



# 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, February 20, 2024, 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. Public comment
5. Additions to agenda
6. Consent agenda (**action item**)
  - a. December 19, 2023 Meeting Minutes
7. Chair Report
8. Executive Director Report
  - a. Expert and Investigator Clearinghouse RFP (**action item**)
9. Commission Business
  - a. Standing Committee Reports
    - i. Executive Committee – *Christine Green, Chair*
    - ii. Performance Standards – *Josh Blanchard, Committee Chair*
    - iii. Training and Evaluation – *Tracey Brame, Committee Chair*
  - b. Ad hoc Committee Reports
    - i. Data – *Kim Buddin, Committee Chair*
    - ii. Equity and Inclusion – *David Jones, Committee Chair*

- c. MIDC 2023 Annual Impact Report (action item)
- d. MIDC Standards Implementation
  - i. FY23 Compliance Year End Reporting
    - o Budget adjustments (information items)
  - ii. FY24 Compliance Planning
    - o Overview of FY24 submissions approved and funding distributed to date
    - o Changes to approved plans
      - 1. Berrien County (action item)
      - 2. Allegan/Van Buren (information item)
      - 3. Cheboygan (information item)

~ Break for Lunch ~

- e. Regional Update: Western Michigan, *Susan Prentice-Sao, Regional Manager*
- f. FY25 Compliance Planning Resources
  - i. Compliance Plan application and cost analysis (action item)
  - ii. Grant Manual revisions (action items)
- g. Presentation from Justin Hodge, Clinical Associate Professor of Social Work, University of Michigan

10. Adjourn – next meeting April 30, 2024 beginning at 9:30 a.m.

*Online Access: For members of the public who wish to join the meeting online, please email Marcela Westrate at [WestrateM1@michigan.gov](mailto: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 19, 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
- Joshua Blanchard
- Tracey Brame
- Paul Bullock
- Judge James Fisher
- James Krizan
- Debra Kubitskey
- Judge Paula Mathes
- Margaret McAvoy
- Tom McMillin
- Alicia Moon
- Rob VerHeulen

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

- Andrew DeLeeuw

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:

- Kimberly Buddin
- John Shea

- William Swor

Chair Green called the meeting to order at 9:30 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
- Peter Menna
- John Faul
- Rob Sarrow

### **Approval of Agenda**

Commissioner McAvoy moved to add the issue of the MIDC's collection of attorney invoices for Standard 8 compliance to the agenda for discussion. Judge Fisher seconded. The motion carried.

Commissioner McMillin moved to approve the agenda as amended. Commissioner Krizan seconded. The motion carried.

### **Consent Agenda**

Chair Green removed the October 2023 minutes from the consent agenda. Commissioner VerHeulen moved that the minutes be corrected to reflect Commissioner DeLeeuw was the Chair of the Nominating Committee, and that the minutes be approved as amended. Commissioner Krizan seconded. The motion carried.

### **Chair Report**

Chair Green gave a brief report and encouraged Commissioners to review the "Gideon at 60" report published by the National Institute of Justice.

### **Executive Director Report**

Executive Director Staley gave an overview of the issue and the need for the invoices as supported by the Department of Licensing and Regulatory Affairs and the Experis auditors with whom the MIDC contracted. Ms. McCowan and Dr. Siegel answered Commissioners' questions.

Commissioner Blanchard moved to refer the issue to the Data Committee with the directive that the committee work with staff, and that staff inform all members of the Commission of the committee's meeting dates. Commissioner Brame seconded. The motion carried.

Commissioner Bullock moved that the implementation of the reporting requirements for the attorney invoices be suspended until the committee has met, reviewed the issue, and made a recommendation to the Commission. Commissioner Kubitskey seconded. The motion carried.

### **Commission Business**

### **Standing Committee Reports**

Chair Green provided an update on the Executive Committee's meeting. The committee drafted the agenda for the meeting and discussed the Executive Director's evaluation.

Commissioner Blanchard provided an update on the Performance Standards committee. The committee will meet in January.

Commissioner Brame provided an overview of the Training and Evaluation Committee. She updated Commissioners on the committee's activities. The committee will meet again in January.

### **Ad hoc Committee Reports**

In Commissioner Jones' absence, Chair Green gave an overview of the Equity and Inclusion Committee's meeting.

Executive Director Staley provided an update on the Legislation and Court Rules Committee's meeting.

In Commissioner DeLeeuw's absence, Commission Blachard provided an overview of the Nominations Committee's recommendations. The committee recommends the following Commissioners to serve as officers for the term beginning January 1, 2024 and concluding December 31, 2024: Christine Green, Chair, Tracey Brame, Vice Chair, and Gary Walker, Secretary. The committee recommends that Judge Fisher serve as an ex officio and non-voting member of the Executive Committee. The committee also recommends that the bylaws committee look at expanding the Executive Committee.

Commissioner McMillin moved to approve the slate recommended by the Nominations Committee. Commissioner Adams seconded. The motion carried.

### **FY24 Compliance Planning**

Ms. McCowan provided an overview Alpena County's request for a plan change to implement a contract for traffic and miscellaneous low-level misdemeanor cases handled by the Northeast Michigan Regional Defender Office in FY23. A local law firm would contract with the office to handle these cases.

Commissioner VerHeulen moved that the plan change requested by Alpena County be approved. Judge Fisher seconded. Chair Green requested a roll call vote. The motion carried with 9 yeas (Green, Adams, Blanchard, Brame, Fisher, Krizan, McMillin, VerHeulen, and Walker) and 4 nays (Bullock, Kubitskey, Mathes, and McAvoy).

Ms. McCowan provided an overview of the plan change requested by the City of Southfield. The City would like to change its plan to pay arraignment attorneys for shifts rather than by the hour. The City would like to use a 2.5 hour morning shift with a payment of \$300, and a 2 hour afternoon, weekend, and holiday shift that would pay \$240. If a shift exceeds the estimated hours, attorneys would be paid \$120/hour using 0.25/hour increments.

Commissioner Adams moved that the compliance plan change requested by the City of Southfield be approved. Commissioner Bullock seconded. The motion carried.

Nicole Smithson, Regional Manager for the Lenawee, Oakland, Macomb and St. Clair Region, provided an update on the activities in her region.

Commissioner McAvoy moved that that the Commission begin a closed session under MCL 15.268(1)(a) to consider the periodic personnel evaluation of Ms. Staley and under MCL 15.268(1)(h) to consider material exempt from disclosure under section 13(1)(g) of the Freedom of Information Act. Commissioner Adams supported the motion. Chair Green requested a roll call vote. The motion carried with 14 yeas: Green, Adams, Blanchard, Brame, Bullock, Fisher, Krizan, Kubitskey, Mathes, McAvoy, McMillin, VerHeulen, and Walker and 0 nays.

The Commission moved to closed session at 12:36 pm.

The Commission returned to open session after a motion from Commissioner Blanchard, seconded by Judge Fisher. The motion carried with 14 yeas: Green, Adams, Blanchard, Brame, Bullock, Fisher, Krizan, Kubitskey, Mathes, McAvoy, McMillin, VerHeulen, and Walker and 0 nays.

The Commission returned to open session at 2:14 pm.

Commissioner Blanchard moved that the Executive Director be given a high performance rating and that her contract be extended for two years at a rate of \$173,568 subject to cost of living increases. Chair Green requested a roll call vote. The motion carried, with 10 yeas (Green, Adams, Blanchard, Brame, Bullock, Fisher, Krizan, Mathes, McMillin, and Walker) and 3 nays (Kubitskey, McAvoy, and VerHeulen). Commissioners Kubitskey and McAvoy stated that they were not dissatisfied with the Executive Director's performance, but voted no because of the language regarding the cost of living increases. Commissioner VerHeulen stated that he was not dissatisfied with the Executive Director's performance but was not comfortable supporting the motion because of the lack of information about the regulations and the flexibility that the Commission has.

The meeting adjourned at 2:22 pm.

The Commission will meet on the following dates in 2024:

- February 20, 2024, 11:00 am rest are at 9:30 am
- April 30, 2024, 9:30 am
- June 25, 2024, 9:30 am
- August 20, 2024, 9:30 am
- October 15, 2024, 9:30 am
- December 17, 2024, 9:30 am



MICHIGAN INDIGENT  
DEFENSE COMMISSION

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February 13, 2024

From: Kristen Staley, Executive Director, MIDC  
To: MIDC

***Re: Seeking approval to begin RFP process for Expert and Investigator Clearinghouse project***

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The MIDC Act permits local systems to request the MIDC “serve as a clearinghouse for experts and investigators” and to “develop and operate a system for determining the need and availability for an expert or investigator in individual cases.” MCL 780.991(5).

As local systems continue to embrace MIDC’s Standard 3 on Investigation and Experts, the uses of such services increase year over year. Based on a recent survey of local systems, a majority of respondents indicated interest in using an Expert and Investigator Clearinghouse if provided the option by the MIDC.<sup>1</sup> Some larger systems have already taken the steps to create a similar service for their own use,<sup>2</sup> but most have not and often seek help from our Regional Manager team or among peers on our MIDC-hosted Defender Leaders Listserv.

To remedy this problem, I am requesting permission from the Commission to seek a contractor through the State of Michigan RFP process to develop and manage a MIDC Expert and Investigator Clearinghouse. A good example of a similar program is North Carolina’s Office of Indigent Defense Services for [Experts](#) and [Investigators](#).

This contractor would assist the Commission and its staff in creating and implementing policies and procedures to assist systems in identifying expert and investigative assistance. Duties would include:

- creation of forms and applications to obtain expert and investigative resources;
- developing and maintaining a database of available experts and investigators;
- assisting indigent defenders and local stakeholders with clearinghouse requests; and
- tracking usage of database and creating case or system impact reports as needed.

The contracted position would be funded by work project funds, which are available “to support the implementation of compliance plans, research and adopt best practices, and other compliance with the MIDC Act.”<sup>3</sup>

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<sup>1</sup> Survey results provided to MIDC in meeting materials for Feb. 20, 2024 meeting. Thirty-eight systems responded; only 4 systems responded “No” to using a MIDC developed Expert and Investigator Clearinghouse.

<sup>2</sup> For example, Wayne County’s IDSD for felony assignments and their Regional District Court Managed Assigned Counsel Office for both maintain expert and investigator databases for their systems.

<sup>3</sup> Implementation plan narrative, FY23 Work Project.

To: Michigan Indigent Defense Commission

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

Re: Compliance Planning and Costs:  
FY23, FY24 status updates and staff recommendations

Date: February 9, 2024

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I. Funding Awards by Fiscal Year

	MIDC Funding	Local Share	Total System Costs
FY 2019	\$86,722,179.85	\$37,963,396.67 <sup>1</sup>	\$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	\$280,402,368.78	\$38,825,422.67	\$319,227,791.45

The MIDC annually collects information about the balance of funds distributed to systems in a form completed by the local funding units due no later than October 31. See the MIDC Act, MCL 780.993(15).

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



## II. FY23 Compliance Plans

### A. General Status

As of the October 11, 2022 meeting, all 120 systems had their plans and cost analyses approved and all 120 were fully executed with funding distributed pursuant to the contract terms.

### B. Reporting

Staff received the fourth quarter of reporting from systems for FY23 (covering July 1 - September 30, 2023) at the end of October 2023. Funding units were required to enter the following reporting in EGrAMS:

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

As of this writing, the Unexpended Balance Reporting has not yet been finalized for approximately 20 funding units. The MIDC's Grants team is actively working to close out FY23 reporting.

MIDC Staff regularly updates the [Grants page](#) of our website with training and resources to assist with reporting.

All reporting is submitted and processed through EGrAMS; local system project directors are able to review the status of reporting, payments, adjustments, and contract terms at any time.

### III. 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

As of the October 17, 2023 meeting, the Commission approved all 120 compliance plans and cost analyses 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](#).

Contracts were distributed to all systems beginning at the end of August through November 2023. As of this writing, all but 5 contracts have been returned for execution and processing the initial funding distribution.

## C. Reporting

The first quarter of reporting from systems for FY24 (covering October 1, 2023 through December 31, 2023) was due by January 31, 2024. Funding units were required to enter the following reporting in EGrAMS:

- Attorney List
- Financial Status Report
- Quarterly Program Report

MIDC staff published a document on the [grants page of the Commission's website](#) identifying changes to reporting for FY24, along with updated compliance reporting instructions, and a [recorded](#)

[webinar](#) covering submission of reports through our EGrAMs. Staff also held virtual “office hours” over several days prior to the reporting due date to offer technical assistance and provide guidance to local partners.

## D. Changes to approved plans

### 1. Budget Adjustments

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):

- Alpena County
- Berrien County
- Charter Township of Waterford
- City of Roseville
- City of Southfield
- City of Warren
- Gogebic County
- Iosco County
- Montcalm County
- Oakland County
- St. Clair County

### 2. Plan Changes

#### a. [Berrien County](#) (action item)

**No changes to costs, senior staff recommends approval:**

This request was submitted pursuant to a line item transfer for use of existing funds. However, it exceeds the dollar threshold for construction projects established by the MIDC and therefore the construction request requires additional scrutiny. See Grant Manual p. 17. The construction

request is to create attorney client meeting space at the public defender office, and there is a related increase in rent related to the space. The existing conference room will be converted into office space and file storage areas will become offices for support staff and interns; adjoining empty office space can be converted into a conference room and attorney-client meeting space with convenient and accessible parking next to an outside entrance. Construction cost is estimated at \$70,078 and is similar to other projects approved previously by the MIDC (Kalamazoo, Kent Counties).

b. Allegan/Van Buren Counties (information item)

The existing regional defender office will move forward this fiscal year with a division of the departments to be operated independently by the individual funding units. The current budget will be sufficient to cover these proposed changes, and no increases are requested to the previously approved FY 2024 cost analysis.

c. Cheboygan County (information item)

Cheboygan County will change its delivery model from a contracted Managed Assigned Counsel (MAC) system to an employee MAC system with a roster of contract attorneys. The county has historically utilized a contracted MAC system where it had a fixed rate contract with attorneys to provide services. At the end of December 2023, two of the three contracted attorneys did not wish to renew the agreement, leaving one contract attorney remaining who wished to move forward as an hourly-contract attorney only. The current budget will be sufficient to cover these proposed changes, and no increases are requested to the previously approved FY 2024 cost analysis.

MIDC **FY25** COMPLIANCE PLAN

## Submitter Information

Funding Unit(s)/System Name:

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

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**Date:**

Signature: \_\_\_\_\_

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

Authorizing official who will sign the contract:

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Mailing address for authorizing signatory: \_\_\_\_\_

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**Project Director or** Primary point of contact for implementation and reporting:

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Financial point of contact **(please note, financial 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):**

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~~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:~~

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## 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 FY25 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, 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 and qualification level for assignments.**

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? Please respond Yes or No.

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?

~~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

9. 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?
10. How are you verifying that in-custody attorney client interviews occur within three business days?
11. How are you verifying attorneys' introductory communications with out-of-custody clients?
12. 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.

~~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 FY25 COMPLIANCE PLAN

## Confidential Meeting Spaces

13. How many confidential meeting spaces are in the jail?
14. What is the TOTAL amount of confidential meeting spaces in the courthouse?
15. How many confidential meeting spaces in the courthouse are for *in-custody clients*? Please describe these spaces.
16. How many confidential meeting spaces in the courthouse are for *out-of-custody clients*? Please describe these spaces.
17. 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.

~~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.~~

## MIDC FY25 COMPLIANCE PLAN

## Standard 3

## Experts and Investigators

18. 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:

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

If yes, please explain the change:

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

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

If yes, please explain the change:

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

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

~~If yes, please describe in the cost analysis.~~

## Standard 4

### Counsel at First Appearance and Other Critical Stages

23. 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.
24. How are you providing counsel at all other critical stages? Please provide details:
25. 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.
26. 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?
27. 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.
28. Describe how counsel is offered to a defendant making a plea who does not appear before a magistrate or judge:
29. 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.**

~~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.

30. 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:
31. 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.
32. Who will approve an attorney's eligibility to receive assigned cases?
33. Who will assign work to the attorneys in the indigent defense system? Please include the person's name, title, employer and/or supervisor.
34. Who will review and approve attorney billing?
35. Who will approve requests for expert and investigative assistance?
36. Who will review and approve expert and investigative billing?
37. What is your appeal process to resolve any potential conflicts between the assigned attorney and the person(s) assigning casework?
38. What is your appeal process to resolve any potential conflicts between the assigned attorney and the person(s) or reviewing/approving billing?

## MIDC FY25 COMPLIANCE PLAN

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

## Standard 6

### Indigent Defense Workloads

40. Public defender offices, assigned counsel, and contract attorneys should not exceed the caseload levels adopted in MIDC Standard 6. Are there sufficient attorneys in your funding unit to meet the caseload standard? Please answer Yes or No

41. Does the system currently have a process to monitor caseloads? Please answer Yes or No

If yes, please briefly describe your current process for monitoring and auditing caseloads.

42. How many attorneys in your system maintain a private/retained or a partial trial-level criminal caseload? (For example, an attorney working on civil matters, youth defense, family legal matters, appellate cases, etc.) (range will be included)

43. Who will be responsible for monitoring and auditing caseload calculations?

44. How will caseloads be monitored throughout the year? How will attorneys be notified when they have reached their caseload cap?

45. Will you have a process to gather information about an attorney's caseload or assignments from other funding units?

46. What action will be taken when the caseload cap is reached?

## Standard 7

### Qualification of Counsel

47. Eligibility for particular case assignments must be based on counsel's ability, training and experience. Are there sufficient attorneys in your funding unit to meet the caseload standard? Please answer Yes or No

Does your funding unit currently have a process to identify qualifications of counsel for particular assignments? Please answer Yes or No.

If yes, briefly describe your current process for identifying counsel's qualifications.

48. Who will be responsible for assessing counsel's qualifications?

49. How will attorneys be notified of their qualification level?

50. What will be your appeal process if an attorney disagrees with their qualification level?

### Review of Counsel

51. The quality of the representation provided by indigent defense providers must be monitored and regularly assessed. Does your system currently have a process to review counsel? Please answer Yes or No.

If yes, briefly describe your current process for reviewing counsel, including participants in the review process.

52. Who will be responsible for reviewing counsel?

53. How often will the reviews occur?

## Determining Indigency, Contribution, Reimbursement

54. 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?
55. Are you designating an Appointing Authority to conduct indigency screening for purposes of MCR 6.005(B)?
56. In cases where contribution is appropriate, who is going to make request with the court for contribution?
57. 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?
58. What is your process for obtaining contribution?
59. What is the process for challenging a request for contribution?
60. Do your courts/judges order reimbursement for attorney fees at the conclusion of a case? Please answer Yes or No.

## Attorney Compensation



**MIDC FY25 COMPLIANCE PLAN**

61. 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).

62. 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

**MIDC FY25 COMPLIANCE PLAN**

**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**

63. 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.

64. 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?

65. 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 and attach documentation to support the request for any increase.**

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

**If yes, please explain in the cost analysis and attach documentation to support the new request.**

### 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 FY25, if seeking reimbursement under this provision.

## MIDC FY25 COMPLIANCE PLAN

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

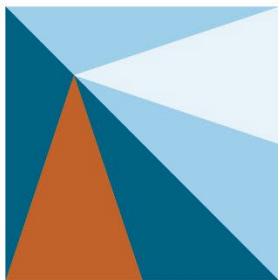
If yes, please describe (cost for case management system, hiring personnel, etc.)

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

Revised February 2024

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*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).

### Expert and Investigator Clearinghouse

The MIDC Act states that “[a]n indigent criminal defense system may include in its compliance plan a request that the MIDC serve as a clearinghouse for experts and investigators. If an indigent criminal defense system makes a request under this subsection, the MIDC may develop and operate a system for determining the need and availability for an expert or investigator in individual cases.” M.C.L. 780.991(5).

### 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 and Stakeholders

The following users must create a username and profile with the MIDC's Grant Management System (EGrAMS) for submission of the compliance plan, cost analysis, and all reporting documents:

- ✓ 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

Funding unit representatives should notify the MIDC when an EGrAMS user has separated from employment. All EGrAMS users will be reviewed by MIDC Staff for eligibility to access the system quarterly.

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

- ✓ **The delivery model(s) used to provide public defense services**
- ✓ **The** 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 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. **M.C.L. §780.993(14).**

## 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.<sup>1</sup>

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<sup>1</sup> See MIDC meeting minutes, June 2017; MRPC 5.4(c).



### 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.

### 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 paralegals, **social workers**, licensed private investigators, or experts in any field recognized in the criminal justice community, to assist the defense. Funding units may employ or contract with student interns in any field to support public defense. Interns may be compensated for their time and reasonable expenses.

### 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.<sup>2</sup> 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.<sup>3</sup> 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. **Case management systems can be**

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

<sup>3</sup> The costs associated with a feasibility study may be reimbursed pursuant to MCL §780.993(2).

purchased by a funding unit for use by contract attorneys, including a Managed Assigned Counsel Administrator.

Outreach efforts to support recruitment and retention are permissible expenses and should be consistent with local policies (e.g., employment opportunities, travel by staff to internship fairs, etc.).

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. social worker) 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.<sup>4</sup>

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

### Hiring of Ancillary Staff

Many systems will hire indirect or ancillary service providers to implement the standards. Ancillary staff refers to personnel outside of assigned counsel and their support staff. Most often these positions include jail staff to facilitate attorney-client communication pursuant to Standards 2 and 4. Other positions include clerks or court staff. These positions must be reasonably and directly related to implementation of the standards to qualify for MIDC grant funding. Local systems are encouraged to submit time studies with any request to fund these positions. Supplanting<sup>6</sup> of existing positions is not permitted.

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<sup>4</sup> See MIDC meeting minutes, October 2019.

<sup>5</sup> See MIDC meeting minutes, July 2019.

<sup>6</sup> 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.

## 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.<sup>7</sup>

## 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

Unless local rates apply, any travel related expenses requested for compliance planning shall not exceed the rates provided by the "Schedule of Travel Rates" and the general policies for reimbursement of travel adopted by the State of Michigan.

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

Travel for training out of state will only constitute an extraordinary circumstances if it is necessary to secure specialized training for public defender staff that is not available in Michigan.<sup>8</sup> ~~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~~

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<sup>7</sup> See MIDC meeting minutes, June 2019.

<sup>8</sup> See State of Michigan LARA Out of State Travel Request Authorization form C-100.

~~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. **To facilitate a client's access to the justice system, a cost analysis can also include funding for transportation, lodging, and meals for a client consistent with MRPC 1.8(e).**

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.

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.

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 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/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/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 be sent to [LARA-MIDC-CLE@michigan.gov](mailto: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~~ **\$50,000** per location. Requests exceeding ~~\$25,000~~ **\$50,000** 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~~ **Items valued over \$5,000 can be included in the “equipment” section of the cost analysis of the compliance plan; individual items valued under \$5,000 should be included in the “supplies” category of the cost analysis.**

## 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 law<sup>9</sup> and/or the local system’s policy.

### Permissible Costs

Expenses for investigators will be considered at hourly rates not to exceed \$100. Expenses for expert witnesses ~~will~~ **should** follow a tiered level of compensation based on education level and type of expert. **Suggested rates are posted on the MIDC’s website.** ~~<sup>10</sup> 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~~

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

<sup>10</sup>~~The 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, upon demonstration of need.~~

- ~~Crime Scene and Related Experts \$100/hr~~
- ~~CPA/Financial Expert \$100/hr~~
- ~~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 3<sup>rd</sup> 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)~~

**A funding unit may include in its compliance plan a request that the MIDC serve as a clearinghouse for experts and investigators. Depending on demonstrated need, the MIDC will identify funding necessary to allocate sufficient staffing for this purpose.**

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, **including documentation of hours spent using a retainer agreement for services to be provided.** 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 **serve as guidance** ~~be used~~ unless a higher rate is specifically authorized by **the**

~~local~~ a system for a particular type of expert or the case. Experts and investigators should be reimbursed for travel related to their work on a case, including time spent traveling if local experts or investigators are unavailable.

## 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, 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 6 – Indigent Defense Workloads

### General Requirements

The caseload of indigent defense attorneys must allow each lawyer to give each client the time and effort necessary to ensure effective representation. Defender organizations, county offices, contract attorneys, and assigned counsel should not be assigned workloads that, by reason of their excessive size, interfere with the rendering of quality representation.

This standard further states that defender organizations, county offices, public defenders, assigned counsel, and contract attorneys should not be assigned in excess of 150 felony cases or 400 non-traffic misdemeanor cases per attorney per year.<sup>11</sup> For attorneys carrying a mixed caseload which includes cases from felonies and misdemeanors, or non-criminal cases, these standards should be applied proportionally.

The workload standard will be revised periodically as necessary and dictated by collection of data during initial implementation.

### Definitions and Calculations

A case is a charge or set of charges filed against a defendant in a court arising from the same transaction and/or that are being handled together, regardless of how the court assigns case numbers.

Where multiple attorneys serve as co-counsel in any capacity, the case counts for each attorney assigned.

Reassignments do not count as a case for an attorney where reassignment is requested before significant work is performed (i.e., early identification of a conflict of interest).

Traffic misdemeanor cases count as ½ of a misdemeanor case assignment.

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<sup>11</sup> As defined by the State Court Administrative Office's publication, Michigan Trial Court Records Management Standards – Case Type Codes (MCR 8.117).

Probation violation representation counts as ½ of a misdemeanor case assignment.

For systems that use house counsel models or shift coverage for any docket including for arraignments or problem solving courts, each hour worked on a shift proportionally reduces the number of hours available for case assignments, using an 1856<sup>12</sup> hour annual limit.

In cases where the final charges are reduced through plea negotiations, the case counts according to the original charge.

The caseload limitation will be assessed for compliance on an annual basis. Attorneys should not exceed caseload limits during any four rolling or consecutive quarters.

These caseload limits reflect the maximum caseloads for full-time defense attorneys, practicing with adequate support staff, who are providing representation in cases of average complexity in each case type specified. Decisions to increase case-weight assignments may be made locally by the appointing authority in extraordinary circumstances.<sup>13</sup>

### Permissible Costs

Travel time, mileage, and expenses should be reimbursed to non-local attorneys employed by the funding unit when necessary to maintain compliance with the standard.

Compliance plans should include a means to account for and audit caseload calculations.

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<sup>12</sup> *Caseload Standards for Indigent Defenders in Michigan*, RAND, at p.72 (2019).

<sup>13</sup> For example, if an attorney has a case with extraordinary circumstances, they may request that their system administrator count it as two cases instead of one. An administrator should not alter case weighting without a request from the attorney. Under no circumstances should a case weight be decreased.

As a best practice, systems should create a process for reviewing or appealing decisions when there is a dispute as to whether an attorney's caseload capacity has been reached.

## Standard 7 – Qualification and Review

### General Requirements

Defense counsel's ability, training, and experience must match the nature and complexity of the cases they are assigned. Attorneys should have their performance reviewed regularly by local system stakeholders to ensure effective assistance of counsel is provided to indigent defendants.

Funding units may only employ attorneys licensed in the State of Michigan as determined by the Michigan Supreme Court and State Bar of Michigan.<sup>14</sup> All attorneys appointed to provide representation in adult criminal cases must complete annual requirements of continuing legal education described in MIDC Standard 1.

### Qualification of Counsel

A tier-based system of experiences is described in the Standard for all case types. The minimum years of service and basic qualifications must not be substituted to qualify counsel in any case.

For misdemeanor and low severity felony cases, equivalent experience and ability to demonstrate similar skills is acceptable in lieu of specific events described in 7.B.1.b and 7.B.2.a.ii. Such experience may include training programs, supervised assignments, and second chair opportunities. Each activity on the following list may count as one substituting event:

- Mock trial preparation in a criminal case
- Preliminary Examinations

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<sup>14</sup> Funding units may use local policies for provisional practice pursuant to the Michigan Court Rules. See e.g. MCR 8.120. This practice can be considered in evaluating counsel's qualification and during counsel's review.

- Contested suppression hearing with testimony taken from witnesses
- *Miller* Hearing
- Simulated skills course constituting a complete trial (voir dire, opening statement, cross-examination of a witness, direct examination of a witness, closing argument). Attendance does not have to be in person and must be verified by course provider.

Civil trial experience may constitute equivalent experience on a case-by-case analysis (e.g., parental rights termination, delinquency proceedings, jury trials.)

There is no limit to the substituting events allowable to qualify for misdemeanor or low severity felony assignments.

For high severity felony cases and life offenses, counsel may qualify by demonstrating a significant record of consistently high quality criminal trial court representation and the ability to handle the assignment type.<sup>15</sup>

The local appointing authority is the decision maker when determining counsel's quality of representation and ability and is encouraged to seek input from system stakeholders with knowledge of the attorney's work.

An attorney's qualification level should be recognized consistently across funding units. As a best practice, systems should create a process for reviewing or appealing decisions when there is a dispute as to an attorney's qualification level.

## Review of Counsel

Attorneys accepting adult criminal case assignments must be reviewed to evaluate the quality of the representation after an attorney has established the minimum requirements for eligibility. The review should be conducted by the attorney's supervisor, the local appointing

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<sup>15</sup> In lieu of the events listed in MIDC Standard 7.B.3.a.ii or 7.B.4.a.ii. The exception to event-based experience should be used in limited circumstances.

authority, or someone working at the request of the appointing authority for this purpose. In all cases, the evaluation of attorneys must be made by peers in the criminal defense community, allowing for input from other stakeholders in the criminal justice system.

Reviews must be done periodically at a predetermined schedule and occur at least once every three years. New attorneys and attorneys needing improvement as determined during a review process should occur more frequently.

There should be no significant difference in the substantive review of employees or contractors. Surveys of individuals impacted by the criminal legal system are encouraged.

### Permissible Costs

Travel related expenses including time spent traveling may be included in a cost analysis to reimburse assigned attorneys when the appointing authority reaches outside of the list of locally qualified attorneys in order to assign counsel consistent with the qualification standard.

When non-local attorneys are employed to assist with qualification opportunities for local attorneys, the local funding unit is responsible for the costs associated with the non-local attorney's employment and travel (i.e., serving as a case mentor, second chair, etc.) unless other arrangements are in place for full time employees.

Funding for administrator consultation or an external review process may be included in the cost analysis.

## 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. **The MIDC will review salaries proposed below these levels on a case by case basis.**
- For attorneys **already being** paid hourly, **systems must** ensure that the rates meet the minimum set in Standard 8 (~~\$100/\$110/\$120 per hour as of 2018~~). The Standard contemplates **office overhead, local travel, and annual** cost of living increases ~~annually~~. Funding

units must implement the following increases to the Standard rates since proposed in 2018:

	Misdemeanors	Felonies	Life Offenses
FY 2025 <sup>16</sup> (eff 10-1-24)	\$124.12	\$136.53	\$148.91

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 covers a three-hour morning docket, **Standard 8 would require minimum compensation of this rate will need to be increased to \$372.36.** If a contract attorney is being paid \$5,000 per-monthly, 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~~

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<sup>16</sup> The **FY2025** rate represents compounded cost of living increases for State of Michigan salaried employees since FY2019. These rates will adjust annually each year.

~~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 **available on the MIDC's website.**  
~~part of the appendix.~~

**In cases where the final charges are reduced through plea negotiations, the hourly rate should be paid according to the original charge.**

### 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.



## 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

### 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 as set forth in the approved plan.

### Attorney List

The funding units will be asked for a list of all attorneys with P#s assigned by the system to represent indigent adults charged with crimes along with the number of assignments to each attorney, and payments made to each attorney quarterly.

### Due Dates for Reporting

- Initial FSR and compliance reports for October 1 – December 31 due on January 31<sup>st</sup>
- 2nd FSR and compliance reports for January 1 – March 31 due on April 30<sup>th</sup>
- 3rd FSR and compliance reports for April 1 – June 30 – due on July 31<sup>st</sup>
- 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. **M.C.L. §780.993(3).**

### 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.

**Systems Funding units are** required to use the MIDC’s grant management system 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.