

**INDIGENT CRIMINAL DEFENSE CONTRACT BETWEEN
KEWEENAW, HOUGHTON AND BARAGA COUNTIES
AND THE TRI-COUNTY PUBLIC DEFENDERS, A MICHIGAN NON-PROFIT
CORPORATION (2025/2026)**

This contract is made between TRI-COUNTY PUBLIC DEFENDERS ("TCPD"); a Michigan non-profit corporation, and the Michigan Counties of Keweenaw, Houghton, and Baraga through their authorized representatives ("COUNTIES"):

1. Continuity with Prior Contracts

This contract is a continuation of the contracts of the same nature made between TCPD and COUNTIES executed between the fiscal years of 2018 to 2025. This contract supersedes prior contracts for years ranging from 2018 to 2025 between the parties.

2. Fiduciary Responsibility

Houghton County shall continue to serve as the fiduciary to Baraga and Keweenaw Counties and to the indigent defense system in their management of the indigent defense fund from October 1, 2025 through September 30, 2027.

3. Attorney Services

References to TCPD in this contract include all attorneys hired or subcontracted by TCPD who perform all legal services contained within this contract.

4. Services Covered

TCPD will provide representation of indigent criminal defendants in the 97th District and 12th Circuit Courts, including the Baraga Maximum Correctional Facility, according to the scope of lawyers' responsibility outlined in MCR 6.005(H) and in conformance with the rules adopted by the Michigan Indigent Defense Commission (MIDC). Representation shall include all matters set forth in Paragraph 6 of this contract, below.

5. Services Excluded

The following services are excluded from this contract:

- a. Appeals filed in the Michigan Court of Appeals and Michigan Supreme Court, except for interlocutory appeals TCPD deems appropriate.
- b. Appeals to the United States Supreme Court;
- c. Habeas corpus proceedings in the United States District Courts and Court of Appeals.
- d. Does not include any records or the prosecuting attorney.

6. Representation

TCPD will represent indigent criminal defendants at all stages of criminal proceedings starting at arraignment and continuing until completed. TCPD shall investigate each indigent criminal defendant's case and consult with each indigent criminal defendant throughout the indigent criminal defendant's case. TCPD shall also provide necessary representation of each indigent defendant, including attending line-ups and out-of-court identification procedures, seeking bond modifications, participating in extradition proceedings, negotiating plea bargains and other matters with prosecuting authorities, interviewing witnesses, preparing for trial, preparing, filing, and arguing motions, seeking counseling for the defendant when appropriate, seeking referrals to appropriate agencies, conducting trials, filing and arguing post-trial motions, defending alleged probation violations, briefing and arguing interlocutory matters in the Michigan Court of Appeals and Michigan Supreme Court and conducting any retrials ordered following an appeal. TCPD's responsibilities include preparation of all briefs, documents, letters, research and any and all things regarded as adequate representation of the indigent party.

7. Indigent Persons

Whether a defendant qualifies as indigent is defined by MCL 780.991 (3), MCR 6.005 (B), and any amendment to MCR 6.005(B) enacted during the contract, and all rules and regulations adapted by the MIDC. These rules, in their current iteration, place the power to determine indigence with the criminal courts.

8. Conflict of Interest

If at any time after a referral has been made, if TCPD or a Court discovers a conflict of interest pursuant to the Michigan Rules of Professional Conduct, TCPD shall promptly notify the Conflict Attorney manager, Hannah Goodman, who will appoint an attorney from the conflict counsel roster when TCPD is unable to provide representation due to a conflict. Conflict counsel's bills shall be reviewed by the Conflict Attorney Manager, and if approved, shall be paid by the fiduciary of TCPD's plan (Houghton County), per the budget submitted by TCPD and approved by the MIDC. Conflict counsel's bills for experts and investigators shall be reviewed by the Conflict Attorney Manager, Hannah Goodman, and if approved, shall be paid by the fiduciary of TCPD's plan (Keweenaw County) per the budget submitted by TCPD and approved by the MIDC.

9. Independent Contractor

The relationship between TCPD and COUNTIES is that of independent contracting parties.

Nothing contained in this Agreement or the course of conduct between TCPD and COUNTIES will be considered to form a partnership or employment relationship. In the performance of the Services under this Agreement, TCPD is an independent contractor with authority to control and direct the manner in which indigent criminal defense representation to clients shall be performed, subject to all duties imposed by statute, the Michigan Court Rules, Michigan Code of Professional Conduct, grants award by the Michigan Indigent Defense Commission (MIDC), and other applicable rules, regulations or requirements.

10. Duration

The minimum duration of this contract shall be from October 1, 2025 through September 30, 2027. This Agreement shall not automatically expire on September 30, 2026. On or about October 1, 2025, this Agreement shall:

- a. Be renewed after evaluation and any modification by the parties; or,
- b. Be extended for an additional one-year period if no other action is taken or by the parties' agreement; or,
- c. Be terminated as later provided in this Agreement.

11. Payment for Services

COUNTIES shall pay Houghton County, acting as fiduciary for all three COUNTIES, their local share, as defined and calculated pursuant to MCL 780.983. The COUNTIES shall pay their shares by depositing the local shares into a 260 Account set up by the fiduciary, Houghton County. The remainder of TCPD's budget will be limited to grants by the State of Michigan, which will be deposited into the 260 Account overseen and managed by Houghton County as fiduciary of the local indigent defense system plan. Pursuant to MCL 780.993(8), the COUNTIES shall not be required to contribute County funds in excess of their respective local shares, plus any grants awarded by the State of Michigan. Payments of the COUNTIES' local shares are to be made through Houghton County, as fiduciary for all three COUNTIES, in the amounts of one-half of COUNTIES' local shares in October 2025, and one-half in April of 2026, and likewise in all subsequent fiscal years. TCPD shall submit monthly requests with supporting documentation to Houghton County, as fiduciary, for release of funds from the 260 account in amounts adequate to provide indigent defense services and operations under this contract. TCPD and Houghton County may confer and agree to adjust the timing and amount of fund disbursements to TCPD as needed in order to assist TCPD in continuing operations.

TCPD shall bill the local indigent defense fiduciary system, Houghton County, monthly for expenses incurred by TCPD. Houghton County will pay TCPD's bill for monthly expenses within thirty (30) days of receipt of each properly itemized and supported monthly bill. TCPD shall not receive compensation in any form from or on behalf of persons represented for services rendered pursuant to this contract.

12. Allocation of Costs and Expenses

TCPD shall pay for all costs, fees, and expenses incurred providing the contract services as well

as all overhead costs such as general office, secretarial, staffing, phone, supplies, equipment, and subcontract fees paid to other attorneys, per the MIDC's approved budget for the years covered by this contract.

Pursuant to the authorized MIDC Budget, the responsibility for the payment of the following fees and expenses shall be as follows:

- A. TCPD shall be responsible for their defense witness fees and expenses, including statutory mileage fees for the defense witnesses; Conflict counsel shall bill these fees and expenses to Houghton County as fiduciary of the 260 Fund for payment, per the MIDC approved budgeted and authorized amounts, subject to MIDC approved budget and eligible expenditures.
- B. Houghton County as fiduciary of the 260 Fund shall be responsible for payment of investigator fees and expert witness fees incurred by both TCPD and conflict counsel, per the MIDC budget and authorized amounts, subject to MIDC approved budget and eligible expenditures.
- C. TCPD shall be responsible for defense's share of the cost of transcripts of preliminary examinations and other transcripts; Houghton County as the fiduciary of the 260 Fund shall be responsible for payment of conflict counsel's/defense's share of the cost of transcripts of preliminary examinations and other transcripts, per the approved MIDC budget, subject to MIDC approved budget and eligible expenditures.
- D. TCPD shall be responsible for service of process fees incurred by the defense; Houghton County as a fiduciary of the 260 Fund shall be responsible for service of process fees incurred by conflict counsel, per the MIDC budget and authorized amounts, subject to MIDC approved budget and eligible expenditures.
- E. TCPD shall be responsible for the cost of independent medical and psychiatric evaluations for the benefit of the defense; Houghton County as the fiduciary of the 260 Fund shall be responsible for payment of conflict counsel's cost of independent medical and psychiatric evaluations for the benefit of the defense, per the MIDC budget and authorized amounts, subject to MIDC approved budget and eligible expenditures.
- F. Houghton County as the fiduciary of the 260 Fund shall be responsible for conflict counsel's travel, meals, and lodging while trying a case or attending other case related proceedings in the tri-county area; Houghton County as fiduciary of the 260 Fund shall be responsible for all approved costs for training, including travel, meals, lodging, bridge fare, and trainer fees, for both TCPD attorneys and conflict counsel., both per the MIDC budget and authorized amounts, subject to MIDC approved budget and eligible expenditures.

13. Quarterly and Year-end Financial Reporting

Within Fifteen (15) days after the end of every quarter of the fiscal year and for all successive fiscal years under this Agreement, TCPD is to deliver to Houghton County, acting as fiduciary for the indigent defense system, quarterly financial reports detailing expenses incurred and the current balance of TCPD's accounts. TCPD is to make these reports available to each of the COUNTIES. TCPD is required to submit timely quarterly reporting to the MIDC in Egrams by submitting an Attorney List and a Quarterly Program Report.

Every quarter of the fiscal year and for all successive fiscal years under this Agreement,

Houghton County, acting as fiduciary for the indigent defense system, is required to submit quarterly reporting to the MIDC by timely submitting a Financial Status Report using Egrams. At year end, Houghton County, acting as fiduciary for the indigent defense system, is required to timely submit a Report of Unexpended Grant Funds to the MIDC using Egrams. Timely information from TCPD to Houghton County is essential for MIDC grant administration and compliance.

14. Request for Financial Documents

Upon request from any of the individual Counties or by Houghton County, acting as fiduciary of the COUNTIES, TCPD will promptly and in good faith make other financial documentation including but not limited to any and all documents referenced in Section 20 hereinafter, accessible to the requesting COUNTIES for review.

Upon request from TCPD, Houghton County, acting as fiduciary for the COUNTIES, will provide monthly financial documentation (ledger of 260 Account) regarding the balance in the 260 Account and all payments made from that account, to TCPD so that TCPD can monitor their annual budget.

15. Malpractice Insurance

The COUNTIES shall have no liability and shall be indemnified for malpractice claims which may be made by persons represented by TCPD pursuant to the contract. TCPD and all conflict attorneys shall carry malpractice insurance, in an amount approved by the COUNTIES and proof of such insurance shall be provided to the COUNTIES forthwith.

16. Indemnification

TCPD shall indemnify, defend, and hold the COUNTIES, their affiliates, and their elected and appointed officials, employees, agents, contractors, and other representatives harmless from and against all claims, losses, expenses, liabilities, demands, obligations, or damages of every kind and nature (including, without limitation, reasonable attorney fees and expenses) (Losses), arising out of or related to (i) any act or omission of TCPD or (ii) any breach of this Agreement by TCPD. TCPD shall acquire reasonable insurance to meet the requirements contained herein above.

17. Force Majeure

If TCPD or COUNTIES are prevented or delayed in the performance of any of their obligations under this Agreement due to Force Majeure (defined below), that party will provide written notice to TCPD and the (other) COUNTIES specifying the nature and expected duration of the Force Majeure. The performance of the party invoking Force Majeure with respect to any obligation will be excused and the time for performance extended, but only for the period of delay or inability to perform due to Force Majeure. If the total of any period of delay or inability to perform due to Force Majeure asserted any party during the Term equals or exceeds 30 consecutive days, the other parties will have the right, at its option, to either terminate this Agreement by written notice or to continue to excuse the first party's performance for the period

of any delay or inability to perform due to Force Majeure. As used in this Agreement, "Force Majeure" shall mean any act of God, fire, casualty, flood, war, strike, lockout, labor trouble, or any other circumstances beyond the reasonable control of the party asserting it that prevents or delays the performance of any of its obligations under this Agreement, including but not limited to the lack of funding provided to Houghton County, acting as fiduciary of the local indigent defense system by the State of Michigan designated for the provision of representation described herein.

18. Assignment

The rights and obligations conferred under this Agreement may not be assigned by TCPD without the prior written consent of the COUNTIES. Any attempted assignment in violation of this section 18 is null and void.

19. Binding Agreement; Successors

This Agreement shall be binding on, inure to the benefit of, and be enforceable by the successors and assigns of the COUNTIES and TCPD; provided, however, that no assignment of this Agreement by TCPD will be effective without the express written consent of all COUNTIES.

20. Non-Privileged Information

When appropriate, TCPD shall advise clients serviced by this contract that information regarding their financial circumstances which is probative of determining indigence is not privileged information unless the information is probative of the guilt or innocence of the client in which case the information shall be protected by attorney-client privilege.

TCPD have the continuing responsibility to bring to the attention of the Judge who is presiding in the matter any non-privileged information regarding the financial resources of defendants which bears on their eligibility for counsel services under this contract.

21. Record Keeping and Information Access

The COUNTIES shall provide TCPD access to current and historic information regarding indigent defense, if requested.

The COUNTIES shall provide TCPD non-confidential information kept in the normal course regarding indigent representation current and historic and the criminal docket in general, if necessary.

TCPD shall maintain individual case records in a manner and according to categories as deemed necessary, but not unduly burdensome for an effective evaluation and review of the contract.

TCPD shall participate in meetings with the COUNTIES, courts, and prosecutors relative to the administration of the criminal justice system in Houghton, Baraga, and Keweenaw Counties relating to matters such as scheduling, local court rules and practices.

TCPD shall maintain complete and accurate records, including but not limited to an accounting of payroll, timesheets, revenues, billings, costs and expenditures necessary to satisfy MIDC grant requirements, as may periodically be amended, and as may be necessary as supporting source documents for audit, government accounting standards board compliance, or other purposes that TCPD or the COUNTIES, singularly or collectively, may be requested or required to participate in or report upon. TCPD shall promptly provide full and complete access to all such records, subject to protective measures for privileged client information, if any. No provision contained in this contract shall be deemed to require the COUNTIES to undertake any additional, new or revised record keeping, except as may be required by the Michigan Indigent Defense Commission.

22. Notices

Notices to TCPD regarding this contract shall be made to TRI-COUNTY PUBLIC DEFENDERS, 1221 Schoolhouse Drive, Houghton, Michigan 49931. Notices to Keweenaw County shall be made to the Keweenaw County Clerk, 5095 4th Street, Eagle River, MI 49950. Notices to Houghton County shall be made to the Houghton County Clerk, 401 E. Houghton Avenue, Houghton, MI 49931. Notices to Baraga County shall be made to the Baraga County Clerk, 2 South Main Street, L'Anse, MI 49946.

23. Contract Modifications

Any modifications of this contract shall be in writing and approved by all parties. There are no oral agreements accompanying this contract.

24. Contract Disputes

Any contract dispute between TCPD and any or all of the COUNTIES shall be addressed first to the presiding Judge of the 97th District Court if the dispute is a District Court matter, secondly by the presiding Judge of the 12th Circuit Court if the dispute is a Circuit Court matter, and thirdly by appropriate legal remedies, if necessary. The Judges shall act as mediators; their recommendations shall not be binding on TCPD or the COUNTIES unless agreed to by TCPD and the COUNTIES. Provided, however, that any dispute involving MIDC, including but not limited to the award, use or application of grant funds by TCPD or the COUNTIES, and any related matters shall be resolved pursuant to Section 15 of the Michigan Defense Commission Act, MCL 780.995.

25. Term of Contract and Termination of Contract

Any party may terminate this contract immediately and at any time for good cause, unethical conduct, or a violation of this contract's terms. Any party may terminate this contract without cause by ninety (90) days' written notice at any time after this contract has been in effect for six (6) months or more.

All cases assigned prior to termination without cause shall be completed pursuant to the contract

without compensation other than that provided for in this contract. All cases assigned to defense counsel prior to October 1, 2027, shall continue with such assigned counsel and the COUNTIES shall compensate assigned counsel on those cases through and to conclusion according to the terms of the appointment policy in effect at the time of the appointment.

26. Waiver

The failure of TCPD or any of the COUNTIES to require the performance of any term or obligation of this Agreement, or the waiver by either party of any breach of this Agreement, shall not prevent any subsequent enforcement of any term or obligation or be deemed a waiver of any subsequent breach

27. Severability

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision is invalid and unenforceable as written, that provision will be deemed modified in a manner consistent with the intent of the original provision, so as to make it valid and enforceable. This Agreement, and the application of the provision to persons or circumstances other than those with respect to which it would be invalid or unenforceable, shall not be affected.

28. Indigent Defense Commission Deference

This contract is subject to The Michigan Indigent Defense Commission's standards for indigent public defense. This contract is subject to modification based on the enactment of MIDC standards or recommendations.

TRI-COUNTY PUBLIC DEFENDERS

By: David M. Gemignani
Chief Public Defender

Dated: _____

KEWEENAW COUNTY

By: Donald Piche, Chairman
County Board of Commissioners

Dated: _____

By: Eric Hermanson, Treasurer

Dated: _____

BARAGA COUNTY

By: Gale Eilola, Chairman
County Board of Commissioners

Dated: _____

By: Wendy Goodreau
County Clerk & Register of Deeds

Dated: _____

HOUGHTON COUNTY

By: Tom Tikkanen, Chairman
County Board of Commissioners

Dated: _____

Chelsea Rheault, Administrator