



STATE BUDGET OFFICE
February 7, 2018

Michigan Indigent Defense Grants
FY 2019 Executive Recommendation

Proposal

The governor's budget includes \$61.3 million for local indigent defense systems to support the four initial minimum standards to improve the statewide provision of indigent criminal defense services. The standards were authorized by the Michigan Indigent Defense Commission (MIDC), and Michigan's 134 local systems will receive grants to support the costs of improvements required to meet the standards. The recommended total of \$61.3 million includes \$46 million general fund and \$15.3 million in reimbursements from partially indigent defendants.

In addition to providing state grants to support the implementation of the initial four minimum standards, the governor's budget also recommends amendatory legislation to clarify and provide for more efficient implementation of the statutory requirements.

Background

In 2011, Governor Snyder issued Executive Order No. 2011-12 creating the Indigent Defense Advisory Commission, which was tasked with making recommendations regarding improvements to legal representation for indigent criminal defendants in the state. Based on the Advisory Commission's findings and core recommendation that a permanent and independent Indigent Defense Commission be established, the Legislature approved and the governor enacted Public Act 93 of 2013. This act created the MIDC and authorized it to improve criminal indigent defense services through a framework of minimum standards. Statute mandates that the additional costs required to implement these minimum standards be paid by the state.

The first set of minimum standards geared towards improving indigent criminal defense services were approved in May 2017, and included the following four items:

1. Education and Training of Defense Counsel - Requires defense counsel to know certain areas of the law including forensic and scientific issues, use applicable technologies, and annually complete continuing legal education courses.
2. Initial Review - Directs defense counsel to be prepared to interview and to evaluate client capability to participate in their representation after appointment of the counsel and before any court proceeding in a confidential setting.
3. Investigation and Experts - Obligates defense counsel to perform investigations, request funds when appropriate to retain a professional defense investigator, and to seek the assistance of experts if necessary.
4. Counsel at First Appearance and Other Critical Stages - Mandates that a defense counsel be assigned to a defendant as soon as the individual is determined to be indigent. Furthermore, counsel must also be provided to defendants at pretrial appearances and for other critical stages at all criminal proceedings.

Pursuant to the act, each local indigent defense system was required to submit a compliance plan and cost analysis that detailed the level of current local funding and additional state funding necessary to implement these initial four minimum standards by November 20, 2017. The MIDC then had 60 days (until January 19, 2018) to review and approve, or disapprove, a system's compliance plan and/or cost analysis. If disapproved, the local indigent defense system has an additional 30 days to submit a new plan and/or cost analysis. However, if after three rounds of submissions a compromise is not reached, mediation is required through the State Court Administrator.

The MIDC is currently in the process of reviewing and approving or disapproving compliance plans and cost analyses from the 134 local criminal indigent defense systems in Michigan. The initial request from all systems submitting a compliance plan and cost analysis totaled \$85.3 million. As of January 31, 2018, 16 plans and cost analyses have been approved, requesting a total of \$6.6 million from the state. The remaining compliance plans and/or cost analyses were initially not approved by the MIDC, and are now in the process of resubmittal by the local system. In addition, two local plans were not submitted and the MIDC is working with them to ensure compliance.

Given statutory timeframes, it may be several months before all compliance plans and cost analyses are approved by the MIDC and total state obligations are known. Total funding proposed in the Executive Recommendation is estimated based on assumptions relative to disallowed costs and the remittance of partially indigent reimbursements in support of statewide grant allocations.

Amendatory Legislation

Key recommended changes to clarify and improve the Michigan Indigent Defense Commission Act include:

- Moving the deadline for annual plan and cost analysis submission from February 1 to October 1, to better align with the state budget development cycle for each following fiscal year.
- Increasing the MIDC plan review periods from 60 to 90 days for initial plans and from 30 to 60 days for plans that were not approved.
- Establishes a minimum local share of indigent defense systems of \$7.25 per capita, and provides for an annual adjustment of a system's local share by the Detroit Consumer Price Index or 3 percent, whichever is less, to maintain the local share of support.
- Requiring that 90 percent of the revenue collected from partially indigent defendants be remitted to the state to support statewide system costs.
- Aligning to a system's actual ongoing costs by adjusting grant awards in subsequent years.
- Identifying and implementing performance metrics to assess the provision of indigent defense services in Michigan relative to national standards and benchmarks.