



Item Number: 15

CITY OF GRAND RAPIDS AGENDA ACTION REQUEST

DATE: August 13, 2024

TO: Mark Washington, City Manager

COMMITTEE: Fiscal Committee

LIAISON: Molly Clarin, Chief Financial Officer

FROM: Connie M. Bohatch, Senior Managing Director of Community Services
Community Development

SUBJECT: **Resolution accepting a grant of approximately \$3.3 million from the Michigan Indigent Defense Commission (MIDC) Department of Licensing and Regulatory Affairs (LARA) and authorizing execution of agreements for implementation of the FY25 Compliance Plan as required by the MIDC Act**

Attached is a resolution accepting a grant and authorizing execution of agreements for implementation of the City of Grand Rapids FY25 Compliance Plan for Indigent Defense Standards 1-8 and the Standard for Determining Indigency. This is necessary due to a series of bills introduced in the fall of 2016 to amend the Michigan Indigent Defense Commission Act and related statutory provisions. The primary legislative amendments resulted in:

1. Moving the MIDC from the Judicial Branch to the Department of Licensing and Regulatory Affairs (LARA);
2. Clarifying the definition of local systems as trial court funding units (cities, counties, etc.); and
3. Requiring LARA to approve proposed minimum standards for indigent defense and specifying that these minimum standards should not infringe on Supreme Court authority.

The nine (9) standards proposed by the Michigan Indigent Defense Commission (MIDC) for indigent defense delivery systems have been approved by LARA as follows.

- Standards 1 through 4 were approved on May 22, 2017.
- Standard 5 was approved on October 29, 2020.
- The Standard for Determining Indigency and Contribution was approved on October 28, 2021.

- Standard 8 was approved on October 28, 2022.
- Standards 6 and 7 were approved on October 24, 2023.

The City is required to submit an annual compliance plan that specifies how its indigent defense system will comply with these standards, and a cost analysis for implementation. The Community Development Department is responsible for this mandated program and obtained approval for the City's FY25 Compliance Plan that addresses the standards as follows:

Standard 1 – Training and Education of Counsel. Counsel will be obtained through an Expression of Interest issued by the Community Development Department to ensure counsel has reasonable knowledge of law under MRPC 1.1. The City also will contract with the Grand Rapids Bar Association to provide attorney training and track required continuing education credits.

Standard 2 – Initial Client Interview. The City will work with the Kent County Correctional Facility, Michigan Department of Corrections, and detention centers to ensure a public defense attorney is assigned and meets with the client within 72 hours of appointment.

Standard 3 – Investigation and Experts. The City will ensure that investigators and expert witnesses are available as appropriate for effective assistance of counsel, including preparing counsel for their client's defense and rebutting the prosecution's case.

Standard 4 – Counsel at First Appearance and Other Critical Stages. The City will contract with up to twelve (12) attorneys to provide services at First Appearance, up to 42 attorneys for Assigned Counsel, and up to six (6) attorneys for Specialty Courts to provide services at first appearance and other critical stages as required. Attorney assignments will continue to the Drug and Sobriety Treatment courts, and Outreach Court. Attorneys will be assigned to Domestic Violence Treatment Court starting in October.

Standard 5 – Independence from the Judiciary. The City, through the Community Development Department, will be responsible for the Indigent Defense System. Community Development has employed a full-time Indigent Defense Coordinator to carry out program responsibilities. An attorney will be contracted to serve as the required "Managing Assigned Counsel" to guarantee the integrity of the relationship between the lawyer and their client by being free from political and undue budgetary influence. As such, the Managing Assigned Counsel will support selection of lawyers to serve indigent clients and review case assignments and billings. The Court's role will be limited to informing defendants of the right to counsel and making a determination of indigency and entitlement to appointment.

Standard 6 – Indigent Defense Workloads. The City will ensure that indigent defense attorneys are not assigned cases or docket hours in excess of MIDC caseload limits, preventing case overload and allowing sufficient time to be dedicated to each client. Additionally, the City will work with area partners to ensure that contract attorneys do not accept excessive workloads if they work in other systems throughout the state.

Standard 7– Qualification and Review. The City will ensure that defense counsel's ability, training, and experience align with the nature and complexity of assigned cases. Additionally, the City will contract with an Attorney Evaluator to assess defense counsel's efficiency and adherence to standards. These measures will guide the education, training, qualification, and ongoing review of criminal defense attorneys appointed to represent indigent defendants.

Standard 8 – Attorney Compensation. The City will continue to pay attorneys at the appropriate rate set forth by the MIDC. This payment standard allows attorneys to defend their clients without compromise and ensure quality representation.

Standard for Determining Indigency and Contribution. The City will work with the 61st District Court to screen for indigency and provide assigned counsel based on the determination. The City will not require clients to contribute to the cost of their defense if the client is determined to be indigent.

Enhanced Service. The City will obtain a contracted, part-time licensed social worker to work with attorneys and their clients to develop individualized alternative sentencing plans and support data collection.

The MIDC Act makes clear that funding units will not have to pay additional funds for compliance. Cities and counties are only required to maintain their "local share," which is the average annual expenditure for indigent adult criminal trial defense services in the three fiscal years prior to the MIDC Act (July 1, 2013) excluding money reimbursed to the system by individuals determined to be partially indigent. See MCL 780.983. Any amount of money needed to comply with the standards above the local share will be part of a grant request submitted with a compliance plan. The funds will be provided by the State and distributed to systems through grants administered by the MIDC. If the grant funds are not provided to the systems, then compliance with the standards is not required. See MCL 780.993.

As outlined in the FY25 Cost Analysis, the City's anticipated total implementation cost is \$3,334,860.84. Costs will be covered using a combination of local share and grant funds. The anticipated local share is \$178,511.36, with a final grant share amount dependent on final closeout of the FY24 grant.

Further Background. The Commission was created as a result of efforts to improve legal representation for indigent criminal defendants. In October 2011, Governor Snyder issued Executive Order 2011-12 establishing the initial Indigent Defense Advisory Commission, which was responsible for recommending improvements to the state's legal system. These recommendations served as the basis for legislation to address this need and called for the 15-member Indigent Defense Commission that the governor signed into law in July 2013 (Michigan Indigent Defense Commission Act).

Your FISCAL COMMITTEE recommends the adoption of the following resolution accepting a grant from the Michigan Indigent Defense Commission (MIDC) Department of Licensing and Regulatory Affairs (LARA) and authorizing execution of agreements for implementation of the FY25 Compliance Plan as required by the MIDC Act.

RESOLVED:

1. That the City of Grand Rapids accept a grant in an amount up to \$3,334,860.84 from the Michigan Indigent Defense Commission (MIDC) Department of Licensing and Regulatory Affairs (LARA) for implementation of the FY25 Compliance Plan for Indigent Defense Standards 1-8 and Standard for Determining Indigency; and
2. That the period of performance shall be from October 1, 2024, through September 30, 2025; and
3. That the Senior Managing Director of Community Services, or her designee, is authorized as the Primary Contact responsible for oversight and reporting of standards implementation; and
4. That the City Manager, or his designee, is authorized to execute the grant agreement and other related documents; and
5. That the Mayor is authorized to execute professional services agreements, memoranda of understanding, and other related documents, and modifications or amendments, including extensions of time, necessary to implement said plan in a form approved by the City Attorney.

CORRECT IN FORM

DEPARTMENT OF LAW