

# Michigan’s Trial Level Indigent Defense System

## **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 44th 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.
  + Called for local control with statewide standards to define or ensure constitutionally adequate defense counsel.

# The Michigan Indigent Defense Commission

## **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 representative interests from the criminal justice system.**

**The Commission has a statutory 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 local systems to implement plans to meet the standards and measure the performance of systems in providing public defense services;
* Award state-funded grants to local systems to bring their systems 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.

## The Work of the Commission:

* In 2017, The Commission submitted to LARA a first set of four proposed minimum standards for indigent defense. The standards addressed:
  + Training and education of defense attorneys;
  + The initial client interview;
  + Access and use of experts and investigators; and
  + Counsel at first appearance and other critical stages.

LARA approved the standards in May 2017, starting a 180-day deadline for submission of compliance plans and cost estimates.

* In November 2017, MIDC received compliance plans from 132 local systems.
* The plans were subjected to a multi-level review process by Regional Managers, the Grant Manager, Senior Staff and where applicable, subcommittees of the Commission, prior to reaching the Commission for final review and approval or disapproval.
* At its December 2017 and January 2018 meetings, the Commission approved 16 of the compliance plans, returning the remaining 116 plans for additional work and resubmission. The majority of the disapprovals required local systems to reexamine the cost analysis associated with the plans.
* The Commission approved 55 resubmitted plans at its February and March 2018 meetings.
* To date, the Commission has approved 71 local system compliance plans, which total approximately $28 million in grant requests.
* The Commission will review the remaining 56 resubmitted plans at its April meeting.
* Where compliance plans are not approved by the Commission at its April meeting, local systems will have the opportunity to work with MIDC to submit a third and final revised plan.

NEXT STEPS:

* Receiving comments and holding a public hearing on proposed standards addressing independence from the judiciary, indigent defense caseloads, qualification and review of attorneys appointed in indigent defense cases and financial incentives and disincentives for indigent defense counsel
* Developing metrics to assess the provision of indigent defense services in Michigan relevant to national standards
* Conducting research studies to determine appropriate indigent defense caseloads and to assess the impact and success of the initial standards

**----------------------**

Loren Khogali, Executive Director - [lkhogali@michiganidc.gov](mailto:lkhogali@michiganidc.gov)

Marcela Westrate, Legislative Director - [mwestrate@michiganidc.gov](mailto:mwestrate@michiganidc.gov)

(517) 657-3066 [www.michiganidc.gov](http://www.michiganidc.gov)