

INDIANA

IC 33-40-5

Chapter 5. Public Defender Commission

IC 33-40-5-4

Duties

Sec. 4. The commission shall do the following:

....

(2) Adopt guidelines and standards for indigent defense services under which the counties will be eligible for reimbursement under IC 33-40-6, including the following:

...

IC 33-40-6

Chapter 6. Public Defense Fund

IC 33-40-6-1

Purpose; administration

Sec. 1. The public defense fund is established to receive court costs or other revenues for county reimbursement and administrative expenses. The fund shall be administered by the division of state court administration of the supreme court.

IC 33-40-6-2

Investment of funds

Sec. 2. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

IC 33-40-6-3

Reversion of money to state general fund

Sec. 3. Money in the fund at the end of a fiscal year does not revert to the state general fund.

IC 33-40-6-4

Certified request for reimbursement for indigent defense services

Sec. 4. (a) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the public defense fund for an amount equal to fifty percent (50%) of the county's expenditures for indigent defense services provided to a defendant against whom the death sentence is sought under IC 35-50-2-9.

(b) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the public defense fund for an amount equal to forty percent (40%)

of the county's expenditures for indigent defense services provided in all noncapital cases except misdemeanors.

IC 33-40-6-5

Amount of reimbursement for indigent defense services; disbursement

Sec. 5. (a) Except as provided under section 6 of this chapter, upon certification by a county auditor and a determination by the public defender commission that the request is in compliance with the guidelines and standards set by the commission, the commission shall quarterly authorize an amount of reimbursement due the county:

(1) that is equal to fifty percent (50%) of the county's certified expenditures for indigent defense services provided for a defendant against whom the death sentence is sought under IC 35-50-2-9; and
(2) that is equal to forty percent (40%) of the county's certified expenditures for defense services provided in noncapital cases except misdemeanors. The division of state court administration shall then certify to the auditor of state the amount of reimbursement owed to a county under this chapter.

(b) Upon receiving certification from the division of state court administration, the auditor of state shall issue a warrant to the treasurer of state for disbursement to the county of the amount certified.

IC 33-40-6-6

Certified claims in capital cases given priority

Sec. 6. The commission shall give priority to certified claims for reimbursement in capital cases. If the balance in the public defense fund is not adequate to fully reimburse all certified claims in noncapital cases, the commission shall prorate reimbursement of certified claims in noncapital cases.

IC 33-37-7-9

Auditor's transfer of funds to treasurer; treasurer's deposit of certain funds

Sec.9

...

(c) On June 30 and on December 31 of each year, the auditor of state shall transfer to the treasurer of state for deposit into the public defense fund established under IC 33-40-6-1 three million seven hundred thousand dollars (\$3,700,000).

NEBRASKA

29-3927. Commission; duties.

(1) With respect to its duties under section 29-3923, the commission shall:

....

(g) Adopt guidelines and standards for county indigent defense systems, including, but not limited to, standards relating to the following: The use and expenditure of funds appropriated by the Legislature to reimburse counties which qualify for reimbursement; attorney eligibility and qualifications for court appointments; compensation rates for salaried public defenders, contracting attorneys, and court-appointed attorneys and overall funding of the indigent defense system; maximum caseloads for all types of systems; systems administration, including rules for appointing counsel, awarding defense contracts, and reimbursing defense expenses; conflicts of interest; continuing legal education and training; and availability of supportive services and expert witnesses.

(2) The standards adopted by the commission under subdivision (1)(g) of this section are intended to be used as a guide for the proper methods of establishing and operating indigent defense systems. The standards are not intended to be used as criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of a conviction. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.

29-3921. Commission on Public Advocacy Operations Cash Fund; created; use; investment; transfers; use.

(1) The Commission on Public Advocacy Operations Cash Fund is created. The fund shall be used for the operations of the commission, except that transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. The Commission on Public Advocacy Operations Cash Fund shall consist of money remitted pursuant to section 33-156. It is the intent of the Legislature that the commission shall be funded solely from the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

33-156. Additional court cost; indigent defense fee.

(1) In addition to all other court costs assessed according to law, an indigent defense fee of three dollars shall be taxed as costs for each case filed in each county court and district court, including appeals

to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of the month. The State Treasurer shall credit the fees to the Commission on Public Advocacy Operations Cash Fund.

29-3933. Request for reimbursement; requirements.

(1) Any county which intends to request reimbursement for a portion of its expenditures for its indigent defense system must comply with this section.

(2) In order to assist the Commission on Public Advocacy in its budgeting process for determining future reimbursement amounts, after July 1, 2002, and before July 15, 2002, and for each year thereafter in which the county intends to seek reimbursement for a portion of its expenditures for indigent defense services in felony cases for the next fiscal year, the county shall present to the Commission on Public Advocacy (a) a plan, in a format approved by the commission, describing how the county intends to provide indigent defense services in felony cases, (b) a statement of intent declaring that the county intends to comply with the standards set by the commission for felony cases and that the county intends to apply for reimbursement, and (c) a projection of the total dollar amount of expenditures for that county's indigent defense services in felony cases for the next fiscal year.

(3) The commission may conduct whatever investigation is necessary and may require certifications by key individuals in the criminal justice system, in order to determine if the county is in compliance with the standards. If a county is certified by the commission as having met the standards established by the commission for felony cases, the county shall be eligible for reimbursement according to the following schedule and procedures: The county clerk of the county seeking reimbursement may submit, on a quarterly basis, a certified request to the commission, for reimbursement from funds appropriated by the Legislature, for an amount equal to one-fourth of the county's actual expenditures for indigent defense services in felony cases.

(4) Upon certification by the county clerk of the amount of the expenditures, and a determination by the commission that the request is in compliance with the standards set by the commission for felony cases, the commission shall quarterly authorize an amount of reimbursement to the county as set forth in this section.

(5) If the appropriated funds are insufficient in any quarter to meet the amount needed for full payment of all county reimbursements for net expenditures that are certified for that quarter, the commission shall pay the counties their pro rata share of the

remaining funds based upon the percentage of the county's certified request in comparison to the total certified requests for that quarter.

MICHIGAN

780.985 Michigan indigent defense commission; creation; powers and duties; functions; carrying forward unexpended funds; delivery of services; minimum standards; best practices. Sec. 5.

(1) The Michigan indigent defense commission is created in the judicial branch of state government.

(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. The commission shall convene a public hearing before a proposed standard is submitted to the supreme court. A minimum standard proposed under this subsection shall be submitted to the supreme court. Opposition to a proposed minimum standard may be submitted to the supreme court in a manner prescribed by the supreme court, but a minimum standard that is approved by the supreme court is not subject to challenge through the appellate procedures under section 15. A proposed minimum standard shall be final when it is approved by the supreme court. If the supreme court neither approves nor disapproves a proposed minimum standard within 180 days of its submission, then the standard is not approved.

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

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 individual attorney providing indigent criminal defense services, 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 and

individual attorneys providing indigent criminal defense services to adults. 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.

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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) Defense counsel is required to attend continuing legal education relevant to counsel's indigent defense clients.

(f) Defense counsel is systematically reviewed 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 shall be made by the court not later than at the defendant's first appearance in court. The determination may be reviewed by the court at any other stage of the proceedings. In determining whether a defendant is entitled to the appointment of counsel, the court shall consider whether the defendant is indigent and the extent of his or her ability to pay. The court may consider such factors as 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.

(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 to governor; maintenance of local share; necessity for excess funding; appropriation of additional funds; grants to local units of government; 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 supreme court, 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 that the supreme court 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) 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 supreme court.

(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 and every trial court 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).