
COMMITTEE OF THE
WHOLE MEETING



April 4, 2017

**NOTICE AND AGENDA
FOR
KALAMAZOO COUNTY BOARD OF COMMISSIONERS'
COMMITTEE OF THE WHOLE MEETING
APRIL 4, 2017**

PLEASE BE ADVISED that the Kalamazoo County Board of Commissioners has scheduled a Committee of the Whole meeting on **Tuesday, April 4, 2017, at 4:00 p.m.** for the purpose of:

Projected Time for Presentation & Discussion

- | | |
|--|------------------|
| 1. Community Mental Health Interviews (3 vacancies, 4 interviews) | 4:00 – 5:00 p.m. |
| 2. Public Housing Commission Appointment Discussion (Item T.) | 5:00 – 5:10 p.m. |
| 3. Review of Transfers and Disbursements (Item O.) – <i>Ms. Amanda Morse</i> | 5:10 – 5:15 p.m. |
| 4. Indigent Defense Update – <i>Mr. Thom Canny</i> | 5:15 – 5:30 p.m. |
| 5. Resolution Standards – <i>Chair Shugars, Vice Chair Moore</i> | 5:35 – 5:45 p.m. |
| 6. Resolution Supporting the Formation of the
Kalamazoo Prisoner ReEntry Coalition – <i>Commissioner Rogers</i> | 5:45 – 5:50 p.m. |
| 7. Any other items | |
| 8. Executive Session | 5:50 – 6:00 p.m. |
| 9. Adjournment – no later than 6 p.m. | |

The meeting will be held in the County Administration Building, 201 West Kalamazoo Avenue, Kalamazoo, Michigan, in Room 207A. Questions regarding the meeting may be addressed to the Kalamazoo County Board of Commissioners, 201 West Kalamazoo Avenue, Kalamazoo, MI 49007, or by telephoning (269) 384-8111.

Dina Sutton

Dina Sutton
Office Manager for Administrative Services

MARCH 29, 2017

MEETINGS OF THE KALAMAZOO COUNTY BOARD OF COMMISSIONERS ARE OPEN TO ALL WITHOUT REGARD TO RACE, SEX, COLOR, AGE, NATIONAL ORIGIN, RELIGION, HEIGHT, WEIGHT, MARITAL STATUS, POLITICAL AFFILIATION, SEXUAL ORIENTATION, GENDER IDENTITY OR DISABILITY. KALAMAZOO COUNTY WILL PROVIDE NECESSARY REASONABLE AUXILIARY AIDS AND SERVICES, SUCH AS SIGNERS FOR THE HEARING IMPAIRED AND AUDIO TAPES OF PRINTED MATERIALS BEING CONSIDERED AT THE MEETING/HEARING, TO INDIVIDUALS WITH DISABILITIES AT THE MEETING/HEARING UPON FOUR (4) BUSINESS DAYS' NOTICE TO THE COUNTY. INDIVIDUALS WITH DISABILITIES REQUIRING AUXILIARY AIDS OR SERVICES SHOULD CONTACT THE COUNTY BY WRITING OR CALLING:

Dina Sutton
Office Manager for Administrative Services
KALAMAZOO COUNTY GOVERNMENT
201 West Kalamazoo Avenue
Kalamazoo, Michigan 49007
TELEPHONE: (269)384-8111



ADMINISTRATIVE SERVICES MEMORANDUM

TO: Board of Commissioners
FROM: Dina Sutton
DATE: March 27, 2017
SUBJECT: Community Mental Health Interviews

Interviews will be conducted at the April 4, 2017 Committee of the Whole meeting for the Kalamazoo Community Mental Health & Substance Abuse Services Board. There are three vacancies: two (2) for Family Sector and one (1) for General Public Sector for terms commencing April 1, 2017 through March 31, 2020.

The schedule is as follows:

- 4:00 p.m. – Erik Krogh – General Public
- 4:15 p.m. – Lisa White – General Public
- 4:30 p.m. – Sharon Spears – Family
- 4:45 p.m. – Pat Guenther – Family

Sharon Spears, Patricia Guenther and Erik Krogh are all seeking reappointment.

Attached please find applications and attendance records.

Thank you for your consideration.

KALAMAZOO COMMUNITY MENTAL HEALTH & SUBSTANCE ABUSE SERVICES (KCMHSAS)

The KCMHSAS meets on the fourth Monday of each month at 418 W. Kalamazoo Avenue at 4:30 p.m. KCMHSAS deals with provision of mental health services. Membership categories are: a) mental health services provide, b) general public, c) agencies/occupations having a working involvement with mental health services, d) primary consumer, e) family member of a primary consumer and f) recipient. Appointments are made for three-year terms of office. Contact: Jeff Patton 269.553.8002.

1. Introduction of Committee and staff members.
2. Please provide a brief background of yourself.
3. Why do you wish to serve on KCMHSAS?
4. What are strengths and weaknesses you see in the current mental health care system?
5. How will your experiences as a *Family Member* affect your decisions regarding all the populations that Community Mental Health serves?
6. Members of the KCMHSAS are often approached by clients and asked to help them with the individual cases and concerns. What do you think is the best way to handle these types of situations?
7. The KCMHSAS meets the 4th Monday of every month from 4-6:30 p.m. at 418 W. Kalamazoo Avenue. In addition, Board members are expected to take part in committee work, state meetings (when able), and view of series of videotapes of KCMHSAS Works training. Will you be able to meet these meeting times and Board commitments?
8. Do you have any questions regarding the KCMHSAS?

KALAMAZOO COUNTY BOARD OF COMMISSIONERS

APPLICATION FOR APPOINTMENT TO:
KALAMAZOO COMMUNITY MENTAL HEALTH & SUBSTANCE ABUSE SERVICES

Name Erik Krogh Occupatio.

Home Address: Street City Zip

Home Telephone Business Telephone

Cell Number E-mail address

Length of residency in Kalamazoo County 59

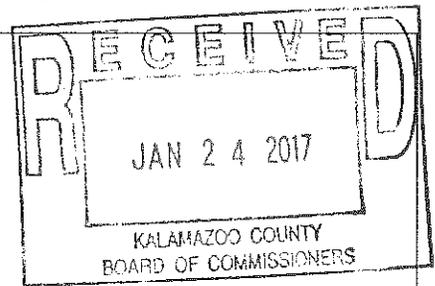
How many hours could you commit to the Board per week/month? 8 weekly

Certain categories need to be represented on the Community Mental Health & Substance Abuse Services. Please check the categories which you believe apply to you:

- a. Mental health services provider
- b. General Public X
- c. Agencies/occupations having a working involvement with mental health services X
- d. Primary consumer (defined as an individual who has received or is receiving services from the private sector equivalent to those offered by the Department or a Community Mental Health & Substance Abuse Service).
- e. Recipient (defined as an individual who is currently directly receiving mental health services from the Department of Community Mental Health, a community mental health services program, or a facility or from a provider that is under contract with the Department or a community mental health service).
- f. Family member (defined as a parent, stepparent, spouse, sibling, child, or grandparent of a primary consumer, or an individual upon whom a primary consumer is dependent for at least 50% of his/her financial support).

If you checked category a, c, d, e or f above, please explain how you represent that category.

I have been retired for many years but I did work fro years in areas related to Mental Health and directly in the provision of Mental Health Services to a range of persons in need of care. I worked 10 years for Kalamazoo County mostly in the Human Service Department. I worked many years in non-profit agencies that contracted with MH and I have served on the Board the Family Healing Center as a volunteer. I have served many years on the Mental Health Board for about 20 years on the Recipient Rights Committee for Mental Health.



What personal or professional experiences have you had with the target populations served by the Community Mental Health & Substance Abuse Services?

While at Senior Services I established case management services for elders; While employed at the County one of my duties was over site of the mental health program; While at Living Ways administered the new program "Options" which pioneered supported independent living services in Kalamazoo County. Living Ways developed services for dual diagnoses person (MH/SA) and operated group homes for persons with DD as well as MH. I have served on the Mental Health Board for many years and am quite alert to the many challenges we face from the State and contact challenging around

Medicaid funding.

Why do you desire to serve on the Community Mental Health & Substance Abuse Services?

The provision of quality services in support of persons challenged with Mental Health, Intellectual Disability or the illness of addiction is essential for all members of our greater community. The cost of failure in this arena would be far greater than the cost of services. Our Kalamazoo County Community has a great tradition of providing quality services to those in need and I consider it a privilege to be able to participate as a member of the Mental Health Board.

State law prohibits an individual from being appointed to a Community Mental Health & Substance Abuse Services if he/she is a party to a contract with the community mental health services program or administers or benefits financially from such a contract; or (2) serves in a policy-making position with an agency under contract with the community mental health services program. Listed below is a list of agencies that contract with the Kalamazoo County Community Mental Health Authority Board. This list is not all-inclusive. Do any of these restrictions apply to you? YES ____ NO X

Catholic Family Services	Bridgeways
Community Living Options	Douglass Community Association
Family & Children Services	Gryphon Place
Community Healing Center	HomeLife
Hope Network	Housing Resources
InterAct of Michigan	Keystone
MRC Industries, Inc.	Residential Opportunities, Inc.
Senior Services	WMU/Center for Disability Services
Ministry with Community	

There is a limit of six "public officials" who can serve on the Community Mental Health Authority Board. "Public officials" are those persons serving in an elected or appointed public office or employed more than 20 hours per week by an agency of federal, state, city or local government. This includes public schools/colleges/universities. YES ____ NO X

If YES, explain:

List membership on other boards or commissions:

Kalamazoo Community Mental Health & Substance Abuse Services Board
Kalamazoo Community Mental Health & Substance Abuse Services Finance Committee
Kalamazoo Community Mental Health & Substance Abuse Services Office of Recipient Rights Board

1/24/2017

Date of Application

KALAMAZOO COUNTY BOARD OF COMMISSIONERS

APPLICATION FOR APPOINTMENT TO:
KALAMAZOO COMMUNITY MENTAL HEALTH & SUBSTANCE ABUSE SERVICES

Name Lisa White Occupation _____

Home Address _____ Street _____ City _____ Zip _____

Home Telephone _____ Business Telephone _____

Cell Number _____ E-mail address _____

Length of residency in Kalamazoo County 9+yrs

How many hours could you commit to the Board per week/month? Open

Certain categories need to be represented on the Community Mental Health & Substance Abuse Services. Please check the categories which you believe apply to you:

- a. Mental health services provider _____
- b. General Public X
- c. Agencies/occupations having a working involvement with mental health services _____
- d. Primary consumer (defined as an individual who has received or is receiving services from the private sector equivalent to those offered by the Department or a Community Mental Health & Substance Abuse Service). _____
- e. Recipient (defined as an individual who is currently directly receiving mental health services from the Department of Community Mental Health, a community mental health services program, or a facility or from a provider that is under contract with the Department or a community mental health service). _____
- f. Family member (defined as a parent, stepparent, spouse, sibling, child, or grandparent of a primary consumer, or an individual upon whom a primary consumer is dependent for at least 50% of his/her financial support). _____

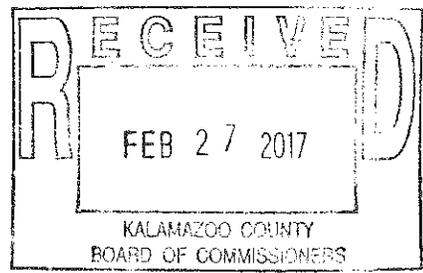
If you checked category a, c, d, e or f above, please explain how you represent that category.

What personal or professional experiences have you had with the target populations served by the Community Mental Health & Substance Abuse Services?

When practicing as a nurse I had worked in intensive in patient drug and alcohol rehab facility.

Why do you desire to serve on the Community Mental Health & Substance Abuse Services?

I understand the dynamics and reality of the disease of alcohol and drug addiction. Personally and professionally have seen the worst and best case scenarios.



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- | | |
|----------------------------|------------------------------------|
| Catholic Family Services | Bridgeways |
| Community Living Options | Douglass Community Association |
| Family & Children Services | Gryphon Place |
| Community Healing Center | HomeLife |
| Hope Network | Housing Resources |
| InterAct of Michigan | Keystone |
| MRC Industries, Inc. | Residential Opportunities, Inc. |
| Senior Services | WMU/Center for Disability Services |
| Ministry with Community | |

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If YES, explain:

List membership on other boards or commissions:

2/27/2017

Date of Application

KALAMAZOO COUNTY BOARD OF COMMISSIONERS

APPLICATION FOR APPOINTMENT TO:
KALAMAZOO COMMUNITY MENTAL HEALTH & SUBSTANCE ABUSE SERVICES

Name Sharon Spears Occupation retired

Home Address _____
Street City Zip

Home Telephone _____ Business Telephone _____

Cell Number _____ E-mail address _____

Length of residency in Kalamazoo County 73 years

How many hours could you commit to the Board per week/month? 10-12

Certain categories need to be represented on the Community Mental Health & Substance Abuse Services. Please check the categories which you believe apply to you:

- a. Mental health services provider _____
- b. General Public _____
- c. Agencies/occupations having a working involvement with mental health services _____
- d. Primary consumer (defined as an individual who has received or is receiving services from the private sector equivalent to those offered by the Department or a Community Mental Health & Substance Abuse Service). _____
- e. Recipient (defined as an individual who is currently directly receiving mental health services from the Department of Community Mental Health, a community mental health services program, or a facility or from a provider that is under contract with the Department or a community mental health service). _____
- f. Family member (defined as a parent, stepparent, spouse, sibling, child, or grandparent of a primary consumer, or an individual upon whom a primary consumer is dependent for at least 50% of his/her financial support). X

If you checked category a, c, d, e or f above, please explain how you represent that category.

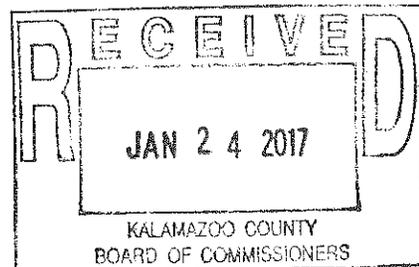
My son has PMD Leukodystrophy ,debilitating disease,is taken of in my home --total care and is almost 50 years old .

What personal or professional experiences have you had with the target populations served by the Community Mental Health & Substance Abuse Services?

I have taken care of my son for almost 50 years. Through the years I have advocated for him and his late twin brother. Served on many different family supports groups and helped create programs. Volunteered for Disability Resource Center, Kalamazoo Special Ed. programs, and served on the then called KVISED committee. I have a B.A. in Social Work.

Why do you desire to serve on the Community Mental Health & Substance Abuse Services?

To use my experienced with my disabled son to help members of the community and to expand the disabled persons and their families horizons.



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- | | |
|----------------------------|------------------------------------|
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| Community Living Options | Douglass Community Association |
| Family & Children Services | Gryphon Place |
| Community Healing Center | HomeLife |
| Hope Network | Housing Resources |
| InterAct of Michigan | Keystone |
| MRC Industries, Inc. | Residential Opportunities, Inc. |
| Senior Services | WMU/Center for Disability Services |
| Ministry with Community | |

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If YES, explain:

I am a Comstock Parks and Recreation Commissioner. Attend one monthly meeting for about 2 hours a month

List membership on other boards or commissions:

1/24/2017
Date of Application

KALAMAZOO COUNTY BOARD OF COMMISSIONERS

**APPLICATION FOR APPOINTMENT TO:
KALAMAZOO COMMUNITY MENTAL HEALTH & SUBSTANCE ABUSE SERVICES**

Name Patricia M Guenther Occupation, _____

Home Address _____
Street City Zip

Home Telephone: _____ Business Telephone _____

Cell Number _____ E-mail address _____

Length of residency in Kalamazoo County MI

How many hours could you commit to the Board per week/month? Whatever is needed.

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- b. General Public _____
- c. Agencies/occupations having a working involvement with mental health services _____
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- f. Family member (defined as a parent, stepparent, spouse, sibling, child, or grandparent of a primary consumer, or an individual upon whom a primary consumer is dependent for at least 50% of his/her financial support). X

If you checked category a, c, d, e or f above, please explain how you represent that category.

My son is a recipient.
My brother has received services.

What personal or professional experiences have you had with the target populations served by the Community Mental Health & Substance Abuse Services?

My family includes a sister in an AFC home because of her mental health condition. Her twin sister is my ward, and is developmentally disabled and in a licensed home. My son has schizophrenia. My brother has schizophrenia. I had a stepsister who had schizophrenia, as well as a cousin. I am an advocate for my son and brother, as well as my sisters. I have taken both my sister and brother into my home and cared for them when they needed that assistance.

Why do you desire to serve on the Community Mental Health & Substance Abuse Services?

I am committed to supporting continuing improvement of the mental health services provided by KCMHSAS. There is nothing more important to me for which I would like to volunteer. Since I am retired, I have the time, energy, and the will to serve.

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- | | |
|----------------------------|------------------------------------|
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| Community Living Options | Douglass Community Association |
| Family & Children Services | Gryphon Place |
| Community Healing Center | HomeLife |
| Hope Network | Housing Resources |
| InterAct of Michigan | Keystone |
| MRC Industries, Inc. | Residential Opportunities, Inc. |
| Senior Services | WMU/Center for Disability Services |
| Ministry with Community | |

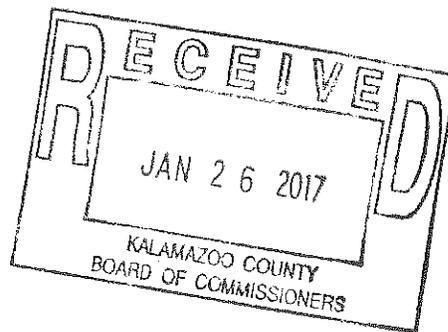
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If YES, explain:

List membership on other boards or commissions:

South West Michigan Behavioral Health, where I serve as alternate for Moses Walker on the board of directors.

1/25/2017
Date of Application



Attendance Record

Kalamazoo Community Mental Health and Substance Abuse Services - 2016

NAME		1/25/2016	2/22/2016	3/28/2016	4/25/2016	5/23/2016	6/27/2016	7/25/2016	8/22/2016	9/26/2016	10/31/2016	11/28/2016	CANCELLED	#	%
1	Patricia Guenther	X	X	X	X	X	X	X	X	X		X		10	83.3%
2	Erik Krogh	X		X	X	X	X	X	X	X	X	X		10	83.3%
3	Sharon Spears	X	X	X	X	X	X	X	X	X	X			10	83.3%
4	Moses Walker													0	0.0%
5	Carolyn Alford													0	0.0%
6	Michael Seals													0	0.0%
7	Dr. Carol Black													0	0.0%
8	Denise Martineau													0	0.0%
9	Ituha Cloud													0	0.0%
10	Karen Longanecker													0	0.0%
11	Elizabeth 'Betty' Veenhuis													0	0.0%
12	Robert T. Green													0	0.0%
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# in Attendance:		3	2	3	3	3	3	3	3	3	2	2	0		



ADMINISTRATIVE SERVICES MEMORANDUM

TO: Board of Commissioners

FROM: Dina Sutton

DATE: March 23, 2017

SUBJECT: Public Housing Commission Appointment

At your March 7, 2017 Committee of the Whole meeting interviews were conducted for the Public Housing Commission. There is one vacancy for a term commencing March 1, 2017 through February 28, 2022. You interviewed:

- Matthew Hollander
- Lisa White
- David Anderson

Mr. Anderson was originally appointed to the Public Housing Commission on March 6, 2002 and has 100% meeting attendance record over the last 5 years.

The Board of Commissioners need to make a decision on whom to appoint/reappoint.

Thank you for your consideration.

**COUNTY OF KALAMAZOO
RECOMMENDED TRANSFERS AND DISBURSEMENTS
APRIL 4, 2017**

DISBURSEMENTS

CLAIMS

Claims	\$2,640,682.48
Claims Requiring Disclosure:	\$0.00
Total Current Claims:	\$2,640,682.48

RELEASE OF FUNDS

Total Release of Funds:	\$0.00
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TRANSFERS

DEPARTMENT/ACCOUNT	DECREASE	INCREASE
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ADMINISTRATIVE SERVICES MEMORANDUM

TO: BOARD OF COMMISSIONERS

FROM: THOM CANNY, CORPORATE COUNSEL
TRACIE MOORED, ADMINISTRATOR-CONTROLLER

DATE: MARCH 27, 2017

SUBJECT: PUBLICLY FUNDED INDIGENT DEFENSE

More than fifty (50) years ago, the United States Supreme Court first held that a person who was facing a serious criminal charge had a constitutional right to have an attorney represent him or her in court. The Supreme Court also held that if the person could not afford to hire their own attorney, an attorney would be would be appointed to represent him or her. Over the next 50 years, federal, state and local units of government, along with the courts, have sought to answer the important questions raised by the constitutional right to appointed counsel:

Who decides if a person cannot afford an attorney and is eligible for appointed counsel?

Who chooses the attorney that is appointed to represent the defendant?

How does that person(s) select the attorney who is appointed to represent the defendant?

Who pays for the appointed attorney?

In Michigan, the State government essentially left it the courts and local units of government (primarily Counties) to answer those questions. As you might imagine, this delegation (some would say abdication) resulted in the creation of dozens of different Publicly Funded Defense Systems (Indigent Defense Systems) throughout Michigan's 83 Counties that have changed many times over the last 50 years.

Currently, in Kalamazoo County, the Kalamazoo County Circuit Court and District Court have undertaken the responsibilities of determining if a person is eligible to have an attorney appointed to represent him or her. The Courts also determine which attorneys can be appointed to represent Indigent Defendants and how the appointments are made. The County, as the funding unit for the Courts, pays for the appointed attorneys. In 2014 the costs for appointed attorneys in Circuit Court was \$951,185¹ and \$327,436 in District Court. In 2015 the costs for appointed attorneys in Circuit Court was \$980,641² and \$382,759 in District Court. In 2016 the costs for appointed attorneys in Circuit Court was \$871,047³ and \$437,835 in District Court.

In the past 15-20 years, there has been substantial criticism of the way Michigan organizes and maintains its various Indigent Defense Systems. With dozens of different methods for providing appointed counsel throughout the State, there were no uniform standards to insure that indigent defendants in criminal cases receive effective assistance of counsel or that there were standards in place for the appointing and supervising attorneys. In response to these criticisms, and to a number of lawsuits, the State enacted the Michigan Indigent Defense Commission Act in 2013. This Act created the Michigan Indigent Defense Commission (MIDC) and directed the MIDC to create and implement standards to insure that indigent defendants in criminal cases receive effective assistance of counsel and that there are standards in place for the appointing and supervising the appointed attorneys.

In January of 2016, the MIDC submitted its first four (4) Proposed Minimum Standards for Appointed Counsel to the Michigan Supreme Court. The Michigan Supreme Court then asked for public comment on the four proposed minimum standards and held a Public Hearing on the proposed standards on May 18, 2016. On June 1, 2016 the Michigan Supreme Court conditionally approved the minimum standards but advised that the standards could not go onto effect until the Legislature made changes to the Michigan Indigent Defense Commission Act. The Legislature

¹ This amount does not include court appointed attorneys for Family Court or Probate Court proceedings.

² This amount does not include court appointed attorneys for Family Court or Probate Court proceedings.

³ This amount does not include court appointed attorneys for Family Court or Probate Court proceedings.

passed the required amendments before the end of 2016 and the Governor signed the amendments into law in January of this year.

On February 7, 2017 the MIDC submitted the first four proposed minimum standards to the Michigan Department of Licensing and Regulatory Affairs (LARA) which accepted public comment on the standards until March 9, 2017. In general, the standards address the Education and Training of Defense Counsel; establish standards for an Initial Interview between the Client and Defense Counsel; establish standards to provide for Investigation and Experts to assist in the defense; and requiring that appointed Counsel be at the Client's first Court appearance. Complete copies of the four minimum standards are attached to this Memorandum for your consideration and review. We expect that LARA will issue its approval of the minimum standards in the near future.

Once LARA approves the standards, each Indigent Defense System (including Kalamazoo County) will have 180 days to submit a plan to the MIDC that describes how it will meet the Minimum Standards and a cost analysis for meeting the Minimum Standards. After the MIDC receives the plan, it has 60 days to review the plan and cost analysis. One of the key components to Michigan Indigent Defense Act provides that the State of Michigan is to pay for the increased costs that result from meeting the Minimum Standards. The increased cost must be identified in the cost analysis submitted to the MIDC and is determined by the difference between the costs of the plan and the county's local share.⁴

At your Committee of the Whole meeting on April 4, 2017, we wish to start the discussion of how Kalamazoo County will prepare a plan to implement the Minimum Standards. This discussion is vitally important because we expect that the MIDC will continue to develop, and that the Supreme Court will adopt, additional Minimum Standards which will result in more changes to the Indigent Defense System in Kalamazoo County. Now is the time and chance to develop an integrated approach to Indigent Defense that meets the County's responsibilities for today and tomorrow. In 2016 we began securing input from people and organizations involved in the Indigent

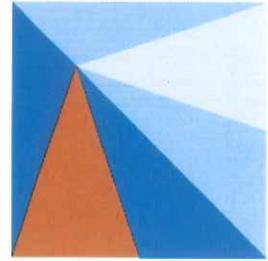
⁴ The county's local share for indigent defense costs is the county's average annual expenditure for the 3 fiscal years immediately preceding the creation of the Michigan Indigent defense Commission in 2013

Defense System on how to meet the proposed minimum standards: the Sheriff's Office, the Courts, the Prosecuting Attorney, and the attorneys who are appointed to represent Indigent Criminal Defendants.

From those discussion we learned that there are many passionate advocates for indigent defense services and that there is the desire to see the County's Indigent Defense System administered independently from the Courts. It is important to note that representatives of both the District Court and Circuit Court expressed the belief that the Courts could continue to fairly and equitably administer the Indigent Defense Services in Kalamazoo County, however, the Courts were also interested in having the County Board of Commissioners undertake the responsibility for administering the County's Indigent Defense System.

Logically, there are two main methods by which the County could administer an Indigent Defense System. One method would be to "step into the shoes" of the Courts and continue to use variations of the Circuit Court Roster System and District Court Contract system, with each one amended to meet the new minimum standards. The second method would be to create a Public Defender's Department which would be staffed and operated by county employees. These are the two options we wish to start discussing with the Board on April 4, 2017.

Thank you for your time and consideration to this Memorandum. We look forward to starting these discussions with you. If you have any questions or concerns regarding this Memorandum, please contact any of us at your convenience.



Proposed Minimum Standards – Set 1

SUBMITTED TO THE DEPARTMENT OF LICENSING AND
REGULATORY AFFAIRS – FEBRUARY 2017

Michigan Indigent Defense Commission

SEND COMMENTS TO: 200 N. WASHINGTON SQUARE, 3RD FLOOR, LANSING, MICHIGAN, 48913 |
COMMENTS@MICHIGANIDC.GOV

Minimum Standards for Appointed Counsel under the MIDC Act

Standard 1 Education and Training of Defense Counsel

The MIDC Act requires adherence to the principle that “[d]efense counsel is required to attend continuing legal education relevant to counsel’s indigent defense clients.” MCL 780.991(2)(e). The United States Supreme Court has held that the constitutional right to counsel guaranteed by the Sixth Amendment includes the right to the effective assistance of counsel. The mere presence of a lawyer at a trial “is not enough to satisfy the constitutional command.” *Strickland v Washington*, 466 US 668, 685; 104 S Ct 2052, 2063; 80 L Ed 2d 674 (1984). Further, the Ninth Principle of The American Bar Association’s Ten Principles of a Public Defense Delivery System provides that a public defense system, in order to provide effective assistance of counsel, must ensure that “Defense counsel is provided with and required to attend continuing legal education.”

The MIDC proposed a minimum standard for the education and training of defense counsel. The version conditionally approved by the Court and submitted by the MIDC is as follows:

A. Knowledge of the law. Counsel shall have reasonable knowledge of substantive Michigan and federal law, constitutional law, criminal law, criminal procedure, rules of evidence, ethical rules and local practices. Counsel has a continuing obligation to have reasonable knowledge of the changes and developments in the law. “Reasonable knowledge” as used in this standard means knowledge of which a lawyer competent under MRPC 1.1 would be aware.

B. Knowledge of scientific evidence and applicable defenses. Counsel shall have reasonable knowledge of the forensic and scientific issues that can arise in a criminal case, the legal issues concerning defenses to a crime, and be reasonably able to effectively litigate those issues.

C. Knowledge of technology. Counsel shall be reasonably able to use office technology commonly used in the legal community, and technology used within the applicable court system. Counsel shall be reasonably able to thoroughly review materials that are provided in an electronic format.

D. Continuing education. Counsel shall annually complete continuing legal education courses relevant to the representation of the criminally accused. Counsel shall participate in skills training and educational programs in order to maintain and enhance overall preparation, oral and written advocacy, and litigation and negotiation skills. Lawyers can discharge this obligation for annual continuing legal education by attending local trainings or statewide conferences. Attorneys with fewer than two years of experience practicing criminal defense in Michigan shall participate in one basic skills acquisition class. All attorneys shall annually complete at least twelve hours of continuing legal education. Training shall be funded through compliance plans submitted by the local delivery system or other mechanism that does not place a financial burden on assigned counsel. The MIDC shall collect or direct the collection of data regarding the number of hours of continuing legal education offered to and attended by assigned counsel, shall analyze the quality of the training, and shall ensure that the effectiveness of the training be measurable and validated. A report regarding these data shall be submitted to the Court annually by April 1 for the previous calendar year.

Comment:

The minimum of twelve hours of training represents typical national and some local county requirements, and is accessible in existing programs offered statewide.

Standard 2 Initial Interview

The MIDC Act requires adherence to the principle that “[d]efense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel’s client.” MCL 780.991(2)(a). United States Supreme Court precedent and American Bar Association Principles recognize that the “lack of time for adequate preparation and the lack of privacy for attorney-client consultation” can preclude “any lawyer from providing effective advice.” See *United States v Morris*, 470 F3d 596, 602 (CA 6, 2006) (citing *United States v Cronin*, 466 US 648; 104 S Ct 2039; 80 L Ed 2d 657 (1984)). Further, the Fourth Principle of The American Bar Association’s Ten Principles of a Public Defense Delivery System provides that a public defense system, in order to provide effective assistance of counsel, must ensure that “Defense counsel is provided sufficient time and a confidential space within which to meet with the client.”

The MIDC proposed a minimum standard for the initial client interview. The version conditionally approved by the Court and submitted by the MIDC is as follows:

A. Timing and Purpose of the Interview: Counsel shall conduct a client interview as soon as practicable after appointment to represent the defendant in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning counsel’s representation and the case proceedings. The purpose of the initial interview is to: (1) establish the best possible relationship with the indigent client; (2) review charges; (3) determine whether a motion for pretrial release is appropriate; (4) determine the need to start-up any immediate investigations; (5) determine any immediate mental or physical health needs or need for foreign language interpreter assistance; and (6) advise that clients should not discuss the circumstances of the arrest or allegations with cellmates, law enforcement, family or anybody else without counsel present. Counsel shall conduct subsequent client interviews as needed. Following appointment, counsel shall conduct the initial interview with the client sufficiently before any subsequent court proceeding so as to be prepared for that proceeding. When a client is in local custody, counsel shall conduct an initial client intake interview within three business days after appointment. When a client is not in custody, counsel shall promptly deliver an introductory communication so that the client may follow-up and schedule a meeting. If confidential videoconference facilities are made available for trial attorneys, visits should at least be scheduled within three business days. If an indigent defendant is in the custody of the Michigan Department of Corrections (MDOC) or detained in a different county from where the defendant is charged, counsel should arrange for a confidential client visit in advance of the first pretrial hearing.

B. Setting of the interview: All client interviews shall be conducted in a private and confidential setting to the extent reasonably possible. The indigent criminal defense system shall ensure the necessary accommodations for private discussions between counsel and clients in courthouses, lock-ups, jails, prisons, detention centers, and other places where clients must confer with counsel.

C. Preparation: Counsel shall obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports concerning pretrial release, and discoverable material.

D. Client status:

1. Counsel shall evaluate whether the client is capable of participation in his/her representation, understands the charges, and has some basic comprehension of criminal procedure. Counsel has a continuing responsibility to evaluate, and, where appropriate, raise as an issue for the court the client's capacity to stand trial or to enter a plea pursuant to MCR 6.125 and MCL 330.2020. Counsel shall take appropriate action where there are any questions about a client's competency.
2. Where counsel is unable to communicate with the client because of language or communication differences, counsel shall take whatever steps are necessary to fully explain the proceedings in a language or form of communication the client can understand. Steps include seeking the appointment of an interpreter to assist with pretrial preparation, interviews, investigation, and in- court proceedings, or other accommodations pursuant to MCR. 1.111.

Comments:

1. *The MIDC recognizes that counsel cannot ensure communication prior to court with an out of custody indigent client. For out of custody clients the standard instead requires the attorney to notify clients of the need for a prompt interview.*
2. *The requirement of a meeting within three business days is typical of national requirements (Florida Performance Guidelines suggest 72 hours; in Massachusetts, the Committee for Public Counsel Services Assigned Counsel Manual requires a visit within three business days for custody clients; the Supreme Court of Nevada issued a performance standard requiring an initial interview within 72 hours of appointment).*
3. *Certain indigent criminal defense systems only pay counsel for limited client visits in custody. In these jurisdictions, compliance plans with this standard will need to guarantee funding for multiple visits.*
4. *In certain systems, counsel is not immediately notified of appointments to represent indigent clients. In these jurisdictions, compliance plans must resolve any issues with the failure to provide timely notification.*
5. *Some jurisdictions do not have discovery prepared for trial counsel within three business days. The MIDC expects that this minimum standard can be used to push for local reforms to immediately provide electronic discovery upon appointment.*
6. *The three-business-day requirement is specific to clients in "local" custody because some indigent defendants are in the custody of the Michigan Department of Corrections (MDOC) while other defendants might be in jail in a different county from the charging offense.*
7. *In jurisdictions with a large client population in MDOC custody or rural jurisdictions requiring distant client visits compliance plans might provide for visits through confidential videoconferencing.*
8. *Systems without adequate settings for confidential visits for either in-custody or out-of-custody clients will need compliance plans to create this space.*
9. *This standard only involves the initial client interview. Other confidential client interviews are expected, as necessary.*

Standard 3 Investigation and Experts

The United States Supreme Court has held: (1) "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v Washington*, 466 US 668, 691; 104 S Ct 2052, 2066; 80 L Ed 2d 674 (1984); and (2) "[c]riminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both." *Harrington v Richter*, 562 US 86, 106; 131 S Ct 770, 788; 178 L Ed 2d 624 (2011). The MIDC Act authorizes "minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel..." MCL 780.985(3).

The MIDC proposed a minimum standard for investigations and experts. The version conditionally approved by the Court and submitted by the MIDC is as follows:

- A. Counsel shall conduct an independent investigation of the charges and offense as promptly as practicable.
- B. When appropriate, counsel shall request funds to retain an investigator to assist with the client's defense. Reasonable requests must be funded.
- C. Counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution's case. Reasonable requests must be funded as required by law.
- D. Counsel has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance. Decisions to limit investigation must take into consideration the client's wishes and the client's version of the facts.

Comments:

- 1. The MIDC recognizes that counsel can make "a reasonable decision that makes particular investigations unnecessary" after a review of discovery and an interview with the client. Decisions to limit investigation should not be made merely on the basis of discovery or representations made by the government.*
- 2. The MIDC emphasizes that a client's professed desire to plead guilty does not automatically alleviate the need to investigate.*
- 3. Counsel should inform clients of the progress of investigations pertaining to their case.*
- 4. Expected increased costs from an increase in investigations and expert use will be tackled in compliance plans.*

Standard 4 Counsel at First Appearance and other Critical Stages

The MIDC Act provides that standards shall be established to effectuate the following: (1) "All adults, except those appearing with retained counsel or those who have made an informed waiver of counsel, shall be screened for eligibility under this act, and counsel shall be assigned as soon as an indigent adult is determined to be eligible for indigent criminal defense services." MCL 780.991(1)(c); (2) "A preliminary inquiry regarding, and the determination of, the indigency of any defendant shall be made by the court not later than at the defendant's first appearance in court. MCL 780.991(3)(a); (3) ...counsel continuously represents and

personally appears at every court appearance throughout the pendency of the case." MCL 780.991(2)(d)(emphasis added).

The MIDC proposed a minimum standard on counsel at first appearance and other critical stages. The version conditionally approved by the Court and submitted by the MIDC is as follows:

A. Counsel shall be assigned as soon as the defendant is determined to be eligible for indigent criminal defense services. The indigency determination shall be made and counsel appointed to provide assistance to the defendant as soon as the defendant's liberty is subject to restriction by a magistrate or judge. Representation includes but is not limited to the arraignment on the complaint and warrant. Where there are case-specific interim bonds set, counsel at arraignment shall be prepared to make a de novo argument regarding an appropriate bond regardless of and, indeed, in the face of, an interim bond set prior to arraignment which has no precedential effect on bond-setting at arraignment. Nothing in this paragraph shall prevent the defendant from making an informed waiver of counsel.

B. All persons determined to be eligible for indigent criminal defense services shall also have appointed counsel at pre-trial proceedings, during plea negotiations and at other critical stages, whether in court or out of court.

Comments:

1. The proposed standard addresses an indigent defendant's right to counsel at every court appearance and is not addressing vertical representation (same defense counsel continuously represents) which will be the subject of a future minimum standard as described in MCL 780.991(2)(d).

2. One of several potential compliance plans for this standard may use an on-duty arraignment attorney to represent defendants. This appointment may be a limited appearance for arraignment only with subsequent appointment of different counsel for future proceedings. In this manner, actual indigency determinations may still be made during the arraignment.

3. Among other duties, lawyering at first appearance should consist of an explanation of the criminal justice process, advice on what topics to discuss with the judge, a focus on the potential for pre-trial release, or achieving dispositions outside of the criminal justice system via civil infraction or dismissal. In rare cases, if an attorney has reviewed discovery and has an opportunity for a confidential discussion with her client, there may be a criminal disposition at arraignment.

4. The MIDC anticipates creative and cost-effective compliance plans like representation and advocacy through videoconferencing or consolidated arraignment schedules between multiple district courts.

5. This standard does not preclude the setting of interim bonds to allow for the release of in-custody defendants. The intent is not to lengthen any jail stays. The MIDC believes that case-specific interim bond determinations should be discouraged. Formal arraignment and the formal setting of bond should be done as quickly as possible.

6. Any waiver of the right to counsel must be both unequivocal and knowing, intelligent, and voluntary. People v Anderson, 398 Mich 361; 247 NW2d 857 (1976). The uncounseled defendant must have sufficient information to make an intelligent choice dependent on a range of case-specific factors, including his education or sophistication, the complexity or easily grasped nature of the charge, and the stage of the proceeding.

Kalamazoo County Board of Commissioners
RESOLUTION

SUPPORTING THE FORMATION OF
THE KALAMAZOO PRISONER REENTRY COALITION

WHEREAS, mass incarceration takes a significant toll on the families of those who are confined to prison or jail; and,

WHEREAS, mass incarceration disproportionately affects people of color; and,

WHEREAS, the criminalization of youth behavior and the school-to-prison pipeline continue to feed juveniles into the criminal justice system; and,

WHEREAS, the rate of mental illness is disproportionately high among the incarcerated; and,

WHEREAS, the average length of stay in both prisons and jails has increased markedly over time and resulted in significant costs; and,

WHEREAS, an objective and transparent parole process will ensure that prisoners eligible for release receive a fair opportunity to reenter the community; and,

WHEREAS, substance abuse is prevalent among the incarcerated and prison-based drug treatment has shown success in reducing the drug use and criminal activity, especially when coupled with aftercare treatment in the community; and,

WHEREAS, employers report that job applicants who have been arrested, jailed, imprisoned or paroled have the lowest chances of being hired; and,

WHEREAS, access to education programming and productive activities will improve reentry outcomes; and,

WHEREAS, reentry outcomes will be improved if returning individuals have access to adequate housing; and,

WHEREAS, while in prison, visitation and communication with family and friends helps to build a network of support to the incarcerated; and,

WHEREAS, recidivism rates can be reduced by investing in research-driven, evidence-based programs, as well as implementing effective community engagement and supervision policies.

NOW, THEREFORE, BE IT RESOLVED, that the Kalamazoo County Board of

Commissioners supports the creation of the Kalamazoo Prisoner Reentry Coalition, which has as its overall goal a 50% reduction in the return-to-prison rate for persons released from State prison, through a rededication to the Michigan Prisoner Reentry Initiative Model which includes full community engagement and community funding control.

BE IT FURTHER RESOLVED, in order to correct prevailing misconceptions about incarceration and its detrimental effect on children, families and communities, while promoting a theory of justice founded in restoration, rehabilitation and redemption, and an understanding that the child welfare and juvenile systems contribute greatly to adult incarceration, the Coalition is dedicated to public education that promotes a safe, fair and cost effective justice system.

BE IT FURTHER RESOLVED, in order to spur investment in neighborhoods most affected by crime and imprisonment, increase the capacity for children and families in those neighborhoods to thrive, and to provide enhanced and expanded services that have a proven impact on crime and recidivism, the Coalition will promote fiscal policies that reinvest savings resulting from improvements in the justice system into those communities and neighborhoods most effected by crime and imprisonment, particularly low-income and communities of color.

BE IT FURTHER RESOLVED, in order for the County, in partnership with Kalamazoo Prisoner Reentry Coalition and the Workforce Development Board to develop annual comprehensive prisoner plans, the state is asked to provide annual demographic and prisoner population characteristics data beginning in 2017 to the Kalamazoo Prisoner Reentry Coalition as previously provided under the Michigan Prisoner Reentry Initiative (See Attached).

BE IT FURTHER RESOLVED, in order to develop highly specific, Individualized Transition Accountability Plans for Kalamazoo's returning citizens, the state is asked to provide detailed information on each prisoner returning to Kalamazoo six months prior to release and to provide access to the prisoner so that he/she is engaged in the development of their reentry plan as was previously the case under the Michigan Prisoner Reentry Initiative.

STATE OF MICHIGAN)
)SS
COUNTY OF KALAMAZOO)

I, Timothy A. Snow, County Clerk/Register, do hereby certify that the foregoing is a true copy of a Resolution adopted by the Kalamazoo County Board of Commissioners at a regular session held on April 18, 2017.

Timothy A. Snow
County Clerk/Register
Kalamazoo County Clerk/Register