REFORMING MICHIGAN'S CRIMINAL INDIGENT DEFENSE SYSTEMS: CHIEF JUDGES' AND COURT ADMINISTRATORS' EXPERIENCES AND PERCEPTIONS

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ABSTRACT

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The need for improvement across Michigan's criminal indigent defense systems has long been recognized, and new legislation has created the opportunity to reform the quality of criminal indigent defense across the state. With the creation of the Michigan Indigent Defense Commission and the establishment of the first set of minimum standards for criminal indigent defense, this study uses this unique time in Michigan's history to study implementation of reform in the courts at a critical time.

Using implementation science and role theory to guide the study, key stakeholders—chief judges and court administrators—were surveyed anonymously across the State of Michigan. They were queried on the current state of criminal indigent defense in their jurisdiction, their perceptions on the new reform, and their role in implementing this new reform. Their experiences and perceptions provide insight into the critical role that key stakeholders' perceptions play in implementing reform in organizations.

Findings indicate that while there is widespread support for the reform effort for criminal indigent defense systems in Michigan, there is skepticism that the state will provide adequate funding in order to ensure the success of the reform. There are also concerns about the logistics of the reform as well as some confusion about the specific roles that chief judges and court administrators will fulfill in the implementation process. The study provides insight into the thought processes of key stakeholders at a critical starting point of reform implementation.

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CHAPTER 1: INTRODUCTION

Despite the universal understanding that a right to counsel requires competence of attorneys, parity between the prosecution and the defense, and adequate time and resources, it has been well-documented that many states struggle to provide basic levels of legal counsel for indigent defendants (Green, 2003; Lucas, 2013; Schulhofer & Friedman, 1993; Vick, 1995). Michigan's government has recognized this disparity in legal representation and has sought to address the systemic issues in the criminal justice system that result from a lack of resources, infrastructure, and accountability.

In an attempt to address the issues in the quality of criminal indigent defense, Governor Richard Snyder created the Indigent Defense Advisory Commission through an executive order in October 2011. The commission's role was to analyze and recommend improvements to Michigan's legal system. The commission recommended changes that became the foundation for legislation which created the Michigan Indigent Defense Commission (MIDC). The MIDC's role includes developing and providing oversight for the minimum standards of indigent defense as stated in the United States Constitution, as well as the state constitution of 1963, and the Michigan Indigent Defense Commission Act. The MIDC gathers data and creates standards in order to improve legal counsel to indigent defendants (MIDC, n.d.). Please see Appendix D for the text of the Michigan Indigent Defense Commission Act and Appendix E for the text of the act that amended the Michigan Indigent Defense Commission Act.

Michigan consists of 83 counties, and until the minimum standards were created, no oversight at the state level existed to ensure the protection of indigent criminal defendants' rights. With the creation of the Michigan Indigent Defense Commission, the state is reviewing

indigent defense across the state of Michigan, gathering data about the different systems across the counties, and creating minimum standards for criminal indigent defense that each county must follow.

There are three main models for providing indigent defense: (1) the assigned counsel model, (2) the contract model, and (3) public defender programs (Davies & Worden, 2009; Frederique, Joseph, & Hild, 2014; Majd & Puritz, 2009; Spangenberg & Beeman, 1995). In the assigned counsel model, judges choose which attorneys will provide indigent defense (Spangenberg & Beeman, 1995). This places defense attorneys in this system at a disadvantage because judges can remove defense attorneys or decide not to assign them in the future. In those appointed counsel systems for which judges directly control appointments, attorneys can be afraid of displeasing judges. Although judicial discretion can remove incompetent or unqualified attorneys, there is a lack of oversight in terms of ensuring that attorneys are not removed for personal reasons. A defense attorney that may be viewed as difficult because of the manner in which he or she advocates for the defendant is at risk for not being assigned to cases again (Spangenberg & Beeman, 1995). This lack of independence can create issues for defendants, who are relying on their attorneys to represent them, especially if attorneys' jobs are at stake if they are seen as creating problems in the court. The contract model is systematically flawed because it incentivizes hiring the lowest bidder, regardless of quality or legal competence (Spangenberg & Beeman, 1995). In contract models, there are rarely enough resources in terms of time, funding, or expert witnesses in order to provide a quality legal defense (Spangenberg & Beeman, 1995).

The MIDC recognized that there was no state oversight to ensure that defense attorneys for indigent defendants are adequately trained, that defendants received counsel during their first

appearance in court and at critical stages throughout their case, that counsel was prepared, and that they had access to independent investigators and could request these services for their defendants. Consequently, the first set of minimum standards addressed this lack of oversight on these issues. These minimum standards were approved by the Michigan Supreme Court and counties are required to report back to the MIDC about their progress in implementing these standards. Future sets of minimum standards will go through the same process of Supreme Court approval.

As social science research frequently focuses on practical issues in the real world, it is important that research on implementation of reform is pursued. Positive outcomes depend on successful implementation of effective reform (Fixsen, Blase, Timbers, & Wolf, 2001; Leschied & Cunningham, 2002). Understanding the context of reform implementation is necessary in order to successfully implement reform, which includes comprehensively understanding the individuals that will be implementing the policy as well as those that will be affected by it (Andrews & Bonta, 2010; Berman, 1978; Feeley, 1983; Harland & Harris, 1987). Part of understanding context requires understanding the goals of the reform and ensuring the implementation is studied in a comprehensive manner (Casper & Brereton, 1984). In order to understand context, the perspectives of key stakeholders as well as those in charge of implementing reform must be understood. When stakeholders and street-level implementers are not involved in creating and implementing new policies—and when their perspectives are not taken into account—criminal justice reform is more likely to fail—and this failure has been noted by researchers (Adler, 2007; DeLeon & DeLeon, 2002; Feeley, 1983; Fixsen, Naoom, Blase, Friedman, & Wallace, 2005; Hill, 2003; McGarrell, Rivera, & Patton, 1990). Research across various types of organizations has shown support for including employees and ensuring

support as an important method in increasing the likelihood of successful implementation (Ramarapu, Mehra, & Frolick, 1995; Salanova, Cifre, & Martin, 2004; Small & Yasin, 2000).

Changes that occur in the criminal justice system are inherently important as they impact the lives of real people and impact the perception of legitimacy of the whole system. This is why it is particularly important to understand and study reform implementation. A well thought-out plan can fail if stakeholders are not supportive of the reform, and a variety of issues can occur at the planning stage, especially if a comprehensive understanding of the context in which reform occurs is not present throughout the planning process.

In order to gain the support and commitment of key stakeholders, a comprehensive understanding of the context in which reform is implemented is necessary. This study seeks to not only examine how chief judges and court administrators define their roles when they are in charge of implementing reform that currently focuses on administration and recordkeeping, but also contribute to the literature on implementation science. Without surveying key stakeholders, it is difficult to know what their main concerns are in the reform process—and without knowing these concerns—it is impossible to address them.

Although this study specifically focuses on chief judges and court administrators (due to their leadership and administrative responsibilities in the courts) in Michigan as they prepare to implement reform in their criminal indigent defense systems across their jurisdictions, the findings can illuminate the responses of key stakeholders when they are faced with reform at the county level that has been largely engineered at the state level.

First Set of Minimum Standards

The first set of minimum standards was approved in summer 2016. They focus on four main areas: (1) training and education, (2) the initial client interview, (3) the availability and use of experts and investigators, and (4) having counsel at first appearance in court and other critical stages in front of a judge (MIDC, 2016). The standard covering training and education requires defense attorneys to continue their legal education so they stay current with legal skills that can assist indigent defendants. This standard covers knowledge of the law, knowledge of scientific evidence and applicable defense, knowledge of technology, and continuing education. The standard covering the initial client interview requires that "[d]efense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel's client" (MCL 780.991(2)(a)). This standard focuses on the timing and purpose of the interview, the setting of the interview, preparation for the interview—counsel is required to have copies of any relevant documents for the client's case, and evaluating the client's status in terms of the client's capability of participating in his or her own defense and understanding the charges against him or her. The standard covering the use of experts and investigators requires counsel to conduct an independent investigation of the charges as quickly as possible, request funding to secure an independent investigator to assist with defense in relevant cases, request funding for experts to aid in defense in relevant cases, and continuously evaluate the defendant's case "for appropriate defense investigations or expert assistance" (MIDC, 2016). The last standard, counsel at first appearance and other critical stages, requires assigning counsel to defendants immediately after they are determined to qualify for indigent defense, and once defendants qualify, they must have "appointed counsel at pre-trial proceedings, during plea negotiations and at other critical stages, whether in court or out of court" (MIDC, 2016). See

Appendix C for the full text of the first set of minimum standards. The MIDC has identified future areas that will be addressed through minimum standards. These areas include the number of cases each defense attorney will be responsible for, the qualifications of defense attorneys, fair compensation for defense attorneys, and the independence of the indigent defense function from the judiciary (MIDC, 2016).

All 83 counties in Michigan are required to comply with the minimum standards outlined by the MIDC. In order to move forward, the MIDC's Regional Consultants worked with court administrators, judges, and practitioners across counties to discuss compliance plans for the implementation of the minimum standards. Upon the adoption of standards by the Michigan Supreme Court, counties must provide the MIDC with their compliance plans within 180 days, and the MIDC has 60 days to approve the compliance plans. The MIDC collects data on the compliance of the minimum standards as required by the MIDC Act. Querying Michigan's chief judges and court administrators on their perceptions of indigent defense and their role in implementing the new minimum standards provided novel insight into reform implementation and how the perception of one's role influences their actions in light of reform.

The Roles of Chief Judges and Court Administrators

Chief judges and court administrators fulfill key roles in the criminal indigent defense systems in their counties. They both hold leadership roles and have administrative duties that are crucial to the operations of the court. In Michigan, there is some variation across courts in terms of what responsibilities are shared between chief judges and court administrators, and each court has its own unique culture. However, according to the Michigan Court Rules, chief judges have

specific duties.[1] Court administrators are crucial in that they manage the operations of the court in order to help ensure procedural due process, equal protection, and the efficient management of time and resources across court cases. Due to the critical roles that chief judges and court administrators fulfill, both were chosen to be surveyed for this study.

[1]Section C of MCR 8.110 states that chief judges have the following responsibilities:
"(1) A chief judge shall act in conformity with the Michigan Court Rules, administrative orders of the Supreme Court, and local court rules, and should freely solicit the advice and suggestions of the other judges of his or her bench and geographic jurisdiction. If a local court management council has adopted the by-laws described in AO 1997-6 the chief judge shall exercise the authority and responsibilities under this rule in conformity with the provisions of AO 1997-6.
(2) As the presiding officer of the court, a chief judge shall: (a) call and preside over meetings of the court; (b) appoint committees of the court; (c) initiate policies concerning the court's internal operations and its position on external matters affecting the court; (d) meet regularly with all chief judges whose courts are wholly or partially within the same county; (e) represent the court in its relations with the Supreme Court, other courts, other agencies of government, the bar, the general public, and the news media, and in ceremonial functions; and (f) counsel and assist other judges in the performance of their responsibilities.
(3) As director of the administration of the court, a chief judge shall have administrative superintending power and control over the judges of the court and all court personnel with authority and responsibility to: (a) supervise caseload management and monitor disposition of the judicial work of the court; (b) direct the apportionment and assignment of the business of the court, subject to the provisions of MCR 8.111; (c) determine the hours of the court and the judges; coordinate and determine the number of judges and court personnel required to be present at any one time to perform necessary judicial administrative work of the court, and require their presence to perform that work; (d) supervise the performance of all court personnel, with authority to hire, discipline, or discharge such personnel, with the exception of a judge's secretary and law clerk, if any; (e) coordinate judicial and personnel vacations and absences, subject to the provisions of subrule (D); (f) supervise court finances, including financial planning, the preparation and presentation of budgets, and financial reporting; (g) request assignments of visiting judges and direct the assignment of matters to the visiting judges; (h) effect compliance by the court with all applicable court rules and provisions of the law; and (i) perform any act or duty or enter any order necessarily incidental to carrying out the purposes of this rule.
(4) If a judge does not timely dispose of his or her assigned judicial work or fails or refuses to comply with an order or directive from the chief judge made under this rule, the chief judge shall report the facts to the state court administrator who will, under the Supreme Court's direction, initiate whatever corrective action is necessary.
(5) The chief judge of the court in which criminal proceedings are pending shall have filed with the state court administrator a monthly report setting forth the reasons for delay in the proceedings:
(a) in felony cases in which there has been a delay of 28 days between the hearing on the preliminary examination or the date of the waiver of the preliminary examination and the arraignment on the information or indictment; (b) in felony cases in which there has been a delay of 6 months between the date of the arraignment on the information or indictment and the beginning of trial; (c) in misdemeanor cases in which there has been a delay of 6 months between the date of the arraignment on the warrant and complaint and the beginning of the trial;
(d) in felony cases in which a defendant is incarcerated longer than 6 months and in misdemeanor cases in which a defendant is incarcerated longer than 28 days.
(6) A chief judge may delegate administrative duties to a trial court administrator or others.
(7) Where a court rule or statute does not already require it, the chief judge may, by administrative order, direct the clerk of the court to provide litigants and attorneys with copies of forms approved by the state court administrator. In addition, except when a court rule or statute specifies that the court or clerk of the court must provide certain forms without charge, the administrative order may allow the clerk to provide the forms at the cost of reproduction to the clerk."

Overview

In the following chapters, the current state of criminal indigent defense in Michigan, the literature on reform implementation, role theory, implementation science, the methodology utilized in this study, the findings, discussion, conclusion, and implications for future research will be covered. The next chapter provides background on the context of legal defense in Michigan and describes the development and status of the reform process. Chapter 3 discusses the theoretical foundation used to guide this study—specifically, implementation science and role theory. The methodology utilized is discussed in Chapter 4 and the findings are assessed in Chapter 5. Chapter 6 covers the discussion and Chapter 7 provides the conclusion, along with limitations and implications for future research.

CHAPTER 2: LITERATURE REVIEW

Current State of Indigent Defense

In order for the defense to function, it must be adequately funded and there must be parity between the defense and prosecution in terms of resources, experience, and quality of legal counsel. Unfortunately, this is rare across jurisdictions nationwide (Benner, 1974; Everett, 2004; Gershowitz, 2007; NLADA, 2008; Wallace, 2000).

The quality of indigent defense varies across the United States, but there is a consensus that underfunding of indigent defense is a chronic issue, leading to disparities in case outcomes and potentially violating the right to counsel guaranteed by the Sixth Amendment (Chiang, 2010; Chin, 2011; Chen, 1996; Citron, 1991; Drinan, 2010; Lemos, 2000; Pruitt & Colgan, 2010). Despite landmark rulings that solidify the right to legal counsel for indigent criminal defendants, many indigent defense systems fall short in implementing basic legal counsel (Anderson, 2011; Lucas, 2013; Uphoff, 2010). Many public defenders are so overburdened that it is not possible for them to effectively represent their clients (Chin, 2011; Cornwell, 2015; Drinan, 2009; 2010; Green, 2003; Logan, 2010). To address these issues, Michigan passed a statute in 2013, which created the Michigan Indigent Defense Commission (MIDC). This statute requires the MIDC to "implement minimum standards, rules, and procedures to guarantee the right of indigent defendants to the assistance of counsel as provided under amendment VI of the constitution of the United States and section 20 of article I of the state constitution of 1963…" MCL 780.991(2). Currently, judges and court administrators are in the process of implementing and preparing to implement minimum standards in Michigan courts.

Indigent defense research has explored disparities across state systems (Brown, 2010; Frederique, Joseph, & Hild, 2014; Laurin, 2015), but there is limited research regarding chief

judges' and court administrators' insights into these issues. There is a clear need for more research in order to improve the quality of indigent defense (Siegel, 2015; Worden, Davies, & Brown, 2010). The National Legal Aid and Defender Association's 2008 report on indigent defense systems in Michigan, entitled *A Race to the Bottom—Speed and Savings Over Due Process: A Constitutional Crisis,* discussed the need for more research on current indigent defense systems so that evidence-based policies and procedures can be created. The current reform in Michigan provides a unique opportunity to study judicial perspectives on indigent defense as well as the process of implementing reform for indigent defense systems across the state. Michigan's 83 counties have a variety of indigent defense systems, and some counties have more than one system, further complicating how indigent defense is provided (NLADA, 2008). As a result, the diversity of Michigan's counties (both in the systems that are provided and the variety of urban and rural courts) and the context of the research (the current implementation of reforms) provide an excellent opportunity for an in-depth research project. Understanding how chief judges and court administrators perceive their role in creating compliance plans and implementing the minimum standards in their counties can contribute to the understanding of role theory in reform implementation.

Many of the issues experienced across the country and in Michigan's counties related to indigent defense are a result of a lack of funding (Drinan, 2009; Gershowitz, 2007; Lucas, 2013; NLADA, 2008; Siegel, 2015). Funding is a major factor in a party's success in court. Marc Galanter's seminal work, *Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change*, outlines the major disadvantages that underfunded parties face in the courtroom. Galanter realistically portrays the differences between actors in terms of wealth and power (Galanter, 1974). He systematically compares the advantages of wealthier individuals and

organizations to average individuals that are not able to afford high quality attorneys (Galanter, 1974). Although these statements are obvious and taken for granted today, his research helped pave the way for testing disparities in outcome in courtrooms, especially as they relate to resource inequality. Many of the indigent defense systems in Michigan are underfunded, and an in-depth report from 2008 showed that all ten counties that were sampled in Michigan of varying population and demographic characteristics, suffered from constitutional violations (NLADA, 2008). While prosecutors' offices have also received attention for the lack of funding and resources they are subject to, prosecutors are generally better-funded than indigent defense systems in the state (NLADA, 2008). Underfunding indigent defense systems across the state puts indigent defendants at a distinct disadvantage. Since the party with the greater resources is more likely to win in court (Galanter, 1974), indigent defendants are often at a disadvantage in court and do not have the same opportunities for defense as their wealthier counterparts that are able to afford private legal defense. The new reform is meant to address this disparity in funding, and as chief judges and court administrators are in charge of implementing the new reform, it is important to understand how they conceive of their role in doing so.

Significance of Defense

The defense protects individuals' constitutional rights through a variety of functions. The defense helps ensure fair sentencing, pre-trial release, guards against self-incrimination, wrongful conviction, and helps to ensure a fair trial with a fair process of jury selection. Prosecutors exercise a large amount of discretion and power in their role (Albonetti, 1986; Feeley, 1983; Jacoby, 1980; Kress, 1976; Starr & Rehavi, 2013; Worrall & Nugent-Borakove, 2008). Because they choose which defendants to prosecute and which charges to pursue, prosecutors' discretionary decision-making power can impact lives and communities in a unique

and serious manner (Starr & Rehavi, 2013). Although prosecutors' offices also suffer from underfunding, their access to more resources than their indigent defense legal counsel counterparts creates a serious ethical issue in the criminal justice system. In an adversarial system, defense attorneys play a very important role. Not only do they provide a defense for accused individuals as is constitutionally mandated, but they act as a counterweight and a check on the prosecution and law enforcement investigations (Hessick & Saujani, 2002). State interests are harmed by wrongful convictions, as they undermine the legitimacy of the system and punish innocent individuals. Additionally, as innocent people are wrongfully convicted and punished, guilty individuals that were not apprehended by law enforcement are free to continue to victimize others. The cost of prosecuting an innocent person reverberates throughout a community and undermines the legitimacy of the criminal justice system. No matter how experienced or ethical law enforcement, investigators, and prosecutors can be, they are still prone to mistakes and cognitive biases (Kassin, Dror, & Kukucka, 2013; Nickerson, 1998; NLADA, 2008). Therefore, it is particularly important for the defense to be as well-funded, trained, and have access to an equal amount of resources as the prosecution. When the prosecution is much better funded than the defense, indigent defendants are further disadvantaged, and the defense is unable to fulfill the important role of check on the prosecution and law enforcement, as well as the many other important functions that ensure the protection of defendants' rights.

The NLADA's investigation revealed that while there are constitutional violations across the state with respect to indigent defense, there are also egregious ethical violations. For example, in Ottawa County, defense attorneys rely on the prosecution to provide more information for the purposes of investigating their client. "Perhaps the most shocking revelation, acknowledged by both defense attorneys and the prosecuting attorney, was that when additional

investigation is needed, the common practice is for the defense attorneys to call the prosecuting attorney and ask him to have law enforcement do it or in some cases they will call the sheriff directly" (NLADA, 2008, p. 68). When the defense relies on the prosecution to gather more information instead of conducting an independent investigation, there is a major conflict of interest and there is no check on the prosecution. Regardless of the ethical integrity and training of local law enforcement, there is no guarantee that the correct person was arrested for a crime. It is the defense's responsibility to conduct independent investigations in order to build a case. Because of this common practice in Ottawa County, the defense cannot fulfill its role.

Models of Indigent Defense Delivery

There are three main systems for delivering indigent defense: (1) the assigned counsel model, (2) the contract model, and (3) public defender programs (Davies & Worden, 2009; Frederique, Joseph, & Hild, 2014; Majd & Puritz, 2009; Spangenberg & Beeman, 1995).

Assigned Counsel System

The assigned counsel model consists of private attorneys that are assigned to indigent clients, either through a specific system or "an ad hoc basis" (Spangenberg & Beeman, 1995, p. 32). The "ad hoc program" relies on the court to appoint a defense attorney, without established criteria or a systematic method. In this system, lawyers are sometimes assigned based on which attorney is present in court during arraignment (Spangenberg & Beeman, 1995). They are paid by the hour or are paid a flat fee in each case. When cases require expert witnesses or independent investigations, attorneys need to petition the courts to secure the extra funding. Attorneys are discouraged from petitioning the court for extra funding in many cases, especially since this can slow down the processing of cases and necessarily requires more funding, which can strain relationships between the judges that assign counsel and the attorneys that hope to be

assigned to cases (Siegel, 2015). The ad hoc program can create conflicts of interest as appointments are made by judges, requiring attorneys to maintain positive relationships with judges in order to continue to be assigned to cases (Majd & Puritz, 2009). Additionally, the lack of standards and minimum qualification criteria translates to attorneys that are inexperienced or unable to find work elsewhere being assigned to indigent defendants (Spangenberg & Beeman, 1995).

Instead of ad hoc programs for assigned counsel, some jurisdictions use a more organized approach, known as the coordinated assigned counsel program. This type of program is defined by the inclusion of administrative oversight (Spangenberg & Beeman, 1995). The advantage of this type of program is that it requires standards in order for attorneys to participate in indigent defense. Under this system, attorneys are systematically assigned and rotated, and the specifics of a case are taken into consideration when counsel is appointed (Spangenberg & Beeman, 1995). Unfortunately, funding for independent investigations and expert witnesses must still be petitioned for, and although there is more organization in this system, it does not eliminate issues of lack of judicial independence (Spangenberg & Beeman, 1995).

Contract System

The second type of system is defined by contracts between attorneys and jurisdictions. Contracts can state that "some or all of the indigent cases in the jurisdiction" will be handled by the attorneys or organizations that have signed the contract (Spangenberg & Beeman, 1995). Contract programs are diverse, but can usually be categorized as either fixed-price contracts or fixed-fee-per-case contracts (Spangenberg & Beeman, 1995). In fixed-price contracts, a flat fee is provided for handling all of the cases throughout the duration of the contract to the lawyers, law firm, or other organization such as a bar association. This single fee covers representation

for indigent defendants, including any supplementary investigations or expert witnesses that are needed for any of the cases. Unfortunately, the contract is not adjusted if particularly complex cases arise or if the number of cases increases dramatically. This incentivizes processing cases as quickly as possible for as cheaply as possible, leaving indigent defendants at a major disadvantage against better-funded prosecutors (Majd & Puritz, 2009). Additionally, it also incentivizes hiring the lowest bidder, without consideration for quality of service. There have been many criticisms of fixed-price contracts (Lemos, 2000; Majd & Puritz, 2009; NLADA, 2008). In *State v. Smith* in 1984[2], Arizona's Supreme Court ruled that the fixed-price contract system is unconstitutional due to the lack of consideration of time spent per case, the lack of funding for expert and support services, the lack of standard qualifications due to hiring the lowest bidder, and a lack of consideration for the diversity of cases.

An alternative to fixed-price contracts is the fixed-fee-per-case contract model. In this model, the contract is limited to a specific number of cases, and each case is paid for by a fixed fee. Additionally, the funding needed for supplementary investigative services, expert witnesses, and support staff is built into the contract (Spangenberg & Beeman, 1995). After the specific number of cases in the contract has been completed, the contract can be extended or renegotiated. Although this system incentivizes higher quality representation than the fixed-price contract system, it is much rarer. Jurisdictions typically opt for the fixed-price contract system in order to limit the cost of providing indigent defense (Spangenberg & Beeman, 1995). Unfortunately, those who suffer most from these cost-cutting measures are in a powerless position to demand higher quality representation. Not only do indigent clients suffer, but jurisdictions also open themselves up to scrutiny and costly litigation that can result "from claims

[2] See *State v. Smith,* 140 Ariz. 355 (1984)

of ineffective assistance of counsel" (Spangenberg & Beeman, 1995, p. 35). One study found that counsel provided through contracts processes cases more quickly (Houlden & Balkin, 1985), which creates a risk that indigent defendants are receiving low-quality legal representation. The contract system remains popular due to the certainty of cost it provides, allowing jurisdictions to manage their budgets more easily (Spangenberg & Beeman, 1995). The assigned counsel system cannot provide certainty in terms of cost, making the contract system more attractive to counties. Although contract programs incentivize rapid case processing and discourage attorneys from spending more time on complex cases, they can be improved by requiring attorneys to be well-trained and experienced, as well as providing funding within the contract to cover support services. Regardless of the model chosen, it is important to have administrative oversight over any system, but this is often lacking in contract models and assigned counsel models (Spangenberg & Beeman, 1995).

Public Defender System

The third type of system is the public defender program, which is defined by an organization that deals strictly with indigent defense and maintains support personnel (Felice, 2000; Spangenberg & Beeman, 1995). This organization can be public or a private nonprofit organization that maintains a staff and represents indigent defendants in their jurisdiction. Permanently employing attorneys in order to represent indigent clients sets this system apart from the assigned counsel and contract systems (Spangenberg & Beeman, 1995). Jurisdictions with a public defender system must also have another system (such as a contract program or assigned counsel program) in place in order to manage cases in which there is a conflict of interest in cases with multiple defendants or other sources of conflicts of interest (Spangenberg & Beeman, 1995).

Public defender programs exist in various jurisdictions, but are more common in jurisdictions that have over 750,000 residents (Spangenberg & Beeman, 1995). There are obvious advantages to the public defender model as it necessitates hiring a staff dedicated to handling criminal cases. This helps ensure higher quality representation and access to support staff. Unfortunately, this system is also frequently underfunded, leaving high caseloads that impede the likelihood of effective legal counsel (Drinan, 2010). This system is arguably better than the assigned counsel and contract system, but lack of funding can create issues that are experienced in the other two systems as well—including time and resource inadequacies that incentivize quick case processing (Spangenberg & Beeman, 1995).

Many states utilize a combination of these models, and some states include counties that use a combination of these models. Michigan is an example of such a state. Since counties are responsible for providing indigent defense in Michigan, all three types of systems can be seen across counties, with some counties employing multiple models. Funding issues largely drive the decision to implement one type or a combination of the systems in a county (Drinan, 2012; Spangenberg & Beeman, 1995). Even as reforms are implemented, there are great challenges to providing indigent defense. The cost of providing representation continues to increase, and budgets are rarely equipped to meet the demand for services (Spangenberg & Beeman, 1995). Additionally, policy changes can lead to an increase in arrests and a subsequent influx of indigent defendants (Spangenberg & Beeman, 1995).

In contract systems and assigned counsel systems, there is not an effective check to make sure that attorneys are not overburdened. In fact, lawyers are incentivized to take on as many cases as possible in order to increase their income, despite the obvious time and resource limitations. In the public defender system, there is a clear advantage in which attorneys are able

to focus all of their efforts on criminal defense, although issues of overburdened caseloads can also occur when such systems are overworked and underfunded (Spangenberg & Beeman, 1995; Worden et al., 2010).

Diversity of Michigan's Counties

Michigan was ranked 44th out of 50 states in terms of per capita spending for indigent defense (NLADA, 2008). This low ranking is further complicated by the lack of standardization across counties. A lack of a statewide system and the diversity in terms of demographics and population size of Michigan's 83 counties results in indigent defense systems that vary greatly from county to county. Until the Michigan Indigent Defense Commission created minimum standards, there was no oversight at the state level and no minimum standards to ensure even basic quality control. Each county chose to evaluate attorneys at will, sometimes transferring the responsibility of quality control to judges, relying solely on judges' subjective opinions. Michigan's urban and rural counties encounter varying criminal defendant populations and budgetary issues. These differences can impact the manner in which indigent defense models are implemented. Rural counties particularly must navigate the issues of familiarity between court actors that can leave defendants as outsiders (Eisenstein, Flemming, & Nardulli, 1988). Because Michigan's counties are burdened with financing indigent defense (alternatively, some states opt for statewide funding or a combination of statewide and local funding), the variation in socioeconomic status of residents across counties further complicates indigent defense delivery systems and leaves the most financially vulnerable counties least able to provide criminal indigent defendants with legal counsel (NLADA, 2008).

Violations of the Constitution and the American Bar Association's Principles

Although in 1857 Michigan was among the first states to provide indigent defense, the responsibility was given to counties, without oversight or guidance from the state (NLADA, 2008). Until the MIDC was created, no uniformity or standardization was available across the state, leading to constitutional violations. A 2008 report from the National Legal Aid and Defender Association chronicled the major issues across ten counties in Michigan. The lengthy investigation resulted in findings of constitutional violations across the state, and all of the counties sampled were deemed to provide constitutionally inadequate legal defense services (NLADA, 2008). This extensive study spanned a full year and covered ten counties that were deemed representative of the state. The study focused on Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa, Shiawassee, and Wayne County.

The report found that egregious constitutional violations occur across Michigan's indigent defense systems. Some of these violations include major conflicts of interest in which judges are able to choose the defense attorneys, a lack of confidential meetings, unqualified attorneys representing defendants, a lack of preparation from legal counsel, major issues in inadequate funding, and the processing of cases for the sake of efficiency over appropriate representation (NLADA, 2008).

Quick Disposal of Cases

In some counties, the need to quickly dispose of cases is the highest priority (NLADA, 2008). Many counties rely on the assigned counsel model, the flat-fee contract model, or a mixture of both. Both models encourage disposing of cases as quickly as possible since spending more time on a case decreases the amount of money defense attorneys are able to make (Anderson, 2011). The models for providing indigent defense sometimes vary within counties

depending on the court. Some courts adopt hourly rates, while others choose fee schedules. A fee schedule determines the monetary amount rewarded for completing a specific task, without consideration for the time it takes to do so. Both approaches encourage attorneys to spend as little time as possible on a criminal case. Fee schedules and flat-fee contracts are used by counties that experience burdensome caseloads and are seeking to decrease the costs of providing indigent defense. Unfortunately, counties that rely heavily on contracts generally choose the lowest bidder without taking into account any other factors (NLADA, 2008).

Lack of Accountability and Uniform Review Process

In violation of the American Bar Association's tenth principle of a public defense delivery system, there is a lack of accountability for defense attorneys that work in indigent defense systems across Michigan. Counties do not regularly evaluate attorneys to ensure quality and competency. Rather, individual judges can intervene and remove attorneys that are not performing up to their standards, but this is a highly subjective process that serves to remove only attorneys that have come to the attention of judges. There is not a uniform mechanism in place to ensure that attorneys serving indigent clients are competent, independent, or experienced (NLADA, 2008).

Lack of Judicial Independence

In addition to a lack of accountability and uniform review process, judges have an enormous amount of power over defense attorneys that work under the assigned counsel model or the contract model. Because judges assign attorneys to indigent clients in the assigned counsel model, attorneys can feel pressure to behave in a manner that will please judges (Majd & Puritz, 2009). The same is true for attorneys that work under a contract system in some counties in which judges have an influence over deciding who is awarded a contract to provide indigent

legal defense. Upsetting or annoying a judge in any manner leaves the defense attorney vulnerable to losing a contract or not being assigned to clients by that judge in the future. As a result, the relationship with the judge necessarily takes priority over the relationship with the client. Unfortunately, in assigned counsel models, attorneys must petition the court in order to secure funding for supplementary investigations, expert witnesses, or support staff (Majd & Puritz, 2009). This is costly and slows down the processing of cases, leaving attorneys in a vulnerable position with judges that are interested in processing cases as quickly as possible. There is no incentive to petition the court for extra resources. In fact, the opposite is true. Attorneys have an incentive to keep the judge satisfied with their performance, and slowing down case processing by requesting costly services works against defense attorneys. Several investigations found numerous cases across the state in which attorneys made it clear that they never petitioned the court for extra resources to advocate for their client (NLADA, 2008; Siegel, 2015).

Lack of Parity Between Defense and Prosecution

The American Bar Association's eighth principle regarding parity between public defenders and prosecutors is routinely violated across the state (NLADA, 2008). Chief Justice Warren Burger discussed the importance of parity of resources between the defense and the prosecution.[3] Most counties are funding the prosecutor's office more generously than the indigent defense system (Gershowitz, 2007). Local law enforcement receives funding from state and federal sources more frequently and in a greater amount than indigent defense systems (NLADA, 2008). This creates a disadvantage for the defense before cases are even reviewed.

[3] See *Argersinger v. Hamlin*, 407 US 25 (1972)

A study on post-conviction public defense highlighted the experiences of criminal defendants, attorneys, and judges with public defense (Siegel, 2015). The appellate level of indigent defense receives state funding, but Siegel's work highlights the need for more research as well as more resources in order to increase the efficacy of indigent defense at the appellate level as well as the trial level. Evidence-based research for indigent defense systems is rare, in part, due to the lack of data collection across the systems. There is a need for greater data collection in order to increase research and insight into the systems (Siegel, 2015).

Creation of the Michigan Indigent Defense Commission to Address Issues

Michigan is currently undergoing indigent defense reform in accordance with the state's new legislation. A 2013 statute created the Michigan Indigent Defense Commission (MIDC). MCL 780.991(2) requires the MIDC to "implement minimum standards, rules, and procedures to guarantee the right of indigent defendants to the assistance of counsel as provided under amendment VI of the constitution of the United States and section 20 of article I of the state constitution of 1963…" The MIDC is a result of Executive Order 2011-12, which was issued by Governor Snyder in October 2011. It created the Indigent Defense Advisory Commission. The commission analyzed and recommended changes for Michigan's legal system. The commission's findings provided a foundation for the legislation that created the MIDC. The MIDC's role includes developing and providing oversight for the minimum standards of indigent defense as stated in the United States Constitution, as well as the state constitution of 1963, and the Michigan Indigent Defense Commission Act. The MIDC gathers data and creates standards in order to improve legal counsel to indigent defendants (MIDC, n.d.).

The minimum standards are designed to address the myriad of issues in indigent defense systems statewide. The first set of minimum standards was submitted to the Michigan Supreme

Court for approval in January 2016. These minimum standards cover major issues related to indigent defense that have plagued the state, and include requirements for training and the continuing education of defense attorneys, having legal counsel during the first appearance in court and throughout critical stages, initial client interviews, and access to supplementary investigation services and expert witnesses (MIDC, 2016). The Court has six months to review and approve the standards. After approval, per the MIDC Act, every local indigent defense system must provide a plan that details how the standards will be implemented within that system.

Discretion, Court Culture, and Implementing Reform

Prior attempts to implement reform in the court setting and other complex organizations have experienced many issues, and multiple cases indicate that a lack of a comprehensive understanding of the problem contributes to this failure (Adler, 2007; DeLeon & DeLeon, 2002; Hill, 2003). In order to address these failures, the perspectives of key stakeholders—in this case chief judges and court administrators—must be taken into account. In order to study the implementation of the new minimum standards for criminal indigent defense in Michigan, it is important to understand the perspectives and experiences of the chief judges and the court administrators that will be in charge of implementation in their jurisdictions.

Disparities across the criminal justice system can be attributed to discretionary decision-making on the part of criminal justice actors (Albonetti, 1991; Anderson, 2012; Feeley, 1973; Leiber, Peck, & Rodriguez, 2013; Lipsky, 1980; Maynard-Moody & Musheno, 2003; McCleary, 1978). This is especially true in the judiciary, where judges have a lot of power in interpreting statutes and in the administration of justice in the courts. Studies of the judiciary frequently focus on decision-making at the federal level. Studies of the United States Supreme Court are

most common (Bailey & Maltzman, 2011; Baum 1997; 2006; 2009; Epstein & Knight, 1997; Epstein & Kobylka, 1992; Jacobs & Smith, 2011; Maltzman, Spriggs, & Wahlbeck, 2000; Segal & Spaeth 1993; 2002). State-level studies are infrequently published. A study that focuses on state-level judges, and especially one that focuses on role theory and reform implementation, provides a unique opportunity to contribute to the literature. The quality of procedural justice depends highly on the court actors that are involved in the process. Without understanding chief judges' and court administrators' perspectives, researchers are unable to fully explain the discretionary decision-making process in the courts. Additionally, because most cases are never appealed, the decisions made in lower courts impact society greatly (Segal & Spaeth, 1993). This makes it particularly important to study and understand judicial perspectives in lower courts.

Because criminal justice cases are complex and outcomes are greatly affected by judicial discretionary decision-making, it is particularly important to gather and analyze data on the manner in which judicial perspectives influence the current indigent defense systems across Michigan's counties and the manner in which reform will be implemented by these actors.

CHAPTER 3: THEORETICAL FRAMEWORK

Implementation Science

Implementing reform in any setting is challenging, and understanding the context in which implementation occurs is important (Fixsen, Blase, Timbers, & Wolf, 2001; Fixsen, Naoom, Blase, Friedman, & Wallace, 2005; Leschied & Cunningham, 2002). Previous research has indicated that reforms can fail for a variety of reasons, including a lack of a comprehensive understanding of the context as well as not considering the perspectives of key stakeholders involved in the reform (Adler, 2007; Andrews & Bonta, 2010; Berman, 1978; Casper & Brereton, 1984; DeLeon & DeLeon, 2002; Feeley, 1983; Harland & Harris, 1987; Hill, 2003; McGarrell, Rivera, & Patton, 1990). Feeley captures this serious concern:

> Scholars are finding that many innovative programs fail in their implementation. This book suggests that the picture is bleaker: the causes of failure are found at every stage of planned change. Often, failure is rooted in conception, in a fundamental misunderstanding of the nature of the problem, the dynamics of the system, the nature of the change process, and attention to detail at the service delivery level. (Feeley, 1983, p. 25)

Understanding context is crucial, and the current study examines the perspectives of key stakeholders—chief judges and court administrators. Understanding their perspectives on the current state of criminal indigent defense, the new reform, and their concerns about the new reform can contribute to the literature on reform implementation in the courts. As reform in complex organizations such as the courts is difficult to successfully implement, there is a need for more research on the views of the key stakeholders that are charged with reform implementation.

The literature on implementation science research indicates that understanding the strengths and weaknesses of the organization prior to reform is paramount (Fixsen, Naoom, Blase, Friedman, & Wallace, 2005). If reform is top-down—as it is with state minimum standards that counties are charged with implementing—those in charge of making that reform happen in their organizations are too often not included in the process. Ensuring that key stakeholders within the organization are on board with the need for reform may sound simple, but reform implementation fails when the organization's leaders and stakeholders are not supportive (Fixsen, Naoom, Blase, Friedman, & Wallace, 2005; Petersilia, 1990), and ensuring support from stakeholders and implementers has been linked to successful reform implementation (Ramarapu, Mehra, & Frolick, 1995; Salanova, Cifre, & Martin, 2004; Small & Yasin, 2000).

To better understand the critical role that stakeholders play in reform implementation across the courts in Michigan, the theoretical framework provided by implementation science and role theory guided this study. Implementation facilitators include staff attitudes, understanding on the part of stakeholders, and support of the reform. Barriers to implementation include lack of funding, knowledge, belief in usefulness, motivation, and managerial support (Fixsen, Naoom, Blase, Friedman, & Wallace, 2005). Key stakeholders influence these areas—so their support and understanding in shaping the reform and implementing it is paramount. The National Implementation Research Network comprehensively investigates implementation science and the barriers and facilitators to successful implementation. Innovations are not implemented successfully due to multiple barriers—including a lack of support at multiple levels—such as the practice level, organization level, and system level (Aladjem & Borman, 2006; Joyce & Showers, 2002; Nord & Tucker, 1987; Schofield, Bourke, & Leonard, 2004).

Although this specific research is from education reform, it is still relevant to criminal justice reform as both courts and schools are organizations that have multiple stakeholders and multiple decision-points in terms of implementing reform. In the context of the courts, the judges and administrators are critical stakeholders at the practice, organization, and system levels.

Previous research on implementation indicates that in order for reform to be successfully implemented, the details of the reform must be clear and specific (Bauman, Stein, & Ireys, 1991; Dale, Baker, & Racine, 2002; Winter & Szulanski, 2001). Stakeholders and implementers must understand the logistics of the reform and what their role will be in implementation. Recognizing this, the current study taps into the insights of chief judges and administrators in order to understand not only their perceptions, but how they conceive of their role in this process.

Role Theory

The current study examines how chief judges and court administrators define their roles when they are charged with implementing reform involving administration and recordkeeping, and how the context of reform can contribute to its success or failure in implementation. The experiences and perspectives of the chief judges and court administrators charged with reform implementation can provide valuable insight and contribute to the body of knowledge of implementation science. Role Theory provides a useful framework from which to understand chief judges' and court administrators' perceptions related to reform implementation and the part they play in implementing the new minimum standards. "The basic premise of role theory is that individuals act differently within their institutional context than they do when acting in relative isolation…[t]hus, a judicial actor's role is a pattern of behavior that is determined by his expectations, the normative expectations that others have for him, and other factors which inform the actor's conception of his function in the judicial system" (Smith, 1990). In order to better

understand reform implementation in indigent defense systems across Michigan's counties, it is imperative to understand how the individuals charged with implementing this reform conceive of their roles in relation to the new minimum standards. Surveying chief judges and court administrators in circuit and district courts about their current perceptions of indigent defense, their perceptions of the new reform, and their perceptions about their role in implementing this new reform can contribute to the literature on role theory and reform implementation in organizations.

Purpose of the Study

The purpose of the study was to explore the perspectives of chief judges and court administrators as they relate to the current state of indigent defense, the new reform, and their role in the implementation of the new reform in order to contribute to the knowledge in the field of implementation science. Much of the literature that focuses on judicial perspectives explores the United States Supreme Court (Bailey & Maltzman, 2011; Baum 1997; 2006; 2009; Epstein & Knight, 1997; Epstein & Kobylka, 1992; Jacobs & Smith, 2011; Maltzman, Spriggs, & Wahlbeck, 2000; Segal & Spaeth 1993; 2002). The research related to state-level judges is largely missing. Additionally, the research on indigent defense focuses on the experiences of defense attorneys, clients, and the models of indigent defense delivery. The research on indigent defense and chief judges' and court administrators' involvement is also largely missing, especially in the State of Michigan.

Siegel (2015) expanded the literature on indigent defense through a report on indigent defense at the appellate level in Michigan, which included qualitative interviews with judges. However, indigent defense trial level experiences have not been explored. Additionally, this unique time in Michigan's history as it implements state-wide reform was not yet explored. As

indigent defense undergoes systematic changes across the State of Michigan, the challenges and concerns of judges and court administrators can provide insight into making organizational changes at the county level. This insight can be used to further explore and strengthen the implementation of minimum standards across Michigan, as well as provide valuable information to other states that are considering, or in the process of, reforming their indigent defense systems. In addition to these practical insights that can potentially contribute to the State of Michigan, the findings from this study can help contribute to the understanding of the role of stakeholders in reform implementation. The literature on implementation science is growing, and this study can help illuminate the role of stakeholders' perspectives in implementation across complex organizations, especially reform that is engineered at the state level, yet implemented by county stakeholders. This study was exploratory and it capitalized on the unique situation in Michigan as it is currently undergoing reforms in indigent defense.

CHAPTER 4: METHODOLOGY

Chief Judges and Court Administrators

Chief judges and court administrators were surveyed on the current state of indigent defense and the implementation of the new minimum standards. Chief judges and court administrators have leadership and administrative responsibilities that affect the way in which indigent defense systems operate in their courtroom. Consequently, both groups were surveyed. Additionally, response rates among judges have been historically low. In order to increase the response rate and have a more comprehensive picture of reform implementation, chief judges and court administrators were targeted to respond to the survey. The addition of court administrators provided a more holistic understanding of indigent defense systems across Michigan. After standards are approved, courts have 180 days to implement the new changes and provide evidence to the MIDC that they are compliant with the standards. This work will likely be the responsibility of court administrators in many counties, so their insight and perceptions of the new reform represented an untapped and very valuable resource for the understanding of reform implementation in the indigent defense systems across Michigan's counties.

Foundational Interviews

As part of the groundwork for designing the current study, three subject-area experts in Michigan's criminal indigent defense systems were interviewed. An employee from the MIDC who was instrumental in research and in creating the minimum standards for criminal indigent defense was interviewed in April 2016. Two individuals from the American Bar Association were also interviewed. In addition to these experts, a phone interview with two researchers from American University regarding the practical challenges of researching indigent defense was held

in April 2016 so their insight on creating effective survey instruments in this area could be applied to create a comprehensive survey instrument. The information gleaned from these interviews provided a detailed background of the current state of Michigan's indigent defense systems across the state. In addition to discussing the current state of indigent defense, the interviews also delved into the creation of the MIDC, the politics surrounding different models of criminal indigent defense delivery, the weaknesses of each model, and the issues that the new minimum standards are intended to address. The interviews were very useful in providing an understanding of the context in which the reform is currently being implemented. They were also helpful in providing an understanding of the way in which discretionary decision-making by chief judges and court administrators impacted the way indigent defense was provided, and the potential manner in which it could influence reform implementation.

Research Questions

1). How do chief judges perceive the current state of indigent defense in their jurisdiction?

2). How do court administrators perceive the current state of indigent defense in their jurisdiction?

3). How do chief judges perceive the new reform?

4). How do court administrators perceive the new reform?

5). How do chief judges perceive their role in implementing the new reform?

6). How do court administrators perceive their role in implementing the new reform?

The research questions focused on chief judges' and court administrators' experiences and perceptions of the current state of indigent defense, the new reform, and their role in implementing the new reform. The first and second research questions were explored through a section in the survey that queries chief judges and court administrators about the current state of indigent defense in their jurisdiction. This brought insight into chief judges' and court administrators' opinions of current issues and the process through which indigent defendants receive legal counsel. The third and fourth research questions were explored through a section in the survey that queried chief judges and court administrators about their familiarity with indigent defense reforms in Michigan, how they perceive the reforms will impact their jurisdiction, and their overall perceptions of these reforms. The fifth and sixth research questions focused on how chief judges and court administrators perceive their role in the implementation of the new minimum standards. See Appendix A for the survey instrument.

The survey was distributed electronically to chief judges and court administrators in district and circuit courts in the State of Michigan. District courts in Michigan are limited jurisdiction courts and circuit courts are general jurisdiction courts. The survey consisted of both closed-ended questions and open-ended questions. Both Likert Scale questions and open-ended questions were chosen for the survey to capture as comprehensive picture of the response to indigent reform implementation as possible. Open-ended questions were chosen in some sections so that survey respondents were able to provide new information and allow new themes to emerge. Chief judges and court administrators in circuit and district courts in all 83 counties in Michigan received an invitation to participate in the survey.

Sampling and Recruitment

The MIDC employee that participated in the foundational interview was sent a copy of the survey instrument so that it could be reviewed and checked for sensitive or controversial language. He has worked on the new minimum standards and is familiar with the judicial community in Michigan. In addition to his insights, Michigan's State Court Administrator reviewed the survey instrument. Based on the feedback, the survey was adjusted, and the new version was distributed. The State Court Administrator sponsored the survey. He briefly wrote about the research project and forwarded the description of the survey, enclosure letter, and SurveyMonkey link to all of the chief judges and top court administrators in every Michigan county.

Chief judges and court administrators in both circuit and district courts in all 83 counties were sent a copy of the survey through SurveyMonkey along with a cover letter explaining the research project on March 8, 2017. See Appendix B for a copy of the cover letter. This survey was exploratory and the goal was to collect as many surveys from chief judges and court administrators as possible. Percentages of answer categories across closed-ended questions indicated how respondents relate in terms of viewpoints (and Kruskal-Wallis H-test results indicated whether differences are statistically significant), while open-ended questions were coded according to themes that emerged.

Analysis Plan

A survey with closed-ended and open-ended questions was chosen because closed-ended questions allow for a direct comparison of data while open-ended questions provide an opportunity to find new themes and information that would not otherwise be uncovered (Shadish, Cook, & Campbell, 2002). Frequencies and percentages were used to explore the characteristics

of respondents. Additionally, respondents' perceptions of defense systems were compared by the position held, type of court, county type, and delivery systems for providing indigent defense. The comparison was conducted using the Kruskal-Wallis H-test. The Kruskal-Wallis H-test is used for examining the bivariate relationship between categorical independent variables and ordinal dependent variables—such as Likert scale questions (Kruskal & Wallis, 1952). The Kruskal-Wallis H-test works by creating a sum of the ranks in each category of the independent variable. For example, in one of the Likert scale questions, respondents were provided the following statement: "Indigent defense reform was necessary in Michigan." Respondents had five response options: strongly disagree, disagree, neutral, agree, or strongly agree. The results of the Kruskal-Wallis H-test used one of the independent variables—the position held by the respondents—to create a sum for the responses for each position. The response options were assigned a numerical value and summed, allowing a comparison across the categories (chief judge, court administrator, and other). Due to the small sample size, these five response options were collapsed into three options: disagree, neutral, and agree. This coding strategy was used for all of the following Kruskal-Wallis H tests.

In addition to the Kruskal-Wallis H-test, a chi-square test was performed as a supplementary analysis, and the findings were consistent. However, considering that the dependent variables (Likert scale questions) are ordinal as opposed to categorical (and chi-square is more appropriate for categorical variables), the Kruskal-Wallis H-test is the more appropriate test for this data set. The Kruskal-Wallis H-test still produces chi-square statistics because the Kruskal-Wallis H-test statistics have a similar chi-square distribution (Kruskal & Wallis, 1952). Using the Kruskal-Wallis H-test, each of the Likert scale questions were subdivided and analyzed based on whether the respondent was a chief judge or court administrator, whether they

were from a circuit or district court, whether they were from a rural or urban county, and the type of indigent defense delivery system used in their jurisdiction.

The open-ended survey questions provided respondents an opportunity to introduce new information that is not already covered in the closed-ended questions, and the responses from the open-ended questions were coded. The themes that emerged are described in the following chapter.

CHAPTER 5: FINDINGS

Characteristics of Respondents

A total of 62 individuals responded to the survey, with a relatively even split between chief judges and court administrators (41.9% held the position of chief judge, 50.0% held the position of court administrator, and 8.1% held another position—such as circuit judge or juvenile court administrator/family court referee). The overall response rate was 19.5% as 57 respondents were either chief judges or court administrators out of a total of 292 chief judges and court administrators (five respondents held other positions). The response rate for chief judges was 22.0% as 26 chief judges out of a total of 118 responded, and the response rate for court administrators was 17.8% as 31 out of 174 court administrators responded. Respondents held positions across district courts, circuit courts, courts that were classified as both district and circuit, and other types of courts (such as probate). For a breakdown of positions held across the different court types, please see Table 1a below.

Table 1a. Current Position of Respondents (by court type)

Response Categories	District % (N)	Circuit % (N)	District and Circuit % (N)	Other % (N)	Total % (N)
Chief Judge	56.3% (18)	18.8% (3)	16.7% (1)	57.1% (4)	41.9% (26)
Court Administrator	43.8% (14)	56.3% (9)	66.7% (4)	42.9% (3)	50.0% (31)*
Other	0.0% (0)	25.0% (4)	16.7% (1)	0.0% (0)	8.1% (5)
Total	**32**	**16**	**6**	**7**	**100% (62)**

*One court administrator skipped the question about type of court.
In some categories, the sum of percentages may not be100% due to rounding.

Both urban and rural counties were well represented as 53.2% of respondents worked in urban counties, 38.7% of respondents worked in rural counties, and 8.1% of respondents chose not to disclose their county. Within the urban county respondents, 45.5% held the position of chief judge, 51.5% held the position of court administrator, and 3.0% held another position. Among rural county respondents, 37.5% held the position of chief judge, 45.8% held the position of court administrator, and 16.7% held another position.

Table 1b. Current Position of Respondents (by county type)

Response Categories	Urban County % (N)	Rural County % (N)	Unknown County % (N)	Total % (N)
Chief Judge	45.5% (15)	37.5% (9)	40.0% (2)	41.9% (26)
Court Administrator	51.5% (17)	45.8% (11)	60.0% (3)	50.0% (31)
Other	3.0% (1)	16.7% (4)	0.0% (0)	8.1% (5)
Total	**33**	**24**	**5**	**100% (62)**

In some categories, the sum of percentages may not be 100% due to rounding.

A wide variety of counties were represented. Of the 62 respondents, 56 respondents chose to identify their county, one respondent described their county as "rural," and five respondents chose to leave that portion of the survey blank. Respondents were from 33 separate counties, and included both rural and urban counties. There were 33 respondents from urban counties and 24 respondents from rural counties.[4] Please see Tables 2a, 2b, and 3a for a breakdown of respondents' counties and the indigent defense delivery system breakdown by county.

[4] The classification of counties as urban or rural was determined by the classification system of the U.S. Census.

Table 2a. Respondents from Urban Counties

Urban County Name	Response (N)
Allegan	2
Bay	1
Genesee	1
Ingham	1
Kalamazoo	3
Kent	3
Lapeer	1
Macomb	1
Oakland	6
St. Clair	1
Washtenaw	2
Wayne	11
Total	**33**

Table 2b. Respondents from Rural Counties

Rural County Name	Response (N)
Barry	1
Calhoun	1
Cass	1
Clare and Gladwin	1
Cheboygan	1
Crawford	1
Dickinson	1
Emmet	1
Gogebic and Ontonagon	1
Hillsdale	1
Lake	1
Lenawee	2
Marquette	1
Mason	1
Mecosta and Osceola	2
Montmorency	1
Ogemaw	1
Oscoda	1
Shiawassee	1
St. Joseph	1
Van Buren	1
Total	24*

*One respondent listed their county as "rural." Five respondents did not indicate their county. Responses are listed verbatim.

Table 3a. System Type by County

Response Categories	Urban County % (N)	Rural County % (N)	Unknown County % (N)	Total % (N)
Assigned Counsel	33.3% (11)	16.7% (4)	40.0% (2)	27.4% (17)
Contract	27.3% (9)	41.7% (10)	0.0% (0)	30.6% (19)
Public Defender Program	3.0% (1)	4.2% (1)	0.0% (0)	3.2% (2)
Mixed Model	27.3% (9)	37.5% (9)	60.0% (3)	33.9% (21)
Other	9.1% (3)	0.0% (0)	0.0% (0)	4.8% (3)
Total (N)	**33**	**24**	**5**	**62**

In some categories, the sum of percentages may not be 100% due to rounding.

Respondents have a lot of experience working in the courts. When asked how long respondents held their position, answers ranged from seven months to 37 years, and the overwhelming majority had multiple years of experience in their position. A wide variety of indigent defense systems were in place across the courts in which respondents work. The assigned counsel model represented 27.4% of the courts in which respondents worked, the contract model represented 30.7%, the public defender program represented 3.2%, a mixture of assigned counsel and contract was 17.7%, a mixture of public defender and assigned counsel was 11.3%, a mixture of contract and public defender was 1.6%, a mixture of all three models was 3.2%, and 4.8% chose "other" to describe the system of delivery for indigent defense in their

jurisdiction. The mixed model delivery systems were combined in the analysis in order to compare across categories. The mixed model delivery systems represented 33.9% of the sample.

Table 3b. Indigent Defense Systems Utilized

Response Categories	Chief Judges % (N)	Court Administrators % (N)	Other % (N)	Total % (N)
Assigned Counsel	23.1% (6)	35.5% (11)	0.0% (0)	27.4% (17)
Contract	34.6% (9)	19.4% (6)	80.0% (4)	30.7% (19)
Public Defender Program	3.9% (1)	3.2% (1)	0.0% (0)	3.2% (2)
Mixed Model	30.8% (8)	38.7% (12)	20.0% (1)	33.9% (21)
Other	7.7% (2)	3.2% (1)	0.0% (0)	4.8% (3)
Total (N)	**26**	**31**	**5**	**62**

In some categories, the sum of percentages may not be 100% due to rounding.

Overall, a little over half of the respondents were from district courts (52.5%), a little over a quarter were from circuit courts (26.2%), one-tenth were from both district and circuit courts (9.8%), and a little over one-tenth were from other types of court, including probate and family court (11.5%). When sub-divided by positions, 69.2% of chief judges worked in a district court, 11.5% worked in a circuit court, 3.9% worked in a court that was classified as both district and circuit, and 15.4% worked in another type of court. Of the court administrators in the study,

46.7% worked in a district court, 30.0% worked in a circuit court, 13.3% worked in a court classified as both district and circuit, and 10.0% worked in another type of court.

Table 4a. Type of Court

Response Categories	Chief Judges % (N)	Court Administrators % (N)	Other % (N)	Total % (N)
District	69.2% (18)	46.7% (14)	0.0% (0)	52.5% (32)
Circuit	11.5% (3)	30.0% (9)	80.0% (4)	26.2% (16)
District and Circuit	3.8% (1)	13.3% (4)	20.0% (1)	9.8% (6)
Other	15.4% (4)	10.0% (3)	0.0% (0)	11.5% (7)
Total	**26**	**30**	**5**	**61**

In some categories, the sum of percentages may not be 100% due to rounding.

Of the 33 respondents that worked in an urban county, 81.8% held a position in a district court, 15.2% held a position in a circuit court, and 3.0% held a position in another type of court. Of the 24 respondents that worked in a rural county, 12.5% held a position in a district court, 45.8% held a position in a circuit court, 20.8% held a position in a court classified as both district and circuit, and 20.8% held a position in another type of court.

Table 4b. Type of Court by County Type

Response Categories	Urban County	Rural County	Unknown County	Total % (N)
District	81.8% (27)	12.5% (3)	50.0% (2)	52.5% (32)
Circuit	15.2% (5)	45.8% (11)	0.0% (0)	26.2% (16)
District and Circuit	0.0% (0)	20.8% (5)	25.0% (1)	9.8% (6)
Other	3.0% (1)	20.8% (5)	25.0% (1)	11.5% (7)
Total	**33**	**24**	**4**	**61**

In some categories, the sum of percentages may not be 100% due to rounding.
*One court administrator skipped this question from an unknown county

Respondents' Perceptions of Defense Systems

The survey began by asking about respondents' perceptions of the quality of legal defense. Specifically, respondents were asked about the quality of legal representation that defendants receive from private defense compared to public defenders. In this survey, "private defense counsel" was used to describe counsel that is hired by the defendant and "public defenders" was used to describe counsel that is provided through the indigent defense system of the county.[5] In the overall response to the statement "defendants represented by private defense

[5] It is possible that respondents interpreted "public defenders" to mean public defenders specifically as opposed to all defense counsel that provides criminal indigent defense, and that this interpretation among some respondents could have led to different responses. However, the context of the survey and the fact that most counties in

counsel generally receive better legal representation than defendants represented by public defenders," 12.9% of respondents strongly disagreed with the statement, 41.9% of respondents disagreed, 27.4% responded with "neutral," 12.9% agreed with the statement, and 4.8% strongly agreed. Over half of respondents disagreed or strongly disagreed with the statement, and over a quarter were neutral. Less than one-fifth agreed with the statement.

Of the 26 chief judges that responded to this statement, 7.7% strongly disagreed, 53.9% disagreed, 23.1% responded with "neutral," and 15.4% agreed. Of the 31 court administrators that responded to this statement, 19.4% strongly disagreed, 35.5% disagreed, 35.5% responded with "neutral," 6.5% agreed, and 3.2% strongly agreed. Sixteen chief judges either strongly disagreed or disagreed with the statement, while 17 court administrators answered in the same way. This translates into 61.6% of chief judges and 54.9% of court administrators that responded to this statement either strongly disagreed or disagreed. In terms of agreeing with this statement, 15.4% chief judges responded that they agreed, while 9.7% of court administrators agreed or strongly agreed with the statement.

In order to test for any statistical differences to this statement across the type of position held by respondents, a Kruskal-Wallis H-test was performed. Because of the large number of categories in relation to the sample size, the five categories (strongly disagree, disagree, neutral, agree, strongly agree) were collapsed into three categories (disagree, neutral, agree). These categories were used for all of the following Kruskal-Wallis H-tests. The results suggest that there is a difference in their perceptions of how private defense compares to indigent defense in terms of quality (χ^2=7.032; p= 0.030). Specifically, the respondents that fell into the "other" category were more likely to agree with the statement that "defendants represented by private

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Michigan do not have traditional public defenders (and that the survey was reviewed by two subject-area experts for appropriate language) makes it less likely that there was misinterpretation of the statement.

defense counsel generally receive better legal representation than defendants represented by public defenders."

Table 5a. Perception of private and public defenders, by position

Response Categories	Chief Judges % (N)	Court Administrators % (N)	Other % (N)	Total % (N)
Strongly disagree	7.7% (2)	19.4% (6)	0.0% (0)	12.9% (8)
Disagree	53.8% (14)	35.5% (11)	20.0% (1)	41.9% (26)
Neutral	23.1% (6)	35.5% (11)	0.0% (0)	27.4% (17)
Agree	15.4% (4)	6.5% (2)	40.0% (2)	12.9% (8)
Strongly Agree	0.0% (0)	3.2% (1)	40.0% (2)	4.8% (3)
Total	**26**	**31**	**5**	**62**

In some categories, the sum of percentages may not be100% due to rounding.

Table 5b. Perception of private and public defenders, by position (Kruskal-Wallis H-test)

Position Held	N	Mean Rank	χ^2	*p*-value
Chief Judges	26	30.38	7.032	0.030*
Court Administrators	31	29.31		
Other	5	50.90		

** $p < .01$; * $p < .05$

After an analysis across the position held by the respondents was completed, the differences across the type of court were explored. Frequencies and percentages revealed that there were more district court respondents who disagree that private defense counsel generally provided better representation in comparison to circuit court respondents or combined district and circuit court respondents. Of the 32 respondents from district courts, 65.7% strongly disagreed or disagreed with the statement that "[d]efendants represented by private defense counsel generally receive better legal representation than defendants represented by public defenders," while 37.6% of the 16 respondents from circuit courts either strongly disagreed or disagreed with the statement. Of respondents from district courts, 18.7% either agreed or strongly agreed, while 25.1% of circuit court respondents agreed or strongly agreed. As there were twice as many respondents from district courts as there were from circuit courts, caution is suggested in interpreting the results in this exploratory study. A Kruskal-Wallis H-test was performed in order to test for any statistical differences to this statement across the type of court. The results suggest that there is no significant difference in their perceptions of how private defense compares to indigent defense in terms of quality (χ^2=2.801; p=0.423).

Table 5c. Perception of private and public defenders, by court type

Response Categories	District % (N)	Circuit % (N)	District and Circuit % (N)	Other % (N)	Total % (N)
Strongly disagree	6.3% (2)	18.8% (3)	0.0% (0)	28.6% (2)	12.9% (8)
Disagree	59.4% (19)	18.8% (3)	33.3% (2)	28.6% (2)	41.9% (26)
Neutral	15.6% (5)	37.5% (6)	50.0% (3)	42.9% (3)	27.4% (17)
Agree	15.6% (5)	18.8% (3)	0.0% (0)	0.0% (0)	12.9% (8)
Strongly Agree	3.1% (1)	6.3% (1)	16.7% (1)	0.0% (0)	4.8% (3)
Total	**32**	**16**	**6**	**7**	**62**

In some categories, the sum of percentages may not be 100% due to rounding.

Table 5d. Perception of private and public defenders, by court type (Kruskal-Wallis H-test)

Court Type	N	Mean Rank	χ^2	*p*-value
District	32	29.38	2.801	0.423
Circuit	16	34.31		
District and Circuit	6	37.83		
Other	7	25.00		

Next, an analysis of the differences between urban and rural counties was performed. Of the 33 respondents from urban counties, 66.7% strongly disagreed or disagreed with the statement "[d]efendants represented by private defense counsel generally receive better legal representation than defendants represented by public defenders." In contrast, of the 24 respondents from rural counties, 37.5% strongly disagreed or disagreed with the statement. Respondents from urban counties agreed or strongly agreed with the statement in 12.1% of cases, while respondents from rural counties agreed or strongly agreed in 25.0% of cases. Overall, respondents from urban counties are less likely to respond in agreement. The difference between the responses from urban and rural counties was statistically significant (χ^2=5.034; p=0.025). Specifically, rural county respondents were more likely to agree that defendants received better legal representation from private defense counsel as opposed to public defenders.

Table 5e. Perception of private and public defenders, by urban-rural county

Response Categories	Urban County % (N)	Rural County % (N)	Unknown County % (N)	Total % (N)
Strongly disagree	15.2% (5)	4.2% (1)	40.0% (2)	12.9% (8)
Disagree	51.5% (17)	33.3% (8)	20.0% (1)	41.9% (26)
Neutral	21.2% (7)	37.5% (9)	20.0% (1)	27.4% (17)
Agree	9.1% (3)	16.7% (4)	20.0% (1)	12.9% (8)
Strongly Agree	3.0% (1)	8.3% (2)	0.0% (0)	4.8% (3)
Total	**33**	**24**	**5**	**62**

In some categories, the sum of percentages may not be 100% due to rounding.

Table 5f. Perception of private and public defenders, by urban-rural county (Kruskal-Wallis H-test)

County	N	Mean Rank	χ^2	*p*-value
Urban	33	25.03	5.034	0.025*
Rural	24	34.46		

** $p < .01$; * $p < .05$

Lastly, the relationship between indigent defense delivery system and respondents' perceptions of the quality of private defense counsel compared to public defenders was explored.

The type of indigent defense system did not meaningfully correlate with responses to this statement (see table 5g below for a breakdown of responses by system type). The Kruskal-Wallis H-test suggested that system type was not related to respondents' perceptions of the quality of public defense counsel (χ^2=2.107; p=0.716).

Table 5g. Perception of private and public defenders, by system type

Response Categories	Assigned Counsel % (N)	Contract % (N)	Public Defender Program % (N)	Mixed Model % (N)	Other % (N)	Total % (N)
Strongly Disagree	17.6% (3)	5.3% (1)	50.0% (1)	9.5% (2)	33.3% (1)	12.9% (8)
Disagree	41.2% (7)	42.1% (8)	0.0% (0)	47.6% (10)	33.3% (1)	41.9% (26)
Neutral	29.4% (5)	26.3% (5)	50.0% (1)	28.6% (6)	0.0% (0)	27.4% (17)
Agree	11.8% (2)	15.8% (3)	0.0% (0)	14.3% (3)	0.0% (0)	12.9% (8)
Strongly Agree	0.0% (0)	10.5% (2)	0.0% (0)	0.0% (0)	33.3% (1)	4.8% (3)
Total	**17**	**19**	**2**	**21**	**3**	**62**

In some categories, the sum of percentages may not be 100% due to rounding.

Table 5h. Perception of private and public defenders, by system type (Kruskal-Wallis H-test)

System Type	N	Mean Rank	χ^2	*p*-value
Assigned Counsel	17	28.82	2.107	0.716
Contract	19	35.79		
Public Defender Program	2	23.75		
Mixed Model	21	30.88		
Other	3	29.00		

** $p < .01$; * $p < .05$

Perceptions of Funding

After asking respondents about the differences in quality of defense between private and public defenders, the survey queried respondents about their perceptions of funding of indigent defense. Approximately half of all respondents felt that indigent defense was not sufficiently funded, and just under a third felt that indigent defense was sufficiently funded. In response to "indigent defense in my jurisdiction is sufficiently funded," 16.1% strongly disagreed, 35.5% disagreed, 17.7% replied with neutral, 19.4% agreed, and 11.3% strongly agreed.

When respondents were subdivided based on the position they held, the results were fairly similar. Of the 26 chief judges that responded, 46.1% strongly disagreed or disagreed that indigent defense in their jurisdiction was sufficiently funded. Of the 31 court administrators that

responded to this statement, 51.7% strongly disagreed or disagreed with the statement. There were five chief judges and five court administrators that responded to the statement with "neutral," which translates to 19.2% of chief judges and 16.1% of court administrators. Respondents that held the position of chief judge agreed or strongly agreed with the statement in 34.7% of cases, while court administrators agreed or strongly agreed 32.3% of the time. Chief judges and court administrators responded in similar ways to this statement, and no statistical difference was found between court administrators and chief judges in their perception of funding for indigent defense (χ^2=1.789; p=0.409).

Table 6a. Perception of sufficiency of funding for indigent defense, by position

Response Categories	Chief Judges % (N)	Court Administrators % (N)	Other % (N)	Total % (N)
Strongly Disagree	11.5% (3)	19.4% (6)	20.0% (1)	16.1% (10)
Disagree	34.6% (9)	32.3% (10)	60.0% (3)	35.5% (22)
Neutral	19.2% (5)	16.1% (5)	20.0% (1)	17.7% (11)
Agree	30.8% (8)	12.9% (4)	0.0% (0)	19.4% (12)
Strongly Agree	3.8% (1)	19.4% (6)	0.0% (0)	11.3% (7)
Total	**26**	**31**	**5**	**62**

In some categories, the sum of percentages may not be 100% due to rounding.

Table 6b. Perception of sufficiency of funding for indigent defense, by position (Kruskal-Wallis H-test)

Position	N	Mean Rank	χ^2	*p*-value
Chief Judge	26	32.88	1.789	0.409
Court Administrator	31	31.94		
Other	5	21.60		

** $p < .01$; * $p < .05$

There were more respondents from the circuit courts and combined district and circuit courts who disagree that indigent defense was sufficiently funded. Of the 32 respondents from district courts, 43.8% strongly disagreed or disagreed that indigent defense was sufficiently funded in their jurisdiction. Of the 16 respondents from circuit courts, 56.3% strongly disagreed or disagreed with the statement. Across district courts, 34.4% agreed or strongly agreed with the statement, while 25.0 % of respondents from circuit courts strongly agreed or agreed with the statement. However, no statistical differences across responses were found based on the type of court (χ^2=3.714; p=0.294).

Table 6c. Perception of sufficiency of funding for indigent defense, by court type

Response Categories	District % (N)	Circuit % (N)	District and Circuit % (N)	Other % (N)	Total % (N)
Strongly disagree	12.5% (4)	6.3% (1)	33.3% (2)	42.9% (3)	16.1% (10)
Disagree	31.3% (10)	50.0% (8)	50.0% (3)	14.3% (1)	35.5% (22)
Neutral	21.9% (7)	18.8% (3)	0.0% (0)	14.3% (1)	17.7% (11)
Agree	18.8% (6)	25.0% (4)	16.7% (1)	14.3% (1)	19.4% (12)
Strongly Agree	15.6% (5)	0.0% (0)	0.0% (0)	14.3% (1)	11.3% (7)
Total	**32**	**16**	**6**	**7**	**61**

In some categories, the sum of percentages may not be 100% due to rounding.

Table 6d. Perception of sufficiency of funding for indigent defense, by court type (Kruskal-Wallis H-test)

Court Type	N	Mean Rank	χ^2	*p*-value
District	32	34.14	3.714	0.294
Circuit	16	30.59		
District and Circuit	6	20.83		
Other	7	26.29		

There were also some modest differences between urban and rural courts in terms of frequencies and percentages, but the differences were not statistically supported (χ^2=1.739; p=0.187). Of the 33 respondents from urban counties, 45.5% strongly disagreed or disagreed with the statement, while 58.3% of respondents from rural counties strongly disagreed or disagreed with the statement. Urban county respondents agreed or strongly agreed that indigent defense was sufficiently funded in their jurisdiction in 33.4% of cases, while 29.2% of respondents from rural counties agreed or strongly agreed. Although one might expect funding to vary based on county type, as the results of the Kruskal-Wallis H test suggested, the responses were similar across rural and urban counties to this statement.

Table 6e. Perception of sufficiency of funding for indigent defense, by rural-urban county

Response Categories	Urban County % (N)	Rural County % (N)	Unknown County % (N)	Total % (N)
Strongly Disagree	9.1% (3)	25.0% (6)	20.0% (1)	16.1% (10)
Disagree	36.4% (12)	33.3% (8)	40.0% (2)	35.5% (22)
Neutral	21.2% (7)	12.5% (3)	20.0% (1)	17.7% (11)
Agree	18.2% (6)	25.0% (6)	0.0% (0)	19.4% (12)
Strongly Agree	15.2% (5)	4.2% (1)	20.0% (1)	11.3% (7)
Total	**33**	**24**	**5**	**62**

In some categories, the sum of percentages may not be 100% due to rounding.

Table 6f. Perception of sufficiency of funding for indigent defense, by rural-urban county (Kruskal-Wallis H-test)

County	N	Mean Rank	χ^2	*p*-value
Urban	33	31.39	1.739	0.187
Rural	24	25.71		

As with all other questions in the survey, responses did not meaningfully correlate with the type of indigent defense delivery system, although this may be due, in part, to the vast diversity of delivery systems across the counties in this study, making it difficult to perform direct comparisons (please see Table 6g for a breakdown of responses by system type). There was no statistical difference based on indigent defense delivery system (χ^2=3.261; p=0.515).

Table 6g. Perception of sufficiency of funding for indigent defense, by system type

Response Categories % (N)	Assigned Counsel % (N)	Contract % (N)	Public Defender Program % (N)	Mixed Model % (N)	Other % (N)	Total % (N)
Strongly Disagree	1.8% (2)	15.8% (3)	0.0% (0)	19.0% (4)	33.3% (1)	16.1% (10)
Disagree	29.4% (5)	42.1% (8)	50.0% (1)	28.6% (6)	66.7% (2)	35.5% (22)
Neutral	29.4% (5)	15.8% (3)	0.0% (0)	14.3% (3)	0.0% (0)	17.7% (11)
Agree	23.5% (4)	15.8% (3)	0.0% (0)	23.8% (5)	0.0% (0)	19.4% (12)
Strongly Agree	5.9% (1)	10.5% (2)	50.0% (1)	14.3% (3)	0.0% (0)	11.3% (7)
Total	**17**	**19**	**2**	**21**	**3**	**62**

In some categories, the sum of percentages may not be 100% due to rounding.

Table 6h. Perception of sufficiency of funding for indigent defense, by system type (Kruskal-Wallis H-test)

System Type	N	Mean Rank	χ^2	*p*-value
Assigned Counsel	17	33.26	3.261	0.515
Contract	19	29.95		
Public Defender Program	2	40.25		
Mixed Model	21	32.83		
Other	3	16.17		

** $p < .01$; * $p < .05$

Respondents' Perceptions of Michigan Indigent Defense Commission Standards

Considering that chief judges and court administrators are responsible for implementing the minimum standards in their courts, it is a positive finding that the overwhelming majority of respondents were familiar with the new Michigan Indigent Defense Commission minimum standards. In response to "I am familiar with the new Michigan Indigent Defense Commission minimum standards," 3.2% strongly disagreed with the statement, 3.2% disagreed, 9.7% replied with neutral, 53.2% agreed, and 30.7% strongly agreed.

When respondents were sub-divided based on the position that they held, 11.6% of chief judges and 3.2% of court administrators strongly disagreed or disagreed with the statement.

Chief judges agreed or strongly agreed that they were familiar with the new minimum standards 73.1% of the time, while court administrators agreed or strongly agreed 90.3% of the time. A statistical difference was found based on the type of position held (χ^2=6.677; p=0.035). Although the Kruskal-Wallis H-test illustrates that the difference is meaningful, it is still important to note that a large majority of both chief judges and court administrators were familiar with the minimum standards, even if court administrators were more likely to be familiar.

Table 7a. Familiarity with MIDC minimum standards, by position

Response Categories	Chief Judges % (N)	Court Administrators % (N)	Other % (N)	Total % (N)
Strongly Disagree	3.8% (1)	3.2% (1)	0.0% (0)	3.2% (2)
Disagree	7.7% (2)	0.0% (0)	0.0% (0)	3.2% (2)
Neutral	15.4% (4)	6.5% (2)	0.0% (0)	9.7% (6)
Agree	57.7% (15)	48.4% (15)	60.0% (3)	53.2% (33)
Strongly Agree	15.4% (4)	41.9% (13)	40.0% (2)	30.6% (19)
Total	**26**	**31**	**5**	**62**

In some categories, the sum of percentages may not be 100% due to rounding.

Table 7b. Familiarity with MIDC minimum standards, by position (Kruskal-Wallis H-test)

Position	N	Mean Rank	χ^2	*p*-value
Chief Judge	26	25.21	6.677	0.035*
Court Administrator	31	35.82		
Other	5	37.40		

** $p < .01$; * $p < .05$

When this statement was explored across different types of courts in terms of the frequencies and percentages, similarities were observed between respondents from different types of courts in their familiarity with the new minimum standards. Respondents from district courts were familiar with the new minimum standards in 84.4% of cases, while respondents from circuit courts were familiar with the standards in 81.3% of cases. Not only were the percentages and frequencies very similar, but the Kruskal-Wallis H-test results suggested that there was no statistical difference based on type of court as well (χ^2=1.115; p=0.773).

Table 7c. Familiarity with MIDC minimum standards, by court type

Response Categories	District % (N)	Circuit % (N)	District and Circuit % (N)	Other % (N)	Total % (N)
Strongly disagree	0.0% (0)	12.5% (2)	0.0% (0)	0.0% (0)	3.2% (2)
Disagree	3.1% (1)	0.0% (0)	0.0% (0)	14.3% (1)	3.2% (2)
Neutral	12.5% (4)	6.3% (1)	16.7% (1)	0.0% (0)	9.7% (6)
Agree	56.3% (18)	43.8% (7)	33.3% (2)	71.4% (5)	53.2% (33)
Strongly Agree	28.1% (9)	37.5% (6)	50.0% (3)	14.3% (1)	30.6% (19)
Total	**32**	**16**	**6**	**7**	**62**

In some categories, the sum of percentages may not be 100% due to rounding.

Table 7d. Familiarity with MIDC minimum standards, by court type (Kruskal-Wallis H-test)

Court Type	N	Mean Rank	χ^2	*p*-value
District	32	30.58	1.115	0.773
Circuit	16	31.75		
District and Circuit	6	36.08		
Other	7	26.86		

** $p < .01$; * $p < .05$

Similar findings across different counties were supported by the frequencies, percentages, and the Kruskal-Wallis H test (χ^2=1.163; p=0.281). In urban counties, 87.9% of respondents agreed or strongly agreed that they were familiar with the new minimum standards. In rural counties, 79.2% of respondents were familiar with the new minimum standards.

Table 7e. Familiarity with MIDC minimum standards, by rural-urban county

Response Categories	Urban County % (N)	Rural County % (N)	Unknown County % (N)	Total % (N)
Strongly Disagree	3.0% (1)	4.2% (1)	0.0% (0)	3.2% (2)
Disagree	3.0% (1)	4.2% (1)	0.0% (0)	3.2% (2)
Neutral	6.1% (2)	12.5% (3)	20.0% (1)	9.7% (6)
Agree	51.5% (17)	54.2% (13)	60.0% (3)	53.2% (33)
Strongly Agree	36.4% (12)	25.0% (6)	20.0% (1)	30.6% (19)
Total	**33**	**24**	**5**	**62**

In some categories, the sum of percentages may not 100% due to rounding.

Table 7f. Familiarity with MIDC minimum standards, by rural-urban county (Kruskal-Wallis H-test)

County	N	Mean Rank	χ^2	*p*-value
Urban	33	30.83	1.163	0.281
Rural	24	26.48		

** $p < .01$; * $p < .05$

Not only were there similar findings across county and court type in terms of familiarity with the new minimum standards, but similar findings were also observed when respondents were asked whether they were familiar with the new minimum standards, regardless of the type of indigent defense delivery system. Familiarity with the new minimum standards did not correlate meaningfully with the type of indigent defense delivery system (please see Table 7g for a breakdown of responses by type of system), and the Kruskal-Wallis H-test indicated that there was no statistical difference based on the type of indigent delivery system (χ^2=7.424; p=0.115).

Table 7g. Familiarity with MIDC minimum standards, by system type

Response Categories	Assigned Counsel % (N)	Contract % (N)	Public Defender Program % (N)	Mixed Model % (N)	Other % (N)	Total % (N)
Strongly Disagree	11.8% (2)	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	3.2% (2)
Disagree	0.0% (0)	10.5% (2)	0.0% (0)	0.0% (0)	0.0% (0)	3.2% (2)
Neutral	23.5% (4)	10.5% (2)	0.0% (0)	0.0% (0)	0.0% (0)	9.7% (6)
Agree	35.3% (6)	57.9% (11)	100.0% (2)	52.4% (11)	100.0% (3)	53.2% (33)
Strongly Agree	29.4% (5)	21.1% (4)	0.0% (0)	47.6% (10)	0.0% (0)	30.6% (19)
Total	**17**	**19**	**2**	**21**	**3**	**62**

In some categories, the sum of percentages may not be 100% due to rounding.

Table 7h. Familiarity with MIDC minimum standards, by system type (Kruskal-Wallis H test)

System Type	N	Mean Rank	χ^2	*p*-value
Assigned Counsel	17	27.06	7.424	0.115
Contract	19	27.95		
Public Defender Program	2	27.00		
Mixed Model	21	39.38		
Other	3	27.00		

** $p < .01$; * $p < .05$

Need for Reform

When respondents were queried about the need for reform in Michigan, the findings were consistent across the positions held, court type, county type, and delivery system type. While the majority of respondents agreed or strongly agreed that reform was necessary for indigent defense in Michigan, nine of 62 respondents disagreed, and one strongly disagreed. In response to "[i]ndigent defense reform was necessary in Michigan," 1.6% strongly disagreed, 14.8% disagreed, 18.0% felt neutral about the statement, 42.6% agreed, and 23.0% strongly agreed.

When subdivided by the position held, 73.1% of chief judges agreed or strongly agreed with the statement, while 60.0% of court administrators agreed or strongly agreed with the

statement. The percentages may create more of an illusion of difference than is truly the case, since 19 chief judges and 18 court administrators agreed or strongly agreed with the statement, and there were no meaningful differences between respondents based on the position that they held (χ^2=0.001; p=1.000).

Table 8a. Perception of necessity of indigent defense reform in Michigan, by position

Response Categories	Chief Judges % (N)	Court Administrators % (N)	Other % (N)	Total % (N)
Strongly Disagree	0.0% (0)	3.3% (1)	0.0% (0)	1.6% (1)
Disagree	15.4% (4)	16.7% (5)	0.0% (0)	14.8% (9)
Neutral	11.5% (3)	20.0% (6)	40.0% (2)	18.0% (11)
Agree	57.7% (15)	30.0% (9)	40.0% (2)	42.6% (26)
Strongly Agree	15.4% (4)	30.0% (9)	20.0% (1)	23.0% (14)
Total	**26**	**30**	**5**	**61**

In some categories, the sum of percentages may not be 100% due to rounding.

Table 8b. Perception of necessity of indigent defense reform in Michigan, by position (Kruskal-Wallis H-test)

Position Held	N	Mean Rank	χ^2	*p*-value
Chief Judges	26	31.06	0.001	1.000
Court Administrators	30	30.93		
Other	5	31.10		

** $p < .01$; * $p < .05$

When respondents were subdivided based on the type of court, 51.6% of respondents from district courts and 87.6% of respondents from circuit courts agreed or strongly agreed with the statement. Thus, it appears that respondents from circuit courts were more likely to believe that indigent defense reform was necessary. This should, however, be interpreted cautiously given the relatively small number of respondents, as well as the Kruskal-Wallis H-test results that indicate the differences between court type are not statistically significant (χ^2=3.007; p=0.390).

Table 8c. Perception of necessity of indigent defense reform in Michigan, by court type

Response Categories	District % (N)	Circuit % (N)	District and Circuit % (N)	Other % (N)	Total % (N)
Strongly disagree	0.0% (0)	0.0% (0)	0.0% (0)	14.3% (1)	1.6% (1)
Disagree	22.6% (7)	6.3% (1)	0.0% (0)	0.0% (0)	14.8% (9)
Neutral	25.8% (8)	6.3% (1)	33.3% (2)	0.0% (0)	18.0% (11)
Agree	29.0% (9)	68.8% (11)	33.3% (2)	57.1% (4)	42.6% (26)
Strongly Agree	22.6% (7)	18.8% (3)	33.3% (2)	28.6% (2)	23.0% (14)
Total	**31**	**16**	**6**	**7**	**61**

In some categories, the sum of percentages may not be 100% due to rounding.

Table 8d. Perception of necessity of indigent defense reform in Michigan, by court type (Kruskal-Wallis H-test)

Court Type	N	Mean Rank	χ^2	*p*-value
District	31	26.92	3.007	0.390
Circuit	16	34.34		
District and Circuit	6	34.00		
Other	7	34.57		

** $p < .01$; * $p < .05$

There were more rural county respondents who agree that indigent defense reform was necessary when compared with urban county respondents. When subdivided by county type, 21.9% of respondents from urban counties disagreed with the statement, while only 8.4% of respondents from rural counties strongly disagreed or disagreed with the statement. Just over half of urban county respondents (53.2%) agreed or strongly agreed that indigent defense reform was necessary, while 79.2% of rural county respondents agreed or strongly agreed that reform was necessary. However, there was no statistical difference found in this statement based on the county type (χ^2=2.631; p=0.105).

Table 8e. Perception of necessity of indigent defense reform in Michigan, by rural-urban county

Response Categories	Urban County % (N)	Rural County % (N)	Unknown County % (N)	Total % (N)
Strongly Disagree	0.0% (0)	4.2% (1)	0.0% (0)	1.6% (1)
Disagree	21.9% (7)	4.2% (1)	20.0% (1)	14.8% (9)
Neutral	25.0% (8)	12.5% (3)	0.0% (0)	18.0% (11)
Agree	34.4% (11)	54.2% (13)	40.0% (2)	42.6% (26)
Strongly Agree	18.8% (6)	25.0% (6)	40.0% (2)	23.0% (14)
Total	**32**	**24**	**5**	**61**

*A court administrator from a district court in an urban county skipped this question.

Table 8f. Perception of necessity of indigent defense reform in Michigan, by rural-urban county (Kruskal-Wallis H-test)

County	N	Mean Rank	χ^2	*p*-value
Urban	32	25.59	2.631	0.105
Rural	24	32.38		

** $p < .01$; * $p < .05$

Across all questions, the type of indigent defense delivery system did not correlate with responses. Please see Table 8g for a breakdown of responses by type of system, and Table 8h for the Kruskal-Wallis H-test results that confirm this finding (χ^2=1.234; p=0.873).

Table 8g. Perception of necessity of indigent defense reform in Michigan, by system type

Response Categories	Assigned Counsel % (N)	Contract % (N)	Public Defender Program % (N)	Mixed Model % (N)	Other % (N)	Total % (N)
Strongly Disagree	0.0% (0)	0.0% (0)	0.0% (0)	5.0% (1)	0.0% (0)	1.6% (1)
Disagree	23.5% (4)	10.5% (2)	0.0% (0)	15.0% (3)	0.0% (0)	14.8% (9)
Neutral	17.6% (3)	15.8% (3)	50.0% (1)	15.0% (3)	33.3% (1)	18.0% (11)
Agree	35.3% (6)	47.4% (9)	50.0% (1)	45.0% (9)	33.3% (1)	42.6% (26)
Strongly Agree	23.5% (4)	26.3% (5)	0.0% (0)	20.0% (4)	33.3% (1)	23.0% (14)
Total	**17**	**19**	**2**	**20**	**3**	**61**

*A respondent from mix of public defender and assigned counsel skipped this question

8h. Perception of necessity of indigent defense reform in Michigan, by system type (Kruskal-Wallis H-test)

System Type	N	Mean Rank	χ^2	*p*-value
Assigned Counsel	17	29.24	1.234	0.873
Contract	19	33.84		
Public Defender Program	2	25.25		
Mixed Model	20	29.78		
Other	3	35.00		

** $p < .01$; * $p < .05$

Summary of Quantitative Findings

The overall findings suggest that there is a significant correlation with the position type and the familiarity of respondents with the new minimum standards. Specifically, court administrators were more likely to answer that they were familiar with the minimum standards ($X^2 = 6.677$; p= 0.035). However, the majority of chief judges and court administrators were familiar with the standards, so despite this significant finding, it appears that an overwhelming majority of the respondents of the survey were familiar with the minimum standards. The only other significant relationships that were found in the data (according to the H-test results) involved the perception of quality of legal defense in terms of private defense and public defenders. Both the position held ($X^2 = 7.032$; p= 0.030) and the type of county ($X^2 = 5.034$; p=

0.025) were significant according to the H-test results. It is possible that the sample size, specifically the five individuals in the "other" category for position type, are responsible for the significant findings, especially since chief judges and court administrators answered very similarly to this Likert statement. As a result, although this finding is significant, it may not reveal much, especially since chief judges and court administrators had a similar response (they generally did not view the quality of private counsel as superior to public defenders). Respondents in rural counties were more likely to agree that defendants that received private defense counsel instead of public defenders had higher quality representation.

All of the other H-test results indicated that the differences between positions held, county type, court type, and indigent defense delivery system were not significant. The results indicated that overall, respondents considered indigent defense underfunded, but a minority did not agree (approximately half of all respondents felt that indigent defense was not sufficiently funded, and just under a third felt that indigent defense was sufficiently funded). Additionally, they were familiar with the new minimum standards, and they felt that indigent defense reform was necessary in Michigan. It is positive that there is a high level of knowledge about the reform process across all respondents, and that there is a view that reform is necessary in Michigan. This can help provide a positive context that is supportive of change, especially considering that major stakeholders are familiar with the reform, and feel that reform was necessary.

Open-Ended Questions

Open-ended questions were examined according to the independent variables that were used for the Likert scale questions: (1) position held, (2) court type, (3) county type, and (4) indigent defense delivery system type. The responses were compared across these variables, and there were no meaningful differences that emerged (other than some themes specific to rural

counties that are discussed below), so the overall findings are presented as a whole in terms of the themes that emerged.

When queried about the ways that the minimum standards would change indigent defense in their jurisdiction, several themes emerged. Fifty-six respondents answered this question, and 34 of these responses included positive statements that focused on improved representation and better outcomes for indigent defendants. The majority of positive responses discussed the benefits to indigent defendants and the improvements that continuing education and resources would have on the attorneys that provide legal representation to indigent defendants. Responses included "improved compensation for attorneys," improving attorneys' skills, "improve attorney-client relations," improving communication, improving due process, and improving the overall criminal justice system.

Six responses were overall negative, focusing on the reforms not being feasible, adding more cost without much benefit, creating "a back log for the courts," and concerns over having counsel at first appearance. One respondent wrote:

> I think the continuing ed and client interview components are good. I think the counsel at first appearance is good in concept but not in reality. I can see that this requirement will actually result in misdemeanor defendants spending more initial time pretrial in jail rather than less. Particularly not practical or functional with regard to weekend arraignments. Also, we handle walk-in arraignments all day, every day currently. Requiring counsel at first appearance will actually require us to set specific times, making it far less convenient for a defendant to come to court and get arraigned.

This sentiment was echoed in other responses across several questions, as concerns about waiting for counsel to arrive were discussed. Fourteen responses centered on the increased costs associated with the reforms. Two respondents indicated that it was too early to tell how the minimum standards would change indigent defense in their jurisdiction. Four respondents indicated that they did not expect any changes to occur in their jurisdiction as a result of the new minimum standards. In one case, the respondent wrote that their county already reformed their system even before the new minimum standards, while another expressed doubt about the reform. The respondent stated: "Very little. Statewide solutions are typically geared toward solving problems in the biggest counties."

When respondents were asked about how the new minimum standards would impact the current models through which indigent defense is delivered in their jurisdiction, if at all, 55 respondents chose to answer. Six respondents indicated that the current model of delivery for criminal indigent defense would not be impacted by the new minimum standards. Other respondents wrote about the time and financial burden that it would place on their delivery system. Five respondents indicated that their county was considering or planning to change their current model to the public defender model. The results were fairly mixed, with some respondents indicating the changes would lead to better representation and a better model in their jurisdiction, and some wrote that the changes would complicate their model and result in lower quality representation. The responses were overall shorter in length when compared with the other open-ended questions, potentially reflecting this early stage in the reform process.

The issue of providing legal representation at first appearance in court was discussed in four of the responses. While some respondents discussed it as a fact that would simply create changes in their model of delivery, one respondent was concerned that it would create a burden

for their district. One respondent echoed this sentiment by claiming that "It will drastically reshape what we do during the week and on weekends […], it will likely reduce available arraignment access." Concerns over cost, delaying court processes, and burdening the courts were discussed across respondents from various counties. A respondent from a small rural county questioned how the standards could realistically be implemented. Another respondent indicated their concern over the new minimum standards by stating: "They will complicate a system that is working fine."

Involvement and Role in Creating Compliance Plans

Forty-four out of 57 respondents to the question "[w]ill you be involved in creating the compliance plan?" answered affirmatively that they would be involved in the creation of the compliance plan. Eight respondents were unsure if they would be involved, and two responded that they would not be involved. Considering that chief judges and court administrators will be faced with this reform in their courts, it is reassuring that the majority of the respondents were sure that they would be involved in creating the compliance plans. When respondents were queried about their anticipated role in creating the compliance plan for their jurisdiction, 49 respondents wrote about their involvement. Seven respondents indicated that they were not sure about their specific role, despite answering that they would be involved.

The responses fell into several categories: creating the compliance plan, providing a support role in terms of advising or providing information such as statistics, and overseeing the compliance plan to ensure that it was properly implemented. Both court administrators and chief judges indicated that they would participate in an advisory role or in a creation role. The roles varied across the counties, and in some cases the chief judges advised, while the court administrators were the primary creators of the plan, and in other cases the court administrators

provided an advisory role while the chief judges took the leadership position in creating the compliance plans. This variation in roles was not correlated with the different types of counties, and potentially reflected the random variation of the ways that different courts choose to delegate different responsibilities, and the ways in which court administrators and chief judges work together depending on the court's culture. In order to determine this, the open-ended responses were compared across categories. The qualitative responses were separated according to position type and compared. Chief judges and court administrators had similar responses. This comparison was also done by separating responses according to district and circuit courts, urban and rural counties, and by indigent defense delivery system. The independent variables that were examined for the Likert scale questions were also used to examine the open-ended responses. The examination revealed that there was no meaningful relationship between these independent variables and the qualitative responses of respondents.

The survey also asked about the role of MIDC personnel. Specifically, "What will be the role of MIDC personnel in creating the compliance plan in your community?" Fifty-four respondents answered this question, and 27 responded with statements about "providing guidance" and playing an "advisory" role in the process. However, a significant portion of the respondents were unsure. Seventeen respondents stated that they did not know what the MIDC personnel's role would be in creating the compliance plan. Only one respondent provided a detailed answer, stating: "Assisting with information, including what plans must include and best practices. I also understand MIDC will be the 'gatekeeper' for grant applications to implement portions of the plans that will require funding."

When asked about who is responsible for overseeing the minimum standards, there were 58 responses. Fifteen respondents answered that they did not know who was responsible for

overseeing the minimum standards in their jurisdiction. Two respondents wrote that the MIDC was responsible. Thirty respondents wrote that the chief judge, court administrator, or both would be responsible for overseeing the minimum standards. It appears that at this early stage, it is not always clear exactly who will be responsible for oversight among the respondents of the survey.

Anticipated Changes to Responsibilities

The survey asked, "How do you anticipate the responsibilities of chief judges changing in response to the minimum standards?" Fifty-five answers were provided. Fourteen respondents stated that they did not anticipate the responsibilities of the chief judges changing, and 14 respondents stated that they did not know. One respondent showed his support with this answer: "I am the Chief Judge. The Public Defenders minimum standards have my attention, support, and assistance in implementation." Another stated: "[t]he changes help to remove judges from the process as it relates to the attorneys and their defense strategies on a case. We welcome the change." Some respondents indicated that they expected the burden to increase, but were vague about the burden, typically stating that the workload would increase. One respondent predicted that the first set of minimum standards may not change the responsibilities of chief judges, but future sets might impact the responsibilities, writing: "[n]ot significantly at this time. Will likely change if the judicial independence standard gets adopted at a later date." The most detailed respondent wrote: "[w]hile I will no longer be responsible for the indigent contract, I will monitor representation to make sure that the standards are met. Some processes will have to be adjusted to allow time for attorneys to talk to defendants prior to arraignment." One respondent indicated that the responsibilities would lessen for chief judges.

The same question about responsibilities changing as a result of the new reform was also asked as it relates to the responsibilities of court administrators. Specifically, "How do you anticipate the responsibilities of court administrators changing in response to the minimum standards?" There were fifty-five answers to this question. Eleven respondents did not know, while 19 indicated that the burden would increase on court administrators, specifically that they would be required to monitor and help ensure that the minimum standards were met. Four respondents indicated that court administrators would have less work and fewer burdens. Five respondents did not think there would be any changes in terms of responsibilities for court administrators.

Respondents' Thoughts on Changes That Minimum Standards May Bring

Fifty-seven respondents wrote about their thoughts on the changes that the new minimum standards may bring to their jurisdictions. Overall, responses to this inquiry were mixed. While one respondent wrote that "I am in complete support of the goal. I think the first set of standards are scratching the surface and hope that they will build momentum for even more change," another stated simply that the changes were "unnecessary." Although many respondents were optimistic that the changes would be positive, a few notable responses indicated that the changes would complicate the system or create unnecessary burdens. Although most of the more negative responses were brief, one detailed response captured the frustration of a stakeholder:

> Why do we change things that are not broken? If there are issues in a few jurisdictions, then deal with them. Majority of the situations in the state are handled fair and representation is more than appropriate. Again, it is nice that there is a standard for education to continue, however, a good attorney would do this anyway. Based on the crime, individuals are given attorneys that can represent the individual and provide the

> best services/and ask for special request. The state paying out more dollars as well, when they indicate they do not have dollars. The cost of hiring staff, a regional MIDC person - grant manager -this is expensive increased cost.

In addition to increased costs, other concerns included confusion about the actual changes and creating unnecessary burdens, especially for rural counties in which resources are already scarce. Other mixed responses included cautious optimism, illustrating support for the changes in theory, as well as concerns over the implementation of the new minimum standards. For example, one respondent wrote: "I think the change is good and necessary. The theory, overall philosophy of this initiative has merit. The implementation could be problematic." One respondent indicated that while overall the minimum standards were a good idea, some of the requirements—particularly requiring legal representation at the first appearance in court—was "too burdensome for the benefit." Another respondent captures the concern for rural counties in this statement: "[w]ell intended, unsure if [it] will actually improve our services, considering we are a rural jurisdiction and have a hard enough time getting lawyers as it is."

Three respondents wrote that the changes were overdue. This respondent captured the sentiment with the following answer:

> The changes are overdue. It is a step in the direction to allow all criminal justice stakeholders (defense attorneys, prosecutors, etc.) to have a fair and balanced opportunity. This also removes the judiciary from the process. For example, we do not tell the prosecutor's office how much they can spend on the case, but the court does for defense attorneys. No longer will this awkward relationship exist.

Funding and ensuring that legal counsel is available at the first appearance were among the main concerns for respondents that were skeptical of implementing the new minimum standards.

> My concern is that the money will not be there to pay for these changes; our county has moved ahead without any state monies—at some point I don't think they will be able to sustain what they have done without state money.

Additionally, some courtrooms are architecturally limiting in terms of providing some basic standards. Undoubtedly, funding and time would be necessary to make adjustments. One respondent commented that "[i]t may be logistically difficult to implement some of the standards, for example providing attorney-client meeting rooms, so it may take some time and funding changes before agencies can comply."

Challenges in Implementing the MIDC's First Set of Minimum Standards

Fifty-eight respondents answered the question, "[w]hat challenges do you anticipate in implementing the Michigan Indigent Defense Commission's first set of minimum standards in your jurisdiction?" Cost was by far the biggest concern in response to implementation. There were 32 responses that included funding as a major challenge for implementing the minimum standards in the jurisdiction in which respondents worked. While some attributed the requirement to have an attorney at arraignment as the main reason for an increase in costs, others cited limited resources to make other changes, such as providing private meeting areas for attorneys and clients. The following response captures concerns echoed by many:

> Cost - The Legislature needs to guarantee that funding will be available. Acceptance of Change - In a culture that has not seen much change in some time, it will be difficult for

> local practices/policies to adjust. We are also considering a regional approach, i.e. 1 Public Defender for 2 counties. This creates its own logistical and funding challenges as well.

A lack of trust that funding would be provided by the state and that the burden would not fall entirely on counties was present in multiple responses. For example:

> I think the standards are reasonable, however with limited space in some courts it may be challenging finding a private area for defendant and counsel to meet. I also believe that money will become an issue at some point. I don't believe our legislators have the people's best interest at heart so therefore funding may be an issue.

Although a few respondents wrote that they did not anticipate challenges or that it was too early to tell what those challenges would be, many respondents did feel that the challenges would mostly revolve around funding, providing an attorney at first appearance, making necessary changes to the courts to allow for private meeting areas between attorneys and clients, being able to find enough qualified attorneys to provide indigent defense, and getting buy-in from the stakeholders. One respondent noted that while there were certainly challenges and the court proceedings may be slowed down even further, they wrote that these burdens were worthy because "protecting the rights of all individuals must be a priority, even if it slows things down a bit."

Additional Insight from Chief Judges and Court Administrators

Respondents were asked to "provide any additional insight on the response to minimum standards in your jurisdiction that has not been covered elsewhere in the survey." Twenty-two responses were provided, but nine of these responses said that they had nothing further to add.

Of the respondents that answered this question, concerns were discussed as well as potential solutions. For example, one respondent wrote: "I strongly suspect that the ideals will not be realized as the budget demands will be prohibitive." Another asked about a potential model that could be used to implement the minimum standards:

> Would like a good template for what is required for representation by counsel at first arraignment. How is that actually accomplished without bringing the whole system to a halt when you have 30 arraignments on the same morning. If counties are in compliance with that part, how are they doing it?

One respondent offered a problem and a solution in a short response: "I think that the requirement on having an attorney present at arraignment is not needed. Maybe the court rule could be changed to not allow plea at arraignment." Another respondent offered a potential solution if the minimum standards were not effective after initial implementation. "In my opinion, if this effort fails, the state should just then consider a state funded public defender system."

A respondent's concerns about distrust of the state government as it relates to funding captures a concern that was present throughout multiple questions in the survey:

> This county has worked exceptionally hard over the course of the last few years to stay solvent through the recession. We have an extremely low tax base and do not have significant revenues streaming to the county. Employees have not been kept up with the cola - despite the efforts of the county to stay in the black. The County has felt many issues being forced on them to address that will cost dollars, and they do not always see the dollars return from the state. There is a lot of distrust from state to county. There is

> lack of trust that the state will make the county whole with the implementation of the project. If they do initially, at what point does it become the county's responsibility to assume the full cost.

Lastly, a commentary on lack of communication and the problems that can result was captured:

> I truly wish there was a requirement to involve the local judiciary in this process. Our already stressed bench will be required to do more, take more time and lengthen an already tight docket to accommodate some of these changes which by and large will only better a small percentage of our caseload. For example, while it would be helpful to a Defendant charged with a severe felony to have an attorney at arraignment, for those with a misdemeanor it will cost time and money for someone who would likely be released on a PR bond anyway. So why would an attorney be needed for that type of case? Judicial input is critical and is not happening in many jurisdictions. Communication is a critical piece to implementing change!

CHAPTER 6: DISCUSSION

Implementing reform in any situation can bring its own unique challenges, and the criminal indigent defense systems across the State of Michigan are no exception. The MIDC's first set of minimum standards are set to address basic—yet fundamental—shortcomings in the standardization of criminal indigent defense (please see Appendix C for the full text of the first set of minimum standards). Ensuring that attorneys are properly trained, that defendants have access to legal counsel during their first appearance in court, and that there is a place for attorneys and clients to meet and speak confidentially are all necessary elements for a fair criminal justice system, but these basic elements are costly to implement in some communities. Court administrators and chief judges were surveyed across all of Michigan's counties to gauge the response to the new minimum standards. There was no difference between how court administrators and chief judges responded to the minimum standards—perhaps because both are involved in the compliance plans and may need to work together as a team on this, and it can be argued that they are equally affected by issues of indigent defense. In some cases, court administrators were taking a lead role on compliance plans while in other cases, chief judges were taking a lead role.

While there is variation across counties in terms of which responsibilities belong to court administrators and which belong to chief judges, the responses did not vary according to one's position, what type of court they worked in, or how long they held the position. With the exception of some respondents from rural counties commenting on the difficulty of finding qualified attorneys and implementing these new minimum standards in a rural setting, there were no differences between the type of county (for example, size of population or location) in terms

of answers to survey questions. A comparison across district, circuit, and combined district and circuit courts did not reveal any meaningful correlations. While some respondents were skeptical of the reform, most respondents were positive about the new minimum standards (although they were concerned about the cost of the reforms).

Overall Response

The overall response to the minimum standards was positive and supportive across the majority of counties. Although a minority of respondents were not supportive of the reforms and described the reforms as burdensome, most respondents discussed the need for the reforms and discussed the positive outcomes—such as higher quality legal representation—of the reforms. Understandably, there were many concerns voiced over the funding issue, and in a fewer—yet sizable—number of cases, concerns were voiced about logistics and slowing down the court processes. It was interesting that regardless of the position of the respondent or the county, there was an overall consensus that the minimum standards were necessary and a move in the right direction. Additionally, funding was a concern across Michigan.

Funding

While the responses were overall positive, a number of concerns were raised by both court administrators and chief judges. The most frequent concern across counties was funding. It appears there is concern that the state government will not provide funding in order to implement these new minimum standards. Several respondents specifically wrote that they did not trust the state to come through with the funding, and that this financial burden on the counties was not sustainable.

First Appearance

Concerns over requiring counsel at first appearance usually revolved around funding, logistics, and slowing down court processes. Multiple respondents—both court administrators and chief judges—expressed concern that requiring counsel at first appearance would be burdensome for a variety of reasons. The most obvious reason is the increased financial cost of paying attorneys to appear at the first stage. They were also worried about slowing down the court process, especially when many arraignments were scheduled in one day. Several respondents wrote about the concern they had that defendants would spend more time in jail, awaiting arraignment until an attorney was available. The logistics of ensuring attorneys were available during the first appearance was discussed across the survey.

Issues for Rural Counties

Several court administrators and chief judges from rural counties expressed specific concerns about having the resources and access to qualified attorneys in their county that they would need in order to comply with the minimum standards. One respondent discussed how reforms such as these are often geared towards urban areas, and that they do not take into account the special circumstances in rural counties. It makes sense that reform that is created at the state level does not take into account the specific challenges of rural communities that are isolated, have a limited population, and have difficulty in recruiting some professionals—such as qualified defense attorneys. Additionally, court actors in rural areas may not have as much experience in different areas of law as there are fewer individuals and fewer incidents that require court intervention. In dealing with rural counties, it is particularly important to involve stakeholders from rural counties in order to benefit from diverse perspectives in planning for reforms. Additionally, perhaps a regional solution may be the key in areas that have a very low

population. One respondent indicated that their county is exploring creating a regional public defender's office across several counties in order to serve the needs of criminal indigent defendants and to be in compliance with the new minimum standards. Such a solution could be particularly useful in low-populated counties that struggle to obtain the resources they need to be in compliance.

If the counties that are considering a regional public defender's office are successful in pooling their resources and coordinating quality criminal indigent defense for all of the counties involved in the regional office, rural counties can use their model to create their own regional office. One respondent suggested that if this reform effort does not succeed, the state should consider a state-wide public defender's office as a potential solution.

Different Perspectives

While the overall response to the minimum standards was positive, and the majority of those that responded to the survey were supportive of the need for reform, there was a minority opinion shared by some that the reform would either not impact their jurisdiction or impact their jurisdiction in a negligible way. Another minority opinion was that the reforms were unnecessary and that the system was not broken. In these few cases, respondents wrote that while other counties may need the reform, their county did not need it, and that the reforms were unnecessary.

Roles

"The basic premise of role theory is that individuals act differently within their institutional context than they do when acting in relative isolation…[t]hus, a judicial actor's role is a pattern of behavior that is determined by his expectations, the normative expectations that others have for him, and other factors which inform the actor's conception of his function in the

judicial system" (Smith, 1990). The context of these reforms has implications for the chief judges and court administrators that are charged with implementation of the new minimum standards. Because these key stakeholders must work together in their courts to implement reform, and must work within a system in which they are concerned about funding and may not be completely sure of their specific role in this process, they are at a disadvantage in terms of successfully implementing this reform. More communication with state leaders is necessary—and perhaps more resources to facilitate these changes could positively impact the chief judges and court administrators that now have an increased workload and burden (even if they are supportive of the new reform). While many respondents indicated that they would be involved in the creation of the compliance plans for their jurisdiction, there was also some confusion about what their roles would look like. While some respondents answered that they did not know at this time, others simply stated that they would hold a leadership or advisory role. Since counties are currently in the process of creating compliance plans, it may simply be too early to tell what specific roles chief judges and court administrators will play. Despite a lack of specificity, the majority of respondents indicated that they would be involved and that they were supportive of creating the plans, even if their exact roles had not been defined yet. This is an area of interest that would benefit from follow-up studies in the future in order to understand how these key players understand and shape their roles during the challenges of reform implementation.

Implementation Facilitators and Barriers

Implementation barriers—such as lack of knowledge, confusion, and lack of support—are tied to the failure of reform in organizations (Adler, 2007; Andrews & Bonta, 2010; Berman, 1978; Casper & Brereton, 1984; DeLeon & DeLeon, 2002; Feeley, 1983; Harland & Harris, 1987; Hill, 2003; McGarrell, Rivera, & Patton, 1990). In order to successfully implement

reform, key stakeholders must be knowledgeable and supportive of the reforms (Fixsen, Naoom, Blase, Friedman, & Wallace, 2005). Fortunately, this exploratory study revealed that while there is some skepticism that the state will provide the necessary funding, the majority of chief judges and court administrators in this sample are familiar with the new minimum standards and are supportive of these changes. Having the support of key stakeholders helps facilitate successful reform implementation, and gaining insight into the concerns of these stakeholders can help ensure that problem areas are addressed (Fixsen, Naoom, Blase, Friedman, & Wallace, 2005). While it is positive that chief judges and court administrators are mainly supportive, it is important to understand and address the skepticism that the state government will provide funding for these reforms. Respondents cited their previous experience of a lack of state support and funding for local reforms as part of the basis for this skepticism. Knowing this, state leaders can address these concerns in order to help ensure that reform is successful. Additionally, there is some confusion about the specific roles that chief judges and court administrators will play. It is early in the reform process, so there is time to correct this confusion, but it is important that it is addressed quickly.

Alongside this confusion is a general concern about the logistics. Having counsel at first appearance was a concern that was raised throughout the responses of the qualitative portion of the survey. Their concern included finding the extra funding that would be necessary to enforce this reform, as well as concern for finding qualified and willing attorneys to help fill this gap. Some respondents were concerned about travel time and about defendants spending extra time in jail, awaiting qualified counsel. Clearly these are issues that must be addressed. The confusion, lack of funding, and lack of understanding of their roles are all barriers to successful implementation. Support of key stakeholders is tied to successful reform implementation

(Ramarapu, Mehra, & Frolick, 1995; Salanova, Cifre, & Martin, 2004; Small & Yasin, 2000). Previous research indicates that successful reform implementation requires that the details of the reform must be clear and specific (Bauman, Stein, & Ireys, 1991; Dale, Baker, & Racine, 2002; Winter & Szulanski, 2001), and this study revealed that currently, the details of the specific roles that stakeholders are supposed to play are missing. In order to increase implementation facilitators and increase the likelihood of success, it is important that the support of key stakeholders is leveraged to help define specific roles and decrease the confusion and lack of understanding that are currently barriers to successful implementation.

CHAPTER 7: CONCLUSION

This exploratory study sought to understand the responses of key stakeholders—chief judges and court administrators—to the reform of criminal indigent defense systems across Michigan. Since chief judges and court administrators will be leaders in implementing the new minimum standards in their jurisdictions, it was interesting to learn of their responses and perceptions of this new reform. There were sixty-two responses to the survey, and chief judges and court administrators from thirty-three different counties responded. Approximately half of the respondents were chief judges (N=26) and half were court administrators (N=31), which did provide for a fair comparison between the two positions in this study.

It was encouraging to find that the majority of respondents supported the new reform and felt that it would improve criminal indigent defense in Michigan. It is possible that in order to make the transition of reform implementation more successful, state leaders must work with county leaders in building trust. A lack of trust was cited several times as a reason for why some respondents were skeptical of the new minimum standards. The very changes that would improve criminal indigent defense are the ones that will require more funding, and since counties cannot afford to provide the extra funding, it is imperative that the state follows through with funding. There was also a bit of confusion about who would be overseeing the minimum standards across the jurisdictions. At this time, the key players—court administrators and chief judges—are not always clear on their specific role in the process. It will be interesting to see over time if state funding does come through, and if it does, how the new minimum standards will impact criminal indigent defense across Michigan.

Policy Recommendations

For states that are planning indigent defense reform, it is crucial for those in charge of reform design and implementation to consider that support from key stakeholders is not enough to successfully implement reform. Although this study was conducted in the early stages of reform implementation, it is important to note that there was a lot of confusion surrounding individual roles. Both chief judges and court administrators across different courts and rural and urban counties were not clear on their role in reform implementation. Without this clarity, there are significant challenges in terms of accomplishing successful reform implementation. In addition to building trust and providing funding, it is important that the state increases communication and ensures that stakeholders fully understand their role in reform implementation. For other states that are considering reform implementation in their courts, those involved in reform must take time to communicate effectively with stakeholders about their specific roles.

Limitations of the Study

This study was conducted at the very beginning stages of reform implementation in Michigan. As a result, there is much that cannot be known with certainty; especially since the compliance plans are still being formulated during the time of this writing. Some of the respondents wrote that they were unsure or did not know how to respond to the open-ended questions in the survey because it is too early in the process to know what will happen in terms of implementation.

Considering the exploratory nature of this study, it is difficult to account for all factors that may influence the discretionary decision-making of court actors as they seek to implement this new reform. Honesty is an important component in each study, and considering that public

servants were surveyed about new reform, ensuring honesty can be considered a limitation. In order to encourage participants to be honest in their responses to the survey questions, anonymity was guaranteed to respondents. The use of SurveyMonkey guarantees anonymous responses as the settings can ensure that the researcher does not receive any identifying information, only the responses of each participant. It is impossible to know for sure if those that responded to the survey were being fully honest, but the survey was designed to encourage honesty through providing an anonymous, online setting for the survey. Additionally, as the survey is voluntary and the responses were overall positive, it is possible that respondents were those that self-selected because they were interested in criminal indigent defense and the current reforms in their jurisdiction. It is possible that the overall positive responses that were in the survey are at least, in part, a result of self-selection (although everyone had an opportunity and was encouraged to participate in the study).

Generalizability is an issue in the study. As the survey focused specifically on Michigan's counties at the beginning of this reform implementation, the results cannot be generalized to other states or other types of reform implementation. However, some of the responses, such as concerns over funding and lack of trust between the counties and the states, are likely concerns that occur in other reform settings, and there is insight that helps illustrate the importance of understanding key stakeholders' perspectives in reform implementation.

Future Research

Future research should follow up on the progress of the reform implementation in Michigan's counties. As this study was conducted at the very initial stages of reform implementation, there is still much to learn. It will be very interesting to see how the reform unfolds and how counties cope with the issues that they raised in the survey responses—

particularly those in terms of funding and accommodating attorneys at the first appearance in court. Several respondents indicated that their entire system of providing criminal indigent defense would be changing in order to accommodate these new minimum standards. In each case, the respondent indicated that the county was exploring—or had decided upon—creating a public defender's office. In order to see the changes and responses to reform, it is important to periodically survey those in charge of reform implementation—court administrators and chief judges across the State of Michigan. Surveying these key actors every few years to follow this reform implementation in action would yield useful information and add to the body of knowledge of criminal indigent defense and reform implementation. Similarly, it would be interesting to expand this research by surveying other key actors both in the State of Michigan and in other states that are in the process of reform implementation for their criminal indigent defense systems.

As this study was exploratory, there is still much to learn about reform implementation across the criminal indigent defense systems in Michigan. Not only would it be helpful to follow up and continue to survey chief judges and court administrators in the years to come, it would also be interesting to have in-depth interviews on this subject in order to gain a deeper understanding of reform implementation in action.

APPENDICES

Appendix A: Survey Instrument

1. What county or counties do you work in?

2. What type of court do you work in?
   (a) district
   (b) circuit
   (c) both district and circuit
   (d) other (please specify)

3. What is the approximate population of your jurisdiction?

4. What is your position?
   (a) chief judge
   (b) court administrator
   (c) other (please specify)

5. How long have you held this position?

6. What types of indigent defense systems are used in your court? Please include the means by which conflict cases are handled as well.
   (a) assigned counsel
   (b) contract
   (c) public defender program
   (d) mixture of assigned counsel and contract
   (e) mixture of public defender and assigned counsel
   (f) mixture of contract and public defender
   (g) all of the above
   (h) I do not know

7. Defendants represented by private defense counsel generally receive better legal representation than defendants represented by public defenders.
   (a) strongly disagree
   (b) disagree
   (c) neutral
   (d) agree
   (e) strongly agree

8. Indigent defense in my jurisdiction is sufficiently funded.
   (a) strongly disagree
   (b) disagree
   (c) neutral
   (d) agree
   (e) strongly agree

9. I am familiar with the new Michigan Indigent Defense Commission minimum standards.
    (a) strongly disagree
    (b) disagree
    (c) neutral
    (d) agree
    (e) strongly agree

10. Indigent defense reform was necessary in Michigan.
    (a) strongly disagree
    (b) disagree
    (c) neutral
    (d) agree
    (e) strongly agree

11. In what ways do you believe the minimum standards will change indigent defense in your jurisdiction?

12). How will the new minimum standards impact the current models through which indigent defense is delivered in your jurisdiction, if at all?

13). Will you be involved in creating the compliance plan?

14). If yes, what do you anticipate your role will be in creating the compliance plan?

15). What will be the role of MIDC personnel in creating the compliance plan in your community?

16). Who is responsible for overseeing the minimum standards in your jurisdiction?

17). How do you anticipate the responsibilities of chief judges changing in response to the minimum standards?

18). How do you anticipate the responsibilities of court administrators changing in response to the minimum standards?

19).What are your thoughts on the changes that these minimum standards may bring to your jurisdiction?

20). What challenges do you anticipate in implementing the Michigan Indigent Defense Commission's first set of minimum standards in your jurisdiction?

21). Please provide any additional insight on the response to the minimum standards in your jurisdiction that has not been covered elsewhere in the survey.

Appendix B: Enclosure Letter

March 8, 2017

Dear Chief Judge or Court Administrator,

I am a doctoral candidate at Michigan State University in the School of Criminal Justice. I am undertaking a study of Chief Judges' responses to the new minimum standards for criminal indigent defense in the State of Michigan. The survey is in no way affiliated with the Michigan Indigent Defense Commission (MIDC).

You are being asked to provide your opinion in a brief survey about criminal indigent defense and this new reform in Michigan. Your answers are anonymous so I will not have any way to identify your responses. I will also be happy to share my final report with you. The survey should take approximately 10 to 15 minutes.

If possible, please make sure that both Chief Judges and Court Administrators in your jurisdiction fill out the survey.

Participation in this research project is completely voluntary. You have the right to say no. You may change your mind at any time and withdraw. You may choose not to answer specific questions or to stop participating at any time. You indicate your voluntary agreement to participate by beginning this anonymous online survey by clicking on the SurveyMonkey link below.

https://www.surveymonkey.com/r/CriminalIndigentDefenseReform

If you have concerns or questions about this study, please contact me at:

Ksenia Petlakh
School of Criminal Justice
College of Social Science
Michigan State University
655 Auditorium Road, Baker Hall, East Lansing, MI 48824
petlakhk@msu.edu

If you have questions or concerns about your role and rights as a research participant, would like to obtain information or offer input, or would like to register a complaint about this study, you may contact, anonymously if you wish, the Michigan State University's Human Research

Protection Program at (517)-355-2180, Fax (517)-432-4503, or e-mail irb@msu.edu or regular mail at Olds Hall, 408 West Circle Dr Rm 207, East Lansing, MI 48824.

Thank you so much for your time and consideration.

Respectfully,

Ksenia Petlakh

Appendix C: Full Text of The First Set of Minimum Standards from MIDC

Standard 1:

Education and Training of Defense Counsel

The MIDC Act requires adherence to the principle that "[d]efense counsel is required to attend continuing legal education relevant to counsel's indigent defense clients." MCL 780.991(2)(e). The United States Supreme Court has held that the constitutional right to counsel guaranteed by the Sixth Amendment includes the right to the effective assistance of counsel. The mere presence of a lawyer at a trial "is not enough to satisfy the constitutional command." *Strickland v Washington*, 466 US 668, 685; 104 S Ct 2052, 2063; 80 L Ed 2d 674 (1984). Further, the Ninth Principle of The American Bar Association's Ten Principles of a Public Defense Delivery System provides that a public defense system, in order to provide effective assistance of counsel, must ensure that "Defense counsel is provided with and required to attend continuing legal education."

The MIDC proposed a minimum standard for the education and training of defense counsel. The version conditionally approved by the Court is as follows:

A. Knowledge of the law.

Counsel shall have reasonable knowledge of substantive Michigan and federal law, constitutional law, criminal law, criminal procedure, rules of evidence, ethical rules and local practices. Counsel has a continuing obligation to have reasonable knowledge of the changes and developments in the law. "Reasonable knowledge" as used in this standard means knowledge of which a lawyer competent under MRPC 1.1 would be aware.

B. Knowledge of scientific evidence and applicable defenses.

Counsel shall have reasonable knowledge of the forensic and scientific issues that can arise in a criminal case, the legal issues concerning defenses to a crime, and be reasonably able to effectively litigate those issues.

C. Knowledge of technology.

Counsel shall be reasonably able to use office technology commonly used in the legal community, and technology used within the applicable court system. Counsel shall be reasonably able to thoroughly review materials that are provided in an electronic format.

D. Continuing education.

Counsel shall annually complete continuing legal education courses relevant to the representation of the criminally accused. Counsel shall participate in skills training and

educational programs in order to maintain and enhance overall preparation, oral and written advocacy, and litigation and negotiation skills. Lawyers can discharge this obligation for annual continuing legal education by attending local trainings or statewide conferences. Attorneys with fewer than two years of experience practicing criminal defense in Michigan shall participate in one basic skills acquisition class. All attorneys shall annually complete at least twelve hours of continuing legal education. 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. The MIDC shall collect or direct the collection of data regarding the number of hours of continuing legal education offered to and attended by assigned counsel, shall analyze the quality of the training, and shall ensure that the effectiveness of the training be measurable and validated. A report regarding these data shall be submitted to the Court annually by April 1 for the previous calendar year.

Comment:
The minimum of twelve hours of training represents typical national and some local county requirements, and is accessible in existing programs offered statewide.

Standard 2:

Initial Interview

The MIDC Act requires adherence to the principle that "[d]efense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel's client." MCL 780.991(2)(a). United States Supreme Court precedent and American Bar Association Principles recognize that the "lack of time for adequate preparation and the lack of privacy for attorney-client consultation" can preclude "any lawyer from providing effective advice." *See United States v Morris*, 470 F3d 596, 602 (CA 6, 2006) (citing *United States v Cronic*, 466 US 648; 104 S Ct 2039; 80 L Ed 2d 657 (1984)). Further, the Fourth Principle of The American Bar Association's Ten Principles of a Public Defense Delivery System provides that a public defense system, in order to provide effective assistance of counsel, must ensure that "Defense counsel is provided sufficient time and a confidential space within which to meet with the client."

The MIDC proposed a minimum standard for the initial client interview. The version conditionally approved by the Court is as follows:

A. Timing and Purpose of the Interview:

Counsel shall conduct a client interview as soon as practicable after appointment to represent the defendant in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning counsel's representation and the case proceedings. The purpose of the initial interview is to: (1) establish the best possible relationship with the indigent client; (2) review charges; (3) determine whether a motion for pretrial release is appropriate; (4) determine the need to start-up any immediate investigations; (5) determine any immediate mental or physical health needs or need for foreign language interpreter assistance; and (6) advise that clients should not discuss the circumstances of the

arrest or allegations with cellmates, law enforcement, family or anybody else without counsel present. Counsel shall conduct subsequent client interviews as needed. Following appointment, counsel shall conduct the initial interview with the client sufficiently before any subsequent court proceeding so as to be prepared for that proceeding. 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. If confidential videoconference facilities are made available for trial attorneys, visits should at least be scheduled within three business days. If an indigent defendant is in the custody of the Michigan Department of Corrections (MDOC) or detained in a different county from where the defendant is charged, counsel should arrange for a confidential client visit in advance of the first pretrial hearing.

B. Setting of the interview:

All client interviews shall be conducted in a private and confidential setting to the extent reasonably possible. The indigent criminal defense system shall ensure the necessary accommodations for private discussions between counsel and clients in courthouses, lock-ups, jails, prisons, detention centers, and other places where clients must confer with counsel.

C. Preparation:

Counsel shall obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports concerning pretrial release, and discoverable material.

D. Client status:

1. Counsel shall evaluate whether the client is capable of participation in his/her representation, understands the charges, and has some basic comprehension of criminal procedure. Counsel has a continuing responsibility to evaluate, and, where appropriate, raise as an issue for the court the client's capacity to stand trial or to enter a plea pursuant to MCR 6.125 and MCL 330.2020. Counsel shall take appropriate action where there are any questions about a client's competency.

2. Where counsel is unable to communicate with the client because of language or communication differences, counsel shall take whatever steps are necessary to fully explain the proceedings in a language or form of communication the client can understand. Steps include seeking the appointment of an interpreter to assist with pretrial preparation, interviews, investigation, and in- court proceedings, or other accommodations pursuant to MCR. 1.111.

Comments:

1. *The MIDC recognizes that counsel cannot ensure communication prior to court with an out of custody indigent client. For out of custody clients the standard instead requires the attorney to notify clients of the need for a prompt interview.*

2. *The requirement of a meeting within three business days is typical of national requirements (Florida Performance Guidelines suggest 72 hours; in Massachusetts, the Committee for Public Counsel Services Assigned Counsel Manual requires a visit within three business days for custody clients; the Supreme Court of Nevada issued a performance standard requiring an initial interview within 72 hours of appointment).*

3. *Certain indigent criminal defense systems only pay counsel for limited client visits in custody. In these jurisdictions, compliance plans with this standard will need to guarantee funding for multiple visits.*

4. *In certain systems, counsel is not immediately notified of appointments to represent indigent clients. In these jurisdictions, compliance plans must resolve any issues with the failure to provide timely notification.*

5. Some jurisdictions do not have discovery prepared for trial counsel within three business days. The MIDC expects that this minimum standard can be used to push for local reforms to immediately provide electronic discovery upon appointment.

6. The three-business-day requirement is specific to clients in "local" custody because some indigent defendants are in the custody of the Michigan Department of Corrections (MDOC) while other defendants might be in jail in a different county from the charging offense.

7. In jurisdictions with a large client population in MDOC custody or rural jurisdictions requiring distant client visits compliance plans might provide for visits through confidential videoconferencing.

8. Systems without adequate settings for confidential visits for either in-custody or out-of custody clients will need compliance plans to create this space.

9. This standard only involves the initial client interview. Other confidential client interviews are expected, as necessary.

Standard 3:

Investigation and Experts

The United States Supreme Court has held: (1) "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v Washington*, 466 US 668, 691; 104 S Ct 2052, 2066; 80 L Ed 2d 674 (1984); and (2) "[c]riminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both." *Harrington v Richter*, 562 US 86, 106; 131 S Ct 770, 788; 178 L Ed 2d 624 (2011). The MIDC Act authorizes "minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel…" MCL 780.985(3).

The MIDC proposed a minimum standard for investigations and experts. The version conditionally approved by the Court is as follows:

A. Counsel shall conduct an independent investigation of the charges and offense as promptly as practicable.

B. When appropriate, counsel shall request funds to retain an investigator to assist with the client's defense. Reasonable requests must be funded.

C. Counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution's case. Reasonable requests must be funded as required by law.

D. Counsel has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance. Decisions to limit investigation must take into consideration the client's wishes and the client's version of the facts.

Comments:

1. *The MIDC recognizes that counsel can make "a reasonable decision that makes particular investigations unnecessary" after a review of discovery and an interview with the client. Decisions to limit investigation should not be made merely on the basis of discovery or representations made by the government.*

2. *The MIDC emphasizes that a client's professed desire to plead guilty does not automatically alleviate the need to investigate.*

3. *Counsel should inform clients of the progress of investigations pertaining to their case.*

4. *Expected increased costs from an increase in investigations and expert use will be tackled in compliance plans.*

Standard 4:

Counsel at First Appearance and Other Critical Stages

The MIDC Act provides that standards shall be established to effectuate the following: (1) "All adults, except those appearing with retained counsel or those who have made an informed waiver of counsel, shall be screened for eligibility under this act, and counsel shall be assigned as soon as an indigent adult is determined to be eligible for indigent criminal defense services." MCL 780.991(1)(c); (2) "A preliminary inquiry regarding, and the determination of, the indigency of any defendant shall be made by the court not later than at the defendant's first appearance in court. MCL 780.991(3)(a); (3) …counsel continuously represents and personally appears at

every court appearance throughout the pendency of the case." MCL 780.991(2)(d)(emphasis added).

The MIDC proposed a minimum standard on counsel at first appearance and other critical stages. The version conditionally approved by the Court is as follows:

A. Counsel shall be assigned as soon as the defendant is determined to be eligible for indigent criminal defense services. The indigency determination shall be made and counsel appointed to provide assistance to the defendant as soon as the defendant's liberty is subject to restriction by a magistrate or judge. Representation includes but is not limited to the arraignment on the complaint and warrant. Where there are case-specific interim bonds set, counsel at arraignment shall be prepared to make a de novo argument regarding an appropriate bond regardless of and, indeed, in the face of, an interim bond set prior to arraignment which has no precedential effect on bond-setting at arraignment. Nothing in this paragraph shall prevent the defendant from making an informed waiver of counsel.

B. 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.

Comments:

1. *The proposed standard addresses an indigent defendant's right to counsel at every court appearance and is not addressing vertical representation (same defense counsel continuously represents) which will be the subject of a future minimum standard as described in MCL 780.991(2)(d).*

2. *One of several potential compliance plans for this standard may use an on-duty arraignment attorney to represent defendants. This appointment may be a limited appearance for arraignment only with subsequent appointment of different counsel for future proceedings. In this manner, actual indigency determinations may still be made during the arraignment.*

3. *Among other duties, lawyering at first appearance should consist of an explanation of the criminal justice process, advice on what topics to discuss with the judge, a focus on the potential for pre-trial release, or achieving dispositions outside of the criminal justice system via civil infraction or dismissal. In rare cases, if an attorney has reviewed discovery and has an opportunity for a confidential discussion with her client, there may be a criminal disposition at arraignment.*

4. *The MIDC anticipates creative and cost-effective compliance plans like representation and advocacy through videoconferencing or consolidated arraignment schedules between multiple district courts.*

5. *This standard does not preclude the setting of interim bonds to allow for the release of in-custody defendants. The intent is not to lengthen any jail stays. The MIDC believes that*

case-specific interim bond determinations should be discouraged. Formal arraignment and the formal setting of bond should be done as quickly as possible.

6. *Any waiver of the right to counsel must be both unequivocal and knowing, intelligent, and voluntary. People v Anderson, 398 Mich 361; 247 NW2d 857 (1976). The uncounseled defendant must have sufficient information to make an intelligent choice dependent on a range of case-specific factors, including his education or sophistication, the complexity or easily grasped nature of the charge, and the stage of the proceeding.*

Appendix D: Michigan Indigent Defense Commission Act

Act 93 of 2013

July 1, 2013

780.981 Short title.

Sec. 1.

This act shall be known and may be cited as the “Michigan indigent defense commission act.”

780.983 Definitions.

Sec. 3.

As used in this act:

(a) "Adult" means either of the following:

(i) An individual 17 years of age or older.

(ii) An individual less than 17 years of age at the time of the commission of a felony if any of the following conditions apply:

(A) During consideration of a petition filed under section 4 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.4, to waive jurisdiction to try the individual as an adult and upon granting a waiver of jurisdiction.

(B) The prosecuting attorney designates the case under section 2d(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d, as a case in which the juvenile is to be tried in the same manner as an adult.

(C) During consideration of a request by the prosecuting attorney under section 2d(2) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d, that the court designate the case as a case in which the juvenile is to be tried in the same manner as an adult.

(D) The prosecuting attorney authorizes the filing of a complaint and warrant for a specified juvenile violation under section 1f of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.1f.

(b) "Department" means the department of licensing and regulatory affairs.

(c) "Effective assistance of counsel" or "effective representation" means legal representation that is compliant with standards established by the appellate courts of this state and the United States supreme court.

(d) "Indigent" means meeting 1 or more of the conditions described in section 11(3).

(e) "Indigent criminal defense services" means local legal defense services provided to a defendant and to which both of the following conditions apply:

(i) The defendant is being prosecuted or sentenced for a crime for which an individual may be imprisoned upon conviction, beginning with the defendant's initial appearance in court to answer to the criminal charge.

(ii) The defendant is determined to be indigent under section 11(3).

(f) Indigent criminal defense services do not include services authorized to be provided under the appellate defender act, 1978 PA 620, MCL 780.711 to 780.719.

(g) "Indigent criminal defense system" or "system" means either of the following:

(i) The local unit of government that funds a trial court.

(ii) If a trial court is funded by more than 1 local unit of government, those local units of government, collectively.

(h) "Local share" or "share" means 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.

(i) "MIDC" or "commission" means the Michigan indigent defense commission created under section 5.

780.985 Michigan indigent defense commission; establishment; powers and duties; functions; carrying forward unexpended funds; delivery of services; minimum standards; final department action; judicial review; best practices.

Sec. 5.

(1) The Michigan indigent defense commission is established within the department.

(2) The MIDC shall retain as an autonomous entity all statutory authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, and other functions, including the functions of budgeting, personnel, locating offices, and other management functions. Any portion of funds appropriated to the MIDC that is not expended in a state fiscal year shall not lapse to the general fund but shall be carried forward in a work project

account that is in compliance with section 451a of the management and budget act, 1984 PA 431, MCL 18.1451a, for use in the following state fiscal year.

(3) The MIDC shall propose minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel to adults throughout this state. These minimum standards shall be designed to ensure the provision of indigent criminal defense services that meet constitutional requirements for effective assistance of counsel. However, these minimum standards shall not infringe on the supreme court's authority over practice and procedure in the courts of this state as set forth in section 5 of article VI of the state constitution of 1963.

(4) The commission shall convene a public hearing before a proposed standard is recommended to the department. A minimum standard proposed under this subsection shall be submitted to the department for approval or rejection. Opposition to a proposed minimum standard may be submitted to the department in a manner prescribed by the department. An indigent criminal defense system that objects to a recommended minimum standard on the ground that the recommended minimum standard would exceed the MIDC's statutory authority shall state specifically how the recommended minimum standard would exceed the MIDC's statutory authority. A proposed minimum standard is final when it is approved by the department. A minimum standard that is approved by the department is not subject to challenge through the appellate procedures in section 15. An approved minimum standard for the local delivery of indigent criminal defense services within an indigent criminal defense system is not a rule as defined in section 7 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.207.

(5) Approval of a minimum standard proposed by the MIDC is considered a final department action subject to judicial review under section 28 of article VI of the state constitution of 1963 to determine whether the approved minimum standard is authorized by law. Jurisdiction and venue for judicial review are vested in the court of claims. An indigent criminal defense system may file a petition for review in the court of claims within 60 days after the date of mailing notice of the department's final decision on the recommended minimum standard. The filing of a petition for review does not stay enforcement of an approved minimum standard, but the department may grant, or the court of claims may order, a stay upon appropriate terms.

(6) The MIDC shall identify and encourage best practices for delivering the effective assistance of counsel to indigent defendants charged with crimes.

780.987 MIDC; membership; terms; appointment by governor; qualifications; staggered terms; vacancy; chairperson; compensation; removal; quorum; official action; confidential case information; exemption from freedom of information act.

Sec. 7.

(1) The MIDC includes 15 voting members and the ex officio member described in subsection (2). The 15 voting members shall be appointed by the governor for terms of 4 years, except as provided in subsection (4). Subject to subsection (3), the governor shall appoint members under this subsection as follows:

(a) Two members submitted by the speaker of the house of representatives.

(b) Two members submitted by the senate majority leader.

(c) One member from a list of 3 names submitted by the supreme court chief justice.

(d) Three members from a list of 9 names submitted by the criminal defense attorney association of Michigan.

(e) One member from a list of 3 names submitted by the Michigan judges association.

(f) One member from a list of 3 names submitted by the Michigan district judges association.

(g) One member from a list of 3 names submitted by the state bar of Michigan.

(h) One member from a list of names submitted by bar associations whose primary mission or purpose is to advocate for minority interests. Each bar association described in this subdivision may submit 1 name.

(i) One member from a list of 3 names submitted by the prosecuting attorney's association of Michigan who is a former county prosecuting attorney or former assistant county prosecuting attorney.

(j) One member selected to represent the general public.

(k) One member selected to represent local units of government.

(2) The supreme court chief justice or his or her designee shall serve as an ex officio member of the MIDC without vote.

(3) Individuals nominated for service on the MIDC as provided in subsection (1) shall have significant experience in the defense or prosecution of criminal proceedings or have demonstrated a strong commitment to providing effective representation in indigent criminal defense services. Of the members appointed under this section, the governor shall appoint no fewer than 2 individuals who are not licensed attorneys. Any individual who receives compensation from this state or an indigent criminal defense system for providing prosecution of or representation to indigent adults in state courts is ineligible to serve as a member of the MIDC. Not more than 3 judges, whether they are former judges or sitting judges, shall serve on the MIDC at the same time. The governor may reject the names submitted under subsection (1) and request additional names.

(4) MIDC members shall hold office until their successors are appointed. The terms of the members shall be staggered. Initially, 4 members shall be appointed for a term of 4 years each, 4 members shall be appointed for a term of 3 years each, 4 members shall be appointed for a term of 2 years each, and 3 members shall be appointed for a term of 1 year each.

(5) The governor shall fill a vacancy occurring in the membership of the MIDC in the same manner as the original appointment, except if the vacancy is for an appointment described in subsection (1)(d), the source of the nomination shall submit a list of 3 names for each vacancy. However, if the senate majority leader or the speaker of the house of representatives is the source of the nomination, 1 name shall be submitted. If an MIDC member vacates his or her commission before the end of the member's term, the governor shall fill that vacancy for the unexpired term only.

(6) The governor shall appoint 1 of the original MIDC members to serve as chairperson of the MIDC for a term of 1 year. At the expiration of that year, or upon the vacancy in the membership of the member appointed chairperson, the MIDC shall annually elect a chairperson from its membership to serve a 1-year term. An MIDC member shall not serve as chairperson of the MIDC for more than 3 consecutive terms.

(7) MIDC members shall not receive compensation in that capacity but shall be reimbursed for their reasonable actual and necessary expenses by the state treasurer.

(8) The governor may remove an MIDC member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

(9) A majority of the MIDC voting members constitute a quorum for the transaction of business at a meeting of the MIDC. A majority of the MIDC voting members are required for official action of the commission.

(10) Confidential case information, including, but not limited to, client information and attorney work product, is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

780.989 MIDC; authority and duties; establishment of minimum standards, rules, and procedures; manual.

Sec. 9.

(1) The MIDC has the following authority and duties:

(a) Developing 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.

(b) Investigating, auditing, and reviewing the operation of indigent criminal defense services to assure compliance with the commission's minimum standards, rules, and procedures. However, an indigent criminal defense service that is in compliance with the commission's minimum standards, rules, and procedures shall not be required to provide indigent criminal defense services in excess of those standards, rules, and procedures.

(c) Hiring an executive director and determining the appropriate number of staff needed to accomplish the purpose of the MIDC consistent with annual appropriations.

(d) Assigning the executive director the following duties:

(i) Establishing an organizational chart, preparing an annual budget, and hiring, disciplining, and firing staff.

(ii) Assisting the MIDC in developing, implementing, and regularly reviewing the MIDC's standards, rules, and procedures, including, but not limited to, recommending to the MIDC suggested changes to the criteria for an indigent adult's eligibility for receiving criminal trial defense services under this act.

(e) Establishing procedures for the receipt and resolution of complaints, and the implementation of recommendations from the courts, other participants in the criminal justice system, clients, and members of the public.

(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.

(g) Establishing 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.

(h) Establishing procedures for annually reporting to the governor, legislature, and supreme court. The report required under this subdivision shall include, but not be limited to, recommendations for improvements and further legislative action.

(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.

(3) In establishing and overseeing the minimum standards, rules, and procedures described in subsection (1), the MIDC shall emphasize the importance of indigent criminal defense services provided to juveniles under the age of 17 who are tried in the same manner as adults or who may be sentenced in the same manner as adults and to adults with mental impairments.

(4) The MIDC shall be 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.

(5) The commission shall establish procedures for the conduct of its affairs and promulgate policies necessary to carry out its powers and duties under this act.

(6) Commission policies shall be placed in an appropriate manual, made publicly available on a website, and made available to all attorneys and professionals providing indigent criminal defense services, the supreme court, the governor, the senate majority leader, the speaker of the house of representatives, the senate and house appropriations committees, and the senate and house fiscal agencies.

780.991 MIDC; establishment of minimum standards, rules, and procedures; principles; application for, and appointment of, indigent criminal defense services; requirements.

Sec. 11.

(1) The MIDC shall establish minimum standards, rules, and procedures to effectuate the following:

(a) The delivery of indigent criminal defense services shall be independent of the judiciary but ensure that the judges of this state are permitted and encouraged to contribute information and advice concerning that delivery of indigent criminal defense services.

(b) If the caseload is sufficiently high, indigent criminal defense services may consist of both an indigent criminal defender office and the active participation of other members of the state bar.

(c) Trial courts shall assure that each criminal defendant is advised of his or her right to counsel. All adults, except those appearing with retained counsel or those who have made an informed waiver of counsel, shall be screened for eligibility under this act, and counsel shall be assigned as soon as an indigent adult is determined to be eligible for indigent criminal defense services.

(2) The MIDC shall implement minimum standards, rules, and procedures to guarantee the right of indigent defendants to the assistance of counsel as provided under amendment VI of the Constitution of the United States and section 20 of article I of the state constitution of 1963. In establishing minimum standards, rules, and procedures, the MIDC shall adhere to the following principles:

(a) Defense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel's client.

(b) Defense counsel's workload is controlled to permit effective representation. Economic disincentives or incentives that impair defense counsel's ability to provide effective representation shall be avoided. The MIDC may develop workload controls to enhance defense counsel's ability to provide effective representation.

(c) Defense counsel's ability, training, and experience match the nature and complexity of the case to which he or she is appointed.

(d) The same defense counsel continuously represents and personally appears at every court appearance throughout the pendency of the case. However, indigent criminal defense systems may exempt ministerial, nonsubstantive tasks, and hearings from this prescription.

(e) Indigent criminal defense systems employ only defense counsel who have attended continuing legal education relevant to counsels' indigent defense clients.

(f) Indigent criminal defense systems systematically review defense counsel at the local level for efficiency and for effective representation according to MIDC standards.

(3) The following requirements apply to the application for, and appointment of, indigent criminal defense services under this act:

(a) A preliminary inquiry regarding, and the determination of, the indigency of any defendant for purposes of this act shall be made as determined by the indigent criminal defense system not later than at the defendant's first appearance in court. The determination may be reviewed by the indigent criminal defense system at any other stage of the proceedings. In determining whether a defendant is entitled to the appointment of counsel, the indigent criminal defense system shall consider whether the defendant is indigent and the extent of his or her ability to pay. Factors to be considered include, but are not limited to, income or funds from employment or any other source, including personal public assistance, to which the defendant is entitled, property owned by the defendant or in which he or she has an economic interest, outstanding obligations, the number and ages of the defendant's dependents, employment and job training history, and his or her level of education. A trial court may play a role in this determination as part of any indigent criminal defense system's compliance plan under the direction and supervision of the supreme court, consistent with section 4 of article VI of the state constitution of 1963. Nothing in this act shall prevent a court from making a determination of indigency for any purpose consistent with article VI of the state constitution of 1963.

(b) A defendant is considered to be indigent if he or she is unable, without substantial financial hardship to himself or herself or to his or her dependents, to obtain competent, qualified legal representation on his or her own. Substantial financial hardship shall be rebuttably presumed if the defendant receives personal public assistance, including under the food assistance program, temporary assistance for needy families, medicaid, or disability insurance, resides in public housing, or earns an income less than 140% of the federal poverty guideline. A defendant is also rebuttably presumed to have a substantial financial hardship if he or she is currently serving a sentence in a correctional institution or is receiving residential treatment in a mental health or substance abuse facility.

(c) A defendant not falling below the presumptive thresholds described in subdivision (b) shall be subjected to a more rigorous screening process to determine if his or her particular circumstances, including the seriousness of the charges being faced, his or her monthly expenses, and local private counsel rates would result in a substantial hardship if he or she were required to retain private counsel.

(d) A defendant shall be responsible for applying for indigent defense counsel and for establishing his or her indigency and eligibility for appointed counsel under this act. Any oral or written statements made by the defendant in or for use in the criminal proceeding and material to the issue of his or her indigency shall be made under oath or an equivalent affirmation.

780.993 Investigation, audit, and review of indigent criminal defense services; cooperation and participation with MIDC; development of plan and cost analysis; award of grant; submission of plan; annual plan; approval or disapproval of plan and cost analysis by MIDC; report; maintenance of local share; necessity for excess funding; appropriation of additional funds; grants to local units of government; compliance with minimum standards; zero grant; funds received by MIDC as state funds.

Sec. 13.

(1) 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.

(2) An indigent criminal defense system may submit to the MIDC an estimate of the cost of developing the plan and cost analysis for implementing the plan under subsection (3) to the MIDC for approval. Upon approval, the MIDC shall award the indigent criminal defense system a grant to pay the approved costs for developing the plan and cost analysis under subsection (3).

(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 February 1 of each year. A plan submitted under this subsection shall specifically address how the minimum standards established by the MIDC under this act shall be met and shall include a cost analysis. The standards to be addressed in the annual plan are those approved not less than 60 days before the annual plan submission date. This cost analysis shall 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 a plan or cost analysis, or both a plan and cost analysis, submitted under subsection (3), and shall do so within 60 calendar days of the submission of the plan and cost analysis. If the MIDC disapproves the plan, the cost analysis, or both the plan and the cost analysis, the indigent criminal defense system shall consult with the MIDC and submit a new plan, a new cost analysis, or both within 30 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 shall be resolved as provided in section 15.

(5) The MIDC shall submit a report to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of representatives requesting the appropriation of funds necessary to implement the plan for each system approved by the MIDC. The information used to create this report shall be made available to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of representatives.

(6) Except as provided in subsection (8), an 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 shall be paid by this state. The legislature shall appropriate to the MIDC the additional funds necessary for a system to meet and maintain those minimum standards, which funds shall be provided to indigent criminal defense systems through grants as described in subsection (7).

(7) An indigent criminal defense system shall 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.

(8) An indigent criminal defense system is not required to expend its local share if the minimum standards established by the MIDC may be met for less than that share, but the local share of a system that expends less than its local share under these circumstances is not reduced by the lower expenditure.

(9) 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.

(10) Within 180 days after receiving funds from the MIDC under subsection (7), 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.

(11) If an indigent criminal defense system is awarded no funds for implementation of its plan under this act, the MIDC shall nevertheless issue to the system a zero grant reflecting that it will receive no grant funds.

(12) The MIDC may apply for and obtain grants from any source to carry out the purposes of this act. All funds received by MIDC, from any source, are state funds and shall be appropriated as provided by law.

780.995 Dispute between MIDC and indigent criminal defense system.

Sec. 15.

(1) Except as provided in section 5, if a dispute arises between the MIDC and an indigent criminal defense system concerning the requirements of this act, including a dispute concerning the approval of an indigent criminal defense system's plan, cost analysis, or compliance with section 13 or 17, the parties shall attempt to resolve the dispute by mediation. The state court administrator, as authorized by the supreme court, shall appoint a mediator agreed to by the parties within 30 calendar days of the mailing date of the official notification of the third disapproval by the MIDC under section 13(4) to mediate the dispute and shall facilitate the mediation process. The MIDC shall immediately send the state court administrative office a copy of the official notice of that third disapproval. If the parties do not agree on the selection of the mediator, the state court administrator, as authorized by the supreme court, shall appoint a mediator of his or her choosing. Mediation shall commence within 30 calendar days after the

mediator is appointed and terminate within 60 calendar days of its commencement. Mediation costs associated with mediation of the dispute shall be paid equally by the parties.

(2) If the parties do not come to a resolution of the dispute during mediation under subsection (1), all of the following apply:

(a) The mediator may submit his or her recommendation of how the dispute should be resolved to the MIDC within 30 calendar days of the conclusion of mediation for the MIDC's consideration.

(b) The MIDC shall consider the recommendation of the mediator, if any, and shall approve a final plan or the cost analysis, or both, in the manner the MIDC considers appropriate within 30 calendar days, and the indigent criminal defense system shall implement the plan as approved by the MIDC.

(c) The indigent criminal defense system that is aggrieved by the final plan, cost analysis, or both, may bring an action seeking equitable relief as described in subsection (3).

(3) The MIDC, or an indigent criminal defense system may bring an action seeking equitable relief in the circuit court only as follows:

(a) Within 60 days after the MIDC's issuance of an approved plan and cost analysis under subsection (2)(b).

(b) Within 60 days after the system receives grant funds under section 13(7), if the plan, cost analysis, or both, required a grant award for implementation of the plan.

(c) Within 30 days of the MIDC's determination that the indigent criminal defense system has breached its duty to comply with an approved plan.

(d) The action shall be brought in the judicial circuit where the indigent criminal defense service is located. The state court administrator, as authorized by the supreme court, shall assign an active or retired judge from a judicial circuit other than the judicial circuit where the action was filed to hear the case. Costs associated with the assignment of the judge shall be paid equally by the parties.

(e) The action shall not challenge the validity, legality, or appropriateness of the minimum standards approved by the department.

(4) If the dispute involves the indigent criminal defense system's plan, cost analysis, or both, the court may approve, reject, or modify the submitted plan, cost analysis, or the terms of a grant awarded under section 13(7) other than the amount of the grant, determine whether section 13 has been complied with, and issue any orders necessary to obtain compliance with this act. However, the system shall not be required to expend more than its local share in complying with this act.

(5) If a party refuses or fails to comply with a previous order of the court, the court may enforce the previous order through the court's enforcement remedies, including, but not limited to, its contempt powers, and may order that the state undertake the provision of indigent criminal defense services in lieu of the indigent criminal defense system.

(6) If the court determines that an indigent criminal defense system has breached its duty under section 17(1), the court may order the MIDC to provide indigent criminal defense on behalf of that system.

(7) If the court orders the MIDC to provide indigent criminal defense services on behalf of an indigent criminal defense system, the court shall order the system to pay the following amount of the state's costs that the MIDC determines are necessary in order to bring the indigent criminal defense system into compliance with the minimum standards established by the MIDC:

(a) In the first year, 10% of the state's costs.

(b) In the second year, 20% of the state's costs.

(c) In the third year, 30% of the state's costs.

(d) In the fourth year, 40% of the state's costs.

(e) In the fifth year, and any subsequent year, not more than the dollar amount that was calculated under subdivision (d).

(8) An indigent criminal defense system may resume providing indigent criminal defense services at any time as provided under section 13. When a system resumes providing indigent criminal defense services, it is no longer required to pay an assessment under subsection (7) but shall be required to pay no less than its share.

780.997 Duty of compliance with approved plan.

Sec. 17.

(1) Except as provided in subsection (2), every local unit of government that is part of an indigent criminal defense system shall comply with an approved plan under this act.

(2) A system's duty of compliance with the terms of the plan as prescribed under subsection (1) is contingent upon receipt of a grant in the amount contained in the plan and cost analysis approved by the MIDC.

(3) The MIDC may proceed under section 15 if an indigent criminal defense system breaches its duty of compliance under subsection (1).

780.999 Annual report, budget, and listing of expenditures; availability on website.

Sec. 19.

The MIDC shall publish and make available to the public on a website its annual report, its budget, and a listing of all expenditures. Publication and availability of the listing of expenditures shall be on a quarterly basis, except for the annual report and salary information, which may be published and made available on an annual basis. As used in this section, "expenditures" means all payments or disbursements of MIDC funds, received from any source, made by the MIDC.

780.1001 Applicability of freedom of information act and open meetings act.

Sec. 21.

Both of the following apply to the MIDC:

(a) The freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except as provided in section 7(10).

(b) The open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

780.1003 Effect of United States or state supreme court cases; failure to comply with statutory duties; grounds for reversal or modification of conviction.

Sec. 23.

(1) Nothing in this act shall be construed to overrule, expand, or extend, either directly or by analogy, any decisions reached by the United States supreme court or the supreme court of this state regarding the effective assistance of counsel.

(2) Nothing in this act shall be construed to override section 29 or 30 of article IX of the state constitution of 1963.

(3) Except as otherwise provided in this act, the failure of an indigent criminal defense system to comply with statutory duties imposed under this act does not create a cause of action against the government or a system.

(4) Statutory duties imposed that create a higher standard than that imposed by the United States constitution or the state constitution of 1963 do not create a cause of action against a local unit of government, an indigent criminal defense system, or this state.

(5) Violations of MIDC rules that do not constitute ineffective assistance of counsel under the United States constitution or the state constitution of 1963 do not constitute grounds for a conviction to be reversed or a judgment to be modified for ineffective assistance of counsel.

Appendix E: An Act to Amend the Michigan Indigent Defense Commission Act

Act No. 439

Public Acts of 2016

Approved by the Governor

January 4, 2017

Filed with the Secretary of State

January 4, 2017

EFFECTIVE DATE: January 4, 2017

STATE OF MICHIGAN

98TH LEGISLATURE

REGULAR SESSION OF 2016

Introduced by Rep. Heise

ENROLLED HOUSE BILL No. 5842

AN ACT to amend 2013 PA 93, entitled "An act to create the Michigan indigent defense commission and to provide for its powers and duties; to provide indigent defendants in criminal cases with effective assistance of counsel; to provide standards for the appointment of legal counsel; to provide for and limit certain causes of action; and to provide for certain appropriations and grants," by amending sections 3, 5, and 11 (MCL 780.983, 780.985, and 780.991).

The People of the State of Michigan enact:

Sec. 3. As used in this act:

(a) "Adult" means either of the following:

(*i*) An individual 17 years of age or older.

(*ii*) An individual less than 17 years of age at the time of the commission of a felony if any of the following conditions apply:

(A) During consideration of a petition filed under section 4 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.4, to waive jurisdiction to try the individual as an adult and upon granting a waiver of jurisdiction.

(B) The prosecuting attorney designates the case under section 2d(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d, as a case in which the juvenile is to be tried in the same manner as an adult.

(C) During consideration of a request by the prosecuting attorney under section 2d(2) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d, that the court designate the case as a case in which the juvenile is to be tried in the same manner as an adult.

(D) The prosecuting attorney authorizes the filing of a complaint and warrant for a specified juvenile violation under section 1f of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.1f.

(b) "Department" means the department of licensing and regulatory affairs.

(c) "Effective assistance of counsel" or "effective representation" means legal representation that is compliant with standards established by the appellate courts of this state and the United States supreme court.

(d) "Indigent" means meeting 1 or more of the conditions described in section 11(3).

(e) "Indigent criminal defense services" means local legal defense services provided to a defendant and to which both of the following conditions apply:

(*i*) The defendant is being prosecuted or sentenced for a crime for which an individual may be imprisoned upon conviction, beginning with the defendant's initial appearance in court to answer to the criminal charge.

(*ii*) The defendant is determined to be indigent under section 11(3).

(f) Indigent criminal defense services do not include services authorized to be provided under the appellate defender act, 1978 PA 620, MCL 780.711 to 780.719.

(g) "Indigent criminal defense system" or "system" means either of the following:

(*i*) The local unit of government that funds a trial court.

(*ii*) If a trial court is funded by more than 1 local unit of government, those local units of government, collectively.

(h) "Local share" or "share" means 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.

(i) "MIDC" or "commission" means the Michigan indigent defense commission created under section 5.

Sec. 5. (1) The Michigan indigent defense commission is established within the department.

(2) The MIDC shall retain as an autonomous entity all statutory authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, and other functions, including the functions of budgeting, personnel, locating offices, and other management functions. Any portion of funds appropriated to the MIDC that is not expended in a state fiscal year shall not lapse to the general fund but shall be carried forward in a work project account that is in compliance with section 451a of the management and budget act, 1984 PA 431, MCL 18.1451a, for use in the following state fiscal year.

(3) The MIDC shall propose minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel to adults throughout this state. These minimum standards shall be designed to ensure the provision of indigent criminal defense services that meet constitutional requirements for effective assistance of counsel. However, these minimum standards shall not infringe on the supreme court's authority over practice and procedure in the courts of this state as set forth in section 5 of article VI of the state constitution of 1963.

(4) The commission shall convene a public hearing before a proposed standard is recommended to the department. A minimum standard proposed under this subsection shall be submitted to the department for approval or rejection. Opposition to a proposed minimum standard may be submitted to the department in a manner prescribed by the department. An indigent criminal defense system that objects to a recommended minimum standard on the ground that the recommended minimum standard would exceed the MIDC's statutory authority shall state specifically how the recommended minimum standard would exceed the MIDC's statutory authority. A proposed minimum standard is final when it is approved by the department. A minimum standard that is approved by the department is not subject to challenge through the appellate procedures in section 15. An approved minimum standard for the local delivery of indigent criminal defense services within an indigent criminal defense system is not a rule as defined in section 7 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.207.

(5) Approval of a minimum standard proposed by the MIDC is considered a final department action subject to judicial review under section 28 of article VI of the state constitution of 1963 to determine whether the approved minimum standard is authorized by law. Jurisdiction and venue for judicial review are vested in the court of claims. An indigent criminal defense system may file a petition for review in the court of claims within 60 days after the date of mailing notice of the department's final decision on the recommended minimum standard. The filing of a petition for review does not stay enforcement of an approved minimum standard, but the department may grant, or the court of claims may order, a stay upon appropriate terms.

(6) The MIDC shall identify and encourage best practices for delivering the effective assistance of counsel to indigent defendants charged with crimes.

Sec. 11. (1) The MIDC shall establish minimum standards, rules, and procedures to effectuate the following:

(a) The delivery of indigent criminal defense services shall be independent of the judiciary but ensure that the judges of this state are permitted and encouraged to contribute information and advice concerning that delivery of indigent criminal defense services.

(b) If the caseload is sufficiently high, indigent criminal defense services may consist of both an indigent criminal defender office and the active participation of other members of the state bar.

(c) Trial courts shall assure that each criminal defendant is advised of his or her right to counsel. All adults, except those appearing with retained counsel or those who have made an informed waiver of counsel, shall be screened for eligibility under this act, and counsel shall be assigned as soon as an indigent adult is determined to be eligible for indigent criminal defense services.

(2) The MIDC shall implement minimum standards, rules, and procedures to guarantee the right of indigent defendants to the assistance of counsel as provided under amendment VI of the Constitution of the United States and section 20 of article I of the state constitution of 1963. In establishing minimum standards, rules, and procedures, the MIDC shall adhere to the following principles:

(a) Defense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel's client.

(b) Defense counsel's workload is controlled to permit effective representation. Economic disincentives or incentives that impair defense counsel's ability to provide effective representation shall be avoided. The MIDC may develop workload controls to enhance defense counsel's ability to provide effective representation.

(c) Defense counsel's ability, training, and experience match the nature and complexity of the case to which he or she is appointed.

(d) The same defense counsel continuously represents and personally appears at every court appearance throughout the pendency of the case. However, indigent criminal defense systems may exempt ministerial, nonsubstantive tasks, and hearings from this prescription.

(e) Indigent criminal defense systems employ only defense counsel who have attended continuing legal education relevant to counsels' indigent defense clients.

(f) Indigent criminal defense systems systematically review defense counsel at the local level for efficiency and for effective representation according to MIDC standards.

(3) The following requirements apply to the application for, and appointment of, indigent criminal defense services under this act:

(a) A preliminary inquiry regarding, and the determination of, the indigency of any defendant for purposes of this act shall be made as determined by the indigent criminal defense system not later than at the defendant's first appearance in court. The determination may be reviewed by the indigent criminal defense system at any other stage of the proceedings. In determining whether a defendant is entitled to the appointment of counsel, the indigent criminal defense system shall consider whether the defendant is indigent and the extent of his or her ability to pay. Factors to be considered include, but are not limited to, income or funds from employment or any other source, including personal public assistance, to which the defendant is entitled, property owned by the defendant or in which he or she has an economic interest, outstanding obligations, the number and ages of the defendant's dependents, employment and job training history, and his or her level of education. A trial court may play a role in this determination as part of any indigent criminal defense system's compliance plan under the direction and supervision of the supreme court, consistent with section 4 of article VI of the state constitution of 1963. Nothing in this act shall prevent a court from making a determination of indigency for any purpose consistent with article VI of the state constitution of 1963.

(b) A defendant is considered to be indigent if he or she is unable, without substantial financial hardship to himself or herself or to his or her dependents, to obtain competent, qualified legal representation on his or her own. Substantial financial hardship shall be rebuttably presumed if the defendant receives personal public assistance, including under the food assistance program, temporary assistance for needy families, medicaid, or disability insurance, resides in public housing, or earns an income less than 140% of the federal poverty guideline. A defendant is also rebuttably presumed to have a substantial financial hardship if he or she is currently serving a sentence in a correctional institution or is receiving residential treatment in a mental health or substance abuse facility.

(c) A defendant not falling below the presumptive thresholds described in subdivision (b) shall be subjected to a more rigorous screening process to determine if his or her particular circumstances, including the seriousness of the charges being faced, his or her monthly expenses, and local private counsel rates would result in a substantial hardship if he or she were required to retain private counsel.

(d) A defendant shall be responsible for applying for indigent defense counsel and for establishing his or her indigency and eligibility for appointed counsel under this act. Any oral or written statements made by the defendant in or for use in the criminal proceeding and material to the issue of his or her indigency shall be made under oath or an equivalent affirmation.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 98th Legislature are enacted into law:

(a) House Bill No. 5843.

(b) House Bill No. 5844.

(c) House Bill No. 5845.

(d) House Bill No. 5846.

This act is ordered to take immediate effect.

REFERENCES

REFERENCES

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