



## Michigan Supreme Court

Michigan Hall of Justice  
P.O. Box 30048  
Lansing, Michigan 48909  
517-373-0128

Thomas P. Clement  
General Counsel

### MEMORANDUM

DATE: October 31, 2018

TO: Trial Courts  
cc: Milton L. Mack, Jr.

FROM: Thomas P. Clement

RE: Michigan Indigent Defense Commission Act Amendments

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Public Act 214 of 2018, effective December 23, 2018, amended the Michigan Indigent Defense Commission Act (the Act). The amendments impact the trial courts with respect to determinations of indigency and collecting and remitting payments for court-appointed counsel representation if a defendant is determined to be *partially* indigent. Of note, the Act creates a requirement for the indigent criminal defense system<sup>1</sup> to remit to the department<sup>2</sup> 20 percent of the payments received from *partially* indigent defendants for court-appointed counsel expenses. MCL 780.993(17), as amended. This memorandum provides courts with information on the Act and the steps courts should take to be compliant with the Act by December 23, 2018.

#### Overview

Public Act 214 of 2018 requires the indigent criminal defense system (the system) to make a determination regarding whether a defendant is indigent, including *partially* indigent. MCL 780.991(3)(a), as amended. “Partially indigent means a criminal defendant who is unable to afford the complete cost of legal representation, but is able to contribute a monetary amount toward his or her representation.” MCL 780.983(k), as amended. The Act provides that the “trial court may play a role” in determining indigency as part of any system’s compliance plan. MCL 780.991(3)(a). If the system determines that a defendant is *partially* indigent, the system shall determine the amount of money the defendant must contribute to his or her defense; however, the statute does not provide direction as to how the system communicates this determination to the trial court. MCL 780.991(3)(a), as amended. The system’s determination regarding the amount of contribution is not a court order, and the determination is subject to

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<sup>1</sup> The “indigent criminal defense system” is defined as either of the following – the local unit of government that funds a trial court, or if a trial court is funded by more than one local unit of government, those local units of government, collectively. MCL 780.983(g).

<sup>2</sup> The “department” is defined as the department of licensing and regulatory affairs (LARA). MCL 780.983(b).

judicial review. MCL 780.991(3)(a), as amended. Nothing in the Act prevents a court from making a determination of indigency. MCL 780.991(3)(a).

### **Ordering Contribution and Reimbursement**

It is important to remember that even if the system has determined that a defendant is partially indigent and should contribute financially to his or her defense, the system's determination of a contribution amount is not a substitute for a court's order. A court may enter an order for contribution payments pursuant to MCR 6.005(C) to establish and enforce contribution payments. MCR 6.005(C) provides that "[i]f a defendant is able to pay part of the cost of a lawyer, the court may require contribution to the cost of providing a lawyer and may establish a plan for collecting the contribution." If the court does not order contribution, there is no authority for a court to collect the cost of court-appointed counsel from a partially indigent defendant prior to conviction.

If a court orders contribution payments from a partially indigent defendant who is later convicted, the judgment of sentence may reflect an assessment for the remainder of the balance due for court-appointed counsel expenses. See MCL 769.1k(1)(b)(iv). Once the defendant is convicted and the judgment of sentence contains the court-appointed counsel assessment, the terminology used to describe the financial obligation changes from *contribution* to *reimbursement*. Pursuant to the Act, the court "shall collect contribution or reimbursement from individuals determined to be partially indigent under applicable court rules and statutes. Reimbursement under this subsection is subject to ... MCL 775.22."<sup>3</sup> MCL 780.993(17), as amended. Please note that if a case is dismissed or a defendant is not convicted, there is no authority to continue to enforce an order for contribution or to impose reimbursement for court-appointed counsel assessments.

### **Communicating Fully and Partially Indigent Status to Funding Unit**

If it is determined that a defendant is fully indigent, any payment collected from that defendant for court-appointed counsel expenses stays 100 percent local. The 80/20 split only applies to payments received from partially indigent defendants ordered to pay contribution or reimbursement for court-appointed counsel expenses.

If it is determined that a defendant is *partially* indigent, the court still remits 100 percent of the payment for contribution or reimbursement to the funding unit; however, the funding unit keeps 80 percent and 20 percent is sent to the department (LARA). MCL 780.993(17), as amended. Please work with your local funding unit to determine how the court will communicate which payments are received from partially and fully indigent defendants. Implementing new cash codes may be an option.

Cash codes may be implemented to assist in tracking the collection of contribution and reimbursement payments from partially indigent defendants. If the court orders a partially indigent defendant to pay contribution for court-appointed counsel expenses, set up a cash code

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<sup>3</sup> MCL 775.22 is often referred to as the priority of payment statute and requires that monies collected by the court from a criminal defendant be allocated in a particular priority.

for contribution. If, at sentencing, a court orders a partially indigent defendant to pay reimbursement for court-appointed counsel expenses, set up a cash code for reimbursement payments from partially indigent defendants. While contribution payments may begin in the district or municipal court, if a felony matter is bound over to circuit court, the circuit court would also need to establish cash codes to track payments from partially indigent defendants.

Courts that want to implement cash codes should work with their case management system provider to implement new cash code configurations. Judicial Information Services (JIS) will be publishing guidance on steps to implement changes for JIS-provided case management systems before the December 23, 2018 effective date of the Act. Please look for that guidance before reaching out for support on an individual basis.

### **Summary**

We suggest that courts work with their local indigent defense system to determine how the system will notify the court of its determination regarding partial indigency; review practices on determining indigency (partial and full) and ordering contribution and/or reimbursement; and communicate with the funding unit about how to identify payments received from partially indigent defendants. The Michigan Indigent Defense Commission is aware of this memo and is in the process of establishing a work group to explore any complications or unintended consequences as a result of the statutory amendments.

If you have any questions regarding this memo, please contact Julia Norton at 517-373-8995 or [trialcourtservices@courts.mi.gov](mailto:trialcourtservices@courts.mi.gov).