



MICHIGAN INDIGENT  
DEFENSE COMMISSION

## MICHIGAN'S TRIAL LEVEL INDIGENT DEFENSE SYSTEM

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NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, 2008 - *A RACE TO THE BOTTOM SPEED AND SAVINGS OVER DUE PROCESS: A CONSTITUTIONAL CRISIS.*

In a study requested by Senate Concurrent Resolution 39 of 2006, the National Legal Aid and Defender Association (NLADA) found that Michigan failed to provide competent representation to poor people in its criminal courts. In the year-long study of ten representative counties, NLADA concluded that none are constitutionally adequate and Michigan ranked 44<sup>th</sup> out of all 50 states in per capita indigent defense spending.

IN OCTOBER 2011, GOVERNOR SNYDER CREATED THE INDIGENT DEFENSE ADVISORY COMMISSION TO INVESTIGATE PROBLEMS AND RECOMMEND REFORMS. THE COMMISSION FOUND:

- *Michigan's counties offer an "uncoordinated, 83-county patchwork quilt" of public defense systems.*
- *There is no data or transparency to show if taxpayer dollars are spent efficiently or effectively.*
- *There are no statewide standards to define or ensure constitutionally adequate defense counsel.*

## THE RESPONSE: THE MICHIGAN INDIGENT DEFENSE COMMISSION

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THE MICHIGAN INDIGENT DEFENSE COMMISSION WAS CREATED BY PA 93 OF 2013, SIGNED INTO LAW BY GOVERNOR SNYDER IN JULY OF 2013. THE COMMISSION IS AN INDEPENDENT AGENCY, NOW HOUSED WITHIN THE EXECUTIVE BRANCH OF STATE GOVERNMENT AND COMPRISED OF 15 MEMBERS APPOINTED BY THE GOVERNOR WITH RECOMMENDATION OF THE LEGISLATURE, SUPREME COURT, THE STATE BAR, AND REPRESENTING INTERESTS FROM THE CRIMINAL JUSTICE SYSTEM.

### The Commission has a mandate to:

- Collect and compile data for the review of indigent defense services in Michigan;
- Propose minimum standards, submitted to the Department of Licensing and Regulatory Affairs (LARA), to ensure all systems providing indigent defense meet constitutional obligations for effective assistance of counsel;
- Work with counties to implement plans to meet the standards and measure the performance of counties in providing public defense services;
- Award state-funded grants to county systems to bring their system into compliance with the new minimum standards;

The MIDC Act makes clear that counties and municipalities will not have to pay additional funds for compliance. The duty of compliance is contingent upon receipt of state grants. MCL 780.993, 780.997.

## WHAT THE COMMISSION HAS DONE:

- LARA has approved the first set of minimum standards for indigent defense proposed by the Commission. These standards involve training and education of defense attorneys, the initial client interview, use of experts and investigators, and counsel at first appearance and other critical stages. Approval of minimum standards has started a 180 day deadline for submission of compliance plans and cost estimates, due November 20.
- Those standards were already conditionally approved by the Michigan Supreme Court on June 1, 2016. The Court conditioned approval upon revisions to the MIDC Act to address provisions of uncertain constitutionality. The now amended MIDC Act moved the MIDC from the Judicial Branch to LARA and defined local systems that implement and comply with minimum standards as local trial court funding units.
- The Commission has released a grant Application and Instructions for compliance planning, a guide, and sample plans to assist funding units with this process. Over 100 funding unit representatives have registered for a series of application workshops to be conducted via webinars the next few weeks.
- The MIDC has employed six regional managers based in different parts of the state to help implement and set-up plans to comply with the first set of minimum standards.
- The MIDC has published a guide for consultation on reform of public defense systems, *Delivery System Reform Models: Planning Improvements in Public Defense* (December 2016).
- The Commission has completed the first comprehensive statewide survey of indigent defense. Over 160 District and Circuit Courts completed the survey.

### **SURVEY HIGHLIGHTS INCLUDE:**

- ✓ ONLY 6% OF DISTRICT COURTS REQUIRE ATTORNEYS TO BE PRESENT AT BOTH THE BAIL HEARING AND AT ARRAIGNMENT.
- ✓ OVER 80% OF COURT SYSTEMS HAVE NO TRAINING REQUIREMENTS FOR ATTORNEYS.
- ✓ DESPITE THE CRITICAL ROLE OF CONFIDENTIAL MEETING SPACE IN LEGAL REPRESENTATION, 9% OF INDIGENT DEFENSE SYSTEMS IN MICHIGAN REPORT THAT NEITHER THE COURTHOUSE NOR THE HOLDING FACILITY HAVE PRIVATE SPACE FOR ATTORNEY-CLIENT MEETINGS.
- ✓ SINCE THE 2008 NLADA RACE TO THE BOTTOM REPORT, MICHIGAN TRIAL LEVEL INDIGENT DEFENSE SPENDING BY COUNTIES HAS ONLY DECLINED.

- The Commission has recently released the first survey of attorneys performing indigent defense. Over 340 attorneys practicing indigent defense in Michigan completed the survey.

### **SURVEY HIGHLIGHTS INCLUDE:**

- ✓ ATTORNEYS VALUE TRAINING AND EDUCATION EVEN THOUGH MOST COURTS DO NOT REQUIRE PUBLICLY APPOINTED ATTORNEYS TO COMPLETE ANNUAL CONTINUING LEGAL EDUCATION.
- ✓ ATTORNEYS ENCOUNTER CONSIDERABLE DIFFICULTIES MEETING WITH IN-CUSTODY CLIENTS RELATED TO THE LACK OF CONFIDENTIAL MEETING SPACE IN JAILS AND COURTHOUSES, THE LACK OF PAYMENT FOR TIME SPENT CONDUCTING JAIL VISITS, AND RESTRICTIVE JAIL AND PRISON VISITING POLICIES.

- ✓ ONLY 41% OF COURTHOUSES IN WHICH SURVEYED ATTORNEYS PRACTICE AND 56% OF HOLDING FACILITIES VISITED BY SURVEYED ATTORNEYS HAVE MEETING SPACE THAT ATTORNEYS CONSIDER TO BE CONFIDENTIAL.
  - ✓ ATTORNEYS STRUGGLE TO OBTAIN FUNDING FROM THEIR COURTS FOR EXPERT WITNESSES AND INVESTIGATORS. BETWEEN 14% AND 17% OF SURVEYED ATTORNEYS REPORT THAT THEY ARE UNFAMILIAR WITH THE PROCESS OF REQUESTING FUNDING FOR THESE PROFESSIONALS.
  - ✓ IN MOST COUNTIES, ATTORNEYS REPORT EXTREMELY LOW RATES OF COMPENSATION AND DESCRIBE THE CONSEQUENCES OF CURRENT PAYMENT STRUCTURES ON THEIR ABILITY TO PROVIDE EFFECTIVE REPRESENTATION. MORE THAN HALF OF THE 59 ATTORNEYS WHO ARE NOT CURRENTLY TAKING ASSIGNED CASES SHIFTED THEIR PRACTICE BECAUSE OF ISSUES RELATED TO COMPENSATION.
  - ✓ ONLY 28% OF SURVEYED ATTORNEYS CONSIDER THE SYSTEM IN WHICH THEY WORK TO BE INDEPENDENT FROM THE JUDICIARY.
  - ✓ AS ONE MICHIGAN DEFENSE ATTORNEY DESCRIBED: “ATTORNEYS ARE [MOSTLY] PAID A SET RATE PER CASE, PLUS A LOW HOURLY RATE FOR CONDUCTING TRIALS. THERE'S NO MOTIVATION TO GO TO TRIAL, NO MOTIVATION TO THOROUGHLY PREPARE FOR TRIAL, AND EVERY MOTIVATION TO GET THE CLIENT TO PLEAD RIGHT AWAY AT THE FIRST MEETING WITH THE PROSECUTOR.”
- All standards, reports, and materials are available at [www.michiganidc.gov](http://www.michiganidc.gov)

#### THE MIDC'S NEXT STEPS:

- Working with local systems to create compliance plans for the first standards
- Second proposed standards covering more areas identified in MIDC Act available for comment:
  - **Independence from the judiciary**
  - **Attorney workloads**
  - **Qualifications**
  - **Economic Disincentives or Incentives (forthcoming)**

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