, adopting some of the most expansive reform in the nation.

Commission staff has been active in engaging stakeholders in issues related to public defense:

- **Regional Manager Melissa Wangler** partnered with counsel, judges and indigent defense leadership to facilitate a series of panels to educate attorneys about the benefits of practicing in the Upper Peninsula of Michigan.
- **Marla McCowan** presented to the Women Lawyer's Association of Michigan on using technology to gain productivity in the practice of law.
- **Regional Manager Kristen Staley** participated as a panelist in a discussion of the National Center for Juvenile Defense (NCJD) assessment of indigent defense services for juveniles. The panel included Michigan Supreme Court Justice Beth Clement, Michigan Center for Youth Justice Director Jason Smith and Kim Tandy, who worked with NCJD on the assessment.
- **Regional Manager Kelly McDoniel** presented to the Western Wayne County Police Chiefs about the Commission's work and opportunities for improvements.
- I presented at the **American Bar Association's Public Defense Summit** on a panel focused on counsel at first appearance and was recently appointed to the Steering Committee for **Advocates & Leaders for Police and Community Trust (ALPACT) of Detroit Metro**, and organization of local, state and federal law enforcement, legislators, community, advocacy and civil rights leaders dedicated to bridging relationships by examining issues affecting police and

community relations and recommending implementation strategies to law enforcement and community groups.

And finally, December, January and February brought continued press coverage of indigent defense and reforms of the criminal legal system in Michigan:

- The Wexford-Missaukee public defender office has hired a new chief, Bob Champion, who is [profiled](#) in the Cadillac News.
- The Alpena News recognized the importance of [indigent defense reforms](#) and the contributions of attorney Bill Pfeifer.
- A recent [article](#) in the ABA News captured the courts continued efforts to balance the increased use of technology and access to courts.
- The [Detroit Free Press editorial board](#) called Wayne, Oakland and Macomb counties to action to address systemic racism underlying the criminal legal system. The editorial explored the CREW report, on which the Commission received a presentation at its December meeting, as a tool for identifying racial inequities.
- Chief Justice McCormack identified the need for better statewide data collection to understand and address the inequities in our justice system in an [editorial featured in the Detroit News](#).

Department of Licensing and Regulatory Affairs Michigan Indigent Defense Commission Grants

February 11, 2021



Issue

Public Act 93 of 2013 created the Michigan Indigent Defense Commission (MIDC) to set minimum standards for the appropriate provision of indigent defense services in the state. The minimum standards are binding directives on local systems to meet the Constitutional requirements for the effective assistance of counsel. The state's 120 local indigent defense systems must comply with the minimum standards that are established by the MIDC and approved by the Department of Licensing and Regulatory Affairs (LARA). The MIDC annually approves compliance plans and cost analyses for local indigent defense systems. Each system contributes a "local share," and the State of Michigan is then responsible for the additional costs of compliance with the standards established, subject to appropriation. In fiscal year 2020, the total local share was \$38.5 million, in addition to the State's contribution of \$117.4 million for indigent defense.

- Minimum Standards #1 - #4 (Continued Implementation) – The first four minimum standards received final approval by LARA in May 2017. These standards set directives around:
 - 1) the education and training of defense counsel;
 - 2) initial review with a client before court proceedings;
 - 3) investigation and experts; and
 - 4) providing counsel at first appearance and other critical stages of criminal proceedings.
 Local trial court units began implementing these standards in fiscal year 2019.
- Minimum Standard #5 (New Implementation) – Approved by LARA in October 2020, Minimum Standard #5 addresses independence from the judiciary and sets directives around preventing political or budgetary influences in the indigent defense system. This new standard will protect independence by shifting certain responsibilities outside of the courts, such as the appointment and payment of counsel, assessment of expert and investigator requests, and assignment and payment of experts and investigators. Trial court units will incorporate this standard into compliance plans and cost analyses beginning in fiscal year 2022.
- Minimum Standards #6 - #8 and the Indigency Standard (Pending) – These additional four standards have been approved by the MIDC and are pending review by LARA. These standards address indigent defense workloads (standard #6), the qualification and review of counsel (standard #7), attorney compensation (standard #8), and a standard for determining indigency and contributions by partially indigent defendants (indigency standard).

Funding Minimum Standards #1- #5 (Fiscal Year 2020 – Fiscal Year 2022)

- **Fiscal Year 2020** – A total of \$81 million was appropriated for local systems to comply with standards #1-#4 in Public Act 60 of 2019. The MIDC approved total grant costs of \$117.4 million, which were supported by the combination of fiscal year 2019 unexpended balances and the fiscal year 2020 appropriation. Pursuant to MCL 780.993, unexpended balances carry forward and reduce the subsequent year's grant by the amount of unexpended funds.
- **Fiscal Year 2021** – A \$117.5 million appropriation was included in Public Act 166 of 2020 for local systems to comply with standards #1-#4, an amount based off fiscal year 2020 grant costs. The estimated cost of fiscal year 2021 compliance plans (not all of which are yet approved) is estimated at \$137 million, although this amount will depend on final approvals by the MIDC. It is expected that unexpended funds from fiscal year 2020 will be sufficient to cover fiscal year 2021 costs, and no additional funding needs are anticipated.

- **Fiscal Year 2022** – In fiscal year 2022, local trial court units will be required to comply with the new minimum standard #5, in addition to standards #1-#4. A total of \$148.9 million is recommended for compliance with these standards.
 - Minimum Standards #1-#4 – An adjustment of \$19.4 million is included to support the compliance costs of minimum standards #1-#4, which would bring total compliance costs to \$137 million, based off fiscal year 2021 grant costs as the MIDC will begin compliance planning for fiscal year 2022 after the release of the Executive Budget. Given the unpredictable impacts of COVID-19 on local trial court units, it is unknown whether there will be any carryforward of unexpended balances into fiscal year 2022.
 - Minimum Standard #5 – An adjustment of \$12 million is included to support the compliance costs of the new minimum standard #5 across 120 trial court units.

As the MIDC begins their review and approval of fiscal year 2022 compliance plans and cost analyses later this spring, approvals will be monitored to determine whether additional resources beyond those recommended in the Executive Budget will be needed for fiscal year 2022.

Justice Reform

This budget recognizes and funds the important bipartisan work on justice improvement efforts done through a partnership among all three branches of state government.

- **\$31.4m increase for Michigan Indigent Defense Commission** (total now \$149m)
 - Increase for existing standards and newly approved minimum standard #5, Independence from the Judiciary
- **\$29.1m for Raise the Age**
 - Program implementation will shift most 17-year-old alleged offenders from adult court to juvenile justice system
- **\$20.1m for Clean Slate for Michigan**
 - Will implement recent legislative package for criminal record expungement programs
- **\$10.2m for De-escalation Training**
 - Provides behavioral health crisis and domestic violence response training for law enforcement to help divert individuals with behavioral health needs away from the criminal justice system, and better supports crime victims within justice system
- **\$325,700 for Pretrial Bail and Sentencing Decisions**
 - Will support the work of pretrial reform efforts
- **\$200,000 for Michigan Legal Help**
 - Michigan Legal Help provides civil legal assistance to unrepresented civil litigants and expands access to justice

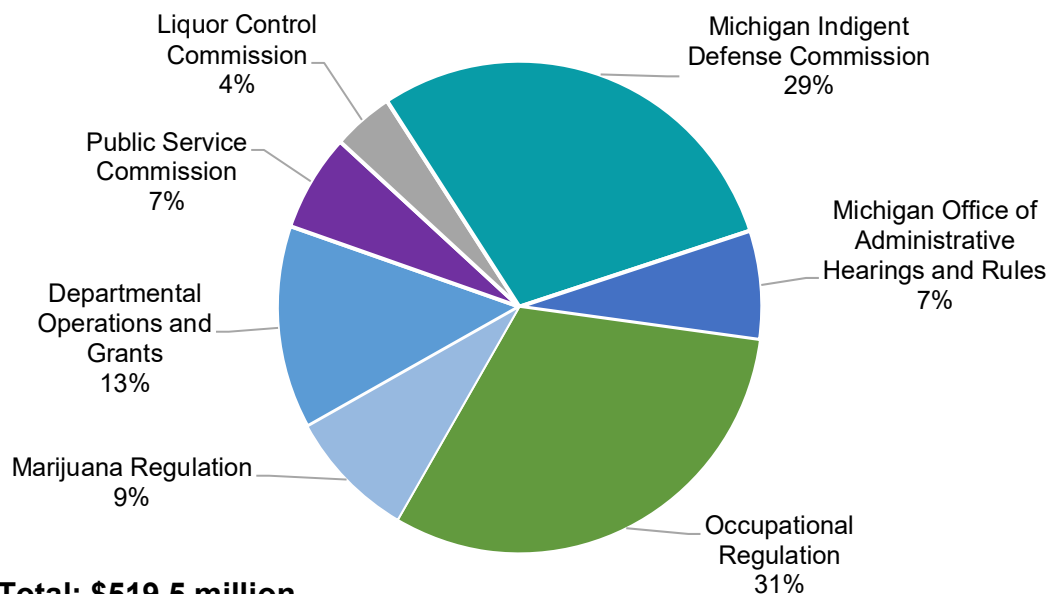
Department of Licensing and Regulatory Affairs

Governor's Recommended Budget for Fiscal Years 2022 and 2023

The Department of Licensing and Regulatory Affairs (LARA) serves as the state's primary regulatory agency, providing oversight for a wide range of program areas, including health and childcare, business, construction, marijuana, indigent criminal defense, liquor, and professional occupations.

The Governor's recommended budget for fiscal years 2022 and 2023 includes total ongoing funding of \$512.4 million, of which \$178.8 million comes from the state's general fund. The Governor also recommends \$7.1 million in one-time funding in fiscal year 2022, all of which comes from the general fund.

Major Department Funding



Highlights

The Governor's recommended budget provides:

- ♦ **\$148.9 million for Indigent Criminal Defense Grants** (\$148.6 million general fund) for 120 trial court funding units to meet the ongoing requirements for the effective assistance of counsel for indigent criminal defendants, a \$31.4 million increase from fiscal year 2021.
- ♦ Of this increase, \$12 million is provided for local trial court funding units to comply with the newly approved minimum standard #5, Independence from the Judiciary, which was approved in October 2020. Compliance with minimum standard #5 will protect the independence of the public defense system and prevent undue political and budgetary influences on the system. Trial court units will develop compliance plans for this new standard in fiscal year 2022.

- ♦ \$19.4 million of the increase is provided to support full year implementation costs of previously approved minimum standards #1 through #4.
 - ♦ **\$51.9 million for Marijuana Regulation** (all restricted funds) to regulate the state's medical and adult-use marijuana industry. Funding includes \$20 million to support research for veteran medical conditions and preventing suicide among veterans, in accordance with Initiated Law 1 of 2018. Excise tax collections from adult-use marijuana sales are forecast to result in the following fiscal year 2022 distributions: \$30 million to qualifying local counties and cities, \$35 million to the school aid fund for K-12 education, and \$35 million for road and bridge repair and maintenance.
 - ♦ **This funding also includes \$500,000 to address social equity within the marijuana industry** by expanding access to affordable capital.
 - ♦ **\$6.1 million to Modernize State Licensing Systems** (to be funded from the Information Technology Investment Fund in the Department of Technology, Management, and Budget), which are critical tools for LARA's regulatory duties. This investment will support the replacement of the existing 20-year-old Health Facilities and Substance Abuse Disorder licensing system (\$2.9 million), as well as the Certified Nurse Aide Licensing System (\$3.2 million). This modernization effort will benefit over 2,100 health facilities licensees, and over 52,000 certified nurse aides, nurse aide trainers, and training program licensees.
 - ♦ **\$5 million for the Michigan Saves Green Bank** (all general fund), to leverage private investment in clean energy improvements for Michigan's residents and businesses. By providing a credit enhancement to lenders, the green bank incentivizes lenders to provide more favorable rates and terms for renewable energy improvements benefitting property owners and the environment. This \$5 million investment will leverage \$150 million in private capital for clean energy improvements across the state.
 - ♦ **\$1.1 million** (all general fund) **to continue supporting State Infection Control Surveys in Skilled Nursing Facilities** to further the State's efforts to control the COVID-19 pandemic and protect the health, safety, and welfare of Michigan residents.
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Department of Licensing and Regulatory Affairs
Governor's Recommended Budget for Fiscal Years 2022 and 2023
 \$ in Thousands

FY 2022 Adjustments

	GF/GP	GROSS
FY 2021 Original Enacted	\$149,605.6	\$484,389.6
Removal of FY 2021 One-Time Funding	(\$1,000.0)	(\$1,000.0)
FY 2022 Ongoing Investments		
Michigan Indigent Defense Commission Standard #5 - Funding for newly approved minimum standard #5, Independence from the Judiciary	\$12,000.0	\$12,000.0
Marijuana Social Equity Program - Funding for encouraging social equity in the marijuana industry	\$0.0	\$500.0
FY 2022 Reductions	\$0.0	\$0.0
FY 2022 Baseline Adjustments		
Michigan Indigent Defense Commission - Additional funding for full implementation of minimum standards #1- #4 and increased restricted fund authorization for local indigent reimbursements	\$19,350.0	\$19,450.0
Underground Natural Gas Storage Safety - Additional federal funding for inspections	\$0.0	\$352.5
Marijuana Regulatory Agency - Funding to support additional inspection activity	\$0.0	\$648.0
Employee-Related Payroll Adjustments	(\$109.7)	(\$1,555.3)
Other Technical Adjustments	(\$1,000.0)	(\$2,398.4)
FY 2022 Total Executive Recommendation - Ongoing Funding	\$178,845.9	\$512,386.4
FY 2022 One-Time Investments		
Michigan Saves Green Bank - Credit enhancement to incentivize renewable energy improvements	\$5,000.0	\$5,000.0
Nursing Facility Infection Control Surveys - Continued support for state inspections	\$1,100.0	\$1,100.0
Urban Search and Rescue - Funding shifted to one-time	\$1,000.0	\$1,000.0
FY 2022 Total Executive Recommendation - One-Time Funding	\$7,100.0	\$7,100.0
FY 2022 Total Executive Recommendation - Ongoing and One-Time	\$185,945.9	\$519,486.4
\$ Change from FY 2021 - Total Funding	\$36,340.3	\$35,096.8
% Change from FY 2021 - Total Funding	24.3%	7.2%

FY 2023 Planning Adjustments

	GF/GP	GROSS
FY 2022 Total Executive Recommendation	\$185,945.9	\$519,486.4
Removal of FY 2022 One-Time Funding	(\$7,100.0)	(\$7,100.0)
FY 2023 Total Executive Recommendation	\$178,845.9	\$512,386.4
\$ Change from FY 2022 - Total Funding	(\$7,100.0)	(\$7,100.0)
% Change from FY 2022 - Total Funding	(3.8%)	(1.4%)



MICHIGAN INDIGENT
DEFENSE COMMISSION

**Michigan Indigent Defense Commission
2021 Meetings**

Time: 9:00 a.m.

Location: TBD

February 23, 2021

April 20, 2021

June 15, 2021

July 20, 2021

August 17, 2021 (Budget Meeting)

October 19, 2021

December 21, 2021



MICHIGAN INDIGENT
DEFENSE COMMISSION

To: Commissioners, MIDC
From: Jeffrey Collins, Chair
Loren Khogali, Executive Director
Date: February 15, 2021

Next week, we will gather virtually for our first meeting of 2021. The Commission, with its staff, has accomplished an incredible amount of work in the past three years. We have seen indigent defense resources in the state of Michigan transformed. Our state government, in partnership with local funding units, has and continues to invest significant resources in protecting the most fundamental constitutional rights of individuals charged under criminal law.

It is appropriate, several years into this Commission's work and a few years into the establishment of funding, ongoing support and evolution of 120 local indigent defense systems, that we consider the scope of our current work, assess our organizational needs and define the priorities that will help guide the next years of the Commission's work.

To accomplish this, the Executive Committee recommends that an *ad hoc* Strategic Planning Committee be established to lead and advise the Commission through developing a strategic plan that will guide the Commission's work over the next two to five years.

There are two attached draft documents on which we invite your feedback:

- Draft committee charge;
- Draft framing document.

At our upcoming meeting, we will solicit volunteers to participate on the Strategic Planning Committee. Please email khogalil@michigan.gov if you are interested in volunteering for the committee. The Chair will appoint the committee after the meeting.

We look forward to beginning this important strategic planning process.

Draft *Ad Hoc* Strategic Planning Committee Description

The *ad hoc* strategic planning committee will support the Commission's strategic planning process. In doing so, the committee will work with the Executive Director to ensure an effective strategic planning process for the Commission, lead the development of a two-to-five year plan for the work of Commission and make recommendations related to its mission, vision and strategic initiatives for consideration and approval to the full Commission.

AUTHORITY/MISSION

Mission Statement:

The Michigan Indigent Defense Commission shall develop and oversee the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure that indigent criminal defense services providing effective assistance of counsel are delivered to all indigent adults in this state consistent with the safeguards of the United States constitution, the state constitution of 1963, and with the Michigan Indigent Defense Commission Act.

We will identify and encourage best practices for delivering the effective assistance of counsel to indigent defendants charged with crimes.

We will collect data, support compliance and administer grants to achieve these goals.

We will accomplish our mission through collaboration, transparency and accessibility to all partners in the criminal justice community.

Michigan Indigent Defense Commission Act:

Propose Standards: 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.

Implementation/Modification/Enforcement of Standards: 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.

Review/ Approval/Funding of Compliance Plans: 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).

Best Practices: The MIDC shall identify and encourage best practices for delivering the effective assistance of counsel to indigent defendants charged with crimes.

Monitor Performance: 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.

Investigation/ Auditing: Investigating, auditing, and reviewing the operation of indigent criminal defense services to assure compliance with the commission's minimum standards, rules, and procedures.

GUIDING QUESTIONS:

1. How has the work of the Commission changed since its inception?

- Identification of the tension inherent in implementing a statute rooted in local control in a manner that empowers local systems to develop and define models for providing indigent defense services and also centralizing policy-setting, support and monitoring in the state
- Facilitating MIDC Act at a state level with broad stakeholder partnerships that have expanded to include technical support and communications focused on the implementation of day-to-day processes rather than broad policy initiatives
- Expansion of Work and Shift in Focus
 - Primary focus on standards development, research and policy development, and stakeholder buy-in
 - Expansion of work in 2018 to include technical assistance related to compliance planning, advocacy for funding implementation, financial and compliance monitoring
 - Primary focus has shifted from standards development to planning for compliance and monitoring for financial and program compliance supported by technical assistance

2. How does that inform the following?

- **Operations**
 - *Question:* Does the established office structure and operational budget need to change to appropriately serve the work of the Commission and its staff to fulfill its mission and statutory duties?
- **Standards and Compliance**
 - *Question:* How does MIDC prioritize issues related to standards and compliance?
 - driven by approval of standards, statutory timelines;
 - driven by authority to track compliance and respond to non-compliance;
 - driven by encouraging increasingly effective indigent defense system;
 - ongoing efforts to improve quality and effectiveness of individual systems and build systemic efficiencies and effectiveness;
- **Policy/Legislation**
 - *Question:* Are there legislative changes the Commission should pursue as necessary or because they would improve the Commission's ability to fulfill its mission and statutory obligations?
- **Governance**
 - *Question:* Are there amendments to the Commission's governing documents that would better serve and reflect the Commission's work?
 - How does the Commission define its mandate?

3. Where should the Commission's priorities lie over the next 2-5 years and why?

- what must get done
- what should get done
- what would be nice to get done

4. What does success look like?

- How do we measure it?
- Timeline?

5. What do we need to accomplish those priorities?

- Short-term steps
- Long-term steps

Submitter Information

Funding Unit(s)/System Name:

Submitted By (include name, title, email address and phone number):

Date:

Signature: _____

Please identify the following points of contact (include name, title, email address and phone number):

Authorizing official who will sign the contract:

Mailing address for authorizing signatory: _____

Primary point of contact for implementation and reporting:

Financial point of contact:

Please identify any other person in the system who should receive communications from MIDC about compliance planning and reporting, including name, title, and email address:

Delivery System Model

1. What type of indigent defense delivery system do you have currently? (indicate all that apply):

- Public Defender Office (county employees)
- Public Defender Office (non-profit/vendor model)
- Managed Assigned Counsel System

Name of MAC Attorney Manager and P#:

- Assigned Counsel System
- Contract Defender System
- Regionalized system or coordination with other trial court funding units

If you are unsure about your type of indigent defense delivery system, more information can be found in MIDC's report entitled *Delivery System Reform Models* (2016), posted here: <https://michiganidc.gov/resources>. Questions can also be directed to your MIDC Regional Manager.

2. Are you proposing to change your type of indigent defense delivery system for next year? Please respond Yes or No.

3. If you are changing your indigent defense delivery system, what model do you plan to use next year?

Standard 1

Training of Attorneys

4. Number of attorneys who accept adult criminal defense assignments as of October 1, 2021 _____
5. Number of attorneys with less than 2 years of Michigan criminal defense experience as of October 1, 2021 _____

In the cost analysis, please include a list of names and P#s of all the attorneys who accept adult criminal defense case assignments in your system, including conflict counsel and counsel for youths charged as adults.

6. What is your plan for training attorneys with less than 2 years of Michigan criminal defense experience?
7. Please describe your system's training plan, including how compliance will be tracked for reporting requirements:
8. If an attorney does not complete the required training, how will the system address the noncompliance?
9. Any changes in your *funding needs* from the prior year for Standard 1? Please respond Yes or No.

If yes, please describe in the cost analysis.

Standard 2

Initial Client Interviews

10. The MIDC Standards now require the selection and assignments of attorneys to be done independently from the judiciary. How and when are defense attorneys notified of new assignments?
11. How are you verifying that in-custody attorney client interviews occur within three business days?
12. How are you verifying attorneys' introductory communications with out-of-custody clients?
13. How are you compensating attorneys for conducting initial interviews? Please include whether you intend to compensate attorneys differently for in-custody and out-of-custody interviews.
14. Any changes in your *funding needs* from the prior year for Initial Interviews? Please respond Yes or No.

If yes, please describe in the cost analysis.

Confidential Meeting Spaces

15. How many confidential meeting spaces are in the jail?
16. What is the TOTAL amount of confidential meeting spaces in the courthouse?
17. How many confidential meeting spaces in the courthouse are for *in-custody clients*? Please describe these spaces.
18. How many confidential meeting spaces in the courthouse are for *out-of-custody clients*? Please describe these spaces.
19. Any changes from the prior year's *compliance plan* for your confidential meeting spaces? Please respond Yes or No.

If Yes, please describe the proposed changes.
20. Any changes from the prior year's *funding needs* for confidential meeting spaces? Please respond Yes or No.

If yes, please describe in the cost analysis.

Standard 3

Experts and Investigators

21. The MIDC Standards now require approval of expert and investigative assistance to be independent from the judiciary. Describe the process of how attorneys request expert witness assistance for their indigent clients:

22. Any change from the prior year's process to request expert witness assistance? Please respond Yes or No.

If yes, please explain the change:

23. Describe the process of how attorneys request investigative assistance:

24. Any change from the prior year's process to request investigative assistance? Please respond Yes or No.

If yes, please explain the change:

25. How are attorney requests (whether approved or denied) for experts and investigators tracked by the system? Please include approved and denied requests.

26. Any change from the prior year's *funding needs* for Standard 3? Please respond Yes or No.

If yes, please describe in the cost analysis.

Standard 4

Counsel at First Appearance and Other Critical Stages

27. The MIDC Standards now require the selection and assignments of attorneys to be done independently from the judiciary. How are you providing counsel at first appearance and all arraignments? Please provide detail for circuit and district court coverage.
28. How are you providing counsel at all other critical stages? Please provide details:
29. How are you compensating attorneys for Standard 4? Please provide detail for compensating counsel at first appearance and compensating counsel at all other critical stages.
30. Do you have a prison in your County? How is counsel provided to people charged with crimes while incarcerated in the prison? Do you seek reimbursement for the cost of counsel from the Michigan Department of Corrections?
31. Are there or will there be any misdemeanor cases where your court accepts pleas without the defendant appearing before a magistrate or a judge? For example, pleas by mail, over the counter pleas, pleas online, etc. Please answer Yes or No.
32. Describe how counsel is offered to a defendant making a plea who does not appear before a magistrate or judge:
33. Any change from the prior year's *attorney compensation* for Standard 4? Please respond Yes or No.
If yes, please describe in the cost analysis.
34. Any change from the prior year's *funding needs* for Standard 4? Please respond Yes or No. **If yes, please describe in the cost analysis.**

Standard 5

The MIDC Standards now require independence from the court including the selection and assignment of attorneys, attorney compensation and approval of requests for expert and investigative assistance.

35. How will attorneys be selected to provide adult indigent criminal defense services in your indigent defense system? Please describe any eligibility requirements needed by the attorneys as well as the selection process:
36. Will the selection process be facilitated by a committee of stakeholders? If so, please list the titles of participating officials, agencies, or departments as appropriate.
37. Who will approve an attorney's eligibility to receive assigned cases?
38. Who will assign work to the attorneys in the indigent defense system? Please include the person's name, title, employer and/or supervisor.
39. Who will review and approve attorney billing?
40. Who will approve requests for expert and investigative assistance?
41. Who will review and approve expert and investigative billing?
42. What is your appeal process to resolve any potential conflicts between the assigned attorney and the person(s) assigning casework?
43. What is your appeal process to resolve any potential conflicts between the assigned attorney and the person(s) or reviewing/approving billing?

44. What is your appeal process to resolve denied or partially denied requests for expert or investigative assistance?

Personnel

In the cost analysis, please provide detail about all personnel employed by the funding unit. This should include DIRECT SERVICE PROVIDERS (Public Defender Chief, Deputy Chief, Assistant Defenders, and staff of the defender office employed by the system) as well as ANCILLARY STAFF (court clerks, sheriff employees, etc.)

Ancillary Staff

45. In limited circumstances, the MIDC can fund some other system staffing needs if required to implement one of the MIDC standards. These requests are evaluated each year.
46. Do you have any ancillary staff? Please answer Yes or No.
- If yes, what standard(s) or reporting needs do they meet?
- If yes, how are you tracking time for ancillary staff?
47. For existing ancillary staff, are there any personnel positions/hours eliminated, reduced or increased from the prior year? Please answer Yes or No.

If yes, please explain in the cost analysis.

48. Are any additional ancillary staff positions or hours requested from the prior year? Please answer Yes or No.

If yes, please explain in the cost analysis.

Reimbursement Costs for Creating Plan

An indigent criminal defense system may submit to the MIDC an estimate of the cost of developing a plan and cost analysis for implementing the plan under MCL 780.993(2). Please attach documentation of planning time for FY22, if seeking reimbursement under this provision.

Are you requesting reimbursement of planning costs? ☐ Yes | ☐ No

If yes, do you have receipts showing that non-funding unit employees have been paid? ☐ Yes | ☐ No

What is the amount you are seeking in reimbursement? \$ _____

Reminders

- ✓ You must also complete a cost analysis.
- ✓ In order to complete your application, you must submit a list of the attorneys providing services with P numbers.
- ✓ If applicable, you must submit documentation supporting your request under MCL 780.993(2) for reimbursement for the cost of compliance planning.

Indigent Defense System Cost Analysis

Grant Year October 1, 2021 - September 2022

Funding Unit Name(s)

DATE SUBMITTED:

Personnel	Position	Calculation and rate	hours	Total	State Grant	Local Share	Other Funding Sources	Total
hours and rate								

Category Summary	0.00	0.00	0.00	0.00	0.00
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Personnel Jusification - List all positions to be funded by the grant budget (state grant/local share). Please * highlight all positions that are new personnel requests for FY2021 and provide justification for need.

Fringe Benefits	Percentage	Amount	State Grant	Local Share	Sources	Total
-----------------	------------	--------	-------------	-------------	---------	-------

Category Summary	0.00%	0.00	0.00	0.00	0.00	0.00
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Fringe Benefits Justification

Contractual

Contracts for Attorneys	Services Provided	Calculation and rate	hours Total	State Grant	Local Share	Other Funding Sources	Total
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Category Summary	0.00	0.00	0.00	0.00	0.00	0.00
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Contract Attorney Justification - list all possible rate scenarios for attorney contracts that apply (i.e. hourly, event based, annual contract paid monthly) and the type work whether generally indigent defense or specific like counsel at first appearance. Please * highlight rates or attorney line requests that are a change from your FY20 approved contract and contract rates.

Contracts for Experts and Investigators	Services Provided	Calculation and rate	hours Total	State Grant	Local Share	Other Funding Sources	Total
--	-------------------	-------------------------	----------------	-------------	-------------	--------------------------	-------

Category Summary	0.00	0.00	0.00	0.00	0.00	0.00
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Experts and Investigators Justification - Provide explanation and justification if there are changes to the requested amounts for experts and investigators from the FY20 approved contract along with an explanation if requesting to adjust the rates from your FY20's approved contract rates.

Contracts for Construction Projects	Services Provided	Calculation	Total	State Grant	Local Share	Other Funding Sources	Total
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Category Summary	0.00	0.00	0.00	0.00	0.00
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Construction Project Justification - Provide as much detail as possible for the requested construction project identifying the need for the construction project, the component costs if possible, whether an estimate or if you were provided a documented quote. Attach a separate document if needed. Please attach the quote to the submission of the application.

Contracts Other	Services Provided	Calulation	Total	State Grant	Local Share	Other Funding Sources	Total
-----------------	-------------------	------------	-------	-------------	-------------	-----------------------	-------

Category Summary	0.00	0.00	0.00	0.00	0.00
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Contracts Other Justification - Provide justification for all other contract costs associated with the local indigent defense system with a * highlight to new request for FY21.

Equipment	Vendor	Calculation	Total	State Grant	Local Share	Other Funding Sources	Total
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Category Summary	0.00	0.00	0.00	0.00	0.00
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Equipment Justification - Provide justification for new equipment requests for FY21.

Training/Travel	Vendor	Calculation	Total	State Grant	Local Share	Other Funding Sources	Total
-----------------	--------	-------------	-------	-------------	-------------	-----------------------	-------

Category Summary	0.00	0.00	0.00	0.00	0.00
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Training and Travel Justification - Provide travel and training justification and *highlight new or changed requests for FY21
Suggested rates for training registration would be \$30/hour; SADO membership is \$50/year; NAPD membership is \$30/year

Supplies/Services	Vendor	Calculation	Total	State Grant	Local Share	Other Funding Sources	Total
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Category Summary	0.00	0.00	0.00	0.00	0.00
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Supplies Justification - Provide justification for supplies requests and *highlight new or changed requests for FY21.

Budget Total	0.00	0.00	0.00	0.00	0.00
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Attorneys Accepting Assignments

Name of Attorney	P#
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Indigent Defense System Cost Analysis

Grant Year October 1, 2021 - September 2022

Funding Unit Name(s)

DATE SUBMITTED:

Personnel	Position	Calculation and rate	hours	Total	State Grant	Local Share	Other Funding Sources	Total
hours and rate								

Category Summary	0.00	0.00	0.00	0.00	0.00
------------------	------	------	------	------	------

Personnel Jusification - List all positions to be funded by the grant budget (state grant/local share). Please * highlight all positions that are new personnel requests for FY2021 and provide justification for need.

Fringe Benefits	Percentage	Amount	State Grant	Local Share	Sources	Total
-----------------	------------	--------	-------------	-------------	---------	-------

Category Summary	0.00%	0.00	0.00	0.00	0.00	0.00
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Fringe Benefits Justification

Contractual

Contracts for Attorneys	Services Provided	Calculation and rate	hours Total	State Grant	Local Share	Other Funding Sources	Total
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Category Summary	0.00	0.00	0.00	0.00	0.00	0.00
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Contract Attorney Justification - list all possible rate scenarios for attorney contracts that apply (i.e. hourly, event based, annual contract paid monthly) and the type work whether generally indigent defense or specific like counsel at first appearance. Please * highlight rates or attorney line requests that are a change from your FY20 approved contract and contract rates.

Contracts for Experts and Investigators	Services Provided	Calculation and rate	hours Total	State Grant	Local Share	Other Funding Sources	Total
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Category Summary	0.00	0.00	0.00	0.00	0.00	0.00
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Experts and Investigators Justification - Provide explanation and justification if there are changes to the requested amounts for experts and investigators from the FY20 approved contract along with an explanation if requesting to adjust the rates from your FY20's approved contract rates.

Contracts for Construction Projects	Services Provided	Calculation	Total	State Grant	Local Share	Other Funding Sources	Total
--	-------------------	-------------	-------	-------------	-------------	--------------------------	-------

Category Summary	0.00	0.00	0.00	0.00	0.00
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Construction Project Justification - Provide as much detail as possible for the requested construction project identifying the need for the construction project, the component costs if possible, whether an estimate or if you were provided a documented quote. Attach a separate document if needed. Please attach the quote to the submission of the application.

Contracts Other	Services Provided	Calulation	Total	State Grant	Local Share	Other Funding Sources	Total
-----------------	-------------------	------------	-------	-------------	-------------	-----------------------	-------

Category Summary	0.00	0.00	0.00	0.00	0.00
------------------	------	------	------	------	------

Contracts Other Justification - Provide justification for all other contract costs associated with the local indigent defense system with a * highlight to new request for FY21.

Equipment	Vendor	Calculation	Total	State Grant	Local Share	Other Funding Sources	Total
-----------	--------	-------------	-------	-------------	-------------	-----------------------	-------

Category Summary	0.00	0.00	0.00	0.00	0.00
------------------	------	------	------	------	------

Equipment Justification - Provide justification for new equipment requests for FY21.

Training/Travel	Vendor	Calculation	Total	State Grant	Local Share	Other Funding Sources	Total
-----------------	--------	-------------	-------	-------------	-------------	-----------------------	-------

Category Summary	0.00	0.00	0.00	0.00	0.00
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Training and Travel Justification - Provide travel and training justification and *highlight new or changed requests for FY21
Suggested rates for training registration would be \$30/hour; SADO membership is \$50/year; NAPD membership is \$30/year

Supplies/Services	Vendor	Calculation	Total	State Grant	Local Share	Other Funding Sources	Total
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Category Summary	0.00	0.00	0.00	0.00	0.00
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Supplies Justification - Provide justification for supplies requests and *highlight new or changed requests for FY21.

Budget Total	0.00	0.00	0.00	0.00	0.00
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Nonprofit PD Office Cost Analysis For Adult Criminal Indigent Defense Services

Grant Year October 1, 2021 - September 2022

Funding Unit Name(s)

Personnel	Position	Calculation of hours and rate	Total MIDC Grant Amount	Total Dollars From Other Source
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Category Summary	0.00
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Personnel Jusification - List all positions within the nonprofit. Please highlight all positions that are new personnel requests for FY21 and provide justification for need. Please note if there is an increase/decrease in pay from last fiscal year for each employee.

Fringe Benefits and Other Employment Perks	Percentage	Total MIDC Grant Amount	Total Dollars From Other Source
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Category Summary	0.00%	0.00
Fringe Benefits Justification - List all positions within the nonprofit. Please highlight all positions that are new personnel requests for FY21 and provide justification for need. Please note if there is an increase/decrease in cost from last fiscal year for each employee.		

Contractual Contract/Conflict for Attorneys	Calculation hours and rate	Total MIDC Grant Amount	Total Dollars From Other Source
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Category Summary	0.00
Contract/Conflict Attorney Justification - list all possible rate scenarios for attorney contracts that apply (i.e., hourly, event based, annual contract paid monthly). Please highlight rates or attorney line requests that are a change from the FY20 approved contract and contract rates.	

Construction/Office Space Improvement Projects	Services Provided	Calculation	Total MIDC Grant Amount	Total Dollars From Other Source

Category Summary			0.00	
Construction/Office Space Improvement Project Justification - Provide as much detail as possible for each requested project identifying the need for the project, the component costs, and if possible, the estimate or project quote. Attach a separate document if needed and submit a copy of all estimates and quotes.				
Contracts Other	Services Provided	Calulation	Total MIDC Grant Amount	Total Dollars From Other Source

Category Summary	0.00
Contracts Other Justification - Provide justification for all other contract costs. Please highlight a new request for FY21.	
Office Lease - Please note if there is an increase/decrease in cost of office space.	

Equipment	Vendor	Calculation	Total MIDC Grant Amount	Total Dollars From Other Source
-----------	--------	-------------	-------------------------	---------------------------------

Category Summary	0.00			
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Equipment Justification - Provide justification for new equipment requests for FY21. Please note if equipment is being replaced and state when the original item was acquired.

Training/Travel	Vendor	Calculation	Total MIDC Grant Amount	Total Dollars From Other Source
-----------------	--------	-------------	-------------------------	---------------------------------

Registration
Mileage for automobiles
Hotels
Meals

Category Summary	0.00			
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Training and Travel Justification - Provide travel and training justification and *highlight new or changed requests for FY21.
Suggested rates for training registration would be \$30/hour; SADO membership is \$50/year; NAPD membership is \$30/year. Please note any out of state training/travel.

Supplies/Services	Vendor	Calculation	Total MIDC Grant Amount	Total Dollars From Other Source
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Category Summary	0.00
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Supplies Justification - Provide justification for supplies requests. Please note if there is an increase/decrease in these costs.

Additional Services/Funding Not Provided Under The MIDC Act	Service	Total Dollars From Other Source
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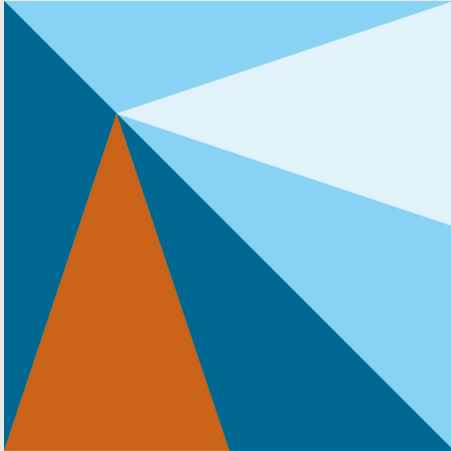
Category Summary	0.00
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If the nonprofit PD office provides additional services out of the scope of the MIDC Grant, please demonstrate that those services are not paid for with MIDC funding.

Budget Total	
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Attorneys Accepting Assignments

Name of Attorney	P#
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COMPLIANCE PLANNING FY2022

TOP TIPS FOR
COMPLETING THE
COMPLIANCE PLAN
AND
COST ANALYSIS
FROM
MIDC STAFF

CONTACT A
REGIONAL
MANAGER
517-657-3066

Do:

- Meet with your **Regional Manager** and other **stakeholders** to assess the needs of the local system.
- Use the **MIDC Grant Manual** to assist you with planning. It is available on the MIDC website "grants" tab.
- Check the MIDC's website (the "grants" tab) for **forms and instructions**.
- **NEW!** Set up a profile for MIDC's EGrMS Grant Management System as soon as possible after April 1, 2021.
- **NEW!** Use the MIDC's EGrMS to submit your compliance plan, cost analysis, current attorney roster, and mileage and travel rates between April 1, 2021 and April 27, 2021.

Don't:

- "Round up" in your math – actual dollar amounts are necessary to evaluate the requests in the compliance plans.
- Leave out details about your plan. Documents are reviewed by many staff members and the full Commission. Some people may not be familiar with what your system is trying to accomplish.
- Miss the April 27th deadline for submission! A failure to submit by the deadline may be treated as a first submission.

GRANT MANUAL



MICHIGAN INDIGENT
DEFENSE COMMISSION

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Revised February 2021

This Grant Manual is created for the convenience of stakeholders seeking information about compliance with the MIDC's standards and the contracts issued to indigent criminal defense systems pursuant to an approved plan and cost analysis. The Commission makes policy determinations regarding funding for the standards. The MIDC's staff serves as liaisons between stakeholders and the Commission and are responsible for bringing novel questions to the Commission for consideration and action. This manual is designed to capture decisions that the Commission has made through action on prior plans and costs for compliance with the standards. This manual will be revised regularly to reflect policy decisions by the Commission and made available on the Commission's public website. Notifications of updates will be communicated to local funding units.

The MIDC Act, in its entirety, is the primary document governing MIDC activities and should be referred to for full context of excerpted materials in this manual.

General Authority

The Michigan Indigent Defense Commission ("MIDC") Act is found at MCL §780.981 *et seq.*

Relevant Provisions of the MIDC Act for Standards, Compliance, and Reporting

The MIDC Establishes Standards for Indigent Defense

The MIDC is responsible for "[d]eveloping 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." MCL §780.989(1)(a).

The 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 **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.” MCL §780.993(3) (emphasis added).

Local Share

The local share refers to “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.” MCL §780.983(i).

“[A]n 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.” MCL §780.993(7). The requirement for spending the local share is activated by the need to spend in excess of that total. The statute does not dictate the *order* in which the state dollars and local share be spent during the contract year. The local share can be contributed at any time during the contract year.

“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.” MCL §780.993(8).

Approval of Compliance Plans

“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.” MCL §780.993(4) (emphasis added).

Duty of Compliance with Approved Plan

“Within 180 days after receiving funds from the MIDC ... 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.” MCL §780.993(11).

The MIDC Reviews Systems for Compliance

The MIDC will be “[i]nvestigating, auditing, and reviewing the operation of indigent criminal defense services to assure compliance with the commission's minimum standards, rules, and procedures.” MCL §780.989(1)(b).

Financial Reporting

“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.” MCL §780.993(14).

Unexpended Grant Funds

“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.” MCL §780.993(15) (emphasis added).

Overspending on Services

“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.” MCL §780.993(16).

Compliance Planning by Indigent Defense Systems

Resources Available on the MIDC’s Website

- The MIDC Standards
- White papers for MIDC Standards 1-4
- *Delivery System Reform Models: Planning Improvements in Public Defense* (MIDC, December 2016)
- ~~Position Paper on Attorney Fees after the Passage of the MIDC Act (MIDC, Summer 2016)~~
- Department of Treasury correspondence regarding adult indigent criminal defense funds

Compliance Plan Components

Identification of System

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

- ✓ The authorizing official submitting the plan and signing the contract terms of the funding consistent with the approved plan

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

Compliance with Approved Standards

The submitted plan will address each standard individually. A statement is required to identify and expand on the current or existing state of the system's process or work in subject the area of the standard. The submission will then need to highlight the changes or enhancements needed to achieve the standard, if any.

Cost Analysis

A cost analysis (budget) for the compliance plan must be submitted in the format approved by the MIDC, **including the detail of costs associated with a non-profit/vendor model defender office.** Reasonableness will be stressed and a list or guideline for permissible costs is included in this manual. To minimize rejections after official submission, systems should contact their MIDC Regional Manager, before submissions, to discuss compliance plan costs that pose situations not addressed in guidelines.

Local Share

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

Beginning in FY2019, all systems calculated and certified their local share. A certification of the local share calculation, acknowledged through local official authorization, was a requirement of the original compliance plan and cost analysis. ~~For FY2020, the local share was increased by 2.2% pursuant to MCL §780.983(i).~~ The local share will be adjusted ~~each year in accordance with the statutory requirement. to 2.1% for FY2021.~~ MIDC grant funds are calculated as the approved cost analysis offset by the local share. Any system seeking to modify its local share due to errors in the original calculation must contact its Regional Manager. Modifications are subject to review of the methodology by the Grant Manager and approval by the Commission.

Fund Established

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

Guidelines for Drafting Compliance Plans

The following information captures decisions that the Commission has made through action on prior plans and costs for compliance with the standards. In reviewing compliance plans, the Commission will generally limit approval of costs to those necessary to implement the MIDC's standards. Novel questions will be brought to the Commission for decision.

General Principles

Prosecutors, Judges, Magistrates

The MIDC Act charges the Michigan Indigent Defense Commission with the authority to develop, oversee implementation, enforcement and modification of minimum standards, rules and procedures to ensure that *indigent criminal defense services* providing effective assistance of counsel are delivered to all indigent adults in the State of Michigan. The Commission will not provide funding for prosecutors, judges, or magistrates to perform their duties. The Commission remains 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.” MCL 780.989(4).

Administrator for Delivery Systems

A funding unit considering the use of a managed assigned counsel system or public defender administrator must use a licensed attorney in good standing with the State Bar of Michigan for all duties involving management or oversight of attorneys or cases within the system.¹

Defense Attorneys – Direct Service Providers

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

¹ See MIDC meeting minutes, June 2017; MRPC 5.4(c).

employees or contract providers shall be given reasonable compensation.

Non-Lawyers – Direct Service Providers and Interdisciplinary Defense Teams

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

Public Defender and Managed Assigned Counsel Systems

Systems may choose to set up regional or local delivery system reform models such as public defender offices or managed assigned counsel programs to meet the minimum standards.² Set-up and operational costs of the office should be included. Lease or rent payments for offices of funding unit employees providing direct services and their staff are permissible expenses. **Systems seeking to change models (i.e., move from an assigned counsel system to a public defender office) should include a feasibility study, including a caseload analysis, sufficiently detailed to allow staff and Commission to review anticipates system impacts. Please consult with a Regional Manager for samples of these studies.**

A compliance plan may include the cost of the State of Michigan's basic bar dues for attorneys employed full time by the system. **Systems can also include the cost of a license for full time employees with positions requiring a license (i.e. investigator).** MIDC grant funding is not permitted for membership in ~~sections or~~ local bar associations **or any optional professional organizations, with the exception of funding for eligible training resources indicated by MIDC Standard 1.**³

A compliance plan may include the cost of malpractice insurance for attorneys employed full time by the system.⁴ Rates should be

² MIDC staff members are able to assist systems with hiring considerations, but cannot serve as a voting member in any employment decision-making process.

³ See MIDC meeting minutes, October 2019.

⁴ See MIDC meeting minutes, July 2019.

commensurate with those offered by the National Legal Aid and Defender Association's preferred carrier.

Hiring of Ancillary Staff

Many systems will hire indirect or ancillary service providers to implement the standards. Ancillary staff refers to personnel outside of assigned counsel and their support staff. 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. These positions must be reasonably and directly related to implementation of the standards to qualify for MIDC grant funding. **Time studies should be submitted with any request to fund these positions.** Supplanting⁵ of existing positions is not permitted.

Cost Allocation

Systems seeking to include cost allocation or indirect costs for employees are allowed. Funding that exceeds 10% of the personnel and fringe benefit (total) is subject to additional scrutiny and must include any methodology for determining the costs.⁶

Reimbursement for Overspending

A system that spends in excess of the prior year's total system cost can seek reimbursement as a separate line item in the subsequent cost analysis for services.

Regional Cooperation

The Commission urges efficient models of providing indigent defense. In some communities, multiple funding units may collaborate to deliver indigent defense services. The statutory authority for multiple counties cooperating in a regional delivery system model can be found in the Urban Cooperation Act of 1967, at MCL §124.501 et seq.

⁵ Supplanting refers to the local funding unit's reduction of local funds for an activity specifically because state funds are available to fund that same activity.

⁶ See MIDC meeting minutes, June 2019.

Travel

Rates will be appended to the grant contract. Unless local rates apply, any travel related expenses requested for compliance planning shall not exceed the rates provided by the “Schedule of Travel Rates” and the general policies for reimbursement of travel adopted by the State of Michigan.

Absent extraordinary circumstances, no grant funds for out-of-state travel will be allowed in any compliance plans. Travel to visit a client housed in custody in another state constitutes an extraordinary circumstance.

Travel for training out of state will only constitute an extraordinary circumstances if it is necessary to secure specialized training for public defender staff that is not available in Michigan.⁷ Public defender offices may seek funding for newly-hired attorneys with fewer than two years of experience practicing criminal defense in Michigan to participate in one basic skills acquisition class in an out of state training program. Systems must pursue any financial aid available to fund attendance for an employee’s attendance at an out of state training program.

MIDC grant funding is not permitted for purchasing or leasing automobiles.

MIDC grant funding is not permitted for the cost of parking at an assigned work station unless reimbursement is required by the funding unit’s established local employment policies.

Supplies

Systems can include funding for supplies needed for trial, including demonstrative exhibits and clothing for defendants to wear during court proceedings.

⁷ See State of Michigan LARA Out of State Travel Request Authorization form C-100.

Planning for Compliance with MIDC Approved Standards

Standard 1 – Training and Education

General Requirements

Michigan Indigent Defense Commission (MIDC) Standard 1 requires that attorneys shall annually complete at least twelve hours of continuing legal education. Attorneys with fewer than two years of experience practicing criminal defense in Michigan shall participate in one basic multi-day (minimum of 16 hours) skills acquisition class. **Time spent in skills training counts towards, and can satisfy, the annual CLE requirement.**

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

Standard 1 is an annual training requirement for every attorney each calendar year. Participation in a basic skills acquisition course (skills training) counts towards the annual continuing legal education requirement.

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

All attorneys providing services in the system should be included in the compliance plan, regardless of whether the attorney practices in other systems. Funding for training and individual training requirements may vary by system. In the event of duplicate registration for a single event, the source of payment should default to the funding unit based on the address listed for the attorney in the bar journal. Deviation from

the default is allowed if doing so is necessary to meet the requirements of the standard.

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

Please see the MIDC's website at <https://michiganidc.gov/cle/> for more information.

Permissible Costs

For **new training programs**, identify the cost of set-up and implementation including personnel, contractors, equipment, supplies, and operating expenses including meals at a group rate. For **existing training programs**, identify the number of attorneys to be trained, the courses or programs that will be attended with a cost of registration/tuition (using a rate of \$30 per credit hour), travel, and other expenses incurred by the trainees. Attorneys will not be reimbursed at any rate for their time spent in or traveling to training sessions.

No printed materials will be funded if digital materials are provided for training purposes.

Memberships

For webinars, such as the National Association for Public Defense, use an annual rate of \$30/per criminal defense attorney for membership and access to programming.

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

MIDC Grant funding will not be awarded for membership to the **National Legal Aid and Defender Association (NLADA)**, the National Association for Criminal Defense Lawyers (NACDL), the Criminal Defense Attorneys of Michigan (CDAM), ~~or~~ the Institute for Continuing Legal Education (ICLE), **or local bar associations**.

Communication and Plans for Reporting

Attorneys identified by the funding unit to represent adults charged with crimes in the particular system may 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 of each calendar year to remain eligible to continue to receive assignments in the following compliance plan year.

Each system must provide 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 LARA-MIDC-CLE@michigan.gov.

Standard 2 – Initial Interview

General Requirements

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 be prepared to complete a voucher form for all assigned cases indicating time spent on the assignment, including when and where the initial interview occurred. Alternatively, systems must indicate a method for verifying timely interviews. Sample vouchers are available on the MIDC's website.

This standard further requires a confidential setting for these interviews in both the courthouse and jail. Upon request by an attorney, the system must accommodate the ability to pass legal materials between an attorney and an in-custody client.

Permissible Costs

If it is necessary to create or alter building space to provide a confidential setting for attorneys and their clients, renovation expenses are allowed up to a maximum of \$25,000 per location. Requests exceeding \$25,000 will be reviewed with higher due diligence and considered with accompanying documentation for justification.

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

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

Other systems may need to change contracting or assigned counsel compensation policies. Funding units, using a contract or rotating assignment system, shall pay attorneys for the initial interview in all assigned criminal cases. Attorneys shall be compensated a reasonable fee for the initial interview, including mileage and travel expenses for

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clients who are not in local custody. Confidential video visits are permissible for initial interviews with in-custody defendants.

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

Standard 3 – Investigation and Experts

General Requirements

This standard requires counsel to conduct an independent investigation. When appropriate, counsel shall request funds to retain an investigator to assist with the client’s defense. Counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution’s case. Counsel has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance.

Funding units may seek grant funds to employ licensed investigators as needed to comply with Standard 3, and/or seek grant funds to contract with investigators or any expert witness identified as necessary to assist with the defense of an indigent client.

Non-assigned (i.e., retained, *pro bono*) counsel representing adult clients who become indigent during the course of the representation and who are in need of expert or investigative services may seek use of indigent defense funding for these resources from the system pursuant to case law⁸ and/or the local system’s policy.

Permissible Costs

Expenses for investigators will be considered at hourly rates not to exceed \$75. Expenses for expert witnesses will follow a tiered level of compensation based on education level and type of expert⁹ not to exceed these amounts:

- High School or Equivalent \$30/hr
- Associate’s Degree \$50/hr
- Bachelor’s Degree \$70/hr
- Master’s Degree \$85/hr
- Crime Scene and Related Experts \$100/hr
- CPA/Financial Expert \$100/hr

⁸ See, e.g., *People v. Kennedy*, 502 Mich. 206 (2018).

⁹The table of expert hourly rates is adopted from the guidelines published by the North Carolina Indigent Defense Services Commission. Variations will be considered on a case-by-case basis.

- Pharmacy/PharmD \$125/hr
- Information Technology Experts \$150/hr
- Ph.D./Licensed Doctor \$200/hr
- Medical Doctor \$250/hr
- MD with Specialty (e.g., Psychiatrist, Pathologist) \$300/hr

Unless there is a demonstrated need, each indigent defense system will be limited to a capped amount of funds for investigators and experts based on the total new circuit adult criminal filings within the jurisdiction in the most recent calendar year, as reported and certified with the State Court Administrative Office. Systems within district courts of the 3rd class are considered in Tier I unless special circumstances are presented.

- 0 - 499 cases/year = Tier I - \$10,000
- 500 - 999 cases/year = Tier II - \$25,000
- 1,000 - 9,999 cases/year = Tier III - \$50,000
- Over 10,000 cases/year = Tier IV - To be determined bases on further discussion and review of records of the system(s)

All funding units must 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. Systems should report whether an expert or investigator was requested, approved, or denied in a particular case to ensure compliance with the standard. The MIDC rates should be used unless a higher rate is specifically authorized by a system for the case. Experts and investigators should be reimbursed for travel related to their work on a case.

Standard 4 – Counsel at First Appearance and Other Critical Stages

General Requirements

Every system in Michigan is required to make an attorney available for an adult charged with a crime facing the loss of his or her liberty. 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. A “critical stage” is any proceeding involving the potential for loss of liberty.

This Standard does not prevent an adult charged with a crime from representing themselves during any proceeding, including the arraignment. All defendants should be given an opportunity to meet with counsel prior to an arraignment where liberty is at stake. Information about waiving counsel should be provided by the court system, preferably by counsel employed to meet this standard.

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 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 present. Guilty pleas submitted to courts outside of the arraignment process (“counter” pleas or “plea by mail”) must be tracked and reported by the system. Systems that will not accept a guilty plea at arraignment and will issue personal bonds do not need to make an attorney available at the initial appearance before a magistrate or judge.

Permissible Costs

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

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

Where appropriate and where it will not unreasonably degrade the quality of representation, technology should be used to ensure the effective representation of indigent defendants. Attorneys may use telephone or video services to facilitate the appearance at arraignment.

In addition to all trial proceedings, funding under this standard can include defense attorney representation or participation in the following matters:

- Criminal contempt and/or show-cause hearings
- District to Circuit Court appeals
- Problem Solving Courts and Swift and Sure Sanctions Probation Programs
- Restitution Hearings
- **Pre-Sentence Investigation Interviews**

MIDC grant funding shall not be used to compensate standby counsel when the defendant has invoked the constitutional right of self-representation.

Services Outside of Adult Criminal Case Representation

The MIDC is cognizant that other legal concerns often exist for indigent clients outside of the criminal trial court and supports local decisions to develop and use best-practice defense services for all those in need.

For example, a few local funding units employ attorneys within their public defender offices to represent youth in delinquency or other probate hearings; some employ administrators to manage the rosters of juvenile defense attorneys; others have considered partnering with local civil legal services to provide increased holistic defense.

Local systems should identify and delineate those costs if they have expanded their legal services to indigent clients outside of the scope of the MIDC Act or are considering such an expansion to ensure they are meeting their current grant contract agreements. The MIDC regional manager team can help systems implement best-practices while ensuring all contract agreements are upheld.

Standard 5 – Independence from the Judiciary

~~This proposed standard has not been approved by the Department of Licensing and Regulatory Affairs. However, many systems have submitted compliance plans seeking independent administration of the delivery system.~~

A managed assigned counsel system (hereafter, “MAC”) is a model that can be used either in coordination with the public defender office or alone to provide indigent defense services in communities at the trial level. This system has independence with oversight by a government-appointed or non-profit agency commission, or by the Executive Branch. MAC is an ideal system to guarantee participation of a vibrant private bar in the delivery of indigent defense.

As with a public defender office, a county or regional MAC can be a very good way to comply with the MIDC standards and best practices:

- MAC can coordinate a program to train attorneys to work on assigned cases;
- MAC can provide resources for prompt meetings with clients and condition participation on these meetings;
- MAC can coordinate contracting of investigators or experts, and even retain investigators on staff;
- MAC can specifically assign counsel at first appearance.

MAC could also comply with many proposed standards including qualifications and evaluations of assigned counsel by having a framework for evaluating the attorneys on the roster and setting requirements for different sorts of cases. MAC can enforce caseload limitations on roster attorneys and establish fair compensation if properly resourced.

As a best practice, systems using a MAC administration model should create a process for reviewing or appealing decisions of the MAC administrator.

Compliance Plan Submission

Step 1

- Compliance Plans submitted to the MIDC

Step 2

- Plans logged in central log

Step 3

- Plans reviewed by Regional Manager

Step 4

- Plans reviewed by Grant Manager

Step 5

- Plans reviewed by Senior Staff
- Plans that require no additional review are forwarded to the Commission
- Plans that require additional review are forwarded to a committee of Commissioners

Step 6

- Plans reviewed by the Commission
- Plans disapproved shall be resubmitted within 60 days
- After three submissions, dispute resolved by mediation

Compliance Reporting by Indigent Defense Systems

The contract executed between the MIDC and the local system is the primary source of information about specific reporting obligations. This portion of the guide is provided for the convenience of stakeholders seeking information about reporting.

Resources

Please consult the MIDC's website at <https://michiganidc.gov/grants/> for regularly updated information about reporting, webinars, checklists, and templates.

Distribution of Funding

The Department of Treasury has established 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" must also be deposited in this fund during the course of the grant contract period, and no later than the end of the contract term.

Systems will work with the MIDC staff to finalize a budget consistent with the cost analysis approved by the MIDC. This process may require assignment of spending between state and local funding sources. Funding must only be used as set forth in the approved plan and cost analysis.

Systems will receive a contract from the MIDC upon approval of the system's compliance plan *and* cost analysis by the Commission. Once the contract is fully executed, 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 within 15 days of the contract being executed by all parties. 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. If it is determined that the total amount of funding awarded in the previous

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year's grant was not fully expended or that grant money was used for a purpose outside of the compliance plan, those funds must be repaid to the MIDC, or if not repaid, must be deducted from future grant amounts. MCL 780.993(15).

Dates for Distribution of MIDC Grant Funding

- Initial Advance of 50% of the state grant – Within 15 days of receipt of executed agreement
- 25% disbursement – May 15
- 25% disbursement – August 14 (final payment).

The above schedule of disbursement of funds is contingent after receipt of quarterly reporting as addressed in the grant contract.

Reporting Required

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 Corrections¹⁰). 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. **Systems with personnel must submit time sheet(s), time certification(s), or a time study with quarterly reporting when requested by MIDC staff or with any request by the system to modify the personnel position(s).**

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

¹⁰ Local funding units are required to report reimbursements received from the Michigan Department of Corrections for which funding is also provided through the MIDC grant as part of program income and report it quarterly or at the end of the fiscal year in the final quarterly report. See MIDC meeting minutes, April 2020.

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 with P#s 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.

Due Dates for Reporting

- Initial FSR and compliance report for October 1 – December 31 due on January 31st
- 2nd FSR and compliance report for January 1 – March 31 due on April 30th
- 3rd FSR and compliance report for April 1 – June 30 – due on July 31st
- Final FSR and compliance report for July 1 – September 30 – due no later than October 31, together with a report of the unexpended balance in the account used for adult indigent criminal defense services.

Every system is required to annually submit a plan for compliance for the next state fiscal year during the timeframe and in the manner established by the MIDC.

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 Regional Manager. Once a cost analysis has been approved by the MIDC, the award total cannot increase, but adjustments within the award total can be allowed. Please contact your Regional Manager for guidance with budget adjustments. Budget adjustments will be processed with other quarterly reporting documents unless extraordinary circumstances require action sooner.

- Deviation allowance: 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 budget adjustment involving greater than 5% of the aggregate of all funding within a budget category requires prior written approval by the MIDC Staff and must be reported to the MIDC as

soon after the Grantee is aware of the necessity of the Budget adjustment and reported in the Grantee's quarterly report.

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.

Evaluation of Plans

All systems will be reviewed for compliance with the MIDC's standards, the approved plan and the approved cost analysis. A complete rubric for evaluation is available on the MIDC's website, a portion of which is displayed below:

FUNDING UNIT: _____

Date of Required Compliance: _____

Date of Evaluation: _____

STANDARD 1	TOTAL POSSIBLE POINTS	TOTAL POINTS AWARDED	COMMENTS
Has the attorney list been updated and submitted in the most recent quarter?	3		
Has a process been established and implemented to pay for and confirm attorney training (including for new attorneys to complete skills training)?	3		
Have attorneys either completed 12 hrs of CLE or been removed from the list?	non-point question		
STANDARD 2			
Have confidential meeting spaces been established or have sufficient steps been taken toward this end?			
In holding facilities/jails	3		
In courtrooms - out-of-custody clients	3		
In courtrooms - in-custody clients	3		
Are the confidential meeting spaces adequate?	non-point question		
Are defense attorneys using the confidential meeting space?	non-point question		
Are attorneys being appointed and notified in a timely and effective fashion?	3		
Is the system verifying invoices/other documents to ensure timely client interviews?	3		
Are attorneys being paid for initial interviews?	3		
Does the system have a process to manage attorney non-compliance?	non-point question		
Are all attorneys meeting with clients within 3 business days?	non-point question		
STANDARD 3			
Does a process exist for attorneys to seek funding for experts and investigators?	3		
Have attorneys been notified of the process?	3		
Are requests being tracked by the system?	non-point question		
Have any attorneys utilized this process?	non-point question		
What is the breakdown between requests granted and denied?	non-point question		

Frequently Asked Questions about Standard 5

1. Can the judiciary select the lawyers eligible to accept adult criminal defense assignments?

No. Indigent criminal defenders “should be subject to judicial supervision only in the same manner and to the same extent as retained counsel or the prosecution.” Standard 5.A. Standard 5 explicitly prohibits the judiciary and all employees reporting to the judiciary from selecting the lawyers eligible to serve in the local indigent criminal defense system.

Standard 5 will require a significant change for those systems who rely ~~solely~~ upon the judiciary to select the attorneys eligible to accept criminal defense assignments. While the MIDC will not direct local systems on how to manage their attorney selection process, there are some best-practice examples that can help systems meet the minimum requirements of Standard 5. These include ~~Some suggestions to replace this process could include~~ creating an attorney selection panel or board with local criminal justice stakeholders, crafting application procedures and policies for approving and selecting eligible defense counsel, employing a lead attorney or a Managed Assigned Counsel Administrator to oversee the eligibility process, or some combination of these best practices.

2. May judges or judicial employees be members of the local attorney selection panel, board, or other hiring committee or board?

Yes, but with conditions. “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.” Standard 5.B (emphasis included). Systems utilizing attorney selection panels, ~~s or~~ boards or some type of hiring committee for either individual attorneys or leadership roles, such as Chief Public Defenders or Managed Assigned Counsel Administrators, can still include representatives from the judiciary, but they must be only advisory roles and shall not be voting members.

3. Who can appoint counsel?

The local indigent defense funding unit must utilize a licensed attorney in good standing with the State Bar of Michigan to act as an appointing authority and oversee

all duties surrounding the appointment of a criminal defense attorney. This includes duties such as case assignment, approval of attorney compensation, establishing and reviewing attorney qualifications, and approval of services necessary for providing effective assistance of defense counsel. The funding unit may authorize non-attorney staff to perform any of the above duties if done under the direction of the appointing authority. Standard 5.A.

The judiciary and employees reporting to the judiciary¹ shall not serve as an appointing authority nor manage or oversee the administration of the local indigent defense system. Standard 5.A. Similarly, the judiciary or employees reporting to the judiciary shall not be employed or contracted by an independent appointing attorney to assist with management or administration of the indigent defense system.

4. Are there any instances where a judge might be allowed to appoint counsel to an indigent criminal case?

No. However, in limited circumstances judges may provide input on the funding unit's appointment of an attorney. As stated in the Staff Comment to Standard 5:

*"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."* (Emphasis added).

Systems should confer with their Regional Manager for any questions about allowable exceptions.

The judiciary is also permitted to inform a defendant of the name and contact information of their appointed attorney if the system provides access to the assigned attorney roster. Similarly, in systems with public defender offices or contracted indigent defense attorneys, the judiciary may refer a defendant to the appropriate indigent defender office or firm for appointment. Standard 5.B.

5. If an attorney-client conflict occurs, who can remove an attorney from a case or make a reappointment of counsel?

¹ This includes all state and local judges, magistrates, retired judges who may still act as a visiting judge, court administrators, and any other employee of the court.

A motion to substitute counsel or withdraw from a case must be captured on the official court record as part of the case. These are legal motions; either the attorney of record or the client should bring these motions to be ruled upon by the court. However, once a ruling on the substitution or withdraw is made, the reappointment of counsel shall be done by the funding unit's appointing attorney.

6. What are some best-practices for making attorney assignments?

If an attorney is reassigned When assigning an attorney to a case, it is important to maintain a consistent appointing protocol to reduce any selection bias. For example, local systems with rotating assigned counsel rosters should appoint the next available attorney on the list as the substitution. Similarly, public defender offices should select the next qualified attorney on their employee list. In cases that require unique skill sets, an attorney with specialized knowledge may be selected outside of the rotation; however this should be done sparingly.

In systems where the directing attorney of the county public defender office, non-profit law office, or other contracted law firm is the default assigned attorney of record, attorneys employed within those offices can be reassigned to a case without a court ruling. However, it is best practice to capture any such change on the official court record by filing an appearance with the court.

6.7. If an attorney disagrees with a funding unit's decision of selection, appointment, or compensation can they appeal to the court?

No. "The selection of lawyers and the payment for their services . . . [and] the 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." Standard 5.A. (emphasis added).

It is a best practice for local funding units to maintain policies that guide the management of their indigent criminal defense system. These policies should reflect fairness and equitable treatment; attorneys should always be appointed, compensated, and provided access to necessary services for their indigent clients so that even the mere inference of impropriety is avoided.

It is suggested that local policies also include objective procedures to resolve any issues of conflict between attorneys and indigent defense administrators. If a conflict requires intervention by a third-party decision-maker, this person should always be a licensed

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attorney. Some examples could include, but are not limited to, a county or city attorney representing the local funding unit or an attorney administrator or chief defender from another indigent defense system.

7.8. If an attorney disagrees with a funding unit's complete or partial denial of funding for expert or investigative services, can they appeal to the court?

Possibly Yes, but only if the denial gives rise to a constitutional violation. in unique instances. Indigent defendants have a due process right to expert and investigative assistance at state expense, depending on the facts and circumstances of their case. *People v Kennedy*, 502 Mich 206; 917 NW2d 355 (2018). MIDC Standards require indigent criminal defenders to request funds for expert and investigative assistance when appropriate. Standard 3.B-C. All reasonable requests must be funded. Standard 3.B-C. When attorneys request such assistance, "the selection and approval of, and payment for, [the] expenses necessary for providing effective assistance shall not be made by the judiciary or employees reporting to the judiciary." Standard 5.A. However, "[j]udges are permitted and encouraged to contribute information and advice concerning the delivery of indigent defense services." Standard 5.B.

It is best-practice for local funding units to maintain policies that guide the management of their indigent criminal defense system. These policies should include objective procedures outlining a fair and equitable process of requesting and receiving funding for expert and investigative assistance.

Because of the constitutional importance of expert and investigative assistance when defending a criminal case, advice or input from the judiciary can be sought if such assistance is denied. However, internal procedures to manage the conflict between the attorney and the indigent defense administrator should be exhausted prior to approaching the court. Ideally, the local system would implement intermediary steps of decision-making prior to involving the judiciary. Any intermediary decision-maker must be a licensed attorney. This could include another attorney with appropriate authority from the funding unit or an attorney administrator or public defender from another jurisdiction.

Systems should contact their Regional Manager prior to any court involvement in the awarding or payment of expert or investigative services.

8.9. Can a local system employ a judge, magistrate or court staff from another jurisdiction to serve as their independent appointing authority?

No. Standard 5 requires the management of the local indigent criminal defense system to be independent from the judiciary. This prohibits the judiciary and employees reporting to the judiciary, regardless of where they serve, from selecting, appointing, or overseeing any part of the local indigent defense system and the attorneys serving under it. This prohibition does not apply to former employees of the judiciary.

9.10. If a system employs a house counsel/docket attorney model of providing services, can a judge require that attorney to remain on a case?

No. Standard 5 does not allow the judiciary to make appointments. Having a house counsel or docket attorney remain on a case beyond the defendant's initial appearance would be an appointment. Instead, the court should inform the appointing authority within the local system who shall then assign the case to appropriate counsel.

10.11. If a system currently allows a member of the judiciary or staff reporting to the judiciary to perform services related to the delivery of indigent criminal defense, must those duties be reassigned?

Generally, yes. The judiciary and employees reporting to the judiciary are prohibited from performing services related to the delivery of indigent criminal defense and administration of the attorneys serving within it. Standard 5. This includes services related to selecting and appointing counsel, management and compensation of counsel and any other expense necessary to provide adequate defense. Standard 5.A. However, the court can provide input and advice on the delivery of the indigent defense system. Standard 5.B. This could include actions such as assistance with reporting, data collection, or collaboration with the local system on drafting the annual MIDC grant.

11.12. Can a member of the judiciary or an employee reporting to the judiciary sign the MIDC grant contract?

No. All representatives of the court are prohibited from being a signatory on the MIDC grant contract, as Standard 5 requires complete independence from the judiciary in the delivery of indigent defense. If a court has previously acted as the funding unit or administered the grant on behalf of the funding unit, a new signatory and administrator outside of the employ of the judiciary must be used for the MIDC grant.

12.13. Can judicial staff continue to submit the grant program report and/or financial status reports?

No. Judiciary staff *may* collect data and assist with required reporting, but the final submission and primary contact for the MIDC grant reporting shall not be a judiciary employee. Although the court, in most systems, is a necessary partner in collecting some of the information required for the program report, the program reports and financial status reports must be submitted by someone unaffiliated with the judiciary.

13.14. If an appointing attorney is unable to perform its services related to the delivery of indigent criminal defense due to illness, emergency, or some other unique circumstance, can the judiciary or an employee reporting to the judiciary temporarily assume their duties?

No. Similarly, the court shall not select another attorney to temporarily perform these services. Standard 5 explicitly prohibits the judiciary or any of its employees from performing services related to the delivery of indigent criminal defense and administration of the attorneys serving within it. This includes services related to selecting and appointing counsel, management and compensation of counsel and any other expense necessary to provide adequate defense. Standard 5.A.

Local systems should create policies that outline approved procedures to follow if their appointing attorney is temporarily unable to perform their job. Any temporary replacement should be a licensed attorney in good standing with the State Bar of Michigan. A local system may authorize a non-attorney to perform these duties if they report to a directing attorney. Some additional suggestions include, but are not limited to, identifying a replacement attorney within the local system that is independent of the judiciary, or using an attorney administrator or chief defender from another indigent defense system.

Notes from Court Rules Committee

February 5, 2021

Commissioners Present:

Kimberly Buddin, Josh Blanchard, Judge Kristina Robinson Garrett, James Krizan and John Shea

Staff members present: Loren Khogali, Marla McCowan, Nicole Smithson and Marcela Westrate

- Staff provided an update on the amendments to MCR 8.120 initially proposed at the State Bar of Michigan's Representative Assembly in the fall. The amendment would allow law students and recent graduates to practice under the supervision of MIDC compliant attorneys. Ms. Khogali will draft a letter to Bernard Jocuns, who proposed the amendment, identifying the concerns Commissioners have with the proposed change. If the proposal is before the Representative Assembly at its April meeting, the Court Rules Committee will meet if necessary and the Commission could take a formal position on the rules change at its April meeting.
- Staff provided background on changes being recommended to the following rules: 2.117, 6.005, 6.104, 6.610, 6.625, 3.708, 6.445, 6.905, 6.907, 6.937, 6.938 and 3.956. Portions of these amendments are currently inconsistent with MIDC's counsel at first appearance and proposed indigency standards.
- The committee reviewed the drafts provided and made recommendations for changes.
- There was a discussion about MCR 2.117 (appearances) and whether changes should be made or if the issue should be tabled. Ms. McCowan brought this issue to the Standard 5 Committee. That committee recommended that changes be made. Ms. McCowan circulated the changes to the Court Rules Committee for its review.
- Staff will draft revisions to the court rules consistent with the committee's discussion.

RULE 2.117 APPEARANCES

(A) Appearance by Party.

(1) A party may appear in an action by filing a notice to that effect or by physically appearing before the court for that purpose. In the latter event, the party must promptly file a written appearance and serve it on all persons entitled to service. A written appearance must comply with the caption requirements in MCR 1.109(D)(1)(b).

(2) Filing an appearance without taking any other action toward prosecution or defense of the action neither confers nor enlarges the jurisdiction of the court over the party. An appearance entitles a party to be served with all documents as provided by MCR 2.107(A). In all other respects, the party is treated as if the appearance had not been filed.

(B) Appearance by Attorney.

(1) In General. An attorney may appear by an act indicating that the attorney represents a party in the action. An appearance by an attorney for a party is deemed an appearance by the party. Unless a particular rule indicates otherwise, any act required to be performed by a party may be performed by the attorney representing the party.

(2) Notice of Appearance.

(a) If an appearance is made in a manner not involving the filing of a document with the court, the attorney must promptly file a written appearance and serve it on the parties entitled to service. The written appearance must comply with the caption requirements in MCR 1.109(D)(1)(b).

(b) If an attorney files an appearance, but takes no other action toward prosecution or defense of the action, the appearance entitles the attorney to be served with all documents as provided by MCR 2.107(A).

(c) Pursuant to MRPC 1.2(b), a party to a civil action may appear through an attorney for limited purposes during the course of an action, including, but not limited to, depositions, hearings, discovery, and motion practice, if the following conditions are satisfied:

(i) The attorney files and serves a notice of limited appearance with the court before or during the relevant action or proceeding, and all parties of record are served with the limited entry of appearance; and

(ii) The notice of limited appearance identifies the limitation of the scope by date, time period, and/or subject matter.

(d) An attorney who has filed a notice of limited appearance must restrict activities in accordance with the notice or any amended limited appearance.

Should an attorney's representation exceed the scope of the limited appearance, opposing counsel (by motion), or the court (by order to show cause), may set a hearing to establish the actual scope of the representation.

(3) Appearance by Notice of Appointment.

(a) In some actions, an appointing authority independent of the judiciary determines the attorney that will represent a party for the entirety of the action. In some actions, an appointing authority independent of the judiciary determines that an attorney will represent a party for a single hearing—like an arraignment.

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(b) In actions where an attorney is appointed for the entirety of the action, the appointing authority's notice of appointment constitutes an appearance on behalf of the appointed attorney.

(c) In actions where an attorney is appointed for a single hearing, the attorney should orally inform the court of the limited appointment at the time of the hearing. It is not necessary for the appointing authority to file an order of appointment or for the attorney to file an appearance.

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(4) Appearance by Law Firm.

(a) A pleading, appearance, motion, or other document filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a document in the action. All notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered, or a confirming notice of withdrawal of a notice of limited appearance is filed as provided by subrule (C)(3). This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the party.

(b) The appearance of an attorney is deemed to be the appearance of every member of the law firm. Any attorney in the firm may be required by the court to conduct a court ordered conference or trial.

(C) Duration of Appearance by Attorney.

(1) Unless otherwise stated or ordered by the court, an attorney's appearance applies only in the court in which it is made, or to which the action is transferred, until a final judgment or final order is entered disposing of all claims by or against the party whom the attorney represents and the time for appeal of right has passed. The appearance applies in an appeal taken before entry of final judgment or final order by the trial court.

(2) Unless otherwise stated in this rule, an attorney who has entered an appearance may withdraw from the action or be substituted for only on order of the court.

~~(3) If an appointing authority has appointed an attorney in an action, the appointing authority can appoint substitute counsel without the court's issuance of an order as~~

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~~long as the substitution will not cause substantial prejudice to a party or substantial delay to the proceeding. In appointed cases, substitute counsel shall file an appearance with the court after receiving the assignment from the appointing authority.~~

(43) An attorney who has filed a notice of limited appearance pursuant to MCR 2.117(B)(2)(c) and MRPC 1.2(b) may withdraw by filing a notice of withdrawal from limited appearance with the court, served on all parties of record, stating that the attorney's limited representation has concluded and the attorney has taken all actions necessitated by the limited representation, and providing to the court a current service address and telephone number for the self-represented litigant. If the notice of withdrawal from limited appearance is signed by the client, it shall be effective immediately upon filing and service. If it is not signed by the client, it shall become effective 14 days after filing and service, unless the self-represented client files and serves a written objection to the withdrawal on the grounds that the attorney did not complete the agreed upon services.

(D) Nonappearance of Attorney Assisting in Document Preparation. An attorney who assists in the preparation of pleadings or other documents without signing them, as authorized in MRPC 1.2(b), has not filed an appearance and shall not be deemed to have done so. This provision shall not be construed to prevent the court from investigating issues concerning the preparation of such a document.

(E) Service of Documents After Removal of Appearance. If an attorney has filed a limited appearance or the attorney is removed from the case for any other reason, the attorney shall not continue to be served with documents in the case after the limited appearance ends or after an order is entered removing the attorney from the case.

RULE 3.708 CONTEMPT PROCEEDINGS FOR VIOLATION OF PERSONAL PROTECTION ORDERS

(A) In General.

(1) A personal protection order is enforceable under MCL 600.2950(23), (25), 600.2950a(23), (25), 764.15b, and 600.1701 *et seq.* For the purpose of this rule, "personal protection order" includes a foreign protection order enforceable in Michigan under MCL 600.2950I.

(2) Proceedings to enforce a minor personal protection order where the respondent is under 18 are governed by subchapter 3.900. Proceedings to enforce a personal protection order issued against an adult, or to enforce a minor personal protection order still in effect when the respondent is 18 or older, are governed by this rule.

(B) Motion to Show Cause.

(1) Filing. If the respondent violates the personal protection order, the petitioner may file a motion, supported by appropriate affidavit, to have the respondent found in contempt. There is no fee for such a motion. If the petitioner's motion and affidavit establish a basis for a finding of contempt, the court shall either:

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(a) order the respondent to appear at a specified time to answer the contempt charge; or

(b) issue a bench warrant for the arrest of the respondent.

(2) Service. The petitioner shall serve the motion to show cause and the order on the respondent by personal service at least 7 days before the show cause hearing.

(C) Arrest.

(1) If the respondent is arrested for violation of a personal protection order as provided in MCL 764.15b(1), the court in the county where the arrest is made shall proceed as provided in MCL 764.15b(2)-(5), except as provided in this rule.

(2) A contempt proceeding brought in a court other than the one that issued the personal protection order shall be entitled "In the Matter of Contempt of [Respondent]." The clerk shall provide a copy of any documents pertaining to the contempt proceeding to the court that issued the personal protection order.

(3) If it appears that a circuit judge will not be available within 24 hours after arrest, the respondent shall be taken, within that time, before a district court, which shall set bond and order the respondent to appear for arraignment before the family division of the circuit court in that county.

(D) Appearance or Arraignment; Advice to Respondent. At the respondent's first appearance before the circuit court, whether for arraignment under MCL 764.15b, enforcement under MCL 600.2950, 600.2950a, or 600.1701, or otherwise, the court must:

(1) advise the respondent of the alleged violation,

(2) advise the respondent of the right to contest the charge at a contempt hearing,

(3) advise the respondent that he or she is entitled to a lawyer's assistance at the hearing and, if the court determines it might sentence the respondent to jail, that the court, or the local funding unit's appointing authority if the local funding unit has determined that it will provide representation to respondents alleged to have violated a personal protection order, will appoint a lawyer at public expense if the individual wants one and is financially unable to retain one,

(4) if requested and appropriate, appoint a lawyer or refer the matter to the appointing authority,

(5) set a reasonable bond pending a hearing of the alleged violation,

(6) take a guilty plea as provided in subrule (E) or schedule a hearing as provided in subrule (F).

As long as the respondent is either present in the courtroom or has waived the right to be present, on motion of either party, the court may use telephonic, voice, or

videoconferencing technology to take testimony from an expert witness or, upon a showing of good cause, any person at another location.

(E) Pleas of Guilty. The respondent may plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the respondent and receiving the respondent's response, must

- (1) advise the respondent that by pleading guilty the respondent is giving up the right to a contested hearing and, if the respondent is proceeding without legal representation, the right to a lawyer's assistance as set forth in subrule (D)(3),
- (2) advise the respondent of the maximum possible jail sentence for the violation,
- (3) ascertain that the plea is understandingly, voluntarily, and knowingly made, and
- (4) establish factual support for a finding that the respondent is guilty of the alleged violation.

(F) Scheduling or Postponing Hearing. Following the respondent's appearance or arraignment, the court shall do the following:

- (1) Set a date for the hearing at the earliest practicable time except as required under MCL 764.15b.

- (a) The hearing of a respondent being held in custody for an alleged violation of a personal protection order must be held within 72 hours after the arrest, unless extended by the court on the motion of the arrested individual or the prosecuting attorney. The court must set a reasonable bond pending the hearing unless the court determines that release will not reasonably ensure the safety of the individuals named in the personal protection order.

- (b) If a respondent is released on bond pending the hearing, the bond may include any condition specified in MCR 6.106(D) necessary to reasonably ensure the safety of the individuals named in the personal protection order, including continued compliance with the personal protection order. The release order shall also comply with MCL 765.6b.

- (c) If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, upon motion of the prosecutor, the court may postpone the hearing for the outcome of that prosecution.

- (2) Notify the prosecuting attorney of a criminal contempt proceeding.

- (3) Notify the petitioner and his or her attorney, if any, of the contempt proceeding and direct the party to appear at the hearing and give evidence on the charge of contempt.

(G) Prosecution After Arrest. In a criminal contempt proceeding commenced under MCL 764.15b, the prosecuting attorney shall prosecute the proceeding unless the petitioner retains his or her own attorney for the criminal contempt proceeding.

(H) The Violation Hearing.

(1) Jury. There is no right to a jury trial.

(2) Conduct of the Hearing. The respondent has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses. As long as the respondent is either present in the courtroom or has waived the right to be present, on motion of either party, and with the consent of the parties, the court may use telephonic, voice, or videoconferencing technology to take testimony from an expert witness or, upon a showing of good cause, any person at another location.

(3) Evidence; Burden of Proof. The rules of evidence apply to both criminal and civil contempt proceedings. The petitioner or the prosecuting attorney has the burden of proving the respondent's guilt of criminal contempt beyond a reasonable doubt and the respondent's guilt of civil contempt by clear and convincing evidence.

(4) Judicial Findings. At the conclusion of the hearing, the court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

(5) Sentencing.

(a) If the respondent pleads or is found guilty of criminal contempt, the court shall impose a sentence of incarceration for no more than 93 days and may impose a fine of not more than \$500.00.

(b) If the respondent pleads or is found guilty of civil contempt, the court shall impose a fine or imprisonment as specified in MCL 600.1715 and 600.1721.

In addition to such a sentence, the court may impose other conditions to the personal protection order.

(I) Mechanics of Use. The use of videoconferencing technology under this rule must be in accordance with the standards established by the State Court Administrative Office. All proceedings at which videoconferencing technology is used must be recorded verbatim by the court.

RULE 3.951 INITIATING DESIGNATED PROCEEDINGS

(A) Prosecutor-Designated Cases. The procedures in this subrule apply if the prosecuting attorney submits a petition designating the case for trial in the same manner as an adult.

(1) Time for Arraignment.

(a) If the juvenile is in custody or custody is requested, the arraignment must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined by MCR 8.110(D)(2), or the juvenile must be released. The court may adjourn the arraignment for up to 7 days

to secure the attendance of the juvenile's parent, guardian, or legal custodian or of a witness, or for other good cause shown.

(b) If the juvenile is not in custody and custody is not requested, the juvenile must be brought before the court for an arraignment as soon as the juvenile's attendance can be secured.

(2) Procedure.

(a) The court shall determine whether the juvenile's parent, guardian, or legal custodian has been notified and is present. The arraignment may be conducted without a parent, guardian, or legal custodian, provided a guardian ad litem or attorney appears with the juvenile. Attorney appointments, even if just for the arraignment, are to be done by the court's local funding unit's appointing authority.

(b) The court shall read the allegations in the petition and advise the juvenile on the record in plain language:

- (i) of the right to an attorney at all court proceedings, including the arraignment pursuant to MCR 3.915(A)(1);
- (ii) of the right to trial by judge or jury on the allegations in the petition;
- (iii) of the right to remain silent and that any statement made by the juvenile may be used against the juvenile;
- (iv) of the right to have a preliminary examination within 14 days;
- (v) that the case has been designated for trial in the same manner as an adult and, if the prosecuting attorney proves that there is probable cause to believe an offense was committed and there is probable cause to believe that the juvenile committed the offense, the juvenile will be afforded all the rights of an adult charged with the same crime and that upon conviction the juvenile may be sentenced as an adult; and
- (vi) of the maximum possible prison sentence and any mandatory minimum sentence required by law.

(c) Unless the arraignment is adjourned, the court must decide whether to authorize the petition to be filed. If it authorizes the filing of the petition, the court must:

- (i) determine if biometric data must be taken as provided by MCR 3.936;
- (ii) schedule a preliminary examination within 14 days before a judge other than the judge who would conduct the trial;
- (iii) if the juvenile is in custody or custody is requested, determine whether to detain or release the juvenile as provided in MCR 3.935(C).

(d) If the juvenile is in custody or custody is requested, the juvenile may be detained pending the completion of the arraignment if it appears to the court that one of the circumstances in MCR 3.935(D)(1) is present.

(3) Amendment of Petition. If a petition submitted by the prosecuting attorney alleging a specified juvenile violation did not include a designation of the case for trial as an adult:

(a) The prosecuting attorney may, by right, amend the petition to designate the case during the preliminary hearing.

(b) The prosecuting attorney may request leave of the court to amend the petition to designate the case no later than the pretrial hearing or, if there is no pretrial hearing, at least 21 days before trial, absent good cause for further delay. The court may permit the prosecuting attorney to amend the petition to designate the case as the interests of justice require.

(B) Court-Designated Cases. The procedures in this subrule apply if the prosecuting attorney submits a petition charging an offense other than a specified juvenile violation and requests the court to designate the case for trial in the same manner as an adult.

(1) Time for Arraignment.

(a) If the juvenile is in custody or custody is requested, the arraignment must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined by MCR 8.110(D)(2), or the juvenile must be released. The court may adjourn the arraignment for up to 7 days to secure the attendance of the juvenile's parent, guardian, or legal custodian or of a witness, or for other good cause shown.

(b) If the juvenile is not in custody and custody is not requested, the juvenile must be brought before the court for an arraignment as soon as the juvenile's attendance can be secured.

(2) Procedure.

(a) The court shall determine whether the juvenile's parent, guardian, or legal custodian has been notified and is present. The arraignment may be conducted without a parent, guardian, or legal custodian, provided a guardian ad litem or attorney appears with the juvenile. Attorney appointments, even if just for the arraignment, are to be done by the court's local funding unit's appointing authority.

(b) The court shall read the allegations in the petition, and advise the juvenile on the record in plain language:

(i) of the right to an attorney at all court proceedings, including the arraignment pursuant to MCR 3.915(A)(1);

(ii) of the right to trial by judge or jury on the allegations in the petition;

(iii) of the right to remain silent and that any statement made by the juvenile may be used against the juvenile;

(iv) of the right to have a designation hearing within 14 days;

(v) of the right to have a preliminary examination within 14 days after the case is designated if the juvenile is charged with a felony or offense for which an adult could be imprisoned for more than one year;

(vi) that if the case is designated by the court for trial in the same manner as an adult and, if a preliminary examination is required by law, the prosecuting attorney proves that there is probable cause to believe that an offense was committed and there is probable cause to believe that the juvenile committed the offense, the juvenile will be afforded all the rights of an adult charged with the same crime and that upon conviction the juvenile may be sentenced as an adult;

(vii) of the maximum possible prison sentence and any mandatory minimum sentence required by law.

(c) Unless the arraignment is adjourned, the court must decide whether to authorize the petition to be filed. If it authorizes the filing of the petition, the court must:

(i) determine if biometric data must be taken as provided by MCR 3.936;

(ii) schedule a designation hearing within 14 days;

(iii) if the juvenile is in custody or custody is requested, determine whether to detain or release the juvenile as provided in MCR 3.935(C).

(d) If the juvenile is in custody or custody is requested, the juvenile may be detained pending the completion of the arraignment if it appears to the court that one of the circumstances in MCR 3.935(D)(1) is present.

(3) Amendment of Petition. If a petition submitted by the prosecuting attorney alleging an offense other than a specified juvenile violation did not include a request that the court designate the case for trial as an adult:

(a) The prosecuting attorney may, by right, amend the petition to request the court to designate the case during the preliminary hearing.

(b) The prosecuting attorney may request leave of the court to amend the petition to request the court to designate the case no later than the pretrial hearing or, if there is no pretrial hearing, at least 21 days before trial, absent good cause for further delay. The court may permit the prosecuting attorney to amend the petition to request the court to designate the case as the interests of justice require.

RULE 6.005 RIGHT TO ASSISTANCE OF LAWYER; ADVICE; APPOINTMENT FOR INDIGENTS; WAIVER; JOINT REPRESENTATION; GRAND JURY PROCEEDINGS

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(A) Advice of Right. At the arraignment on the warrant or complaint, the court must advise the defendant

- (1) of entitlement to a lawyer's assistance at all subsequent court proceedings, and
- (2) that the court will appoint defendant is entitled to a lawyer at public expense if the defendant wants one and is financially unable to retain one.

The court must questionask the defendant to determine whether the defendant wants a lawyer and, if so, whether the defendant is financially unable to retain one.

(B) Questioning Defendant About Indigency. If the defendant requests a lawyer and claims financial inability to retain one, the court must determine whether the defendant is indigent unless the court's local funding unit has designated an appointing authority in its compliance plan with the Michigan Indigent Defense Commission. If there is an appointing authority, the court must refer the defendant to the appointing authority for indigency screening. If there is no appointing authority, or if the defendant seeks judicial review of the appointing authority's determination concerning indigency, the court's determination of indigency must be guided by the following factors:

- (1) present employment, earning capacity and living expenses;
- (2) outstanding debts and liabilities, secured and unsecured;
- (3) whether the defendant has qualified for and is receiving any form of public assistance;
- (4) availability and convertibility, without undue financial hardship to the defendant and the defendant's dependents, of any personal or real property owned; and
- (5) the rebuttable presumptions of indigency listed in the MIDC's indigency standard; and
- (6) any other circumstances that would impair the ability to pay a lawyer's fee as would ordinarily be required to retain competent counsel.

The ability to post bond for pretrial release does not make the defendant ineligible for appointment of a lawyer. The court reviews an appointing authority's determination of indigency de novo and may consider information not presented to the appointing authority.

(C) Partial Indigency. If a defendant is able to pay part of the cost of a lawyer, the court may require contribution to the cost of providing a lawyer and may establish a plan for collecting the contribution.

(D) Appointment or Waiver of a Lawyer. Where if the court makes the determinations that the defendant is financially unable to retain a lawyer, it must promptly refer the defendant to the local indigent criminal defense system's appointing authority for appointment of a lawyer and promptly notify the lawyer of the appointment. The court

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may not permit the defendant to make an initial waiver of the right to be represented by a lawyer without first

- (1) advising the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation, and
- (2) offering the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer.

The court should encourage any defendant who appears without counsel to be screened for indigency and potential appointment of counsel.

(E) Advice at Subsequent Proceedings. If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding (e.g., preliminary examination, arraignment, proceedings leading to possible revocation of youthful trainee status, hearings, trial or sentencing) need show only that the court advised the defendant of the continuing right to a lawyer's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. Before the court begins such proceedings,

- (1) the defendant must reaffirm that a lawyer's assistance is not wanted; or
- (2) if the defendant requests a lawyer and is financially unable to retain one, the court must refer the defendant to the local indigent criminal defense system's appointing authority for the appointment of one; or
- (3) if the defendant wants to retain a lawyer and has the financial ability to do so, the court must allow the defendant a reasonable opportunity to retain one.

The court may refuse to adjourn a proceeding for ~~these~~ appointment of counsel or allow a defendant to retain counsel if an adjournment would significantly prejudice the prosecution, and the defendant has not been reasonably diligent in seeking counsel.

(F) Multiple Representation. When two or more indigent defendants are jointly charged with an offense or offenses or their cases are otherwise joined, the ~~court~~ local indigent criminal defense system must appoint separate lawyers unassociated in the practice of law for each defendant. Whenever two or more defendants who have been jointly charged or whose cases have been joined are represented by the same retained lawyer or lawyers associated in the practice of law, the court must inquire into the potential for a conflict of interest that might jeopardize the right of each defendant to the undivided loyalty of the lawyer. The court may not permit the joint representation unless:

- (1) the lawyer or lawyers state on the record the reasons for believing that joint representation in all probability will not cause a conflict of interests;
- (2) the defendants state on the record after the court's inquiry and the lawyer's statement, that they desire to proceed with the same lawyer; and

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(3) the court finds on the record that joint representation in all probability will not cause a conflict of interest and states its reasons for the finding.

(G) Unanticipated Conflict of Interest. If, in a case of joint representation, a conflict of interest arises at any time, including trial, the lawyer must immediately inform the court. If the court agrees that a conflict has arisen, it must afford one or more of the defendants the opportunity to retain separate lawyers. The court should on its own initiative inquire into any potential conflict that becomes apparent, and take such action as the interests of justice require.

(H) Scope of Trial Lawyer's Responsibilities. The responsibilities of the trial lawyer who represents the defendant include

(1) representing the defendant in all trial court proceedings through initial sentencing,

(2) filing of interlocutory appeals the lawyer deems appropriate, and

(3) responding to any preconviction appeals by the prosecutor. The defendant's lawyer must either:

(i) file a substantive brief in response to the prosecutor's interlocutory application for leave to appeal, or

(ii) notify the Court of Appeals that the lawyer will not be filing a brief in response to the application.

(4) Unless an appellate lawyer has been appointed or retained, or if retained trial counsel withdraws, the trial lawyer who represents the defendant is responsible for filing postconviction motions the lawyer deems appropriate, including motions for new trial, for a directed verdict of acquittal, to withdraw plea, or for resentencing.

(5) when an appellate lawyer has been appointed or retained, promptly making the defendant's file, including all discovery material obtained, available for copying upon request of that lawyer. The trial lawyer must retain the materials in the defendant's file for at least five years after the case is disposed in the trial court.

(I) Assistance of Lawyer at Grand Jury Proceedings.

(1) A witness called before a grand jury or a grand juror is entitled to have a lawyer present in the hearing room while the witness gives testimony. A witness may not refuse to appear for reasons of unavailability of the lawyer for that witness. Except as otherwise provided by law, the lawyer may not participate in the proceedings other than to advise the witness.

(2) The prosecutor assisting the grand jury is responsible for ensuring that a witness is informed of the right to a lawyer's assistance during examination by written notice accompanying the subpoena to the witness and by personal advice immediately before the examination. The notice must include language informing the witness that if the witness is financially unable to retain a lawyer, the chief judge in the circuit court in which the grand jury is convened will on request ~~appoint one for~~ refer the

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witness to the local indigent criminal defense system for appointment of an attorney at public expense.

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RULE 6.104 ARRAIGNMENT ON THE WARRANT OR COMPLAINT

(A) Arraignment Without Unnecessary Delay. Unless released beforehand, an arrested person must be taken without unnecessary delay before a court for arraignment in accordance with the provisions of this rule, or must be arraigned without unnecessary delay by use of two-way interactive video technology in accordance with MCR 6.006(A). The arrested person is entitled to the assistance of an attorney at arraignment unless 1) the arrested person makes an informed waiver of counsel or 2) the court issues a personal bond and will not accept a plea of guilty or no contest at arraignment.

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(B) Place of Arraignment. An accused arrested pursuant to a warrant must be taken to a court specified in the warrant. An accused arrested without a warrant must be taken to a court in the judicial district in which the offense allegedly occurred. If the arrest occurs outside the county in which these courts are located, the arresting agency must make arrangements with the authorities in the demanding county to have the accused promptly transported to the latter county for arraignment in accordance with the provisions of this rule. If prompt transportation cannot be arranged, the accused must be taken without unnecessary delay before the nearest available court for preliminary appearance in accordance with subrule (C). In the alternative, the provisions of this subrule may be satisfied by use of two-way interactive video technology in accordance with MCR 6.006(A).

(C) Preliminary Appearance Outside County of Offense. When, under subrule (B), an accused is taken before a court outside the county of the alleged offense either in person or by way of two-way interactive video technology, the court must advise the accused of the rights specified in subrule (E)(2) and determine what form of pretrial release, if any, is appropriate. To be released, the accused must submit a recognizance for appearance within the next 14 days before a court specified in the arrest warrant or, in a case involving an arrest without a warrant, before either a court in the judicial district in which the offense allegedly occurred or some other court designated by that court. The court must certify the recognizance and have it delivered or sent without delay to the appropriate court. If the accused is not released, the arresting agency must arrange prompt transportation to the judicial district of the offense. In all cases, the arraignment is then to continue under subrule (D), if applicable, and subrule (E) either in the judicial district of the alleged offense or in such court as otherwise is designated.

(D) Arrest Without Warrant. If an accused is arrested without a warrant, a complaint complying with MCR 6.101 must be filed at or before the time of arraignment. On receiving the complaint and on finding probable cause, the court must either issue a warrant or endorse the complaint as provided in MCL 764.1c. Arraignment of the accused may then proceed in accordance with subrule (E).

(E) Arraignment Procedure; Judicial Responsibilities. The court at the arraignment must

(1) inform the accused of the nature of the offense charged, and its maximum possible prison sentence and any mandatory minimum sentence required by law;

(2) if the accused is not represented by a lawyer at the arraignment, advise the accused that

(a) the accused has a right to remain silent,

(b) anything the accused says orally or in writing can be used against the accused in court,

(c) the accused has a right to have a lawyer present during any questioning consented to, and

(d) if the accused does not have the money to hire a lawyer, the local indigent criminal defense system~~court~~ will appoint a lawyer for the accused;

(3) advise the accused of the right to a lawyer at all subsequent court proceedings ~~and, if appropriate, appoint a lawyer;~~

(4) set a date for a probable cause conference not less than 7 days or more than 14 days after the date of the arraignment and set a date for preliminary examination not less than 5 days or more than 7 days after the date of the probable cause conference;

(5) determine what form of pretrial release, if any, is appropriate; and

(6) ensure that the accused has had biometric data collected as required by law.

The court may not question the accused about the alleged offense or request that the accused enter a plea.

(F) Arraignment Procedure; Recording. A verbatim record must be made of the arraignment.

(G) Plan for Judicial Availability. In each county, the court with trial jurisdiction over felony cases must adopt and file with the state court administrator a plan for judicial availability. The plan shall

(1) make a judicial officer available for arraignments each day of the year, or

(2) make a judicial officer available for setting bail for every person arrested for commission of a felony each day of the year conditioned upon

(a) the judicial officer being presented a proper complaint and finding probable cause pursuant to MCR 6.102(A), and

(b) the judicial officer having available information to set bail.

This portion of the plan must provide that the judicial officer shall order the arresting officials to arrange prompt transportation of any accused unable to post bond to the judicial district of the offense for arraignment not later than the next regular business day.

RULE 6.445 PROBATION REVOCATION

(A) Issuance of Summons; Warrant. On finding probable cause to believe that a probationer has violated a condition of probation, the court may

- (1) issue a summons in accordance with MCR 6.103(B) and (C) for the probationer to appear for arraignment on the alleged violation, or
- (2) issue a warrant for the arrest of the probationer.

An arrested probationer must promptly be brought before the court for arraignment on the alleged violation.

(B) Arraignment on the Charge. At the arraignment on the alleged probation violation, the court must

- (1) ensure that the probationer receives written notice of the alleged violation,
- (2) advise the probationer that
 - (a) the probationer has a right to contest the charge at a hearing, and
 - (b) the probationer is entitled to a lawyer's assistance at the hearing and at all ~~subsequent~~ court proceedings, including the arraignment on the violation/bond hearing, and that ~~the court a lawyer~~ will be appointed a lawyer at public expense if the probationer wants one and is financially unable to retain one,
- (3) if requested and appropriate, ~~appoint a lawyer~~ refer the matter to the local indigent criminal defense system's appointing authority for appointment of a lawyer,
- (4) determine what form of release, if any, is appropriate, and
- (5) subject to subrule (C), set a reasonably prompt hearing date or postpone the hearing.

(C) Scheduling or Postponement of Hearing. The hearing of a probationer being held in custody for an alleged probation violation must be held within 14 days after the arraignment or the court must order the probationer released from that custody pending the hearing. If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, the court may postpone the hearing for the outcome of that prosecution.

(D) Continuing Duty to Advise of Right to Assistance of Lawyer. Even though a probationer charged with probation violation has waived the assistance of a lawyer, at each subsequent proceeding the court must comply with the advice and waiver procedure in MCR 6.005(E).

(E) The Violation Hearing.

- (1) Conduct of the Hearing. The evidence against the probationer must be disclosed to the probationer. The probationer has the right to be present at the hearing, to present

evidence, and to examine and cross-examine witnesses. The court may consider only evidence that is relevant to the violation alleged, but it need not apply the rules of evidence except those pertaining to privileges. The state has the burden of proving a violation by a preponderance of the evidence.

(2) Judicial Findings. At the conclusion of the hearing, the court must make findings in accordance with MCR 6.403.

(F) Pleas of Guilty. The probationer may, at the arraignment or afterward, plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the probationer and receiving the probationer's response, must

- (1) advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing and, if the probationer is proceeding without legal representation, the right to a lawyer's assistance as set forth in subrule (B)(2)(b),
- (2) advise the probationer of the maximum possible jail or prison sentence for the offense,
- (3) ascertain that the plea is understandingly, voluntarily, and accurately made, and
- (4) establish factual support for a finding that the probationer is guilty of the alleged violation.

(G) Sentencing. If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration. The court may not sentence the probationer to prison without having considered a current presentence report and may not sentence the probationer to prison or jail (including for failing to pay fines, costs, restitution, and other financial obligations imposed by the court) without having complied with the provisions set forth in MCR 6.425(B) and (E).

(H) Review.

- (1) In a case involving a sentence of incarceration under subrule (G), the court must advise the probationer on the record, immediately after imposing sentence, that
 - (a) the probationer has a right to appeal, if the underlying conviction occurred as a result of a trial, or
 - (b) the probationer is entitled to file an application for leave to appeal, if the underlying conviction was the result of a plea of guilty or nolo contendere.
- (2) In a case that involves a sentence other than incarceration under subrule (G), the court must advise the probationer on the record, immediately after imposing sentence, that the probationer is entitled to file an application for leave to appeal.

(A) Precedence. Criminal cases have precedence over civil actions.

(B) Pretrial. The court, on its own initiative or on motion of either party, may direct the prosecutor and the defendant, and, if represented, the defendant's attorney to appear for a pretrial conference. The court may require collateral matters and pretrial motions to be filed and argued no later than this conference.

(C) Record. Unless a writing is permitted, a verbatim record of the proceedings before a court under subrules (D)-(F) must be made.

(D) Arraignment; District Court Offenses.

(1) Whenever a defendant is arraigned on an offense over which the district court has jurisdiction, the defendant must be informed of

- (a) the name of the offense;
- (b) the maximum sentence permitted by law; and
- (c) the defendant's right

(i) to the assistance of an attorney at all court proceedings, including arraignment, and to a trial;

(ii) (if subrule [D][2] applies) to an appointed attorney; and

(iii) to a trial by jury, when required by law.

The information may be given in a writing that is made a part of the file or by the court on the record.

(2) An indigent defendant has a right to an appointed attorney whenever the offense charged requires on conviction a minimum term in jail or the court determines it might sentence to a term of incarceration, even if suspended.

If an indigent defendant is without an attorney and has not waived the right to an appointed attorney, the court may not sentence the defendant to jail or to a suspended jail sentence.

(3) The right to the assistance of an attorney, to an appointed attorney, or to a trial by jury is not waived unless the defendant

- (a) has been informed of the right; and
- (b) has waived it in a writing that is made a part of the file or orally on the record.

(4) The court may allow a defendant to enter a plea of not guilty or to stand mute without formal arraignment by filing a written statement signed by the defendant and any defense attorney of record, reciting the general nature of the charge, the maximum possible sentence, the rights of the defendant at arraignment, and the plea to be entered. The court may require that an appropriate bond be executed and filed and appropriate and reasonable sureties posted or continued as a condition precedent

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to allowing the defendant to be arraigned without personally appearing before the court.

(E) Discovery in Misdemeanor Proceedings.

(1) The provisions of MCR 6.201, except for MCR 6.201(A), apply in all misdemeanor proceedings.

(2) MCR 6.201(A) only applies in misdemeanor proceedings, as set forth in this subrule, if a defendant elects to request discovery pursuant to MCR 6.201(A). If a defendant requests discovery pursuant to MCR 6.201(A) and the prosecuting attorney complies, then the defendant must also comply with MCR 6.201(A).

(F) Pleas of Guilty and Nolo Contendere. Before accepting a plea of guilty or nolo contendere, the court shall in all cases comply with this rule.

(1) The court shall determine that the plea is understanding, voluntary, and accurate. In determining the accuracy of the plea,

(a) if the defendant pleads guilty, the court, by questioning the defendant, shall establish support for a finding that defendant is guilty of the offense charged or the offense to which the defendant is pleading, or

(b) if the defendant pleads nolo contendere, the court shall not question the defendant about the defendant's participation in the crime, but shall make the determination on the basis of other available information.

(2) The court shall inform the defendant of the right to the assistance of an attorney. If the offense charged requires on conviction a minimum term in jail, the court shall inform the defendant that if the defendant is indigent the defendant has the right to an appointed attorney. The court shall also give such advice if it determines that it might sentence to a term of incarceration, even if suspended.

(3) The court shall advise the defendant of the following:

(a) the mandatory minimum jail sentence, if any, and the maximum possible penalty for the offense,

(b) that if the plea is accepted the defendant will not have a trial of any kind and that the defendant gives up the following rights that the defendant would have at trial:

(i) the right to have witnesses called for the defendant's defense at trial,

(ii) the right to cross-examine all witnesses called against the defendant,

(iii) the right to testify or to remain silent without an inference being drawn from said silence,

(iv) the presumption of innocence and the requirement that the defendant's guilt be proven beyond a reasonable doubt.

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(4) A defendant or defendants may be informed of the trial rights listed in subrule (3)(b) as follows:

- (a) on the record,
- (b) in a writing made part of the file, or
- (c) in a writing referred to on the record.

Except as provided in subrule (E)(7), if the court uses a writing pursuant to subrule (E)(4)(b) or (c), the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.

(5) The court shall make the plea agreement a part of the record and determine that the parties agree on all the terms of that agreement. The court shall accept, reject or indicate on what basis it accepts the plea.

(6) The court must ask the defendant:

- (a) (if there is no plea agreement) whether anyone has promised the defendant anything, or (if there is a plea agreement) whether anyone has promised anything beyond what is in the plea agreement;
- (b) whether anyone has threatened the defendant; and
- (c) whether it is the defendant's own choice to plead guilty.

(7) A plea of guilty or nolo contendere in writing is permissible without a personal appearance of the defendant and without support for a finding that defendant is guilty of the offense charged or the offense to which the defendant is pleading if

- (a) the court decides that the combination of the circumstances and the range of possible sentences makes the situation proper for a plea of guilty or nolo contendere;
- (b) the defendant acknowledges guilt or nolo contendere, in a writing to be placed in the district court file, and waives in writing the rights enumerated in subrule (3)(b); and
- (c) the court is satisfied that the waiver is voluntary.

A "writing" includes digital communications, transmitted through electronic means, which are capable of being stored and printed.

(8) The following provisions apply where a defendant seeks to challenge the plea.

- (a) A defendant may not challenge a plea on appeal unless the defendant moved in the trial court to withdraw the plea for noncompliance with these rules. Such a motion may be made either before or after sentence has been imposed. After

imposition of sentence, the defendant may file a motion to withdraw the plea within the time for filing an application for leave to appeal under MCR 7.105(G)(2).

(b) If the trial court determines that a deviation affecting substantial rights occurred, it shall correct the deviation and give the defendant the option of permitting the plea to stand or of withdrawing the plea. If the trial court determines either a deviation did not occur, or that the deviation did not affect substantial rights, it may permit the defendant to withdraw the plea only if it does not cause substantial prejudice to the people because of reliance on the plea.

(c) If a deviation is corrected, any appeal will be on the whole record including the subsequent advice and inquiries.

(9) The State Court Administrator shall develop and approve forms to be used under subrules (E)(4)(b) and (c) and (E)(7)(b).

(G) Sentencing.

(1) For sentencing, the court shall:

(a) require the presence of the defendant's attorney, unless the defendant does not have one or has waived the attorney's presence;

(b) provide copies of the presentence report (if a presentence report was prepared) to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, at a reasonable time, but not less than two business days before the day of sentencing. The prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, may retain a copy of the report or an amended report. If the presentence report is not made available to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, at least two business days before the day of sentencing, the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, shall be entitled, on oral motion, to an adjournment to enable the moving party to review the presentence report and to prepare any necessary corrections, additions or deletions to present to the court, or otherwise advise the court of circumstances the prosecutor or defendant believes should be considered in imposing sentence. A presentence investigation report shall not include any address or telephone number for the home, workplace, school, or place of worship of any victim or witness, or a family member of any victim or witness, unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual. Upon request, any other address or telephone number that would reveal the location of a victim or witness or a family member of a victim or witness shall be exempted from disclosure unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual.

(c) inform the defendant of credit to be given for time served, if any.

(d) order the dollar amount of restitution that the defendant must pay to make full restitution as required by law to any victim of the defendant's course of conduct that gives rise to the conviction, or to that victim's estate. Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney.

(2) The court shall not sentence a defendant to a term of incarceration for nonpayment unless the court has complied with the provisions of MCR 6.425(E)(3).

(3) Unless a defendant who is entitled to appointed counsel is represented by an attorney or has waived the right to an attorney, a subsequent charge or sentence may not be enhanced because of this conviction and the defendant may not be incarcerated for violating probation or any other condition imposed in connection with this conviction.

(4) Immediately after imposing a sentence of incarceration, even if suspended, the court must advise the defendant, on the record or in writing, that:

(a) if the defendant wishes to file an appeal and is financially unable to retain a lawyer, the local indigent criminal defense system's court appointing authority will appoint a lawyer to represent the defendant on appeal, and

(b) the request for a lawyer must be made within 14 days after sentencing.

(H) Motion for New Trial. A motion for a new trial must be filed within 21 days after the entry of judgment. However, if an appeal has not been taken, a delayed motion may be filed within the time for filing an application for leave to appeal.

(I) Arraignment; Offenses Not Cognizable by the District Court. In a prosecution in which a defendant is charged with a felony or a misdemeanor not cognizable by the district court, the court shall

(1) inform the defendant of the nature of the charge;

(2) inform the defendant of

(a) the right to a preliminary examination;

(b) the right to an attorney, if the defendant is not represented by an attorney at the arraignment;

(c) the right to have an attorney appointed at public expense if the defendant is indigent; and

(d) the right to consideration of pretrial release.

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If a defendant not represented by an attorney waives the preliminary examination, the court shall ascertain that the waiver is freely, understandingly, and voluntarily given before accepting it.

RULE 6.625 APPEAL; APPOINTMENT OF APPELLATE COUNSEL

(A) An appeal from a misdemeanor case is governed by subchapter 7.100.

(B) If the court imposed a sentence of incarceration, even if suspended, and the defendant is indigent, the local indigent criminal defense system's court-appointing authority must ~~enter an order~~ appointing a lawyer if, within 14 days after sentencing, the defendant files a request for a lawyer or makes a request on the record. If the defendant makes a request on the record, the court shall inform the appointing authority of the request that same day. Unless there is a postjudgment motion pending, the appointing authority ~~court~~ must ~~rule~~ act on a defendant's request for a lawyer within 14 days after receiving it. If there is a postjudgment motion pending, the ~~court-appointing authority~~ must ~~act~~ rule on the request after the court's disposition of the pending motion and within 14 days after that disposition.

(C) If indigency was not previously determined or there is a request for a redetermination of indigency, the court shall make an indigency determination unless the court's local funding unit has designated this duty to its appointing authority in its compliance plan with the Michigan Indigent Defense Commission. The determination of indigency and, if indigency is found, the appointment of counsel must occur with 14 days of the request unless a postjudgment motion is pending. If there is a postjudgment motion pending, the appointing authority must act on the request after the court's disposition of the pending motion and within 14 days after that disposition.

(D) If a lawyer is appointed, the 21 days for taking an appeal pursuant to MCR 7.104(A)(3) and MCR 7.105(A)(3) shall commence on the day of the notice of appointment is filed with the court.

RULE 6.905 ASSISTANCE OF ATTORNEY

(A) Advice of Right. If the juvenile is not represented by an attorney, the magistrate or court shall advise the juvenile at each stage of the criminal proceedings of the right to the assistance of an attorney. If the juvenile has waived the right to an attorney, the court at later proceedings must reaffirm that the juvenile continues to not want an attorney.

(B) ~~Court~~-Appointed Attorney. Unless the juvenile has a retained attorney, or has waived the right to an attorney, the magistrate or the court must refer the matter to the local indigent criminal defense system's appointing authority for appointment of ~~appoint~~ an attorney to represent the juvenile.

(C) Waiver of Attorney. The magistrate or court may permit a juvenile to waive representation by an attorney if:

(1) an attorney is appointed to give the juvenile advice on the question of waiver;

(2) the magistrate or the court finds that the juvenile is literate and is competent to conduct a defense;

(3) the magistrate or the court advises the juvenile of the dangers and of the disadvantages of self-representation;

(4) the magistrate or the court finds on the record that the waiver is voluntarily and understandingly made; and

(5) the court appoints standby counsel to assist the juvenile at trial and at the juvenile sentencing hearing.

Commented [SN(3): Standby counsel appears to be outside our statute. Thus no change has been made here.

(D) Cost. The court may assess cost of legal representation, or part thereof, against the juvenile or against a person responsible for the support of the juvenile, or both. The order assessing cost shall not be binding on a person responsible for the support of the juvenile unless an opportunity for a hearing has been given and until a copy of the order is served on the person, personally or by first class mail to the person's last known address.

RULE 6.907 ARRAIGNMENT ON COMPLAINT AND WARRANT

(A) Time. When the prosecuting attorney authorizes the filing of a complaint and warrant charging a juvenile with a specified juvenile violation instead of approving the filing of a petition in the family division of the circuit court, the juvenile in custody must be taken to the magistrate for arraignment on the charge. The prosecuting attorney must make a good-faith effort to notify the parent of the juvenile of the arraignment. The juvenile must be released if arraignment has not commenced:

(1) within 24 hours of the arrest of the juvenile; or

(2) within 24 hours after the prosecuting attorney authorized the complaint and warrant during special adjournment pursuant to MCR 3.935(A)(3), provided the juvenile is being detained in a juvenile facility.

(B) Temporary Detention Pending Arraignment. If the prosecuting attorney has authorized the filing of a complaint and warrant charging a specified juvenile violation instead of approving the filing of a petition in the family division of the circuit court, a juvenile may, following apprehension, be detained pending arraignment:

(1) in a juvenile facility operated by the county;

(2) in a regional juvenile detention facility operated by the state; or

(3) in a facility operated by the family division of the circuit court with the consent of the family division or an order of a court as defined in MCR 6.903(C).

If no juvenile facility is reasonably available and if it is apparent that the juvenile may not otherwise be safely detained, the magistrate may, without a hearing, authorize that the juvenile be lodged pending arraignment in a facility used to incarcerate adults. The juvenile must be kept separate from adult prisoners as required by law.

(C) Procedure. At the arraignment on the complaint and warrant:

(1) The magistrate shall determine whether a parent, guardian, or an adult relative of the juvenile is present. Arraignment may be conducted without the presence of a parent, guardian, or adult relative provided the magistrate-local funding unit's appointing authority appoints an attorney to appear at arraignment with the juvenile or provided an attorney has been retained and appears with the juvenile.

(2) The magistrate shall set a date for the juvenile's preliminary examination within the next 14 days, less time given and used by the prosecuting attorney under special adjournment pursuant to MCR 3.935(A)(3), up to three days' credit. The magistrate shall inform the juvenile and the parent, guardian, or adult relative of the juvenile, if present, of the preliminary examination date. If a parent, guardian, or an adult relative is not present at the arraignment, the court shall direct the attorney for the juvenile to advise a parent or guardian of the juvenile of the scheduled preliminary examination.

RULE 6.937 COMMITMENT REVIEW HEARING

(A) Required Hearing Before Age 19 for Court-Committed Juveniles. The court shall schedule and hold, unless adjourned for good cause, a commitment review hearing as nearly as possible to, but before, the juvenile's 19th birthday.

(1) Notice. The Family Independence Agency or agency, facility, or institution to which the juvenile is committed, shall advise the court at least 91 days before the juvenile attains age 19 of the need to schedule a commitment review hearing. Notice of the hearing must be given to the prosecuting attorney, the agency or the superintendent of the facility to which the juvenile has been committed, the juvenile, and the parent of the juvenile if the parent's address or whereabouts are known, at least 14 days before the hearing. Notice must clearly indicate that the court may extend jurisdiction over the juvenile until the age of 21. The notice shall include advice to the juvenile and the parent of the juvenile that the juvenile has the right to an attorney.

(2) Appointment of an Attorney. The local funding unit's appointing authority must appoint an attorney to represent the juvenile at the hearing unless an attorney has been retained or is waived pursuant to MCR 6.905(C).

(3) Reports. The state institution or agency charged with the care of the juvenile must prepare a commitment report as required by MCL 769.1b(4) and 803.225(1). The commitment report must contain all of the following, as required by MCL 803.225(1)(a)-(d):

- (a) the services and programs currently being utilized by, or offered to, the juvenile and the juvenile's participation in those services and programs;
- (b) where the juvenile currently resides and the juvenile's behavior in the current placement;
- (c) the juvenile's efforts toward rehabilitation; and

(d) recommendations for the juvenile's release or continued custody.

The report created pursuant to MCL 803.223 for the purpose of annual reviews may be combined with a commitment review report.

(4) Findings; Criteria. Before the court continues the jurisdiction over the juvenile until the age of 21, the prosecutor must demonstrate by a preponderance of the evidence that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety. The rules of evidence do not apply. In making the determination, the court must consider the following factors:

- (a) the extent and nature of the juvenile's participation in education, counseling, or work programs;
- (b) the juvenile's willingness to accept responsibility for prior behavior;
- (c) the juvenile's behavior in the current placement;
- (d) the prior record and character of the juvenile and physical and mental maturity;
- (e) the juvenile's potential for violent conduct as demonstrated by prior behavior;
- (f) the recommendations of the state institution or agency charged with the juvenile's care for the juvenile's release or continued custody; and
- (g) other information the prosecuting attorney or the juvenile may submit.

(B) Other Commitment Review Hearings. The court, on motion of the institution, agency, or facility to which the juvenile is committed, may release a juvenile at any time upon a showing by a preponderance of evidence that the juvenile has been rehabilitated and is not a risk to public safety. The notice provision in subrule (A), other than the requirement that the court clearly indicate that it may extend jurisdiction over the juvenile until the age of 21, and the criteria in subrule (A) shall apply. The rules of evidence shall not apply. The local funding unit's appointing authority~~court~~ must appoint an attorney to represent the juvenile at the hearing unless an attorney has been retained or the right to counsel waived. The court, upon notice and opportunity to be heard as provided in this rule, may also move the juvenile to a more restrictive placement or treatment program.

RULE 6.938 FINAL REVIEW HEARINGS

(A) General. The court must conduct a final review of the juvenile's probation and commitment not less than 3 months before the end of the period that the juvenile is on probation and committed to the state institution or agency. If the court determines at this review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court may impose that sentence.

(B) Notice Requirements. Not less than 14 days before a final review hearing is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parents or guardian must be notified. The notice must state that the court may impose a

sentence upon the juvenile and must advise the juvenile and the juvenile's parent or guardian of the right to legal counsel.

(C) Appointment of Counsel. If an attorney has not been retained or appointed to represent the juvenile, the local funding unit's appointing authority~~court~~ must appoint an attorney and the court may assess the cost of providing an attorney as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(D) Criteria. In determining whether the best interests of the public would be served by imposing sentence, the court shall consider the following:

- (1) the extent and nature of the juvenile's participation in education, counseling, or work programs;
- (2) the juvenile's willingness to accept responsibility for prior behavior;
- (3) the juvenile's behavior in the current placement;
- (4) the prior record and character of the juvenile and the juvenile's physical and mental maturity;
- (5) the juvenile's potential for violent conduct as demonstrated by prior behavior;
- (6) the recommendations of the state institution or agency charged with the juvenile's care for the juvenile's release or continued custody;
- (7) the effect of treatment on the juvenile's rehabilitation;
- (8) whether the juvenile is likely to be dangerous to the public if released;
- (9) the best interests of the public welfare and the protection of public security; and
- (10) other information the prosecuting attorney or juvenile may submit.

(E) Credit for Time Served on Probation. If a sentence is imposed, the juvenile must receive credit for the period of time served on probation and committed to a state agency or institution.

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Proposed Comments on Proposed Changes to MCR 8.120:

The MIDC writes to comment on the proposed amendment to MCR 8.120. The existing court rule has served a long-standing purpose of permitting law students and recent graduates to provide services to indigent clients under the supervision of public defender offices and legal aid clinics. In addition, the rule provides for those individuals to serve under the supervision of prosecutors and the attorney general to provide training opportunities. The proposed amendment significantly expands the scope of such service.

While the intention of the proposed amendment may be laudable, the MIDC has the following concerns with the proposed amended rule:

1. The proposal is based on supervision of students and recent graduates by “MIDC compliant attorneys.” This term is not defined in the proposed rule. It is also not defined by the MIDC. The MIDC does not certify attorneys. Standards presently in effect that have been promulgated pursuant to our statute require a minimum of 12 CLE training hours per year for each attorney accepting indigent defense appointments. Additional skills training is required for attorneys with less than 2 years of criminal defense experience. Attorneys who fail to complete these requirements cannot receive appointments. However, mere completion of this minimum requirement does not create a certification of “MIDC compliance.” The MIDC has no power to certify or regulate attorneys. Presuming that attendance at required minimum training events provides adequate client protection in these cases is inappropriate.
2. The existing court rule presumes that the institutional structure of public defender offices, Legal Aid offices and the other agencies covered by the rule have internal supervision and oversight requirements and procedures in place to adequately protect the rights of clients served by law students and recent graduates. The present rule presumes that training and supervision are built into the existing structure, and this applied to the use of students and interns. The proposed amendment allows members of the bar in private practice who do not have such institutional structures in place to provide whatever supervision and training they deem suitable.
3. A public defender or legal aid office are accountable to local governing bodies or boards of directors, providing the criminal legal system and the clients it serves more confidence that the organization will have internal controls for vetting applicants for internships, training them, overseeing them, etc., than individual private attorneys with ad hoc methods of using interns.
4. The proposed rule does not restrict the law students and recent graduates to service on behalf of indigent clients. The rule as proposed authorizes private attorneys to use law students as surrogates on behalf of any client. Since the structure of the rule is based on some form of MIDC compliance, this seems wholly inappropriate. The provision requiring malpractice insurance is likely intended to address some of these concerns. However, a malpractice claim is inadequate to redress possible harm to clients in criminal matters.

5. The present rule provides for informed consent by the client being served by a student or intern. This expansion does not address how or even if such consent would be obtained.

Both the training of new attorneys for indigent defense and the expansion of access to representation for indigent clients are important goals. Unfortunately, this proposal does not provide the needed protections to achieve those goals. The MIDC opposes adoption of the proposal as it is currently presented.

LAW STUDENT, RECENT GRADUATE AND LAW INTERN PRACTICE COURT RULE

ISSUE

Should the Representative Assembly request that the Michigan Supreme Court amend Michigan Court Rule (MCR) 8.120 to permit law students and recent graduates to practice under the supervision of Michigan Indigent Defense Commission (MIDC) attorneys in private practice similar to how they are permitted to practice in Legal Aid Clinics and Legal Defender Offices?

RESOLVED, that the State Bar of Michigan supports amendment of the Michigan Court Rules to expand the scope of MCR 8.120 to include the ability for law students and recent graduates to practice under the supervision of MIDC attorneys in private practice.

FURTHER RESOLVED, that the State Bar of Michigan proposes the amendment to Chapter 8 of the Michigan Court Rules by amending MCR 8.120, as follows:

Rule 8.120 Law Students and Recent Graduates; Participation in Legal Aid Clinics, Defender Offices, MIDC Compliant Attorneys With 5 Years-Experience, and Legal Training Programs.

(A) [No Change]

(B) MIDC Compliant Attorneys. Law students and recent law graduates, under supervision of a member of the State Bar of Michigan, may staff the private practice of an attorney in the same manner as Legal Aid Clinics and Defender Offices. To qualify as a supervising attorney, the attorney shall:

(1) have a minimum of five (5) years of experience in practice,

(2) be fully compliant with the MIDC, and

(3) carry malpractice insurance.

~~(B)~~ [No Change]

~~(C)~~ [No Change]

~~(D)~~ [No Change]

(1) [No Change]

(2) [No Change in (a)-(b)(i)-(ii)]

The supervising attorney shall assume all personal professional responsibility for the student's or graduate's work, and should consider purchasing professional liability insurance to cover the practice of such student or graduate. Attorneys who supervise law students or recent graduates in private practice shall obtain malpractice insurance as set forth in Section (B).

(3) [No Change]

(4) [No Change]

SYNOPSIS

The proposed addition to the Michigan Court Rules improves the access of indigent criminal defendants to representation by expanding the scope of attorneys under whom law students and recent graduates can gain valuable practical legal experience. The proposed amendment has two purposes: to enhance the profession by providing practical experience that is not taught in law school; and to expand access to legal services for indigent persons.

BACKGROUND

The proposed rule is based upon US. Const., Amend. VI, which provides in relevant part, that “[i]n all criminal prosecutions, the accused shall ... have the Assistance of Counsel for his defence.”

The proposed rule is also based upon Const. 1963, Art 1, Sec. 20, which provides, in pertinent part, that “[i]n every criminal prosecution, the accused shall have the right ... to have the assistance of counsel for his or her defense [and] to have such reasonable assistance as may be necessary to perfect and prosecute an appeal.”

OPPOSITION

None known.

PRIOR ACTION BY REPRESENTATIVE ASSEMBLY

None known.

FISCAL AND STAFFING IMPACT ON STATE BAR OF MICHIGAN

None known.

STATE BAR OF MICHIGAN POSITION

By vote of the Representative Assembly on September 17, 2020

Should the Representative Assembly request that the Michigan Supreme Court amend MCR 8.120 to permit law students and recent graduates to practice under the supervision of MIDC attorneys in private practice similar to how they are permitted to practice in Legal Aid Clinics and Legal Defender Offices?

(a) Yes

or

(b) No

From: [McCowan, Marla \(LARA\)](#)
To: [Tracey Brame](#); ["Bill Swor"](#); deleeuwa@washtenaw.org; [Josh Blanchard](#); hakim@jlusa.org
Cc: [Khogali, Loren \(LARA\)](#); [Klimaszewski, Barbara \(LARA\)](#); [Prentice-Sao, Susan \(LARA\)](#)
Subject: Re: MIDC Committee: Training and Evaluation
Date: Friday, January 22, 2021 4:03:57 PM
Attachments: [Outlook-lhy4nxma.png](#)

Since I wrote this message below, there has been some reorganization of committees. This group now includes:

Training and Evaluation Standards Committee

Tracey Brame, Committee Chair

Andrew DeLeeuw

Josh Blanchard

Hakim Crampton

Bill Swor

Thank you for a good meeting earlier this week. I captured some notes from the topics in the original or early development memo, and I will start drafting standards covering the following topics based on that discussion. After the February meeting I will circulate language in a document that we can collaboratively edit, and schedule follow up meetings as necessary.

Standards for trainers/training providers should cover:

- Planning for training events, such as identifying training needs and objectives and substantive content planning
 - Discussion:
 - When possible, planning should be done by a group composed of largely/exclusively defense attorneys, surveying other stakeholders including judges for potential topics to cover in training.
 - We talked about the possibility of an ethics component of any and all topics
 - We talked about client centered values in every topic
 - We talked about including, but editing, the language from NAIDE (see [thread below/original message](#))
- Logistical considerations, such as creating agendas
 - Blended platforms (hybrid remote and in person learning) should be addressed
- Counting training time, breaks
 - Universal system needs to be in place (i.e. "hours" of training, not "credits")
- Creating evaluations for plenary and skills training sessions for trainees and trainers
- Collection and compilation of evaluations and verifying attendance
- Ethical consequences for an attorney who mis-reports attendance
 - Discussion: who would report to AGC? Marla to reach out to the new

administrator for information regarding possibilities and process

- Out of state training/webinars, limitations or expectations for attendance
 - This past year reveals much can be done online, including skills training
 - General consensus: no need for MIDC to put a limit on max number of webinars; systems are free to create more stringent standards if desired
- Non-traditional classroom training, 2nd chair opportunities and how to calculate credit (if any)
 - Marla to review ND III trial bar information
- Expectations for trainers and training providers, such as adhering to specified lesson time, providing materials, a code of conduct
 - How to treat no-shows for limited attendance/high faculty required events (i.e. skills trainings)
- Payments and credits for trainers, for prep/development and classroom time
 - Covered in grant manual and website/CLE tab, will review and incorporate as necessary

Marla R. McCowan
Director of Training, Outreach & Support
Michigan Indigent Defense Commission
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McCowanM@michigan.gov



From: McCowan, Marla (LARA)

Sent: Friday, December 18, 2020 8:42 AM

To: Tracey Brame <bramet@cooley.edu>; Jeff Collins <jcollins@collinslegal.net>; 'Bill Swor' <wwwswor@wwnet.net>; deleeuwa@washtenaw.org <deleeuwa@washtenaw.org>; Josh Blanchard <josh@blanchard.law>

Cc: Khogali, Loren (LARA) <KhogaliL@michigan.gov>; Klimaszewski, Barbara (LARA) <KlimaszewskiB@michigan.gov>; Prentice-Sao, Susan (LARA) <PrenticeSaoS@michigan.gov>
Subject: MIDC Committee: Training and Evaluation

Previously this standing committee that is described in our by-laws was chaired by Frank Eaman, who retired earlier this year. Congratulations to our new committee chair, Tracey Brame, and welcome Commissioner Josh Blanchard:

Training and Evaluation Standards Committee

Tracey Brame, Committee Chair

Andrew DeLeeuw

Josh Blanchard

Jeffrey Collins

Bill Swor

This committee is tasked with standards development under the MIDC Act. So far, the work has primarily been around MIDC Standard 1 (Training and Education) and Standard 7 (Qualification and Review). We started the work in 2019 to develop standards for trainers and training providers, pursuant to a portion of the MIDC Act that was amended in 2018 to include this language:

MCL §780.991(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."

The work in 2019 (see attached memo) was preliminary and required some implementation of MIDC Standard 1 first. Implementation of Standard 1 began in 2019 and continued this year.

I recently spoke with Commissioner Brame and timing-wise it feels appropriate for this committee to meet to resume discussion around the development of standards for trainers and training providers with the hope of developing these standards in 2021.

Please indicate your availability to meet in January (I am aiming for the week of January 18):

https://doodle.com/poll/37usccfxcuutt82x?utm_source=poll&utm_medium=link

A few other notes:

We received an exemption to the state's current hiring freeze, and the training analyst (MIDC support staff) position was posted [here](#) yesterday. We hope this position will be filled in early 2021.

The MIDC's whitepaper for standard 1 can be found [here](#).

At the MIDC meeting on Tuesday, I listened with great interest about the topics of anti-racism and implicit bias, and the need for training on these topics. I'm pleased to report that CDAM trainings on race and implicit bias have been offered free of charge to criminal defense attorneys in Michigan this past year. Over the summer the NLADA issued a statement from the National Alliance of Indigent Defense Educators ([NAIDE](#)), which we should incorporate into our work in 2021:

Public Defender educators have the honor and the obligation to develop excellence in representation by criminal defenders, family defenders and other advocates for accused people. We believe unambiguously that black lives matter. Police brutality must end. Our voices must be used to amplify the stories of black and brown people targeted and terrorized by the legal system every day.

The role of trainers is to shape the culture of the community doing this vital work. As trainers, we are committed to diversity and inclusion. To that end, we are dedicated to recruiting, developing, and encouraging people of color to seek roles as training directors, faculty members, and leaders throughout the defender community. We are devoted to creating programs with diverse participants and trainers.

Our training efforts will consistently include education regarding anti-racism, implicit bias, and advocacy designed to dismantle white supremacy throughout the legal system. We commit to examine our own biases and blindspots and create opportunities for others to do the same. We will not stand in silence, exacerbating the profound inequities in the legal system. We will speak; we will train and support our advocates to speak as well with strong, intentional voices in an effort to change a system that has consistently failed communities of color. We cannot continue to ignore the foundations of racism and brutality which continue to plague our nation, but instead face them and declare that enough is enough. Change is long past due. We will no longer be satisfied by the status quo. We are dedicated to providing leadership in making change, not only in this moment, but going forward in establishing sustained and meaningful progress toward equality and humanity.

Marla R. McCowan
Director of Training, Outreach & Support
Michigan Indigent Defense Commission
517-388-6702
McCowanM@michigan.gov



To: Michigan Indigent Defense Commission

From: Marla R. McCowan
Director of Training, Outreach & Support

Re: FY21 quarterly reporting, compliance plan resubmissions, and staff recommendations

Date: February 16, 2021

I. FY21 Compliance Funding Distribution Update; Q1 reporting

A. Overview

As of the December 2020 meeting, **116 of 120 systems have had their plans and cost analyses approved** and contracts have been distributed to those systems.

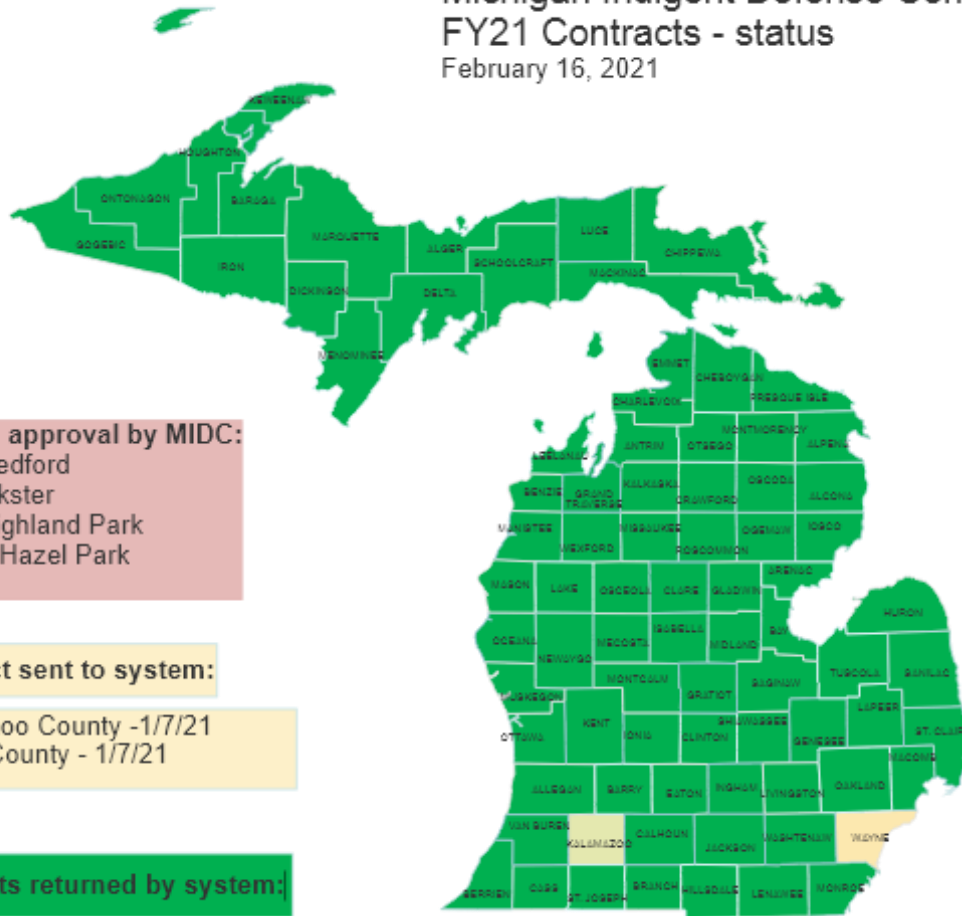
The graphic on the next page details the finalized contracts to date as well as the outstanding contracts that need to be approved and/or returned by the system(s).

FY21 Total system cost approved (to date): \$163,926,116.96

- Local share (increase of 2.1% from FY19): \$38,355,520.19
- MIDC funding approved for compliance plans: \$125,570,596.78
- MIDC funding approved to reimburse systems for the cost of planning: \$21,716.83

Note: There is a net increase in the MIDC grant funding approved from the total presented at the December 17, 2020 meeting by \$17.98 due to a typographical error in Gogebic County's local share. The total system cost approved by the Commission was unchanged.

Michigan Indigent Defense Commission FY21 Contracts - status February 16, 2021



Pending approval by MIDC:

D 17 - Redford
D 22 - Inkster
D 30 - Highland Park
D 43-1 - Hazel Park

Contract sent to system:

Kalamazoo County -1/7/21
Wayne County - 1/7/21

Contracts returned by system:

Wayne 3rd Class Districts and Municipalities:

D 16 - Livonia
D 18 - Westland
D 19 - Dearborn
D 20 - Dearborn Heights
D 21 - Garden City
D 23- Taylor
D 24 - Allen Park
D 25 - Lincoln Park
D 27 - Wyandotte
D 28 - Southgate
D 29 - Wayne
D 31 - Hamtramck
D 32a - Harper Woods
D 33 - Trenton
D 34 - Romulus
D 35 - Plymouth
D 36 - City of Detroit
Grosse Pointe City
Grosse Pointe Farms/Shores
Grosse Pointe Park
Grosse Pointe Woods

Macomb 3rd Class Districts:

D 37 - Warren Centerline
D 38 - Eastpointe
D 39 - Roseville/Fraser
D 40 - St Clair Shores
D 41-a-1 - Sterling Heights
D 41-a-2 - Shelby
D 41 -b - Mt. Clemens

Oakland 3rd Class Districts:

D 43-2 - Ferndale
D 43-3 - Madison Heights
D 44 - Royal Oak
D 45 - Oak Park
D 46 - Southfield
D 47 - Farm/Hills
D 48 - Bloomfield
D 50 - Pontiac
D 51 - Waterford

Kent 3rd class Districts:

D 61 - Grand Rapids
D 62a - Wyoming (GKWW)

1. System reporting - progress towards compliance

Staff received the first quarter of reporting from systems for FY21 (covering October 1, 2020 – December 31, 2020). The reporting is composed of:

- A **program report**, detailing the progress towards compliance with the approved plan. All program reports are submitted online through a survey-type of system for ease in submitting, receiving, and organizing the information provided;
- A **financial status report**, in the format approved by the Commission, to provide information regarding the spending on indigent defense between October 1, 2020- December 31, 2020;
- A **budget adjustment request**, if applicable, to accommodate necessary changes to the line items without exceeding the approved total grant award;
- A **list of attorneys** providing services in the system, including full name and P#, to track progress on continuing legal education; and

The MIDC staff worked to simplify the reporting process and created a series of short web-based tutorials to provide systems with guidance on completing the necessary reporting documents. The tutorials, along with a number of resources for reporting, can be found on our grants page, at www.michiganidc.gov/grants.

2. Changes and adjustments to approved plans and/or cost analysis

a. Plan Change Requests – **action items**

1) D 37 – Warren and Centerline District Court

Senior staff recommends approving this request, there is no change to the approved budget.

Instead of filling its vacant MIDC coordinator position, Warren would like to hire an attorney as independent contractor to oversee its indigent defense program as a MACC and assist with the implementation of MIDC Standard 5. Warren does not believe that this change will impact funding because the funds intended to be paid for the coordinator's salary and benefits will be reallocated for the MACC's compensation.

Additionally, the MACC will not begin working until after March 1st, so there is some cost savings with the delay in implementation.

The MACC will be an independent contractor with the City who will be paid \$100 per hour. It is anticipated that the MACC will perform administrative services for an average of 13.50 per week. The MACC will only be paid for services provided. The total MACC cost will be up to \$70,000 per year.

2) Shiawassee County

Senior staff recommends rejecting this request.

Shiawassee County is requesting a plan adjustment seeking to expand services of MIDC Standard 4 and allow for funding for payment of tether monitoring fees for pretrial release of indigent clients. This would include coverage of tether fees for clients charged with probation violations and are awaiting a hearing.

The complete submission and analysis submitted by the system is at this link in the shared drive of materials.

b. FY20 Q4 Budget adjustments – **information item**

- 1) The Grant Manager **approved budget adjustment requests** pursuant to the process set forth in the MIDC's [Grant Manual](#) at p. 26 (June 2020). **These adjustments did not impact the total system cost:**

- Berrien County
- Chippewa County
- D 37 Warren/Centerline (*separate from plan change request*)
- Eaton County
- Houghton County
- Kalkaska County
- Livingston County
- Macomb County
- Menominee County
- Montcalm County

- Oakland County
- Ottawa County
- Tuscola County

The documentation for these budget adjustment requests can be found in the shared drive of materials.

II. FY21 Compliance Planning, Submissions, and Recommendations

A. Overview

Statutory authority MCL §780.993 (**as amended with emphasis** December 2018):

(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.**

B. FY21 Submissions

Staff hosted several webinars for compliance planning and made a recording of one of these webinars available on our website along with the forms and relevant documents for submission. The MIDC staff **expected to receive a total of 120 compliance plans** and cost analyses from funding units for FY21. The dates of submission are tracked closely by staff to ensure compliance with the statutory timelines for review by the Commission.

1. Review of FY21 Compliance Plans and Cost Analyses

a. Substantive Review of Resubmissions – Action Requested

Senior staff recommends, pursuant to MCL 780.993(4), as follows:

Staff Recommendation:

Disapprove Compliance Plan, Disapprove Cost Analysis

Failure to resubmit:

1. D 22 Inkster

Note: The system has also failed to submit complete program and financial reporting for FY19 and FY20.

Plan and cost analysis previously disapproved; recommend APPROVING resubmitted plan AND cost analysis

No system change; overall reduction in spending from FY 20

2. D 30 Highland Park

FY20 Total system cost: \$167,781.34

FY21 Total system cost: \$143,891.19

Prior basis for disapproval: no prior submissions

Overview: Assigned counsel system seeking to maintain services with reductions in spending based on actual time needed for attorney hours and coordinator administration time, and eliminated skills training (no attorneys with less than 2 years exp.).

Plan previously approved, cost analysis previously rejected; recommend APPROVING resubmitted cost analysis

No system change; overall reduction in spending from FY 20

3. D 17 Redford

FY20 Total system cost: \$291,038.77

FY21 Total system cost: \$211,431.17

(Note: Original FY 21 submission \$386,701.17 was rejected in August 2020; resubmitted total \$389,181.17 was rejected in October 2020)

Prior basis for cost analysis disapproval: Assigned counsel system seeking to increase attorney fees by 38% without explanation or apparent need after evaluation of caseloads; additional detail or clarification is required for payment method (hourly vs shift coverage) and math errors in travel and training budget.

Resubmission: Supplies and travel were revised, but the attorney fees do not correspond with previously approved hourly rates and caseload numbers.

Final Submission: Attorney fees have been revised (compliance plan reflects revised cost analysis).

b. Summary of Recommended Approval Totals for February 2021:

Below is a summary of costs for these 2 systems that were previously rejected and now recommended for approval:

Recommended for approval			
	Total System Cost	FY 21 Local Share (+2.1%)	MIDC Grant Funding
D 17 - Redford	\$211,431.17	\$52,565.74	\$158,865.43
D 30 - Highland Park	\$143,891.19	\$13,783.50	\$130,107.69
Totals	\$355,322.36	\$66,349.24	\$288,973.12

c. FY21 Previously Approved Totals:

System Name	FY21 Total System Cost	FY21 Local Share (+2.1%)	MIDC Grant Funding
Plan and Costs Approved			
Alcona County	\$152,650.00	\$40,971.99	\$111,678.01
Alger County	\$429,084.71	\$53,411.62	\$375,673.09
Allegan/Van Buren Counties	\$2,650,305.00	\$540,374.46	\$2,109,930.54
Alpena County	\$610,435.00	\$163,201.41	\$447,233.59
Antrim County	\$255,891.40	\$80,078.05	\$175,813.35
Arenac County	\$256,678.28	\$114,224.09	\$142,454.19
Baraga/Houghton/Keweenaw Counties	\$700,178.20	\$158,294.21	\$541,883.99
Barry County	\$911,597.41	\$231,076.12	\$680,521.29
Bay County	\$1,234,010.40	\$605,605.63	\$628,404.77
Benzie/Manistee Counties	\$766,610.24	\$282,873.44	\$483,736.80
Berrien County	\$3,095,791.00	\$574,534.13	\$2,521,256.87
Branch County	\$643,176.00	\$154,555.91	\$488,620.09
Calhoun County	\$3,575,137.02	\$697,606.42	\$2,877,530.59
Cass County	\$473,540.80	\$254,093.20	\$219,447.60
Charlevoix County	\$514,125.60	\$168,311.85	\$345,813.75
Cheboygan County	\$386,704.00	\$144,373.49	\$242,330.51
Chippewa County	\$513,994.30	\$224,154.43	\$289,839.87
Clare/Gladwin Counties	\$1,481,001.28	\$236,294.44	\$1,244,706.84
Clinton County	\$1,404,249.81	\$147,696.84	\$1,256,552.97
Crawford County	\$316,295.80	\$15,014.82	\$301,280.98
D 16 - Livonia	\$648,950.88	\$17,573.31	\$631,377.57
D 18 - Westland	\$447,280.00	\$62,895.64	\$384,384.36
D 19 - Dearborn	\$347,081.67	\$78,777.98	\$268,303.69
D 20 - Dearborn Heights	\$224,372.18	\$9,821.67	\$214,550.51
D 21 - Garden City	\$138,584.08	\$8,929.66	\$129,654.42
D 23 - Taylor	\$433,718.56	\$40,330.52	\$393,388.04
D 24 - Allen Park	\$183,718.00	\$14,817.09	\$168,900.91
D 25 - Lincoln Park	\$500,380.11	\$10,725.44	\$489,654.67
D 28 - Southgate	\$186,265.04	\$4,682.30	\$181,582.74
D 27 - Wyandotte	\$243,705.80	\$1,460.91	\$242,244.89
D 29 - Wayne	\$179,204.94	\$23,452.78	\$155,752.16
D 31 - Hamtramck	\$189,082.71	\$14,472.68	\$174,610.04
D 32a - Harper Woods	\$221,006.72	\$12,648.41	\$208,358.31
D 33 - Trenton	\$297,090.00	\$76,681.87	\$220,408.13
D 34 - Romulus	\$398,233.50	\$55,261.63	\$342,971.88
D 35 - Plymouth	\$385,370.00	\$31,111.46	\$354,258.54
D 36 - Detroit	\$8,323,170.00	\$1,085,610.79	\$7,237,559.21

D 37 - Warren and Centerline	\$1,047,942.60	\$122,687.59	\$925,255.01
D 38 - Eastpointe	\$469,842.12	\$52,956.54	\$416,885.58
D 39 - Roseville and Fraser	\$796,130.54	\$90,161.44	\$705,969.10
D 40 St Clair Shores	\$534,636.91	\$7,072.53	\$527,564.38
D 41-a-1 Sterling Heights	\$298,931.00	\$0.00	\$298,931.00
D 41-a-2 Shelby Twp	\$378,519.45	\$0.00	\$378,519.45
D 41b - Mt Cl, Harris., Clinton	\$464,280.86	\$43,576.48	\$420,704.38
D 43-3 Madison Heights	\$558,888.92	\$1,779.63	\$557,109.29
D 43-2 Ferndale	\$551,357.44	\$15,293.56	\$536,063.88
D 44 - Royal Oak	\$638,042.32	\$22,670.29	\$615,372.03
D 45 - Oak Park	\$449,850.00	\$42,128.50	\$407,721.50
D 46 - Southfield	\$579,952.00	\$82,701.00	\$497,251.00
D 47 Farmington/Hills	\$187,828.22	\$21,889.50	\$165,938.72
D 48 Bloomfield	\$531,500.00	\$17,446.43	\$514,053.57
D 50 Pontiac	\$660,703.69	\$18,005.34	\$642,698.36
D 51 - Waterford	\$268,258.26	\$31,776.08	\$236,482.18
D 61 - Grand Rapids	\$655,510.00	\$176,951.55	\$478,558.45
D 62 a - Wyoming (59-1, 59-2, 62B)	\$647,885.74	\$55,335.07	\$592,550.67
Delta County	\$585,443.54	\$109,483.87	\$475,959.67
Dickinson County	\$541,144.46	\$68,586.69	\$472,557.77
Eaton County	\$2,085,798.00	\$444,892.58	\$1,640,905.42
Emmet County	\$446,636.00	\$162,669.81	\$283,966.19
Genesee County	\$4,833,546.98	\$1,334,291.81	\$3,499,255.17
Gogebic County	\$298,453.76	\$104,277.26	\$194,176.50
Grand Traverse County	\$1,058,022.80	\$156,805.18	\$901,217.62
Gratiot County	\$757,347.36	\$83,319.37	\$674,027.99
Grosse Pointe Farms	\$65,974.00	\$15,000.53	\$50,973.47
Grosse Pte City Municipal	\$23,750.00	\$3,229.43	\$20,520.57
Grosse Pointe Park	\$41,110.00	\$10,175.28	\$30,934.72
Grosse Pointe Woods	\$45,375.00	\$3,147.75	\$42,227.25
Hillsdale County	\$407,313.37	\$113,644.44	\$293,668.93
Huron County	\$644,827.26	\$81,103.74	\$563,723.52
Ingham County	\$6,068,854.75	\$920,963.44	\$5,147,891.31
Ionia County	\$543,453.64	\$223,194.34	\$320,259.30
Iosco County	\$307,538.92	\$171,638.20	\$135,900.72
Iron County	\$619,053.86	\$72,999.79	\$546,054.07
Isabella County	\$1,454,506.28	\$238,206.32	\$1,216,299.96
Jackson County	\$3,522,431.66	\$566,779.27	\$2,955,652.39
Kalamazoo County	\$4,312,698.16	\$1,174,957.52	\$3,137,740.64
Kalkaska County	\$446,774.89	\$39,813.90	\$406,961.00
Kent County C17/D63	\$7,295,853.89	\$2,446,700.91	\$4,849,152.98

Lake County	\$286,287.59	\$77,818.17	\$208,469.42
Lapeer County	\$850,016.00	\$109,737.51	\$740,278.49
Leelanau County	\$221,985.72	\$52,780.96	\$169,204.76
Lenawee County	\$1,391,202.72	\$214,605.27	\$1,176,597.45
Livingston County	\$2,266,080.00	\$935,939.47	\$1,330,140.53
Luce County	\$266,954.00	\$30,146.04	\$236,807.96
Mackinac County	\$199,707.56	\$136,696.59	\$63,010.98
Macomb C 16 & D 42-1, 42-2	\$7,556,919.62	\$2,239,945.36	\$5,316,974.27
Marquette County	\$1,098,460.19	\$229,695.39	\$868,764.80
Mason County	\$600,658.33	\$156,702.08	\$443,956.25
Mecosta County	\$454,799.00	\$166,746.65	\$288,052.35
Menominee County	\$703,571.00	\$116,087.70	\$587,483.30
Midland County	\$489,927.25	\$259,344.82	\$230,582.43
Monroe County	\$973,072.76	\$215,785.28	\$757,287.48
Montcalm County	\$914,421.13	\$224,959.17	\$689,461.96
Montmorency County	\$235,820.00	\$16,898.57	\$218,921.43
Muskegon County	\$2,959,506.88	\$676,202.18	\$2,283,304.70
Newaygo County	\$821,607.58	\$201,215.03	\$620,392.55
Oakland C 6 & D 52-1, 2, 3, 4	\$7,203,836.12	\$1,867,161.92	\$5,336,674.20
Oceana County	\$480,459.40	\$92,863.02	\$387,596.38
Ogemaw County	\$608,093.00	\$147,705.00	\$460,388.00
Ontonagon County	\$162,911.00	\$27,747.04	\$135,163.96
Osceola County	\$424,472.82	\$70,238.68	\$354,234.14
Oscoda County	\$178,857.00	\$54,284.53	\$124,572.47
Otsego County	\$352,745.09	\$82,192.54	\$270,552.55
Ottawa County	\$3,279,235.00	\$942,471.82	\$2,336,763.18
Presque Isle County	\$218,468.51	\$74,828.40	\$143,640.11
Roscommon County	\$399,283.00	\$203,467.61	\$195,815.39
Saginaw County	\$3,795,287.00	\$916,773.25	\$2,878,513.75
Sanilac County	\$388,001.09	\$65,619.63	\$322,381.46
Schoolcraft County	\$234,547.70	\$36,278.66	\$198,269.04
Shiawassee County	\$909,815.40	\$105,977.76	\$803,837.64
St. Clair County	\$2,788,549.84	\$749,438.51	\$2,039,111.33
St. Joseph County	\$918,293.67	\$422,808.72	\$495,484.95
Tuscola County	\$1,138,982.00	\$253,708.29	\$885,273.71
Washtenaw County	\$6,050,067.42	\$2,645,848.39	\$3,404,219.03
Wayne County Circuit Court	\$31,259,985.16	\$7,603,728.02	\$23,656,257.14
Wexford/Missaukee Counties	\$998,590.32	\$146,758.54	\$851,831.78
Total approved as of December 15, 2020	\$163,926,116.96	\$38,355,520.19	\$125,570,596.78