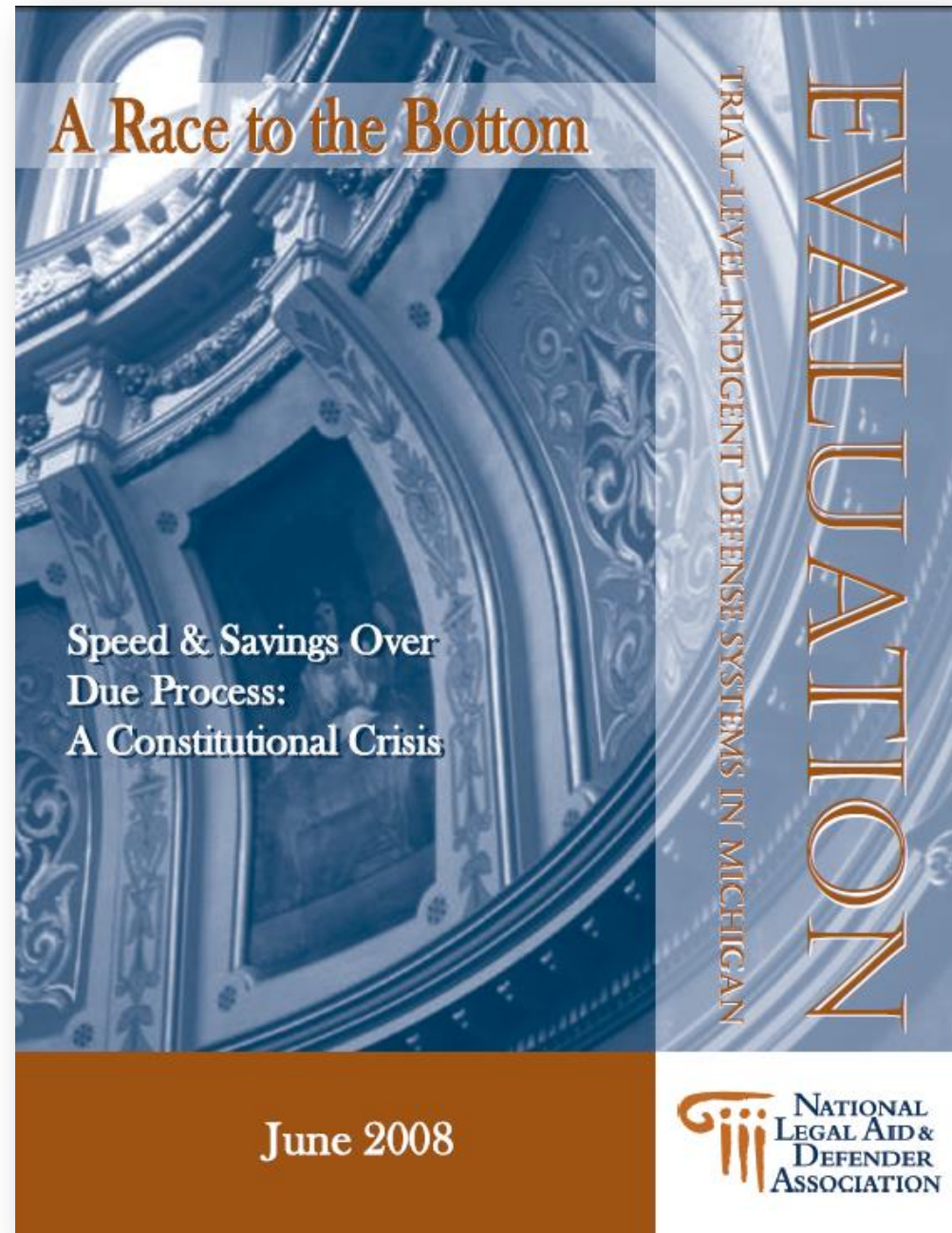


MICHIGAN INDIGENT DEFENSE COMMISSION

Jonathan Sacks
Executive Director

Wayne County Criminal Advocacy Program
September 2015

Background



Counties Studied:

Alpena, Bay, Chippewa, Grand
Traverse, Jackson, Marquette,
Oakland, Ottawa, Shiawassee
and **Wayne**

Per-Capita Spending

33.	Tennessee	\$9.30
34.	Alabama	\$9.17
35.	North Dakota	\$8.80
36.	Rhode Island	\$8.67
37.	Kansas	\$8.53
38.	Hawaii	\$8.26
39.	Maine	\$8.20
40.	Pennsylvania	\$8.10
41.	Oklahoma	\$8.02
42.	Idaho	\$7.83
43.	South Carolina	\$7.65
44.	Michigan	\$7.35
45.	Texas	\$7.04
46.	Indiana	\$6.77
47.	Arkansas	\$6.65
48.	Utah	\$5.22
49.	Missouri	\$5.20
50.	Mississippi	\$4.15
	NATIONAL AVERAGE	\$11.86

Comparing indigent defense systems across state lines is difficult, at best, given jurisdictional variances related to: delivery model, population, geographical expanse, prosecutorial charging practices, crime rates, county versus state funding, three strikes laws, and the death penalty (among others). For example, the state of Alaska has the highest cost per capita indigent defense spending (\$40.96) due almost entirely to the fact that public defenders must travel by air for many court appearances. So, whereas a high cost per capita may not necessarily guarantee that a state is providing adequate representation, a low indigent defense cost per capita certainly is an indicator of a system in trouble. Michigan ranks 44th of the 50 states.

In the year-long study of ten representative counties, NLADA concluded that none are constitutionally adequate and Michigan ranked 44th out of all 50 states in per capita indigent defense spending.

468 Mich. 1244
Supreme Court of Michigan.

WAYNE COUNTY CRIMINAL DEFENSE BAR ASSOCIATION, and The Criminal Defense Attorneys of
Michigan, Plaintiffs,
and
Legal Aid and Defender Association of Detroit, Inc., Intervening Plaintiff,
v.
CHIEF JUDGES OF WAYNE CIRCUIT COURT, Defendants,
and
County of Wayne, Intervening Defendant.

Docket No. 122709. | June 27, 2003.

Opinion

On order of the Court, the motion of the Legal Aid and Defender Association of [*472](#) Detroit, Inc. to intervene as a party plaintiff is GRANTED, and the complaint and brief filed with the motion are accepted. The motion for admission pro hac vice of Martin S. Pinales and the motion for leave to file brief amicus curiae are GRANTED.

The complaints for superintending control are considered, and relief is DENIED, because the Court is not persuaded that it should grant the requested relief. We are not persuaded by plaintiffs' complaints and supporting papers that the Chief Judges of the Wayne Circuit Court have adopted a fee schedule which, at this time, fails to provide assigned counsel reasonable compensation within the meaning of [M.C.L. § 775.16](#).

Order

July 15, 2013

147111(54)

CHRISTOPHER LEE DUNCAN, BILLY JOE
BURR, JR., STEVEN CONNOR, ANTONIO
TAYLOR, JOSE DAVILA, JENNIFER
O'SULLIVAN, CHRISTOPHER MANIES, and
BRIAN SECREST,

Plaintiffs-Appellees,

v

STATE OF MICHIGAN and GOVERNOR OF
MICHIGAN,

Defendants-Appellants.

_____ /

Michigan Supreme Court Lansing, Michigan

Robert P. Young, Jr.,
Chief Justice

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

SC: 147111

COA: 307790

Ingham CC: 07-000242-CZ

On order of the Chief Justice, the stipulation of the parties, through their respective counsel, to dismiss the application for leave to appeal without costs is GRANTED. The appeal is DISMISSED with prejudice.

Advisory Commission findings – June 2012

- Michigan's counties offer an “uncoordinated, 83-county patchwork quilt” of public defense systems.

Advisory Commission findings – June 2012

- There is no data or transparency to show if taxpayer dollars are spent efficiently or effectively.

Advisory Commission findings – June 2012

- There are no statewide standards to define or ensure constitutionally adequate defense counsel.



Signing of Public Act 93 of 2013

Michigan Indigent Defense Commission

Jim Fisher, Chair

Michael Puerner

Shela Motley

Hon. Thomas Boyd

Nancy Diehl

Frank Eaman

Gary Walker

Brandy Robinson

Cletus Smith

Bill Swor

Joe Baumann

Jon Campbell

John Shea

Kevin Oeffner

David Schuringa

Richard Lindsey

Wayne County MIDC Commissioners

Nancy Diehl

Frank Eaman

Brandy Robinson

Bill Swor



Michigan Indigent Defense Commission Act

- Collects and compiles data for the review of indigent defense services in Michigan

Michigan Indigent Defense Commission Act

- Creates minimum standards

Michigan Indigent Defense Commission Act

- Works with counties to design plans to meet the standards and measures the performance of counties in providing public defense services

Michigan Indigent Defense Commission Act

- Awards **state funded** grants to county systems to fund the compliance plans and bring systems into compliance with the new minimum standards

MIDC Survey

The Michigan Indigent Defense Commission (MIDC) is committed to the local delivery of indigent defense services. We will receive consistent, effective public comment later this year and will be statewide in developing our plan.

To assist in these efforts, we are providing you with much needed information.

Please see the attached memorandum for more information about the survey. The MIDC is currently in the process of developing the survey.

Thank you for taking the time to provide your input.

Robert P. Young, Jr.
Chief Justice



To: Chief Judges of Circuit and District Courts
 CC: Court Administrators of Circuit and District Courts
 From: Judge James Fisher (retired), Chair, Michigan Indigent Defense Commission (MIDC)
 Re: MIDC Survey
 Date: July 8, 2015

Appointed by Governor Rick Snyder, the MIDC is charged with:

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. (PA 93 of 2013)

The MIDC appreciates the assistance of the State Court Administrative Office in distributing a survey to courts that will help the MIDC achieve this mandate.

As required by statute, the MIDC is collecting data on indigent criminal defense systems statewide. MCL 780.989(1)(f), MCL 780.993(1). Through this survey, the collection of such data will facilitate development and implementation of indigent defense best practices.

More specifically, the survey gives courts the opportunity to provide information about types of indigent defense systems, eligibility for counsel, process for appointment of counsel, and public defense expenditures. The questions only involve trial level indigent criminal defense for adults.

We anticipate that the survey will take less than 30 minutes, although some questions may require you to gather data that is not immediately accessible or collaborate with other staff members or departments. A PDF copy of the survey is attached to enable you to gather the necessary data prior to taking the online survey.

Once you are ready to take the survey, please click here.

For assistance with the survey, please contact Jonah Siegel, MIDC's Research Director, at 517-898-5489 or jsiegel@michiganidc.gov. For any general questions about the MIDC, please contact Executive Director Jonathan Sacks, 517- 899-1354, jsacks@michiganidc.gov. Thank you very much for your anticipated cooperation in helping us fulfill our responsibility to the courts and citizens of our state.

Michigan Indigent Defense Commission Survey Spring 2015
 For questions or concerns, contact Research Director Jonah Siegel at (517) 898-5489

The survey requires the following identifying information before proceeding to the substantive questions:

- The County where your court resides;
- Whether you are reporting for a Circuit or District Court (and which court);
- The name, title, email address and direct telephone number for the person completing the survey.

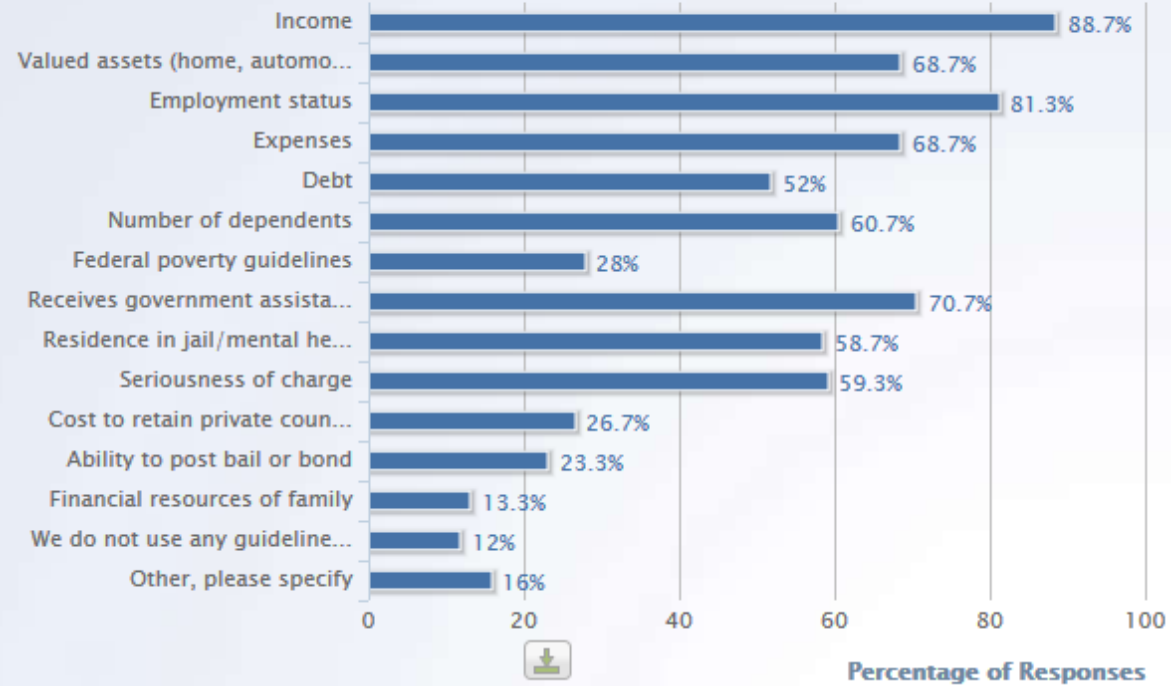
QUESTION I: Eligibility For Public Defense Services		YES	NO
1a.	What factors does the court use to determine the eligibility of a defendant for right to counsel services? (Please check all that apply)		
	<input type="checkbox"/> Income	<input type="checkbox"/> Receives government assistance (e.g., Social Security, Medicaid, Public housing)	
	<input type="checkbox"/> Valued assets (home, automobile, etc)	<input type="checkbox"/> Residence in jail/mental health facility	
	<input type="checkbox"/> Employment status	<input type="checkbox"/> Seriousness of charge	
	<input type="checkbox"/> Expenses	<input type="checkbox"/> Cost to retain private counsel	
	<input type="checkbox"/> Debt	<input type="checkbox"/> Ability to post bail or bond	
	<input type="checkbox"/> Number of dependents	<input type="checkbox"/> Financial resources of family	
	<input type="checkbox"/> Federal poverty guidelines	<input type="checkbox"/> Other (please specify below):	
	<input type="checkbox"/> We do not use any guidelines to establish eligibility		
	Describe other factors taken into account:		
1b.	Are judges required to consider these factors when determining eligibility?	<input type="checkbox"/>	<input type="checkbox"/>
1c.	Is there a process for a defendant to challenge the court's determination?	<input type="checkbox"/>	<input type="checkbox"/>

DELIVERY MODELS
There are three basic models for the delivery of indigent defense services. What type(s) of delivery model(s) does your court employ? Please check all that apply.
<input type="checkbox"/> Assigned Counsel: Refers to one or more private attorneys who are not salaried by the court and are paid (a) per hour, (b) per each case, or (c) per each event in a case.
<input type="checkbox"/> Contract Defender: Refers to one or more private attorneys who are paid a set amount of money to handle all or a negotiated percentage of indigent criminal representation. Contracts may be with (a) "affiliated" lawyers (two or more lawyers affiliated with a non-profit organization such as Legal Aid Society or a private law firm); or (b) individual lawyers with no affiliation to other contract defenders.
<input type="checkbox"/> Public Defender Office: A "public defender" is defined as a salaried/benefited government employee; a "public defender office" is defined as two or more attorneys. Attorneys may be (a) full-time (not allowed to handle private cases); or (b) part-time (may handle private cases).
<input type="checkbox"/> Other Defender Services: Your court employs some other model for indigent defense services not covered above.

What factors does the court use to determine the eligibility of a defendant for right to public defense counsel services? (Please check all that apply):

	Count	Filter
Income	133 (88.7%)	<input type="checkbox"/>
Valued assets (home, automobile, etc)	103 (68.7%)	<input type="checkbox"/>
Employment status	122 (81.3%)	<input type="checkbox"/>
Expenses	103 (68.7%)	<input type="checkbox"/>
Debt	78 (52%)	<input type="checkbox"/>
Number of dependents	91 (60.7%)	<input type="checkbox"/>
Federal poverty guidelines	42 (28%)	<input type="checkbox"/>
Receives government assistance (e.g., Social Security, Medicaid, Public housing)	106 (70.7%)	<input type="checkbox"/>
Residence in jail/mental health facility	88 (58.7%)	<input type="checkbox"/>
Seriousness of charge	89 (59.3%)	<input type="checkbox"/>
Cost to retain private counsel	40 (26.7%)	<input type="checkbox"/>
Ability to post bail or bond	35 (23.3%)	<input type="checkbox"/>
Financial resources of family	20 (13.3%)	<input type="checkbox"/>
We do not use any guidelines to establish eligibility	18 (12%)	<input type="checkbox"/>
Other, please specify	24 (16%)	<input type="checkbox"/>

What factors does the court use to determine the eligibil...



Initial Standards Proposed

ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

Black Letter

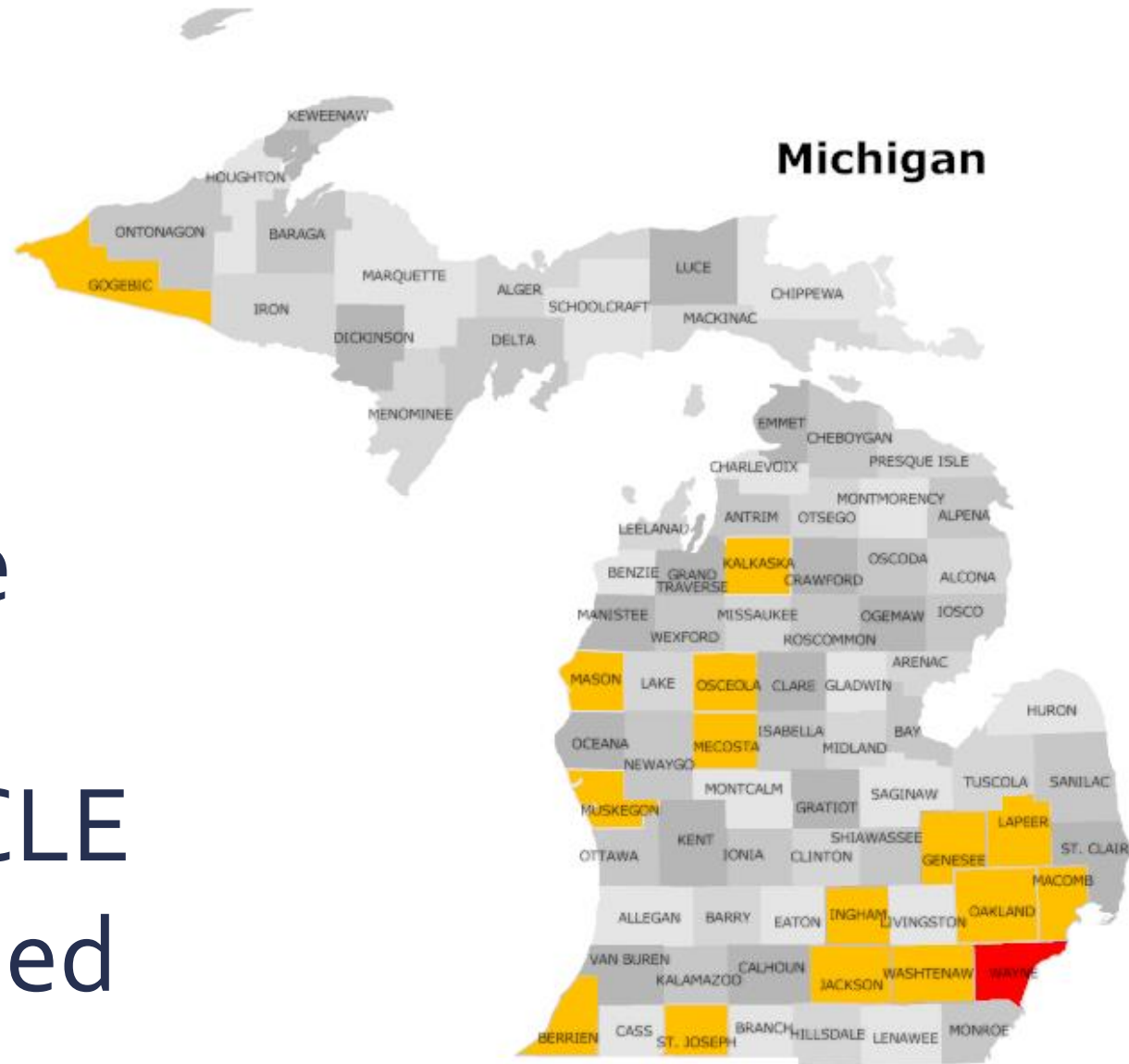
- 1 The public defense function, including the selection, funding, and payment of defense counsel, is independent.
- 2 Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
- 3 Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
- 4 Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
- 5 Defense counsel's workload is controlled to permit the rendering of quality representation.
- 6 Defense counsel's ability, training, and experience match the complexity of the case.
- 7 The same attorney continuously represents the client until completion of the case.
- 8 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
- 9 Defense counsel is provided with and required to attend continuing legal education.
- 10 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.



Standard 1 – Education and Training

“The only area of the state that partially complies with the training principle is Wayne County.”

The counties highlighted have reported some requirement of CLE to stay on assigned counsel list.



- Knowledge of law, scientific evidence, defenses, technology.
- Basic skills for new attorneys.
- 12 hours of CLE for all.

Q: Will the 12 hours of training count towards my training requirements to stay on assigned counsel lists in other counties?

Standard 2 – Initial Interview

“Initial interviews with defendants (particularly those in custody) are frequently conducted in court (or in the “bullpen” – a cell behind the courtroom), just prior to a hearing held within days of the district court arraignment.”

- Meet in-custody client within 72 hours
- Confidential meeting
- Client competency assessment

Standard 3 – Investigation / Experts

- Reasonable investigation required
- Use experts and investigators when appropriate
- Continuously evaluate

**STATE AND COURT APPROVED PRIVATE INVESTIGATION AGENCIES
ON FILE WITH THIRD JUDICIAL CIRCUIT OF MICHIGAN**

Company	Investigator(s)	Address	Phone No(s)
Iverson Agency <i>specialops@ameritech.net</i>	Joel D. Iverson Jacki Goodrum Lisa Murray	P. O. Box 2042 Detroit, MI 48202	O - (313) 961-2599 C - (313) 779-9270 F - (313) 557-6002
Joseph Bruce The Investigator <i>theinvestigator@aol.net</i>	Joseph H. Bruce	9168 Prest Detroit, MI 48228	(313) 319-3163
P & J Associates Inc. <i>gogarypi@gmail.com</i>	Gary F. Sumeracki	1476 N. Alstott Drive Howell, MI 48843-7817	O - (517) 546-7005 or (800) 437-5854 F - (517) 546-5620
Recon Management Group, LLC <i>dandb@reconmgmt.com</i>	Daniel J. DiBardino Dwane Blackmon Doug Bucher Jeff Clyburn Linda Hicks Mark Paliszewski David Rees James Schoenherr	30400 Telegraph Road, Suite 472 Bingham Farms, MI 48025-2364	O - (248) 540-0160 F - (248) 540-3622
Salisbury's Diversified Services <i>Does not have email.</i>	Michael P. Salisbury	6651 Orchard Dearborn, MI 48126	(313) 617-4211
Scott Lewis Private Investigations <i>scott@scottlewispi.com</i>	Scott Lewis	18530 Mack Avenue, #134 Grosse Pointe Farms, MI 48236	(313) 600-4254
Security Countermeasures & Intelligence <i>hglaspie@scst.com</i>	Henry W. Glaspie, III (Hank) Bernard Moner James P. Triano	37637 5 Mile Road Suite 244 Livonia, MI 48154	O - (313) 444-2653 C - (313) 574-2170 F - (866) 505-4108
Statewide Investigation Service Inc. <i>jborycz9126@comcast.net</i>	Gerald K. Borycz Michele M. Egan	P.O. Box 85236 Westland, MI 48185-0236	(734) 231-1045
Sunshine Investigations <i>info@sunshineinvestigations.net</i>	Julianne Cuneo Andrew Dillon Andrew Keinath	P. O. Box 3304 Centerline, MI 48015	O - (586) 806-0203 F - (586) 486-4709
Tock Services <i>timntock@gmail.com</i>	Timothy N. Tock ¹⁴⁷	22 Lyons Street Livonia, MI 48154	(248) 789-6029

Standard 4 –
Counsel at First Appearance

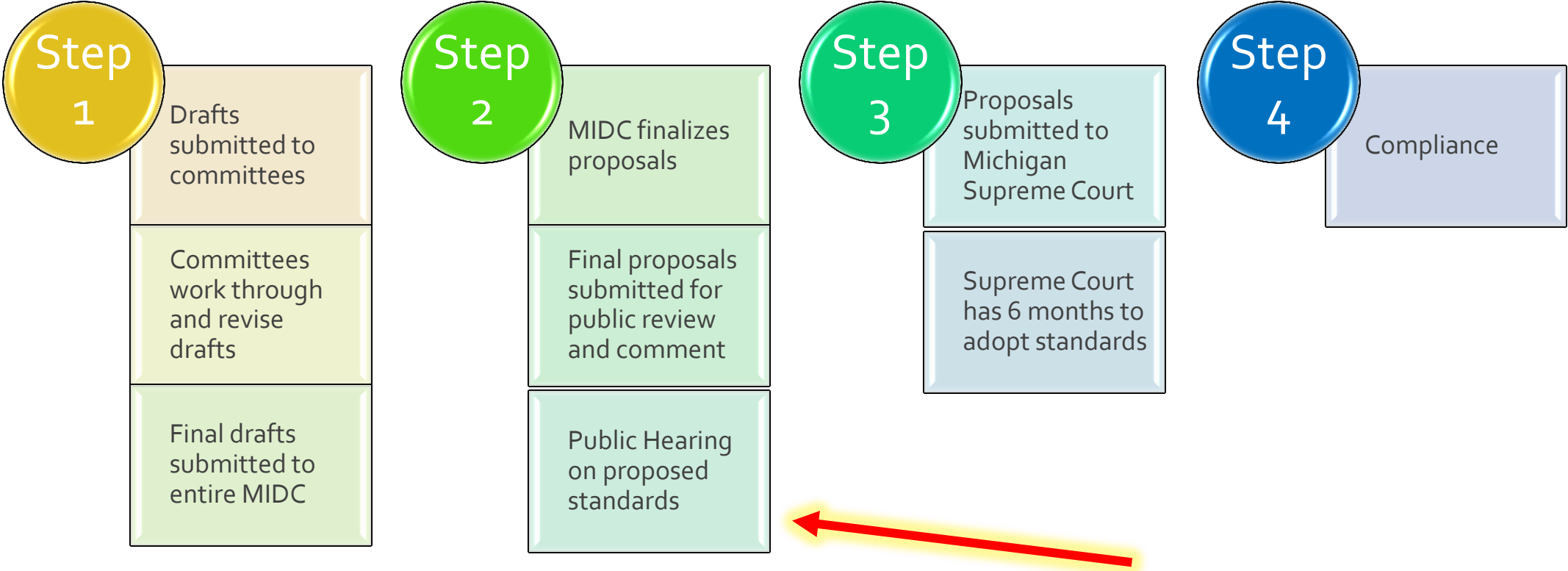
Rothgery v. Gillespie County., Tex.,
554 U.S. 191 (2008)

“Counsel shall be assigned as soon as the defendant is determined to be eligible for indigent criminal defense services [].....

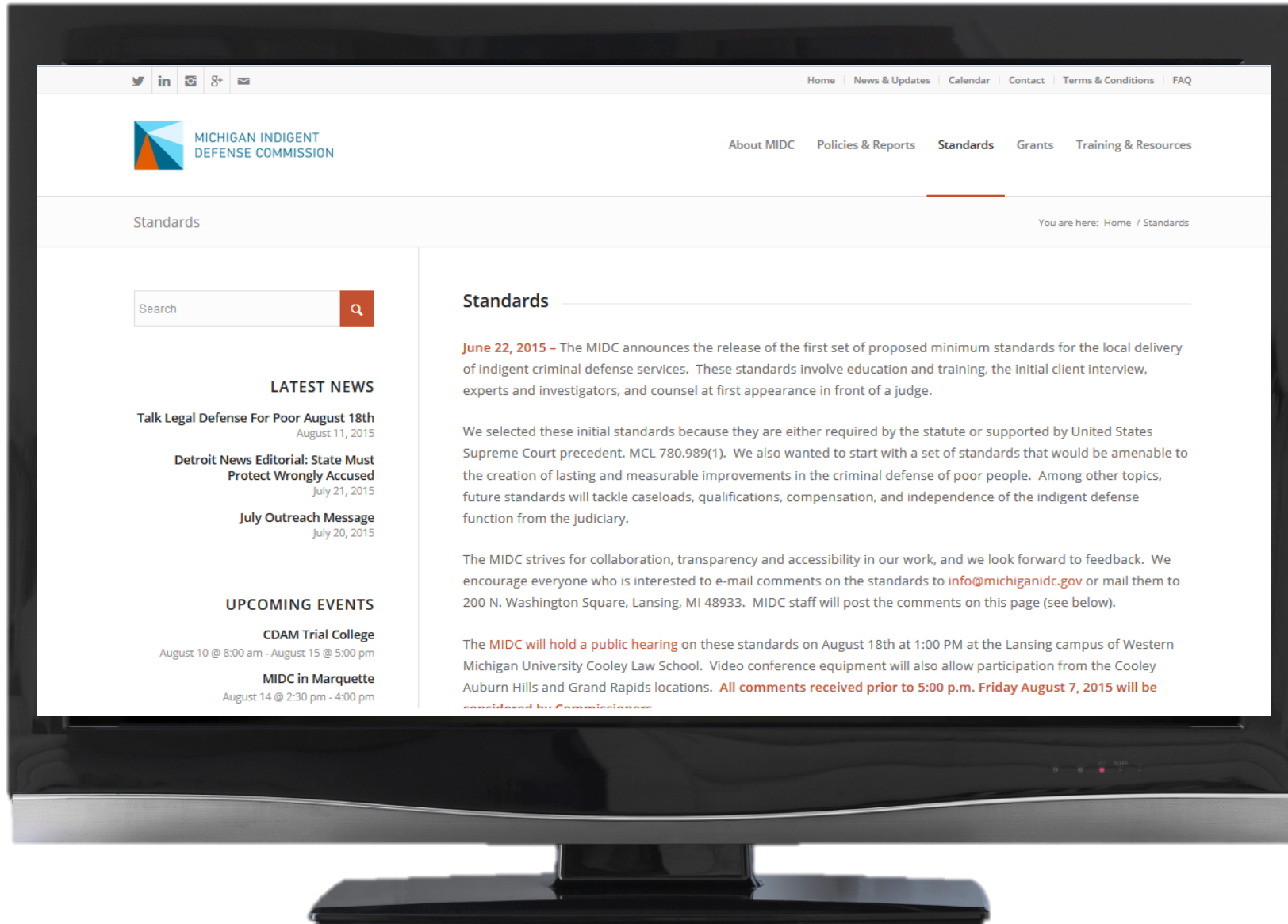
The representation includes, but is not limited to the arraignment on the complaint and warrant or the setting of a case specific interim bond while defendant is in custody..... []”

MIDC Proposed Standard 4

Standards Proposed by MIDC



Feedback...



Future Minimum Standards

- Delivery of services is independent of the judiciary. MCL 780.991(1)(a).

Future Minimum Standards

- Workload is controlled to permit effective representation. MCL 780.991(2)(b).

Future Minimum Standards

- An attorney has the training and experience that matches the complexity of the allegations against their client. MCL 780.991(2)(c).



Meet the Staff

Commission Meetings

Search



LATEST NEWS

August Outreach Message

August 31, 2015

"Indigent Defense Must Change"

August 19, 2015

Talk Legal Defense For Poor August 18th

August 11, 2015

UPCOMING EVENTS

Welcome to MIDC

We have a full time staff working under the supervision of the Executive Director of the Michigan Indigent Defense Commission. Our office is in [Lansing, Michigan](#).

MEET THE STAFF

Supporting the Commission and Improving Indigent Defense



Jonathan Sacks
Executive Director



Marcela Westrate



Marla McCowan



Jonah Siegel
Research Director

Find out more at michiganidc.gov



MICHIGAN INDIGENT
DEFENSE COMMISSION

**Jonathan
Sacks**

Executive Director

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517-899-1354