



COUNTY ADMINISTRATOR
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TO: Katie Scott
Chair, Ways & Means Committee

THROUGH: Gregory Dill
County Administrator

FROM: Delphia Simpson, Chief Public Defender
Washtenaw County Public Defender Office

DATE: September 4, 2019

SUBJECT: 2019/2020 Michigan Indigent Defense Commission Washtenaw County
Compliance Plan and 2019/2020 Washtenaw County Indigent Public Defense
Budget

BOARD ACTION REQUESTED:

It is requested that the Board of Commissioners to authorize the signature of the County Administrator on the 2019/2020 Michigan Indigent Defense Commission Washtenaw County Compliance Plan, approve the 2019/2020 Washtenaw County Indigent Public Defense Budget, authorize the County Administrator to sign delegate contracts and approve position creations.

BACKGROUND:

The Michigan Indigent Defense Commission (MIDC) was created by legislation in 2013 after an advisory commission recommended improvements to the state's legal system. (MCL §780.991)

The MIDC is statutorily required to develop and oversee the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure that indigent criminal defense services providing effective assistance of counsel are delivered to all indigent adults in this state consistent with the safeguards of the United States constitution, the state constitution of 1963, and with the Michigan Indigent Defense Commission Act.

The MIDC is charged with identifying and encouraging best practices for delivering the effective assistance of counsel to indigent defendants charged with crimes. The MIDC will also collect data, support compliance and administer grants to achieve these goals.

MIDC requires that all indigent defense delivery systems in Michigan must submit compliance plans and cost projections for all the standards approved by the Department of Licensing and Regulatory Affairs.

An indigent criminal defense system shall not be required to provide funds in excess of its local share. The MIDC shall provide grants to indigent criminal defense systems to assist in bringing the systems into compliance with minimum standards established by the MIDC.

"Local share" or "share" means an indigent criminal defense system's average annual expenditure for indigent criminal defense services in the 3 fiscal years immediately preceding the creation of the MIDC under this act. MCL§780.983(g)

It is important to note that a system's duty of compliance with the terms of the compliance plan is contingent upon receipt of a grant in the amount contained in the plan and cost analysis approved by the MIDC. See MCL §780.997.

On May 22, 2017, The Michigan Indigent Defense Commission published the first four standards for indigent criminal defense services that were approved by the Department of Licensing and Regulatory Affairs. Those first four standards cover training and education of counsel, the initial client interview, use of investigation and experts, and counsel at first appearance and other critical stages.

Stakeholders in the Washtenaw County Criminal Justice system gathered to prepare the Washtenaw County Compliance Plan that addresses the first four standards submitted to the Michigan Indigent Defense Commission.

On November 15th 2017, July 11th, 2018 and May 15, 2019 the BOC approved the of the Washtenaw County Compliance plan along with the cost analysis through resolutions 17-195, 18-105 and 19-088. The resolution also approved FTEs to expand the Office of the Public Defender to meet the needs of their growing responsibilities under the new mandatory standards.

Currently the delivery of indigent defense in Washtenaw County uses a combination of several systems to provide the most effective services to its residence.

The Public Defender Office represents all indigent felony defendants in the 22nd Circuit Court and misdemeanor indigent clients in the 14A and in September of 2019 all the indigent misdemeanor clients in the 14B District Court.

In the event of any ethical conflict of interests, multiple co-defendants or any other conflict, the Washtenaw County Trial Court contracts with a criminal defense firm as well as maintains an assigned counsel list to provide representation. The 14A and 14B District Courts has a centralized assigned counsel list for conflicts.

As the implementation of the Michigan Indigent Defense commission standards evolve, the local stakeholders meet regularly to evaluate the impact of MIDC standards and to make adjustments and discuss the possibility of new efficiencies to the system.

DISCUSSION:

The Washtenaw County Indigent Defense System includes the Public Defender Office, the Courts (22nd Circuit Court, 14A, 14B and 15th District Court) the Sheriff Office as well as private criminal defense attorneys.

The County has substantially complied with the current 4 mandated standards.

The Public Defender has provided an opportunity for 17 training hours for the local indigent criminal defense attorneys to assist them in meeting the 12 hour continuing legal education requirement in MIDC Standard 1.

The Public Defender's new Arraignment Division is operational and provides an attorney at first appearance (standard 2) for all clients in-custody at 14 District Court. Before the end of the year, the Public Defender will be expanding to appear at all walk-in arraignments, out-of-custody arraignments at 14A District Court as well as all arraignments held at 14B District Court.

The Public Defender has expanded the use of experts and investigators by training and staff discussion to meet MIDC standard 3 and

The Public Defender's Arraignment division also serves to comply with MIDC standard 4 by conducting the initial intake interview with all client appointed to the Public Defender.

The 2019/2020 Michigan Indigent Defense Commission Washtenaw County Compliance Plan and 2019/2020 Washtenaw County Indigent Public Defense Budget will not only continue to improve the effectiveness of the delivery of service by meeting and/or exceeding the first 4 mandated MIDC standards but will also include improvements to the overall delivery of indigent services by providing needed resources to the other components of the Indigent delivery system.

The FY2020 will adjust the current delivery of service system by creating an Assigned Counsel Administrator position which will report to the County Administrator's Office. The indigent defense system stakeholders agreed that streamlining the assignment of conflict counsel by centralizing the process would improve services to the clients as well as to the private attorneys on the conflict list.

All of the Courts, 22nd Circuit Court, 14A, 14B as well as 15th District Court, will make use the Assigned Counsel Administrator and create one point for the county to collect assigned counsel information to comply with the MIDC reporting data.

The FY 2020 compliance plan and budget also includes an increase of the fee structure for the assigned private counsel who accept cases through the assigned counsel system. The fee structure had not be increase in over 10 years and was considered to be one of the lowest in the state. The Indigent defense stakeholders all agreed the in order to ensure quality legal representation from the assigned conflict counsel list it would be necessary to increase the fees for this service. This is considered to be a best practice by the Michigan Indigent Defense Commission.

In addition, the Compliance plan and budget would also create a FTE Public Defender Investigator position. This would replace the contract line item for an investigator in the FY2019 MIDC budget and is also considered to be a best practice by the Michigan Indigent Defense Commission.

The total net operating budget for fiscal year 2019-2020 for the department is \$7,379,024 and includes all indigent defense activities. The budget includes \$6,529,872 for the MIDC program and \$849,152 for juvenile indigent defense. Total expenditures and revenues in 2019/2020 reflect a net increase of \$2,687,551 from the prior year. Factors increasing the budget are outlined above and reflect enhancements to the MIDC program, which are offset by increased MIDC grant revenues. The budget includes MIDC program revenues of \$4,087,939 and the annual general fund appropriation of \$3,291,085.

IMPACT ON HUMAN RESOURCES:

Approval of this resolution will result in the net creation of two (2) positions.

PCN	Position Title	Employee Group	Grade	Create	Eliminate
3209-0001	Assigned Counsel Administrator	4100	32	1.0	
3008-0001	Public Defender Investigator	4100	30	1.0	

IMPACT ON BUDGET:

The Public Defender budget for fiscal year 2018/2019 beginning October 1, 2019 is \$ 7,379,024. The budget reflects the various factors of the MIDC grant and Juvenile defense discussed above.

IMPACT ON INDIRECT COSTS:

Indirect Costs of \$695,853 are included in this plan.

IMPACT ON OTHER COUNTY DEPARTMENTS OR OUTSIDE AGENCIES:

The follow will benefit from the grant activities:

Washtenaw County Trial Court – 22nd Circuit Court
14A District Court
14B District Court
15th District Court
Washtenaw County Sheriff Office
Washtenaw County Bar Association

CONFORMITY TO COUNTY POLICIES:

This request is in conformance with County policies.

ATTACHMENTS/APPENDICES:

MIDC Compliance Plan
MIDC Approval Letter – July 30, 2019
Job Descriptions
Budget

A RESOLUTION THAT THE WASHTENAW COUNTY BOARD OF COMMISSIONERS
TO RATIFY THE 2019/2020 MICHIGAN INDIGENT DEFENSE COMMISSION
WASHTENAW COUNTY COMPLIANCE PLAN AND 2019/2020 WASHTENAW
COUNTY INDIGENT PUBLIC DEFENSE BUDGET IN THE AMOUNT OF \$ 7,379,024
FOR THE PERIOD OF OCTOBER 1, 2019 THROUGH SEPTEMBER 30, 2020

WASHTENAW COUNTY BOARD OF COMMISSIONERS

September 18, 2019

WHEREAS, The Washtenaw County Public Defender Office represents the vast majority of criminal defendants throughout the county in all state and local criminal matters and the Public Defender office as well as the Washtenaw county Indigent defense delivery system has enjoyed a long standing reputation for excellence; and

WHEREAS, The Michigan Indigent Defense Commission (MIDC), created by legislation in 2013 (MCL §780.991) and charged with identifying and encouraging best practices for delivering the effective assistance of counsel to indigent defendants, is requiring all Michigan indigent defense delivery systems to submit compliance plans and cost projections for the first four standards approved by the Department of Licensing and Regulatory Affairs; and

WHEREAS, The Public Defender Office and Washtenaw County indigent defense delivery system has in many aspects met or exceed the current best practices for an Indigent delivery systems established by the MIDC however in some areas additional resources are needed to be able to improve the delivery of services to Washtenaw County residents; and

WHEREAS, The Public Defender Office along with other stakeholders of the criminal justice community has designed, prepared and submitted the Washtenaw County Michigan Indigent Defense Commission FY 2019-2020 Compliance Plan to continue to fund implantation of the first four approved standard issued by the MIDC as well as fund additional best practices as stated by the Michigan Indigent Defense Commission; and

WHEREAS, The Michigan Indigent Defense Commission will not require the duty of compliance of Washtenaw County until the receipt of a grant in the amount contained in the plan and cost analysis approved by the MIDC. (MCL §780.997); and

WHEREAS, this revised Compliance Plan would continue to ensure that the Public Defender Office and the Washtenaw County indigent defense delivery system are in full compliance with the standards issued by the Michigan Indigent Defense Commission; and

WHEREAS, this matter has been reviewed by Corporation Counsel, the Finance Department, Human Resources, the County Administrator's Office, and the Ways and Means Committee

NOW THEREFORE BE IT RESOLVED that the Washtenaw County Board of Commissioners hereby ratify the Washtenaw County Compliance Plan application for the Michigan Indigent Defense Commission to fund improvements to the Washtenaw County indigent defense delivery system for the period of October 1, 2019 through September 30, 2020.

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners takes the following actions contingent upon the receipt of the Grant award in conformity with the grant application:

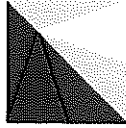
1. Authorizing the County Administrator to sign the Compliance Plan and any resulting funding contracts, Authorizing the Administrator to sign the Notice of Grant Award/Contract, and any necessary amendments to the grant award/contract, and any other grant award/contract related documents
2. Authorizing the budget, as attached hereto and made a part hereof
3. Authorizing the Administrator to sign delegate contracts in conformity with the application/award upon review of Corporation Counsel, to be filed with the County Clerk.

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners authorizes the following position modifications upon the receipt of the Grant award, and in conformity with the approved grant application:

<u>Position ID</u>	<u>Position Title</u>	<u>General Ledger</u>	<u>Grade</u>	<u>Group</u>	Create	Eliminate
3209-0001	Assigned Council Administrator	19002900	32	4100	1.0	
3008-0001	Public Defender Investigator	19002900	30	4100	1.0	

**Indigent Defense
Fund Summary
October 1, 2019 - September 30, 2020
1900**

<u>Object</u>	<u>Description</u>	<u>Revised Budget 2018/19</u>	<u>Original Budget 2019/20</u>	<u>Variance</u>
Revenue:				
54	State Revenue	\$1,462,463	\$4,087,939	\$2,625,476
58	Local Revenue	\$0	\$0	\$0
69	Transfers In	<u>\$3,229,010</u>	<u>\$3,291,085</u>	<u>\$62,075</u>
	Total Revenue	\$4,691,473	\$7,379,024	\$2,687,551
 Expenditures				
70	Personal Services	\$2,604,757	\$4,522,512	\$1,917,755
75	Supplies	\$54,126	\$48,300	(\$5,826)
80	Other Services & Charges	\$769,842	\$2,093,304	\$1,323,462
95	Internal Service Charge	\$1,186,488	\$705,508	(\$480,980)
96	Capital Outlay	\$76,260	\$9,400	(\$66,860)
99	Transfers	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
	Total Expenditures	\$4,691,473	\$7,379,024	\$2,687,551



MICHIGAN INDIGENT
DEFENSE COMMISSION

July 30, 2019

Dear Sir or Madam:

Please be advised that the Michigan Indigent Defense Commission has reviewed the compliance plan and cost analysis submitted by your system. This letter shall serve as official notice that the plan *and* cost analysis submitted by your system has been **approved** by the MIDC.

We are in the process of submitting financial estimates and related information to the Department of Licensing and Regulatory Affairs and the State Budget Office to secure funding to distribute through a grant for the approved cost analyses. *See* MCL 780.993(7). After funding is distributed, your system will have 180 days to comply with the MIDC's standards pursuant to the terms of the approved plan, cost analysis, and grant provisions. *See* MCL 780.993(10); 780.997.

We anticipate providing information about funding later this summer/early fall and we will advise as soon as possible regarding distribution of a grant to your system. In the meantime, if you have any questions, please feel free to contact your Regional Manager.

Thank you very much for your cooperation and patience with this process.

Sincerely,

A handwritten signature in black ink that reads "Loren E. Khogali".

Loren E. Khogali
Executive Director

AUG 0 2019

AUG 0 2019

Washtenaw County

JOB DESCRIPTION

Job Code: 3209
Authorization: RES#
Employee Group: 4100

CLASS TITLE: MANAGED ASSIGNED COUNSEL ADMINISTRATOR
DEPARTMENT: Public Defender
FLSA STATUS:

JOB SUMMARY

Under the direction of the Public Defender, the Managed Assigned Counsel Administrator is responsible for operating the county's indigent criminal defense program to ensure that adult defendants receive competent legal representation in criminal proceedings. The Administrator is responsible for screening, selecting, and maintaining a roster of eligible attorneys for case assignment, evaluating attorney performance, maintaining payments, authorizing investigative resources and performing other duties associated with the provision of competent and consistent legal representation.

EXAMPLES OF DUTIES

Essential Duties:

- Manages the county's public criminal defense operation separate from the court including budgeting, planning, and general administration. Provides the Public Defender with ongoing reports regarding caseload, legal resources and costs.
- Supervises any support staff, if available. Maintains responsibility for directing day-to-day operation workload of personnel, evaluates performance, and assures necessary training and professional development. Recommends disciplinary action according to established procedures.
- Oversees indigency eligibility screening for assigned counsel based on income and other available assets. Follows baseline criteria ensuring that procedures are consistently applied.
- Identifies attorneys that are qualified to accept assignments. Ensures that interested attorneys meet the MIDC standards established for legal providers - including but not limited to basic skills and annual training requirements.
- Maintains a roster of qualified attorneys, makes case assignments, and oversees scheduling of counsel. Monitors cases and the performance of assigned attorneys.

- Approves the use of investigators, experts and other resources required for particular cases and assigned counsel.
- Reviews, approves and handles vouchers for payment to assigned attorneys, investigators, experts and other expenditures associated with particular cases.
- Resolves non-grievance matters between defendants, and assigned counsel and the courts, including administratively reassigning counsel when appropriate.
- Assists with the coordination of compliance with the MIDC standards, including annual grant requests for funding compliance plans.
- Attends legal conferences and seminars to stay current on legal issues, updates administrative techniques regarding public defender requirements and other legal matters.
- The Assigned Counsel Administrator is responsible for overseeing the conflict counsel process in the Washtenaw County Courts (22nd Circuit Court, 14A District Court, 14B District Court and 15th District Court).
- The Administrator is to ensure that adult defendants receive competent legal representation in criminal proceedings.
- The Administrator is responsible for creating and coordinating a qualification committee to screen and select eligible attorneys for case assignment.
- Performs other duties as assigned.

The above statements are intended to describe the general nature and level of work being performed by employees assigned this classification. They are not to be construed as an exhaustive list of all job duties performed by personnel so classified.

EMPLOYMENT QUALIFICATIONS

Knowledge, Skills, and Abilities:

- Thorough knowledge of the professional public management techniques involved in budgeting, personnel administration and resource management and the ability to identify and implement new best practices.
- Thorough knowledge of the principles and practices of State of Michigan criminal law and public defense processes and procedures.
- Skill in assembling and analyzing data, preparing comprehensive and accurate reports, and formulating policy and service recommendations.
- Skill in effectively communicating ideas and concepts orally and in writing and making presentations in public forums.

- Ability to establish effective working relationships and use good judgment, initiative and resourcefulness when dealing with County employees, contractors to the County, representatives of other governmental units and the courts, professional contacts, elected officials, and the public.
- Ability to assess situations, solve problems, work effectively under stress, within deadlines, and in emergency situations.
- Skill in the use of office equipment and technology, including Microsoft Suite applications and the ability to learn data base software utilized in public defense administration.
- Ability to attend meetings scheduled at times other than normal business hours.
- Ability to respond to emergencies or service needs on a 24-hour basis.

LICENSES/CERTIFICATIONS

Must be licensed in good standing to drive a motor vehicle and to practice law in the State of Michigan. Admittance to practice in front of federal courts and the U.S. Supreme Court is desirable.

PHYSICAL DEMANDS

Duties require sufficient mobility to work in a normal office setting and use standard office equipment including a computer, vision to read printed materials and a computer screen and hearing and speech sufficient to communicate in person or over the telephone.

These requirements may be accommodated for otherwise qualified individuals requiring and requesting such accommodations.

EDUCATION

Possession of an Undergraduate Degree (with preferable courses in business management and/or criminal law) plus a Juris Doctor Degree with a required Certificate of Admittance to the State Bar of Michigan as evidence of continued good professional standing and authority to practice law throughout the state.

EXPERIENCE

At least 5 years of progressively more responsible experience in the practice of criminal defense or the equivalent. The County, at its discretion, may consider an alternative combination of formal education and work experience.

This class description intends to identify the major duties and requirements of the job and should not be interpreted as all-inclusive. Incumbents may be requested to perform job-related duties

other than those outlined above and may be required to have specific job-related knowledge for successful job performance.

Washtenaw County

JOB DESCRIPTION

Job Code: 3008
Authorization: RES#
Employee Group: 4100
Non-union

CLASS TITLE: Public Defender Investigator
DEPARTMENT: Public Defender
FLSA STATUS: Exempt

JOB SUMMARY

Under administrative direction of the Public Defender, this position develops, Provides investigative services to the Public Defender's Office. Cultivates leads and furthers areas of inquiry from available information. May search official and unofficial records, obtains statements, takes photographs, creates drawings, recordings, and models. Assists Assistant Public Defender's in trial preparation.

EXAMPLES OF DUTIES

Essential Duties:

- Conduct detailed investigations of complex criminal activities and other violations of local, federal, or state law.
- Locates and interviews witnesses, victims, and clients in a timely manner. Coordinates witnesses regarding Court appearances.
- Direct crime scene investigators and other law enforcement personnel at crime scenes.
- As directed by the attorney, conducts surveillance of both stationary and mobile subjects in a covert manner.
- Employ deductive reasoning and analysis to make informed decisions and conclusions that lead to prosecution.
- Write detailed case reports, and file to maintain records.
- Coordinate search and arrest warrants, and arrest suspects as needed.
- Testify in court regarding case evidence and findings in order to secure a conviction.
- Delivers subpoenas to witnesses in a timely manner.

- Prepares professional photographs, diagrams, maps and trial exhibits to facilitate improved understanding of a case.
- Responsible for testifying in court concerning findings of investigations regardless of representation.
- Performs assigned investigations and updates case management software in a timely manner.
- Participates in necessary case review meetings to ensure sound communication from all applicable parties. Maintains frequent contact with attorneys regarding case activity.
- Obtains, analyzes and disseminates pertinent records including court, medical, military, criminal, and psychological; reviews presentence reports, prepares appropriate support documents.
- Maintains availability to other staff members for consultation and education; participates in training programs.
- Completes special projects and other duties as assigned by the Public Defender or other leadership staff.
- Performs other duties as assigned.

The above statements are intended to describe the general nature and level of work being performed by employees assigned this classification. They are not to be construed as an exhaustive list of all job duties performed by personnel so classified.

EMPLOYMENT QUALIFICATIONS

Knowledge, Skills, and Abilities:

- Demonstrates zealous representation of clients and client advocacy.
- Ability to effectively communicate variety of people from divergent backgrounds.
- Ability to operate typical office equipment and standard computer software.
- Ability to deal effectively with people of widely divergent backgrounds, within and outside the office, and to relate empathetically to clients and their special needs.
- Utilize services of interpreters as necessary to communicate with clients, witnesses and other persons related to the case.
- Maintain confidentiality with highly sensitive information.
- Learn quickly and function efficiently under stressful and distracting conditions.
- Work independently as well as cooperatively in a legal services team atmosphere.
- Principles and practices of public administration.
- Social, political, environmental and related issues influencing local government functions and activities.

- Planning, organizing, coordinating and administering varied programs, projects and services in a public agency setting.
- Interpreting, applying and explaining complex laws, policies and regulations.
- Analyzing complex administrative problems, evaluating alternative solutions and adopting effective courses of action.
- Using sound, independent judgment within general policy and legal guidelines.
- Preparing clear, concise and effective written materials.

LICENSES/CERTIFICATIONS

Must have a valid drivers license.

PHYSICAL DEMANDS

Duties require sufficient mobility to work in a normal office setting and use standard office equipment including a computer, vision to read printed materials and a computer screen and hearing and speech sufficient to communicate in person or over the telephone. Ability to work flexible hours including evenings, nights and/or holidays and weekends as necessary in order to contact witnesses and information sources.

These requirements may be accommodated for otherwise qualified individuals requiring and requesting such accommodations.

EDUCATION

Equivelant to a Bachelor's Degree in Criminal Justice or related field preferred.

EXPERIENCE

A minimum of three (3) years of experience in the practice of criminal law and direct experience in investigative work.

This class description intends to identify the major duties and requirements of the job and should not be interpreted as all-inclusive. Incumbents may be requested to perform job-related duties other than those outlined above and may be required to have specific job-related knowledge for successful job performance.