



MICHIGAN INDIGENT DEFENSE COMMISSION

The Michigan Indigent Defense Commission ensures that quality public defense services are accessible to all eligible adults charged with a criminal offense in Michigan.

Date: Tuesday, August 15, 2023, Time: 9:30 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. Public comment
5. Additions to agenda
6. Consent agenda (**action item**)
 - a. June 13, 2023 Meeting Minutes
7. Chair Report
 - a. Committee Assignments for New Commissioners
8. Executive Director Report
 - a. FY24 budget update
 - i. Byrne Jag opportunity
 - b. FY25 budget submission (**action item**)
9. Commission Business
 - a. Standing Committee Reports
 - i. Executive Committee – *Christine Green, Chair*
 - ii. Indigence and Compensation – *Judge Fisher, Committee Chair*
 - b. Ad hoc Committee Reports
 - i. Data – *Kim Buddin, Committee Chair*
 - o Research Priorities

- c. MIDC Standards Implementation
 - i. FY23 Compliance Planning
 - Status updates and funding distributed to date
 - System assessment process
 - Update on system compliance – Muskegon County (information item)
 - Budget adjustments (information items)

~ Break for Lunch ~

- d. Regional Update: South Central Michigan – Nicole Walter, *Regional Manager*
- e. FY24 Compliance Planning
 - i. Overview of FY24 submissions received and approved to date
 - ii. Quarterly Program Updates for Standard 8 compliance (information item)
 - iii. Changes to approved plans or costs (**action items**)
 - Isabella County

10. Adjourn

Next meeting: October 17, 2023, beginning at 9:30 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.

June 13, 2023

Time: 9:30 am

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

Commission Members Participating

The following members participated in person:

- Chair Christine Green
- Thomas Adams
- Tracy Brame
- Kimberly Buddin
- Paul Bullock
- Andrew DeLeeuw
- Judge James Fisher
- James Krizan
- Debra Kubitskey
- Judge Paula Mathes
- Margaret McAvoy
- Alicia Moon
- William Swor
- Rob VerHeulen

The following member observed the meeting via Zoom but did not participate in the discussions or voting:

- Joshua Blanchard

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
- Tom McMillin
- John Shea

Chair Green called the meeting to order at 9:38 am.

Introduction of Commission members and guests

Chair Green invited guests to introduce themselves to the Commission.

Public Comment

The following people provided public comment:

- Jill Recker
- Matt Farrar
- Fred Johnson
- Angie Doremia
- Joe Fisher
- Angela Gasiewski
- Mark Eisenbarth
- Darell Paige
- Andrew Sullivan
- Craig Paull

Approval of Agenda

There were no changes made to the agenda as presented. Commissioner McAvoy moved that the agenda be adopted, Judge Fisher seconded. The motion carried.

Consent Agenda

Commissioner Krizan moved that the consent agenda containing the minutes from April 18, 2023 be adopted. Commissioner Bullock seconded. The motion carried.

Chair Report

Chair Green introduced two new commissioners. Thomas Adams was appointed by Governor Whitmer representing the general public. He succeeds Hakim Crampton, whose term expired.

Chief Justice Clement designated Alicia Moon to serve on the MIDC in an ex officio capacity.

Executive Director Report

Executive Director Staley updated the Commission on staff's activities. She provided an overview of the anticipated costs for Standards 6 and 7.

Commissioner Brame moved that the Executive Director be authorized to submit the FY25 proposal for change reflecting the MIDC's needs for Standards 6 and 7. Commissioner Swor seconded. A roll call vote was requested. The motion carried with 8 yeas (Green, Adams, Brame, Buddin, DeLeeuw, Fisher, Swor, and VerHeulen) and 6 nays (Bullock, Krizan, Kubitskey, Mathes, McAvoy, and Walker).

The MIDC has been asked to post public defense-related job postings its website. Commissioner Brame moved that public defense related job postings from funding units be posted on the MIDC's website. Commissioner Adams seconded. The motion carried.

Commission Business

2022 Annual Report

Judge Fisher moved that the 2022 annual report be approved. Commissioner Krizan seconded. The motion carried.

2024 MIDC Grant Contract

Judge Fisher moved that the FY2024 grant contract be approved as edited. Commissioner Bullock seconded. The motion carried.

Executive Committee Report

Chair Green updated the Commission on the Executive Committee's meeting.

MIDC Standards Implementation

Marla McCowan provided an overview of staff's communication with Muskegon County.

Commissioner VerHeulen moved that MIDC staff be authorized to pursue mediation with Muskegon County. Commissioner Swor seconded.

Commissioner Kubitskey moved that the motion be tabled. Commissioner McAvoy seconded. The motion to table carried. Judge Mathes abstained from the discussion and vote.

Regional Update: Wayne County

Kelly McDoniel, Regional Manager for Wayne County, presented on her work in the region.

FY24 Compliance Planning

Ad Hoc Committee Reports

The Increase to Direct Costs in Compliance Plans Committee met on June 7. Ms. McCowan and Commissioner Swor provided an overview of the meeting.

The General Increases in Compliance Plans Committee met on June 7. Ms. McCowan and Chair Green provided an overview of the meeting.

The Line Item Reduction Committee chaired by Commissioner McMillin met on June 7. Ms. McCowan provided an overview of the meeting in Commissioner McMillin's absence.

The Data Committee met on May 26. Commissioner Buddin provided an overview of the committee's activities.

Action on FY24 Compliance Plans and Cost Analyses

Hillsdale and Otsego Counties did not submit compliance plans and cost analyses by the April deadline. Staff recommends that the failure to submit be treated as a disapproval of both the plan and cost analysis for each system.

Judge Fisher moved that the failure of Hillsdale and Otsego Counties to submit a compliance plan and cost analysis be treated as a disapproval. Commissioner Brame seconded. The motion carried.

Ms. McCowan provided an overview of the compliance plans and cost analyses submitted by Crawford and St. Joseph Counties. Staff recommends that the compliance plans and cost analyses for these two systems be disapproved.

Commissioner Swor moved that the compliance plans and cost analyses submitted by Crawford and St. Joseph Counties be disapproved. Commissioner Brame seconded. The motion carried.

Ms. McCowan presented an overview of the plans submitted by Barry and Isabella Counties. Commissioner DeLeeuw moved that the compliance plans and cost analyses submitted by Barry and Isabella Counties be disapproved. Commissioner Brame seconded. Chair Green called for a roll call vote. The motion failed with five yeas (Green, Brame, Buddin, Swor, and Walker) and nine nays (Adams, Bullock, DeLeeuw, Fisher, Krizan, Kubitskey, Mathes, McAvoy, and VerHeulen).

Judge Fisher moved that the compliance plans and cost analyses submitted by Barry and Isabella Counties be approved. Commissioner Kubitskey seconded. The motion carried.

Ms. McCowan provided an overview of the compliance plans and cost analyses submitted by the following systems:

- Alger County
- Benzie and Manistee Counties
- 41-a-1 District Court – Sterling Heights
- Emmet County
- Kalkaska County
- Presque Isle County

Commissioner Bullock moved to approve the compliance plans and cost analyses submitted by the six systems listed above. Commissioner Kubitskey seconded. Chair Green called for a roll call vote. The motion carried with eight yeas (Adams, Bullock, DeLeeuw, Krizan, Kubitskey, Mathes, McAvoy, and VerHeulen) and six nays (Green, Brame, Buddin, Fisher, Swor, and Walker).

Ms. McCowan provided an overview of the compliance plans and cost analyses submitted by the following systems:

- Arenac County
- Berrien County
- Chippewa County
- 25th District Court – Lincoln Park

- Iron County
- Muskegon County
- Saginaw County

Commissioner Kubitskey moved that the compliance plans and cost analyses submitted by the seven systems listed above be disapproved. Commissioner Swor seconded. The motion carried.

Commissioner Krizan abstained from the discussion and vote with respect to the 25th District Court in Lincoln Park. Judge Mathes abstained from the discussion and vote with respect to Muskegon County.

Ms. McCowan provided an overview of the compliance plans and cost analyses submitted by Macomb and Oakland Counties. Senior staff recommends approving the compliance plans and approving a portion of the cost analyses submitted by these systems. In Macomb County, staff recommends deleting the construction reserve request of \$280,012 and using FY23 approved costs to cover the project. In Oakland County, senior staff recommends reducing the cost allocation to the amount limited for indirect costs (a reduction of \$72,028.55) and awaiting a cost allocation study.

Commissioner Bullock moved that the compliance plans and a portion of the cost analyses submitted by Macomb and Oakland Counties be approved. Commissioner Adams seconded. The motion carried.

Ms. McCowan provided an overview of the compliance plans and cost analyses submitted by the following systems:

- 16th District Court – Livonia
- 17th District Court – Redford
- 19th District Court – Dearborn
- 20th District Court – Dearborn Hgts.
- 21st District Court – Garden City
- 22nd District Court – Inkster
- 23rd District Court – Taylor
- 24th District Court – Allen Park
- 27th District Court – Wyandotte
- 28th District Court – Southgate
- 29th District Court – City of Wayne
- 30th District Court – Highland Park
- 31st District Court – Hamtramck
- 32a District Court – Harper Woods
- 33rd District Court – Woodhaven
- 34th District Court – Romulus
- 35th District Court – Canton Twp.
- City of Grosse Pointe
- City of Grosse Pointe Farms
- City of Grosse Pointe Woods
- 18th District Court – Westland
- 36th District Court – Detroit
- Wayne County

Commissioner Adams moved that the compliance plans and cost analyses submitted by the 23 systems listed above be approved. Commissioner Krizan seconded. The motion carried.

Ms. McCowan provided an overview of the compliance plans and cost analyses submitted by the following systems:

- Clinton County
- Eaton County
- Gratiot County
- Genesee County

- Ingham County
- Jackson County
- Lenawee County
- Livingston County
- Monroe County
- Shiawassee County
- Washtenaw County

Commissioner VerHeulen moved that the compliance plans and cost analyses for the 11 systems listed above be approved. Commissioner Kubitskey seconded. The motion carried. Commissioner DeLeeuw abstained from the discussion and vote with respect to Washtenaw County. Commissioner Kubitskey abstained from the discussion and vote with respect to Jackson County.

Ms. McCowan provided an overview of the compliance plans and cost analyses submitted by the following systems:

- Allegan and Van Buren Counties
- Branch County
- Calhoun County
- Cass County
- City of Grand Rapids
- City of Wyoming
- Ionia County
- Kalamazoo County
- Kent County
- Montcalm County
- Ottawa County

Commissioner Bullock moved that the compliance plans and cost analyses submitted by the 11 systems listed above be approved. Commissioner Adams seconded. The motion carried. Commissioner Brame abstained from the discussion and vote with respect to Kent County.

Ms. McCowan provided an overview of the compliance plans and cost analyses submitted by the following systems:

- Alpena County
- Montmorency County
- Oscoda County
- Clare and Gladwin Counties
- Lake County
- Mason County
- Mecosta County
- Newaygo County
- Oceana County
- Osceola County
- Bay County
- Alcona County
- Huron County
- Iosco County
- Midland County
- Ogemaw County
- Roscommon County
- Sanilac County

Commissioner McAvoy moved that the compliance plans and cost analyses submitted by the 18 systems listed above be approved. Commissioner Kubitskey seconded. The motion carried. Commissioner Bullock abstained from the discussion and vote with respect to Mecosta County.

Ms. McCowan provided an overview of the compliance plans and cost analyses submitted by the following systems:

- Baraga, Houghton, and Keweenaw Counties
- Wexford and Missaukee Counties
- Marquette County
- Antrim County
- Grand Traverse County
- Leelanau County
- Gogebic County
- Ontonagon County
- Charlevoix County
- Cheboygan County
- Delta County
- Dickinson County
- Luce County
- Mackinac County
- Menominee County
- Schoolcraft County

Commissioner Swor moved that the compliance plans and cost analyses for the 16 systems listed above be approved. Commissioner Adams seconded. The motion carried.

Ms. McCowan provided an overview of the compliance plans and cost analyses submitted by the following systems:

- St. Clair County
- Lapeer County
- 37th District Court – Warren and Centerline
- 38th District Court – Eastpoint
- 39th District Court – Roseville
- 40th District Court – St. Clair Shores
- 41a2 District Court – Charter Township of Shelby
- 41b District Court – Clinton Township
- 43-1 District Court – Hazel Park
- 43-2 District Court – Ferndale
- 43-3 District Court – Madison Heights
- 44th District Court – Royal Oak
- 45th District Court – Oak Park
- 46th District Court – Southfield
- 47th District Court – Farmington
- 48th District Court – Birmingham
- 50th District Court – Pontiac
- 51st District Court – Waterford

Judge Mathes moved that the compliance plans and cost analyses for the 18 systems listed above be approved. Commissioner Kubitskey seconded. The motion carried.

Chair Green adjourned the meeting at 3:22 pm.

The next meeting will be August 15, 2023, at 9:30 am.

Respectfully submitted,
Marcela Westrate

MIDC Research Priorities FY24-FY26

The MIDC is responsible for creating minimum standards, assisting local systems in developing compliance plans and budgets, awarding grants to local systems, providing technical assistance, and collecting data on the implementation and impact of standards. Prior to the MIDC, very little data was collected on indigent defense in the State of Michigan. The Commission’s statute responds to the lack of data on current practices by requiring that the agency establish “procedures for the mandatory collection of data concerning the operation of the MIDC, each individual attorney providing indigent criminal defense services, each indigent criminal defense system, and the operation of indigent criminal defense services.”¹

Despite a clear mandate, the MIDC has run into considerable data challenges since its inception. In particular, data collection has been hindered by (1) a lack of consistency in case management systems in both the courts and amongst public defender systems, (2) challenges mandating judicial data collection as an executive branch agency; and (3) the disparate measurement of even simple data points across local systems.

However, in the last four years since the initial standards were implemented, the MIDC has made enormous strides in data collection. Each system now reports a variety of data quarterly to the MIDC. These data points are increasingly more accurate and more consistent both within and across systems.

In looking ahead to future research and data collection, the MIDC will focus on two main priorities:

- Data on compliance with standards
- Data on the impact of standards and other best practices

Additional priorities include research into the cost of standards and the collection of data to inform the development of future standards.

Data on Compliance with Standards

Through its quarterly program report, attorney list, and compliance rubric, the MIDC is currently collecting the majority of data necessary to measure compliance with approved standards. The quarterly program report and attorney list offer a broad, birds-eye view of compliance while the rubric provides complementary, on-the-ground information about compliance successes and struggles.

In the next several years, the MIDC will look to add several addition data points to round out compliance data.

¹ Michigan Indigent Defense Commission Act, MCL 780.981 *et seq.*

FY24: The program report will be expanded to ask for the number of in-custody interviews conducted during each reporting period as well as the number of these interviews that were not conducted within three business days of appointment. Local systems will need to track date of appointment and date of first interview on every case in order to submit this data point. The attorney list will also be expanded to include the breakdown of misdemeanor/felony/capital cases and the number of hours billed by category quarterly for each attorney. The FY24 attorney list will also ask for each attorney's qualification level, recognizing that these data may not be accurate (or mandatory) until FY25. The rubric has already been updated for FY24.

FY25 or FY26, depending on when the standards are approved by LARA: The program report will be expanded to ask implementation questions on Standards 6 and 7 to obtain confirmation of compliance (for example, are attorney caseloads being monitored for compliance with caseload maximums?). The rubric will be expanded to include the compliance measurement for these new standards and may also shift non-point questions for previously implemented standards to point questions.

In order to assess compliance with Standards 6-8, the MIDC Research team will audit local systems in a variety of ways. The audits will help answer the following questions:

- Are local systems ensuring that attorneys stay within caseload maximums? (Std 6)
- Are local systems ensuring that only qualified attorneys are appointed on felonies and capital cases? (Std 7)
- Are local systems ensuring that attorneys in flat-fee and contract systems are being compensated at Standard 8 rates? (Std 8)

The audits related to Standard 8 will be implemented first, as this standard is slated for FY24. Funding units that use flat-rates event-based rates, or non-hourly contracts will submit all attorney invoices from systems, and the Research team will be responsible for analysis. During the first year of implementation, the primary goal of the Research team will be to assess whether attorneys in the above-mentioned systems are being compensated at rates equivalent to Standard 8. As the MIDC moves into FY25, the question will turn to whether non-hourly payment schemes disincentivize quality representation. In order to do so, the Research team will first explore whether attorneys in non-hourly systems are billing hours that are significantly different from the hours billed by attorneys in hourly systems. In other words, do non-hourly attorneys tend to bill fewer hours, and/or are there other patterns in their billing that differ from their hourly counterparts? These comparisons will be made between systems that are similar in terms of population size, caseload size, and other demographic information. In the second year, we will ideally take this inquiry one step further by trying to assess whether attorneys in hourly systems obtain more favorable case outcomes, but our ability to conduct this assessment will be entirely dependent on access to data.

The research team will continue to be in conversation with other staff members to develop a comprehensive staff plan for designing and implementing local system audits.

Data on the Impact of Standards and Other Best Practices

In an ideal world, the MIDC would have access to case-level data on all adult, criminal, trial-level cases handled by both retained and appointed counsel across the state. This would only be feasible through some sort of unified case management system among defense administrators, and also ideally between courts. At some point in the future, a unified, statewide case management system among defense administrators might be feasible, and the courts are making efforts to unify their systems as well. At this moment in time, however, the research team will utilize a more diverse, multi-pronged approach to gathering data to assess the impact of standards that does not rely on case-level data from the entire state. The approach is characterized by three different methods: qualitative data collection, external collaboration, and case-level data/pilots.

Qualitative Data Collection: through methods such as surveys, interviews, and focus groups with clients and attorneys, the MIDC will ask and answer a variety of questions during FY24-FY26 such as the following:

- Impact of training on case preparation/outcomes (Std 1)
- Benefit of more timely interviews with regards to gathering materials; building attorney-client trust through timeliness and confidentiality (Std 2)
- Contribution of investigator/expert witness to case outcomes (Std 3)
- Impact of CAFA on bond outcomes or client satisfaction (Std 4)
- Impact of reducing caseloads on time spent / case outcomes (Std 6)
- Impact of increased compensation on attorney practice (Std 8)

The MIDC research team will plan to design and send out an attorney survey at some point FY24 . Ideally, we would also initiate more client focus groups but entering the jails has been difficult since covid. Perhaps some version of client satisfaction surveys through offices could be a stand-in for client focus groups in the near future. To this end, the research team recently released a template for client surveys that can be utilized by local systems. The research team will also investigate whether it is possible and worthwhile to conduct a broader survey of clients.

External Collaboration: The MIDC has benefitted in the past from external collaboration with researchers, including the RAND caseload study, the Urban Institute standards implementation evaluation, the Social Worker Defender Program, and the Barry County CAFA cost-benefit analysis. The MIDC's partnership with students from the University of Michigan's Ford School has also been instrumental in the ROA Project to create the first case-level data set.

Looking ahead, the MIDC will aim to bring in external collaborators to work on both statewide projects as well as local projects. In 2023, external researchers will be applying for grants to answer the following questions:

- Has the implementation of minimum standards led to a change in the number of type of IAC claims raised on appeal? Has there been a change in conviction reversals specifically for IAC? [Grant application to NIJ with NORC at the University of Chicago]
- Is the creation of a public defender office associated with changes in appointment rates and processes, pretrial detention, and case dispositions? [Grant application to NIJ submitted by the Deason Center; working with the Ingham County PD Office]

It is also possible that external researchers from NORC at the University of Chicago will apply for additional funding to expand the scope of the CAFA Cost-Benefit Analysis project. The research team will also consider whether external collaboration could be helpful in exploring either the impact of Standard 8 (Does changing hourly rates incentivize quality defense?) or the cost savings associated with opening public defender offices.

Case Studies/Pilots: Given the decision *not* to pursue a unified statewide case management system at this moment in time, case studies and pilot projects will be extremely important to assessing the impact of standards and other broad research questions in the coming years. Rather than mandating case-level data collection across the state, the MIDC will build additional case-level data capacity where there is interest and willingness. To do so, the research team will establish best data practices for both public defender offices and MAC administrators who want to go beyond the data collection for quarterly reports. Once we establish best practices, we will solicit systems that are willing to pilot them, with technical assistance from the MIDC. These systems will receive Data Innovation Awards from the MIDC. In exchange for technical assistance, we will ask these systems to sign MOUs that allow the MIDC to retrieve their case-level data for analysis. High-quality case management systems will play a critical role in the success of these efforts. Once these more robust data collection efforts are in place, and with the permission of the local systems, the MIDC will conduct data analysis on the available case-level data.

Key research questions might include the following:

- Do shorter times between appointment and first interview improve client outcomes in any capacity, such as the length of pretrial detention?
- Do cases with CAFA have better bond outcomes?
- What is the impact of utilizing social workers in public defense?

Importantly, once data innovators are in place, the MIDC can also utilize available data to run pilots on any new programs implemented by these systems to assess effectiveness or impact, which will hopefully be an incentive for systems to join the best practices effort.

The goal is to develop two sets of best data practices, one for public defender offices and one for MAC administrators, in the second half of FY23. In FY24, the MIDC will attempt to recruit 2-3 offices and 2-3 administrators to come on board. In partnership with these local systems, the MIDC will estimate budget costs for this additional data collection to write into compliance plans for FY25. By late FY25-early FY26, the research team will be able to draw conclusions about the successes and challenges of implementation as well as the possibility of conducting broader research using these data sets.

In addition to data collection in systems that are Data Innovators, the research team will also continue its efforts of standardizing data collection related to social work in across offices in the state. At present, many social workers have started some form of data tracking with the support of the research team, and the goal is to systematize and expand this data collection over the next several years, allowing both local offices and the MIDC to ask and answer questions about the practices and impact of social work in public defense.

To: Michigan Indigent Defense Commission

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

**Re: Compliance Planning and Costs:
FY22, 23, 24 status updates and staff recommendations**

Date: August 9, 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	\$173,928,393.06	\$38,825,422.67	\$212,753,815.73
FY 2024 ²	\$256,391,850.65	\$38,825,422.67	\$291,965,586.70

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 were

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

² Amount approved as of June 13, 2023. Eleven funding units have plans pending approval at the October 2023 MIDC meeting.

offset by any unexpended balances on deposit with the local system as of September 30, 2022. Third and fourth distributions will be made this summer. The MIDC annually collects information about 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, all FY22 Attorney Lists, Financial Status Reports, and Quarterly Program Reports have been approved. Also, all Unexpended Balance Reports have been approved.

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.

Executive Director Staley and I met with County Administrator Eisenbarth and Deputy Administrator Farrar on July 14. Additionally I have met with or spoken to system stakeholders numerous times since the MIDC's June 2023 meeting regarding compliance with MIDC Standards pursuant to the currently approved plans for the local funding unit as well as the FY24 resubmission by the funding unit. I also made a site visit on July 5, 2023. At this time, I recommend holding off on any further action until the October 2023 MIDC meeting.

III. FY23 Compliance Planning

A. 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 all 120 have been fully executed with funding distributed pursuant to the contract terms.

2. 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. 32 (February 2023):

- Allegan County
- Berrien County
- Branch County
- City of Birmingham
- City of Pontiac
- Ingham County
- Jackson County
- Kent County
- Livingston County
- Macomb County
- Menominee County
- Monroe County
- Oakland County
- Ottawa County
- St. Clair County
- Washtenaw County

The following funding units submitted budget adjustment requests that were denied as unnecessary:

- Lake County
- Mason County
- Tuscola County

IV. FY24 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, 2023, pursuant MCL §780.993, which provides:

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

(4) The MIDC shall approve or disapprove all or any portion of a plan or cost analysis, or both a plan and cost analysis, submitted under subsection (3), and shall do so within 90 calendar days of the submission of the plan and cost analysis. If the MIDC disapproves any part of the plan, the cost analysis, or both the plan and the cost analysis, the indigent criminal defense system shall consult with the MIDC and, for any disapproved portion, submit a new plan, a new cost analysis, or both within 60 calendar days of the mailing date of the official notification of the MIDC's disapproval. If after 3 submissions a compromise is not reached, the dispute must be resolved as provided in section 15. All approved provisions of an indigent criminal defense system's plan and cost analysis must not be delayed by any disapproved portion and must proceed as provided in this act. The MIDC shall not

approve a cost analysis or portion of a cost analysis unless it is reasonably and directly related to an indigent defense function.

Funding units are using the MIDC's Grant Management System (EGrAMS) to submit compliance plans. A detailed, self-guided tutorial was prepared for funding units and [linked on our website](#) along with resources and materials for planning.

B. Status of FY24 Compliance Plans

At the June 2023 meeting, the Commission approved 107 compliance plans and cost analyses as submitted, and 2 plans (Macomb County and Oakland County) had their plans approved and costs partially³ approved, pursuant to M.C.L. 780.993(4). The individual funding for each system is available on the MIDC's website [and at this link](#).

The following funding units were notified by U.S. Mail as well as our grant management system that their plans and costs were not approved by the MIDC. These funding units have until August 21, 2023 at 11:59 p.m. to resubmit their FY24 compliance plan and cost analysis and will be on the MIDC's October 2023 agenda for action:

- Arenac County
- Berrien County
- Chippewa County
- City of Lincoln Park
- Crawford County
- Hillsdale County
- Iron County
- Muskegon County
- Otsego County

³ Oakland County's original request was for \$23,187,373.86, which the MIDC reduced to \$23,115,345.31 in the category of indirect costs. However, EGrAMS rounded (down) the percentage of funding allowed, and the revised total system costs are now \$23,115,344.86. The funding unit was advised of the \$.45 difference by email.

- Saginaw County
- St. Joseph County

C. Changes to approved plans (**action item**)

1. Isabella County

FY 23 approved total \$1,600,332.76

FY 24 total system costs approved \$1,818,959.18

FY 24 REVISED requested total \$1,830,141.27

Senior staff recommends approval.

June 2023 summary: Public defender office (county employees) with a managed assigned counsel administrator overseeing roster of attorneys. Increase includes salary and fringe benefits (+\$97,000) and rates for contract attorneys (+\$117,000); minor increases for MAC support and indirect costs. The original senior staff recommendation was to deny the plan and cost analysis because the Deputy Public Defender rate of \$41.77/hr with supervisory responsibilities fell below AG salary *guidance*; all other rates are consistent with AG guidance and minimum contractual fees. The Commission rejected staff's recommendation and approved the plan as submitted.

In a communication received on July 21, 2023, the funding unit now seeks to revise the request and increase the total system costs for the following reasons:

“On June 13, 2023, the Michigan Indigent Defense Commission voted to approve the Isabella County FY 23 Grant Application contrary to staff recommendation. The plan Isabella County had submitted was not compliance with Standard 8 salaries for primarily one position – the Chief Assistant Public Defender. This however undoubtedly affects the salary of the Chief Public Defender as well. In voting to approve the application, Isabella County

became the lowest paying salaried public defender office in the State of Michigan for the Chief Assistant position.

After Standard 8 was passed, Isabella County moved, with their Board of Commissioners, to increase the pay of the Chief Assistant and Chief Public Defender in March 2023. In doing so, the rate for the Chief Public Defender was put at a rate of 16 on the state pay scale. The Chief Assistant was raised to the equivalent of a 15c. (The Assistants and Senior Assistants were not moved at that time as they had always received standard step increases yearly while the other two positions remained largely stagnant since the original compliance plans) We later learned we not put the two leadership positions at a high enough level – primarily the Chief Assistant position which has supervisory responsibilities. We learned of this on May 23, 2023. Unfortunately, we were not prepared to have a correction done in time for the June MIDC meeting.

Shortly after we were told our plan would be up for “denial,” we had a stakeholder meeting with our county. This meeting included: Nicole Frost – County Administrator Controller, Eric Janes – Chief Judge, Kerri Curtiss – Trial Court Administrator, David Barberi – Isabella County Prosecutor, Jerry Jaloszynski – District 3 Commissioner, Chris Embrey – District 2 Commissioner, Tobin Hope – District 7 Commissioner, and Thomas Hausmann – Isabella County Public Defender. At this meeting, we discussed our denial and eventual resubmission increasing those salaries to comply with standard 8. We had a plan going forward and were working on the numbers for our resubmission. In fact, it was proposed by the county prosecuting attorney that we even include it as a line item transfer to be able to increase salaries during FY22 due to staffing shortages in his office, thereby raising everyone all at once. The results of this meeting were communicated to our regional manager – Barbara Klimaszewski, that same day. I met with our county accountant to begin running the numbers for our resubmission and essentially had them prepared prior to the MIDC meeting on June 13.

By voting to approve our plan, our chief assistant position became the lowest hourly rate paid to a supervisory position by approximately \$8 per hour. We wish to right this wrong. I share

fault in this when we asked to have our salaries raised back in march through our Board of Commissioners by not originally seeking guidance from a level 16 on the state wage scale. Our county has a plan moving forward and we wish the Commission to reconsider the approval of our plan and allow us to raise the pay for our Chief Assistant position. We are prepared to raise the Chief Assistant salary to \$49.62 per hour with our FY24 plan and it has been approved by Isabella County.”

Attorney List Changes

Current Attorney List

- Attorney Name
- Attorney P#
- Number of Assignments
- Amount Paid

Proposed Attorney List Format

Attorney Info			# of New Assignments			Payment on Assignments				Payment for Docket Coverage		Payment for Expenses
Name	P#	Standard 7 Qualification Tier	Misd	Fel	Life	Total Paid in Qtr on Assignments	Misd Hours	Fel Hours	Life Hours	Total Paid in Qtr for Docket Coverage	# of Hours Actually Worked	Total reimbursements paid for travel, training, discovery, etc.
Doc, Jane	99999	Dropdown (Misd; Low Severity Fel, High Severity Fel; Life; Unknown)	#	#	#	\$	#	#	#	\$	#	\$

*Make sure to have a key for Qualification Tier

FY 24 QPR QUESTION REVISIONS

1. QPR Changes
2. Case definition discussion
3. Traffic v Non-Traffic Misdemeanor discussion

1. QPR Changes

Reporting Information Tab

- No changes

System Tab

- Replace Question 7 with two questions specifically tracking Standard 2 compliance.
7. System-wide, how many in-custody initial interviews were conducted this quarter?
 - 7a. Of these in-custody initial interviews, how many were conducted within 3 business days of appointment?

Court-Level Questions

Circuit Court

1. What was the total number of new adult criminal CASES (not charges) filed in this court during this reporting period?
2. How many circuit court cases were qualified for and assigned to an appointed attorney during this reporting period? This should reflect CASES and not the number of DEFENDANTS.
3. How many requests for appointed counsel were denied during this reporting period? (Please indicate whether this answer reflects the number of CASES or the number of DEFENDANTS?)

District Court

1. What was the total number of new adult misdemeanor cases filed in this court in the reporting period?
2. What was the total number of new adult felony cases filed in this court in the reporting period?

Arraignments

3. How many arraignments were conducted in this court during the reporting period TOTAL? Please include all PV arraignments in this response and in response to the following questions about arraignments.
 - a. Of the total arraignments reported, how many were conducted by RETAINED counsel?
 - b. Of the total arraignments reported, how many were conducted by APPOINTED counsel?

- c. Of the total arraignments reported, how many were conducted by PRO PER (client/defendant waived the right to counsel and invoked right of self-representation)?
- d. Of the total arraignments reported, how many were conducted where counsel was ABSENT (arraignment proceeded without counsel even though counsel was not waived)?
- e. Of the total arraignments reported, provide the total number of arraignments not captured in any of the above categories:
- f. Please provide more information about the arraignments in the “other” category. Why do they not fit into one of the other categories above?

Dispositions, Assignments and Reimbursement

- 4. Of the cases you arraigned this reporting period (Question 3), how many cases had a final disposition at arraignment? This should reflect the number of CASES, not the number of clients/defendants.
- 5. How many misdemeanor cases were qualified for and assigned to an appointed attorney (post arraignment) during this reporting period? This should reflect CASES and not number of clients/defendants.
- 6. How many felony cases were qualified for and assigned to an appointed attorney (post arraignment) before they were bound over during this reporting period? This should reflect CASES and not number of clients/defendants. (Cases should be included regardless of whether the assignment was made by your system or by another system that manages felony assignments.)
- 7. How many requests for appointed counsel were denied this reporting period?
 - a. Please indicate whether this answer reflects the number of CASES or the number of DEFENDANTS?
- 8. Total number of cases resolved before arraignment through any of the following: pleas by mail, pleas taken at the counter, pleas entered through an online system, or any other form of resolution pre-arraignment (no appearance before a judge or magistrate):
 - a. How many of these received the assistance of counsel?

2. Defining a Case

In order to implement Standard 6, MIDC needs to provide systems guidance on how to define a “case,” particularly for assignment purposes.

Currently, systems generally default to counting cases however cases are counted in their court’s case management system. (Most courts follow SCAO recommendations, but some do not.) Some systems supplement court data with their own numbers, but many systems rely on the court entirely.

The problem, broadly, is that there are some courts that log each charge as an individual case (or some courts that do this for certain kinds of cases).

For case filings and arraignment data, this discrepancy does not have compliance implications. If systems rely on the court to provide these data points, it may require MIDC staff to interpret trends and ratios more carefully. For assignment data, this variation among systems has significant implications for compliance.

Example: If systems rely on court data to count cases, an attorney could be credited with 5 misdemeanor cases for a set of misdemeanor charges that relate to the same underlying conduct whereas an attorney in another system might only be credited with a single misdemeanor case for an identical set of charges simply because of the way the local court logs cases.

MIDC needs to provide guidance to systems about how they are supposed to define a case and instruct them they will have to **track their own assignment counts** consistent with that guidance if their court does not count cases consistent with MIDC guidance.

Specifically, MIDC needs to establish a definition related to defendants with multiple **court** cases that are handled by a single attorney. In many cases, it will be appropriate to group these court cases as a single MIDC case, but this will not always be true.

3. Traffic v Non-Traffic Misdemeanors

Before the implementation of Standard 6, we will need guidance on how the commission will treat traffic misdemeanors.

The standard specifically says “...attorneys should not exceed the caseload levels ... – 150 felonies or 400 non-traffic misdemeanors per attorney per year.” If the commission is going to observe any distinction between the types of misdemeanors, we would need to collect misdemeanor data in discrete categories. The proposal above does not include sub-divided misdemeanor data.

More broadly, in thinking about caseloads and attorney hours, it has been suggested that traffic and non-traffic misdemeanors are substantial different assignments and analyzing hours per case expectations may require breaking the traffic misdemeanors out into its own category. This is potentially valuable, but not reason enough to require separate data collection if the separation is not necessary for Standard 6. There is likely more value in thinking about misdemeanors based on their maximum sentence rather than traffic/non-traffic if the commission wanted to consider a more granular standard.