



MICHIGAN INDIGENT DEFENSE COMMISSION

Date: Tuesday, February 7, 2023, Time: 11:00 a.m.

Michigan Bankers Association
507 S. Grand Ave, Lansing, MI 48933

MEETING AGENDA

1. Call to Order
2. Roll call and opening remarks
3. Introduction of Commission members and guests
4. Additions to agenda
5. Consent agenda (action item)
 - December 20, 2022 Meeting Minutes
6. Chair Report
7. Executive Director Report
 - Request for Proposals – Recruitment and Support for Rural Defense (action item)
8. Commission Business
 - a. Standing Committee Report
 - Executive – *Christine Green, Chair*
 - Indigence & Compensation Standards – *Judge Fisher, Chair*
 - b. Ad Hoc Committee Reports
 - Data – *Kim Buddin, Committee Chair*
 - c. FY23 Compliance Planning
 - Status of contracts and funding distribution
 - 1Q Reporting overview
 - Updates on system compliance
 - Standard 1 compliance
 - Plan changes
 - Alpena County (action item)
 - Oscoda County (action item)

- Macomb County (information item)
- Increases to total system costs (action items)
 - Funding requested pursuant to MCL 780.993(16)
 - Allegan County
 - Iosco County
 - Monroe County
 - Funding requested due to unexpected costs
 - Genesee County
- Budget adjustments (information items)

~ Break for Lunch ~

- d. FY24 Compliance Planning
 - Compliance Plan and Cost Analysis revisions (action item)
 - Grant Manual revisions (action item)
 - e. Regional Update: Northern Michigan – *Melissa Wangler, Senior Regional Manager*
9. Public comment
10. Adjourn

Next meeting: April 18, 2023, beginning at 11:00 a.m. in Lansing

Online Access: For members of the public who wish to join the meeting online, please email Marcela Westrate at WestrateM1@michigan.gov or call (517) 648-3143 to request a Zoom link. This link will be provided in the morning before the meeting begins.

Michigan Indigent Defense Commission Meeting Minutes

The meeting was held in person at the Michigan Bankers Association building in Lansing, Michigan. Remote access via Zoom was available for Commissioners and, upon request, for members of the public. The MIDC website and meeting notice included information for members of the public on how to contact the MIDC to obtain the Zoom link for participation. Commissioners were able to participate remotely if they qualified for an exemption under the Open Meetings Act or if they requested an accommodation under the Americans with Disabilities Act, 42 USC 12131 *et. seq.*, and Rehabilitation Act, MCL 395.81 *et. seq.*, pursuant to Attorney General Opinion No. 7318.

December 20, 2022

Time: 11:00 am

Michigan Bankers Association
507 S. Grand Ave, Lansing, MI 48933

Commission Members Participating

The following members participated in person:

- Chair Christine Green
- Joshua Blanchard
- Tracy Brame
- Kimberly Buddin
- Paul Bullock
- Hakim Crampton
- Andrew DeLeeuw
- Judge James Fisher
- James Krizan
- Deborah Kubitskey
- Judge Paula Mathes
- Tom McMillin
- John Shea
- William Swor
- Rob VerHeulen

The following member requested an accommodation under the Americans with Disabilities Act to participate via Zoom:

- Gary Walker (Chocolay Township, Marquette County, Michigan)

The following Commissioners were absent:

- David Jones

- Margaret McAvoy

Chair Green called the meeting to order at 11:03 am.

Public Comment

The following people provided public comment:

- Jill Recker
- Robin Dillard-Russaw
- Peter Menna

Approval of Agenda

Commissioner Shea moved that the agenda be adopted as presented. Commissioner VerHuelen seconded. The motion carried.

Consent Agenda

Commissioner Kubitskey moved that the consent agenda containing the minutes from the October 11, 2022 meeting be adopted. Commissioner Bullock seconded. The motion carried.

Chair Report

Chair Green provided an update about Commissioners' activities since the last meeting.

Executive Director Report

Ms. Staley provided an update on MIDC staff activities since the last meeting. She provided an overview of the budget request for FY24 submitted to the State Budget Office.

Commission Business

Standing Committee Reports

Executive Committee

Chair Green provided an update on the committee's meeting. The Executive Committee discussed the FY24 budget and youth defense legislation.

Data Committee

Commissioner Buddin provided an overview of the areas the committee would be reviewing. The committee plans to have a report at the February meeting and will address how to respond to data reporting noncompliance.

Local System Communication

Commissioner Bullock updated the commission on the committee's work.

Commissioner Bullock moved that, if the Attorney General's office is available, that the office schedule a short refresher on the rights and responsibilities of the Commissioners. Commissioner Krizan seconded. The motion carried.

Nominations Committee

Commissioner DeLeeuw provided a report for the Commission's consideration. Commissioners Blanchard and VerHuelen also served on the committee. The Nominations Committee

recommends that the existing Executive Committee be renominated with Commissioner Green serving as Chair, Commissioner Brame serving as Vice Chair, Commissioner Walker serving as Secretary and Judge Fisher serving as an ex officio and non-voting member of the Executive Committee.

Commissioner Shea moved that the Nominations Committee's recommendations be adopted. Commissioner Kubitskey seconded. The motion carried.

Mecosta County/Northern Michigan Pilot Project

Michael Naughton provided a report regarding the rural attorney shortage. He answered questions from Commissioners.

Commissioner Swor moved that the report be accepted for publication on the MIDC website. Commissioner Blanchard seconded. The motion carried.

Report: The Right to Counsel in Oakland County, Michigan: Evaluation of Trial-Level Indigent defense services in Adult Criminal Cases

Jon Mosher from the Sixth Amendment Center provided an overview of the organization's report and answered questions from Commissioners.

Regional Update

Nicole Smithson, Regional Manager for Lapeer, Macomb, Oakland, and St. Clair Counties provided an update about the work in her region.

MIDC Standards Implementation

FY22 Compliance Planning

Ms. McCowan provided an update on Muskegon and the City of Detroit.

FY23 Compliance Planning

Plan Changes

The City of Birmingham requested a change to its compliance plan to increase the rate of pay for its arraignment attorneys from \$250/half day to \$300. The City would also like to increase the hourly rate of pay for its managed assigned counsel coordinator (MACC) from \$50.00 an hour to \$60.00 effective January 1, 2023. There is no anticipated change to overall costs for FY23. Staff supports the request.

Commissioner Shea moved that the City of Birmingham's request to change its compliance plan be approved. Commissioner McMillin supported. The motion carried, Commissioners Blanchard and Swor opposed the motion.

The City of Farmington Hills requested a change to its compliance plan to allow managed assigned counsel coordinators to screen for indigency. There is no anticipated change to the overall costs for FY23. Staff supports the request.

Commissioner Blanchard moved that the City of Farmington Hills' request to change its compliance plan be approved. Commissioner Swor seconded. The motion carried.

Saginaw County requested a change to its compliance plan to implement a contract for misdemeanor traffic cases handled by the Managed Assigned Counsel in FY23.

Commissioner Shea moved that Saginaw County's request for a change to its compliance plan be approved. Judge Fisher seconded the motion. Chair Green requested a roll call vote. The motion carried with 12 yeas (Green, Brame, Buddin, Bullock, DeLeeuw, Fisher, Krizan, McMillin, Shea, Swor, VerHuelen, and Walker) and 4 nays (Blanchard, Crampton, Kubitskey, and Mathes).

Overview of Compliance with MIDC Standards for all funding units

Ms. McCowan, Rebecca Mack, Deborah Mitchell, Jonah Siegel, and Melissa Wangler provided an update on compliance for the 2022 fiscal year.

2023 Meeting Schedule

The Commission will meet the following dates, at 11:00 am at the Michigan Bankers Association Building:

- February 7, 2023
- April 18, 2023
- June 13, 2023
- August 15, 2023
- October 17, 2023
- December 19, 2023

Chair Green adjourned the meeting at 3:54 pm.

Respectfully submitted,
Marcela Westrate

2023 FY Request for Proposal – DRAFT Summary – For MIDC Approval

Public Defender Recruitment and Retention Project Manager**I. Purpose**

Indigent defense attorney shortages are a significant barrier to ensuring large parts of Michigan can come into compliance with the MIDC standards on attorney caseloads and qualifications. In some jurisdictions only one or two attorneys are available to represent multiple counties and, in many areas, open positions in public defense remain steadily unfilled. To remedy this issue, untapped opportunities exist to work with law schools, graduate programs, and the growing cohort of public defender leaders to broaden the pipeline of new attorneys and other professionals into Michigan's public defense workforce.

Michigan now has 32 public defender offices, but only a few are prepared to embrace interns, train graduate fellows, or provide sustainable mentorship for new attorneys. Moreover, many of Michigan's law schools have yet to connect with these new offices or even identify them as job or learning opportunities for their students. In fact, many of the state's law graduates continue to seek out-of-state opportunities in public defense, despite the rapid growth of new job openings in-state.

A Public Defender Recruitment and Retention Project Manager will serve as the primary coordinator of initiatives intended to both attract new professionals into the field of public defense and ensure employee sustainability within the workplace.

Expected activities include, but are not limited to:

- Liaising with law schools/ graduate schools and defender leaders to build intern and/or extern programs.
- Aid in development of student attorney training or learning opportunities.
- Training defender leaders on best-practices in recruitment, retention, and burn-out reduction.
- Promoting careers in Michigan's public defense systems, both statewide and nationally.
- Building opportunities for postgraduate fellowship programs in Michigan public defense systems.
- Other activities related to the growth of the public defense workforce in Michigan.

II. Project Timeline - Two years, with option for contract renewal**III. Budget - Up to \$350,000 over two years. This would include travel and all administrative expenses.**

To: Michigan Indigent Defense Commission

From: Marla R. McCowan
Deputy Director/Director of Training

Re: Compliance Planning and Costs:
FY23 status updates and staff recommendations

Date: January 31, 2023

I. Funding Awards by Fiscal Year

| | MIDC Funding | Local Share | Total System Costs |
|---------|------------------|------------------------------|--------------------|
| FY 2019 | \$86,722,179.85 | \$37,963,396.67 ¹ | \$124,685,576.52 |
| FY 2020 | \$117,424,880.47 | \$38,523,883.90 | \$157,698,982.46 |
| FY 2021 | \$129,127,391.54 | \$38,486,171.32 | \$167,613,562.86 |
| FY 2022 | \$138,348,406.27 | \$38,146,920.09 | \$176,495,326.36 |
| FY 2023 | \$172,424,423.47 | \$38,825,422.67 | \$211,249,846.14 |

The total system cost, local share, and state grant funds are listed for each system for each fiscal year and can be found on our grants page, <https://michiganidc.gov/grants/>.

We have begun distributing funding for all systems to implement the plans and costs in FY2023. The initial payments reflect 25% of the MIDC grant funded portion of the total; the 2nd disbursements will be offset by any unexpended balances on deposit with the local system as of September 30, 2022. The MIDC annually collects information about

¹ The annual inflationary increase described in MCL 780.983(i) is calculated from the FY2019 local share.

the balance in a form completed by the local funding units due no later than October 31, 2022. See the MIDC Act, MCL 780.993(15).

II. FY22 Compliance Reporting Update

A. Overview

Staff received the final/fourth quarter of reporting from systems for FY22 (covering June 1, 2022 through September 30, 2022) at the end of October 2022. Funding units were required to enter the following reporting in EGrAMS:

- Attorney List
- Financial Status Report
- Quarterly Program Report
- Unexpended Balance

MIDC Staff offered online training sessions in mid-January and posted a recording of the training on the MIDC's YouTube page for anyone to review at any time throughout the year. Staff also conducted multiple "office hours" or drop-in online support sessions for technical assistance, and has "help desk" services advertised on the EGrAMS homepage. A [self-guided tutorial](#) for the final quarter of financial reporting was distributed in early October 2022 and posted to the MIDC's website on the grants page.

As of this writing, over 93% of the reporting has been successfully submitted by funding units and approved by staff. The 2nd disbursements have been provided to all funding units with signed FY23 contracts in place and approved financial status reports/unexpended balance forms. All requests for corrections are processed through EGrAMS; local system project directors are able to review the status of reporting, payments, adjustments, and contract terms at any time.

B. Notice of Noncompliance Issued

1. Muskegon County

On April 11, 2022, notice advising that the Compliance Resolution Process was being initiated was sent to the funding unit via U.S. Mail and electronic mail for the following reasons:

- Failure to provide verification and documentation of compliance with Standard 2 – initial interviews of in-custody clients and initial contact with out-of-custody clients;
- Failure to provide verification and documentation of compliance with Standard 4 – walk-in arraignments taken into custody without the opportunity to consult with an attorney; and
- Failure to comply with the approved cost analysis.

Muskegon stakeholders have made significant efforts toward compliance, with the assistance of Regional Manager Susan Prentice-Sao and Grants Director Rebecca Mack. I have received several written reports from the system detailing these efforts. Staff has extended the time for full compliance and will continue to provide support to the funding unit during this process.

Since the last report, meetings with the local stakeholders have been held on December 22, January 10, and January 25. Quarterly program reporting issues are expected to improve significantly after a collaborative meeting with court staff; the National Association for Public Defense (NAPD) assessment is scheduled to begin in March 2023.

2. City of Detroit

On December 9, 2022, notice advising that the Compliance Resolution Process was being initiated was sent to the funding unit via U.S. Mail and electronic mail for failing to provide FY22, 4th quarter financial reports and for a pattern of consistently late reporting. The funding unit submitted a response on January 6, 2023 successfully resolving all compliance issues.

III. FY23 Compliance Planning

A. Overview of process and submissions received

All funding units were required to submit a plan for compliance with all approved MIDC Standards no later than April 26, 2022, pursuant MCL §780.993. Funding units used the MIDC's Grant Management System (EGrAMS) to do so. Training on submission was conducted by MIDC Staff at the end of March 2022, and a [recording](#) is linked on our website along with resources and materials for planning.

B. Status of Compliance Plans

1. Approved Plans and Costs for FY23

As of the October 11, 2022 meeting, all 120 systems have had their plans and cost analyses approved and as of this writing 116 have been fully executed with funding distributed pursuant to the contract terms. The following contracts have been issued by the MIDC and are pending signatures with the funding unit:

- Alger County
- Delta County
- Jackson County
- Washtenaw County

2. Revisions to Compliance Plans

- **Alpena County (action item)**

FY22 approved total system cost: \$675,423.47

FY23 APPROVED total system cost: \$775,167.98

FY23 revised request: \$941,015.04

Approved 2023: Non-profit PD vendor system with contract attorney overflow/conflict panel. Panel handles arraignments. A regional office operates with Montmorency County; regionalized services will expand to cover Oscoda County in FY23. (All funding units submit separate plans for MIDC approval).

Increased case related expenses: This system, which has previously budgeted for two capital cases per year, added 3 more capital cases to the budget in anticipation of the filing of charges in a 3-defendant double homicide. The budget included \$36,000 increase in capital attorney fees to cover these cases. It also included expert and investigator fees of \$20,000 which represented an increase of \$7,500 for these cases. None of the additional funds have been spent yet.

After nearly 2 years of investigation, the AG filed murder charges charging 3 defendants in two homicides. It is anticipated that there will likely be 3 trials. The discovery at present is nearly 20,000 pages, and over 150 hours of recorded witness interviews. Multiple experts will be needed (cell phone, pathology, ballistics), as well as court transcripts, transcripts of the recorded interviews, and a coordinating discovery attorney to assist in managing and organizing the discovery.

Due to conflicts, it became necessary to obtain an attorney from Wexford County for the primary defendant. This will add both travel time and lodging expenses to the budget for this trial.

In addition, a younger attorney needing capital experience has agreed to do second chair work for the primary defendant. This is primarily training for him to qualify for capital cases.

To date, the contract attorney has been paid \$4,682.91 in attorney fees. He has also incurred expenses of \$9,920.30. This leaves \$45,396.79 left in the amount budgeted for these cases.

Defense counsel have submitted a joint budget for the case expenses through the end of FY23. There will be substantially more expenses in FY 24, since the trials will occur in FY 24. The funds needed for these cases in FY 23 is \$204,577.60. Therefore, additional funding is needed. These funds include:

- Attorney fees (including possible interlocutory appeals \$60,840)
- Second chair attorney \$6,840
- Experts and discovery services \$108,550
- Investigators and researchers \$17,600
- Miscellaneous (mileage, transcripts, Lodging, etc) \$12,167.85
 - Subtotal \$205,997.85
- Unspent attorney fees \$45,396.79
- Unspent expert and investigator fees \$7,500
 - Added case funds needed: \$153,101.06

Revised personnel funding: The PD office has had a reallocation of their attorney assignments as a result of this case. A very experienced attorney had hired in to handle misdemeanors and was paid at a reduced rate. This case has required him to do second chair duties as well as other felony assignments. It is only fair to pay him now at the same rate as the other staff attorney who handles a mixture of felonies and misdemeanors. This will require an additional amount of \$12,746 in salary and fringes for the remainder of FY 23. The total amount requested to be added to the Alpena budget for FY 23 is \$165,847.06.

MIDC Staff recommends approval.

- **Oscoda County (action item)**
FY23 APPROVED total system cost: \$309,550.00
FY23 revised request: \$369,601.33
Total requested increase + \$60,051.33

Approved 2023: hourly panel system managed by MAC.

A variety of issues have arisen regarding delivery of services under the existing plan, primarily due to attorney shortage. The funding unit proposes to join the non-profit PD office that presently serves Alpena and Montmorency counties. They will continue to maintain an overflow/conflict panel with MAC supervision.

[Revised FY23 Compliance Plan](#) (link)

[Revised FY23 Cost Analysis](#) (link)

| | |
|--|---------------------|
| PD office costs for remainder of FY 23 | \$139,363.33 |
| Costs for funding unit using panel and MAC for remainder of FY 23 | \$230,238.00 |
| Revised total system costs for FY 23 | \$369,601.33 |

MIDC Staff recommends approval.

- **Macomb County (information item)**
Total System Cost: \$10,225,656.20
No anticipated change to overall costs for FY 2023

The funding unit will expand coverage to include problem solving court representation and funding in the 42-1 District Court (Romeo).

2. Increases to Total System Costs (action items)

- Reimbursement for Overspending in Prior Year**

MCL 780.993(16) provides: “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.”

The following funding units seek reimbursement for overspending in the prior grant year, pursuant to the approved unexpended balance (UB) reports submitted by the funding units:

| Funding Unit | FY22 actual overspend/UB \$ | FY23 reimbursement approved in compliance plan | Additional funding needed | Revised total system cost |
|-----------------------|-----------------------------|--|---------------------------|---------------------------|
| Allegan County | (\$782,611.82) | \$300,000.00 | \$482,611.82 | \$4,869,691.90 |
| Iosco County | (\$29,578.09) | \$18,800.00 | \$10,778.09 | \$505,497.49 |
| Monroe County | (\$169,864.42) | no request | \$169,864.42 | \$1,464,075.77 |

MIDC Staff recommends approval.

- Unforeseen Expenses (no other changes to plan)**

Genesee County

FY23 APPROVED total system cost: \$6,747,929.08

FY23 revised request: \$7,217,929.08

Total requested increase + \$470,000

On July 28, 2022, the Michigan Supreme Court issued several decisions related to youth life sentencing, including the case of [*People v Parks*](#) (holding that mandatorily subjecting 18-year-old defendants convicted of first-degree murder to a sentence of life imprisonment without the

possibility of parole violates the principle of proportionality derived from the Michigan Constitution and thus constitutes unconstitutionally cruel punishment under the Michigan Constitution 1963, art 1, §16) and [*People v Stovall*](#) (holding that the defendant's life sentence with the possibility of parole for second-degree murder, imposed for a crime committed when he was a juvenile, violates Article 1, §16 of the Michigan Constitution which forbids cruel or unusual punishment).

The *Parks* case was remanded to Genesee Circuit Court for resentencing, and the County also has 8 cases impacted by the decision in *Stovall*. The funding unit is seeking an additional \$40,000 per case related to the *Stovall* decision (+\$320,000) for attorney fees and other case related expenses.

Relatedly, there are 8 cases that are still pending hearings in Genesee Circuit Court pursuant to [*Miller v Alabama*](#) (United States Supreme Court decision in 2012 finding that mandatory sentences of life imprisonment without the possibility of parole on homicide offenders who were under 18 years old at the time they committed the offense was prohibited by the Eighth Amendment) which require expert and investigative assistance. This type of assistance has averaged \$15,000 per case, and the funding unit is requesting additional funds (+\$120,000) to cover these expenses.

Finally, in FY22 the funding unit had \$30,000 approved for furniture for the office, which was not spent due to supply chain issues until FY23 based on the date of delivery and invoices received.

MIDC Staff recommends approval.

3. Budget Adjustments (information items)

The Grants Director processed and approved the following budget adjustment requests (line item transfer requests) pursuant to the process set forth in the MIDC's Grant Manual at p. 29 (February 2022):

- Berrien County
- City of Birmingham
- City of Roseville
- Clinton County
- Muskegon County

The following requests were denied as unnecessary:

- Chippewa County
- City of Warren
- Ogemaw County

MIDC FY24 COMPLIANCE PLAN**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?

MIDC FY24 COMPLIANCE PLAN

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 EGrAMS ~~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.

Will you require your attorneys to submit attendance directly through the MIDC's continuing legal education database provider, CE Broker?

If no, please describe how attendance will be tracked and reported to the MIDC:

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.

MIDC FY24 COMPLIANCE PLAN

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.

MIDC FY24 COMPLIANCE PLAN

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?

MIDC FY24 COMPLIANCE PLAN

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

Determining Indigency, Contribution, Reimbursement

45. Will judges and/or court staff conduct all indigency screening in every proceeding? Please answer Yes or No.

If no, who will screen for indigency?

Is this screener the Appointing Authority?

If the screener is not the Appointing Authority, does the Appointing Authority oversee the screening process?

Briefly describe your process for screening for indigency.

What is the process for appealing a determination that a person does not qualify for appointed counsel?

46. Are you designating an Appointing Authority to conduct indigency screening for purposes of MCR 6.005(B)?

47. In cases where contribution is appropriate, who is going to make request with the court for contribution?

48. In cases where contribution is appropriate, what is your process for determining the amount that a person should contribute during the pendency of the case to their defense?

49. What is your process for obtaining contribution?

50. What is the process for challenging a request for contribution?

51. Does your system seek reimbursement for attorney fees at the conclusion of a case? Please answer Yes or No.

MIDC FY24 COMPLIANCE PLAN

Attorney Compensation

52.The MIDC Standards set minimum hourly rates for roster attorneys accepting assignments in adult criminal cases. Are roster attorneys (not full time employees of a public defender office) paid on an hourly basis? Please answer Yes or No.

If yes [hourly rates are paid], is there any cap or maximum on the hours that can be billed? Please answer Yes or No.

If yes, please explain.

If no [hourly rates are not paid], please describe how attorneys are compensated (flat rate contract, event based, shift coverage, etc).

Are attorneys compensated based on caseloads and does the compensation account for increases or decreases in caseload size?

What other factors were considered in arriving at the payment?

Are attorneys able to seek extraordinary compensation?

How do attorneys seek reimbursement for case-related expenses?

How will your system demonstrate that the compensation is equivalent to the MIDC minimum hourly rates? (type of invoicing, etc).

53.All roster attorneys should be provided regular, periodic payments.

How often are attorney invoices processed and paid?

In lengthy cases, is periodic billing and payment during the course of representation allowed?

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

54. 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.

55. 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?

56. 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.

57. 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.

MIDC FY24 COMPLIANCE PLAN**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 **FY24**, 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? \$ _____

Costs Associated with Data Collection

The MIDC shall fund reasonable costs associated with data required to be collected under the MIDC Act that is over and above the local unit of government's data costs for other purposes pursuant to MCL 780.993 (10).

Are you requesting funding for costs associated with data collection? ☐ Yes | ☐ No

If yes, please describe (cost for case management system, hiring personnel, etc.)

What is the amount you are seeking for this funding? \$ _____

Reminders

- ✓ You must also complete a cost analysis.
- ✓ In order to complete your application, you must update or confirm the 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.

GRANT MANUAL



MICHIGAN INDIGENT
DEFENSE COMMISSION

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Proposed Revisions February 2023

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).

Collection of Data

MCL 780.989 (1) The MIDC has the following authority and duties:

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

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

“All indigent criminal defense systems and, at the direction of the supreme court, attorneys engaged in providing indigent criminal defense services shall cooperate and participate with the MIDC in the investigation, audit, and review of their indigent criminal defense services.” MCL 780.993 (1).

“This state shall appropriate funds to the MIDC for grants to the local units of government for the reasonable costs associated with data

required to be collected under this act that is over and above the local unit of government's data costs for other purposes.” MCL 780.993 (10).

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
- A link to the MIDC's grant management program, EGrAMS
- Training for technical support with grant management system as well as substantive compliance planning topics
- White papers for MIDC Standards 1-4
- Answers to Frequently Asked Questions about the standards covering independence from the judiciary and indigency, contribution and reimbursement
- *Delivery System Reform Models: Planning Improvements in Public Defense* (MIDC, December 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 with the compliance plan through the MIDC's grant management program, EGrAMS, including the detail of costs associated with a non-profit/vendor model defender office. Reasonableness will be stressed and a list or guidelines 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. The local share will be adjusted each year in accordance with the statutory requirement. 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 Grants ~~Director~~ 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 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. **Funding units can employ or contract with student interns in any field to support public defense. Interns may be compensated for their time and reasonable expenses.**

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

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 anticipated system impacts.³ Please consult with a Regional Manager for samples of these studies.

Increased staffing for direct service providers to ensure compliance with new MIDC Standards are allowable, and time studies to support those requests are encouraged. Any time study should clearly state the duties that are being tracked.

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) **and any annual training costs required to maintain the full time employee's license**. MIDC grant funding is not permitted for membership in local bar associations or any optional professional organizations, with the exception of funding for eligible training resources indicated by MIDC Standard 1.⁴

A compliance plan may include the cost of malpractice insurance for attorneys employed full time by the system.⁵ Rates should be commensurate with those offered by the National Legal Aid and Defender Association's preferred carrier.

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 The costs associated with a feasibility study may be reimbursed pursuant to MCL §780.993(2).

⁴ See MIDC meeting minutes, October 2019.

⁵ See MIDC meeting minutes, July 2019.

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. Local systems are encouraged to submit time studies with any request to fund these positions. Supplanting⁶ 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.⁷

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. MCL 780.993(16).

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.

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

⁶ 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.

⁷ See MIDC meeting minutes, June 2019.

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.⁸ 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 and Services

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

Transcripts of proceedings prepared at the request of an indigent defendant can be included in the cost analysis.

Interpreter services sought by the defense to facilitate some out-of-court meetings between assigned counsel and clients or witnesses can be included in the cost analysis.

⁸ See State of Michigan LARA Out of State Travel Request Authorization form C-100.

Funding needed by the defense to obtain documents through the Freedom of Information Act, or school or medical records, or similar materials, can be included in the cost analysis if it is directly related to representation in a pending criminal case in the trial court.

Systems using a nonprofit model for delivering indigent defense services can include funding for any required audit in the nonprofit cost analysis.

No funding shall be used to pay for restraints or monitoring services of an accused defendant.

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 **a basic skills acquisition course (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 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 ~~\$50~~ ~~\$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 ~~\$40~~ ~~\$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 ~~\$75~~ ~~\$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), 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 ~~can~~ ~~should~~ be sent to LARA-MIDC-CLE@michigan.gov. Funding units are encouraged to have attorneys report their time spent in training directly through the MIDC's continuing legal education database provider, CE Broker. All attorneys accepting adult criminal case assignments in Michigan have access to a free basic account in CE Broker for reporting purposes.

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

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 law⁹ and/or the local system’s policy.

Permissible Costs

Expenses for investigators will be considered at hourly rates not to exceed ~~\$100~~ \$75. Expenses for expert witnesses will follow a tiered level of compensation based on education level and type of expert¹⁰ 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

⁹ See, e.g., *People v. Kennedy*, 502 Mich. 206 (2018).

¹⁰The 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. **For all services,** ~~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
- Early Probation Discharge

MIDC grant funding shall not be used to compensate standby (or “advisory”) 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

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 or appointing authority.

The MIDC has approved answers to Frequently Asked Questions about the standard requiring independence from the judiciary attached as an appendix.

Standard for Determining Indigency and Contribution

Unless there is no possibility of incarceration upon conviction or after sentencing, a local funding unit should conduct an indigency assessment of anyone who may wish to have counsel appointed or who seeks access to public funding for things like experts and investigators.

A person should be screened for indigency as soon as reasonably possible after they make their request. Ideally, a person will be screened for indigency and, if eligible, have counsel appointed within 24 hours of making their request. If indigency screening cannot occur before a person's arraignment, the local funding unit should make counsel available for the limited purpose of providing representation at the arraignment unless an exception to Standard 4 applies.

The Indigency Standard does not require funding units to seek contribution or reimbursement.

The MIDC has approved answers to Frequently Asked Questions about indigency, contribution, and reimbursement attached as an appendix.

Standard 8 – Attorney Compensation

Reasonable compensation and resources must be provided to all attorneys representing indigent clients. Funding units may use any method of employment, including hiring salaried employees and/or a managed assigned counsel system overseeing a roster of private attorneys. Contracted services for defense representation are allowed, so long as financial disincentives to effective representation are minimized.

Systems using event based pay, capped hourly rates, or flat fee payment schemes must be able to demonstrate that the compensation is equivalent to the MIDC minimum hourly rates.

The MIDC offers the following guidance for transitioning to Standard 8 rates and estimating costs to implement the Standard.

Step 1: Estimating Caseload

In order to estimate costs, systems will need to predict caseloads for the next fiscal year. Factors to consider include: comparing pre-COVID caseload numbers (from 2019) to the most recent caseload numbers, caseload trends, local charging practices, and case lifecycles.

Step 2: Budgetary Changes Based on Compensation Type

- For salaried attorneys, the rates paid by the Michigan Attorney General for Assistant Attorneys General, or other state offices, serve as guidance for reasonable compensation. The rates set by the Michigan Attorney General positions for Assistant Defenders would be level 15 position, and Senior or Management level positions would be levels 16-18 for Chief Public Defenders and Deputy Public Defenders.
- For attorneys already being paid hourly, ensure that the rates meet the minimum set in Standard 8 (\$100/\$110/\$120 per hour). The Standard contemplates cost of living increases annually. Funding units can consider the following increases to the Standard rates since proposed in 2018:

| | | | |
|--|-----------------|-----------------|-----------------|
| Rate approved August 2018 | \$100.00 | \$110.00 | \$120.00 |
| FY 2019 (eff 10-1-18) +2% | \$102.00 | \$112.20 | \$122.40 |
| FY 2020 (eff 10-1-19) +2% | \$104.04 | \$114.44 | \$124.85 |
| FY 2021 (eff 10-1-20) +2%, +1% | \$107.16 | \$117.87 | \$128.56 |
| FY 2022 (eff 10-1-21) +2%, +1% | \$110.37 | \$121.41 | \$132.42 |
| FY 2023 (eff 10-1-22) +5% | \$115.89 | \$127.48 | \$139.04 |
| FY 2024 (eff 10-1-23) +2% | \$118.21 | \$130.03 | \$141.82 |
| | Misdemeanors | Felonies | Life Offenses |

Hourly rates should not exceed the rates paid for defender services by the United States Courts, absent demonstration of comparable local practice or extraordinary circumstances.

- For any attorneys paid through an event-based schedule or other sort of contract, ensure that payment is equivalent to Standard 8 hourly rates. For example, if a contract attorney is currently being paid \$250 to cover a three-hour morning docket, this rate will need to be increased to \$300. If a contract attorney is being paid \$5,000 per month, their hours will need to be tracked in order to ensure that they are being paid the equivalent of Standard 8 hourly rates, at the minimum.

For systems transitioning to hourly rates or hourly-equivalent rates for the first time, estimate the number of hours to compensate attorneys over the course of the year. Use the caseload numbers from Step 1 together with MIDC Standard 6's proposed case type hours to make the calculation. Standard 6's proposed case type hours are 5.3 hours per misdemeanor (2080 hours/400 cases) and 13.9 hours per felony (2080 hours/150 cases). Note that Standard 6 case type hours are the floor and

not the ceiling; funding units should rely on local practice to estimate the average number of hours per case.

Sample invoices for time tracking are part of the appendix.

Compliance Plan Submission

Step 1

- Compliance Plans submitted to the MIDC through EGrAMS.

Step 2

- Plan submission date tracked for compliance with statutory timeline for action by MIDC.

Step 3

- Plans reviewed by Regional Manager

Step 4

- Plans reviewed by Grants ~~Director~~ 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. Unless the contract provides otherwise, the MIDC will distribute 25% 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 and a list of attorneys

providing services for the local system. If it is determined that the total amount of funding awarded in the previous 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).

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. **This reporting should be completed and/or submitted by an employee of the indigent defenses system's funding unit who can certify to the correctness and accuracy of the reporting and supporting documentation, including the funding unit's general ledger for the local grant fund.** The funding unit must use the MIDC's grant management system, EGrAMS, for reporting. 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).

Systems should track all funding collected from defendants for the purpose of reimbursement of assigned counsel.

Collection of any program income must be reported in the unexpended balance form.

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.

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 and compliance with MIDC Standards ~~1, 2, 3, and 4~~ as set forth in the approved plan.

Attorney List

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~~ **along with**. ~~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,~~ **the number of** assignments to **each** attorneys, and **payments made to each attorney quarterly.** ~~compliance with Standards 1, 2, 3, and 4 as set forth in the approved plan.~~

Due Dates for Reporting

- Initial FSR and compliance reports for October 1 – December 31 due on January 31st
- 2nd FSR and compliance reports for January 1 – March 31 due on April 30th
- 3rd FSR and compliance reports for April 1 – June 30 – due on July 31st
- Final FSR and compliance reports 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 **grant management system** ~~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 sample rubric for evaluation is attached.

FUNDING UNIT:

Date of Required

Compliance:

Date(s) 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 | | |
| <i>Is the system tracking and verifying CLE hours and discontinuing case assignments for attorneys who have not completed their CLE hours?</i> | <i>non-point question</i> | | |
| | | | |
| 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 defense attorneys using the confidential meeting space? | 3 | | |
| 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? | 3 | | |
| | | | |
| STANDARD 3 | | | |
| Is there a formal process for attorneys to seek funding for experts and investigators? | 3 | | |
| Have attorneys been notified of the process? | 3 | | |
| <i>Have any attorneys utilized this process?</i> | <i>non-point question</i> | | |
| Is a system in place to track requests, approvals and denials? | 3 | | |
| | | | |

| | | |
|--|------------------|--|
| STANDARD 4 | | |
| Is there a process in place to ensure that every client has counsel or a valid waiver? | 3 | |
| Is counsel being offered at all arraignments where an MCR 6.104(A) exception does not apply? | 3 | |
| Is there a process in place to have counsel at all other critical stages? | 3 | |
| Is counsel being offered at all other critical stages? | 3 | |
| <i>Who is conducting the waiver of counsel for arraignment?</i> | <i>non-point</i> | |
| <i>Have you observed the system encouraging waiver of counsel?</i> | <i>non-point</i> | |
| <i>Is there an advice of rights for counterpleas and pleas by mail, and is the system collecting information on these?</i> | <i>non-point</i> | |
| <i>Is there a process to provide contact information to the appointed attorney and the client after arraignment?</i> | <i>non-point</i> | |
| STANDARD 5 | | |
| Are all case and docket assignments being managed by people who operate independently from the court? | 3 | |
| Is the approval of requests for experts and investigators made independently from the court? | 3 | |
| Is the approval of attorney payments made independently from the court? | 3 | |
| STANDARD 8 | | |
| Are all attorneys being paid consistent with Standard 8 rates? | 3 | |
| REPORTING & FINANCIAL COMPLIANCE | | |
| Have quarterly reports been submitted and approved? | | |
| • Program Reports | 3 | |
| • FSRs | 3 | |
| • Attorney Lists | 3 | |
| List any areas of concern regarding contract compliance outside of the above. | | |

| Scores | Raw Score | Rank Score |
|----------------------------|-----------|------------|
| Std. 1 | 0 | Red |
| Std. 2 | 0 | Red |
| Std. 3 | 0 | Red |
| Std. 4 | 0 | Red |
| Std. 5 | 0 | Red |
| Std. 8 | 0 | Red |
| Program Reports | 0 | Red |
| Financial Reports | 0 | Red |
| Attorney Lists | 0 | Red |
| Overall (pass/fail) | | |
| Non Compliant | | |

RUBRIC

| STANDARD 1 | GRADE | CHARACTERISTICS |
|--|---------------------------|--|
| Has the attorney list been updated and submitted in the most recent quarter? | 3 | List is fully updated and submitted. |
| | 2 | List is partially updated and submitted; or appears to be fully updated but has not been submitted. |
| | 1 | List has not been updated or submitted |
| Has a process been established and implemented to pay for and confirm attorney training (including for new attorneys to complete skills training)? | 3 | Process is established and implemented consistent with compliance plan, and attorneys have been notified. |
| | 2 | Process is established but not fully implemented, or attorneys have not been sufficiently notified of process. |
| | 1 | No process has been established. |
| <i>Is the system tracking and verifying CLE hours and discontinuing case assignments for attorneys who have not completed their CLE hours?</i> | <i>non-point question</i> | |

STANDARD 2

| | | |
|---|---|---|
| Has confidential meeting space been established or have sufficient steps been taken toward this end? • In holding facilities/jails • In courtrooms: out-of-custody clients • In courtrooms: in-custody clients | 3 | Meeting space is established, or an exception has been made for confidential meeting space. |
| | 2 | Construction is in process but is not complete; or construction has not started but the system is moving reasonably toward completion. |
| | 1 | System has not taken adequate steps toward establishing confidential meeting space, or the space has been established but is not made available to defense attorneys. |
| Are defense attorneys using the confidential meeting space? | 3 | Defense attorneys are regularly using the confidential meeting space. |
| | 2 | Defense attorneys are periodically using the confidential meeting space. |
| | 1 | Defense attorneys do not use the confidential meeting space. |
| Are attorneys being appointed and notified in a timely and effective fashion? | 3 | Attorneys are always being appointed either at arraignment or within one business day following arraignment, and are notified within one business day of appointment. |
| | 2 | Attorneys are sometimes appointed at arraignment or within one business day following arraignment. |
| | 1 | Attorneys are rarely or never appointed at arraignment or within one business day following arraignment. |

| | | |
|--|---|---|
| Is the system verifying invoices/other documents to ensure timely client interviews? | 3 | Yes, a process is established and is being utilized. |
| | 2 | A process is established but is not consistently utilized. |
| | 1 | No process has been established. |
| Are attorneys being paid for initial interviews? | 3 | Yes, always. |
| | 2 | Typically, but there are exceptions, or the method of payment is not clear. |
| | 1 | No. |
| Does the system have a process to manage attorney non-compliance? | 3 | Yes, a process is established and is being utilized. |
| | 2 | A process is established but is not consistently utilized. |
| | 1 | No process has been established. |

STANDARD 3

| | | |
|--|---|--|
| Is there a formal process for attorneys to seek funding for experts and investigators? | 3 | Yes, a process is established and is being utilized. |
| | 2 | A process is established but is not consistently utilized. |
| | 1 | No process has been established. |
| Have attorneys been notified of the process? | 3 | Yes. |
| | 2 | Some, or unclear. |
| | 1 | No. |
| <i>Have any attorneys utilized this process? non-point question</i> | | |
| Is a process in place to track requests, approvals and denials? | 3 | Yes, a process is established and is being utilized. |
| | 2 | A process is established but is not consistently utilized. |
| | 1 | No process has been established. |

STANDARD 4

| | | |
|--|---|---|
| Is there a process in place to ensure that every client has counsel or a valid waiver? | 3 | Yes, a process is established and is being utilized. |
| | 2 | A process is established but is not consistently utilized. |
| | 1 | No process has been established. |
| Is counsel being offered at all arraignments where an MCR 6.104(A) exception does not apply? | 3 | Yes, consistently, and based on observations, it appears that this is happening 100% of the time. |
| | 2 | For the most part, although there are some concerning exceptions. |
| | 1 | There are still a considerable number of arraignments at which counsel is not present. |
| Is there a process in place to have counsel at all other critical stages? | 3 | Yes, a process is established and is being utilized. |
| | 2 | A process is established but is not consistently utilized. |
| | 1 | No process has been established. |

| | | |
|--|------------------|---|
| Is counsel being offered at all other critical stages? | 3 | Yes, consistently, and based on observations, it appears that this is happening 100% of the time. |
| | 2 | For the most part, although there are some concerning exceptions. |
| | 1 | There are still a considerable number of critical stages in which counsel is not present. |
| <i>Who is conducting the waiver of counsel for arraignment?</i> | <i>non-point</i> | |
| <i>Have you observed the system encouraging waiver of counsel?</i> | <i>non-point</i> | |
| <i>Is there an advice of rights for counterpleas and pleas by mail, and is the system collecting information on these?</i> | <i>non-point</i> | |
| <i>Is there a process to provide contact information to the appointed attorney and the client after arraignment?</i> | <i>non-point</i> | |

STANDARD 5

| | | |
|---|---|---|
| Are all case and docket assignments being managed by people who operate independently from the court? | 3 | Yes, consistently, and based on observations, it appears that this is happening 100% of the time. |
| | 2 | For the most part, although there are some concerning exceptions. |
| | 1 | No, case and docket assignments are not managed by people who operate independently from the court. |
| Is the approval of requests for experts and investigators made independently from the court? | 3 | Yes, consistently, and based on observations, it appears that this is happening 100% of the time. |
| | 2 | For the most part, although there are some concerning exceptions. |
| | 1 | No, the approval of requests are not made independently from the court. |
| Is the approval of attorney payments made independently from the court? | 3 | Yes, consistently, and based on observations, it appears that this is happening 100% of the time. |
| | 2 | For the most part, although there are some concerning exceptions. |
| | 1 | No, the approval of attorney payments are not made independently from the court. |

STANDARD 8

| | | |
|--|---|---|
| Are all attorneys being paid consistent with Standard 8 rates? | 3 | All contract employees are being paid at or above the hourly rate as set by Standard 8. All salaried employees are being paid at or above the rate set by the Michigan Attorney General for level 15-16 positions. Systems can demonstrate that all payments meet these criteria. |
| | 2 | Systems either (1) claim to be appropriately and timely compensating attorneys but can only partially demonstrate this with data, or (2) still are not paying every attorney consistent with Standard 8 rates but this will soon be remedied based on the local salary step schedule. |
| | 1 | Systems are still using hourly rates that are not consistent with Standard 8 or are still using event-based rates and cannot demonstrate that rates are equivalent to Standard 8 rates. |

PROGRAM REPORTS

| | | |
|--|---|---|
| Have quarterly reports been submitted? | 3 | Report submitted and approved. This may include reports where some information is missing/incorrect, but the system has a plan in place to address these data that has been approved by both the research/finance team and regional team. |
| | 2 | Initial report was submitted but some or all of the information was incorrect and either (a) corrections have not yet been submitted and approved, or (b) the system has a plan but has not implemented it in a timely fashion. Systems that fall into (2)(b) must work with the research/finance team to calculate estimates for all data points, or the system moves to a score of 1. |
| | 1 | Initial report was not submitted, or the initial report has been submitted with missing/incorrect information and the system does not have a workable plan in place to get accurate information on a short or long term basis. |