

Michigan Indigent Defense Commission Meeting Minutes

The meeting was held remotely via Zoom in compliance with the Open Meetings Act and Public Act 228 of 2020 to reduce transmission of COVID-19 and protect the health of Commissioners, MIDC staff and members of the public interested in attending the meeting. The MIDC website and meeting notice included information for members of the public on how to participate.

February 23, 2021

Time: 9:00 am

Commission Members Participating

Consistent with Public Act 228 of 2020, during roll call Commissioners were asked to identify the county, city, town or village and state from which they are attending, that information is reflected below in parentheses following each Commissioner's name.

- Judge Jeffrey Collins (Wayne County, Michigan)
- Joshua Blanchard (Greenville, Montcalm County, Michigan)
- Tracy Brame (Grand Rapids, Kent County, Michigan)
- Kimberly Buddin (Oakland County, Michigan)
- Nathaniel Crampton (Jackson, Jackson County, Michigan)
- Christine Green (Scio Township, Washtenaw County, Michigan)
- David Jones (Wayne County, Michigan) (joined at 10:12 am)
- James Krizan (Wayne County, Michigan)
- Margaret McAvoy (Mount Pleasant, Isabella County, Michigan)
- Tom McMillin (Oakland Township, Oakland County, Michigan)
- Cami Pendell (non-voting member) (Eaton County, Michigan)
- Michael Puerner, Chair, (Ada, Kent County, Michigan) (joined at 10:25 am)
- Judge Kristina Robinson Garrett (Detroit, Wayne County, Michigan)
- John Shea (Dexter Township, Washtenaw County, Michigan)
- William Swor (Detroit, Wayne County, Michigan)
- Gary Walker (Chocolay Township, Marquette County, Michigan)

Commission Members Absent:

Andrew DeLeeuw, James Fisher and Joseph Haveman

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 Collins called the Michigan Indigent Defense Commission (“MIDC” or “the Commission”) meeting to order at 9:04 am.

Introduction of Commission members and guests

Chair Collins welcomed attendees to the meeting. Guests were invited to introduce themselves.

Public Comment

The following members of the public offered comments:

- Meghann Keit, on behalf of the Michigan Association of Counties (MAC)
- Bernard Jocuns
- Mary Ann Jerge
- Doug Corwin, in support of Shiawassee County's proposed plan change
- Judge Theodore Metry
- Richard Lynch, speaking in his personal capacity and not on behalf of Wayne County
- Marianne Talon
- Robin Dillard Russaw
- Dawn Van Hoek
- Thomas Jefferson provided a comment via email read by Ms. Khogali

Additions to agenda

Commissioner Shea moved that the agenda be approved as presented. Commissioner Swor seconded the motion. The motion carried.

Consent Agenda

Commissioner Green moved that the consent agenda containing the December meeting minutes and revised 2021 meeting dates be adopted. Commissioner Walker seconded the motion. The motion carried.

Chair Report

Chair Collins thanked Ms. Khogali for scheduling introductory meetings with the Governor's Legal Division, the Department of Licensing and Regulatory Affairs (LARA), and the Michigan Association of Counties (MAC). He thanked Commissioners DeLeeuw and McAvoy for participating in the meeting with MAC. He thanked Commissioner Puerner for his service as Chair and thanked the people who attend the meetings for their service and time.

Executive Director Report

Ms. Khogali provided a written report to the Commission prior to the meeting. Ms. Mitchell has been hired as the MIDC's first Training Analyst. MIDC expects to fill the vacant Grant Analyst position within the next few weeks. She updated the Commission on the four commission seats that expire in April, two nominated by the Speaker of the House and two nominated by the Senate

Majority Leader. Ms. Khogali will work with LARA and the Governor's office on these appointments.

Commission Business

FY 22 Appropriation and Legislative Report

The Commission discussed House Bill 4174, introduced by State Representative Lightner. The bill would create a new Justice Data Collection and Reporting System.

Commissioner Shea moved that MIDC staff be authorized to engage in the legislative process with respect HB 4174. Commissioner Walker seconded. The motion carried.

Executive Committee Report

Judge Collins provided an overview of the Executive Committee's meeting and discussion about the strategic planning process. He asked Commissioners interested in participating on the Strategic Planning Committee to contact him.

The Commission discussed the proposed charge of the committee:

The *ad hoc* strategic planning committee will support the Commission's strategic planning process. In doing so, the committee will work with the Executive Director to ensure an effective strategic planning process for the Commission, lead the development of a two-to-five year plan for the work of Commission and make recommendations related to its mission, vision and strategic initiatives for consideration and approval to the full Commission.

Commissioner Swor moved that the proposed charge of the committee be approved. Commissioner McAvoy seconded. The motion carried.

Commissioner Swor moved that the Chair be authorized to establish the committee. Commissioner Walker seconded. The motion carried.

Compliance Planning Committee

FY 22 Compliance plan application and cost analysis

Ms. McCowan provided an overview of the proposed FY 22 compliance plan application and cost analysis.

Commissioner McMillin moved that the FY 22 compliance plan application and cost analysis be approved. Commissioner Blanchard seconded the motion. The motion carried.

Proposed changes to the Grant Manual

The Commission discussed the process for reviewing proposed changes to the Grant Manual.

Commissioner Shea moved that the Commission go forward with its review of the entire Grant Manual on an edit-by-edit basis, and that the Commission then vote on an edit-by-edit basis whether to approve, disapprove or table the suggested amendment. Commissioner Blanchard seconded the motion.

Chair Collins briefly departed the meeting and Commissioner Green temporarily assumed the role of chair. After discussion on the motion, Commissioner Green asked for a roll call vote. Judge Collins rejoined the meeting.

The motion carried with nine yeas (Collins, Blanchard, Brame, Buddin, Crampton, Green, McMillin, Shea and Walker) and 5 nays (Krizan, Jones, McAvoy, Swor, Puerner). Judge Robinson Garrett joined the meeting during discussion of this motion and abstained from voting.

The Commission reviewed each change proposed to the Grant Manual.

Commissioner Shea moved that page 5 of the Grant Manual be amended by striking “Position Paper or Attorney Fees after the Passage of the MIDC Act (MIDC, Summer 2016)” from resources available on the MIDC’s website listed in the document. Commissioner Blanchard supported the motion. The motion carried, Commissioner McAvoy opposed the motion.

Commissioner Blanchard moved that page 6 of the Grant Manual be amended by adding the following language in bold to the sentence already included in the document: “A cost analysis (budget) for the compliance plan must be submitted in the format approved by the MIDC, **including the detail of costs associated with a non-profit/vendor model defender office.**” Commissioner Shea supported the motion. The motion carried.

Commissioner Blanchard moved that the first paragraph of page 7 be amended with following changes, strike the sentence that reads “For FY2020, the local share was increased by 2.2% pursuant to MCL §780.983(i).” and adjust the next sentence in the paragraph to read: “The local share will be adjusted **each year in accordance with the statutory requirement.** ~~to 2.1% for FY2021.~~” Commissioner Green seconded the motion. The motion carried, Commissioner McAvoy opposed the motion.

Commissioner Shea moved that a sentence be added to the first full paragraph on page 9 to read “Systems seeking to change models (i.e., move from an assigned counsel system to a public defender office) should include a feasibility study, including a caseload analysis, sufficiently detailed to allow staff and Commission to review anticipated system impacts. Please consult with a Regional Manager for samples of these studies.” Commissioner Shea further moved that language be added to clarify that feasibility studies could be something for which systems requested reimbursement. Ms. McAvoy seconded the motion. The motion carried. Commissioner Blanchard opposed the motion.

Commissioner Green moved that a new sentence be added after the first sentence in the second full paragraph on page 9: “Systems can also include the cost of a license for full time employees with positions requiring a license (i.e. investigator).” Commissioner Swor seconded. The motion carried.

Commissioner Shea moved that a sentence in the second paragraph on page 9 be modified to read: “MIDC grant funding is not permitted for membership in ~~sections or~~ local bar associations **or any optional professional organizations, with the exception of funding for eligible training resources indicated by MIDC Standard 1.**” Commissioner Shea moved that there be an explanation about local bar association dues being included in the Grant Manual previously and that this language is consistent with the Commission’s policies to this point. Commissioner Crampton seconded the motion. The motion carried. Commissioner McAvoy opposed the motion.

Commissioner Blanchard moved that the following sentence be added to the first full paragraph on page 10: "Time studies should be submitted with any request to fund these positions."

Commissioner Green seconded the motion. After discussion, Commissioner Shea moved that the sentence be amended to read: "Local systems are encouraged to submit time studies with any request to fund these positions." The motion to adopt the amended language passed, Commissioner McAvoy opposed the motion.

Commissioner Shea moved that the amended sentence be adopted. Commissioner Green seconded the motion. The motion carried, Commissioner McAvoy opposed.

Commissioner Swor moved that the following language be added after the fourth full paragraph on page 11: "MIDC grant funding is not permitted for the cost of parking at an assigned work station unless reimbursement is required by the funding unit's established local employment policies." Commissioner Shea seconded the motion. The motion carried.

Commissioner Swor moved that the following paragraph be added to page 11: "Supplies Systems can include funding for supplies needed for trial, including demonstrative exhibits and clothing for defendants to wear during court proceedings." Commissioner Blanchard seconded the motion. The motion carried.

Commissioner Green moved that the following sentence be added to the end of the first full paragraph on page 12: "Time spent in skills training counts towards, and can satisfy, the annual CLE requirement." Commissioner Blanchard seconded the motion. The motion carried.

Commissioner Shea moved that the first sentence in the fourth paragraph on page 12 be amended to strike "compliance plan" and insert "grant management system" so that the sentence would read "In the grant management system, provide the names and P#s of all attorneys who will provide indigent defense in the year covered by the compliance plan." Commissioner Brame seconded the motion. The motion carried.

Commissioner Buddin moved that the last paragraph on page 13 be amended to add the language in bold: "MIDC Grant funding will not be awarded for membership to the **National Legal Aid and Defender Association (NLADA)**, the National Association for Criminal Defense Lawyers (NACDL), the Criminal Defense Attorneys of Michigan (CDAM), the Institute for Continuing Legal Education (ICLE), **or local bar associations.**" Commissioner Blanchard seconded the motion. The motion carried.

Commissioner Blanchard moved that "Pre-Sentence Investigation Interview" be added to the bulleted list of matters on page 20 that can be included in Standard 4 funding. Commissioner Green seconded. The motion carried.

Commissioner Blanchard moved that the following sentence be added at the end of page 20: "MIDC grant funding shall not be used to compensate standby counsel when the defendant has invoked the constitutional right of self-representation." Commissioner Crampton seconded the motion. A roll call vote was requested. The motion carried with 9 yeas (Brame, Buddin, Green, McMillin, Puerner, Robinson Garrett, Shea, Swor and Walker) and 5 nays (Blanchard, Crampton,

Krizan, Jones, McAvoy). Chair Collins temporarily left the meeting, Commissioner Green assumed the role of chair in his absence.

Commissioner Swor moved that the following new section be added to page 21:

Services Outside of Adult Criminal Case Representation

The MIDC is cognizant that other legal concerns often exist for indigent clients outside of the criminal trial court and supports local decisions to develop and use best-practice defense services for all those in need.

For example, a few local funding units employ attorneys within their public defender offices to represent youth in delinquency or other probate hearings; some employ administrators to manage the rosters of juvenile defense attorneys; others have considered partnering with local civil legal services to provide increased holistic defense.

Local systems should identify and delineate those costs if they have expanded their legal services to indigent clients outside of the scope of the MIDC Act or are considering such an expansion to ensure they are meeting their current grant contract agreements. The MIDC regional manager team can help systems implement best-practices while ensuring all contract agreements are upheld.

Commissioner Walker seconded. The motion carried, Commissioner McAvoy opposing.

Commissioner Blanchard moved that the first sentence on page 22 be removed from the document. This sentence is not necessary since Standard 5 has been approved by LARA. Commissioner Shea seconded. The motion carried.

Commissioner Swor moved that the following sentence be added to the first paragraph of the Reporting Required section on page 25: "Systems with personnel must submit time sheet(s), time certification(s), or a time study with quarterly reporting when requested by MIDC staff or with any request by the system to modify the personnel position(s)." Commissioner Green seconded the motion. A roll call vote was requested. The motion carried with 10 yeas (Blanchard, Brame, Buddin, Green, Jones, McMillin, Robinson Garrett, Shea, Swor, Walker) and 3 nays (Krizan, McAvoy, Puerner).

Commissioner Swor moved that the following footnote be added to page 25:

Local funding units are required to report reimbursements received from the Michigan Department of Corrections for which funding is also provided through the MIDC grant as part of program income and report it quarterly or at the end of the fiscal year in the final quarterly report. See MIDC meeting minutes, April 2020.

Commissioner Blanchard seconded. The motion carried. Commissioner McAvoy opposed the motion.

The Commission recessed from 12:40 pm until 12:50 pm. Commissioner Swor left during the break.

Selection Standards Committee (Standard 5)

Ms. McCowan and Ms. Staley presented an overview of the FAQs provided in the Commission's meeting materials.

Commissioner Puerner moved that the FAQs be adopted and published. Commissioner Green seconded. The motion carried.

Court Rules Committee

Ms. Smithson provided an overview of the rules changes that had been reviewed by the committee. There was discussion in the Selection Standards Committee about the proposed changes to MCR 2.117. That committee's suggested changes were included in the document that was presented to the Commission. Commissioner Blanchard asked that the changes to MCR 2.117 be considered separately from the other changes.

Commissioner Shea moved to approve the proposed changes to MCR 2.117. Commissioner Krizan seconded. The motion carried. Commissioner Blanchard opposed the motion.

Commissioner Shea moved that the Commission adopt the proposed changes to the remaining court rules that were before the Commission. Commissioner Walker supported the motion. The motion carried.

Ms. Khogali will work with the State Court Administrative Office to submit the proposed changes for consideration.

Ms. Khogali provided an overview of proposed changes MCR 8.120 which were before the State Bar of Michigan's Representative Assembly in September. Ms. Khogali drafted a proposed response to the changes.

Commissioner Blanchard moved that the response be submitted if the proposal was on the Representative Assembly's agenda in April. Commissioner Shea seconded. The motion carried.

Training and Evaluation Committee

Commissioner Brame and Ms. McCowan updated the Commission on the committee's work. The committee will start to draft language for trainers and training providers.

FY 21 Compliance Plan Updates

Wayne County Update

State Court Administrator Tom Boyd appointed attorney Pam Enslin as mediator with respect to the disapproved portion of Wayne County's FY21 cost analysis. Pursuant to the MIDC Act, mediation must begin within 30 days of appointment of a mediator and conclude within 60 days of initiation of the mediation.

Commissioner Walker moved to authorize the Executive Director to proceed through the mediation process in consultation with the Executive Committee and Judge Fisher. Any mediation agreement should be brought before the Commission for approval. Commissioner Puerner seconded the motion. The motion carried.

Plan Change Requests

The City of Warren submitted a request for a plan change to hire an attorney as an independent contractor to oversee its indigent defense program as a Managed Assigned Counsel Coordinator and assist with the implementation of MIDC Standard 5. MIDC staff recommends that the request be approved.

Commissioner Blanchard moved that the staff recommendation be adopted and that the plan change submitted by the City of Warren be approved. Commissioner Puerner supported the motion. The motion carried.

Ms. McCowan provided an overview of Shiawassee County's request for a plan change. Shiawassee County is requesting a plan adjustment seeking to expand services of MIDC Standard 4 and allow for funding for payment of tether monitoring fees for pretrial release of indigent clients. This would include coverage of tether fees for clients charged with probation violations and are awaiting a hearing. MIDC staff recommends that the county's request for a plan change be rejected.

Commissioner Walker moved that the staff recommendation to reject the plan change submitted by Shiawassee County be adopted. Commissioner Shea supported the motion. The motion carried, Commissioner Blanchard opposed the motion. Commissioner McAvoy abstained from the motion because of her previous employment with the county.

First Quarter Reporting

Ms. Mack approved the following budget adjustments:

- Berrien County
- Chippewa County
- 37th District Court - Warren/Centerline
- Eaton County
- Houghton County
- Kalkaska County
- Livingston County
- Macomb County
- Menominee County
- Montcalm County
- Oakland County
- Ottawa County
- Tuscola County

Review of FY21 Compliance Plan Submissions

Inkster

The City of Inkster has not completed reporting for fiscal years 2019 and 2020. The City has not submitted a plan or cost analysis for fiscal year 2021. MIDC staff recommends that the failure to submit a plan/cost analysis be treated as a denial and that the Commission move to mediation with this system.

Chair Collins moved that the staff recommendation to treat third failure to submit a plan as a denial be adopted, that the Commission move to mediation with respect to the plan and the failure to provide reporting and that the Executive Director proceed through the mediation process in consultation with the Executive Committee with any mediation agreement being brought before the Commission for approval. Chair Shea seconded the motion. Chair Collins requested a roll call vote. The motion carried with 13 yeas (Collins, Blanchard, Buddin, Brame, Green, Krizan, McAvoy, McMillin, Puerner, Robinson Garrett and Walker), 0 nays and 1 abstention (Jones).

Highland Park

Ms. McCowan provided an overview of Highland Park's resubmitted plan and cost analysis. MIDC staff recommends that the plan and cost analysis resubmitted by Highland Park be approved. Commissioner Puerner moved that the staff recommendation be adopted and that the plan and cost analysis resubmitted by Highland Park be approved by the Commission. Commissioner Walker seconded the motion. The motion carried.

Redford

Ms. McCowan provided an overview of Redford's resubmitted cost analysis, the system's plan was previously approved by the Commission. MIDC staff recommends that the cost analysis resubmitted by Redford be approved. Commissioner Green moved that the staff recommendation be adopted and that the cost analysis resubmitted by Redford be approved. Commissioner Krizan seconded. The motion carried.

Annual Review of Executive Director

Ms. Khogali has requested that the Commission consider her evaluation in a closed session. Commissioner Green moved to go into closed session under MCL 15.268(a) to consider the periodic personnel evaluation of Ms. Khogali and under MCL 15.268(h) to consider material exempt from disclosure under section 13(1)(g) of the Freedom of Information Act. Commissioner Krizan seconded. Chair Collins requested a roll call vote. The motion carried with 12 yeas (Collins, Blanchard, Brame, Buddin, Green, Krizan, Jones, McAvoy, McMillin, Puerner, Robinson Garrett, and Shea) and 0 nays. The Commission moved into closed session at 2:20 pm.

The Commission returned at 2:56. Chair Collins asked for a roll call vote on returning to open session. Roll was called, the following members were present: Collins, Blanchard, Brame, Buddin, Green, Krizan, Jones, Puerner, Robinson Garrett, Shea, Swor and Walker.

Ms. Khogali's contract with LARA was distributed to Commissioners prior to the meeting. Commissioner Shea moved that the contract be approved. Commissioner Krizan seconded. The motion carried.

Commissioner Krizan moved that the meeting be adjourned. Commissioner Green seconded the motion. The motion carried. The meeting adjourned at 3:02 pm.

Respectfully submitted,
Marcela Westrate