

Michigan Indigent Defense Commission Meeting Minutes
Open Session
Ottawa Building, UL Conference Room 3
611 W. Ottawa
Lansing, MI 48933
August 13, 2019
Time: 11:00 am

Commission Members Present

Michael Puerner, Chair, Judge Thomas Boyd, Thomas Clement (non-voting member), Judge Jeffrey Collins, Nathaniel Crampton, Andrew DeLeeuw, Frank Eaman, Judge James Fisher, Christine Green, James Krizan, Margaret McAvoy, John Shea, William Swor

Participating via Telephone

Kimberly Buddin (joined at 11:30 am), Tracey Brame, Nancy Diehl, Gary Walker

Commission Members Absent

Joseph Haveman, Tom McMillin

Members of the Public Participating Included:

Diane Burton, Malcolm Brown, Barbara Caskey, Peter Cunningham, Mary Ann Jerge, Meghann Keit, Janet Koch, Richard Lynch, Karen Moore, Chris Renna, Sara Spencer-Noggle, Marianne Talon, Drew Van de Grift, Shelli Weisberg

Staff Members Present

Loren Khogali, Barbara Klimaszewski, Marla McCowan, Kelly McDoniel, Rebecca Mack, Susan Prentice-Sao, Christopher Sadler, Jonah Siegel, Nicole Smithson, Kristen Staley, Melissa Wangler, Marcela Westrate

Chair Puerner called the Michigan Indigent Defense Commission (“MIDC” or “the Commission”) meeting to order at 11:15 am.

Public Comment

Barbara Caskey gave public comment on behalf of Macomb County and offered answer any questions regarding the Macomb County plans.

Additions to Agenda

Judge Fisher requested that a new item be added under Commission Business. The new item, “Discussion of a Request to Amend or Supplement the MIDC’s Appropriations Request for the Next Fiscal Year,” would be item 8e on the agenda. Mr. Krizan moved that the item be added. Mr. Walker seconded the motion. The motion carried.

Consent Agenda

Judge Boyd moved that the Consent Agenda be included with an amendment to the July 23, 2019 minutes. The minutes would be amended so that the reference to the ad hoc committee on page 11 (2nd to last paragraph) mirrored the language used on page 4 (first paragraph). Ms. Green seconded the motion. The motion carried.

Chair Report

Chair Puerner updated the Commission on his activities since the July meeting and provided an overview of the meeting materials. He asked Judge Boyd to provide an update on the new ad hoc committee's activities. Judge Boyd provided an overview of the framework the committee was using to evaluate processes. He reported that the committee's framework will be used in evaluating plans for FY 21. The committee will have a report for the October meeting.

The Commission discussed the bylaws' requirements for ad hoc committees. Chair Puerner stated that the Executive Committee will review the ad hoc committees and whether it is necessary to change the by-laws to reflect that some of the committees will have to be permanent.

Executive Director Report

Ms. Khogali provided an overview of the office's activities since the July meeting. A Grant Analyst will begin employment on August 26 supporting Grant Manager Rebecca Mack in her work. Mr. Clement recently accepted a new position with the Michigan Retailers Association; Ms. Khogali wished him well in his new position.

Commission Business

Nominating Committee Report

Judge Boyd reported that the Nominating Committee met electronically and recommended that Judge Collins fill the vacant Vice Chair position. Chair Puerner opened the floor for additional nominations. No additional members were nominated. Judge Fisher moved to adopt the recommendation of the nominating committee and unanimously approve Judge Collins as Vice Chair. Mr. Swor seconded the motion. The motion carried.

Operational Budget

A summary of the budget for the current fiscal year was presented to the Commission for its review. The Commission's internal operating procedures require a budget be presented in August. This year, the annual appropriations process is ongoing, and the final budget for the MIDC is not yet known. The document will be updated once the budget is finalized.

Sixth Amendment Center Report on Wayne County's Assigned Counsel System

Commissioners received the report written by David Carroll who wrote the "Race to the Bottom" report that evaluated Michigan's indigent defense system in 2008. Representatives from Wayne County were invited to offer comments. The Commission discussed the report's recommendations,

how the report relates to the Commission's work and the status of the standards pending with LARA.

FY 19 Grants, Compliance Plan Adjustments and Highlights

Budget Adjustments

Ms. Mack approved budget adjustment requests that did not impact the total system cost for the following 15 systems:

- Berrien County
- Charlevoix County
- Cheboygan County
- Clinton County
- 28th District Court – Southgate
- 33rd District Court – Woodhaven
- 41-a-2 District Court – Shelby Township
- 46th District Court – Southfield
- Delta County
- Genesee County
- Huron County
- Ingham County
- Mason County
- Ogemaw County
- Oseola County

Oceana County requested a budget adjustment; that request was denied by Ms. Mack.

Requests for Plan Adjustments

The 46th District Court in Southfield requested a plan revision to include a Managed Assigned Counsel Coordinator to replace a non-attorney coordinator that is currently included in the plan. There is no change to overall costs, the personnel spending line is modified to hire the full-time employee.

Ms. McAvoy moved that the City of Southfield's request be approved. Ms. Green seconded the motion. The motion carried.

Third Quarter Financial Reporting by Local Systems

Ms. Mack provided an overview of the reporting submitted by systems for the third quarter of the fiscal year. The following systems had not submitted third quarter financial status reports before the Commission met: Warren/Centerline, Eastpointe, Lapeer, Arenac, Montmorency, Oscoda, Garden City, Inkster, Wyandotte, Highland Park, Branch and Ionia.

Extension of Fiscal Year 2019 Grant Contracts

Oakland County requested an extension for its construction costs. Mr. Brown and Ms. Jerge from Oakland County gave an overview of the request and were available for questions.

The Construction Committee met on August 8, 2019 via telephone and reviewed this proposal. The committee did not express any concerns about the extension.

Judge Boyd moved that Oakland County's request for an extension of its FY 19 grant agreement to complete construction projects be approved. Ms. McAvoy seconded. The motion carried.

Wayne County requested an extension of the totality of its unspent funds for the current fiscal year.

At the April 16, 2019 meeting Judge Fisher moved that the issue of granting a contract extension to Wayne County be tabled; the motion to table the issue passed. Mr. Shea moved to take the motion from April 16, 2019 off of the table. Mr. Swor seconded. The motion carried. The Commission discussed the issue and determined that Wayne County would not be the only system in this position. The motion was withdrawn, the Commission recessed to draft a motion that would cover the systems who would be in similar positions.

The Commission recessed from 1:15 pm until 1:55 pm. Mr. Clement left the meeting during the recess.

Chair Puerner allowed Janet Koch to offer public comment on behalf of Wexford County before that County's plan was considered by the Commission.

The Commission returned to the issue raised by Wayne County.

Judge Boyd moved the following:

MCL 780.993 (15) requires each and every system to report unexpended funds as of September 30th by October 31, 2019. This report includes funds subject to section 780.993(11) and funds not subject to 780.993 (15) - both totals must be reported. The action taken by the MIDC today effects only funds not subject to 780.993(11).

The MIDC acknowledges that unexpended funds in each system (not subject to 780.993(11)) will be included in the subsequent fiscal year's expenditures through the subsequent year's compliance plan and cost analysis. The state grant for the subsequent fiscal year will be offset (reduced) by the amount of unexpended funds (not subject to 780.993(11)).

The MIDC authorizes its Executive Director to approve continued - uninterrupted expenditures of unexpended funds from one fiscal year in the subsequent fiscal year by contract, letter agreement, or similar device. The intent of this action is to effectuate MCL 780.993 (15) capture of unexpended funds while allowing their expenditure in the subsequent fiscal year.

Nothing here effects the calculation of the local share pursuant to the MIDC Act. That share is adjusted on an annual basis. The clock/calendar for determining local share is not changed here.

Judge Fisher seconded the motion. After discussion, the motion carried.

Discussion of a Request to Amend or Supplement the MIDC's Appropriations Request for the Next Fiscal Year

Judge Fisher moved to amend or supplement MIDC spending request for FY 19/20 to provide for total expenditures of \$128,848,000 with a clear statement of the one-time funds that the Commission believes to be available within each local system. Further, that the MIDC, with the assistance of the Executive Director, communicate this request to the Governor, State Budget

Office, the Director of LARA, and Chairpersons/staff of the House and Senate Appropriations Committees. Judge Boyd seconded the motion. After discussion, the motion carried.

FY20 Compliance Plans

The following systems resubmitted compliance plans for staff review and the Commission's consideration:

- Baraga/Keweenaw/Houghton
- Berrien
- Cheboygan
- Lake
- Lenawee
- Livingston
- Marquette
- Wexford/Missaukee

Ms. McCowan provided an overview of the plans and indicated what changes were made from previous submissions. MIDC staff recommend that the Commission approve the plans and approve the cost analyses resubmitted by the systems listed above.

Chris Renna presented comments on behalf of Berrien County and answered questions from Commissioners.

Judge Boyd left the meeting at 2:15 pm.

Mr. Swor moved that the staff recommendation be adopted and that the plans and cost analyses resubmitted by the eight systems listed above be approved. Ms. Green seconded the motion. The motion carried.

Review of Compliance Plans

The Commission moved to consideration of compliance plans from Oakland and Wayne Counties.

MIDC staff recommend the adoption of Oakland County's plan and cost analysis. Ms. McCowan and Ms. Smithson provided an overview of the plan. The compliance plan included \$578,490 for modifications to the County's case management system. Staff believe that the modification should be accomplished through a planning grant using funds dedicated for that purpose. MIDC staff will continue to work with the system during the contractual phase to clarify payments for experts and investigators.

Mr. Brown and Ms. Jerge offered comments in support of the plan and answered questions from the Commission. The County expressed concerns regarding the MIDC rates for experts and investigators and being able to find people willing to perform the work for those rates.

Ms. McAvoy moved that the staff recommendation be adopted and that the plan and cost analysis for Oakland County be approved. Mr. Eaman seconded the motion. The motion carried.

The Commission next considered Wayne County's submission.

MIDC staff recommend that the plan be approved and that the cost analysis be disapproved. Ms. McCowan provided an overview of the plans and the areas that she believed should be addressed in a subsequent submission. Chair Puerner stated that he would recommend deferring action on the plan until Ms. McCowan had the information she needed.

Mr. Lynch, Ms. Talon and Mr. Van de Grift offered comments in support of Wayne County's plan and answered questions.

Mr. Shea moved that the staff recommendation be adopted and that Wayne County's plan be approved but its cost analysis be disapproved. Judge Collins seconded the motion. The motion carried.

Conflict of Interest Policy and Discussion of Current Commission Processes Under the Open Meetings Act

Ms. McAvoy moved that these two items be tabled until the October meeting. Mr. Shea seconded the motion. The motion carried.

Goals and Benchmarks Rubric

Dr. Siegel provided an overview of the benchmarks and rubric and answered questions from Commissioners. Ms. Green moved that the document be adopted and that staff begin using it to assess systems. Mr. Swor seconded the motion. The motion carried.

Proposed Request for Proposal for Local Share Study

MCL 780.993(6) in the amended MIDC Act requires the MIDC to "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 not later than October 31, 2021 that includes a recommendation regarding the appropriate level of local share, expressed in both total dollars and as a percentage of the total cost of compliance for each indigent criminal defense system."

Ms. Khogali presented a draft for the Request for Proposal for this project. She would like to have individuals from outside of the MIDC complete the report. After the report is completed, she will present it to the Commission for its consideration. It will be transmitted to state government officials after the Commission's approval.

Mr. Shea moved that staff finalize the request for proposals and proceed as proposed by Ms. Khogali. Mr. Crampton seconded the motion. The motion carried.

Move into Closed Session

Chair Puerner requested a motion to go into closed session under MCL 15.268(a) to consider the periodic personnel evaluation of Ms. Khogali and under MCL 15.268(h) to consider material exemption from disclosure under section 13(1)(g) of the Freedom of Information Act. He noted that Ms. Khogali had submitted a request to have her evaluation considered in the closed session. Judge Collins so moved. Ms. Green seconded. Chair Puerner asked for a roll call vote. The Commission moved into closed session at 4:05 pm, the following members voted yes on the motion: Chair Puerner, Ms. Buddin, Ms. Brame,

Judge Collins, Mr. Crampton, Mr. DeLeeuw, Ms. Diehl, Mr. Eaman, Judge Fisher, Ms. Green, Mr. Krizan, Ms. McAvoy, Mr. Shea, Mr. Swor and Mr. Walker.

The Commission voted to return to open session at 5:00 pm. Mr. Puerner reported on the Commission's activities while in closed session.

On a motion duly made and seconded, the Commission voted unanimously to accept the Executive Director's self-assessment, and the Commission's performance review of the Executive Director.

The Commission adjourned at 5:05 pm.

Respectfully submitted,

Marcela Westrate