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

**Kent County Office of the Public Defender**

(Updated: April 26, 2024)

**HISTORICAL BACKGROUND THROUGH TODAY**

1. *Why establish a public defender office?*

* The County engaged the National Association of Public Defense (NAPD) “to investigate what changes, if any should be made to the way Kent County currently delivers indigent defense services.”
* The NAPD study concluded that Kent County would be better served by a county-based public defender office, moving away from the current service delivery model.

1. *Why did you commission the study?*

* When the Michigan Indigent Defense Commission (MIDC) began implementing standards in 2018, Kent County chose not to immediately alter the service delivery model in place, watching to see what worked well in other systems around the state before considering any shift, noting difficulties with our current system, and what could be improved in the current system.
* After five years, it was time to evaluate. Using an outside, neutral, expert entity that regularly performs such studies was an action endorsed and paid for 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 Kent County (Grandville, Kentwood, Walker, and Wyoming – the “Collaborative”) and Grand Rapids.

* Felony Charges: When a defendant is charged with a felony, the Kent 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.
* Misdemeanor Charges: Appointments for those charged with misdemeanor-only crimes are handled by the Collaborative, except for the County-funded 63rd District Court and the Grand Rapids-funded 61st District Court. For the 63rd District Court, the Kent County Indigent Defense Administration 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 terminology of the MIDC, this is known as a Managed Assigned Counsel (MAC) system.
  + The city of Grand Rapids, through its 61st District Court, handles its own misdemeanor appointments.

1. *When did the County get involved with Indigent Defense?*

The MIDC Act was signed into law in 2013, with graduated implementation:

* In 2017, the first of many standards were implemented.
* Prior to 2018, indigent defense was managed by the judiciary.
* In 2018, Kent County’s Indigent Defense Administration Office entered into a year-to-year contract with the non-profit vendor.
* In October 2020, pursuant to the MIDC Statute, the judiciary was removed from funding activities. All functions were transitioned to Kent County’s, Indigent Defense Administration Office.

**LOOKING AHEAD**

1. *What are the advantages of a County-run public defender office?*

* Accountability
  + Consistency in quality of representation
  + Performance evaluations of attorneys and non-attorney staff that will ensure appropriate plans for professional development and potential promotion
  + In-house, regular, required training and professional development
* Transparency
* Leveraging county resources and systems, including human resources, financial processing, facilities management, and information technology

1. *What will happen with misdemeanor appointments?*

* The Collaborative (cities of Grandville, Kentwood, Walker, and Wyoming) will not be renewing their contract with the non-profit vendor. The new County office will handle their misdemeanor-only appointments. This agreement will be formalized over the next few months.
* Misdemeanor appointments for 63rd District Court have always been part of the County’s system, as that Court is county-funded.
* At this time, the City of Grand Rapids will continue to remain separate from the new County office.
* 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 when the office will otherwise exceed the misdemeanor caseload maximum.

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

* Documents and Information regarding cases are exempt from disclosure.

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. There also is a further exemption from disclosure contained in the MIDC Act.

* Administrative items are subject to FOIA.

Administrative items like any County policy, reports, statistics on program effectiveness or efficiency, budgetary documents, purchasing records, or personnel records (with some redactions for personal identifying information etc.) would be release-able under FOIA. In contrast, the non-profit vendor is not subject to FOIA so there is no way for a member of the public to request these items from the vendor if the vendor did not want to release them.

1. *Where will the new office be located?*

The new Office will take existing vacant space in the Calder Plaza Building where the non-profit vendor’s office is located. The vendor’s lease does allow the County to assume the lease if the County desires to do so. The County is not obligated to assume the lease. There were comments made indicating the vendor did not want the County to assume its lease. There is enough space available in the Calder Plaza Building to accommodate the County’s needs without the vendor’s space. The cost of new space is anticipated to be approximately the same as the vendor’s lease costs.

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

May 2, 2024.

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

* 73 positions, comprising 30 non-attorney roles (investigators, social workers, mitigation specialists, and administrative positions) and 43 attorney positions.
* This is the minimum staffing level required to meet new MIDC standards.
* At the helm of the office will be the Public Defender, supported by two Deputy Public Defenders.
  + One Deputy will oversee the attorneys in the trial division, while the other will manage the administrative (e.g., grant and grant reporting etc.) aspects.
  + The office will be a holistic, client-centered public defense office.

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 contract will not be renewed based on continuing assessments of their history of performance and the NAPD study. This would be the same action the County would take and has taken with vendors in similar performance 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 saves tax dollars when compared to 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.

1. *What if the BOC votes not to staff the Office of the Public Defender?*

If the BOC votes in the negative regarding staffing the new Office of the Public Defender, Kent County will transition to a full roster system and amend its grant application to the MIDC to reflect that change. Social worker and investigator resources that are offered by the non-profit vendor to support roster attorneys will continue to be available via the County.

**INDEPENDENCE**

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?*

* **No**.

The way in which the County office of the Public Defender handles cases will **not** be beholden to or influenced by other departments within the County. Case strategy will **not** be subject to political or administrative influence. Rules of Professional Conduct and ethical obligations of attorneys already exist to guide and instruct attorneys on how to avoid situations where improper influence could arise and what to do if an attorney is confronted by a problematic situation. All attorneys risk losing their license to practice law if they violate these Rules. Indeed, it is already the ethical obligation of public defenders to stand up to and call out this type of interference in their cases, including as appropriate, to the presiding judge on the case.

* To increase trust and transparency in the process, we recommend the adoption of a new County Policy entitled “Independence of Office of Public Defender.” This policy confirms and requires that the Office of the Public Defender has sole discretion and control over the defense of cases.
* We are recommending the creation of an Independence Council, which will be appointed to receive any complaints or concerns about non-compliance with the Independence Policy, with initial term through September 30, 2025, unless extended by the Board Chair.
* With regard to judicial independence, prior to the MIDC Act, the judiciary ran many indigent defense operations in Michigan. That is now prohibited and independence from the judiciary is mandated.

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

* Michigan has in place an Indigent Defense Commission, which provides oversight for all indigent defense systems in the state, including ours (which is something many states lack).
* We have confirmed that the recommendation for an oversight board in the NAPD is a standard recommendation contained in a review of any system in any state, and was not necessarily tailored to Michigan or our county.
* The Kent County Office of the Public Defender will have oversight by the Board of Commissioners, the Michigan Indigent Defense Commission, and the proposed Independence Council. Any additional oversight and governance would be cumbersome, create a risk of delays, and be unnecessarily duplicative.

**CURRENT ATTORNEYS AND STAFF IN THE SYSTEM**

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

* All positions will be publicly posted.
* We will invite every non-profit 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 the non-profit, and every kind of position existing at non-profit has an approximate equivalent in the new office. We understand that not every non-profit employee may decide to seek County employment.
* Specific hiring determinations have not yet been made.

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

* A roster will always be needed to handle situations that can create a conflict of interest precluding a single attorney or office from representing a particular client. This most frequently arises in cases with co-defendants. Co-defendants must have separate attorneys from separate offices. Additionally, roster attorneys handle cases when caseloads internally reach the MIDC limits on the number of cases assigned to a particular attorney.
* The percentage of cases allocated to roster attorneys will shift only slightly for the first few years.
* Over time, and in compliance with all applicable MIDC standards, we will slowly increase the percentage of cases handled by the County’s public defender office.

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

The non-profit is independent of the County and has not shared its plans with the County.

**COSTS AND GRANT FUNDING**

1. *Will there be extra costs for other departments because of this plan? How will those be paid for?*

* At this time, our projections indicate that there will not be extra costs for other departments because of this plan.
* If the County needs additional staff or resources to directly support the new Office of the Public Defender, those expenses will be part of future grant applications as general overhead is an allowable expense to be reimbursed through the grant. Overhead includes cost allocation for indirect expenses such as HR and Fiscal Services.
  + As an example, our current grant already covers 4 FTE Corrections Officers to facilitate prompt attorney interviews and initial appearances for jailed clients. The grant also funded technological updates to ensure confidential attorney-client conversations at the jail.
* Retirement, health insurance, worker’s compensation, and other benefits are all funded by the grant. Fiber connectivity, computers and other technological equipment, janitorial services, office supplies, malpractice insurance, and many other similar expenses costs are also all funded by the MIDC grant.

1. *How is this change being funded?*

* 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 County contribution amount is the same regardless of the delivery service model uses and is not affected by these changes.

1. *If State funding is reduced in the future, how does the County plan to address costs of the program?*

If the State reduces or ceases funding indigent defense, then the County (and every other funding unit across the State of Michigan) will no longer required to meet the MIDC’s standards. Further, the State will be exposed to litigation for violation of the MIDC statute that obligates the State to provide funding. The Board of Commissioners will have the option to reduce staffing or use general fund revenue to support existing services. Since regardless of model, indigent defense is funded by the State MIDC grant, the consequences of a loss of state funding are the same whether or not we have a non-profit vendor providing public defense or a county-based office – the BOC will ultimately have to decide how and to what degree to fund indigent defense.

1. *What performance measures will the County Commissioners receive and what budget control does the County Commission have?*

* As a County department, the Office of the Public Defender will present annual performance measures to the assigned subcommittee of the Board.
* 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.

1. *What do you pay currently to the non-profit vendor for defense services?*

Our contract commitment with the non-profit vendor for FY 2023-2024 is $6,381,371.04, with allowances to pay less if all positions are not filled.

1. *What is the current cost for our system?*

Our current MIDC-approved cost for our system for this year is $23,884,344.34. Of that total, $21,416,076.03 is from the state grant and $2,468,268.31 is our mandated (and capped) local share.

1. *What is the projected cost for the proposed office for next year?*

The cost for next year has been submitted as $29,932,312.08. Of that total, $27,408,220.92 is from the state grant, and $2,524,091.16 is the local share. The total local share amount increases because it will include $55,822.85 as the local share from the “Collaborative” (Grandville, Kentwood, Walker, and Wyoming). Those cities will forward their local shares to the County, so the County’s contribution remains unchanged from this year.

1. *What factors are causing the cost increase for the proposed office?*

The increase from FY 2023-2024 to FY 2024-2025 is caused by:

* + Taking on the misdemeanor-only representations for the Collaborative;
  + Meeting the maximum case load requirements imposed by the new MIDC standard (Standard 6);
  + Increasing roster attorney hourly rates by approximately 3% as required by MIDC Standard 8; and
  + One-time expenses to build-out and furnish office space on another floor in the Calder Plaza building