



MICHIGAN INDIGENT
DEFENSE COMMISSION

Capitol National Building, Basement, 200 N. Washington Sq., Lansing, MI 48933

Date: Tuesday, February 11, 2020, Time: 11:00 a.m.

MEETING AGENDA

1. Roll call and opening remarks
2. Introduction of Commission members and guests
3. Public comment
4. Additions to agenda
5. Consent agenda – December 17, 2019 Meeting Minutes
6. Chair Report
7. Executive Director Report
8. Commission Business
 - a. FY20 Compliance Planning Process
 - Approvals to date
 - Contracts distributed
 - Plan Changes (Action Requested)
 - Delta County
 - D 33 Woodhaven
 - Macomb County
 - Substantive Review of Third/Final Submissions (Action Requested)
 - D 36 City of Detroit
 - D 43-1 Hazel Park
 - Lapeer County
 - Local Share Adjustments (Action Requested)
 - Kalamazoo County
 - Otsego County
 - Gratiot County
 - Final Resubmissions to be considered at April 2020 meeting:
 - D 22 City of Inkster
 - b. FY19 Plan Implementation Update
 - Q4 reporting, final adjustments, unexpended balances
 - Financial Reporting
 - D22 Inkster
 - Jackson County (Action Requested)
 - c. Wayne County Extension of Planning Grant (Action Requested)
 - d. Update: Office of Internal Audit Services (OIAS)
 - e. Training and Education Committee Report
 - f. Discussion of FY 21 Draft Grant Manual
 - g. Indigency Standard Memorandum and Update
9. Next meeting – **April 21, 2020 at 11:00 a.m.**
10. Adjourn

Michigan Indigent Defense Commission Meeting Minutes

507 S. Grand Avenue

Lansing, MI 48933

December 17, 2019

Time: 11:00 am

Commission Members Present

Michael Puerner, Chair, Kimberly Buddin, Judge Thomas Boyd, Judge Jeffrey Collins, Nathaniel Crampton, Andrew DeLeeuw, Judge James Fisher, Christine Green, James Krizan, Margaret McAvoy, Tom McMillin, Cami Pendell (non-voting member), William Swor

Participating via Telephone

Nancy Diehl and Gary Walker

Commission Members Absent

Tracy Brame, Frank Eaman, Joseph Haveman and John Shea

Members of the Public Participating Included:

Courtney Adams, Michael Boucher, Malcolm Brown (via telephone), Russell Church, Chris Dennie, Chris Forsyth, Tim Havis, Mary Ann Jerge, Meghann Keit, Steve Morton, Karen Moore, Craig Paull, Scott Smith, Eric Wilson

Staff Members Present

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

Chair Puerner called the Michigan Indigent Defense Commission (“MIDC” or “the Commission”) meeting to order at 11:02 am.

Public Comment

Chair Puerner invited members of the public to introduce themselves if they wished and to make comments to Commissioners.

Mr. Forsyth made comments on behalf of Grand Traverse County.

Mr. Smith made comments on behalf of the City of Wyoming

Ms. Moore made comments on behalf of Newaygo County.

Mr. Morton and Mr. Wilson made comments on behalf of the Cities of Hazel Park and Madison Heights.

Additions to the Agenda

Mr. McMillin requested that an item to discuss the Michigan Supreme Court’s proposed amendment to court rule 8.115 be added to the agenda.

Ms. McAvoy moved that the agenda be approved as amended. Mr. Swor seconded. The motion carried.

Consent Agenda

Judge Collins moved that the minutes from the open and closed sessions of the October 18, 2019 meeting be approved. Mr. Walker seconded the motion. The motion carried.

Chair Report

Chair Puerner welcomed Ms. Pendell to the Commission.

Mr. Swor will serve as Chair-Elect of the American Board of Criminal Lawyers. Chair Puerner and the Commission congratulated him on this position.

Chair Puerner provided an overview of the agenda and materials.

Executive Director Report

Ms. Khogali gave an overview of the written report she provided to Commissioners.

Commission Business

Appointment of New Commissioner

Chair Puerner indicated that he received a letter from Chief Justice Bridget McCormack appointing Ms. Pendell as the Chief Justice's designee on the Commission. Ms. Pendell will serve in an ex-officio capacity. Ms. Pendell introduced herself.

Engagement of the Office of Internal Audit Services

Ms. Khogali updated the Commission on staff's work with the Office of Internal Audit Services (OIAS). Ms. Mack provided information to assist with OIAS's work. OIAS will conduct a financial audit and will work with Regional Managers to better understand what is being audited.

Chair Puerner requested that calendar of the timing for review and the plan for reviews be presented to the Commission in February.

Implementation of eGrams Grant Management System

Ms. Khogali provided an update on the progress with the system. MIDC staff continues to work with DTMB and eGrams on developing the system.

Request for Approval of New Position

The MIDC received an additional appropriation for FY 20 to fund one employee to assist Ms. McCowan with tracking training and CLE completion. Ms. Khogali provided an overview of the draft position. Commissioners requested additional information about the pay range for the position. The anticipated civil service classification and corresponding salary range was provided by staff.

Mr. Swor moved that Ms. Khogali move forward with adding this position. Ms. Green seconded the motion. The motion carried, the majority of members voting in support of the motion.

Transition to DTMB

Ms. McCowan is working with the Department of Licensing and Regulatory Affairs (LARA) to transition the MIDC website to LARA and DTMB format. There will be no loss of functionality with this transition.

FY 19 Plan Implementation Update**Program Rubric Completions and Court Watching**

Ms. McCowan provided an overview of the court watching Regional Managers are doing. The court watching is being conducted on days planned with the State Court Administrative Office's Regional Directors for the MIDC Regional Manger's corresponding region.

Fourth Quarter Reporting, Final Adjustments, Unexpended Balances

Ms. Mack continues to review the reports from the fourth quarter and working with systems to obtain additional documentation when necessary. She anticipates that local systems will have between \$42 and 43 million in unexpended funds.

Financial Reporting

Ms. Khogali and Ms. McCowan provided an overview of the three systems that had not completed FY 19 reporting requirements. Those systems are the 22nd District Court – City of Inkster, the 43-1 District Court – City of Hazel Park and Jackson County. Mr. Crampton joined MIDC staff in attending a meeting with Jackson County officials.

Ms. Green moved that MIDC staff be authorized to advise the local systems to submit the required reporting within 30 days and, if those efforts fail, to activate the mediation process. Judge Fisher seconded the motion. The motion carried.

Ms. Mack approved budget adjustment requests pursuant to the MIDC's process. These adjustments did not impact the total system cost. The following systems had approved requests to their FY 19 plans:

- Alger
- Isabella
- Jackson
- Macomb
- Marquette
- Ottawa

FY 20 Compliance Planning Process

Ms. Khogali and Ms. McCowan updated Commissioners on the total amount of approvals to date and the number of contracts that have been distributed to systems for review.

Calhoun and Oakland Counties had mathematical errors in the planning funding total. Mr. Swor moved that the Commission approve the revised planning costs and that the systems be paid the revised amounts. Judge Collins seconded the motion. The motion carried.

Substantive Change to MIDC Award

Ms. McCowan provided an overview of the change requested by the 44th District Court in Royal Oak. The system requested a plan modification that will allow for the creation of a driving while

license suspended (DWLS) docket to be staffed by house counsel attorneys who will be paid \$400 per docket. MIDC staff recommends approval of this change.

Mr. McMillin moved that the staff recommendation be adopted and that Royal Oak's request be granted. Ms. Green seconded the motion. The motion carried. Mr. Krizan abstained from the vote because of his employment with the City of Royal Oak.

The Commission recessed from 12:50 pm until 1:15 pm.

Report by RAND Corporation – “Caseload Standards for Indigent Defenders in Michigan”

The Commission moved to item 8h on the agenda, Report by RAND Corporation. Nick Pace of the RAND Corporation attended remotely to provide a presentation about the organization's caseload standards report. Commissioners discussed the report and asked questions about the findings.

Substantive Change to MIDC Award

The Commission returned to Substantive Change to MIDC Award to discuss Genesee County's plan. Ms. McCowan provided an overview of the changes to the plan. The plan has been submitted for the Commission's review to correct the total system cost. The staff recommendation is to approve both the plan and the cost analysis.

Mr. Swor moved that the staff recommendation be adopted and that Genesee County's revised plan and cost analysis be approved. Judge Collins seconded the motion. The motion carried.

Resubmission of fully approved plans and cost analysis

The following systems submitted requests to change their respective plans and cost analyses:

- 48th District Court – Bloomfield Hills
- 62a District Court – Wyoming
- Grand Traverse County
- Oakland County
- Otsego County

The following systems submitted requests to change their respective cost analyses:

- Clare/Gladwin Counties
- Hillsdale County
- Ionia County
- Lake County
- Newaygo County
- Ogemaw County
- Sanilac County

The staff recommendation is that the MIDC continue to work with systems to accomplish the plan changes using the amount of money already included in the approved cost analyses, that any requests for changes to the approved totals be denied, and that any reimbursements be included as part of the systems' FY 21 plans.

Mr. McMillin moved that the staff recommendation be adopted and that MIDC staff work with the systems listed above to accomplish the plan changes using the amount of money already included in the approved cost analyses, that any requests for changes to the approved totals be denied, and that any reimbursements be included as part of the systems' FY 21 plans. Mr. Swor seconded the motion.

The Commission discussed the motion.

Mr. Smith again commented on behalf of the City of Wyoming's request.

Ms. Moore again commented on behalf of Newaygo County's request.

Mr. Forsyth again commented on behalf of Grand Traverse County.

Mr. McMillin withdrew his motion.

Judge Fisher moved that the plan changes be approved as requested and that any increase in funding to accomplish the changes be approved for the current fiscal year. Judge Collins seconded the motion. The Commission discussed the motion. Judge Fisher stated that he made the motion because systems brought the issue to the Commission's attention early in the fiscal year and that the Commission will treat such requests on a case by case basis and may decide to handle this issue differently with respect to subsequent requests. Chair Puerner called for a roll call vote. The motion carried, 13 members voting yea, 0 members voting nay and 5 members absent.

Substantive Review of Third/Final Submissions

Staff recommends that the Commission approve the cost analyses for the following systems:

- 35th District Court – Plymouth
- 43-3 District Court – Madison Heights
- 61st District Court – Grand Rapids
- 62B District Court – Kentwood
- Ottawa County

Judge Fisher moved that the staff recommendation be adopted and cost analyses for the five systems listed above be approved. Judge Collins seconded the motion. The motion carried.

Four systems remain for consideration at the February 11, 2020 meeting:

- 22nd District Court – City of Inkster
- 36th District Court – City of Detroit
- 43-1 District Court – City of Hazel Park
- Lapeer County

Discussion of FY 21 Draft Grant Manual

Judge Boyd moved that the resolution presented and tabled at the October 15, 2019 meeting be removed from the table and added to the agenda. Judge Fisher seconded the motion. The motion carried.

Chair Puerner provided a summary of the Commission's previous discussion about this issue.

Ms. Khogali provided an overview of the Draft Grant Manual.

Judge Boyd moved that the resolution he presented (attached at the end of this document) be adopted. Judge Fisher supported the motion. After discussion, Chair Puerner called for a roll call vote. The motion failed with 5 yeas, 7 nays and 6 members absent.

Court Rules Committee Report

Ms. Khogali reported that work on the draft court rules is continuing. Ms. Westrate worked with Judge Boyd on a revised draft that was forwarded to the committee for its review.

Proposed Changes to MCR 8.115

The Commission reviewed the amendment currently being considered by the Michigan Supreme Court. Chair Puerner provided an overview of the issue.

Mr. Swor moved that the Commission support the proposed amendments to MCR 8.115. Mr. McMillin seconded the motion. The motion carried. Judge Boyd abstained from the vote because of his position with the Michigan District Judges Association.

The next meeting is February 11, 2020 at 11:00 am.

Mr. Swor moved that the meeting be adjourned. Ms. Green seconded the motion. The motion carried.

The meeting adjourned at 4:01 pm.

Respectfully submitted,
Marcela Westrate

Michigan Indigent Defense Commission Resolution

WHEREAS, the Michigan Indigent Defense Commission (MIDC) was created to, among other things, “propose minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel to adults throughout this state.” 780.985(3)

WHEREAS, the MIDC’s duties include “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.” MCL 780.989(1)(a).

WHEREAS, the MIDC’s authority and duties includes, “hiring an executive director and determining the appropriate number of staff needed to accomplish the purpose of the MIDC consistent with annual appropriations. And 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. MCL 780.989(1)(c)&(d).

THEREFORE, BE IT RESOLVED, that the MIDC has the authority to develop and implement minimum standards as well as interpret the MIDC Act.

BE IT FURTHER RESOLVED, that the MIDC Executive Director and, through the Executive Director, the MIDC staff are responsible for assisting the MIDC development, implementation regular review of standards rules and procedures created by the MIDC.

BE IT FURTHER RESOLVED, that MIDC staff, as agents for the commission, may not require anything of or prohibit any action/plan of a local criminal indigent defense system unless the MIDC has expressly provided for the same. The MIDC staff may communicate the commission’s previous actions/decisions in the compliance plan approval process.

FINALLY, IT IS FURTHER RESOLVED, that the MIDC instructs the Executive Director to develop appropriate procedures for presentation of all issues involving understanding/implementation of minimum standards and statutory interpretation to the MIDC. This expressly includes all future questions and an organized review of each and every decision already made by staff and currently affecting MIDC operation and/or implementation of any compliance plan.

Submitted by Tom Boyd
Chair, Ad Hoc Committee on MIDC Authority
October 15, 2019

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF ATTORNEY GENERAL
LICENSING AND REGULATION DIVISION
AND
THE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN INDIGENT DEFENSE COMMISSION

FOR FISCAL YEAR 2019-2020: October 1, 2019 - September 30, 2020**

Purpose

This Memorandum of Understanding (MOU) between the Department of Attorney General (AG)/Licensing and Regulation Division (LRD) and the Department of Licensing and Regulatory Affairs (LARA)/Michigan Indigent Defense Commission (MIDC) (hereinafter collectively referred to as the "parties") provides the agreement by which the AG will provide legal services in general matters and any new litigation matters, as authorized under PA 93 of 2013, as amended.

Payment and Services

The services will be provided at a cost not to exceed \$35,000 per fiscal year beginning October 1, 2019 until September 30, 2020. Such funds may be used for salary and fringe benefits. If additional funds are needed in excess of the \$35,000 enumerated in this Agreement, the LARA/MIDC and the AG/LRD agree to issue an Addendum to this Agreement to provide for such funding.

Any associated costs, such as transcripts, expert witness costs, vendor costs related to electronic discovery, any related discovery costs, consultant costs, court fees, and travel that are incurred through the normal course of business are reimbursable under this MOU. The AG will be reimbursed by interagency transaction and will provide quarterly billings for the legal services and other associated costs that are provided under the terms of this MOU.

Estimated Budget:

Personnel Costs	\$ 34,500
Other Expenses	\$ 500
Total Estimated Budget	\$ 35,000

Upon program staff approval, LARA's Finance and Administrative Services will pay the invoice via inter-agency transaction process using the following coding structure for each agency:

LARA
Agency Code: 641
Accounting Event: IN04
Accounting Template: 6412503T001
Dept. Object: 8140

AG
Agency Code: 111
Accounting Event: IN04
Accounting Template: 111641IDC
Dept. Object: 5490

The AG will submit invoices detailing the specific services provided, and supporting documentation, on a quarterly basis to:

Chris Graham
Finance & Administrative Services
4th Floor, Ottawa Bldg.
Lansing, MI 48909

Personnel

Attorneys and support staff to be assigned not to exceed the budget above. The attorneys and support staff will be physically housed and supervised in the AG/LRD.

Assignment of Priorities

The Executive Director of the MIDC, or his/her designee, will determine the priorities of legal assignments. Assignments will be made through the Division Chief of the LRD to support the established priorities. The parties will work together to resolve scheduling conflicts.

Reports

The AG/LRD will provide quarterly status reports of all legal assignments. The content of the reports will reflect the opened, closed, and pending status during the quarter, and other mutually agreed upon information. This report will not only keep all parties familiar with activities but will support the annual cost paid by the LARA/MIDC. The AG/LRD will track all hours that the LARA/MIDC utilizes their services including, but limited to, phone calls, emails and other legal proceedings, and report that data quarterly to the LARA/MIDC.

Modifications

Any changes, amendments, or revisions to this MOU shall only be effective if made in writing with the written concurrence authorized by the AG/LRD and the LARA/MIDC.

Termination

This agreement shall be in full force and effect for the period specified in this MOU. This MOU may be terminated by either party by giving sixty (60) day written notice, stating the reasons for termination and the effective date.

Special Conditions

This MOU is conditionally approved subject to and contingent upon the availability of funds.

Agreement Period

This agreement is in full force and effect from October 1, 2019 through September 30, 2020.

DEPARTMENT OF ATTORNEY GENERAL

By: _____
Christina M. Grossi, Chief of Operations

Date: _____

By: _____
James Selleck, Director of Fiscal Management

Date: _____

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

By: _____
Orlene Hawks, Director

Date: _____

To: Michigan Indigent Defense Commission

From: Marla R. McCowan
Director of Training, Outreach & Support

Re: FY20 Compliance Planning – Updates and Staff
Recommendations for Resubmissions

Date: February 4, 2020

I. FY20 Compliance Planning and Process

A. Overview of process

Statutory authority (**as amended** December 2018), MCL §780.993:

(3) No later than 180 days after a standard is approved by the department, 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 **October 1** of each year. A plan submitted under this subsection must specifically address how the minimum standards established by the MIDC under this act will be met and must include a cost analysis **for meeting those minimum standards**. The standards to be addressed in the annual plan are those approved not less than **180** days before the annual plan submission date. The cost analysis must 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 **all or any portion of** a plan or cost analysis, or both a plan and cost analysis, submitted under subsection (3), and shall do so within 90 calendar days of the submission of the plan and cost analysis. If the MIDC disapproves **any part of** the plan, the cost analysis, or both the plan and the cost analysis, the indigent criminal defense system shall consult with the MIDC and, **for any disapproved portion**, submit a new plan, a new cost analysis, or both within **60** 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 must be resolved as provided in section 15. **All approved provisions of an indigent criminal defense system's plan and cost analysis must not be delayed by any disapproved portion and must proceed as provided in this act. The MIDC shall not approve a cost**

analysis or portion of a cost analysis unless it is reasonably and directly related to an indigent defense function.

B. Plans submitted for Commission Review

1. Status of Submissions to date

a. Approved plans and costs for FY20

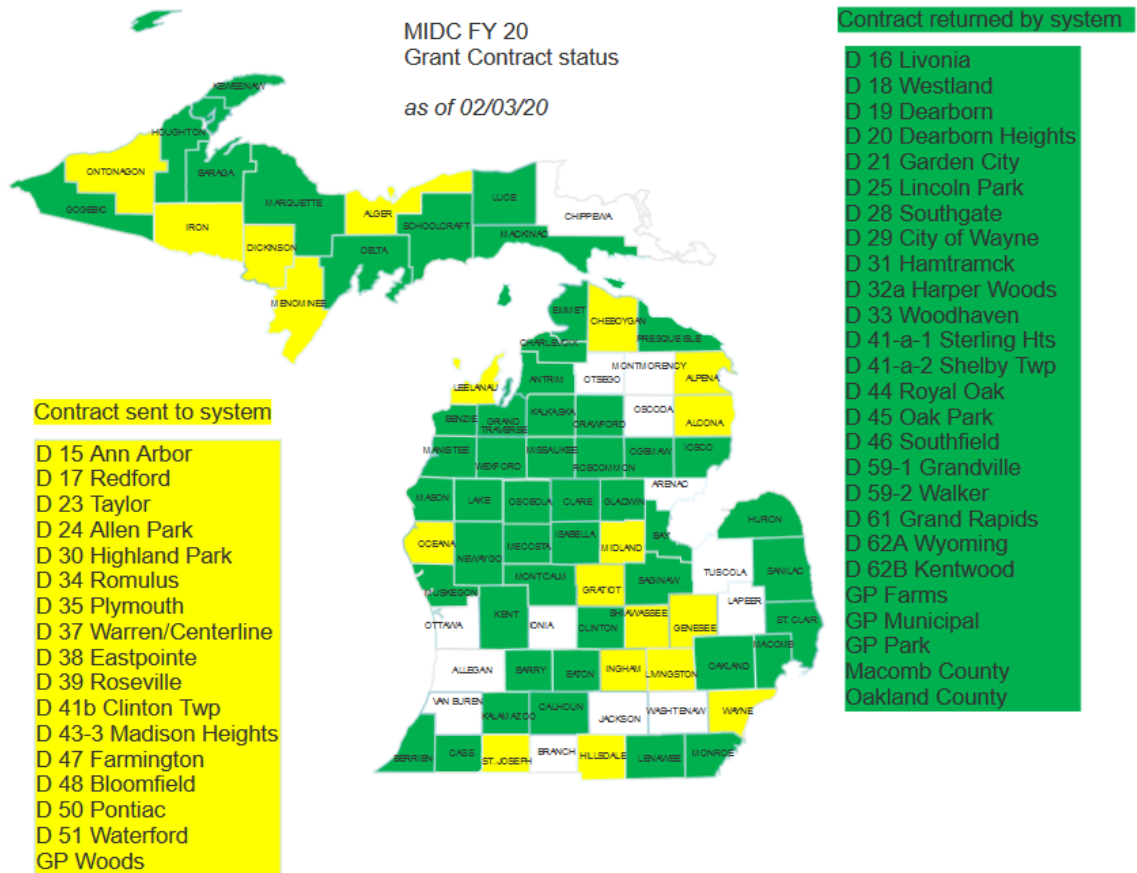
As of the December 17, 2019 meeting, **120 of 124 systems have their plans and cost analyses approved.**

FY20 Total system cost approved (to date): \$149,463,343.81

- Local share (increase of 2.2% from FY19): \$37,423,181.52
- MIDC funding approved: **\$110,289,506.30**
- Planning grant funding, 13.2: \$1,092,539.65

b. Contracts distributed

As of this date, 97 contracts have been distributed to systems and 67 have been returned for processing and the initial distribution of payment by the Department of Licensing and Regulatory Affairs.



c. System reporting - progress towards compliance

The first quarterly reporting for fiscal year 2020 was to be filed by systems on January 31, 2020. The reporting is composed of:

- A **program report**, detailing the progress towards compliance with the approved plan. All program reports were submitted online through a survey-type of system for ease in submitting, receiving, and organizing the information to be provided;
- A **financial status report**, in the format approved by the Commission, to provide information regarding the spending on indigent defense between October 1, 2019 – December 31, 2019;
- A **budget adjustment request**, if applicable, to accommodate necessary changes to the line items without exceeding the approved total grant award (*note: processing of the requests will be reported at the April 2020 Commission meeting*); and
- A **list of attorneys** providing services in the system, including full name and P#, to track progress on continuing legal education.

The MIDC Staff conducted three webinars to answer the most common questions about reporting. The webinars were well-attended and a recording of one of the sessions is available on our website, along with a handout and links to a number of resources for reporting on our grants page, at www.michiganidc.gov/grants.

d. Substantive change to approved plan and/or cost analysis (**action requested**)

1) **Delta County**

Total System Cost: \$399,133.51

Local Share: \$109,591.10

MIDC Funding: \$263,674.26 (state grant) plus \$25,868.15 (unspent FY 19 funds)

No change to overall costs for FY 2020

Staff recommends approval

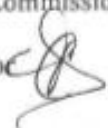
In an effort to secure representation, the County is seeking to raise the hourly rate of pay for conflict counsel from \$55/hr to proposed MIDC rates, and to reimburse mileage/travel for attorneys traveling to Delta to provide representation. Funding would be accomplished through a budget adjustment to the expert/investigator line item. A memo from the county and a budget adjustment request has been submitted:

DELTA COUNTY BOARD OF COMMISSIONERS

ADMINISTRATION OFFICE
310 LUDINGTON STREET
ESCANABA, MICHIGAN 49829
PHONE: 906-789-5100
FAX: 906-789-5197



MEMO

DATE: January 23, 2020
TO: Michigan Indigent Defense Commission
FROM: Emily DeSalvo, Administrator 
RE: Budget Amendment

Please take this memo as a formal request to adjust fiscal year 2020 grant between Delta County and the Michigan Indigent Defense Commission. Historically, since Delta County wrote their first grant, they undercut the amount of money paid out hourly to conflict attorneys. This was done by a prior Administrator who was conservative on his approach not knowing how much was going to be funded by the State for the compliance with the new standards. As the years have passed it has become quite apparent that this grant is fruitful and the State of Michigan holds the Indigent Defense Commission at high regard and of high importance.

We have seen this grant provide positive changes in the way Delta County is supplying a defense for our citizens who cannot afford private legal counsel. However, a barrier we run into is that of the number of attorneys we are able to contract with to make sure these services continue. One main problem lies in conflict attorneys.

The number of high-level felony cases has increased over the past few years, which creates a number of cases where there may be co-defendants. When this happens, we may have to look outside of our contract attorneys. Currently, Delta County has three felony contract attorneys; which is down from the four that was originally reported on our grant application. This is due to one attorney discontinuing his contract with Delta County due to a new position out of the area.

We also run into conflicts with Probate Court conflicts who are representing defendants who may have criminal charges pending at the same time. This creates another barrier to finding an attorney to cover cases.

In order to help our county be able to provide the best possible representation as well as stay in compliance with the standards set by the Commission, Delta County respectfully asks to increase the hourly rate of the conflict attorney with an effective date retroactive to January 1, 2020.

Delta County is an equal opportunity provider and employer.

The current rate listed in the grant is set at \$55/hour. We are requesting the board to approve this increase to reflect \$100/hour for misdemeanor appointments, \$110/hour for low level felony cases (under 20 years), and \$120/hour for high level felonies. We would also like to request a mileage reimbursement for any attorney whose office is outside of Delta County. This rate will be the standard rate of the State which the County adopted, at \$0.575/mile.

This budget amendment can be taken from line item Experts and Investigations at a rate of \$2,500.00 from each line item, and placed into the Conflict Attorney line item.

Thank you for your consideration, as this will help enhance our services for the remainder of the budget year and draw in qualified, trusted, attorneys.

2) D-33 Woodhaven District Court (Flat Rock, Gibraltar, Rockwood, Trenton, Brownstown Township, Grosse Ile, Woodhaven)

Total system cost: \$297,822.70

Local Share: \$76,756.97

MIDC Funding: \$80,164.02 (state grant) plus \$140,901.71 (unspent FY 19 funds)

No change to overall costs for 2020

Woodhaven District Court seeks to change the current plan for FY 2020. Under the current plan, the attorneys are paid on a full day/half day basis, rather than hourly. If an attorney leaves before 12:30, they are paid a half day - \$200. An attorney might work four hours and make \$50/hour. Most attorneys leave before 12:30, so most make this rate. If the docket runs past 12:30, they are paid \$300 at the full day rate. The system is hoping to increase the half day rate to \$250. The docket is rarely over before 11:30, so increasing the half day to \$250 increases the rate to a more reasonable \$83/hr or so, which is still less than most courts are paying.

It is estimated that this will cost an extra \$700 per week in attorney fees X 45 weeks (with holidays and judges' vacation excluded) = \$31,500.

The court believes that the funding for this can come from budget adjustments from other categories. First, it originally intended to hire an MIDC clerk, but it has not yet filled that position and does not expect to anytime soon. Thus, there will be an extra \$13,500 from this line item, along with the benefits. Second, the court estimated \$45,000 per year for jail visits. Based on precedent, this appears to be a significant overestimation. In the first quarter of FY20, there have been very few situations where the judges set a cash bond that was not posted. Therefore, there have been very few jail visits. If this trend continues, the court believes that it will have adequate funding in that line item to cover the increase in attorney fees.

3) Macomb County (C 16 Macomb, D 42-1 Romeo, and D 42-2 New Baltimore)

Total system cost: \$7,071,336.20

Local Share: \$2,242,139.23

MIDC Funding: \$3,199,213.46 (state grant) plus \$421,276.74 (unspent FY 19 funds)

Other Funding: \$1,208,706.77

No change to overall costs for 2020

Staff recommends approval

Macomb County seeks to change the current plan for FY 2020. Under the current plan, an Indigent Defense Administrator would manage the roster attorneys, two staff attorneys, and clerical staff; approve requests for experts and investigators; oversee the budget and Macomb's implementation of the Standards; and essentially

design a public defender office for creation in FY 2021. The current plan is essentially a hybrid of a managed assigned counsel coordinator office and a public defender office.

Since submitting the current plan, Macomb has decided that it would prefer to skip the half step and move to opening a public defender office more quickly. Accordingly, it would like to amend its plan to include the addition of a Public Defender and appropriate the workload of the staff involved in opening a brand new office.

Under the revised plan, Macomb would first hire a Public Defender's Office Administrator. This person would oversee the implementation of the office itself, day-to-day administrative operations, the hiring of the clerical support staff, MIDC compliance and reporting, as well as look at designing a regional plan where the County's Public Defender Office could provide services to/on behalf of the local district courts. The Administrator will also be responsible for the creation and submittal of our FY 2021 compliance plan, which is due April 30. Administration ability is the primary job skill for this person, so they may not be an attorney. However, if they are an attorney, they could assist with case management, handle attorney assignments, etc. as the office grows. They envision that the Administrator position would align with similar positions within the County organizational structure, such as Office Manager (Prosecutor's Office), Chief of Staff (various) and/or Chief of Operations (Prosecutor's Office) as the office expands. The salary for this position is \$81,766.59 to \$103,699.81 plus benefits.

While the Administrator establishes the office, Macomb would work on hiring the actual Public Defender within the next 3-6 months. The Public Defender will be responsible for, among other things, overall case management, hiring of staff attorneys, roster attorney assignments, vetting and hiring of investigators and experts, and the future vision of the office. The proposed minimum salary range for the Public Defender position is \$85,213.18 - \$121,284.92 plus benefits. Macomb estimates that this person would be performing services for the last six months of FY 2020.

Macomb County is very excited for the opportunities and impact that a Public Defender's Office will have within our Criminal Justice System. They continuously review the status of this office and how they can best position ourselves to implement this entirely new way of doing business within the County and believe that this requested change to move forward with a Public Defender's Office during this fiscal year rather than next, will place them in a much better position moving forward. As part of this review, they re-evaluated what steps actually need to take place first in setting up an entirely new office (office setup, familiarization with county practices and policies such as payroll, accounts purchasing and receivable, contract management, grant compliance and reporting familiarity, relationship building/meetings) and quickly realized that, given the size of the county and the caseload of our circuit court, this was a larger undertaking than previously planned and will require an extensive amount of time in order to establish the office. More than likely, any type of case management would not be able to be implemented within the first 6 months or more with the

previous staffing request, therefore we are asking to bring on/add the Public Defender to our current plan. The Administrator position will be able to concentrate on the office setup, the administrative/compliance side of the office, as well as concentrate on the FY2021 compliance plan submittal. The Public Defender will be able to concentrate on the case management side of the office, hire the 2 staff attorneys in our currently approved plan, and formulate a plan for the future of the office, including the impact of the implementation of Standards 6-8. To clarify further, the current plan calls for 5 new positions for an Indigent Defense Office, but they are asking to revise the plan to include the addition of one position, that of the actual Public Defender and thus a corresponding name change to a Public Defender's Office. Due to the delayed implementation of hiring the 5 new positions, they would have funds available within our approved FY2020 budget to hire the Public Defender within this compliance plan year.

The County believes strongly in the need for a Public Defender's Office and that this plan revision request will assist them in moving that process forward. Macomb County is determined to improve our criminal justice system and the creation of a Public Defender's Office is a major component of the services that they offer for fair and competent representation for our community.

e. **Third/Final Resubmissions (action requested)**

As of the December 17, 2019 meeting, 4 systems had their resubmitted plans and/or costs disapproved. All but one system (D22 – City of Inkster) resubmitted within the statutory deadline of December 23, 2019. The City of Inkster’s plan will be reviewed by staff and submitted for Commission action at the April 21, 2020 meeting.

Staff Recommendation: Approve Compliance Plan and Cost Analysis

*Senior staff recommends, pursuant to MCL 780.993(4), that the Commission **approve the plan and cost analyses** submitted by the following system:*

1) D 36 – City of Detroit

Plans at p. 1

FY19 Total system cost: \$2,208,405.25 (not implemented)

FY20 Total system cost: \$5,791,521.08

- The FY20 plan adds necessary personnel and additional attorney hours to meet the standards: Indigent Defense Counsel Coordinator, 2 Indigent Defense Counsel Analysts, 4 Deputies; increased attorney hours to meet needs (increased rates from \$85/\$100/hr to \$100/hr); construction to modify and soundproof interview room; workstations and equipment for personnel. Removed: construction for buildout of interview rooms and JIS programming.

Staff Recommendation: Approve Cost Analysis (plan previously approved)

*Senior staff recommends, pursuant to MCL 780.993(4), that the Commission **approve the cost analyses** submitted by the following system:*

2) D 43-1 Hazel Park

Plans at p.19

FY19 Total system cost: \$1,121,167.96

FY20 Total system cost: \$1,226,624.07

- *Original staff recommendation approved by Commission:* Eliminate magistrate costs, clerk time, supplanting and

related fringe benefits; reduce/eliminate duplicative and excessive supplies, reduce MAC and attorney hours based on current spending trends.

- *Second submission:* No significant change.
- *Third/final submission:* All issues of concern addressed in revised cost analysis.

Staff Recommendation: Disapprove Cost Analysis (plan previously approved)

*Senior staff recommends, pursuant to MCL 780.993(4), that the Commission **disapprove the cost analyses** submitted by the following system:*

3) Lapeer County

Plans at p. 23

FY19 Total system cost: \$483,783.49

FY20 Total system cost: \$1,100,776.00

- *Original staff recommendation approved by Commission:* Disapprove plan and resubmit without prosecutor and related costs; disapprove cost analysis and/or portions of costs as follows: reduce MAC assistant hours, eliminate supplanting for court staff, eliminate corrections staff, reduce expert/investigator spending, and reduce supplies/operating/training expenses.
- *Second submission:* Many issues addressed and corrected in resubmission, staff recommendation approved by the Commission was to approve the plan for a MAC admin and standards compliance; revise/reduce/explain attorney payments, remove indirect costs.
- *Third/final submission areas of concern:* Rate of pay for salaried attorney administrator, indirect costs.

C. Request to adjust local share contribution (no change to total system cost)

FY20 Approved totals by MIDC	Total System Cost	Local Share	MIDC Grant Funding
Gratiot County	\$586,807.51	\$157,448.30	\$429,359.20
Kalamazoo County	\$4,709,000.00	\$1,202,867.98	\$3,506,132.02
Otsego County	\$358,903.00	\$141,665.55	\$217,237.45
	\$5,654,710.51	\$1,501,981.83	\$4,152,728.67
			additional funding requested
FY20 Local Share Revision request			
Gratiot County		\$83,400.98	\$74,047.32
Kalamazoo County		\$1,176,108.31	\$26,759.67
Otsego County		\$82,273.04	\$59,392.51
<i>Otsego County FY19 (overpayment reimbursement request)</i>		\$80,502.00	\$58,114.00
			\$218,313.50

MIDC FY20 Approved Compliance Plan and Cost Analysis		Total system cost	FY 20 local share	MIDC grant	13.2 request
Lapeer, Macomb, Oakland, St. Clair					
D 37 - Warren and Centerline	1	\$1,427,025.82	\$122,807.75	\$1,304,218.07	
D 38 - Eastpointe	1	\$770,886.95	\$53,008.41	\$717,878.54	
D 39 - Roseville and Fraser	1	\$1,031,602.97	\$90,249.75	\$941,353.22	\$0.00
D 40 St Clair Shores	1	\$551,999.08	\$7,079.46	\$544,919.62	\$798.90
D 41-a-1 Sterling Heights	1	\$483,457.33	\$0.00	\$483,457.33	\$76,159.20
D 41-a-2 Shelby Twp	1	\$500,232.87	\$0.00	\$500,232.87	
D 41b - Mt Cl, Harris., Clinton	1	\$479,800.00	\$43,619.16	\$436,180.84	
D 43-2 Ferndale	1	\$642,131.00	\$15,308.54	\$626,822.46	
D 43-3 Madison Heights	1	\$626,516.25	\$1,781.37	\$624,734.88	
D 44 - Royal Oak	1	\$861,833.36	\$22,692.49	\$839,140.87	
D 45 - Oak Park	1	\$515,430.00	\$42,169.76	\$473,260.24	
D 46 - Southfield	1	\$600,500.00	\$82,782.00	\$517,718.00	
D 47 Farmington/Hills	1	\$203,339.69	\$21,910.94	\$181,428.75	
D 48 Bloomfield (revised 12/17)	1	\$452,714.00	\$17,463.52	\$435,250.48	
D 50 Pontiac	1	\$1,052,015.00	\$18,022.97	\$1,033,992.03	
D 51 - Waterford	1	\$351,679.06	\$31,807.20	\$319,871.06	
Macomb C 16 & D 42-1, 42-2	1	\$7,071,336.20	\$2,242,139.23	\$3,620,490.20	
Oakland C 6 & D 52-1, 2, 3, 4	1	\$6,564,397.00	\$1,868,990.68	\$4,153,895.00	\$587,163.00
St. Clair County	1	\$2,439,289.10	\$750,172.53	\$1,689,116.57	
Mid- Michigan					
Alcona County	1	\$152,650.00	\$41,012.12	\$111,637.88	
Alpena County	1	\$670,326.00	\$163,361.25	\$506,964.75	
Arenac County	1	\$281,417.70	\$114,335.96	\$167,081.74	\$0.00
Bay County	1	\$1,143,261.00	\$606,198.78	\$537,062.22	
Clare/Gladwin Counties (revised 12/17)	1	\$1,976,939.89	\$236,525.87	\$1,740,414.02	
Huron County	1	\$541,000.67	\$81,183.18	\$459,817.49	
Iosco County	1	\$194,264.04	\$171,806.31	\$22,457.73	
Isabella County	1	\$1,632,191.16	\$238,439.63	\$1,393,751.83	\$2,215.50
Lake County (revised 12/17)	1	\$306,795.00	\$77,894.39	\$228,900.61	
Mason County	1	\$626,149.00	\$156,855.56	\$469,293.44	
Mecosta County	1	\$454,239.00	\$166,909.97	\$287,329.03	
Midland County	1	\$543,605.00	\$259,598.83	\$284,006.17	\$0.00
Montmorency County	1	\$287,425.00	\$16,915.12	\$270,509.88	
Newaygo County (revised 12/17)	1	\$834,012.00	\$201,412.11	\$632,599.89	
Oceana County	1	\$546,200.00	\$92,953.97	\$453,246.03	
Ogemaw County (revised 12/17)	1	\$583,209.00	\$147,849.67	\$435,359.33	

Osceola County	1	\$368,270.00	\$70,307.47	\$297,962.53	
Oscoda County	1	\$254,609.00	\$54,337.70	\$200,271.30	
Roscommon County	1	\$652,085.25	\$203,666.89	\$448,418.36	
Saginaw County	1	\$3,907,993.00	\$917,671.17	\$2,990,321.83	
Sanilac County (revised 12/17)	1	\$463,107.11	\$65,683.90	\$397,423.21	
Tuscola County	1	\$1,121,837.00	\$253,956.78	\$867,880.22	
Northern Michigan					
Alger County	1	\$446,941.78	\$53,463.93	\$393,477.85	\$3,362.19
Antrim County	1	\$258,432.00	\$80,156.48	\$178,275.52	\$0.00
Baraga/Houghton/Keweenaw Counties	1	\$649,626.64	\$158,449.25	\$491,177.39	
Benzie/Manistee Counties	1	\$813,561.86	\$283,150.50	\$530,411.36	
Charlevoix County	1	\$513,540.00	\$168,476.70	\$345,063.30	
Cheboygan County	1	\$380,071.56	\$144,514.89	\$235,556.67	
Chippewa County	1	\$543,811.98	\$224,373.97	\$319,438.01	
Crawford County	1	\$288,669.00	\$15,029.53	\$273,639.47	
Delta County	1	\$399,133.51	\$109,591.10	\$289,542.41	
Dickinson County	1	\$532,670.07	\$68,653.87	\$464,016.20	
Emmet County	1	\$472,652.00	\$162,829.13	\$309,822.87	
Gogebic County	1	\$362,648.65	\$104,379.38	\$258,251.27	\$854.80
Grand Traverse County (revised 12/17)	1	\$837,550.20	\$156,958.76	\$680,591.44	\$0.00
Iron County	1	\$445,694.95	\$73,071.29	\$372,623.66	\$0.00
Kalkaska County	1	\$450,726.07	\$39,852.89	\$410,873.18	
Leelenau County	1	\$220,225.00	\$52,832.66	\$167,392.34	
Luce County	1	\$246,026.00	\$30,175.57	\$215,850.43	\$0.00
Mackinac County	1	\$200,011.56	\$136,830.47	\$63,181.09	
Marquette County	1	\$958,688.80	\$229,920.36	\$728,768.44	\$0.00
Menominee County	1	\$490,826.59	\$116,201.40	\$374,625.19	
Ontonagon County	1	\$167,291.00	\$27,774.22	\$139,516.78	
Otsego County (revised 12/17)	1	\$358,903.00	\$141,665.55	\$217,237.45	
Presque Isle County	1	\$199,811.02	\$74,901.69	\$124,909.33	
Schoolcraft County	1	\$233,227.70	\$36,314.19	\$196,913.51	
Wexford/Missaukee Counties	1	\$989,164.36	\$146,902.28	\$842,262.08	
South Central Michigan					
Clinton County	1	\$815,673.30	\$147,841.50	\$667,831.80	
D 15 - Ann Arbor	1	\$393,529.96	\$206,506.85	\$187,023.11	
Eaton County	1	\$2,132,500.68	\$445,328.32	\$1,687,172.36	
Genesee County	1	\$4,825,360.66	\$1,335,598.66	\$3,489,762.00	
Gratiot County	1	\$586,807.51	\$157,448.30	\$429,359.20	

Hillsdale County (revised 12/17)	1	\$495,314.02	\$113,755.75	\$381,558.27	
Ingham County	1	\$5,542,054.00	\$921,865.46	\$4,620,188.54	
Jackson County	1	\$2,892,162.20	\$567,334.39	\$2,324,827.81	\$1,210.75
Lenawee County	1	\$1,314,689.11	\$214,815.46	\$1,099,873.65	
Livingston County	1	\$2,554,318.27	\$936,856.16	\$1,617,462.11	
Monroe County	1	\$863,639.00	\$215,996.63	\$647,642.37	
Shiawassee County	1	\$945,865.40	\$106,081.56	\$839,783.84	
Washtenaw County	1	\$6,529,871.55	\$2,441,932.97	\$4,087,938.58	
Wayne County					
D 16 - Livonia	1	\$504,623.01	\$17,590.52	\$487,032.49	
D 17 - Redford	1	\$291,038.77	\$52,617.22	\$238,421.55	
D 18 - Westland	1	\$447,220.00	\$62,957.24	\$384,262.76	
D 19 - Dearborn	1	\$357,033.44	\$78,855.14	\$278,178.30	
D 20 - Dearborn Heights	1	\$226,780.42	\$9,831.29	\$216,949.13	
D 21 - Garden City	1	\$114,793.07	\$8,938.41	\$105,854.66	\$0.00
D 23 - Taylor	1	\$401,859.00	\$40,370.02	\$361,488.98	
D 24 - Allen Park	1	\$187,102.50	\$14,831.60	\$172,270.90	
D 25 - Lincoln Park	1	\$571,360.11	\$10,735.94	\$560,624.17	
D 27 - Wyandotte	1	\$285,315.80	\$1,462.35	\$283,853.46	
D 28 - Southgate	1	\$188,193.69	\$4,686.89	\$183,506.80	
D 29 - Wayne	1	\$171,784.79	\$23,475.75	\$148,309.04	
D 30 - Highland Park	1	\$167,781.34	\$13,797.00	\$153,984.34	\$0.00
D 31 - Hamtramck	1	\$211,422.00	\$14,486.85	\$196,935.15	
D 32a - Harper Woods	1	\$189,771.90	\$12,660.80	\$177,111.10	
D 33 - Trenton	1	\$297,822.70	\$76,756.97	\$221,065.73	
D 34 - Romulus	1	\$561,179.00	\$55,315.75	\$505,863.25	
D 35 - Plymouth	1	\$432,761.00	\$31,141.93	\$401,619.07	
Wayne County Circuit Court	1	\$26,800,560.00	\$7,611,175.35	\$19,189,384.60	\$401,692.45
Grosse Pte City Municipal	1	\$31,590.00	\$3,232.59	\$28,357.41	
Grosse Pointe Farms	1	\$58,853.00	\$15,015.22	\$43,837.78	
Grosse Pointe Park	1	\$41,530.00	\$10,185.25	\$31,344.75	
Grosse Pointe Woods	1	\$57,200.00	\$3,150.83	\$54,049.17	
Western Michigan					
Allegan/Van Buren Counties	1	\$3,112,882.00	\$540,903.72	\$2,571,978.28	
Barry County	1	\$808,676.18	\$231,302.44	\$577,373.74	
Berrien County	1	\$3,128,460.00	\$575,096.85	\$2,553,363.15	
Branch County	1	\$663,985.00	\$154,707.29	\$509,278.31	
Calhoun County	1	\$2,866,565.81	\$698,289.68	\$2,168,276.13	\$9,787.47

Cass County	1	\$457,136.00	\$254,342.07	\$202,793.93	
D 59-1 - Grandville	1	\$82,698.81	\$2,826.17	\$79,872.64	\$805.62
D 59-2 - Walker	1	\$94,973.88	\$6,236.58	\$88,737.30	
D 61 - Grand Rapids	1	\$502,130.00	\$177,124.86	\$325,005.14	
D 62 a - Wyoming (revised 12/17)	1	\$358,250.00	\$7,161.15	\$351,088.85	\$7,757.57
D 62B - Kentwood	1	\$266,078.60	\$39,165.37	\$226,913.23	
Ionia County (revised 12/17)	1	\$453,149.77	\$223,412.94	\$229,316.83	
Kalamazoo County	1	\$4,709,000.00	\$1,202,867.98	\$3,506,132.02	
Kent County C17/D63	1	\$6,769,498.13	\$2,449,097.29	\$4,320,400.84	
Montcalm County	1	\$648,628.63	\$225,179.50	\$423,449.13	
Muskegon County	1	\$2,362,268.20	\$676,864.47	\$1,685,403.73	
Ottawa County	1	\$3,287,034.00	\$943,394.91	\$2,343,639.09	
St. Joseph County	1	\$774,890.80	\$423,222.83	\$351,667.97	\$732.20

Total approved as of December 17, 2019	120	\$149,463,343.81	\$37,423,181.52	\$110,289,506.30	\$1,092,539.65
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Not included in total
system cost

February 11, 2020 Commn meeting

Lapeer County (final submission)	1	\$1,100,776.00	\$109,844.99	\$990,931.01	
D 36 - Detroit (recent submission)	1	\$5,791,521.08	\$1,086,674.07	\$4,704,847.01	
D 43-1 Hazel Park (final submission)	1	\$1,226,624.07	\$18,374.88	\$1,208,249.19	

April 15, 2020 Commn meeting

D 22 - Inkster (prior FY20 submission)	1	\$157,602.50	\$45,990.00	\$111,612.50	
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Total	4	\$8,276,523.65	\$1,260,883.94	\$7,015,639.71	\$0.00
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FY20 Approved totals by MIDC	Total System Cost	Local Share	MIDC Grant Funding
Gratiot County	\$586,807.51	\$157,448.30	\$429,359.20
Kalamazoo County	\$4,709,000.00	\$1,202,867.98	\$3,506,132.02
Otsego County	\$358,903.00	\$141,665.55	\$217,237.45
	\$5,654,710.51	\$1,501,981.83	\$4,152,728.67

FY20 Local Share Revision request		additional funding requested
Gratiot County		\$74,047.32
Kalamazoo County		\$26,759.67
Otsego County		\$59,392.51
<i>Otsego County FY19 overpayment reimbursement request</i>		\$58,114.00
		\$218,313.50



KALAMAZOO COUNTY GOVERNMENT

In the Pursuit of Extraordinary Governance...

January 3, 2020

Ms. Susan Prentice-Sao
Regional Manager for Western Michigan
Michigan Indigent Defense Commission
200 N. Washington Square, 3rd Floor
Lansing, MI 48933

Dear Ms. Prentice-Sao,

At the suggestion of Ms. Rebecca Mack, Grant Manager, I am writing to request our local share be adjusted. If approved, I understand this may increase our grant funding. Kalamazoo County worked with the MIDC to complete and submit its original local share for 2019 in the amount of \$1,176,974.54 (attached). Subsequently we were informed by the MIDC in late 2019 that certain line items included in that calculation (witness fees and interpreter fees) were not allowable expenditures for the program. As such, we have recalculated what the local share would have been absent those costs at \$1,150,790.91 for 2019 (attached). Carry this forward to the approved 2020 plan utilizing the 2.2% multiplying factor and the new local share for 2020 would be \$1,176,108.31 (rather than the \$1,202,867.98 which is reflected in the 2020-119 grant agreement).

Not only will these adjustments reflect what was truly allowable, but it would also allow us to restore budget where the unallowable expenditures need to reside within the County general fund. We respectfully request consideration for a local share adjustment for these reasons.

If you have any questions or need any further information, please contact me at either 269-383-8908 or tfmeek@kalcounty.com. Thank you for your assistance.

Tim Meeker
Finance Director
Kalamazoo County

FINANCE DEPARTMENT

201 West Kalamazoo Avenue | Kalamazoo, MI 49007

Phone: 269.384.8088 | www.kalcounty.com

LOCAL SHARE CALCULATION

The Local Share is defined as an indigent criminal defense system's average annual direct expenditures for adult criminal defense services for three fiscal years preceding the creation of the MIDC Act (effective July 1, 2013). Collections or reimbursements made to the system for partially indigent defendants are applied to the calculation.

Expenditures to be included in the calculation:

- Payments to criminal defense attorneys (contracts, public defenders, appointed systems, hybrid systems) for providing indigent adult criminal defense services including services for expedited docket programs, criminal contempt, juveniles waived into adult court, appeals from district to circuit court or eligible interlocutory appeals to the Court of Appeals
- Payments to experts and investigators
- Other expenses including attorney supplies, travel, or training

Services not included as expenditures:

- Post-sentencing appeals
- Probate, Juvenile Delinquency, Abuse and Neglect cases
- Civil Contempt
- Counsel at lineup (before charges are filed)

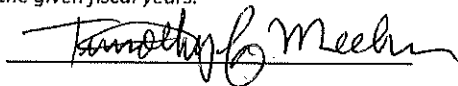
Reimbursements:

- Fees paid by or on behalf of a defendant for indigent criminal defense services including payments by the Michigan Department of Corrections and grant payments that include indigent defense services as eligible grant expenditures (i.e. expedited docket programs)

If the actual expenses and reimbursements cannot be calculated as exact, identify that you are providing estimates and discuss the methodology for determining the estimated local share.

FISCAL YEAR	TOTAL EXPENSES	REIMBURSEMENTS	NET EXPENSES
2010	1,541,737.33	269,038.67	1,272,698.66
2011	1,373,700.68	264,468.63	1,109,232.05
2012	1,331,676.66	261,234.65	1,070,442.01
Average of Three Fiscal Years			1,150,790.91

Certification: I certify to the best of my knowledge and belief that the calculation of the local share is correct and complete and that all fiscal details included are direct indigent defense system expenditures and reimbursements in the given fiscal years.

Authorizing Official Name TIMOTHY F. MEEKER 
 (Printed) (Signature)

Title FINANCE DIRECTOR Date 1/3/20

ORIGINAL APPROVED 2018/2019

Indigent Defense Local Share Calculation

Circuit Court	Title	2010	2011	2012
101-132-805.00	Witness Fees	\$ 517.68	\$ 845.81	\$ 143.04
101-132-805.01	Expert Witness Fees	\$ 13,968.00	\$ 12,395.00	\$ 19,553.70
	Juvenile Portion of Witness Fees	\$ (612.00)	\$ (2,672.00)	\$ (1,313.10)
101-132-805.03	Indigent Subpoena Fee	\$ 160.80	\$ 279.95	\$ 76.60
101-132-806.05	Court Appointed Attorney	\$ 1,104,860.28	\$ 988,072.14	\$ 979,490.41
101-132-808.07	Evaluation	\$ 75.00	\$ 150.00	\$ 250.12
101-132-808.36	Interpreters	\$ 8,663.35	\$ 6,657.33	\$ 5,855.59
	Juvenile & Domestic Portion of Other Fees	\$ (2,453.90)	\$ (3,227.51)	\$ (4,294.00)
101-132-956.31	Attorney Training	\$ 1,504.25	\$ 2,360.84	\$ 1,894.43
Total Circuit Court Expenditures		\$ 1,126,683.46	\$ 1,004,861.56	\$ 1,001,656.79
101-132-613.00	Attorney Fee Reimbursement	\$ 221,727.31	\$ 212,646.70	\$ 205,580.93
	Juvenile Portion of Reimbursement	\$ (5,767.62)	\$ (3,970.81)	\$ (8,733.21)
Total Circuit Court Revenue		\$ 215,959.69	\$ 208,675.89	\$ 196,847.72
Expenditures minus Revenues		\$ 910,723.77	\$ 796,185.67	\$ 804,809.07
Circuit Court Local Share Calculation (3 Year Average)				\$ 837,239.50

District Court	Title	2010	2011	2012
101-136-805.00	Witness Fees	\$ 7,766.18	\$ 8,343.47	\$ 5,170.49
101-136-806.06	Court Appointed Attorney	\$ 421,781.00	\$ 373,114.75	\$ 331,724.50
101-136-808.36	Interpreting Services	\$ 17,541.94	\$ 15,127.52	\$ 11,893.91
Total District Court Expenditures		\$ 447,089.12	\$ 396,585.74	\$ 348,788.90
101-136-613.00	Attorney Fee Reimbursement	\$ 53,078.98	\$ 55,792.74	\$ 64,386.93
Total District Court Revenue		\$ 53,078.98	\$ 55,792.74	\$ 64,386.93
Expenditures minus Revenues		\$ 394,010.14	\$ 340,793.00	\$ 284,401.97
District Court Local Share Calculation (3 Year Average)				\$ 339,735.04
TOTAL LOCAL SHARE CALCULATION				\$ 1,176,974.54

Proposed COLLECTED 2018/2019

Indigent Defense Local Share Calculation

Circuit Court Acct	Title	2010	2011	2012
101-132-805.00	Witness Fees	\$ -	\$ -	\$ -
101-132-805.01	Expert Witness Fees	\$ 13,968.00	\$ 12,395.00	\$ 19,553.70
	Juvenile Portion of Witness Fees	\$ (612.00)	\$ (2,672.00)	\$ (1,313.10)
101-132-805.03	Indigent Subpoena Fee	\$ 160.80	\$ 279.95	\$ 76.60
101-132-806.05	Court Appointed Attorney	\$ 1,104,860.28	\$ 988,072.14	\$ 979,490.41
101-132-808.07	Evaluation	\$ 75.00	\$ 150.00	\$ 250.12
101-132-808.36	Interpreters	\$ -	\$ -	\$ -
	Juvenile & Domestic Portion of Other Fees	\$ -	\$ -	\$ -
101-132-956.31	Attorney Training	\$ 1,504.25	\$ 2,360.84	\$ 1,894.43
Total Circuit Court Expenditures		\$ 1,119,956.33	\$ 1,000,585.93	\$ 999,952.16
101-132-613.00	Attorney Fee Reimbursement	\$ 221,727.31	\$ 212,646.70	\$ 205,580.93
	Juvenile Portion of Reimbursement	\$ (5,767.62)	\$ (3,970.81)	\$ (8,733.21)
Total Circuit Court Revenue		\$ 215,959.69	\$ 208,675.89	\$ 196,847.72
Expenditures minus Revenues		\$ 903,996.64	\$ 791,910.04	\$ 803,104.44
Circuit Court Local Share Calculation (3 Year Average)		\$	\$	\$ 833,003.71

District Court Acct	Title	2010	2011	2012
101-136-805.00	Witness Fees	\$ -	\$ -	\$ -
101-136-806.06	Court Appointed Attorney	\$ 421,781.00	\$ 373,114.75	\$ 331,724.50
101-136-808.36	Interpreting Services	\$ -	\$ -	\$ -
Total District Court Expenditures		\$ 421,781.00	\$ 373,114.75	\$ 331,724.50
101-136-613.00	Attorney Fee Reimbursement	\$ 53,078.98	\$ 55,792.74	\$ 64,386.93
Total District Court Revenue		\$ 53,078.98	\$ 55,792.74	\$ 64,386.93
Expenditures minus Revenues		\$ 368,702.02	\$ 317,322.01	\$ 267,337.57
District Court Local Share Calculation (3 Year Average)		\$	\$	\$ 317,787.20

2018/2019 \$ 1,150,790.91
 2019/2020 \$ 1,176,108.51

TOTAL LOCAL SHARE CALCULATION

MEMORANDUM

To: Melissa Wangler, Northern Michigan Regional Manager

From: Victoria Courterier, Otsego County Court Administrator

Date: January 15, 2020

Re: MIDC Local Contribution Apportionment

As a follow up to our discussions in December, 2019, Otsego County is requesting recertification of the local share contribution for FY18/19 and FY19/20 due to errors and insufficient information presented by the Court in the original Compliance Plan and Cost Analysis submission:

Issue #1

At the inception of MIDC, caseload numbers for 2010, 2011 and 2012 were requested, to come up with an average that was being paid for indigent defense services. The court did not track indigent caseload, because it contracted with a local law firm to handle all court appointed attorney assignments. These included criminal (felony and misdemeanor) and Probate/Family court matters (abuse/neglect, delinquency, guardianships and conservatorships) and were paid as a lump sum on a monthly basis. Therefore, caseload for indigent defense was not specifically broken out for criminal. Because the Court was unable to determine the amount of criminal indigent defense cases at that time, it was advised by MIDC representatives to use the total amount of the contracts for that 3 year period (\$138,616.00). However, Court Administration erred on the cost analysis section (page 14) by utilizing the wrong number to calculate the Local Share. Total Expenses average (\$138,616.00) was submitted in the cost analysis. However, **Net Expenses** average total **should have** been utilized.

Issue #2

The calculations for each attorney contract were incorrect, as an increase was given each year in August (per contract requirements). Therefore, the actual totals should have been calculated with 7 months at "a" rate plus 5 months at "b" rate. The re-calculation results in a slight decrease in the total expense (please see attached spreadsheet, Total Expense Discrepancy).

Issue #3

The Reimbursement Section of the Net Expenses total was incorrect for two reasons:

- a. It only included District Court Reimbursement (Circuit Court information was not available)
- b. The 3 year average reimbursement number itself was incorrect.

However, Circuit Court reimbursement information is now available, so the correct Reimbursement Average (to include District and Circuit) should be **\$35,270.00** (please see attached spreadsheet, FY2019 – Actual Local Share Calculations).

Issue #4

The contracted court appointed attorney subsequently tracked caseload by case type (please see attached 2015-2018 case type statistics). After review, it has been determined that approximately 84% of the contract apportionment is attributed to criminal indigent defense. Therefore, the local share contribution should be re-calculated based on 84% of the total contract payment that was originally submitted.

Utilizing 2018 statistics, all of the case types were added together (which totaled 580 cases) then were divided by the number of criminal cases ($270 + 181 + 36 = 487$) ($487/580 = .84$). 84% of the attorney contract is devoted to criminal indigent defense. The original average total for the local contribution included probate & family court cases. However, using the percentages that are now available, only 84% of the Total Average Expenses (\$115,772.00) should be used to calculate the Total Net Expense.

Conclusion

When the appropriate calculations are utilized, the maximum local contribution **should have been \$80,502.00** in 2018:

\$115,772.00	Total Expenses (84% of total contract)
- 35,270.00	Reimbursement (includes District & Circuit)
\$ 80,502.00	Net Expenses (Local Share that should have been submitted on pg. 14 of the Compliance Plan)

With the 2% required increase for 2019 (\$1,610.00), the **total Local Share Contribution for FY20 should be \$82,112.00**.

A revised Local Share Calculation representing the accurate numbers, referenced above is attached.

It should be noted that the contract for court appointed attorney services has now been separated, resulting in two separate contracts; one for criminal and one for Probate/Family court matters.

Based on the above, Otsego County should not be penalized for the Court's errors, and therefore requests recertification of the Local Share Calculation for FY 18/19 and FY19/20.

Thank you for your consideration of this request. I apologize for any inconvenience and/or confusion that resulted in these errors. Should you have any questions or require any additional information, please do not hesitate to contact my office.

Attachments: Revised Local Share Calculation (Issue #1)
 FY2019 Total Expense Discrepancy (Issue #2)
 FY2019 Actual Local Share Calculations (Issue #3)
 BS&A GL Activity Report - Circuit (2010, 2011, 2012) (Issue #3)
 BS&A GL Activity Report - District (2010, 2011, 2010) (Issue #3)
 Court Appointed Cases, provided by Contract Attorney (Issue #4)

LOCAL SHARE CALCULATION

The Local Share is defined as an indigent criminal defense system's average annual direct expenditures for adult criminal defense services for three fiscal years preceding the creation of the MIDC Act (effective July 1, 2013). Collections or reimbursements made to the system for partially indigent defendants are applied to the calculation.

Expenditures to be included in the calculation:

- Payments to criminal defense attorneys (contracts, public defenders, appointed systems, hybrid systems) for providing indigent adult criminal defense services including services for expedited docket programs, criminal contempt, juveniles waived into adult court, appeals from district to circuit court or eligible interlocutory appeals to the Court of Appeals
- Payments to experts and investigators
- Other expenses including attorney supplies, travel, or training

Services not included as expenditures:

- Post-sentencing appeals
- Probate, Juvenile Delinquency, Abuse and Neglect cases
- Civil Contempt
- Counsel at lineup (before charges are filed)

Reimbursements:

- Fees paid by or on behalf of a defendant for indigent criminal defense services including payments by the Michigan Department of Corrections and grant payments that include indigent defense services as eligible grant expenditures (i.e. expedited docket programs)

If the actual expenses and reimbursements cannot be calculated as exact, identify that you are providing estimates and discuss the methodology for determining the estimated local share.

FISCAL YEAR	TOTAL EXPENSES	REIMBURSEMENTS	NET EXPENSES
2010	\$114,345.00	\$31,443.00	\$82,902.00
2011	\$116,149.00	\$40,699.00	\$75,450.00
2012	\$116,822.00	\$33,667.00	\$83,155.00
Average of Three Fiscal Years	\$115,772.00	\$35,270.00	\$80,502.00

Certification: I certify to the best of my knowledge and belief that the calculation of the local share is correct and complete and that all fiscal details included are direct indigent defense system expenditures and reimbursements in the given fiscal years.

Authorizing Official Name _____

Rachel Frisch



(Printed)

(Signature)

Title County Administrator

Date 01/29/2020

Methodology = 84% of total contract
 Reimbursements Include District & Circuit Court

The above calculations are estimates

MIDC - TOTAL EXPENSE DISCREPANCY

FY 2019 - SUBMITTED Local Share Calculations

	Total CAA Contract	
	Expense	
2010	\$137,700.00	
2011	\$139,074.00	
2012	\$139,074.00	
Average of Three Years:		\$138,616.00

FY 2019 - CORRECT Local Share Calculations Based on August Increase

	Total CAA Contract	
	Expense	
2010	\$136,125.00	
2011	\$138,272.50	
2012	\$139,074.00	
Average of Three Years:		\$137,823.84

User: mmaier

DB: Otsego Co

FROM 101-131-606.020 TO 101-131-606.020
TRANSACTIONS FROM 01/01/2010 TO 12/31/2010

01/29/2020 February 2020 meeting materials page 39

Date	JNL	Type	Description	Reference #	Debits	Credits	Balance
			101-131-606.020 COURT FEE -COURT APPT ATTN				
			(Continued)				
10/19/2010	GJ	JE	CLERK CC DEP (4) BANK STMT 10/18	6269		253.00	(14,211.02)
10/20/2010	CR	RCPT	ATTORNEY FEES	12953		65.00	(14,276.02)
11/02/2010	CR	RCPT	ATTORNEY FEES	13144		48.00	(14,324.02)
11/03/2010	CR	RCPT	ATTORNEY FEES	13162		53.60	(14,377.62)
11/05/2010	CR	RCPT	ATTORNEY FEES	13191		350.00	(14,727.62)
11/08/2010	CR	RCPT	ATTORNEY FEES	13213		125.00	(14,852.62)
11/09/2010	GJ	JE	CLERK CC (1) STMT 11/08/10; WARNER	6491		350.00	(15,202.62)
11/17/2010	CR	RCPT	ATTORNEY FEES	13348		137.50	(15,340.12)
11/18/2010	CR	RCPT	ATTORNEY FEES	13363		67.50	(15,407.62)
11/24/2010	CR	RCPT	ATTORNEY FEES	13465		30.56	(15,438.18)
12/02/2010	CR	RCPT	ATTORNEY FEES	13558		25.00	(15,463.18)
12/07/2010	CR	RCPT	ATTORNEY FEES	13632		25.00	(15,488.18)
12/10/2010	CR	RCPT	ATTORNEY FEES	13680		78.00	(15,566.18)
12/13/2010	CR	RCPT	ATTORNEY FEES	13698		58.66	(15,624.84)
12/14/2010	CR	RCPT	ATTORNEY FEES	13715		25.00	(15,649.84)
12/17/2010	CR	RCPT	ATTORNEY FEES	13772		265.10	(15,914.94)
12/20/2010	CR	RCPT	ATTORNEY FEES	13795		10.00	(15,924.94)
12/21/2010	CR	RCPT	ATTORNEY FEES	13827		10.00	(15,934.94)
12/30/2010	CR	RCPT	ATTORNEY FEES	13959		142.00	(16,076.94)
12/31/2010	GJ	JE	CLERK CC (1) STMT 12/31/10 S. MENDOSI	6883		319.00	(16,395.94)
12/31/2010			101-131-606.020	END BALANCE	0.00	16,395.94	(16,395.94)
GRAND TOTALS:						16,395.94	(16,395.94)

Date	JNL	Type	Description	Reference #	Debits	Credits	Balance
GRAND TOTALS:					127.00	22,159.38	(22,032.38)

Date	JNL	Type	Description	Reference #	Debits	Credits	Balance	
			101-131-606.020 COURT FEE -COURT APPT ATTN					
						(Continued)		
10/03/2012	CR	RCPT	ATTORNEY FEES	24924		10.00	(12,306.71)	
10/04/2012	CR	RCPT	ATTORNEY FEES- CHRISTINA SNIDER	24949		50.00	(12,356.71)	
10/05/2012	CR	RCPT	ATTORNEY FEES	24974		350.00	(12,706.71)	
10/08/2012	CR	RCPT	ATTORNEY FEES	25010		137.00	(12,843.71)	
10/10/2012	CR	RCPT	ATTORNEY FEES	25059		25.00	(12,868.71)	
10/11/2012	CR	RCPT	ATTORNEY FEES	25080		90.50	(12,959.21)	
10/12/2012	CR	RCPT	ATTORNEY FEES	25109		350.00	(13,309.21)	
10/15/2012	CR	RCPT	ATTORNEY FEES	25135		350.00	(13,659.21)	
10/16/2012	CR	RCPT	ATTORNEY FEES	25165		200.00	(13,859.21)	
10/17/2012	CR	RCPT	COURT FEE -COURT APPT ATTN	25209		35.00	(13,894.21)	
10/22/2012	CR	RCPT	ATTORNEY FEES	25276		25.00	(13,919.21)	
10/25/2012	CR	RCPT	COURT FEE -COURT APPT ATTN	25385		45.00	(13,964.21)	
11/02/2012	CR	RCPT	ATTORNEY FEES	25544		25.00	(13,989.21)	
11/05/2012	CR	RCPT	ATTORNEY FEES	25581		11.00	(14,000.21)	
11/05/2012	CR	RCPT	COURT FEE -COURT APPT ATTN	25592		5.00	(14,005.21)	
11/06/2012	CR	RCPT	ATTORNEY FEES	25614		113.00	(14,118.21)	
11/09/2012	CR	RCPT	ATTORNEY FEES	25679		358.00	(14,476.21)	
11/09/2012	CR	RCPT	ATTORNEY FEES- RILEY LITWILLER	25680		25.00	(14,501.21)	
11/14/2012	CR	RCPT	ATTORNEY FEES	25738		350.00	(14,851.21)	
11/14/2012	CR	RCPT	COURT FEE -COURT APPT ATTN	25754		25.00	(14,876.21)	
11/16/2012	GJ	JE	ATTY FEE ENTRY PER SUZY	11665		19.00	(14,895.21)	
11/16/2012	CR	RCPT	ATTORNEY FEES- CHRISTINA SNIDER	25798		50.00	(14,945.21)	
11/21/2012	CR	RCPT	COURT FEE -COURT APPT ATTN	25881		22.50	(14,967.71)	
12/06/2012	CR	RCPT	ATTORNEY FEES	26117		6.50	(14,974.21)	
12/10/2012	CR	RCPT	ATTORNEY FEES	26159		350.00	(15,324.21)	
12/12/2012	CR	RCPT	COURT FEE -COURT APPT ATTN	26226		22.50	(15,346.71)	
12/13/2012	CR	RCPT	ATTORNEY FEES	26229		25.00	(15,371.71)	
12/13/2012	CR	RCPT	ATTORNEY FEES	26242		20.00	(15,391.71)	
12/19/2012	CR	RCPT	COURT FEE -COURT APPT ATTN	26352		47.50	(15,439.21)	
12/21/2012	CR	RCPT	ATTORNEY FEES	26385		10.00	(15,449.21)	
12/21/2012	CR	RCPT	ATTORNEY FEES- CHRISTINA SNIDER	26390		13.48	(15,462.69)	
12/31/2012	GJ	JE	2012 ACCOUNTS RECEIVABLE ENTRY	12487		25.00	(15,487.69)	
12/31/2012			101-131-606.020	END BALANCE	410.00	15,897.69	(15,487.69)	
GRAND TOTALS:						410.00	15,897.69	(15,487.69)

Date	JNL	Type	Description	Reference #	Debits	Credits	Balance
Fund 101 GENERAL FUND							
01/01/2010			101-136-606.020 COURT FEE -COURT APPT ATN			BEG. BALANCE	0.00
02/28/2010	GJ	JE	DISTRICT COURT MONTH END FOR JANUARY	4748		898.00	(898.00)
03/05/2010	GJ	JE	DISTRICT COURT MONTH END FOR FEB 2010	4749		1,604.13	(2,502.13)
04/06/2010	GJ	JE	DISTRICT COURT MONTH END FOR MARCH 20	4963		1,092.75	(3,594.88)
05/05/2010	GJ	JE	87-A DISTRICT COURT MONTH END	5189		2,166.50	(5,761.38)
06/07/2010	GJ	JE	DISTRICT COURT MAY MONTH END	5355		1,158.70	(6,920.08)
07/06/2010	GJ	JE	DISTRICT COURT MONTH END FOR JUNE	5521		1,303.66	(8,223.74)
08/03/2010	GJ	JE	DISTRICT COURT MONTH END FOR JULY	5704		1,218.95	(9,442.69)
10/06/2010	GJ	JE	AUG 2010 DISTRICT COURT MONTH END	6157		1,804.90	(11,247.59)
10/11/2010	GJ	JE	DISTRICT COURT MONTH END FOR SEPT	6190		1,003.24	(12,250.83)
11/10/2010	GJ	JE	DISTRICT COURT MONTH END FOR OCT 2010	6504		942.75	(13,193.58)
12/16/2010	GJ	JE	DISTRICT COURT MONTH END FOR NOV 2010	6765		1,177.00	(14,370.58)
12/28/2010	GJ	JE	DISTRICT COURT MONTH END FOR DEC 2010	6820		676.75	(15,047.33)
12/31/2010			101-136-606.020	END BALANCE	0.00	15,047.33	(15,047.33)
GRAND TOTALS:						15,047.33	(15,047.33)

Date	JNL	Type	Description	Reference #	Debits	Credits	Balance
Fund 101 GENERAL FUND							
01/01/2011			101-136-606.020 COURT FEE -COURT APPT ATTN			BEG. BALANCE	0.00
02/03/2011	GJ	JE	DIVISION 3 MONTH END JANUARY 2011	7174		2,789.75	(2,789.75)
03/12/2011	GJ	JE	FEB 2010 DISTRICT COURT MONTH END	7488		1,407.00	(4,196.75)
04/06/2011	GJ	JE	DISTRICT COURT MONTH END FOR MARCH 20	7683		2,691.00	(6,887.75)
05/05/2011	GJ	JE	DISTRICT COURT MONTH END FOR APRIL	7872		2,784.50	(9,672.25)
06/10/2011	GJ	JE	DIST CT MONTH END FOR MAY-DIV 3	8111		933.45	(10,605.70)
07/16/2011	GJ	JE	DISTRICT COURT DIV 33 38-6004882 JUN-	8442		1,160.00	(11,765.70)
08/10/2011	GJ	JE	DISTRICT COURT MONTH END FOR JULY 20	8636		1,853.00	(13,618.70)
09/02/2011	GJ	JE	DISTRICT COURT FOR MONTH END AUGUST 1	8849		1,706.25	(15,324.95)
10/12/2011	GJ	JE	DISTRICT COURT MONTH END FOR SEPT.	9078		896.75	(16,221.70)
11/09/2011	GJ	JE	DISTRICT COURT MONTH END FOR OCTOBER	9276		995.00	(17,216.70)
12/05/2011	GJ	JE	DISTRICT COURT MONTH END FOR NOVEMBER	9419		1,450.00	(18,666.70)
12/31/2011			101-136-606.020	END BALANCE	0.00	18,666.70	(18,666.70)
GRAND TOTALS:						<u>18,666.70</u>	<u>(18,666.70)</u>

User: mmaier
 DB: Otsego Co

FROM 101-136-606.020 TO 101-136-606.020
 MDC February 2020 meeting materials page 47
 TRANSACTIONS FROM 01/01/2012 TO 12/31/2012

Date	JNL	Type	Description	Reference #	Debits	Credits	Balance
Fund 101 GENERAL FUND							
01/01/2012			101-136-606.020 COURT FEE -COURT APPT ATTNY		BEG. BALANCE		0.00
01/09/2012	GJ	JE	DISTRICT COURT MONTH END FOR DECEMBER	9694		37.50	(37.50)
02/09/2012	GJ	JE	DIST CT MONTH END FOR JANUARY	9967		601.99	(639.49)
03/02/2012	GJ	JE	DIST CT END OF MONTH FEBRUARY 2012	10145		3,970.40	(4,609.89)
04/09/2012	GJ	JE	DISTRICT COURT MONTH END FOR MARCH	10379		1,437.50	(6,047.39)
05/03/2012	GJ	JE	DISTRICT COURT MONTH END FOR APRIL	10525		999.50	(7,046.89)
06/01/2012	GJ	JE	DISTRICT COURT MONTH END FOR MAY	10666		1,181.25	(8,228.14)
07/02/2012	GJ	JE	DISTRICT COURT MONTH END FOR JUNE	10840		1,418.00	(9,646.14)
08/06/2012	GJ	JE	DISTRICT COURT MONTH END FOR JULY	11040		1,449.25	(11,095.39)
09/06/2012	GJ	JE	DISTRICT COURT MONTH END FOR AUGUST	11204		1,832.95	(12,928.34)
10/03/2012	GJ	JE	DISTRICT COURT MONTH END FOR SEPTEMBER	11388		591.50	(13,519.84)
11/15/2012	GJ	JE	DISTRICT COURT MONTH END FOR OCTOBER	11660		1,756.00	(15,275.84)
11/30/2012	GJ	JE	DISTRICT COURT MONTH END FOR NOVEMBER	11735		1,373.65	(16,649.49)
12/18/2012	GJ	JE	DISTRICT COURT MONTH END FOR DEC (BE)	11865		1,054.85	(17,704.34)
12/28/2012	GJ	JE	DISTRICT COURT MONTH END FOR DEC (ENI)	11914		475.00	(18,179.34)
12/31/2012			101-136-606.020	END BALANCE	0.00	18,179.34	(18,179.34)
GRAND TOTALS:						18,179.34	(18,179.34)

Court appointed cases

Calendar Year	2015	2016	2017	2018
Felony	114	168	216	270
Misdemeanor	106	117	148	181
NA/DL	69	66	90	63
GD/CA/GA	30	12	18	30
PVs		22	24	36

LOCAL SHARE CALCULATION

The Local Share is defined as an indigent criminal defense system's average annual direct expenditures for adult criminal defense services for three fiscal years preceding the creation of the MIDC Act (effective July 1, 2013). Collections or reimbursements made to the system for partially indigent defendants are applied to the calculation.

Expenditures to be included in the calculation:

- Payments to criminal defense attorneys (contracts, public defenders, appointed systems, hybrid systems) for providing indigent adult criminal defense services including services for expedited docket programs, criminal contempt, juveniles waived into adult court, appeals from district to circuit court or eligible interlocutory appeals to the Court of Appeals
- Payments to experts and investigators
- Other expenses including attorney supplies, travel, or training

Services not included as expenditures:

- Post-sentencing appeals
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- Civil Contempt
- Counsel at lineup (before charges are filed)

Reimbursements:

- Fees paid by or on behalf of a defendant for indigent criminal defense services including payments by the Michigan Department of Corrections and grant payments that include indigent defense services as eligible grant expenditures (i.e. expedited docket programs)

If the actual expenses and reimbursements cannot be calculated as exact, identify that you are providing estimates and discuss the methodology for determining the estimated local share.

FISCAL YEAR	TOTAL EXPENSES	REIMBURSMENTS	NET EXPENSES
2012	\$126,600.53	\$30,907.46	\$95,693.07
2011	\$120,006.00	\$32,998.31	\$87,007.69
2010	\$96,978.66	\$34,811.95	\$62,166.21
Average of Three Fiscal Years	\$114,528.40	\$32,905.91	\$81,605.66

Certification: I certify to the best of my knowledge and belief that the calculation of the local share is correct and complete and that all fiscal details included are direct indigent defense system expenditures and reimbursements in the given fiscal years.

Authorizing Official Name Karen L. Phillips Karen Phillips
 (Printed) (Signature)

Title Gratiot County Indigent Defense Administrator Date 1/15/2020



MICHIGAN INDIGENT
DEFENSE COMMISSION

December 23, 2019

Honorable Sabrina Johnson
22nd District Court
26279 Michigan Avenue
Inkster, MI 48141

Re: Inkster Fiscal Year 2019 Reporting

Dear Judge Johnson:

Please be advised that on December 17, 2019, the Michigan Indigent Defense Commission discussed the City of Inkster's failure to provide required financial and programmatic reporting regarding its fiscal year 2019 grant funding. The Commission authorized staff to advise the funding unit that if the required reports were not submitted within a 30-day period, that the Commission would proceed to mediation, as authorized under the MIDC Act.

Please provide the required financial and programmatic reporting by January 30, 2020. After January 30th, the MIDC will contact the State Court Administrator to initiate the mediation process. If you have questions about the reporting referenced in this letter, please contact your Regional Manager, Kelly McDoniel.

Sincerely,

s/Loren Khogali

Loren Khogali
Executive Director

cc: Darin Carrington, Treasurer for City of Inkster



MICHIGAN INDIGENT
DEFENSE COMMISSION

January 20, 2020

Mr. Michael Overton
Jackson County Administrator
Jackson County Tower Building
120 W Michigan
Jackson, MI 49201

Re: Michigan Indigent Defense Commission Grant

Dear Mr. Overton:

The following expenses were submitted by Jackson County in its FY19 fourth quarter Financial Status Report:

- Salaries for two Corrections Officers: \$97,037.58
- American Title Expenses:
 - Earnest money: \$1,000.00
 - Other American Title expense: \$2,680.00

Total: \$100,717.58

At this time, these expenditures will be recommended for denial of payment to the Commission. This recommendation will be included for discussion at the Commission's next meeting on February 11, 2020.

Correction Officers

The Michigan Indigent Defense Commission Act states that cost analysis expenses must be reasonably and directly related to the indigent defense function.¹ Jackson County's FY19 approved Compliance Plan, which is incorporated into its FY19 Grant Agreement with the MIDC, shows a clear reason directly related to Standard 2 for adding two correction officers at each county jail for an anticipated increase in movement and transportation of indigent defendants. However, during the entirety of fiscal year 2019, Jackson County did not implement Standard 2. Thus, the additional corrections officers could not have been used for their intended purpose under the Grant Agreement of fulfilling Standard 2 nor do they appear to be otherwise directly related to the county's indigent defense function.

Earnest Money and Title Payment

On September 27, 2019, the MIDC Grant Manager approved Jackson County's requested FY19 budget adjustment for the "payment of the first month's lease" as well as other updates to 505 South Jackson to serve as the physical location of the county's public defender office. Following this approval, the MIDC

¹ MCL 780.993(4); MIDC, Compliance Plan Application and Instructions, 2017.

MDC February 2020 meeting materials page 53
approved an accompanying FY19 plan change on October 15, 2019 to create a public defender office. Guidance was given from the MIDC Regional Manager on the requested budget adjustment for the building on May 14, 2019, indicating that an adjustment is possible for to pay for a building lease: “[t]he MIDC grants can be used to pay the lease and other costs to retrofit the space for PD office needs – i.e. creating office space, client meeting space, installing tech to run the office, etc.” The American Title expenses were not anticipated nor approved in the budget amendment, as only the monthly lease payments were approved.

Use of Fiscal Year 2019 Funds

On September 20, 2019 Jackson County submitted a signed amendment to its FY19 Grant Agreement entitled, “Amendment to Allow for Expenditure of Fiscal Year 2019 Unexpended Funds.” This amendment allowed the County to use money from its FY19 grant beyond Sept. 30, 2019 in accordance with its FY19 compliance plan and any adjustments made throughout the year. Term 1 of this amendment states: “[a]ny funds used pursuant to this agreement shall be used consistent with the FY 19 approved compliance plan and cost analysis and shall not be used for any other purpose.” Term 2 states:

Any variation in Grantee’s spending requires prior written approval from the MIDC. Grantee must follow MIDC policy and procedure when applying for approval. *The MIDC’s approval of Grantee’s fiscal year 2020 plan and/or cost analysis does not qualify as approval to deviate from Grantee’s fiscal year 2019 spending.* [emphasis added].

In this case, the Commission will determine whether expenditures inconsistent with the Jackson County’s FY19 plan are approved. Disapproval would most likely occur if an expense is not reasonably and directly related to the county’s indigent defense function or not previously approved by the Commission.

The next Michigan Indigent Defense Commission meeting is February 11, 2020. At this time the Commission will review these recommendations made by staff to disapprove the above expenses. You are welcome and encouraged to attend the Commission meeting and make public comment if you wish. In the meantime, we are committed to ensuring that indigent defendants in Jackson County receive uninterrupted and quality defense services.

Sincerely,

/Loren Khogali

Loren Khogali, Executive Director
Michigan Indigent Defense Commission
Phone: (517) 275-2845/Email: khogalil@michigan.gov

Cc: Debra Kubitsky, Assistant Administrator
Michael Boucher, Chief Public Defender

To: MIDC Staff and Commissioners

From: Marianne Talon, Wayne County project consultant

Date: January 15, 2020

Re: Extension of 13.2 Planning Grant until expiration of funds

Please consider this the request of Wayne County to again extend the term of planning grant #201900000001. This grant has been previously extended until March 31, 2020, however it does not appear that funds will be exhausted by that date. This is primarily because we determined not to use the services of Bob Boruchowitz and his team. It was originally thought that those services would be needed, because an RFP was pending for operation of a public defender office. However when it became clear that the recipient of that bid, Neighborhood Defender Service, had come equipped with the skills necessary to get this office up and running, we felt it was duplicative to engage the services of other experts in that effort.

In addition, because we felt it was important to conserve planning funds while the public defender office got started, the hiring of Dawn VanHoek's assistant was also delayed. This contract, for Ms. Angela Peterson, was approved by the County Commission Government Operations Committee on January 15, 2020, and should be approved by the full Commission on January 23rd. Thus, funds remain in this grant that will not be spent by March 31st. As it is not known when 2020 planning grant funds will be received, continuing to draw down these initial funds will enable services to be provided without interruption.

For these reasons, Wayne County respectfully requests that it be allowed to spend the remainder of the grant funds, in accordance with the terms of the planning grant, until the funds are exhausted. Dawn VanHoek's regular planning reports will continue to be provided to the MIDC until the funds have been exhausted.



MICHIGAN INDIGENT
DEFENSE COMMISSION

MEMORANDUM

To: Michigan Indigent Defense Commission
 From: Loren Khogali, Executive Director
 Date: February 11, 2020

At the December Commission meeting, Commission members discussed a draft grant manual, intended to serve as a tool for local systems as they approach annual compliance planning. The MIDC Act requires that:

“policies...be placed in an appropriate manual, made publicly available on a website, and made available to all attorneys and professionals providing indigent criminal defense services, the supreme court, the governor, the senate majority leader, the speaker of the house of representatives, the senate house appropriations committees, and the senate and house fiscal agencies.” MCL 780.989(6).

At the conclusion of its discussion, the Commission referred the grant manual back for additional feedback and revision. Staff solicited feedback on the draft grant manual. In addition to the discussion at the December meeting, six commissioners provided suggestions after the meeting. The information collected has been incorporated into a revised draft of the grant manual for the Commission’s review. Information previously published by the Commission through applications and guides is in black, revisions are in strikethrough or red font; some sourcing of new content is referenced in footnotes.

In anticipation of fiscal year 2021 compliance planning, a handful of policy questions have arisen through the course of revising the grant manual and by way of questions from local systems. It would benefit staff to have guidance from the Commission on those questions to better support local systems during the compliance planning process.

- **Local share:** Local share is defined in the MIDC Act as “an indigent criminal defense system’s average expenditure for indigent criminal defense services in the 3 fiscal years immediately preceding the creation of the MIDC under this act, excluding money reimbursed to the system by individuals determined to be partially indigent.” MCL 780.983(i). “[A]n 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 must be paid by this state.” MCL 780.993(7). “An indigent criminal defense system is not requires 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.” MCL 780.993(9). **Question: The local share and any state grant funding in excess of the local share comprise the total grant amount. Is there any differentiation in the way that the local share and state grant may be spent or for purposes of the grant, are the local share and state grant treated as a single pot of funding? For example, if the Commission has determined that it will not provide funding through MIDC grants for prosecutors but a local system would like to use its local share to do so, is that appropriate? Or, if prior to the MIDC Act, the local system had previously paid for CDAM memberships for all of its attorneys, may it continue to do so with its local share? If not, does the local share adjust to remove those costs?**

- **Purchase of Buildings:** Several local funding units have purchased buildings and are leasing them to defender offices. The cost of the lease is included as part of the indigent defense grant. **Question: May a local indigent criminal defense system utilize an MIDC grant to purchase a building in a single year?**
- **Out of State Travel for Training:** There are many quality out of state trainings related to criminal defense. In Michigan, there is currently quality training available through local bar associations, CDAM, Byrne JAG funded skills training, NAPD, SADO, the SBM Criminal Law Section and online resources for attorneys to meet the requirements of Standard 1. **Question: May MIDC grants be used for out of state travel to attend training? If so, are there any guidelines that the Commission will employ to determine approval of the training? For instance, limitation to a person doing indigent defense full-time or a requirement that a funding unit must pursue any available financial aid?**
- **Income from Other Programs:** In some local systems, the MIDC grant incorporates funding for representation of persons incarcerated in the MDOC. The MDOC also provides funding for representation. **Question: Should the funding be provided by MDOC be placed into the local restricted indigent defense fund?**
- **Scope of Proceedings:** May MIDC grant funding be applied to collateral proceedings such as expungement proceedings, extradition hearings, restitution hearings and in direct appeals in misdemeanor cases from the district to the circuit court? If so, are there guidelines for requesting such funding that should be considered by local systems? For instance, is the cost of transcripts for defense attorneys related to these proceedings covered by the MIDC grant?

Finally, in order to enable local funding units to more easily see what has been funded in individual plans, the Commission should consider making final approved plans available outside of the FOIA process. In the past, the MIDC has handled requests for compliance plans through the FOIA process. From an operational efficiency standpoint, requests for compliance plans comprise the majority of FOIA requests by media, funding units and others. Making approved plans available outside of the FOIA process will:

- Enable funding units to more easily see how other plans are structured, potentially leading to collaboration and innovation across systems;
- Align with the Governor's Executive Directive 2019-11 encouraging transparency in state government.

Were the Commission to decide to make compliance plans available outside of the FOIA process, I suggest that it be limited to final approved plans and that requests for plans that have not yet been approved go through the FOIA process.

GRANT MANUAL

DRAFT



MICHIGAN INDIGENT
DEFENSE COMMISSION

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This Grant Manual is created for the convenience of stakeholders seeking information about compliance with the MIDC's Standards and the contracts issued to indigent criminal defense systems pursuant to an approved plan and cost analysis. The Commission makes policy determinations regarding funding for the standards. The MIDC's staff serves as liaisons between stakeholders and the Commission and are responsible for bringing novel questions to the Commission for consideration and action. This manual is designed to capture decisions that the Commission has made through action on prior plans and costs for compliance with the standards.

The MIDC Act, in its entirety, is the primary document governing MIDC activities and should be referred to for full context of excerpted materials in this manual.

General Authority

The Michigan Indigent Defense Commission ("MIDC") Act is found at MCL §780.981 *et seq.*

Relevant Provisions of the MIDC Act for Standards, Compliance, and Reporting

The MIDC Establishes Standards for Indigent Defense

The MIDC is responsible for "[d]eveloping 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." MCL §780.989(1)(a).

The MIDC Creates Rules and Procedures for Compliance Plans for Indigent Criminal Defense Systems

The MIDC has the authority and duty to establish "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." MCL §780.989(1)(g).

Indigent Criminal Defense System Creates Compliance Plan

"No later than 180 days after a standard is approved by the department, 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 **October 1** of each year. A plan submitted under this subsection must specifically address how the minimum standards established by the MIDC under this act will be met and must include a cost analysis for meeting those minimum standards. The standards to be addressed in the annual plan are those approved not less than 180 days before the annual plan submission date. The cost analysis must 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." MCL §780.997(3) (emphasis added).

Local Share

The local share refers to an indigent criminal defense system's average annual expenditure for indigent criminal defense services in the 3 fiscal years immediately preceding the creation of the MIDC under this act, excluding money reimbursed to the system by individuals determined to be partially indigent. Beginning on November 1, 2018, if the Consumer Price Index has increased since November 1 of the prior state fiscal year, the local share must be adjusted by that number or by 3%, whichever is less." MCL §780.983(i).

"[A]n 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 must be paid by this state." MCL §780.993(7). The requirement for spending the local share is activated

by the need to spend in excess of that total. The statute does not dictate the *order* in which the state dollars and local share be spent during the contract year. The local share can be contributed at any time during the contract year.

“An indigent criminal defense system must 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.” MCL §780.993(8).

Approval of Compliance Plans

“The MIDC shall approve or disapprove all or any portion of a plan or cost analysis, or both a plan and cost analysis submitted under subsection (3), and shall do so within **90 calendar days** of the submission of the plan and cost analysis. If the MIDC disapproves any part of the plan, the cost analysis or both the plan and the cost analysis, the indigent criminal defense system shall consult with the MIDC and, for any disapproved portion, submit a new plan, a new cost analysis, or both within **60 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 must be resolved as provided in section 15. All approved provisions of an indigent criminal defense system’s plan and cost analysis must not be delayed by any disapproved portion and must proceed as provided in this act. The MIDC shall not approve a cost analysis or portion of a cost analysis unless it is reasonably and directly related to an indigent defense function.” MCL §780.993(4) (*emphasis added*).

Duty of Compliance with Approved Plan

“Within 180 days after receiving funds from the MIDC ... 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. The terms of a grant may allow an indigent criminal defense system to exceed 180

days for compliance with a specific item needed to meet minimum standards if necessity is demonstrated in the indigent criminal defense system's compliance plan. The MIDC has the authority to allow an indigent criminal defense system to exceed 180 days for implementation of items if an unforeseeable condition prohibits timely compliance.” MCL §780.993(11).

The MIDC Reviews Systems for Compliance

The MIDC will be “[i]nvestigating, auditing, and reviewing the operation of indigent criminal defense services to assure compliance with the commission's minimum standards, rules, and procedures.” MCL §780.989(1)(b).

Financial Reporting

“The MIDC shall ensure proper financial protocols in administering and overseeing funds utilized by indigent criminal defense systems, including, but not limited to, all of the following:

- a) Requiring documentation of expenditures.
- b) Requiring each indigent criminal defense system to hold all grant funds in a fund that is separate from other funds held by the indigent criminal defense system.
- c) Requiring each indigent criminal defense system to comply with the standards promulgated by the governmental accounting standards board.” MCL §780.993(14).

Unexpended Grant Funds

“If an indigent criminal defense system does not fully expend a grant toward its costs of compliance, its grant in the second succeeding fiscal year must be reduced by the amount equal to the unexpended funds. Identified unexpended grant funds must be reported by indigent criminal defense systems on or before **October 31** of each year. Funds subject to extension under subsection (11) must be reported but not included in the reductions described in this subsection. Any grant money that is determined to have been used for a purpose outside of the compliance plan must be repaid to the MIDC, or if not repaid, must be

deducted from future grant amounts.” MCL §780.993(15) (**emphasis added**).

Overspending on Services

“If an indigent criminal defense system expends funds in excess of its local share and the approved MIDC grant to meet unexpected needs in the provision of indigent criminal defense services, the MIDC shall recommend the inclusion of the funds in a subsequent year's grant if all expenditures were reasonably and directly related to indigent criminal defense functions.” MCL §780.993(16).

Compliance Planning by Indigent Defense Systems

Resources available on the MIDC's website

- The MIDC Standards
- White papers for MIDC Standards 1-4
- *Delivery System Reform Models: Planning Improvements in Public Defense* (MIDC, December 2, 2016)
- *Position Paper on Attorney Fees after the Passage of the MIDC Act* (MIDC, Summer 2016)
- Department of Treasury correspondence regarding adult indigent criminal defense funds

Compliance Plan Components

Identification of System

All compliance plans will need to address the following general information:

- ✓ The authorizing official submitting the plan and signing the contract terms of the funding consistent with the approved plan
- ✓ The point(s) of contact for the submitted plan (phone, email, address)
- ✓ A local financial contact for the post award fiscal administration
- ✓ Trial court funding unit(s) and court(s) included in the plan
- ✓ The identification of stakeholders or committee members involved in the planning process

- ✓ Collaborative plans must list all systems and trial courts associated with the plan

Compliance with Approved Standards

The submitted plan will address each standard individually. A statement is required to identify and expand on the current or existing state of the system's process or work in subject the area of the standard. The submission will then need to highlight the changes or enhancements needed to achieve the standard, if any.

Cost Analysis

A cost analysis (**budget**) for the implementation of **compliance plan** and issues related to each standard is required **to be submitted in the format approved by the MIDC. Costs cannot be excessive.** Reasonableness will be stressed and a list or guideline for permissible costs **is included in this manual.** ~~will be provided. It will be difficult for this guideline to be exhaustive of all possible financial scenarios.~~ To minimize rejections after official submission, systems should contact their MIDC Regional Manager, before submissions, to discuss compliance plan costs that pose situations not addressed in guidelines.

Local Share

The MIDC Act requires maintenance of a certain level of funding by the local system(s), defined as the local share. The calculation of the local share involves the capture of expenditures for adult indigent defense costs for the three fiscal years preceding enactment of Public Act 93 of 2013. The costs are then offset by the corresponding collections or payments for court appointed counsel services in the same time period on behalf of defendants made by either an individual or an agency.

Beginning in FY2019, all systems calculated and certified ~~The submission shall identify a methodology employed to achieve the local share.~~ A certification of the local share calculation, acknowledged through local official authorization, ~~shall be~~ **was** a requirement of the **original compliance plan and cost analysis.** For FY2020, the local share was increased by 2.2% pursuant to MCL §780.983(i). **The local share**

will be adjusted to 2.1% for FY2021. MIDC grant funds Awards will then be are calculated as the sum of the approved cost analysis per standard offset by the local share. Any system seeking to modify its local share due to errors in the original calculation must contact its Regional Manager. Modifications are subject to review of the methodology by the Grant Manager and approval by the Commission.

Fund Established

A condition of award to the local system(s) shall include the grantee securing and supplying to the MIDC a resolution from the local legislative branch (board of commissioners, city council) for the creation of a new fund within the local chart of accounts. The sole purpose of this fund shall be for accepting the grants funds from the MIDC and charging all plan-related costs to this fund. As a condition or assurance upon accepting the award, this fund will allow for better management of the grant funds and monitoring by the local and state interested parties. All adult indigent criminal defense funding (local share and MIDC grant award) must be deposited into the fund. The local fund description shall allow for any fund balance not to revert to the general fund at the close of a fiscal year. Rollover funds will be used for expenditures that cross fiscal years as well as unexpended funds to be used for future compliance expenditures.

Guidelines for Drafting Compliance Plans

The following information captures decisions that the Commission has made through action on prior plans and costs for compliance with the standards. Novel questions will be brought to the Commission for decision.

Cross-Standard General Principles

Prosecutors, Judges, Magistrates

The Michigan Indigent Defense Commission will not provide funding for prosecutors, judges, or magistrates to perform their duties.

Administrator for Delivery Systems

A funding unit considering the use of a managed assigned counsel system or public defender administrator must use a licensed attorney in good standing with the State Bar of Michigan for all duties involving management or oversight of attorneys or cases within the system.¹

Defense Attorneys – Direct Service Providers

All attorneys identified by the funding unit to provide direct representation to indigent defendants must be licensed attorneys in good standing with the State Bar of Michigan and are bound by the Michigan Rules of Professional Conduct. Until approval of Minimum Standard 8, Economic Disincentives or Incentives, funding unit employees or contract providers shall be given reasonable compensation.

Non-Lawyers – Direct Service Providers and Interdisciplinary Defense Teams

Provided they are used to comply with minimum standards, MIDC grant funds can be used to hire employees or independently contract with licensed private investigators or experts in any field recognized in the criminal justice community to assist the defense.

Public Defender and Managed Assigned Counsel Systems

Systems may choose to set up regional or local delivery system reform models such as public defender offices or managed assigned counsel programs to meet the minimum standards.² Set-up and operational costs of the office should be included. **Lease or rent payments for offices of direct service providers and their staff are permissible expenses.**

A compliance plan may include the cost of the State of Michigan's basic bar dues for attorneys employed full time by the system. MIDC grant

¹ See MIDC meeting minutes, June 2017; MRPC 5.4(c).

² MIDC staff members are able to assist systems with hiring considerations, but ~~will not~~ cannot serve as a voting member in any employment decision-making process.

funding is not permitted for membership in sections or local bar associations.³

A compliance plan may include the cost of malpractice insurance for attorneys employed full time by the system.⁴ Rates should be commensurate with those offered by the National Legal Aid and Defender Association's preferred carrier.

Hiring of Ancillary Staff

Depending on the plan, many systems intend to hire indirect or ancillary service providers to implement the standards. Ancillary staff refers to personnel outside of assigned counsel and their support staff. Most often these positions include jail staff to facilitate attorney-client communication pursuant to Standards 2 and 4. Other positions include clerks or court staff. These positions must be reasonably and directly related to implementation of the standards to qualify for MIDC grant funding. Progress regarding all hiring as set forth in the plan must be included in the quarterly reports, and all hiring decisions must be made within 180 days from the initial distribution of grant funds.

Cost Allocation

Systems seeking to include cost allocation or indirect costs for employees are allowed. Funding that exceeds 10% of the personnel and fringe benefit (total) is subject to additional scrutiny and must include any methodology for determining the costs.⁵

Reimbursement for Overspending

A system that spends in excess of the prior year's total system cost can seek reimbursement as a separate line item in the subsequent cost analysis for services.

³ See MIDC meeting minutes, October 2019.

⁴ See MIDC meeting minutes, July 2019.

⁵ See MIDC meeting minutes, June 2019.

Regional Cooperation

The Commission urges efficient models of providing indigent defense. In some communities, multiple funding units may collaborate to deliver indigent defense services. The statutory authority for multiple counties cooperating in a regional delivery system model can be found in the Urban Cooperation Act of 1967, at MCL §124.501 et seq.

Travel

Rates can be found online at <http://www.michigan.gov/dtmb/0,5552,7-150-9141-13132--,00.html> will be appended to the grant contract. Unless local rates apply, any travel related expenses requested for compliance planning shall not exceed the rates provided by the “Schedule of Travel Rates” and the general policies for reimbursement of travel adopted by the State of Michigan.

Absent extraordinary circumstances, no grant funds for out-of-state travel will be allowed in any awarded for compliance plans. Travel to visit a client housed in custody in another state constitutes extraordinary circumstances.

Travel for training out of state will only constitute an extraordinary circumstances if it is necessary to secure specialized training for public defender staff that is not available in Michigan.⁶ Public Defender offices may seek funding for newly-hired attorneys with fewer than two years of experience practicing criminal defense in Michigan to participate in one basic skills acquisition class in an out of state training program. Systems must pursue any financial aid available to fund attendance for an employee’s attendance at an out of state training program.

MIDC grant funding is not permitted for purchasing or leasing automobiles.

⁶ See State of Michigan LARA Out of State Travel Request Authorization form C-100.

Planning for Compliance with MIDC Approved Standards

Standard 1 – Training and Education

General Requirements

Michigan Indigent Defense Commission (MIDC) Standard 1 requires that attorneys shall annually complete at least twelve hours of continuing legal education. Attorneys with fewer than two years of experience practicing criminal defense in Michigan shall participate in one basic skills acquisition class.

Pursuant to MIDC Standard 1.D, system practices that require assigned counsel to subsidize mandatory training will not be approved. Training shall be funded through compliance plans submitted by the local delivery system or other mechanism that does not place a financial burden on assigned counsel.

Standard 1 is an annual training requirement for every attorney each calendar year. Participation in a basic skills acquisition course (skills training) counts towards the annual continuing legal education requirement.

In the compliance plan, provide the **names and P#s of all attorneys** who will provide indigent defense in the year covered by the compliance plan. Further identify in that category **how many of those attorneys who** have practiced criminal defense for two years or less.

All attorneys providing services in the system should be included in the compliance plan, regardless of whether the attorney practices in other systems. Funding for training and individual training requirements may vary by system. In the event of duplicate registration for a single event, the source of payment should default to the funding unit based on the address listed for the attorney in the bar journal. Deviation from the default is allowed if doing so is necessary to meet the requirements of the standard.

In the plan and cost analysis, describe whether the training is part of the 12 hours of annual continuing legal education (CLE) and/or skills training for new lawyers.

Please see the MIDC's website at <https://michiganidc.gov/cle/> for more information.

Permissible Costs

For **new training programs**, identify the cost of set-up and implementation including personnel, contractors, equipment, supplies, and operating expenses **including meals at a group rate**. For **existing training programs**, identify the number of attorneys to be trained, the courses or programs that will be attended with a cost of registration/tuition (using a rate of no more than \$25 per credit hour), travel, and other expenses **incurred by the trainees**. **Attorneys will not be reimbursed at any rate for their time spent in or traveling to training sessions.**

No printed materials will be funded if digital materials are provided for training purposes.

Memberships

For webinars, such as the National Association for Public Defense, use an annual rate of \$3020²⁰ per criminal defense attorney for membership and access to programming.

For the Michigan State Appellate Defender Office's (Criminal Defense Resource Center) online resources, use an annual rate of \$50/per criminal defense attorney for membership and access to programming.

MIDC Grant funding will not be awarded for membership to the National Association for Criminal Defense Lawyers (NACDL), the Criminal Defense Attorneys of Michigan (CDAM), or the Institute for Continuing Legal Education (ICLE).

Communication and Plans for Reporting

Attorneys identified by the funding unit to represent adults charged with crimes in the particular system will receive communications from

the MIDC's staff regarding training opportunities and requirements for compliance with Standard 1. The MIDC staff will work to efficiently coordinate the statewide roster of attorneys and assist with communicating progress towards compliance with the standard. All attorneys must complete their training and education requirements by December 31 **of each calendar year**, ~~2019~~ to remain eligible to continue to receive assignments in the following compliance plan year.

Each system **must** provide a plan for reporting CLE attendance to the MIDC for data collection purposes, pursuant to Michigan Supreme Court Administrative Order 2016-2. Documentation of attendance must be submitted to the MIDC no later than 30 days after completion of the course(s). This documentation should be sent to LARA-MIDC-CLE@michigan.gov.

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Standard 2 – Initial Interview

General Requirements

This standard requires that when a client is in local custody, counsel shall conduct an initial client intake interview within three business days after appointment. When a client is not in custody, counsel shall promptly deliver an introductory communication so that the client may follow-up and schedule a meeting. Attorneys should **be prepared to** complete a voucher form for all assigned cases indicating time spent on the assignment, including when and where the initial interview occurred. **Alternatively, systems must indicate a method for verifying timely interviews.** Sample vouchers **are** will be available on the MIDC's website.

This standard further requires a confidential setting for these interviews in both the courthouse and jail. **Upon request by an attorney, the system must accommodate the ability to pass legal materials between an attorney and an in-custody client.**

Permissible Costs

If it is necessary to create or alter building space to provide a confidential setting for attorneys and their clients, renovation expenses are allowed up to a maximum of \$25,000 per location. Requests exceeding \$25,000 will be reviewed with higher due diligence and considered with accompanying documentation for justification.

For all systems undergoing construction to create confidential space, a detail regarding progress on the project will be required quarterly.

If public defender offices need additional attorneys to comply with the initial interview standard, funding units may seek grant funds for personnel.

Other systems may need to change contracting or assigned counsel compensation policies. Funding units, using a contract or rotating assignment system, shall pay attorneys for the initial interview in all assigned criminal cases. Attorneys shall be compensated a reasonable fee for the initial interview, **including mileage and travel expenses for**

clients who are not in local custody. Confidential video visits are permissible for initial interviews with in-custody defendants.

Efficient use of technology (such as the use of PolyCom systems) and existing space in courthouses and jails in lieu of construction projects is encouraged to ensure and facilitate confidential interview space. Equipment can be included in the cost analysis of the compliance plan.

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Standard 3 – Investigation and Experts

General Requirements

This standard requires counsel to conduct an independent investigation. When appropriate, counsel shall request funds to retain an investigator to assist with the client’s defense. Counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution’s case. Counsel has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance.

Funding units may seek grant funds to employ licensed investigators as needed to comply with Standard 3, and/or seek grant funds to contract with investigators or any expert witness identified as necessary to assist with the defense of an indigent client. ~~Funding Units may seek grant funds for a line item expense for this purpose. A forthcoming MIDC publication on allowable expenses will describe the maximum funding for this purpose.~~

~~Non-assigned (i.e. retained, *pro bono*) counsel representing adult clients who become indigent during the course of the representation and who are in need of expert or investigative services may seek use of indigent defense funding for these resources from the system pursuant to case law⁷ and/or the local system’s policy.~~

Permissible Costs

Expenses for investigators will be considered at hourly rates not to exceed \$75. Expenses for expert witnesses will follow a tiered level of compensation based on education level and type of expert⁸ not to exceed these amounts:

- High School or Equivalent \$30/hr
- Associate’s Degree \$50/hr
- Bachelor’s Degree \$70/hr

⁷ See, e.g., *People v. Kennedy*, 502 Mich. 206 (2018).

⁸The table of expert hourly rates is adopted from the guidelines published by the North Carolina Indigent Defense Services Commission. Variations will be considered on a case-by-case basis.

- Master's Degree \$85/hr
- Crime Scene and Related Experts \$100/hr
- CPA/Financial Expert \$100/hr
- Pharmacy/PharmD \$125/hr
- Information Technology Experts \$150/hr
- Ph.D./Licensed Doctor \$200/hr
- **Medical Doctor \$250**
- **MD with Specialty (e.g., Psychiatrist, Pathologist) \$300**

Unless there is a demonstrated need, Each indigent defense system will be limited to a capped amount of funds for investigators and experts based on the total new circuit adult criminal filings within the jurisdiction in the most recent calendar year, as reported and certified with the State Court Administrative Office. Systems within district courts of the 3rd class are considered in Tier I unless special circumstances are presented.

- 0 - 499 cases/year = Tier I - \$10,000
- 500 - 999 cases/year = Tier II - \$25,000
- 1,000 - 9,999 cases/year = Tier III - \$50,000
- Over 10,000 cases/year = Tier IV - To be determined bases on further discussion and review of records of the system(s)

All funding units **will** have an approved line item for using experts and investigators in the local court system. The funding unit should reimburse these service providers directly based upon a proper accounting of time spent during the grant reporting period. **Attorneys Systems should report** ~~will also indicate on individual voucher forms~~ whether an expert or investigator was **requested, approved, or denied used** in a particular case to ensure compliance with the standard. **The MIDC rates should be used unless a higher rate is specifically authorized by a system for the case.** Experts and investigators should be reimbursed for travel related to their work on a case.

Standard 4 – Counsel at First Appearance and Other Critical Stages

General Requirements

Every system in Michigan is required to ~~make~~ have an attorney **available present** for an adult charged with a crime facing the loss of his or her liberty. All persons determined to be eligible for indigent criminal defense services shall also have appointed counsel at pre-trial proceedings, during plea negotiations and at other critical stages, whether in court or out of court. **A “critical stage” is any proceeding involving the potential for loss of liberty.** ~~Each system must comply with the plan for providing this service within 180 days of receipt of funding from the MIDC.~~

This Standard does not prevent an adult charged with a crime from representing themselves during any proceedings, including the arraignment. All defendants should be given an opportunity to meet with counsel prior to an arraignment where liberty is at stake. Information about waiving counsel should be provided by the court system, preferably by counsel employed to meet this standard.

~~In virtually all systems, the attorney at the first appearance is not necessarily going to be the attorney appointed to the case. Attorneys providing this service should account for their time separately and, depending on the plan, be paid consistent with the approved costs for these services.~~

Systems will be required to report specific information about every arraignment including the number of total arraignments and breakdown of representation in any of the following categories: retained counsel, assigned counsel, waiver of counsel by defendant, or counsel not **present** required. **Guilty pleas submitted to courts outside of the arraignment process (“counter” pleas or “plea by mail”) must be tracked and reported by the system. Systems that do not accept guilty pleas at arraignment and issue personal bonds do not need to make an attorney available at the initial appearance before a magistrate or judge.**

Permissible Costs

Funding Units with public defender systems may seek grant funds to hire defense attorneys to comply with the standard for counsel at first appearance.

Funding units using a contract or rotating assignment system shall pay attorneys for the first appearance in a criminal case. A flat-rate can be paid to an attorney to be available on an on-call basis; until the approval of Standard 8 providing more specific guidelines, counsel shall be paid a reasonable fee.

The use of technology is encouraged. Attorneys may use telephone or video services to facilitate the appearance at arraignment.

In addition to all trial proceedings, funding under this standard can include defense attorney representation or participation in the following matters:

- Criminal contempt and or show cause hearings
- District to Circuit Court appeal
- Problem Solving Courts and Swift and Sure Sanctions Probation Programs
- *Extradition hearings*
- *Expungement proceedings*
- *Restitution matters*

Standard 5 – Independence from the Judiciary

This proposed standard has not been approved by the Department of Licensing and Regulatory Affairs. However, many systems have submitted compliance plans seeking use of an independent administration of the delivery system.

A managed assigned counsel system (hereafter, “MAC”) is a model that can be used either in coordination with the public defender office or alone to provide indigent defense services in communities at the trial level. This system has independence with oversight by a government-appointed or non-profit agency commission, or by the Executive Branch. MAC is an ideal system to guarantee participation of a vibrant private bar in the delivery of indigent defense.

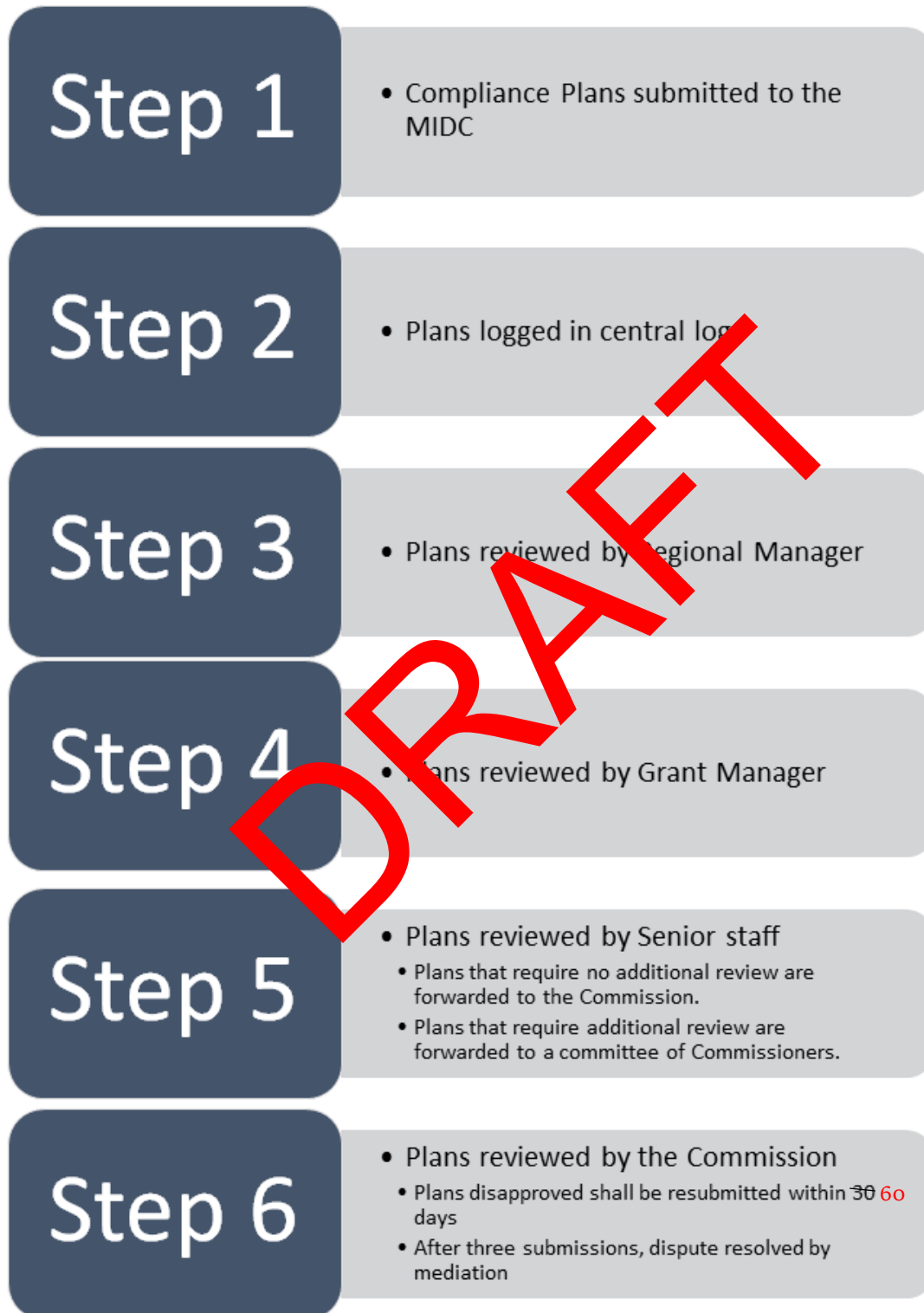
As with a public defender office, a county or regional MAC can be a very good way to comply with the MIDC standards and best practices:

- MAC can coordinate a program to train attorneys to work on assigned cases;
- MAC can provide resources for prompt meetings with clients and condition participation in these meetings;
- MAC can coordinate contracting of investigators or experts, and even retain investigators on staff;
- MAC can specifically assign counsel at first appearance.

MAC could also comply with many proposed future standards including qualifications and evaluations of assigned counsel by having a framework for evaluating the attorneys on the roster and setting requirements for different sorts of cases. MAC can enforce caseload limitations on roster attorneys and establish fair compensation if properly resourced.

As a best practice, systems using a MAC administration model should create a process for reviewing or appealing decisions of the MAC administrator.

Compliance Plan Submission



Compliance Reporting by Indigent Defense Systems

The contract executed between the MIDC and the local system is the primary source of information about specific reporting obligations. This portion of the guide is provided for the convenience of stakeholders seeking information about reporting.

Resources

Please consult the MIDC's website at <https://michiganidc.gov/grants/> for regularly updated information about reporting, webinars, checklists, and templates.

Distribution of Funding

The Department of Treasury ~~has~~ will established the creation of a new fund within the local chart of accounts. The sole purpose of this fund shall be for accepting the grants funds from the MIDC and charging all plan-related costs to this fund. The system's "local share" ~~must~~ should also be deposited in this fund during the course of the grant contract period, ~~and no later than the end of the contract term~~. The local share contribution was determined by the funding unit through a certification process and approved as part of the total system costs. This fund will allow for better management of the grant and monitoring by the local and state interested parties. The local fund description shall allow for any fund balance not to revert to the general fund at the close of a fiscal year. ~~Other funds will be used for expenditures that cross fiscal years.~~

~~Systems will work with the MIDC staff to finalize a budget consistent with the cost analysis approved by the MIDC. This process may require assignment of spending between state and local funding sources. Funding must only be used as set forth in the approved plan and cost analysis.~~

~~Systems will receive a contract from the MIDC upon completion of the prior year's reporting being finalized and approved. Once the contract is executed, Upon finalization of the grant contract with each local funding unit, the MIDC will distribute grants to the system consistent~~

with the approved budget and as set forth in the system's approved plan. The MIDC will distribute 50% of the approved state grant **within 15 days of the contract being executed by all parties.** ~~in October 2018, and~~ The timeframe for compliance with the approved plan will begin on the date of the initial distribution. Each system will submit a progress report describing compliance with the plan on a quarterly basis, together with a financial status report detailing expenses incurred that quarter.

Dates for Distribution of MIDC Grant Funding

- Initial Advance of 50% of the state grant - Within 15 days of receipt of executed agreement
- 25% disbursement - May 15, 2020
- 25% disbursement - August 14, 2020 (final payment).

The above schedule of disbursement of funds is contingent after receipt of quarterly reporting as addressed in ~~the grant contract.~~ **grant contract.** ~~this section and section 1.5 of this document.~~ The financial status report (FSR) report must be submitted on the form provided by the MIDC/LARA and indicate:

Reporting Required

Financial Status Report (FSR)

Each system is required to provide a report on the expenses incurred for implementing the plan for indigent defense delivery. The system should use a form provided by the MIDC to detail the total system costs and identify the source of funding: the local share, MIDC funding, or other sources (i.e. Michigan Department of Corrections). ~~A report template is attached. All attorney services should be submitted on an MIDC invoice form, which will be available on the MIDC's website. This form requires tracking of time for each case, even in funding units where payment is not calculated on an hourly rate. The FSR must be supported with documentation for the expenses to be eligible for reimbursement. Receipts for purchases, payroll, documentation, and vouchers from direct service providers should be attached to the FSR. It is not necessary to list every individual contractor (for example:~~

attorneys) as long as the individual payments are detailed in appended documents.

Expenses are eligible for payment if incurred during the grant contract period (on or after October 1 **of the grant contract year, 2018**).

Eligible expenses for travel must be consistent with State of Michigan requirements, unless otherwise provided for in the approved budget.

Compliance Plan Progress Report (PR)

A short program report detailing in narrative form the system's progress towards fully implementing the compliance plan is required quarterly. This report should complement the FSR and offer context about the expenses incurred during the specified timeframe.

The funding units will be asked for basic information in each report to ensure the MIDC has the appropriate points of contact and authorizing officials, as well as a list of all attorney **with #s** assigned by the system to represent indigent adults charged with crimes. Approved compliance plans addressed each standard individually, and reporting should track compliance with the standards according to the plan. The progress report will mirror this approach and collect information regarding new case filings, assignments to attorneys, and compliance with Standards 1, 2, 3, and 4 as set forth in the approved plan. ~~A report template is attached.~~

Due Dates for Reporting

- Initial FSR and compliance report for October 1 – December 31 due on January 31st
- 2nd FSR and compliance report for January 1 – March 31 due on April 30th
- 3rd FSR and compliance report for April 1 – June 30 – due on July 31st
- Final FSR and compliance report for July 1 – September 30 – due on October 31, **together with a report of the unexpended balance in the account used for adult indigent criminal defense services.**

Every system is required to annually submit a plan for compliance for the next state fiscal year **during the timeframe and in the manner established by the MIDC.**

Adjustments to Approved Plans or Budgets

The MIDC is mindful that many systems submitted a plan for compliance and cost analysis nearly one year prior to funding distribution. While adjustments to the cost analysis will be necessary in many instances, there should be no substantial changes to the delivery system method set forth in the plan itself without prior approval from the Michigan Indigent Defense Commission. A “substantial change” is one that alters the method of meeting the objectives of the standard(s) in the approved plan. For example: a system with an approved plan for a public defender office that would instead prefer to maintain a contract system would constitute a “substantial change” to the approved plan.

Any system seeking a substantial change to their **compliance plan** must contact their Regional Manager for guidance on that process, which will require a written request, justification for the change, and multi-level staff review prior to consideration by the Commission. Substantial changes to a compliance plan will not be recommended for approval to the Commission absent extraordinary circumstances.

Adjustments to a system’s approved **contract budget** must be communicated promptly to the Regional Manager MIDC staff. **Once a cost analysis has been approved by the MIDC, the award total cannot increase, but adjustments within the award total will be allowed.** Please contact your Regional Manager for guidance with budget adjustments. **Budget adjustments will be processed with other quarterly reporting documents unless extraordinary circumstances require action sooner.**

- **Deviation allowance:** If the adjustment involves redistributing less than 5% of the budget category total, (e.g., “equipment”), then the adjustment must be reported in the next quarterly FSA.

- A system must obtain prior approval for any adjustment to the contract budget involving 5% or more within the budget category.
- A system must obtain prior approval for any adjustment between categories of funding.

The system is required to use the MIDC's budget adjustment form for any budget adjustment request and must obtain approval of MIDC staff prior to making any changes to the contract budget.

All adjustments to the approved cost analysis will be reported to the MIDC during regularly scheduled meetings, or as requested by the Commission.

DRAFT

Evaluation of Plans

All systems will be reviewed for compliance with the MIDC’s Standards, the approved plan and the approved cost analysis. A complete rubric for evaluation is available on the MIDC’s website, a portion of which is displayed below:

FUNDING UNIT: _____

Date of Required Compliance: _____

Date of Evaluation: _____

STANDARD 1	TOTAL POSSIBLE POINTS	TOTAL POINTS AWARDED	COMMENTS
Has the attorney list been updated and submitted in the most recent quarter?	3		
Has a process been established and implemented to pay for and confirm attorney training (including for new attorneys to complete skills training)?	3		
Have attorneys either completed 12 hrs of CLE or been removed from the list?	non-point question		
STANDARD 2			
Have confidential meeting spaces been established or have sufficient measures been taken toward this end?			
In holding facilities/jails	3		
In courtrooms - out-of-custody clients	3		
In courtrooms - in-custody clients	3		
Are the confidential meeting spaces adequate?	non-point question		
Are defense attorneys using the confidential meeting space?	non-point question		
Are attorneys being appointed and notified in a timely and effective fashion?	3		
Is the system verifying invoices/other documents to ensure they are for interviews?	3		
Are attorneys being paid for initial interviews?	3		
Does the system have a process to manage attorney non-compliance?	non-point question		
Are all attorneys meeting with clients within 3 business days?	non-point question		
STANDARD 3			
Does a process exist for attorneys to seek funding for experts and investigators?	3		
Have attorneys been notified of the process?	3		
Are requests being tracked by the system?	non-point question		
Have any attorneys utilized this process?	non-point question		
What is the breakdown between requests granted and denied?	non-point question		



MICHIGAN INDIGENT DEFENSE COMMISSION

Update on Indigency Standard Development

The MIDC Act requires the Commission to “promulgate objective standards for indigent criminal defense systems to determine whether a defendant is indigent or partially indigent” and “the amount a partially indigent defendant must contribute to his or her defense.” MCL 780.991(3)(e),(f). In an effort to gather information and insight from stakeholders to assist the Commission in drafting indigency standards, staff has examined other states’ methods for determining indigency, researched caselaw and other authority concerning indigency and the appointment of counsel from Michigan and other states, surveyed criminal defense attorneys on retainer practices, and conducted focus groups with criminal defense attorneys and judges from around the state on current and prospective methods of assessing indigency.

Attorney Survey: 239 attorneys responded to questions about retainers, the cost of handling particular types of cases, and factors that prevented their non-appointed clients from continuing to engage them. The results indicated that Michigan defendants generally must pay an upfront retainer in order to engage private counsel. The amount of this retainer depends on a number of variables including type of charge and likelihood of plea, travel, and other factors personal to the attorney. Initial retainers generally do not include trial costs. In addition, retainer amounts vary widely. For example, the range of responses concerning the cost of handling a probation violation was \$300 to \$5,000. The survey also revealed that almost a third of respondents had withdrawn, or attempted to withdraw, from a case because the defendant was unable to pay legal costs.

Attorney Focus Groups: Nine attorneys participated in three focus groups. These attorneys were asked about the factors that courts in their areas look at in determining indigency, instances when they disagreed with the denial of a request for counsel, and what they would want to see in an indigency screening tool. The attorneys revealed that they think courts place too great an emphasis on present income (many defendants have a reasonable income, but they are still living paycheck to paycheck). Courts also mistakenly believe that attorneys will accept payments over time as opposed to requiring the entire retainer at the beginning of representation. And, courts make incorrect assumptions about household income, i.e., parents may not equally share financial responsibility for children and defendants do not always have ready access to all

household income. Attorneys also expressed a strong preference for standardized screening tools that ensure they are not appointed to represent people who can afford counsel.

Judges Focus Groups: We have three focus groups for judges scheduled on January 31st, February 4th, and February 5th.

Areas to be explored in all focus groups include:

- Factors generally considered when deciding whether to appoint counsel
- The impact of the severity charge(s)
- Understanding of the market (retainers v. payments; cost of defense)
- Desirable changes to the request for counsel form and designing a better screening tool
- Partial indigency

January 31st Focus Group: Five judges attended the first focus group. Every judge agreed that it will be difficult to create a statewide indigency standard and it is important to give discretion to judges when making these determinations because they know their bailiwick better than judges 150 miles away. The judges also shared their concerns that the state lacks the resources to continue providing counsel to those who do not qualify, providing counsel to individuals with the ability to retain counsel is unfair to the defense bar, and there is little time and resources for indigency screening.

Additional Relevant Context: The calculation of “local share” in the MIDC act excludes “money reimbursed to the system by individuals determined to be partially indigent.” MCL 780.993(i). “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 780.993(k). Subsection 16 of MCL 780.993 requires the court to collect “contribution or reimbursement from individuals determined to be partially indigent under applicable court rules and statutes.” The court is required to remit 100% of the funds it collects to the indigent criminal defense system in which it sits. In turn, 20% of those funds must be remitted to LARA, reported to the MIDC and “expended by the MIDC in support of indigent criminal defense systems in this state.” MCL 780.993(17). The remaining 80% may be retained by the indigent criminal defense system “for purposes of reimbursing the costs of collecting the funds under this subsection and funding indigent defense in the subsequent fiscal year.” *Id.* Attached are memos from SCAO effectuating the relevant portion of subsection (17). In 2019, LARA reported the receipt of approximately \$91,000 from indigent criminal defense systems pursuant to subsection (17).

Next Steps: Once the judges focus groups have concluded, staff will review the data collected, complete its legal research, and present a draft standard for the Indigency Committee's initial consideration and feedback.



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

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 system¹ to remit to the department² 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

¹ 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).

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

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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."³ 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

³ 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.

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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.



Michigan Supreme Court

State Court Administrative Office

Judicial Information Services

Michigan Hall of Justice

925 W. Ottawa Street

Lansing, Michigan 48915

MEMORANDUM

DATE: December 19, 2018 (Revision of December 14 memorandum – see item 1.D.)
TO: JIS District Court System Administrators and Staff
FROM: JIS District Court System Team
RE: 2018 Public Act 214 / MCL 780.993 (17) and Instructions to Add New Cash Codes for Partially Indigent Defendants

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 indigence and collecting and remitting payments for court-appointed counsel representation if a defendant is determined to be partially indigent. Please refer to the October 31, 2018 Michigan Supreme Court memorandum from Thomas P. Clement, General Counsel for complete details. We have included that memorandum along with our memorandum today.

In order to comply with Public Act 214, steps must be taken by JIS District Courts to create two new cash codes, CFAT and PFAT. This memorandum describes those steps.

It is important courts follow these steps to add the new cash codes by December 23, 2018. The Act requires 20 percent of payments from partially indigent defendants with court appointed attorneys to be remitted to the Department of Licensing and Regulatory Affairs (LARA). Payments from defendants determined to be fully indigent still stays 100 percent local using the existing MFAT – ATTORNEY FEE cash code.

1. Create Two New Cash Codes

- **CFAT - COURT APPOINTED ATTORNEY FEE CONTRIBUTION-PARTIALLY INDIGENT**
 - CFAT is intended to be used if the court has entered an order for contribution payments prior to sentencing.
- **PFAT - COURT APPOINTED ATTORNEY FEE REIMBURSEMENT-PARTIALLY INDIGENT**
 - PFAT is used for the remainder of the contribution balance due if the defendant is convicted and sentenced, or if the amount is imposed at sentencing. At the time of sentencing the financial obligation of the defendant changes from a contribution to reimbursement.
 - Any CFAT balance still remaining should be adjusted to zero and that remaining balance assessed to the PFAT cash code.

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- A. **Creating new cash codes should be done at the beginning or end of the business day when no cash transactions OR disposition entries are taking place. This allows cash files to align properly.**
- B. Detailed instructions for adding a new *Cash Code* are found on page 4-10 of the Cash User Guide. The most recent version of the User Guide and **Adding a New Cash Code** document can be found on the [JIS Knowledge Base](#).
- C. Go to the 'Cash Codes Update' screen to add *Cash Code* **CFAT**. Each court will need to determine its own *Hot Key*, *Screen Priority*, *Account ID*, and *Transmittal Line # Local Form*.
- D. See **CFAT (ATT FEE CONT) Example** below. **(Corrected from 12/14/2018 memorandum)**

SUNNY SPRINGS Cash Codes Update

Division T (T=T/C, C=Civil, M=Miscellaneous)

Cash Code CFAT Description on Receipt ATT FEE CONT

Group Code _ Hot Key _

Screen Priority 321 Default Amount _____ T/A Type _

Account ID	Percentage	Venue	Transmittal Line#	
			State Form	Local Form
FUNDING UNIT	80 %	-	---	---
LARA	20 %	-	---	---
_____	___ %	-	---	---
_____	___ %	-	---	---

F1-Clear
F4-Prompt
F5-Venues
F6-Transmittal File
F23-Delete
F24-Previous Menu
Page/Roll
Help

CFAT (ATT FEE CONT) Example

- E. Repeat same step to add *Cash Code* **PFAT**. See **PFAT (ATT FEE REIM) Example** below.

SUNNY SPRINGS Cash Codes Update

Division T (T=T/C, C=Civil, M=Miscellaneous)

Cash Code PFAT Description on Receipt ATT FEE REIM

Group Code _ Hot Key _

Screen Priority 322 Default Amount _____ T/A Type _

Account ID	Percentage	Venue	Transmittal Line#	
			State Form	Local Form
FUNDING UNIT	80 %	-	---	---
LARA	20 %	-	---	---
_____	___ %	-	---	---
_____	___ %	-	---	---

F1-Clear
F4-Prompt
F5-Venues
F6-Transmittal File
F23-Delete
F24-Previous Menu
Page/Roll
Help

PFAT (ATT FEE REIM) Example

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2. Add New Cash Codes CFAT and PFAT on the Traffic Criminal 'Code File Inquiry & Update' screen.

12/04/18 09:50:56

Code File Inquiry & Update

Code: CFAT Code Listing Group: AG

Short Description: ATT FEE CONT

Long Description:

COURT APPOINTED ATTORNEY FEE CONTRIBUTION-PARTIALLY INDIGENT

Press F2-Add to enter the new cash code.

Effective Date: Begin End
 Last Chgd: 12/04/18 By: D9992JLF

F1-Clear Screen **F2-Add** F3-Update F23-Delete F24-Prev Menu Page/Roll Help

CFAT – ATT FEE CONT Example

12/04/18 09:53:29

Code File Inquiry & Update

Code: PFAT Code Listing Group: AG

Short Description: ATT FEE REIM

Long Description:

COURT APPOINTED ATTORNEY FEE REIMBURSEMENT-PARTIALLY INDIGENT

Effective Date: Begin End
 Last Chgd: 12/04/18 By: D9992JLF

F1-Clear Screen F2-Add F3-Update F23-Delete F24-Prev Menu Page/Roll Help

PFAT – ATT FEE REIM Example

3. Add New Cash Codes in MCAP Collection Data System (CDS)

Any time you create a new assessment type cash code, the code also needs to be added in the MCAP - CDS in preparation for the Collections Reports due in July. Please refer to your CDS User Guide or contact SCAO Trial Court Collections by e-mail to collections@courts.mi.gov or call 517-373-4987.

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Additional Information

Current cash code **MFAT – ATTORNEY FEE** is excluded from the Fine portion of a sentencing abstract and prints in the **ATTY FEES** section of the Judgment of Sentence, Order Delaying Sentence and Assignment to Youthful Trainee Status. The same will be true for the two new cash codes **CFAT** and **PFAT** when a software update is applied in January 2019.

If you have any questions regarding the instructions in this memorandum, please contact the JIS District Court Help Desk at dcshelpdesk@courts.mi.gov or 888-339-1547, option 1.



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-0128

Milton L. Mack, Jr.
State Court Administrator

MEMORANDUM

DATE: March 27, 2019

TO: All Judges
cc: Court Administrators
Probate Registers
County Clerks

FROM: Milton L. Mack, Jr.

RE: New Account Numbers for Indigent Defense Contribution and Reimbursement

Public Act [214 of 2018](#) created a requirement for court funding units to remit 20 percent of the payments received from *partially* indigent defendants for court-appointed counsel expenses to the Department of Licensing and Regulatory Affairs (LARA). See October 31, 2018, [memo](#). **The Treasury account number for the indigent defense contribution and reimbursement is 228.71.**

Treasury has revised the Fee Transmittal for State of Michigan courts (Treasury forms [57](#) and [295](#)) and can now receive and accept indigent defense contribution and reimbursement revenue. Courts should use Treasury's revised forms at this time. On the next transmittal to the state of Michigan, please remit to Treasury the 20 percent of the payments received from partially indigent defendants for court-appointed counsel expenses using the appropriate account number noted above.

If JIS is your case management system provider, they will be providing further instructions for updating cash codes and any programming changes within the next few weeks.

If you have any questions regarding the Treasury transmittal process, please contact Charlene McLemore at mclemorec@courts.mi.gov or 313-972-3307.