



MICHIGAN INDIGENT
DEFENSE COMMISSION

March 30, 2020

Dear Indigent Defense Partners:

The Michigan Indigent Defense Commission (MIDC) held a Special Meeting on Friday, March 27th to discuss the impact of COVID-19 with respect to the implementation of MIDC minimum standards for indigent defense. The Commission acknowledged the unprecedented impact of COVID-19 on our state and local governments, the court system, indigent defense systems and other aspects of the state and local criminal justice systems. The response to COVID-19 is evolving on a daily basis and the Commission will continue to gather information and address questions with respect to implementation of the standards as they arise.

Compliance with MIDC Standards 2 & 4

The Commission emphasized that the constitutional right to counsel is a fundamental due process right, the observance of which is even more critical in times of crisis and isolation of incarcerated persons. At its meeting the MIDC acted by unanimously adopting the following motion:

The MIDC's standards for the timing of initial interviews and counsel appearing at arraignment and all critical proceedings remain in effect. The MIDC staff will work with funding units to facilitate all necessary modifications to compliance plans and/or budgets to ensure confidential attorney-client meetings take place remotely during the state of emergency and that attorneys appear in court on behalf of in-custody clients through technological means.

The passage of this motion reflects the available technological resources that can and should be utilized by local funding units to provide defense counsel with confidential, remote access to indigent defendants. This may be accomplished by telephone, video conferencing or polycom. Local funding units should expeditiously explore and employ potential solutions to facilitate remote meetings and appearances by counsel on behalf of in-custody criminal defendants. The MIDC is committed to supporting local funding units in making necessary adjustments within their current budgets to accommodate requests for tools used to facilitate these fundamental minimum standards.

Compliance with MIDC Standard 1

The Commission also took the following unanimous action with respect to continued compliance with the continuing legal education (CLE) requirements under Standard 1:

The annual requirement for continuing legal education as set forth in MIDC Standard 1 remains in effect. The Commission strongly recommends and would deem it to be in compliance that local funding units temporarily lift any restrictions prohibiting training by video as a method of compliance with the CLE requirement. The MIDC's staff will work with funding units to identify and publicize appropriate options for training by video or video conferencing.

Deadline for Submission of Compliance Plans

In recognition of the current stressors on the capacity of local government systems as they respond to the COVID-19 public health crisis, the Commission took action by passing a motion to extend the compliance planning deadline to **May 31, 2020**. The Commission strongly encourages those local funding units that are able, to work with MIDC Regional Managers to complete and submit compliance plans by the original April 30 deadline. The timing of the original deadline plays a significant role the MIDC's ability to learn and communicate the financial needs of each funding unit as part of the State of Michigan's appropriation process. The State's budget for FY 2021 will undoubtedly face pressures from COVID-19. As such, we ask that you communicate with your Regional Manager about your system's needs and consider submitting your Compliance Plan and Cost Analysis for FY 2021 as soon as feasibly possible.

Next Steps

Undoubtedly, local funding units' and indigent defense systems' responses to the COVID-19 pandemic will continue to evolve in response to the crisis. The Commission is committed to:

- gathering information about needs that arise as indigent defense systems respond to COVID-19;
- supporting indigent defense systems to identify and implement technological solution to enable compliance with the minimum standards; and
- working with local funding units to facilitate necessary adjustments to compliance plans and within current budgets to allow for continued compliance with the minimum standards.

Finally, the Commission is mindful of its role and that of defense attorneys as partners in the criminal justice system with prosecution, law enforcement and the courts. As such, it fully supports the widespread and collaborative efforts of the state and local criminal justice systems to assess the necessity of pretrial detention in pending and new cases, evaluate continued incarceration on certain sentences and the exercise of additional discretion in executing new warrants where no clear risk to the public safety exists. These are necessary and important steps to protect against the spread of COVID-19.

Sincerely,

Michael Puerner

Michael Puerner, Chair
Michigan Indigent Defense Commission

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