



MICHIGAN INDIGENT
DEFENSE COMMISSION

Date: Tuesday, September 15, 2020, Time: 11:00 a.m.
<https://us02web.zoom.us/j/87621678263>
Meeting ID: 876 2167 8263
+19292056099,,87621678263# US (New York)

PUBLIC HEARING AGENDA

1. Roll call and opening remarks
2. Welcome by Chair
3. Committee presentation of proposed standard on indigency screening
4. Receipt of public comment
6. Adjourn meeting

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 – August 18, 2020 Meeting Minutes
6. Commission Business
 - a. Amendment to Allow for Expenditure of Fiscal Year 2020 Unexpended Funds (Action requested)
 - b. Executive Committee's Recommendation to Extend Wayne County's FY20 Planning Grant through December 31, 2020
 - c. Discussion of Proposed Indigency Screening Standard (Action requested)
7. Next meeting – **October 20, 2020**
8. Adjourn



MICHIGAN INDIGENT
DEFENSE COMMISSION

Date: September 14, 2020
To: MIDC Commissioners
From: Loren Khogali, Executive Director

Dear Commissioners:

I'm looking forward to seeing you tomorrow, September 15th at 11:00 am, to receive public comment on the proposed indigency standard. The link to participate on the Zoom meeting is in the agenda, as well as the email you received with materials. If you are not able to attend the meeting, please let me know by phone/text, (517) 275-2845 or by email at khogalil@michigan.gov.

The Zoom session tomorrow will be divided into two parts: (1) the public hearing, and (2) a brief business meeting. There is an agenda included with your materials.

Your meeting packet includes the following:

- Agenda for public hearing and business meeting;
- Minutes from August 18, 2020 meeting;
- Proposed MIDC Standard on Indigency Screening;
- Written public comment received as of September 14, 2020 at 5:00pm;
- Documents related to Executive Committee's recommendation to extend Wayne County's request to extend its FY20 planning grant through December 31, 2020;
- Proposed Amendment to Allow for Expenditure of Fiscal Year 2020 Unexpended Funds.

Executive Committee's Recommendation to Extend Wayne County FY20 Planning Grant through December 31, 2020: Wayne County submitted a request to extend its current FY20 planning grant, which will expire September 30th (the end of the FY20 fiscal year). Wayne County maintains two planning grants, one approved by the Commission in FY18¹ and a second approved by the Commission in FY20. This request to extend applies to the latter.

¹ In FY18, MIDC awarded Wayne County a \$901,371 planning grant related to lay the groundwork for its initial compliance plan. To date, payments have been made to the County as follows: Payments were made to the County as follows:

June 28, 2018 – disbursement of \$300,457

March 19, 2019 – disbursement of \$510,776.96

There are funds remaining in that grant for a research project that has not yet been implemented.

Wayne County has requested that an FY20 planning grant provided by the Commission be extended until “all funds are expended.” This is a \$401,000 grant for planning related to the FY20 plan, which is currently set to expire at the end of the FY20 fiscal year on September 30, 2020. The grant was issued to the County by MIDC in early March. The County CEO signed the grant in June. The executed grant was returned to MIDC in August.

In order to provide support for the recently hired head of the assigned counsel portion of Wayne County’s indigent defense system, the Executive Committee determined that the planning grant should be extended through December 31, 2020. This extension will provide a smooth transition and ensure accountability to the planning project funded by the grant. If by December, the funds have not been fully expended *and* there is a continued need for planning support, the Commission can may whether to extend the grant again.

The County has agreed that if the FY20 planning grant is extended, the FY21 cost analysis will not contain any costs duplicative of the FY20 planning grant.

Amendment to Allow for Expenditure of FY20 Unexpended Funds after September 30, 2020:

Last year, the Commission approved the use of an amendment to the compliance grant contracts that articulated permission for local funding units to spend unexpended current fiscal year funds past the end date of the grant contract and into the next fiscal year pending execution of a new compliance grant contract. The purpose for this amendment was to eliminate the disruption of indigent defense services due to: (1) delay in issuing grant contracts as a result of the budget being signed at the very end of the fiscal year; and (2) delay in the execution of grant contracts for systems that will not have an approved compliance plan and cost analysis prior to the end of the fiscal year or where local governance processes delay the execution of the contract. The proposed amendment is included in the materials for your review.

Please do not hesitate to call me with any questions – 517-275-2845.

Loren

The MIDC Act requires the MIDC to “promulgate objective standards for indigent criminal defense systems to determine whether a defendant is indigent or partially indigent.” MCL 780.991(3)(e). It also directs the MIDC to “promulgate objective standards for indigent criminal defense systems to determine the amount a partially indigent defendant must contribute to [their] defense.” MCL 780.991(3)(f). The United States Supreme Court has long recognized that “[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has.” *Griffin v Illinois*, 351 US 12, 19; 76 S Ct 585; 100 L Ed 891 (1956).

Accordingly, the MIDC proposes this minimum standard for making indigency determinations for those local funding units that elect to assume the responsibility of appointing counsel and for setting the amount that a partially indigent defendant must contribute to their defense.

Definitions

As used in this Standard:

“Appointing authority” means the individual or office selected by the local funding unit that determines indigency and approves requests for counsel and/or requests for experts and investigators.

“Available assets” means funds and property in which defendant has an ownership interest and ability to liquidate that are not exempt assets.

“Basic living expenses” means costs related to those needs which must be met in order to avoid serious harm in the near future. These costs include, but are not limited to, housing, food, clothing, childcare, child support, utilities, medical insurance, other necessary medical expenses, and transportation (fares, car payments, car insurance, gasoline).

“Current monthly expenses” means those costs that defendant pays on a regular monthly basis. These costs include, but are not limited to, basic living expenses, court obligations, minimum credit card payments, loan payments, tuition payments, phone, internet, and cable. If an expense is not assessed in monthly installments but should be treated as a current monthly expense because it is a regularly occurring or long-term obligation, the expense should be converted to monthly installments.

“Exempt assets” means funds and property that defendant would be able to protect from levy and sale under execution under MCL 600.6023 if they were a judgment debtor.

“Gross Income” means funds or compensation periodically received from any source during a 52-week period. Gross income includes, but is not limited to, wages, pensions, stock dividends, rents, insurance benefits, trust income, annuity payments, and public assistance.

“Indigent” means an inability to obtain competent legal representation on one’s own without substantial financial hardship to one’s self or one’s dependents.

“Local funding unit” means the governmental entity or entities listed as a grantee in the grant contract with the MIDC.

“Net income” means gross income minus those deductions required by law or as a condition of employment. These deductions include, but are not limited to, taxes, union dues, and funds withheld pursuant to a garnishment or support order.

“Partially indigent” means an inability to afford the complete cost of legal representation but an ability to contribute a monetary amount toward one’s representation.

“Prosecuting authority” means any governmental agent or entity pursuing charges against defendant.

“Public assistance” means governmental benefits or subsidies like food assistance, temporary assistance for needy families, Medicaid, disability insurance, or public housing.

“Seasonal income” means income that is earned from regularly reoccurring employment that lasts for 26 weeks or less in any 52-week period.

“Substantial financial hardship” means an inability to meet the basic living expenses of one’s self or one’s dependents.

Indigency Determination

(a) A defendant is rebuttably presumed to be indigent if defendant receives personal public assistance, earns a net income less than 140% of the federal poverty guidelines, is currently serving a sentence in a correctional institution, is less than 18 years of age, and/or is receiving residential treatment in a mental health or substance abuse facility. See MCL 780.991(3)(b).

(b) A defendant who cannot, without substantial financial hardship to themselves or to their dependents, obtain competent, qualified legal representation on their own also qualifies for appointed counsel. MCL 780.991(3)(b).

(c) Factors to be considered when determining eligibility for appointed counsel under subparagraph (b) include net income, property owned by defendant or in which they have an economic interest to the extent that it is an available asset, basic living expenses, other current monthly expenses, outstanding obligations, the number and ages of defendant’s dependents, employment and job training history, and their level of education. MCL 780.991(3)(a). In addition, the seriousness of the charges faced by defendant, whether defendant has other pending cases, whether defendant is contributing to the support and maintenance of someone other than a dependent, and local private counsel rates should also be considered. This subsection does not provide an exhaustive list of factors for the appointing authority to consider.

(d) A defendant who cannot obtain competent counsel on their own without substantial financial hardship, but who has the current or reasonably foreseeable ability to pay some defense costs, is partially indigent.

- (e) A defendant must be screened for indigency as soon as reasonably possible.
- (f) Defendants who have retained counsel or who are representing themselves can request to be screened for indigency in order to qualify for expert and investigator funding.

Household and Marital Income

The appointing authority will not presume that defendant can use household income, including income of a spouse, and joint marital assets to pay defense costs unless it has information that defendant's household income and/or joint marital assets should be considered.

Joint Bank Accounts

The appointing authority will presume that defendant owns 50% of the funds in a joint bank account. Defendant must inform the appointing authority if they own more than 50% of the funds in a joint bank account. Conversely, defendant can rebut the presumption of 50% ownership by submitting a sworn statement explaining why the presumption should not apply.

Seasonal Income

If defendant earns a seasonal income, the appointing authority should consider how defendant's expected annual income compares to the federal poverty level instead of comparing defendant's current monthly income to the federal poverty level. For example, the federal poverty level for Defendant A's household is \$4,000 per month. Defendant A earns his annual income over three summer months when Defendant A makes \$9,000 to \$10,000 per month. Even though Defendant A's current monthly income is double the federal poverty level, Defendant A should be treated as someone who only makes about 75% of the federal poverty level.

Self-Employment Income

If defendant is self-employed, the appointing authority should consider defendant's adjusted gross income. Adjusted gross income is determined by deducting business expenses and any expenses required by law from gross income. An expense is a "business expense" if it is ordinary and necessary. Expenses are ordinary if they are common and accepted in defendant's trade or business. Expenses are necessary if they are helpful and appropriate for defendant's trade or business.

Educational Grants and Scholarships

A grant or scholarship, or any part thereof, is not income unless it is provided to defendant on a periodic basis and it exceeds the tuition and boarding costs paid to an

educational provider. A grant or scholarship is an available asset to the extent that it exceeds defendant's tuition and boarding costs and is allowed to be used for non-tuition and boarding expenses by the grantor. For example, Defendant A receives a number of grants and scholarships at the beginning of the school year. Defendant A has no boarding costs and has \$1,000 in scholarship funds left over after paying tuition. Although the \$1,000 is not income, it is an available asset. Student loan proceeds, however, are not available assets.

Liquidation of Assets

The appointing authority can only consider defendant's income and available assets when deciding whether defendant has sufficient means to retain counsel. Under no circumstances can the appointing authority demand that defendant liquidate or mortgage an exempt asset.

Debts as Disqualifiers

The appointing authority cannot reject a request for counsel because defendant has a regularly recurring expense that the appointing authority deems excessive unless the appointing authority can show that the expense is unnecessary, can be easily eliminated, and the elimination of the expense would result in defendant having sufficient income to retain counsel. For example, if Defendant A has a \$150 monthly cellphone bill, Defendant B has a \$600 monthly car payment, and Defendant C has a \$1,700 mortgage, they might be eligible for appointed counsel.

Change in Financial Condition

The effect of a change in defendant's financial condition during the course of the case depends on whether the change is positive or negative for defendant.

(a) If defendant's financial condition declines during the case, defendant can request to be rescreened to see if counsel should be appointed or if the contribution amount should be reduced or eliminated. This rescreening should occur as soon as reasonably possible.

(b) If defendant's financial condition significantly improves during the course of the case, a redetermination of defendant's status as indigent/partially indigent should be made and a redetermination of defendant's contribution payments should occur. If defendant has sufficient income and/or available assets, defendant should make contribution payments equaling 100% of the costs of representation. There should never be a change of attorney by the court or appointing authority based solely on defendant's new ability to retain counsel.

(c) Defendant has an ongoing duty during the pendency of the case to report significant improvements in their financial condition to the appointing authority. The obligation to

report a change of financial condition belongs exclusively to defendant, not their attorney.

(d) The prosecuting authority lacks standing to challenge the continuation of appointed counsel due to defendant's improved financial condition.

Appointing Authority

Except as otherwise provided, a local funding unit can designate the individual(s) or entity of its choice to review applications for the appointment of counsel provided that they agree to comply with all applicable MIDC Standards and policies and they agree to take adequate measures to safeguard the sensitive nature of the information disclosed during the application process. Only a licensed attorney, however, can review requests for experts and investigators.

Managed assigned counsel coordinators and public defender offices can serve as appointing authorities. Anyone currently employed by a court funded by the local funding unit cannot serve as an appointing authority or be employed by the appointing authority to assist with their screening responsibilities.

Cost of Indigency Assessment

There is no cost for requesting an assessment for indigency. No screening costs can be passed to defendant.

Contribution

This Standard does not require local funding units to seek contribution. But if a local funding unit elects to pursue contribution in a specific case, this Standard controls, among other things, when and how much contribution can be sought.

The appointing authority cannot require an indigent defendant to contribute to the cost of their defense.

An appointing authority cannot require a partially indigent defendant to contribute to the cost of their defense if doing so would cause defendant a substantial financial hardship.

In setting the amount of contribution, the appointing authority should first subtract defendant's current monthly expenses from defendant's monthly net income. If the result is negative, the appointing authority cannot require contribution. If the result is positive, the appointing authority shall direct defendant to remit no more than 25% of the result each month. For example, Defendant A's net monthly income is \$2,000. Defendant A's

current monthly expenses are \$1,600. Defendant A should contribute \$100 per month towards Defendant A's defense costs.

The appointing authority may adjust the amount and/or timing of contribution payments as necessary to avoid causing defendant a substantial financial hardship. Under no circumstances will defendant be required to contribute more than the actual cost of defense. If defendant fails to pay any ordered contribution, the local funding unit may seek a wage assignment.

Defendant's obligation to make contribution payments ends at sentencing or when defendant's defense costs are paid—whichever is earlier. If at sentencing the sum of defendant's contribution payments are less than the cost of defendant's defense, the appointing authority can request a reimbursement order on or after defendant's sentencing. If defendant contributed more than the cost of their defense, if all charges against defendant are dismissed, or if defendant is found not guilty of all charges against them, the amount of defendant's contribution payments must be refunded to defendant. If defendant becomes indigent during the proceedings, defendant's contribution payments must be applied towards the costs of defendant's defense before they can be used to pay any assessment.

Judicial Review

(a) If defendant disagrees with the appointing authority's decision to deny defendant's request for appointed counsel, an expert, or an investigator or its decision concerning contribution, defendant can request a review of the determination by the judge assigned to defendant's case. This right of review also applies to Defendant's second or subsequent request for counsel and second or subsequent request for review of a contribution determination.

(b) Defendant can request a review by making an oral motion while on the record or by filing a Request for Review of Appointing Authority Determination form or other document seeking review with the court. The appointing authority shall provide defendant with a copy of the Request for Review of Appointing Authority Determination form with its denial of the request for appointed counsel.

(c) The prosecuting authority lacks standing to seek judicial review of the appointing authority's decision to appoint or deny counsel or the appointing authority's decision concerning contribution.

(d) Defense counsel lacks standing to seek judicial review of the appointing authority's decision to appoint counsel.

Determination of Reimbursement

The Michigan Supreme Court has determined that the U.S. Constitution does not require that defendant's foreseeable ability to pay be considered before a defendant can be directed to pay reimbursement for appointed counsel. *People v Jackson*, 483 Mich 271, 290; 769 NW2d 630 (2009). But "[t]he public would not be profited if relieved of paying costs of a particular litigation only to have imposed on it the expense of supporting the person thereby made an object of public support." *Adkins v E I DuPont de Nemours & Co*, 335 US 331, 339; 69 S Ct 85; 93 L Ed 43 (1948).

Local funding units should only seek reimbursement from defendants who have a meaningful ability to pay it. Thus, if a defendant is indigent, and is expected to remain indigent in the near future, the local funding unit should not seek any reimbursement for defense costs.

The amount of requested reimbursement cannot exceed the actual cost. Local systems with a public defender office, however, can use an average hourly cost that encompasses employee salaries, fringe benefits, and office overhead when determining attorney's fees. This average hourly cost cannot exceed the hourly rate paid to attorneys on the local system's roster of conflict attorneys for the same type of case.

The amount of a reimbursement request should not cause defendant substantial financial hardship. In deciding the amount of reimbursement to request, the local funding unit should consider defendant's current income, available assets, current monthly expenses, and dependents, as well as any reasonably anticipated changes to defendant's economic situation in the near future.

Many defendants will be unable to afford to repay their cost of defense in a lump sum payment. When that is the case, the local funding unit should suggest a payment plan based on what defendant could reasonably afford to pay towards defense costs for up to two years if defendant were convicted of a misdemeanor or up to five years if defendant were convicted of a felony. During the repayment period, the amount and/or timing of installment payments should be adjusted as necessary to avoid causing defendant a substantial financial hardship. If defendant has good cause for failing to pay the full amount of the requested defense costs by the end of the repayment period, the local funding unit should ask the court to waive the balance. Similarly, while it may be appropriate to have the probation department assist the court in collecting defense costs, it is inappropriate to make defendant's failure to pay a probation violation absent a determination that the defendant is able to comply with the order without manifest

Proposed Standard for Determining Indigency and Contribution – submit comments to LARA-MIDC-info@michigan.gov by 5 p.m. September 14, 2020

hardship and that the defendant has not made a good-faith effort to comply with the order. See MCR 6.425(E)(3)(a).

PROPOSED



COUNTY OF ST. CLAIR

Office of the Public Defender

Michael G. Boucher
Chief Public Defender
mboucher@stclaircounty.org
Phone: (810) 989-6332

Frederick J. Lepley Jr.
Chief Assistant Public Defender
flepley@stclaircounty.org
Phone: (810) 985-2333 x 6401

Sandy Shankin
Administrative Services &
Compliance Supervisor
sshankin@stclaircounty.org
Phone: (810) 985-6374

Monday, September 14, 2020

Michigan Indigent Defense Commission
200 North Washington Sq.
Lansing MI 48913

Re: Public Comment Proposed Indigency Standard

To begin, I'm grateful for the noble work of the commission. For nearly 30 years, I practiced criminal defense and observed firsthand the shortcomings in a system where defense counsel rarely if ever had a "seat at the table". In the past several years, there have been notable changes that will benefit the indigent and undoubtedly transform the delivery of criminal defense. I'm mindful however that Rome was not built in a day and it seems clear that course corrections and refinements to our services will be required in the days, months and years ahead. We must start somewhere, the Commission has done precisely that and while I appreciate the work done to date, I submit the following comment as to the Proposed Standard on Indigency:

Judicial Review of Appointment Decision

In my humble opinion, the proposed **Judicial Review** Process is fraught with potential problems. In the proposed standard, it is suggested that the Judge assigned the case be the final arbiter of whether counsel is appointed.

Our position is that Judges (many of them former prosecutors) though they may possess extensive trial experience, lack appreciation for the subtleties of defending a case. Moreover, those Judges have a limited understanding of local private counsel rates. Even in those cases where the Judge operated a defense practice, any appreciable time on the bench and away from private practice likely impairs that jurist's ability to make a reasonable assessment about prevailing market retainers for private counsel.

To compound matters, all members of the bench share a common trait inasmuch as they want their dockets to move swiftly. For that reason they tend to prefer that all Defendant's appear in court with counsel if only to expedite their dockets inasmuch as a Pro Per Defendant delays many courtroom proceedings.

It is my concern that for those reasons, Judge's will simply err on the side of appointing attorneys.

In the past, rightfully or wrongly, there existed a bulwark against the wholesale appointment of indigent counsel. Judge's, elected by taxpayers of a County and thus mindful of limitations on County/Funding Unit Finances, would scrutinize applications and in many instances deny such appointments justifying their decisions on the grounds of fiscal restraint.

302 Michigan Street
Port Huron, MI 48060

Telephone (810) 985-2333
Fax (810) 985-2308

publicdefender@stclaircounty.org

In the systems where I've served as Public Defender, I've witnessed firsthand, a paradigm shift where local courts seem to take for granted the fact that almost unlimited State resources exist for indigent defense. In my current system, Courts have abandoned attempts to assess attorney fees any longer as they assume that all funding for indigent counsel is being provided thanks to the largesse of State taxpayer dollars.

Such an approach will almost certainly inure to the detriment of those most deserving of the appointment of indigent counsel, while providing counsel to some Defendants who might otherwise have resources to retain members of the private bar.

Finally, I believe that such a provision conflicts with the spirit of Proposed Standard 5. The pertinent statute plainly states:

"The delivery of indigent criminal defense services shall be independent of the judiciary but ensure that the judges of this state are permitted and encouraged to contribute information and advice concerning that delivery of indigent criminal defense services." MCL 780.991 (1)(a).

Standard 5 provides in part:

The indigent criminal defense system ("the system") should be designed to guarantee the integrity of the relationship between lawyer and client. The system and the lawyers serving under it should be free from political and undue budgetary influence. Both should be subject to judicial supervision only in the same manner and to the same extent as retained counsel or the prosecution. The selection of lawyers and the payment for their services shall not be made by the judiciary or employees reporting to the judiciary. Similarly, the selection and approval of, and payment for, other expenses necessary for providing effective assistance of defense counsel shall not be made by the judiciary or employees reporting to the judiciary.

It appears that under section B. of the proposed Standard 5, the language contained in same conflicts with the underlined language above as it provides as follows:

B. *The court's role shall be limited to: informing defendants of right to counsel; making a determination of indigency and entitlement to appointment; and, if deemed eligible for counsel and absent a valid waiver, referring the defendant to the appropriate agency.*

When the Commission considers Standard 5, we will object to the adoption of subsection B of the Standard for the reasons set forth herein as we believe "independence" means precisely that.

The statute provides that a trial court **may** play a role in determinations of indigency. The final sentence of subsection (3) acknowledges that a court has the ability to make a determination of indigency consistent with Article VI of the State Constitution, however, we urge the commission "build" a mechanism to insure independence from the Judiciary to whatever extent practical.

The Court's before whom we appear should not be permitted to make decisions that impact the budget of a Public Defender or Managed Assigned Counsel system. The standard reflects the fact that a Court can't mandate that retained counsel accept a case (invariably impacting the private attorney's budget) and thus should not make comparable decisions regarding indigent defense system's budget. The proposed Judicial Review provisions would do exactly that.

If there is to be independence from the Judiciary, now or at any time in the future, this is a prime example of a circumstance where the Public Defender or Assigned Counsel Administrator should make these decisions.

At present, our appeal process occurs when our compliance analyst reviews the form. If an assessment is made by the analyst that the Defendant is not indigent, the form setting forth income and expenses is presented to the Chief Public Defender or the Chief Assistant Public Defender who makes a final determination.

It is important to note here that rejection of cases based on the information we screen is rare.

In fact, the number of cases rejected thus far of all the applications submitted to this office are so few as to be statistically insignificant.

The philosophy that this system (and I'll presume other systems) adopts is that where there is a close call, an attorney should be appointed.

Income/Asset Review and Qualifying Clients and the Potential Strain on Finite Resources

The indigency standard further raises questions regarding confirmation of client finances, asset value and the like. At arraignment, the client won't have documentation to confirm bank account value, they won't be in a position to provide deeds to real property, State Equalized Value Statements, or paystubs or tax information to provide confirmation as to income or value or ownership interest in real estate, bank accounts or other assets.

In those instances that analysis will have to occur at some later date.

At the moment, our process at arraignment requires that our attorneys complete a detailed form.

In July 2020, we began to conduct a time study with our staff attorneys to better assess the time resources expended with each arraignment.

The completion of the form, interview of the client regarding pending charges, reviewing the advice of rights form with the client and conducting the actual hearing is averaging 29.07 minutes per arraignment. The initial income/expense /asset screening process is a tool we utilize in order to make an expeditious assessment as to whether the client meets minimum requirements to qualify for our services.

As we are required to conduct a more formalized "audit" of the client's finances, the manpower and resources required to conduct this screening will undoubtedly increase substantially. Representing persons who lack resources to retain counsel is an honor and privilege. However, fewer of those persons who demonstrably require our help will receive that assistance if our resources are further depleted if we are required to demand the client produce those critical financial documents. Moreover, we will be unable to make a final determination as to whether appointment of indigent counsel is appropriate unless and until the client produces supporting data as to income, expenses and assets. Again, a situation that will inure to the detriment of the client.

In our system, we do the appointments for both the Public Defender's office and for roster attorney's that take our overflow and conflict work. In many instances a case can

be arraigned one week and the client is due in Court the following week for a Probable Cause Conference (PCC).

Time is of the essence in making an appointment.

It's noteworthy to observe here that pursuant to Court Rule, the Prosecution may, in some cases proceed to Preliminary Examination at the PCC. If the client is dilatory in producing supporting income documentation, and Public Defenders or Managed Assigned Counsel Administrators are unable (based on that delay) to make an appointment, assign an attorney, give said attorney time to meet with the client, the result seems obvious. The client faces a very real risk of appearing at a critical stage in the proceedings without representation. Thus creating a circumstance that will frustrate Judge's, many of whom are dubious about the change in the delivery of indigent services.

If, on the other hand, we appoint an attorney without scrutinizing the income of a Defendant who possessed resources to retain an attorney, we do harm to those we are intended to serve. Either by depleting resources intended for the truly indigent, or spreading staff counsel too thin to the point that quality representation is sacrificed. Of course, once we've filed an appearance, we can't back out at that point.

Our position is that significant refinements need to be considered as to the examination of income, expenses, assets for purposes of assessing whether the appointment of counsel is appropriate.

Instead, the office should either appoint a screening analyst to implement procedures designed to take the proposed standards into consideration for purposes of appointing counsel.

In the event that there's a rejection and it's appealed, the Office can designate a person or persons to consider the appeal and make the final determination quickly, cost effectively and without the need to schedule a hearing before the Court.

Reimbursement Issues

As with income review issues, reimbursement poses a host of potential problems that will require refinement.

As indicated herein, Courts aren't making any effort to collect costs from Defendants with the advent of State Funding. For Courts to make assessments at the conclusion of criminal litigation will require another assessment inasmuch as such litigation can take many months before resolution.

The proposed standard discusses a proposal by the funding unit as to what a Defendant could reasonably afford to pay. This would appear to require yet another financial assessment based on the clients financial circumstances at the time of case resolution. Such an assessment will require the dedication of Public Defender office time and resources.

To further compound those perceived difficulties, the reimbursement provisions would suggest that the amount or timing of repayment should be adjusted "as necessary" to avoid "substantial financial hardship" to the Defendant.

Based on the proposed standard, it is conceivable that periodic adjustments could be required over a five year period on felonies and a two year period for misdemeanors.

Certainly such a proposal, assuring that payments to our clients remain manageable over the term of the repayment period, is a noble one. Nonetheless, it will require substantial resources to field inquiries from clients seeking to reduce said payments, review by additional staff (will an internal finance department be required) and time expended by staff attorneys drafting motions to modify those repayment terms.

It is my sincerest hope that these observations are received in the spirit in which they were intended, that is, to assure representation to those in need while conserving resources for the defenders in all funding units.

Kind Regards

/s/ Michael G. Boucher

Michael G. Boucher
Chief Public Defender
County of St. Clair

From: jfrance@chippewacountymi.gov
To: [LARA-MIDC-Info](#)
Subject: Standard 5 and the Indigency Standard
Date: Monday, September 14, 2020 9:09:36 AM

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

Indigency Standard: THANK YOU! It is very important to our area that we have this finalized. There have been challenges to who qualifies. The standard as it is laid out appears to follow case law and common sense. I ask that it be approved immediately.

Standard 5:

I believe it should be made extremely clear that the judge can only make a recommendation. I would strongly suggest that it also says all appointments shall be done through the grant manager or assigned counsel system manager.

Jennifer J France
Chief Public Defender
Chippewa County
325 Court Street Suite 201
Sault Ste Marie MI 49783
906-635-6860 office
906-635-6864 fax

Jennifer J France
Chief Public Defender
Chippewa County Public Defender Office
325 Court Street Suite 201
Sault Ste Marie MI 49783
906-635-6860 office
906-635-6864 fax

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From: [JACQUELINE GEORGE](#)
To: [LARA-MIDC-Info](#)
Subject: Collections
Date: Friday, August 21, 2020 1:23:12 PM

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I think it's a conflict of interest defending our client and trying to gather information for the county to collect. We are not in the business of collections. What about Attorney client privilege?

Sent from my iPhone

From: [Robert Hamilton](#)
To: [Marla McCowan](#)
Cc: [Prentice-Sao, Susan \(LARA\)](#)
Subject: Indigency Screening
Date: Wednesday, September 2, 2020 2:24:56 PM

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Dear MIDC commissioners and staff,

Thank you for the opportunity to comment on the proposed indigency determination standard.

Ottawa County has traditionally been speedy with arraignments and generous with requests for appointment of counsel at arraignment and liberal in setting bonds. The generosity in appointments is typically accounted for at sentencing when determining reimbursement for attorney fees.

The overriding concern of the Ottawa County Office of the Public Defender is that the proposed indigency determination process tries to standardize a dynamic process across all funding units and does not account for local economies, customs and control. It seemingly creates complicated process which will result in taking valuable resources away from the core mission of the MIDC. A framework of general guidelines with built in flexibility and a defined end goal would be preferred. More specifically our concerns are as follows:

Delay of initial arraignment

Judges in Ottawa County make a concerted effort to arraign incarcerated individuals and appoint counsel the day of arrest. Excessive bonds are not typically an issue. Standard 4, CAFA, has complicated that process, but the OPD has nimbly stepped in to minimize any delay. Adding another level of administration into the appointment process is likely to delay the arraignments and keep clients in jail a day longer.

As a practical matter, citizens who appear at court for arraignment will see a lengthy indigency assessment and will be inclined to forego attorney assistance. This would be a shame because we typically offer meaningful assistance to citizens who appear for arraignment. Defendants see us working our cases and are encouraged to ask for court appointed counsel because they know they will get assistance in real time.

Ottawa County conducts pretrials immediately following arraignment, whenever possible, in order to resolve misdemeanor traffic offenses and other appropriate types of cases without the defendant having to come back to court on a later date. The time crunch created by the new indigency determination procedure might cause our courts to discontinue the practice of instant pretrials altogether which will cause additional cost and delay for citizens we serve.

In order to accommodate the proposed standard, the courts and the citizens appearing for initial arraignment, we may have to assign additional attorneys to arraignment duty to assist with the new indigency determination procedure. Dedicating more attorney time to administration of appointments rather than the practice of law on behalf of the citizens we serve will hamper our service and result in job dissatisfaction for our attorneys.

Delay of appointment.

Our judges typically appoint counsel at arraignment which triggers the Standard 2 requirement of a jail visit within three days. A financial review process to determine indigency/partial indigency before appointment will cause a delay in appointment and therefore a delay in getting attorneys to jail within three days. This will delay potential bond motions. The delay is especially critical on felonies where PCC conferences will be scheduled based on arraignment date and will reduce the time between the attorney client conference and PCC.

Currently, we routinely see clients within the first day or two which sets a positive tone for our representation. We risk citizens observing our arraignment process with the new indigency determination procedure and thinking we are “the stereotypical” public defender with too many cases and too little time to dedicate to them.

Cost of indigency determination process.

The process as outlined will take a substantial amount of time to administer. Our office was appointed on 4139 cases in 2019, a partial year. Assuming an average of 15 minutes per case the process creates an additional 1,035 hours of work. This does not include the defendants who were denied an attorney. Currently, we do not have the administrative support to absorb 1,035 additional hours of work while continuing to provide excellent service to our clients. The mission of the MIDC is to elevate and improve indigent defense services. This will not be accomplished through bureaucratic procedure which ignores local control in areas that are already performing well.

Confusion regarding appointing authority role in process.

The courts are in the best position to make the determination of indigency on a timely basis. The proposal combines indigency determination with approval of requests for counsel. In Ottawa County, all indigency cases are assigned to our office and we make the assignment to a staff attorney or a conflict attorney. Will the court still be able to assign the case to our office?

Putting the Office of the Public Defender in the role of determining indigency/partial indigency and monitoring financial changes in indigency creates an inherent conflict. When caseloads are high do indigency standards become stricter.

Inserting PD offices into the process will create distrust of clients towards the office and our attorneys. We are already viewed as only being in it only for the money and not caring about our clients because we are county employees and not “real” attorneys. Adding financial review as an element of our representation will only serve to increase that perception.

A fiscal services position could be created to do the review but this will only further delay matters.

Specific concerns

“Basic living expenses” should include “Current monthly expenses.” The listed monthly expenses create much financial pressure on our clients. They can result in zealous collection activities, lawsuits, garnishments and levy and execution. Financial stressors contribute to our client’s inability to meet bond requirements along with myriad other problems associated with addictions and dependency. In order to holistically help our clients all of these expenses need to be considered in determining indigency.

“Exempt assets” should also include the U.S. Bankruptcy Code exemptions found at 11USC 522(b) which are more generous in some ways than the Michigan exemptions which are antiquated, although chickens are making in comeback in my neighborhood.

There may be collateral consequences to collecting an increased amount of financial information. Impertinent parties could seek financial information about a defendant to be used in other adversarial matters. Defendants will be reluctant to seek appointed counsel out of fear of collateral consequences.

If the new indigency determination standards are implemented, a new court rule or other provision must be codified to protect the information. Otherwise criminal files may be raided for financial information provided by a defendant. This would put indigent defendants at a disadvantage not experienced by defendants with means to retain counsel.

Thank you for your consideration of our concerns.

Bob Hamilton

Robert C Hamilton

Public Defender
Ottawa County Office of the Public Defender
12185 James Street, Suite 170
Holland, MI 49424
616-393-4472 (phone)
616-355-3535 (fax)

rhilton@miottawa.org | www.miOttawa.org

Robert C Hamilton

Public Defender
Ottawa County Office of the Public Defender

From: thausmann@isabellacounty.org
To: [LARA-MIDC-Info](#)
Subject: Proposed Standard 5 Public Comment
Date: Monday, September 14, 2020 11:29:03 AM

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I would concur with my fellow Defenders regarding Reimbursement and Determination of Reimbursement. Presently, most courts charge a flat fee to contribute towards the costs of a court appointed attorney. This routinely varies from county to county, funding unit to funding unit.

The language in the Proposed Standard indicates it would be up to the local funding unit to establish a payment plan with past Defendants. The time frame allowable for this endeavor is the maximum allowable for a probationary term set by the court. It then indicates that the local funding unit should ask the court to waive the balance for good cause if Defendant fails to pay during the repayment period. This seems to contradict the heart of the standard being independence from the judiciary. It will undoubtedly force local funding units to become bill collectors. The language allows local funding units to use the assistance of the probation department in collecting these fees.

Frequently, Defendants are seen by the local funding units repeatedly. Sometimes while they would still be under a collections plan, this could seriously impact the Attorney-Client relationship on current and future cases and moves the public defender office more towards a private practitioner model.

Thomas Joseph Hausmann P74762
Isabella County Public Defender
2885 Health Parkway
Mount Pleasant, Michigan 48858
Phone: (989) 317-9393
Fax: (989) 317-9394

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From: [Amanda L. Morse](#)
To: [LARA-MIDC-Info](#)
Subject: MIDC Minimum Standard
Date: Tuesday, September 8, 2020 5:47:56 PM
Attachments: [Outlook-Kalamazoo D.png](#)

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Good evening –

Kalamazoo County has received the proposed indigency standards and provides the following comment particularly around partial indigency.

1. Cannot happen at arraignment:
 - Attorneys lack the time and ability to make fine distinctions in income that respect due process and treat each defendant with the same process.
 - Even if it were possible to obtain accurate and complete information sufficient to make such a determination (indigency vs. partial indigency), facts change quickly, often due to the arrest and charge (jobs lost, housing lost, etc.), making such a determination premature.
2. Conflict of interest for non-profit public defender to make determination:
 - Once past arraignment, and an individual is assigned to a public defender office, it is a conflict of interest for that office to advocate for higher fees in court.
3. Diversion of resources:
 - In order to create a process that is constitutionally defensible, a public defender would have to run a financial analysis on anyone not receiving public subsidies (automatically indigent). Such defendants would have to be tagged differently in a database and all interviewed and examined for assets and income, however long or short their service. This would require a dedicated position which would surely exceed the income generated from such a program.
 - This could become even more challenging as such a financial review would also have to factor in the length of service, so someone who takes a plea a week after arraignment isn't charged the same as someone who goes to trial, or generates investigation expenses, all of which seriously complicate this process.

Joshua C. Hilgart
Executive Director | He/Him/His

151 South Rose Street | Suite 300 | Kalamazoo, Michigan 49007

JHilgart@KalamazooDefender.org



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From: [Smithson, Nicole \(LARA\)](#)
To: [McCowan, Marla \(LARA\)](#)
Subject: Public Comment from John Nizol
Date: Monday, September 14, 2020 4:59:26 PM
Attachments: [image002.png](#)
[image002.png](#)

From: John Nizol <John.Nizol@macombgov.org>
Sent: Monday, September 14, 2020 4:46 PM
To: Smithson, Nicole (LARA) <SmithsonN@michigan.gov>
Subject: Re: Zoom Info

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Thanks, Nicole. Here are my comments:

(1) I understand the intent behind this standard is to ensure the provision of counsel in systems which are resistant to doing so. I believe, however, that this may have the unintentional effect of limiting provision of counsel in systems where counsel is provided as a matter of course for all who request it. I strongly believe that erring on the side of caution and appointing whenever requested is a much better approach (especially when dealing with a large volume of cases) than expending significant resources attempting to analyze each defendant's financial situation in an effort to exclude a small number of people from receiving court-appointed counsel because of their resources. In other words, I would much rather run the risk of appointing for a few people who could pay for their own attorney than risk violating *Gideon* and depriving someone of counsel because of a too searching inquiry into their finances. I think a comment to the standards would probably be sufficient to avoid any confusion here.

(2) It appears that these standards are not intended to have any impact on judges' reimbursement orders at sentencing. Once sentencing has occurred, I believe this standard is completely inapplicable. But I think this bears emphasizing, since there is no ability for a Court to sua sponte conduct rolling reassessments of indigency during the course of subsequent collections efforts.

John Nizol
Deputy Court Administrator
Sixteenth Judicial Circuit Court
40 N. Main
Mount Clemens, MI 48043
Phone: 586-469-5076

On Mon, Sep 14, 2020 at 4:38 PM Smithson, Nicole (LARA) <SmithsonN@michigan.gov> wrote:

Hi John:

Here is the Zoom info for the meeting tomorrow.

Nicole

Topic: MIDC Public Hearing

Time: Sep 15, 2020 11:00 AM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/87621678263>

Meeting ID: 876 2167 8263

One tap mobile

+13126266799,,87621678263# US (Chicago)

+19292056099,,87621678263# US (New York)



Nicole M. Smithson

Regional Manager at Michigan Indigent
Defense Commission

Email: smithsonn@michigan.gov

Phone: (586) 638-6546

200 N. Washington Square, Lansing,
Michigan 48913

www.michiganidc.gov

September 11, 2020

Michigan Indigent Defense Commission
200 N. Washington Square, 3rd Floor
Lansing, MI 48913

RE: Proposed Standard for Determining Indigency and Contribution

Members of the Commission:

The State Bar of Michigan has advocated for improvements to Michigan's public defense delivery system for decades, and supports the Proposed Standard for Determining Indigency and Contribution with the following two amendments offered by the Bar's Access to Justice Policy Committee and Criminal Jurisprudence and Practice Committee:

- The federal poverty guidelines listed in Indigency Determination (a) should be changed from 140% to 200% of the federal poverty guidelines. The change would make Michigan Indigent Defense Commission (MIDC) indigency determinations consistent with the income eligibility guidelines utilized by the Legal Services Corporation (LSC) for the provision of civil legal services. Furthermore, the 200% federal poverty guideline benchmark is a more realistic and accurate measure of indigency which, if implemented, would help ensure defendants who cannot afford legal defense qualify for it under the MIDC.
- Indigency Determination (f) should be expanded as follows:
 - (f) Defendants who have retained counsel or who are representing themselves can request to be screened for indigency in order to qualify for expert and investigator funding, transcripts, and other case-related expenses.

Thank you for the opportunity to comment. The proposed standard with the above amendments will help advance the goal of effective representation for all criminal defendants.

Sincerely,



Janet K. Welch
Executive Director

CC: Dennis M. Barnes, President

From: [Chris Vreeland](#)
To: [LARA-MIDC-Info](#)
Subject: Public Comment on Minimum Standard for Indigency
Date: Monday, August 10, 2020 11:41:01 AM

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In order to avoid punishing people for working, I would respectfully request that consideration be given to increasing the standard from 140% of the Federal Poverty Guidelines up to 200%. People with income at or above 200% of federal poverty guidelines can most likely afford an attorney, but most everyone above 140% and below 200% of federal poverty guidelines will go without representation because of a lack of money.

Thank you.

Christopher B. Vreeland

Branch County
Deputy Chief Public Defender
61 East Chicago Street
Coldwater, Michigan 49036

517-279-4338

cvreeland@countyofbranch.com

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Warren C. Evans
County Executive

September 14, 2020

Michigan Indigent Defense Commission
200 N. Washington Square, 3rd Floor
Lansing, MI 48913

RE: Proposed Standard for Determining Indigency

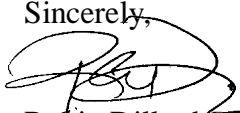
Dear Honorable Commissioners:

The new Office of Public Defense Services (OPDS) in Wayne County would like to express the below concerns with the proposed indigency standard.

The OPDS is transitioning the indigent defense system and its components from the 3rd Circuit Court. This is a huge undertaking, as the 3rd Circuit handles well over 15,000 assignments of counsel in felony cases. OPDS' concern is the cost and the procedure that will have to be implemented to meet this proposed standard. In envisioning a process for the collection of information that will help OPDS determine indigency, we have concluded that dedicated staff will have to be present at all district courts in Wayne County to facilitate meeting with clients and collecting their information. Assigned counsel should not be the collectors of such information as it will create distrust between the attorney and the client.

Therefore additional positions will have to be added to the OPDS office staff, and the OPDS FY21 Budget has not yet been approved. We are fearful that if we present these positions in a FY22 budget, we will be met with pushback. It is possible that each district court in Wayne County can get funding for a dedicated person for the position, but OPDS will then have to coordinate a streamlined process for getting the client's information back to the OPDS office for timely appointment. This will still require additional staff for the coordination. The proposed standard presents yet another area in the many of unique challenges that the OPDS may have in the future. We remain, however, dedicated to establishing the best indigent defense system. Thank you in advance for the opportunity to present comment.

Sincerely,



Robin Dillard-Russaw
Director, OPDS

From: [Wirth, David](#)
To: [LARA-MIDC-Info](#)
Cc: [Voet, Judge](#); [Walter J. Downes](#)
Subject: Proposed Indigency Standard
Date: Wednesday, September 2, 2020 10:54:39 AM

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Good morning,

I recently read through the Proposed Indigency Standard and I'm confused by the reading of the second sentence in the second paragraph under the "Appointing Authority" header. Are they suggesting that a Court employee such as a magistrate cannot serve as the Appointing Authority?

Dave Wirth, Magistrate
64-A District Court

Michigan Indigent Defense Commission Meeting Minutes

The meeting was held electronically via Zoom.

The notice included information for members of the public on how to participate.

August 18, 2020

Time: 9:00 am

Commission Members Participating

Michael Puerner, Chair, Joshua Blanchard (joined at 9:14 am), Tracy Brame, Kimberly Buddin, Judge Jeffrey Collins, Nathaniel Crampton, Andrew DeLeeuw, Judge James Fisher, Christine Green, Joseph Haveman (joined at 9:14 am), David Jones, James Krizan, Cami Pendell (non-voting member), Judge Kristina Robinson Garrett (joined at 10:25 am), John Shea, William Swor, Gary Walker

Commission Members Absent:

Margaret McAvoy and Tom McMillin

Staff Members Participating

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

Chair Puerner called the Michigan Indigent Defense Commission (“MIDC” or “the Commission”) meeting to order at 9:05 am.

Introduction of Commission members and guests

Chair Puerner welcomed attendees to the meeting.

Public Comment

Melanie Young offered commends on behalf of Monroe County.

Kareem Johnson offered comments on behalf of Jackson County.

Approval of the Agenda

There were no additions to the agenda. Judge Fisher moved that the agenda be adopted as presented, Commissioner Swor seconded. The motion carried.

Consent Agenda

Judge Collins moved that the consent agenda containing the minutes from the Commission’s June meeting be approved, Commissioner Walker seconded. The motion carried.

Chair Report

Chair Puerner thanked MIDC staff members for their hard work in the face of the challenges that have been presented over the last several months. He provided an overview of the materials distributed electronically to Commissioners. He recognized Commissioner Brame and Judge Fisher for awards that they are receiving. Commissioner Brame was recently named Lawyers Weekly

Lawyer of the Year. Judge Fisher is receiving the State Bar of Michigan's Champion of Justice Award.

Executive Director Report

Ms. Khogali provided an overview of her written report given to members prior to the meeting.

The Commission's indigency screening standard has been published and the MIDC is accepting public comments through September 14. A public hearing will be scheduled in mid-September on the proposed standard.

Commission Business

FY21 Legislative/Appropriations Update

Ms. Westrate provided an update about the status of the Commission's FY21 appropriations. She will update the Commission as the process continues.

Byrne JAG Grant

Ms. Khogali and Ms. McCowan provided an overview of the proposed Byrne JAG grant application for FY21. The Commission has received the grant for FY19 and FY20.

Commissioner Shea moved that the Commission authorize staff to apply for up to \$250,000 in Byrne JAG grant funding to support skills training for indigent defense attorneys in Michigan. Commissioner Buddin seconded. The motion carried. Commissioner Blanchard abstained from the vote because of a potential conflict of interest.

FY21 Proposed Budget

Ms. Khogali provided a draft FY21 budget for the Commission's review. The Commission's Internal Operating Procedures require it to approve a budget no later than August for the fiscal year starting the following October 1. Since the FY21 budget has not been finalized, it is unclear what the amount will be. Ms. Khogali's draft is based on the Executive Recommendation presented by Governor Whitmer earlier this year.

Commissioner Shea moved to approve the FY21 proposed budget. Judge Collins seconded. The motion carried.

FY21 Compliance Planning Process

Judge Collins provided an overview of the Compliance Planning Committee's activities. The committee reviewed a document drafted by MIDC staff to guide the Commission in making decisions regarding the to be determined FY21 budget for compliance grants and recommends that the Commission adopt the document.

Judge Fisher moved that the Commission adopt the document presented by the committee to guide the Commission in making decisions in the case that there is a shortfall in the FY21 appropriation for compliance grants. Commissioner Krizan seconded the motion. The motion carried.

The Commission returned to public comment.

Lillian Diallo provided comment on behalf of the Wayne County Criminal Defense Bar Association.

Compliance Plan Assessment Tool

Dr. Siegel provided an updated assessment tool for the Commission's review and to assist in its evaluation of compliance plans. The tool is another way to compare compliance plans and costs between systems. Commissioners discussed the numbers, how they were calculated and provided comments.

The Commission returned to public comment.

Sam Churikian provided comments as a member of Wayne County's private defense bar.

FY20 Compliance Updates

Plan Changes

Ms. McCowan provided an overview of the changes requested by Crawford County. The county would like to have the court administrator take over the MIDC administrative responsibilities for the grant; these duties were previously handled by the magistrate. This change will not result in a substantive change to the approved cost analysis. MIDC staff recommends approval of the change.

Commissioner Swor moved that the staff recommendation be adopted and that Crawford County's plan change be approved. Judge Fisher seconded. The motion carried.

Ms. Mack approved the following budget adjustment requests; these did not impact the total system costs and do not require Commission approval:

- 36th District Court – City of Detroit
- 37th District Court – Warren/Centerline
- Lenawee County
- Jackson County
- Saginaw County

Ms. Mack partially approved Wayne County's budget request. The training and travel portion requires correction of documentation but is otherwise granted, the Sheriff Department benefits reimbursement is denied and the jail/deputy expenses were denied.

The Commission recessed for 15 minutes.

Upon resuming the meeting, Chair Puerner requested a second roll call vote to confirm that a quorum was still present. Ms. Westrate called the roll, a quorum was present.

Ms. McCowan provided a summary of the review done by MIDCs committees. All committees met on August 11 via Zoom.

The System Change Committee chaired by Gary Walker reviewed the following plans (listed by MIDC regions):

Western Michigan

- | | |
|-----------------------------------|----------------------|
| • Calhoun County | • 62A District Court |
| • 61 st District Court | • Muskegon |

- Ottawa

Northern Michigan

- Iron
- Menominee
- Presque Isle

Mid-Michigan

- Alpena/Montmorency
- Saginaw

Lapeer, Macomb, Oakland, St. Clair

- 41A-2 District Court – Shelby Twp.
- 41B District Court - Clinton Township

South Central Michigan

- Eaton County
- Genesee County
- Washtenaw County

The Increase to Direct Costs Committee, Commissioner Swor Chair, met and discussed the following plans (listed by MIDC region):

Western Michigan

- | | |
|-------------|---|
| • Branch | • Grandville, Kentwood, Walker, & Wyoming |
| • Calhoun | • Montcalm |
| • Cass | • Muskegon |
| • Ionia | • St Joseph |
| • Kalamazoo | |
| • Kent | |

Northern Michigan

- | | |
|----------------------------|-------------------------|
| • Baraga/Houghton/Keweenaw | • Grand Traverse County |
| • Crawford County | • Marquette |
| • Delta County | |

Wayne County

- | | |
|---|---|
| • 16 th District Court – Livonia | • 32A District Court – Harper Woods |
| • 17 th District Court – Redford | • 33 rd District Court – Woodhaven |
| • 21 st District Court – Garden City | • 34 th District Court – Romulus |
| • 23 rd District Court – Taylor | • Grosse Pointe Farms/Shores |
| • 29 th District Court – City of Wayne | • 3rd Circuit, Wayne County |

Mid-Michigan

- Huron County
- Iosco County
- Ogemaw County
- Osceola County
- Tuscola County

Lapeer, Macomb, Oakland and St. Clair

- 37th District Court - Warren
- 40th District Court - St. Clair Shores
- 41B District Court - Clinton Township
- 46th District Court – Southfield
- Lapeer County
- Macomb County
- Oakland County
- St. Clair County

South Central Michigan

- Clinton County
- Eaton County
- Genesee County
- Gratiot County
- Ingham County
- Jackson County
- Lenawee County
- Monroe County
- Washtenaw County

The General Increase to Plan Committee, chaired by Commissioner Green, considered the following plans (organized by MIDC region):

Western Michigan

- Calhoun County
- Ionia County
- Kalamazoo County
- Kent County
- Grandville, Kentwood, Walker, & Wyoming
- Montcalm County
- Muskegon County
- St Joseph County

Northern Michigan

- Cheboygan County
- Crawford County
- Wexford/Missaukee Counties

Mid-Michigan

- Oceana County

Wayne County

- 21st District Court – Garden City
- 23rd District Court – Taylor
- 25th District Court – Lincoln Park
- 36th District Court – Detroit
- Grosse Pointe Farms/Shores
- 3rd Circuit, Wayne County

Lapeer, Macomb, Oakland, St. Clair

- 40th District Court - St. Clair Shores
- 43-3 District Court - Madison Heights
- 46th District Court - Southfield
- Lapeer County
- Macomb County
- Oakland County
- St. Clair County

South Central MI

- Eaton County
- Genesee County
- Ingham County
- Jackson County
- Lenawee County
- Livingston County
- Monroe County
- Shiawassee County
- Washtenaw County

No submission to review

The following three systems did not submit final documents for the Commission and staff to review:

- 20th District Court – Dearborn Heights
- 30th District Court – Highland Park
- 43-1 District Court – Hazel Park

MIDC staff recommends that the failure to submit a plan and/or cost analysis be treated a rejection.

Commissioner Swor moved that the staff recommendation to treat the failure to submit a plan and/or cost analysis as a rejection of the plan and rejection of the cost analysis be adopted. Commissioner Walker seconded. The motion carried.

Rejection of submission

MIDC staff recommends that the plans and cost analyses for the following plans be rejected:

- 22nd District Court - Inkster
- 27th District Court - Wyandotte
- Grosse Pointe Woods
- 37th District Court – Warren/Centerline
- 38th District Court - Eastpointe
- 46th District Court – Southfield
- Allegan/Van Buren Counties
- Calhoun County
- 61st District Court – Grand Rapids
- 62a District Court – Wyoming (59-1, 59-2, 62b District Courts)
- Kent County (17th Circuit and 63rd District Courts)
- Muskegon County
- Midland County

Commissioner Krizan moved that the staff recommendation be adopted and that the Commission reject the plans and reject the cost analyses for the systems listed above. Judge Collins seconded. The motion carried.

Approve plan, reject cost analysis

MIDC staff recommends that the plans for the following systems be approved and the corresponding cost analyses be rejected:

- Alger County
- 43-3 District Court - Madison Heights
- 51st District Court - Waterford
- Lapeer County
- Ionia County
- Kalamazoo County
- 17th District Court - Redford
- 25th District Court – Lincoln Park
- 34th District Court - Romulus
- Wayne County (Circuit only)
- Alpena County
- Montmorency County
- Iosco County
- Jackson County
- Monroe County
- Washtenaw County (all)

The Commission returned to public comment. Drew Van de Grift offered public comment on behalf of Wayne County.

Commissioner Walker moved that the staff recommendation be adopted and that the plans for the systems listed above be approved and the cost analyses be rejected. Commissioner Green seconded the motion. The motion carried. Commissioner DeLeeuw abstained from the vote with respect to Washtenaw County because of his employment with that county.

Approve plan, approve cost analysis

Ms. McCowan provided an overview of the plans that are recommended to have both the plan and cost analysis approved.

The following plans have no change to the plan from the previous fiscal year and no increase in the cost analysis:

- 19th District Court - Dearborn
- 33rd District Court - Trenton
- 35th District Court - Plymouth
- 39th District Court - Roseville/Fraser
- 41-a-1 District Court - Sterling Heights
- 43-2 District Court - Ferndale
- 44th District Court - Royal Oak
- 45th District Court - Oak Park
- Mackinac County
- Berrien County
- Branch County
- Livingston County
- Shiawassee County
- Alcona County
- Arenac County
- Isabella County
- Oscoda County
- Sanilac County
- Clare/Gladwin Counties

- Lake County
- Mason County
- Newaygo County
- Oceana County

The Commission returned to public comment. Marianne Talon offered public comment on behalf of Wayne County.

The following systems did not request any change to their current plans and the only increase in the cost analyses were for cost of living adjustments:

- Bay County
- Dickinson County
- Charlevoix County
- Leelanau County
- Schoolcraft County

The following systems did not request any change to the current plans and had minor increases (less than 5%) to their cost analyses based on demonstrated need and/or standards implementation:

- Cass County
- Cheboygan County
- Wexford-Missaukee Counties
- 29th District Court – City of Wayne
- 40th District Court – St. Clair Shores
- Ogemaw County
- Tuscola County

The following systems requested changes to their compliance plans but no additional cost in their cost analyses:

- 41-a-2 District Court – Shelby Twp.
- 41-b District Court - Mt. Clemens
- Ottawa County
- Eaton County
- Saginaw County

Commissioner Swor moved that the Commission adopt the staff recommendation and approve the plan and approve the cost analysis for the 40 plans listed above. Commissioner Brame seconded. The motion carried.

Ms. McCowan provided an overview of the systems whose submissions included a change to the current plan and/or an increase to direct services greater than 5%. MIDC staff recommends approval of these plans:

- Montcalm County
- St. Joseph County
- Huron County
- Osceola County
- Baraga/Houghton/Keweenaw Counties
- Crawford County
- Delta County
- Grand Traverse County
- Iron County
- Marquette County
- Menominee County
- Presque Isle County
- Clinton County
- Gratiot County
- Genesee County
- Ingham County
- Lenawee County
- Macomb County (16th Circuit & 42 District Courts)

- St. Clair County
- Grosse Pointe Farms
- 16th District Court - Livonia
- 21st District Court - Garden City
- 23rd District Court - Taylor
- 32a District Court - Harper Woods
- 36th District Court - Detroit

The Commission recessed at 1:10 pm for 10 minutes. Commissions Crampton and Swor left the meeting during the recess. Upon resuming the meeting, Chair Puerner requested a roll call vote to confirm that a quorum was still present. Ms. Westrate called the roll, a quorum was present.

Commissioner Green moved that the staff recommendation be adopted and that the plans and cost analyses for the 25 systems listed above be approved. Judge Collins seconded. The motion carried. Judge Robinson Garrett abstained from the vote with respect to the plan for 36th District Court because she serves on that court's bench.

MIDC staff recommends conditional approval of the plan and cost analysis submitted by Oakland County. The approval would be subject to the resolution of the FY20 planning grant being executed and the corresponding amount (\$597,456.21) being removed from the FY21 cost analysis.

Commissioner Shea moved that the staff recommendation be adopted and that Oakland County's plan be conditionally approved. Judge Collins seconded the motion. The motion carried.

Planning costs

Ms. Khogali provided an overview of the planning costs requested by systems for FY 21 plans.

Commissioner Walker moved that the Commission approve planning costs submitted for fiscal year 2021 as request by funding units to date. Commissioner Krizan seconded the motion. The motion carried.

The next meeting is October 20, 2020.

Commissioner Shea moved that the meeting be adjourned. Commissioner Green seconded the motion. The motion carried. The meeting was adjourned at 1:40 pm.

Respectfully submitted,

Marcela Westrate

Wayne county's request to extend its 2020 13.2 planning grant

For MIDC consideration on 8-18-20

Wayne County requests an extension of time for its 2020 planning grant “until the funds are expended.” Work remains to be done on the grant and it will not be completed until after September 30, 2020, the grant’s current end date. Wayne County’s 2018 planning grant also was extended by the MIDC, “until the funds are expended.” Both planning grants have goals that remain viable, with work underway to achieve them.

The 2020 planning grant of \$401,692.04 to Wayne County pertains primarily to critical work to be done as functions transition from the Third Circuit Court to the County, and major compliance plan implementations occur. A combination of court and county staff are working with local planning consultants to transition Wayne County’s indigent defense system in all areas. Planning work is underway to evaluate the case assignment process, payment of vendors including assigned counsel, and evaluation of assigned counsel performance and qualifications. Consolidation of indigent defense system management within a new Wayne County Office of Public Defense Services has begun with the August hiring of its Director, who will participate in the process to hire the staff approved in the County’s 2020 compliance plan. Planners also will be working with the Center for Court Innovation, a BJA-supported group which has begun a technical assistance project working with indigent defense system stakeholders during FY 2020-2021. Due to the State-mandated shut down as a result of the COVID-19 pandemic, planning has been unexpectedly delayed, thus necessitating this extension request.

An extension of time for the 2020 planning grant is needed for the following reasons:

- First, the planning grant was approved by the MIDC in February 2020 and the COVID emergency was declared shortly thereafter. The Wayne County Commission approved the grant on May 7, 2020.
- Second, the COVID-19 emergency started in March of 2020, causing a major interruption in all governmental operations, including the indigent defense system. While planning activities on the 2020 planning grant continued, much of the planners’ time was diverted to emergency concerns.
- Third, as much of the initial COVID-19 emergency has been addressed, planning activities are increasing with the launch of Wayne County’s Office of Public Defense Services. The coming months will need the planners’ training of new staff, definition and support of new roles and responsibilities, and development of management tools during this critical juncture. Fall of 2020, including the months after the current grant end date of September 30, 2020, will be particularly busy.
- Work with the Center for Court Innovation will soon begin in earnest, requiring the participation of staff and consultants on the 2020 planning grant.

Of the 2020 planning grant, approximately \$102,106 has been spent, with approximately \$299,585.72 remaining:

Planner	Budget approved	Expenditures to 7-31-20	Budget remaining
Consultant Marianne Talon	63,577.40	-31,384	\$32,193.40
Corp Counsel Drew VandeGrift	75,992.86	-23,725	\$52,267.86
MIDC Court Coordinator*	77,166.13	0	77,166.13
Consultant Dawn VanHoek	133,333.33	-16,450	116,883.33
Assistant to Consultant	50,025	-28,950	21,075
Management & Budget	950.00	-950	0
Rich Lynch	647.00	-647	0
	401,691.72	-102,106	\$299,585.72
*funding for this position in 2021 compliance grant will be removed, upon extension of 2020 planning grant			

GRANT NO. 2020-PG00001

GRANT BETWEEN
THE STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
AND
Wayne County

GRANTEE/ADDRESS:

Warren C. Evans
County Executive for Wayne County
500 Griswold St., 31st Floor
Detroit, MI 48226
313-224-0286

GRANTOR/ADDRESS:

Michigan Indigent Defense Commission
Department of Licensing and Regulatory Affairs
200 N. Washington Square
Lansing, MI 48933
517-657-3060
866-291-0874

GRANT PERIOD:

From October 1, 2019 to September 30, 2020

TOTAL AUTHORIZED BUDGET: \$401,692.04

Federal Contribution: \$
State Contribution: \$401,692.04
Local Contribution: \$
Other Contributions: \$

ACCOUNTING DETAIL:

Accounting Template No.: 6412503T004

GRANT

This is Grant #2020-PG00001 between the Michigan Indigent Defense Commission (hereinafter "MIDC") (Grantor), and Wayne County (Grantee), subject to terms and conditions of this grant agreement (Agreement).

1.0 Statement of Purpose

Michigan Compiled Law 780.993 provides that upon approval of an estimate of compliance planning costs, the MIDC shall award the indigent criminal defense system a grant to pay the approved costs. The purpose of this Grant is to provide funding for planning costs related to the submission and implementation of Wayne County's fiscal year 2020 plan for compliance with MIDC minimum standards 1-4, which was approved by the Commission in October 2019.

1.1 Statement of Work

The Grantee agrees to undertake, perform, and complete the following project:

With respect to planning and implementation of its fiscal year 2020 plan for compliance with MIDC minimum standards, necessary Wayne County staff, along with local consultants, will consult with local county and court staff to plan for continued implementation of Wayne County's plan for compliance and to lay the ground work for future compliance plans.

1.2 Detailed Budget

- A. This Agreement does not commit the State of Michigan (State) or the Department of Licensing and Regulatory Affairs (LARA) to approve requests for additional funds at any time.
- B. Attachment A contains the detailed Budget. The Grantee agrees that all funds shown in the Budget are to be spent as detailed in the Budget.

Changes in the Budget will be allowed only upon prior review and written approval by the Grant Administrator.

1.3 Payment Schedule

The maximum amount of grant assistance offered is \$401,692.45. Michigan Compiled Law 780.993 provides that upon approval of an estimate of compliance planning costs, the MIDC shall award the indigent criminal defense system a grant to pay the approved costs. On October 15, 2019, the MIDC approved Wayne County's request for a grant based on an estimate of the cost of compliance planning related to the fiscal year 2020 compliance plan. Grantee may submit requests for reimbursement on a monthly basis as work is completed. All requests for reimbursement must indicate grant funds received to date, project expenditures to date (supported with computer printouts of accounts, general ledger sheets, balance sheets, invoices, payroll records, etc.), and objectives completed to date. Backup documentation such as

computer printouts of accounts, ledger sheets, check copies, invoices, payroll records, etc. shall be maintained for audit purposes in order to comply with this Agreement. The final request for reimbursement is contingent upon the submission of a final invoice that includes expenditures of grant funds reported by line item.

Public Act 279 of 1984 states that the State shall take all steps necessary to assure that payment for goods or services is mailed within 45 days after receipt of the goods or services, a complete invoice for goods or services, or a complete contract for goods or services, whichever is later.

1.4 Monitoring and Reporting Program Performance

- A. **Monitoring.** The Grantee shall monitor performance to assure that time schedules are being met and projected work by time period is being accomplished.
- B. **Monthly Reports.** The Grantee shall submit to the Grant Administrator **monthly** performance reports that briefly present the following information:
 - 1. Percent of completion of the project objectives. This should include a brief outline of the work accomplished during the reporting period and the work to be completed during the subsequent reporting period.
 - 2. Brief description of problems or delays, real or anticipated, which should be brought to the attention of the Grant Administrator.
 - 3. Statement concerning any significant deviation from previously agreed-upon Statement of Work.

GENERAL PROVISIONS

2.1 Project Changes

Grantee must obtain prior written approval for project changes from the Grant Administrator. **See Section 1.2, Detailed Budget.**

2.2 Delegation

Grantee may not delegate any of its obligations under the Grant without the prior written approval of the Grantor. Grantee must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Grantee must: (a) be the sole point of contact regarding all contractual project matters, including payment and charges for all Grant Activities; (b) make all payments to the subgrantee; and (c) incorporate the terms and conditions contained in this Grant in any subgrant with a subgrantee. Grantee remains responsible for the completion of the Grant Activities, compliance with the terms of this Grant, and the acts and omissions of the subgrantee. The State, in its sole discretion, may require the replacement of any subgrantee.

2.3 Project Income

All program income shall either be added to the project budget and used to further eligible program objectives or deducted from the total program budget for the purpose of determining the amount of reimbursable costs. The final determination shall be made by the Grant Administrator.

2.4 Share-in-Savings

The Grantor expects to share in any cost savings realized by the Grantee. Therefore, final Grantee reimbursement will be based on actual expenditures. Exceptions to this requirement must be approved in writing by the Grant Administrator.

2.5 Order of Spending

Unless otherwise required, Grantee shall expend funds in the following order: (1) private or local funds, (2) federal funds, and (3) state funds. Grantee is responsible for securing any required matching funds from sources other than the State.

2.6 Purchase of Equipment

The purchase of equipment not specifically listed in the Budget, Attachment A, must have prior written approval of the Grant Administrator. Equipment is defined as non-expendable personal property having a useful life of more than one year. Such equipment shall be retained by the Grantee unless otherwise specified at the time of approval.

2.7 Accounting

The Grantee shall adhere to the Generally Accepted Accounting Principles and shall maintain records which will allow, at a minimum, for the comparison of actual outlays with budgeted amounts. The Grantee's overall financial management system must ensure effective control over and accountability for all funds received. Accounting records must be supported by source documentation including, but not limited to, balance sheets, general ledgers, time sheets and invoices. The expenditure of state funds shall be reported by line item and compared to the Budget.

2.8 Records Maintenance, Inspection, Examination, and Audit

The State or its designee may audit Grantee to verify compliance with this Grant. Grantee must retain, and provide to the State or its designee upon request, all financial and accounting records related to the Grant through the term of the Grant and for four years after the latter of termination, expiration, or final payment under this Grant or any extension ("Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Grantee must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Grantee's premises or any other places where Grant Activities are being performed. The State and its authorized representatives or designees also have the right to examine, copy, and audit all records related to this Grant. Grantee must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Grant must be paid or refunded within 45 calendar days.

This Section applies to Grantee, any parent, affiliate, or subsidiary organization of Grantee, and any subgrantee that performs Grant Activities in connection with this Grant.

If the Grantee is a governmental or non-profit organization and expends the minimum level specified in OMB Uniform Guidance (\$750,000 as of December 26, 2013) or more in total federal funds in its fiscal year, then Grantee is required to submit an Audit Report to the Federal Audit Clearinghouse (FAC) as required in 200.36.

2.9 Competitive Bidding

The Grantee agrees that all procurement transactions involving the use of state funds shall be conducted in a manner that provides maximum open and free competition. When competitive selection is not feasible or practical, the Grantee agrees to obtain the written approval of the Grant Administrator before making a sole source selection. Sole source contracts should be negotiated to the extent that such negotiation is possible.

3.0 Liability

The State is not liable for any costs incurred by the Grantee before the start date or after the end date of this Agreement. Liability of the State is limited to the terms and conditions of this Agreement and the grant amount.

3.1 Intellectual Property

Grantee grants to the Grantor a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use the Deliverables and related documentation according to the terms and conditions of this Agreement. For the purposes of this license, "site-wide" includes any State of Michigan office regardless of its physical location.

The Grantor may modify the Deliverable and may combine the Deliverable with other programs or materials to form a derivative work. The Grantor will own and hold all copyright, trademarks, patent and other intellectual property rights in any derivative work, excluding any rights or interest in Deliverable other than those granted in this Agreement.

The Grantor may copy each Deliverable to multiple hard drives or networks unless otherwise agreed by the parties.

The Grantor will make and maintain no more than one archival copy of each Deliverable, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. The Grantor may also make copies of the Deliverable in the course of routine backups for the purpose of recovery of contents.

In the event that the Grantee shall, for any reason, cease to conduct business, or cease to support the Deliverable, the Grantor shall have the right to convert these licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

3.2 Safety

The Grantee and all subgrantees are responsible for ensuring that all precautions are exercised at all times for the protection of persons and property. Safety provisions of all Applicable Laws and building and construction codes shall be observed. The Grantee and every subgrantee are responsible for compliance with all federal, state, and local laws and regulations in any manner affecting the work or performance of this Agreement and shall carefully observe and comply with all rules, ordinances, and regulations at all times. The Grantee and all subgrantees shall secure all necessary certificates and permits from municipal or other public authorities as may be required in connection with the performance of this Agreement.

3.3 General Indemnification

Inasmuch as each party to this grant is a governmental entity of the State of Michigan, each party to this grant must seek its own legal representation and bear its own costs, including judgments, in any litigation which may arise from the performance of, or in connection with, this grant except as otherwise provided in this Agreement. It is specifically understood and agreed that neither party will indemnify the other party in such litigation.

3.4 Termination

A. Termination for Cause

The State may terminate this Grant for cause, in whole or in part, if Grantee, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, files a bankruptcy petition, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Grant will not be construed to mean that other breaches are not material.

If the State terminates this Grant under this Section, the State will issue a termination notice specifying whether Grantee must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Grantee was not in breach of the Grant, the termination will be

deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Subsection B, Termination for Convenience.

The State will only pay for amounts due to Grantee for Grant Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Grantee for the State's reasonable costs in terminating this Grant. The Grantee must pay all reasonable costs incurred by the State in terminating this Grant for cause, including administrative costs, attorney's fees, court costs, transition costs, and any costs the State incurs to procure the Grant Activities from other sources.

B. Termination for Convenience

The State may immediately terminate this Grant in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. If the State terminates this Grant for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Grant Responsibilities.

3.5 Conflicts and Ethics

Grantee will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Grant; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Grant; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Grantee, any consideration contingent upon the award of the Grant. Grantee must immediately notify the State of any violation or potential violation of these standards. This Section applies to Grantee, any parent, affiliate, or subsidiary organization of Grantee, and any subgrantee that performs Grant Activities in connection with this Grant.

3.6 Non-Discrimination

Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101 to 37.2804, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., Grantee and its subgrantees agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Grant.

3.7 Unfair Labor Practices

Under MCL 423.324, the State may void any Grant with a Grantee or subgrantee who appears on the Unfair Labor Practice register compiled under MCL 423.322.

3.8 Force Majeure

Neither party will be in breach of this Grant because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Grantee will not be relieved of a breach or delay caused by its subgrantees. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

4.0 Website Incorporation

The State is not bound by any content on Grantee's website unless expressly incorporated directly into this Grant.

4.1 Certification Regarding Debarment

The Grantee certifies, by signature to this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal or State department or agency. If the Grantee is unable to certify to any portion of this statement, the Grantee shall attach an explanation to this Agreement.

4.2 Illegal Influence

The Grantee certifies, to the best of his or her knowledge and belief that:

- A. No federal appropriated funds have been paid nor will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this grant, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Grantee shall require that the language of this certification be included in the award documents for all grants or subcontracts and that all subrecipients shall certify and disclose accordingly.

The State has relied upon this certification as a material representation. Submission of this certification is a prerequisite for entering into this Agreement imposed by 31 USC § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Grantee certifies, to the best of his or her knowledge and belief, that no state funds have been paid nor will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any State agency, a member of the Legislature, or an employee of a member of the Legislature in connection with the awarding of any state contract, the making of any state grant, the making of any state loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state contract, grant, loan or cooperative agreement.

4.3 Governing Law

This Grant is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Grant are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Grant must be resolved in Michigan Court of Claims. Grantee consents to venue in Ingham County and waives any objections, such as lack of personal jurisdiction or forum non conveniens. Grantee must appoint agents in Michigan to receive service of process.

4.4 Compliance with Laws

Grantee must comply with all federal, state, and local laws, rules, and regulations.

4.5 Disclosure of Litigation, or Other Proceeding

Grantee must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") involving Grantee, a subgrantee, or an officer or director of Grantee or subgrantee, that arises during the term of the Grant, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Grantee's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Grantee is required to possess in order to perform under this Grant.

4.6 Assignment

Grantee may not assign this Grant to any other party without the prior approval of the State. Upon notice to Grantee, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Grant to any other party. If the State determines that a novation of the Grant to a third party is necessary, Grantee will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Grant.

4.7 Entire Grant and Modification

This Grant is the entire agreement and replaces all previous agreements between the parties for the Grant Activities. This Grant may not be amended except by signed agreement between the parties.

4.8 Grantee Relationship

Grantee assumes all rights, obligations and liabilities set forth in this Grant. Grantee, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Grant. Grantee, and not the State, is responsible for the payment of wages, benefits, and taxes of Grantee's employees and any subgrantees. Prior performance does not modify Grantee's status as an independent Grantee.

4.9 Dispute Resolution

The parties will endeavor to resolve any Grant dispute in accordance with this provision. The dispute will be referred to the parties' respective Grant Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Grant.

5.0 Severability

If any part of this Grant is held invalid or unenforceable by any court of competent jurisdiction, that part will be deemed deleted from this Grant and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Grant will continue in full force and effect.

5.1 Waiver

Failure to enforce any provision of this Grant will not constitute a waiver.

5.2 Signatories

The signatories warrant that they are empowered to enter into this Agreement and agree to be bound by it.



LeAnn Droste, Director
Bureau of Finance and Administrative Services
Department of Licensing and Regulatory Affairs
State of Michigan

3-5-2020
Date



Loren Khogali, Executive Director
Michigan Indigent Defense Commission
State of Michigan

3-5-20
Date

DocuSigned by:



1E49F8E5D1A8408

Warren Evans, County Executive
Wayne County

6/2/2020 | 10:51:41 AM EDT

Date

GRANT NO. 2020-PG00001

GRANT NO. 2020-PG1

Attachment A – Budget

Subject	Hourly rate	Total
Consultant-Marianne Talon	\$62.00	\$63,577.40
Corporation Counsel – Drew Vandegrift	\$37.21	\$42,354.28
-F/T Benefits		\$33,638.58
MIDC Court Coordinator	\$23.63	\$49,150.40
-Court Benefits		\$28,015.73
Consultant – Dawn VanHoek	\$200.00	\$133,333.33
Assistant to Consultant	\$75.00	\$50,025.00
Management & Budget - Kevin Haney	\$67.88	\$950.32
Rich Lynch	\$64.70	\$647.00
TOTAL		\$401,692.04

AMENDMENT TO ALLOW FOR EXPENDITURE OF FY2020 UNEXPENDED FUNDS

Subject to the terms and conditions below, the State of Michigan, the Michigan Indigent Defense Commission (MIDC) and the Department of Licensing and Regulatory Affairs (LARA) (collectively “Grantor”) and _____ (“Grantee”) enter into this Agreement to allow Grantee to use funds remaining from Grant No. _____ after September 30, 2020.

BACKGROUND

In 2019, the Michigan Legislature appropriated funds to cover the cost of indigent defense services under the Michigan Indigent Defense Commission Act. Funding for fiscal year 2020 was distributed to 124 funding units pursuant to a grant contract executed between each funding unit and Grantor. The funds distributed under these grant contracts included the state grant amount and the local share. The amount of the grants included funding for the period of October 1, 2019 through September 30, 2020.

Pursuant to the MIDC Act, all indigent defense grant funds are required to be held in a restricted fund. MCL 780.993(14)(b). The MIDC Act also provides that unexpended funds in a system’s restricted fund (not subject to MCL 780.993(11)) will be included in the system’s subsequent fiscal year’s expenditures through the subsequent year’s compliance plan and cost analysis.

The parties are unable to fully execute a new grant contract for fiscal year 2021 on or before October 1, 2020. The parties agree, however that Grantee should make indigent defense related expenditures with unexpended funds from fiscal year 2020 in order to ensure that uninterrupted provision of indigent defense services.

TERMS

1. **SCOPE OF AUTHORITY:** This agreement incorporates by reference the fiscal year 2020 grant contract and associated fiscal year 2020 compliance plan and cost analysis. If Grantee received a budget adjustment or during fiscal year 2020, it should continue spending funds in accordance with the budget adjustment. Any funds used pursuant to this agreement shall be used consistent with the FY20 approved compliance plan and cost analysis, or where the funding unit has an approved compliance plan *and* cost analysis for FY21, consistent with the approved FY21 compliance plan and cost analysis, pending execution of an FY21 grant contract. Grant funds shall not be used for any other purpose.
2. **VARIATION FROM FISCAL YEAR 2020 SPENDING:** Any variation in Grantee’s spending requires prior written approval from the MIDC. Grantee must follow MIDC policy and procedure when applying for approval.
3. **OFFSET:** The state grant for fiscal year 2021 will be offset by the amount of unexpended funds (not subject to MCL 780.993(11)) remaining on September 30, 2020.
4. **FUND BALANCE REPORTING:** Michigan Compiled Laws 780.993(15) requires Grantee to report all unexpended funds as of September 30th by October 31, 2020.
5. **INCORPORATION:** All terms and conditions of the parties’ fiscal year 2020 grant agreement, including attachments, are incorporated into this Agreement. If there is a conflict between the terms and conditions of the fiscal year 2020 grant agreement and this Agreement, this Agreement prevails.

MISCELLANEOUS PROVISIONS

6. LOCAL SHARE: Nothing in this agreement affects the calculation of the local share pursuant to the MIDC Act. That share is adjusted on an annual basis.
7. MODIFICATION: This Agreement, and all documents incorporated hereto, constitute the parties' entire agreement. This Agreement can only be modified by the parties' written agreement.
8. WAIVER: Failure to enforce any provision of the Agreement shall not constitute a waiver.
9. SEVERABILITY: If any court or competent jurisdiction finds any part of this Agreement to be invalid or unenforceable, that part will be deemed deleted from this Agreement. The severed part will be replaced with a mutually agreeable provision that achieves the same or similar objectives. The remaining Agreement will continue in full force and effect.
10. HEADINGS: The use of headings in this Agreement is for convenience only. Headings shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the parties.
11. TERMINATION: This agreement shall terminate on December 31, 2020 or the date that the parties sign their FY21 grant contract. Expenditures made under this Agreement, however, shall be included and supported with documentation in the first report required under the FY21 grant contract.
12. SIGNATORIES: The signatories warrant that they are empowered to enter into this Agreement and agree to be bound by it.

Loren Khogali, Executive Director
Michigan Indigent Defense Commission
Department of Licensing and Regulatory Affairs
State of Michigan

Date: _____

LeAnn Droste, Director
Bureau of Finance and Administrative Services
Department of Licensing and Regulatory Affairs
State of Michigan

Date: _____

Name:

Date: _____

Title:

Funding Unit: