**Frequently Asked Questions Regarding Implementation of the County-Based**

**Kent County Office of the Public Defender**

(Updated 4/19/24)

1. Why are you establishing a public defender office?

We commissioned a study from the National Association for Public Defense (NAPD) in 2023. That study was delivered at the end of January this year. It detailed issues our system needs to address to deliver better services to constituents. One of them was the creation of a government-run public defender office, moving away from our current service delivery model.

1. Why did you commission the study?

When local governments had to start meeting the standards imposed by the Michigan Indigent Defense Commission (MIDC) in 2018, Kent County chose not to alter the service delivery model it had in place at that time. Part of that decision was driven by a determination that our system worked acceptably, and part of it was wanting to take a “wait and see” approach, watching to see what worked well in other systems around the state before considering any shift. After five years, those running the County’s program felt it was time to evaluate what the County could do better. Using an outside entity that regularly performs such studies was an action endorsed by the MIDC.

1. What is the County’s current service delivery model?

The County operates in cooperation with the other local court funding units within its boundaries (Grand Rapids, Grandville, Kentwood, Walker, and Wyoming). When a defendant is charged with a felony, the County’s indigent defense administration office receives a request from the district court. After reviewing the request, if the defendant has requested appointed counsel and is determined to be indigent, the office appoints an attorney. Approximately 60% of felony appointments go to the non-profit Kent County Office of the Defender (KCOD). The other 40% are directed to a roster of roughly 50 private attorneys. Appointments for those charged with misdemeanor-only crimes are handled by the local funding units, except for 63rd District Court. For that court, the office appoints all cases to KCOD unless there is a conflict that prevents KCOD from representing the defendant. In that situation, the office appoints counsel from the its roster of private attorneys. In the parlance of the MIDC, this is known as a Managed Assigned Counsel (MAC) system.

1. What are the advantages of replacing a non-profit with long tenure with a County-run public defender office?

Our goal is providing the best possible representation for those who cannot afford an attorney and have become entangled in the criminal justice system, consistent with the transparency and accountability that comes with services delivered directly by Kent County. That means, among other things, consistency in representation and regular audits and performance evaluations for attorneys. Contracting the work with a non-profit diminishes the County’s insight into how the program is managed.

Having the office be a County department also means it can leverage the internal resources of a large organization. There are resources dedicated to human resources, financial processing, facilities management, and information technology. Tapping these frees the public defender office to concentrate on its core mission of representing clients.

Also, the study identified issues related specifically to KCOD’s leadership and governance. While perhaps addressable, given that KCOD is a contracted entity with its own board, this means any change would be onerous to implement and subject to the non-profit’s board governance, which again, was raised as a key problem in the Study. The government-based public defender office model is widely used across Michigan and the nation, and the direct accountability that comes with that model means we can ensure we do what is needed to deliver the best possible representation, meeting or exceeding the MIDC’s standards.

1. What about independence of a County-run public defender office? Won’t it be beholden to or unduly influenced by other departments or elected officials, such as the Sheriff’s Office, Prosecutor’s Office, or the courts?

The enabling legislation that created the MIDC has certain requirements that mandate independence. Prior to the MIDC Act, the courts ran many indigent defense operations in Michigan. That is now prohibited; the law requires indigent defense to be handled by administration in the local funding unit. That keeps the programs away from the courts, law enforcement, and prosecutors. Kent County’s Chief Public Defender will report directly to the County Administrator / Controller, Al Vanderberg.

The MIDC also acts to ensure independence through the standards it has formally promulgated. While feedback from the judiciary and others involved in the criminal justice system is encouraged, all decisions about who to appoint and how to meet the standards are handled by administrative staff. Further, County administration is committed to the independence of the new Office of the Public Defender, drafting the following statement to put these concerns to rest: *The Office of the Public Defender is committed to upholding fundamental principles of justice and fairness for all. County leadership is precluded from exerting any influence, whether direct or indirect, on how cases are defended.*

1. What are you doing about those at the non-profit who are affected by this decision?

We will invite every KCOD employee to apply for all positions that are part of the County’s new public defender office. There are more positions in the new office than there are employees at KCOD, and every kind of position existing at KCOD has an equivalent in the new office. We do understand that not every KCOD employee may decide to seek County employment A comparison of benefit plans to help assist KCOD staff in making decisions has already been developed and provided to KCOD's leadership. There will be recognition of longevity at KCOD in terms of benefits such as vacation accrual. Specific hiring determinations have not been made at this time.

1. What is the impact on the roster of private attorneys with this change?

We anticipate very little will change for the first several years after starting up the County’s office. No public defender office can handle all cases; at a minimum there must be a roster to handle cases where a conflict of interest exists that prevents representation. Such conflicts can arise, for instance, where there are co-defendants. Further, we plan that percentage of case allocation will shift only slightly for that first few years. We are allowing for up to 60% of felony appointments to be handled by the County’s office. That slight increase is to give us some room to manage the new MIDC caseload maximum standard that will come into effect later this year. As we gain experience with the new delivery model, we do plan to look at slowly increasing the percentage of cases handled by the County’s office. However, we will continue to need a robust private roster to handle conflicts (which will increase as the percentage of cases handled increases) and excess cases when a sudden influx would otherwise cause us to exceed the maximum allowed caseload.

1. What is happening with misdemeanor appointments?

As we evaluated the study results, we recognized there was an opportunity to leverage a County office for other systems, and indeed, consolidation of public defense services was recommended by the NAPD study. After some discussion, the cities of Grandville, Kentwood, Walker, and Wyoming have agreed to have the County office handle their misdemeanor-only appointments. This agreement will be formalized over the next few months. We plan the County public defender office will handle most misdemeanor-only cases in-house and will appoint attorneys from the private roster for those where conflicts exist or the office will otherwise exceed the misdemeanor caseload maximum.

1. How does the County plan on protecting confidentiality under FOIA?

Michigan’s Freedom of Information Act contains exemptions for documents covered under statutes. Attorney-client communications and attorney work product are already protected under statutes, and there is also a further exemption contained in the Michigan Indigent Defense Commission Act.

1. Where will the new office be located?

Our current plan is to take over the existing non-profit vendor’s lease in the Calder Plaza Building. This is specifically allowed as part of the non-profit’s lease agreement with the building’s owner. There is also space both above and below the current office so that growth can be accommodated.

1. How is this change being funded?

The changes are included in the County’s grant application to the Michigan Indigent Defense Commission. The County’s obligation is to contribute a defined amount per state statute. That required contribution is not affected by these changes.

1. If State funding is reduced in the future, how does the County plan to address Legacy Costs?

If the State reduces funding, then the County (and any other funding unit affected by the reductions) is no longer required to meet the MIDC’s standards. What action is taken specifically will depend on the size of the reduction and the Board’s willingness to substitute general fund revenue to support existing service levels.

1. What are the current plans for the Kent County Office of the Defender's Board?

The current board at the non-profit will have the responsibility to decide what to do with the dissolution of the non-profit. The County’s plan does not incorporate the current non-profit volunteer board members.

1. Why is the oversight board which is recommended in the report not being advanced?

We do not plan to put in place an oversight board or council. While that is one of the recommendations contained in the NAPD study, we have confirmed it is a standard recommendation contained in a review of any system and was not necessarily tailored to our specific situation. We believe between the oversight of you, as our Board of Commissioners, and the Michigan Indigent Defense Commission (which is something many systems outside Michigan lack) an outside group would not add anything substantively. It would also add expense and potentially create delays in action.

1. How will the new office structured and how many positions would there be?

The new structure will consist of a total of 73 positions, comprising 30 non-attorney roles and 43 attorney positions. At the helm of the office would be the Public Defender, supported by two Deputy Public Defenders. One Deputy would oversee the attorneys in the trial division, while the other would manage the administrative aspects. It's worth noting that this represents an expansion in the number of positions compared to those currently in place at the non-profit organization (50).

1. When is the BOC scheduled to approve the positions?

May 2, 2024.

1. Has the BOC ever approved the operating contract with the nonprofit?

No.

1. Would the County Commissioners basically be responsible only for the budgeting?

We anticipate that once formed, the Office of the Public Defender will have an annual presentation to the Legislative and Human Resources Committee on performance measures, as do other County departments. In addition, the Office’s budget will be presented to the Commission for approval as part of the standard budget approval process. The vast majority of the funding for the Office comes from a grant from the State of Michigan; the County’s contribution is limited to a set amount per statute. The Office submits an annual grant application to the MIDC to obtain that funding.

1. Why do we have to implement this plan now? Why can’t the Board be afforded more time to review the proposal?

Our current contract with the non-profit vendor expires by its own terms on September 30 of this year. The problems documented with the non-profit vendor in the NAPD study are sufficient to disqualify it from future contracts. This would be the same action the County would take with a vendor in similar situations outside the indigent defense context. That action eliminates one potential service delivery model under the MIDC’s guidelines. The two remaining models are a public defender office, as proposed, and a straight roster system. The public defender office offers more consistency, transparency, and accountability. It also costs less than a full roster system. Given the current contract’s expiration date, we need to move ahead now to implement one of the two remaining service delivery models.