

County Administrator's Digest

October 12, 2012

Alan G. Vanderberg, County Administrator

County of Ottawa
Administrator's Office
12220 Fillmore Street
West Olive, MI 49460
(616) 738-4068
avanderberg@miottawa.org
www.miottawa.org

WAGE/HEALTH CARE ADJUSTMENT FOR 2012

Fiscal Services Director Bob Spaman presented the 2013 Budget at Tuesday's Board of Commissioners meeting and the Board held the public hearing as is typical for this stage of the budget adoption process. One aspect of the budget that our employees certainly have questions about and our local units of government will find interesting as they work with their budget situations is what we are doing with wages and health benefits for next year.

The recommended budget includes a 1.75% increase to wages for 2013 consisting of two distinct components. The first is a net 1% increase to wages. As we surveyed the landscape of counties we saw that most counties are going with a 0% increase or a 1% increase with tradeoffs in pension and/or health cost, which for some counties made the 1% much less or even less than zero. We decided that we wanted employees to receive a net 1%, which while not a large amount is at least a move in the right direction as we *slowly* recover from the Great Recession. The .75% is the amount equal to the dollars required for all County employees in the High Deductible HSA plan (a total of 75% of employees who take County insurance have chosen this plan) to pay 25% of the deductible. The IRS has increased the minimum deductible amount from \$1,200 for a single insurance benefit to \$1,250 and from \$2,400 to \$2,500 for a family benefit. The reason for having employees pay 25% of the premium this year, is that studies show that employee consumer type decision making in HSA plans is maximized when they pay 50% of the deductible, regardless of the size of the total deductible. Our plan is to do a similar thing next year so employees are paying 50% of the deductible. The .75% increase, plus removal of the 5% premium will cover the cost of employees paying their benefit. Additional flexibility accrues to employees who deposit the .75% portion of the wage increase directly into their Health Savings Account as it is deposited tax free. We also believe that this move will show additional benefits the further we move into the Health Management Plan.

TWITTER

I activated my Twitter account that had sat dormant since I set it up three years ago a couple of weeks ago. Anyone interested in seeing my updates there can



follow me @AIVanderberg

MOUNTAIN BIKE TRAILS AT UPPER MACATAWA (John Scholtz)

Mountain bike trails are under construction at the Upper Macatawa Natural Area through a volunteer effort led by the West Michigan Mountain Biking Alliance. Approval was granted to construct approximately 2 miles of trail this fall as a first phase project. After monitoring the trails for one year to ensure there are no problems with erosion or other issues, the group will be granted approval to construct 2-3 more miles of trail. The trails are being constructed in the steep ravines in the northwest portion of the park. They will be accessed from the 84th Avenue parking area via the existing ½ mile paved pathway. Ottawa County Parks allows mountain bikes on trails at Pigeon Creek Park, Grand River Park, and Riley Trails, but this will be the first location in the park system with single track trails designed to mountain bike standards.



JAIL ACCREDITATION (Sheriff Gary Rosema)

Recently the Michigan Department of Corrections, County Jail Services Unit was involved in conducting the 2012 inspection of the 462 bed Ottawa County Jail. As part of the overall inspection process the Correctional Facility Specialists from the DOC had the opportunity to meet with the Jail Administrator and the Undersheriff to discuss their findings as the final part of the inspection process. During this interview the DOC Representatives go through their inspection observations and discussions regarding our facility.

I am once again pleased to announce that upon the completion of this process and the exit interviews we were informed that the Ottawa County Jail was found to be in full compliance with the Department of Corrections Administrative Rules for County Jails.

This is clearly another accomplishment by the members of this department in our operations, as well as, the support services that provide services and help maintain the Ottawa County Jail. The DOC Inspectors were quick to point out and make special reference to the professional appearance of not only our facility but more importantly, of our staff, as it relates to the image projected and the way they conduct themselves in the operations of the facility and the interaction with the inmates and other correctional staff.

"We believe and strongly feel that our jail and the services it provides continues to play a major role in the Criminal Justice System in Ottawa County. Being in full compliance and the comments that were shared with us speaks well of our staff, the facility and it's operations. The Corrections Staff and Supervision, Facilities and Maintenance, along with the health care providers, Canteen Services, Forgotten Man Ministries, and all those that are involved with the various programs and services are to be commended.

CONNOR BAYOU PARK OPENS (John Scholtz)

Connor Bayou, the newest Ottawa County Park, officially opened following completion of major improvements on August 18 with a special event associated with the Grand River Greenway Celebration. The Park has remained open, although some work is still underway to complete various aspects of the project that were delayed by permits. All permits have now been received and all work is expected to be completed by late fall.

The new park features extensive hiking trails with river overlooks, picnic areas, canoe/kayak landing, fishing dock, and the Woodland Cabin which is available for group rentals and is already proven to be popular for weddings and other functions.

The park is located off of North Cedar Drive in Robinson Township just west of 128th Avenue.



View of cabin looking north



Bayou overlook deck

GRAND VALLEY METRO COUNCIL (GVMC) MEETING AND QUARTERLY LUNCHEON

Attorney General Bill Schuette was the featured speaker and nearly 170 attended the luncheon, which was co-sponsored by the GR Bar Association. I was surprised to see Bill Shuette pouring coffee for everyone at the luncheon and in his opening remarks, he mentioned that pouring coffee was his campaign strategy when he ran for Congress and allowed him to meet many more people in a room by doing so. Schuette met with the GVMC Board of Directors in a sort of Shuette unplugged time where he discussed his views on a number of topics.

[Click here](#) to read the latest weekly update from GVMC Executive Director John Weiss.

PIGEON CREEK PARK LODGE EXPANSION

Pigeon Creek Park has become a popular winter attraction over the past decade for cross country skiing and sledding with extremely heavy use when snow conditions are suitable. Park visitors can enjoy 10 miles of ski trail groomed for both classic and skate skiing, a one mile snowshoe trail and lighted sledding hills.

The park lodge building is a key attraction, serving as a warming house with food and beverage concessions and both ski and snowshoe rental. The high use levels at the facility create overcrowded conditions on a regular basis. In order to address problems of inadequate seating capacity in the warming house and long lines at the ski rental concession, an addition was added over the summer providing approximately 1,000 square feet of space for larger concession spaces and improved circulation within the building. The project cost approximately \$150,000 and was paid for with park millage funds.



Lodge addition and new front entrance



New lobby and service counter

NEW SHERIFF PATROL BOAT (Sheriff Gary Rosema)

In 2010 the Sheriff's Office submitted for funding through a Federal Port Security Grant for the purchase of a Patrol Boat for the area of the Grand Haven Channel including the waterways in and around Spring Lake. At that time we added equipment to this specialized boat including that allows it to have multiple uses in dive/marine operations as well as fire fighting abilities by adding a "fire apparatus" Sheriff's Office Takes Delivery of New Boat

and water pumping abilities. With the adding of the fire equipment we have worked with the area fire departments in Northern Ottawa County and consider this a resource for their operations in fire events.

In 2011 we once again submitted for funding through the Federal Port Security Grant and were able to secure funding for another boat for our Marine operations. The boat that we have acquired (2012) under through the assistance of the 2011 funds is a 27 ft. Boston Whaler that will be stationed in the Holland area and will be routinely utilized in Lake Macatawa and the Lake Michigan area. This boat has once again been equipped with

fire fighting capabilities and will be made available in the Spring of 2013 for training and as a resource to fire services in Holland Township, Park Township, and the City of Holland.

In addition to the boat that we just recently acquired we have also been able to upgrade a significant amount of equipment and technology on other patrol boats items such as GPS mapping, radar, thermal night camera, underwater scan, and side scan sonar has been acquired. Dive team equipment has also been updated with new dry suits for the divers, range finder and dive lights, and underwater diver to surface communications. We have also acquired a underwater video robot that has been utilized in a number of body recover situations on drowning events both in our county and outside of the county when requested. Throughout the 2012 boating season this equipment has been utilized in assisting dive and recover operations in Muskegon County, Mason County, Montcalm County, and Barry County.



INDIGENT DEFENSE ([Click here to view related attachments](#))

Kevin Bowling, Circuit/Probate Court Administrator and I testified before the MI Senate Judiciary Committee regarding County/Court opposition to HB 5804 as it currently is written. We testified immediately after Rep. McMillan, sponsor of the bill and former Judge Fisher, who chaired the task force that came up with the recommendation that led to the drafting of HB

The MIRS (Michigan Information and Research Service) summarized Tuesday's hearing for their daily report which follows in bolded type.

Accusations Fly During Indigent Defense Hearing

Harold WELLS was innocent. It didn't take attorney David MORAN long to figure that out.

About two decades ago, a police officer in Wayne County discovered a stolen car. The car's driver fled, disappearing into the night. A half-mile away from the car, another officer found Wells, who happened to match the driver's description. Wells was arrested. He was convicted. He was sentenced.

But after serving 18 months in jail, Wells was exonerated thanks to the work of the State Appellate Defender Office (SADO), which found a police report that vindicated Wells. Moran, who worked for SADO and now co-directs the Michigan Innocence Clinic, shared Wells' story with the Senate Judiciary Committee this morning.

"I wish that I could say that it wasn't happening today," Moran testified of Wells' case. "It is."

Moran's statement was one of many serious accusations that flew back and forth today as the Senate Judiciary Committee took testimony on a proposal that would create a new system in Michigan for providing legal aid for the state's most impoverished defendants.

Sponsored by Rep. Tom McMILLIN (R-Rochester Hills), 🐾 **HB 5804** would create a new commission to set and enforce minimum standards for local indigent defense services.

In September, the House Judiciary Committee reported the bill to the House floor (See "**Indigent Defense Bill Survives Debate, Advances**," 9/19/12). But so far, the House hasn't acted on the legislation.

Sen. Rick JONES, (R-Grand Ledge), chairman of Senate Judiciary Committee, said he decided to hold a hearing on the legislation today because he wanted to get some of the initial testimony out of the way.

"It is a very important issue that we're going to have to deal with," Jones told MIRS.

But like others who testified today, Jones added of the bill, "I think it needs some work."

In total, the Judiciary Committee took about two hours of testimony -- much of it passionate arguments on both sides.

Al VANDERBERG, county administrator in Ottawa County, questioned why the Legislative Service Bureau hadn't "fully vetted" the bill by determining the cost for each county. He also called the legislation an unfunded mandate because it could require counties to pay more for their indigent defense services.

"You're looking for one-size solutions to fix horrible problems in some parts of the state when you have other parts of the state that are leaders and that are doing a fantastic job," Vanderberg said. "So is there a leveling going on where we have to drag down the counties that are doing a great job to drag up the counties that aren't?"

Likewise, Matthew EVANS of the Wayne County Criminal Defense Bar Association alleged that 🐾 **HB 5804** would cost taxpayers "tens of millions of dollars in unnecessary expenses."

Evans added that there are problems with the current system. The source of most of those problems, he said, is simply a lack of adequate funding. For example, he explained, the fee schedule to pay defense attorneys in Wayne County is virtually the same as it was in 1982.

"I am reminded of the three big lies told in life," he said. "The first one being, 'Your check's in the mail.' The second one is, 'I love you.' And the third one is, 'I'm from the government and I'm here to help.'"

But supporters of  [HB 5804](#) believe the legislation will help Michiganders by providing a more level playing field across the state and by fixing problems in the current system.

One of those problems, alleged some supporters, is that judges who receive political contributions from attorneys make choices on which attorneys receive defense cases. Another problem, supporters testified, is that Michigan ranks 44th in the nation for funding for indigent defense.

"We're here to address this issue once and for all," McMillin testified today, "and to make sure that the unthinkable of taking away people's liberty when it shouldn't be taken away is done away with as much as we can."

In the case of Harold Wells, the "unthinkable" McMillin described happened. As Moran testified, similar wrongful convictions not only hurt those who face penalties they shouldn't, but the cases also cost taxpayers.

"Those 18 months cost taxpayers \$45,000 roughly," Moran said of Wells' case. "They cost Harold Wells immeasurably."

Asked about the Wells story today, Jones told *MIRS* there are always going to be bad attorneys, bad prosecutors and bad judges.

"There's always going to be a possibility of a problem in the system," Jones said. He continued, "You can't take one specific case and damn the entire system."

MAC OPPOSES PROPOSAL 5

NEWS RELEASE

M.A.C. Joins Press Conference to Oppose Proposal 5

LANSING, Mich. – The Michigan Association of Counties (M.A.C.) joined Governor Rick Snyder and a coalition of local governments, business leaders, and advocacy groups today at a press conference to oppose Proposal 5.

"Proposal 5 would create a huge tax shift putting more strain on local government," said M.A.C. Board 2nd Vice President Jon Campbell, Commissioner from Allegan County, who spoke on behalf of M.A.C. "Counties have mandated services, like child welfare, that cannot be cut. The passing of Proposal 5 would inhibit the state further from paying their portion of these services."

Proposal 5 would require a 2/3 majority vote of the State House and the State Senate in order for the State

of Michigan to impose new or additional taxes. This will permanently change the state constitution creating a minority rule in the legislature by giving super powers to a minority of just 13 senators.

“This is one of the most egregious proposals on the ballot,” said Governor Snyder. “It is just not good public policy.”

More information can be found on the topic at <http://defendmidemocracy.com/>.



Jon Campbell, Allegan County Commissioner and 2nd MAC VP, speaks at press conference

SEPTEMBER DISPATCH STATISTICS (Tim Smith)

The numbers handled through Central Dispatch for September 2012 were:

Total Incidents – 9,989 up 1.5% over September 2011 and up 3.8% YTD over 2011

Fire Incidents – 1,159 up 3.1% over September 2011 and up 3.1% YTD over 2011

Law Incidents – 8,830 up 1.3% over September 2011 and up 4% YTD over 2011

911 Calls – 8,732 down 5.4% over September 2011 and up 2% YTD over 2011

911 Hang Up calls – 1,015 down 8.9% over September 2011 and down 3.2% YTD over 2011

Wireless 911 calls – 88.4% of 911 calls for September and 86.4% of 911 calls YTD

911 calls answered in 10 seconds or less – 92.7% for September and 93.9% YTD 2012

(NENA recommended standard is 90% within 10 seconds)

MAKE YOUR OWN ELECTORAL COLLEGE MAP

Many of you know that for the past 13 years, one of my hobbies has been to teach government as a member of the Adjunct Faculty of Grand Rapids Community College. I sent the following to my students for their enjoyment during the presidential election season. Have fun making your own electoral vote count predictions!

http://www.realclearpolitics.com/epolls/2012/president/obama_vs_romney_create_your_own_electoral_college_map.html

BUDGET ARTICLES

There have been three main articles written about the 2013 budget thus far and they are included with the Digest ([click here](#)). The Grand Rapids Press did a budget overview last week and the Holland Sentinel did a brief overview prior to Tuesday's public hearing. Both articles had some errors. The main problem in these two articles is that they made it look like I was only crediting the administrative department heads for the fact that we typically only spend 97% of budgeted expenditures annually. In fact, and as Shannon Felgner reminded me that I clearly communicated, it is a combined effort of our department heads, elected officials, judges and employees that makes this possible and I appreciate all of the above.

The Holland Sentinel is doing a multiple week series on the budget and the first installment was on the Sheriff Department. Unfortunately the Sentinel took prepared data from us and managed to print many factual errors with the numbers. Shannon Felgner has already been in contact with the Sentinel and will work with them to eliminate these errors as the series progresses.



October 12, 2012

Attorney General Schuette Speaks at Board Meeting and Quarterly Luncheon

Michigan's Attorney General Bill Schuette spoke at our Quarterly Luncheon on Monday. He also attended our Board of Directors meeting and spoke informally with the Board.



Over 160 Grand Valley Metro Council members and guests attended the luncheon. Sponsored in part by Consumers Energy the luncheon was a great success and we want to thank our sponsor and guest speaker for their participation in the event.

The Attorney General began his visit by attending our Board Meeting. He called the session "Schuette Unplugged" and had a casual conversation with the Board including questions from our members.

At the luncheon, James Brunner, Senior Vice President and General Council for Consumers Energy talked to the group about the importance of intergovernmental cooperation and public/private part-

nerships. He also discussed his company's commitment to the continued growth and success of our region.

The Attorney General covered a wide variety of topics including the duties of his office and the 215 attorneys working to protect Michigan citizens. He also

talked about threats to our state and our economy including issues involving crime, the environment, and the future success of our governments and business. He praised West Michigan for the excellent job we are doing in cooperation, collaboration and problem solving.

Proposal 5 Press Conference

On Wednesday morning, GVMC hosted a press conference in op-

position to Proposal 5. This proposal would require a 2/3 vote in both the Michigan House and Senate to change tax policy. Along with myself, others speaking at the press conference included, Mark Murray, President of Meijer and former Michigan Treasurer and Budget Director, Grand Rapids Mayor George Heartwell, Rick Baker, President of the Grand Rapids Area Chamber of Commerce, and Steve Heacock, Senior Vice President of Spectrum Health.

This proposal would permanently change the Michigan Constitution and give super powers to a small minority of just 13 senators. These 13 senators could stop legislation that is supported by 135 other duly elected representatives and senators.

The opposition to the Proposal 5 is state-wide and bi-partisan. It includes diverse organizations like AARP, Business Leaders for Michigan, the UAW, Michigan Education Association, Michigan Chamber of Commerce, Michigan Farm Bureau, the MML, MTA and Michigan Association of Counties.





County of Ottawa

Administrator's Office

Alan G. Vanderberg
County Administrator

Keith A. Van Beek
Assistant County Administrator

12220 Fillmore Street, Room 331, West Olive, Michigan 49460!

West Olive (616) 738-4898
e-mail: avanderberg@miottawa.org

October 12, 2012

Indigent Defense (HB 5804) Analysis Executive Summary

Ottawa County, and its Circuit Court judges, both support the goal of ensuring that all indigent defendants are provided high quality representation (meeting constitutional requirements). However, they also believe that indigent defense should be provided in the most cost-effective manner.

Ottawa County's Indigent Defense is One of the Best Managed and Most Cost-Effective in the Country

- Ottawa County ranks high nationally when measuring against objective factors such as client satisfaction levels (including # grievances to Attorney Grievance Commission); Prison Commitment rates; and Cost per case.
- Ottawa County provides effective indigent criminal defense services for approximately \$5.58 per capita.

Legislation Would Increase Cost to the State & Counties and Result in a Headlee Violation

- The legislation would establish a spending floor for Ottawa County equal to the "statewide average" that is being spent on indigent defense. It has been estimated that the statewide average is \$7.25 per capita (this figure was included in the first draft of the bill). This would result in an unfunded mandate that would increase Ottawa County's cost by \$1.67 per capita (\$441,455 per year).
- Projected cost estimates to implement this legislation vary between \$70 million - \$120 million. Yet, no detailed analysis has been conducted by the House or Senate Fiscal Agencies to determine the precise budgetary impacts to the State and each county or how the new requirements will be funded.
- Declining crime rates could result in counties legitimately spending less for indigent defense services. If under Section 13, Subsection 7 this triggered the automatic state withholding of funds it is not clear if the State would withhold the entire minimum spending level or the difference between what is being spent and the State's minimum required spending amount. If it is the entire amount, this would create serious questions regarding the State's ability to budget for and administer existing contracts with local attorneys as well as other expenditures associated with indigent defense operations.
- The withdrawal of local funds would also create havoc with local budgets. This type of situation occurred recently with LEIN and created several unintended consequences. The State was mining data from LEIN, which was populated with County data, and then reselling it to private vendors and the public. The revenues were being placed into the State's General fund and not being returned to 911. The State continued to require counties to pay into the LEIN Fund. When counties objected and quit paying, the State began withholding funds from the counties from a variety of different revenue sources. This created serious administrative issues for Counties since these withheld funds were already committed to existing programs and operational expenses.

Legislation Would Fail to Improve Outcomes in Well-Managed Counties, and May Actually Hurt Them

- There is speculation that *The Eleven Principles of a Public Defense Delivery System* will be used as the basis for the standards that will be developed in accordance with the legislative mandates. If the *Eleven Principles are used*, Ottawa County will meet most of the standards, but not all of them according to our judges and defense attorneys. Therefore, even though Ottawa County can demonstrate it has one of the

very best public defender programs in the Country, it will be forced to modify its successful and proven approach to indigent defense.

Formulas to Determine Amounts that Should be Spent on Indigent Defense Services are Arbitrary and Would Increase Cost Whether it is Needed or Not

- Two separate counties could spend the same on indigent defense, but, if one has a large population, their relative per capita spending will be low. The county with a small population will have a relatively high per capita funding rate. Therefore, a per capita rate would result in erroneous conclusions being drawn because it does not adequately reflect the amount being spent per defendant who is indigent.
- Crime rates are on a downward trend across the nation. If crime rates continue to drop, this legislation would require counties to ‘maintain not less than the current level being spent or the statewide average whichever is greater’. Even if a county’s crime rate decreases with a resulting decrease in demand for indigent services, the legislation would require the same or more funding to be spent.

PREFERRED SOLUTION

The following provisions would provide a solution that avoids arbitrary standards and unfunded mandates:

- A. Define the minimum standards, requirements, rules, procedures, and metrics for measurement prior to passing the legislation.
- B. Provide an opportunity for counties and courts to give input regarding the adequacy, fairness, and cost of any proposed minimum standards and metrics.
- C. Conduct detailed analyses (House and Senate Fiscal Agencies) of the proposed legislation to determine the precise budgetary impacts to the State and each county and ensure that the House and Senate Appropriations Committees are in agreement since there will be financial implications to the State.
- E. Allow out of compliance counties to propose and implement procedural, policy, and administrative improvements in an attempt to meet the minimum standards, requirements, rules, procedures, and metrics. If the minimum standards can still not be achieved, the State should pay for all mandates that are required to achieve the State’s minimum standards to avoid a Headlee Amendment violation. To accomplish this objective, it would necessitate the removal of language in Section 13, Subsection 7 since this language requires the State Treasurer to withhold funding from locals when they do not comply with the State’s standards and are not maintaining minimum spending levels.
- F. The state’s spending levels should be tied to ‘per capita funding levels of defendants who are indigent’ to ensure there are fair and comparable spending levels regardless of the size of a county’s population. And ‘uniform crime rates’ should also be used to ensure tax dollars are not being wasted by having to maintain state mandated funding levels when there are declining crime rates.
- G. In conclusion, provide exemption to counties like Ottawa that are doing an exceptional job of managing indigent defense cases from having to meet the more arbitrary state standards, requirements, rules, and procedures (and the minimum state maintenance funding levels). One or more of the following objective areas of performance could be used to determine if an exemption is granted: Reversals on appeal for ineffective assistance of counsel; Client Satisfaction levels (including # grievances to Attorney Grievance Commission); Prison Commitment rates; Cost per case.

October 9, 2012

Michigan Indigent Commission Act – HB 5804 (H-2)
Senate Judiciary Committee
20th Circuit Court Testimony

Position of Ottawa County Administration

The testimony provided by County Administrator Vanderberg highlight several issues which are not adequately addressed by the draft legislation, including: the need to define minimum standards and metrics prior to approving the legislation; the need to avoid Headlee implications (or violations) by more carefully analyzing the costs of indigent defense delivery; and the need to avoid penalizing well managed counties which are already providing quality indigent defense services.

The 20th Circuit Court in Ottawa County is supportive of this position and in agreement with the “Preferred Solution” offered, which includes prior definition of minimum standards and metrics (with Court input); ensures counties which meet reasonable standards are exempted from added costs; and ensures there is a detailed fiscal analysis to determine precise financial impacts.

Position of Ottawa County Judiciary

The judges of Ottawa County recently met for their annual review of court appointed counsel in the 20th Circuit and 58th District courts. In the process of evaluating attorneys providing indigent representation during the past year, the judges reiterated their primary goals of

1. ensuring all indigent defendants are provided high quality representation (meeting constitutional requirements), and
2. ensuring this quality indigent defense is provided in the most efficient and cost effective manner.

Historically, these goals have been achieved by selecting experienced attorneys in a fair and transparent manner, paying a reasonable hourly rate that encourages the participation of competent attorneys, ensuring continuity in representation, and generally complying with most of the Michigan Principles of a Public Defense Delivery System. In fact, there is full or substantial compliance with most of the 11 principles adopted by the State Bar of Michigan. In addition, to further ensure indigent defendants receive competent counsel, the Ottawa County

judges rarely appoint new attorneys to criminal cases. Instead, the judges rely on attorneys who are highly rated by Martindale-Hubbell, local judges, and indigent defendants.

Chief Judge Edward R. Post specifically asked me to point out that no one has indicated the current Ottawa County system is unfair or that indigent defendants get a bad result. In fact, the National Legal Aid and Defender Association reported in their 2008 Evaluation of indigent defense systems that “*the attorneys interviewed in Ottawa County all stated that the judges are fair in the assignment of cases and payment of claims. All attorneys stated they can aggressively represent clients and this is not a problem for the judges.*” (p.65) In addition, the Ottawa County judges met with representatives of the Michigan Campaign for Justice and carefully listened to their presentation on effective public defender systems. At the conclusion of the presentation, the judges requested Campaign staff to identify any Michigan County or other similarly situated jurisdiction which has an effective defender system that complies with all 11 Principles. This request was made so we could personally review such systems to determine how we may improve our delivery of services. Although the request was made and subsequently repeated, no response was ever provided. Consequently, the judges have chosen to continue with a proven solution to the provision of indigent defense services. The judges do not support legislation which purports to improve constitutionally effective assistance of counsel, but offers no specific standards, no implemented models of achievement, and no reliable estimates of actual costs.

Position of the Ottawa County Criminal Defense Bar

The general position of the Ottawa County attorneys who regularly handle court appointed cases is represented in the attached document entitled, “*FACT SHEET – The Eleven Principles of a Public Defense Delivery System as Applied to The Ottawa County Felony Public Defender Program.*” This analysis of Ottawa County’s compliance with the State Bar association standards (i.e., the standards which presumably will guide the work of the proposed Michigan Indigent Defense Commission) demonstrates how most standards are currently followed. The author, Attorney Joseph Legatz (Ottawa County Public Defender since 1973) highlights in his summary comments that “by any objective standard (prison commitment rate, percentage of not guilty verdicts or dismissals, client satisfaction, reversals on appeal, cost per case, Bar grievance complaints, etc.), Ottawa County ranks with the very best public defender programs anywhere in the country.” It is acknowledged mandatory training may improve the program, but otherwise there is grave concern that well intention efforts to solve problems affecting other counties will likely have a negative impact on an extremely effective defender program that is meeting the constitutional needs of indigent defendants in Ottawa County.



Robert J. Daddow
Special Projects Deputy County Executive

TO: Senate Committee on Judiciary
House Committee on Judiciary
Oakland County Legislators
Michigan Association of Counties
Oakland County Board of Commissioners

FROM: Robert J. Daddow 
Deputy County Executive
Oakland County, MI

SUBJECT: HB-5804 (H-2): Continued Fundamental Flaws of the Michigan Indigent Defense Commission

DATE: October 8, 2012

The Oakland County Administration has reviewed House Bill No. 5804, H-2 ("Substitute H-2") calling for the establishment of the Michigan Indigent Defense Commission (MIDC). The Substitute H-2 was passed by the House Committee on Judiciary. The County Administration had previously provided an analysis of the original bill dated September 19, 2012 that found that the original Bill, as drafted, had serious, fundamental flaws. The September 19, 2012 correspondence discussed the major flaws in HB-5804 and identified other lesser concerns, as well.

Even as the original bill was being "fast-tracked" to secure a full House vote the Oakland County Board of Commissioners, through a suspension of the Board rules the night before the full House was to take up HB-5804, took a formal, bi-partisan and unanimous opposition to the original HB-5804. The Board of Commissioners rarely takes up formal positions on Legislative bills without first going through the committee process, but because of the severity of the flaws in HB-5804, the Board was compelled to act.

Despite having been repeatedly assured by Rep. Thomas McMillin that the new, Substitute H-2 has resolved all of the issues cited in the September 19, 2012 correspondence, many of the "corrections" have actually worsened the situation. An analysis of the Substitute H-2 as passed by the House Committee on Judiciary and under consideration by the Senate is incorporated within this correspondence. This Oakland County Administration correspondence also suggested an alternative proposal by which the underlying purpose of the bill can be enabled, if the State sees that the goals are that important to secure.

Absent satisfactory resolution of the concerns identified as described herein, the Oakland County Administration cannot support passage of Substitute H-2.

Oakland County supports the goals of improving defense services to the indigent in order to ensure fair and consistent legal representation. However, it is the Administration's opinion that HB-5804– H2 as drafted creates more problems, at a great cost, than it fixes. Accordingly, the County Administration has proposed an alternative course of action to achieve the goals set forth by the State Legislature in the

creation of the Michigan Indigent Defense Commission and concurrently, provided the flaws in the Substitute H-2 bill within this correspondence.

ALTERNATIVE APPROACH TO SATISFY STATE GOALS

The Oakland County Administration has proposed a framework to satisfy the goals of the Indigent Defense Advisory Commission in the report dated June 22, 2012. This alternative framework addresses most, if not all, programmatic, budgetary and other conflicting constitutional issues facing the implementation of the Substitute H-2.

As drafted, Substitute H-2 places all of the financial and operating risks upon local courts and funding units as the Michigan Indigent Defense Commission (MIDC) has yet to be formed and the operating standards to be imposed on local courts created. These financial and operating risks can be mitigated by simply changing the approach presently recommended. In point of fact, much of these risks have been incorporated in Substitute H-2 (albeit *only* as an intention to appropriate, which has its own concerns to local units as discussed hereinafter) as follows:

Substitute H-2, Sec. 13 (2). "If additional funding is necessary in order to bring a local unit of government's delivery of criminal trial defense services into compliance with the standards established by the MIDC, that additional funding shall be paid by this state. The legislature shall appropriate the additional funds necessary to a local unit of government to allow that local unit of government to meet the demonstrated and quantified requirements of a local unit of government to meet those standards."

This section of Substitute H-2 seems to have arisen from Recommendation #10 from the Indigent Defense Advisory Commission, but leaves out critical financial recommendations in the proposed Substitute H-2 bill. In point of fact, the Commission's recommendation states:

Recommendation #10. "Since indigent defense is a **state obligation**, justice system funding is a shared responsibility for the State and local government, and the current trial level indigent defense is 100% locally funded, **any new funding requirements should be fulfilled by the state.**" Emphasis Added.

The Indigent Defense Advisory Commission is instructive as to the recommended financial goals for the cost increases paid for indigent defense. Page 6 of the Commission's report cites that an additional \$50 million would be required to be incurred in order that Michigan then incurs the national per capita average on indigent defense. Why is that the 'per capita' amount spent is the all-inclusive metric that the State must adhere to, rather than the cost *per crime for indigent defense, clearly a more representative denominator?*

Since the crime and indigent defense needs are largely constant, infusing an additional \$50 million into the system will accomplish only one thing: raising rates on services currently provided. While certainly, the some currently deficient defense services could be improved it is more likely that it will result in rate increases for services performed. It should be noted that the Commission's report fails to provide any metrics in support of their recommendations even as they call for future metrics that could drive an additional \$50 million into the indigent defense system. Perhaps, the supporters of Substitute H-2 would consider limiting caps on defense attorney fees as a good faith effort towards the passage of this legislation?

The Oakland County Administration supports the Legislative intentions to fund the improvements and additional requirements in the State's court system, but has significant concerns about whether the appropriation will actually be made and at a level necessary to ensure that the goals set by the Indigent Defense Advisory Commission. The Substitute H-2 sets forth financial, budgetary and operating risks upon local units of government as currently drafted, yet through the above paragraph provides an avenue to resolve this matter.

The above State Legislative assertion of accepting the responsibility for enhancing this service is critical to the solution of most of the fundamental flaws cited subsequently in this correspondence. Instead of the existing funding formula identified in HB-5804 and revised in Substitute H-2, a simpler solution is in the offing: *the local funding units will pay the State the average of the last three years indigent defense costs (such information is included on the Supreme Court's website), adjusted for inflation going forward*, and all other risks and budgetary costs are solely borne by the State to ensure that its constitutionally-created court system meets the standards it has yet to develop.

The above approach has the following advantages:

- The risk to local funding unit of governments' of the State *failing to fund* standards and operations that the Michigan Indigent Defense Advisory Commission imposes is virtually eliminated. This alternative approach results in the State assuming the responsibility of funding the improvement to the indigent defense system, an obligation that Substitute H-2 indicates the State it has the intention to fund anyway. Not only would the State be directly fulfilling the commitment to fund, the failure to do so (e.g. accountability) would rest with the State, not the local units.

The proposed funding structure is not unlike that which the Legislature crafted for community mental health authorities. Upon the launch of these authorities, counties have the fixed financial responsibility of funding future services at the level of the average of the prior year's services. In doing so, the success of this funding approach enabled the community mental health authorities to have more latitude in providing services to the public. The same funding framework would do so for indigent defense as well.

Finally, the offensive language relating to self-help could then be removed as the dollar amounts involved are already appropriated at a level that is included in the local unit of governments' budgets. The nominal risk of the local unit of government not then paying the State for the current funding level of indigent defense is minimal.

- The local units of government would have certainty in the funding of its indigent defense system based on historical funding levels. Presently under Substitute H-2, the standards have yet to be developed and even as there may be an *intention* to fund and a provision that *might* permit the existing levels of funding to be appropriate, there is no certainty in these fiscally-troubled times.
- As described subsequently, the audit function simply will not work, is too costly an approach and will ensure that the goals of the Indigent Defense Advisory Commission will be inconsistently administered. As a former audit partner in a "Big 8" accounting firm, inspecting quality of services after the fact (against standards yet to be created) with the notion that the services will improve is nigh on impossible. It is better to restructure the service delivery system

ensuring that the quality of services is provided with or without an audit. The Substitute H-2 fails on all accounts: it is a labor-intensive, costly approach and an administrative nightmare. With several hundred courts in the state, one must ask, is it reasonable to expect, even with after-the-fact auditing, that a consistent indigent defense service could be provided by all courts scattered in the size of a state like Michigan? Unlikely.

- With the changes in the funding approach comes opportunity to minimize the financial impact on local units of government and State as well. If the State has the financial responsibility for this program (at levels above existing local expenditures), the State then can assume the operating responsibilities for the program, including those relating to functions such as: assessing the qualifications and training levels of the defense attorneys centrally, providing lists of qualified attorneys to the courts to be used in the defense system, and allows for a singular, consistent payment structure to be developed. Centrally controlling those factors at the State level that go into points of failure, should they exist, is a much more effective solution than the one proposed through Substitute H-2.
- Further, given that the introduction of this legislation essentially asserts that there is a substantial failing in current indigent defense services offered to defendants today, one must ask where are the provisions in Substitute H-2 to initiate actions against attorneys who have failed their professional standards to represent their clients. Shouldn't the next version of the bill incorporate a section that requires the defense attorney to face disciplinary actions when a criminal case is reversed by a court on a finding of ineffective assistance of counsel? Presently, there are no penalties on the defense attorneys in this bill for their failures to perform up to their professional standards; yet, there are penalties on local units of government when the attorneys fail to perform, albeit in the substantial expansion of the costs imposed via Substitute H-2 on these very local units of government.

The above alternative framework in satisfying the goals of the Indigent Defense Advisory Commission is a more creative, lower cost solution than the discord that will be created once the State has imposed the structure model offered in Substitute H-2. It satisfies all of the fundamental flaws in Substitute H-2 and goes a long way in solving many of the lesser flaws as well.

FLAWS OF SUBSTITUTE H-2

After reviewing the Substitute H-2 and related changes to the original bill incorporated into this version, **Oakland County continues to oppose** this bill as *currently* drafted. With as many fundamental flaws as were cited in the September 19, 2012 correspondence to the House Committee on Judiciary, many of which remain unresolved or have actually worsened the original objection, it is unlikely that future revisions to this bill can be accomplished in order that it can be salvaged. Despite having been assured by Rep. McMillin that the bill's flaws cited in the September 19, 2012 were resolved, only a few were and the core problems with the Substitute H-2 remain. The fundamental flaws and other issues are discussed in this section of the correspondence.

Unfunded Mandate

The State's creation of the MIDC and its delineation of that Commission's role, responsibilities, standards and other processes clearly constitute the establishment of an unfunded mandate. HB 5804 imposes new, additional financial obligations on local units of government without appropriate funding

being provided by the State. While some have argued that these new requirements are “Constitutional Mandates”, the fact remains that they are unfunded. One is forced to ask that if these new obligations find their basis in the Constitution and thus must be met, unfunded or not, one must also ask why the State has refused to acknowledge the constitutional call for “one court of justice”, a truly unified court system funded by the state? The Oakland County proposal to address one court function, indigent defense, would provide the State the avenue to begin to honor their responsibilities under the Constitution.

To award the powers to create *and enforce* new criminal defense standards to an *unelected State (not local)* board with a predisposition of an outcome to defend and then *enforce* the standards once developed not only increases taxpayer costs but also destroys the appropriation and oversight responsibilities of county boards of commissioners and city councils. Under proposed Substitute H-2, the ‘first dollars’ mandated by this unelected State in any fiscal year would involve a county setting aside no less than \$7.25 per capita and an undetermined amount (see subsequent discussions on funding flaws) of funds for indigent defense. All other operating needs of the local unit, including other public safety, public health and other services, become secondary. In fact, the revised House Fiscal Report issued after the House Committee on Judiciary approved Substitute H-2 is now citing ‘some estimates have placed the state-wide three-year average of per capita spending at \$7.38.’

The award of such power to a far-reaching, unbridled appropriating authority to an unelected State board involving local unit of governments’ finances is constitutionally suspect. In addition, the operating approach delegated by the Legislature to the Judiciary also constitutes the surrender of a significant portion of a local legislative bodies’ budgetary and appropriation powers to the state-mandated indigent defense commission. It makes the elected legislative bodies’ funding roles merely ministerial actions.

Clearly, if there is a state-wide interest in addressing indigent defense the State should accept the roles, responsibilities *and* funding obligations for those services as outlined earlier in this correspondence. That way elected State officials can be appropriately held responsible for determining and insuring an appropriate standard of service and funding consistent throughout the state for all courts. To do otherwise under the Substitute H-2 will ensure that the cost of services for many local units of government will increase with no appreciable improvement in the quality of services to the indigent.

Funding Formula Before MIDC Is Seated

Even before the Commission is seated and metrics developed and applied against existing operations, Substitute H-2 has established a minimum threshold of mandated appropriations on local units of government for indigent defense. How can a funding formula be developed and imposed on counties without first developing the metrics and then, assessing the effectiveness of those metrics on real world operations? The cart is before the horse.

While Substitute H-2 has incorporated a minor change in that the Supreme Court must approve the standards (or in the absence of formal approval wait 120 days). The approval process by the Supreme Court fails to alleviate the uncertainty of court funding and operating compliance issues created by Substitute H-2 (particularly coupled with other funding and operating uncertainties in this correspondence). The modest change in Substitute H-2 leaves the original question of why an entity could be created (yet to be seated), but then, once standards are subsequently created, *enforce* them upon local units of government.

No assessment of alternative service models for contracting for legal service, controlling service delivery and then funding indigent defense has been performed. Such a study would likely shed light on the more effective county service models such and enable a rational, objective funding level to be established for local taxpayer expenditures. The earlier alternative funding and operating model is just one example of an operating model that would serve to quickly improve local court funding compliance against standards yet to be developed and entrust the State with funding their imposed standards.

The House Fiscal Agency's September 14, 2012 report cites the following concerning the fiscal impacts of this legislation on State and local governments:

- "The bill would increase costs for state and local governments by an indeterminate amount."
- "Estimates of current indigent defense spending in Michigan vary ..." and "...the actual per-capita spending in Michigan is not known, and may be lower than typically estimated."

The revised House Fiscal Agency's September 26, 2012 report continues to leave the amount of the increased costs burdened on the State and local units of government unaddressed. Specifically, it states:

- "The bill would increase costs for state and local governments by an indeterminate amount. Some of these costs are directly associated with this legislation, while others would depend on future actions by the Michigan Indigent Defense Commission (MIDC).

Here the state concedes that they have not properly assessed the level of funding required of local unit of governments. No fiscal analysis has been developed by the State or Indigent Defense Advisory Commission despite having over a year to develop such an analysis. Yet, the Indigent Defense Advisory Commission report is instructive in the targeted dollar infusion into the indigent defense system (e.g. page 6) – an amount of approximately \$50 million in new appropriations required. Why has the House Fiscal Agency financial analysis failed to include this target in its September 26, 2012 report?

The above admissions, coupled with the fact that standards have yet to be developed by the MIDC, makes clear that a minimum funding requirement should not be contained in this bill. The House Fiscal Agency admits actual per-capita spending is not known and at best asserts that '*some estimates have placed the state-wide average of per capita spending at \$7.38.*' If the House Fiscal Agency or the Indigent Defense Advisory Commission cannot state emphatically what the cost of these new mandated burdens are on local units of government why is it appropriate that the sole burden for funding these requirements fall on local units? Frankly, it is far too easy to spend other people's money and this core concept was a central theme of past Legislative practices identified, but remaining unresolved, in the State Commission on Unfunded Mandates.

This means that if there are costs in line items outside of this bill and the minimum threshold is established at \$7.25 per capita, the fiscal impact will be for counties to appropriate amounts for indigent defense that may not be warranted. As described subsequently, Substitute H-2 is even more offensive than the original bill!, In such case, these additional mandated budgeted amounts will adversely impact other county programs by effectively sheltering dollars that could have been directed into more worthwhile programs but for this legislation.

Absent legislative adoption of the more appropriate approach of having the State assume complete fiscal responsibility for this program, the MIDC program should be established and the fiscal impacts on local units defined before a funding formula is developed and debated prior to the imposition on local units of government. To incorporate a minimum funding formula into the enabling legislation and then provide penalties involving seizing of funds unrelated to indigent defense before the standards are even created is simply poor public policy.

County Versus Non-County Courts

Pursuant to state statute Oakland County funds four district court divisions in its jurisdiction. Ten other district courts in Oakland County, (hereafter “non-county courts”) are funded by other local units of government. Oakland County has no operating responsibility, control or funding obligations relating to the non-county district courts. In prior years, the funding relationship established by state law between the non-county courts and those courts funded by Oakland County has been the subject of some concern.

Substitute H-2’s imposition of minimum funding requirement based on a state-wide per capita formula burdens the Oakland County’s General Fund for indigent defense not only at the County level but also for ten district courts that the County has no fiscal responsibilities for today. Once general fund appropriations as required under Substitute H-2 are enacted by Oakland County’s Board of Commissioners, it will re-open the entire funding debate in Oakland County and in those jurisdictions where county and non-county district courts are located.

The language added in Substitute H-2 in Section 13 does little more than continue to confuse this issue and ignores the history of legislation passed in funding provided to the courts in prior years.

Clearly, opening such funding debates is not in the interest of the collegiality that the State is espousing through the EVIP program. How on one hand can the State demand consolidation and cooperation between local units of government but at the same time inflict new burdens on the funding structure of non-county district courts only to open a debate over funding from fiscally-distressed funding units?

Further, once this legislation is passed it is highly likely that any indigent defense costs relating to Probate Court and juvenile justice will follow in short order. There is no mention of the unintended consequences or costs on local units of government relating to these next projects once Substitute H-2 is passed – nor, any acknowledgement that these operating costs will further burden local units of government’s operating budgets.

Incremental Cost, Metrics and Funding

While the determination of the level of the funding formula has not been explained nor properly vetted (see references from the House Fiscal Agency), its estimated impact on Oakland County should be noted. Oakland County, through its Circuit and County and non-County District Courts (as reflected on the Supreme Court website), has effectively managed its indigent defense costs while providing fair, professional indigent defense services such that it’s combined budgeted amounts as averaged over a three-year term ending in FY-2011 were \$5,167,856.

Unfortunately, the term 'criminal trial defense services' and the line items that are incorporated into the submitted data to the Supreme Court may not be the same; any errors in the inclusion of this data would alter the calculation of the County's operating shortfall that would have to be funded out of other County programs arising from Substitute H-2. The failure of the House Fiscal Agency and Indigent Defense Advisory Commission to vet these costs contributes to the flaws in the funding formula. The legislation assumes that the amounts currently submitted by local courts in a report prepared for the Supreme Court are one in the same. Who knows?

Using the state-wide three-year operating cost of \$71,765,512 arising from the combined costs from the Supreme Court report and applying it against the 2010 census, the new minimum funding required is \$7.26 per capita (even as the House Fiscal Agency is suggesting a state-wide average of \$7.38 per capita) – actually an *increase* over the recommended amount in the original House bill even as I was provided assurances to the contrary by Rep. McMillin. The new per capita formula for the minimum funding would be \$8,729,148 ($\$7.26 \times 1,202,362$ population in the 2010 census).

The impact should be obvious relating to the difference between the increased minimum funding standard of \$8,729,148 and the amounts in the Supreme Court report of indigent defense costs for County and non-County courts of \$5,167,856, or no less than \$3,561,292. With the additional funds mandated by the state on the County's Board of Commissioners, history tells us that rates and additional indigent defense service levels arising from standards yet developed will expand to meet the mandated appropriation. The affect would be to provide a 69% increase in rates and services to criminal defendants overnight, all to the detriment of other Oakland County taxpayer service programs. While some additional resources may be called for, absent an assessment by the State of the effectiveness of the services being delivered in Oakland County to determine that there is even a need for additional funding, such mandated increase is unconscionable.

In addition to the reduction of services to taxpayers not charged with crimes, Substitute H-2 also effectively imposes adverse impacts on County employees. Is there any doubt that County employees who have taken a pay reductions and freezes over the past several years and who have also seen reductions in fringe benefits would now face further cuts in the face of increases for criminal defendants?

The new funding formula proposed in Substitute H-2, actually provides an unfortunate unintended consequence: Because the per capita crime incidence is less in Oakland County than in other major populations areas, the County will be required to cover a higher level of cost in its service to indigent defense arising from crimes committed outside its borders because the funding of indigent defense will be based on statewide averages of costs. Even as the County's cost pressures to fund indigent defense will increase against a static crime level, it does nothing to solve the excessive costs in counties experiencing crime above the average. In simple truth, it will pay more for the same services the County provides today to the detriment of other County programs.

Using a per-capita funding formula related to the indigent defense costs assumes that crime is uniform, by county, throughout the State. Obviously, it is not. A county with a higher crime rate (particularly when the crimes are more severe) would necessarily experience a higher need for resources than other counties. And why is a county with a lower crime rate being penalized in a 'one size fits all' formula by being compelled to reduce county operation not related to indigent criminal defense? Perhaps a more appropriate base in calculating a standardized formula (after proper vetting by the MIDC) would be the cost per crime occurring in the county; such relationship is more causal than population.

Also of concern is the fact that the new state agency may impose standards and requirements costing more than \$7.25 per capita. In such case, the fact that Substitute H-2 cites an intention to appropriate is of little comfort, especially since the State does not provide fiscal notes, has performed no financial analysis relating to this legislation and does not actually appropriate funds in support of local units of government in this proposed legislation. Given the history of the state's failure to actually appropriate funds related to the "one court of justice" (despite legislative statements of intent to do so) and Headlee Amendment matters cited in the Statutory Commission on Unfunded Mandates (which remains unresolved even today) such assurances cannot be accepted before the funds are actually appropriated by the State Legislature. In addition, even if the funding was appropriated, it would be for one year only as current Legislatures cannot bind future Legislatures to any specific funding level for operations.

Substitute H-2 fails to even reference the reimbursement of indigent defense costs by those having received those services. Oakland County's Circuit Court and County District Courts projected reimbursements from those receiving these services for FY-2012 are estimated at \$1.82 million, or roughly 41% of actual costs incurred. The reimbursements for non-County district courts are unknown. Using the per-capita formula for FY-2012 less actual projected costs incurred for FY-2012, those receiving these services would be burdened by an additional \$1.5 million in fees withheld from their pay checks, State withholdings and similar manners of securing payment. Even assuming more costs could be captured (a wildly unlikely assumption in these troubling times), does it make sense to further fiscally burden those in need of court-appointed attorneys (those who are truly indigent with no means to pay do not reimburse the County)?

Clearly, the adverse impacts of the unsubstantiated funding formula must be eliminated. In an already uncertain budgetary world for local units of government, Substitute H-2 continues to increase the uncertainty on operating budgets. The funding formula (assuming that the State chooses not to fund this program as proposed and outlined previously in this correspondence) should be developed as part of the initial MIDC responsibilities and *after* having assessed the local units' effectiveness in providing services against metrics properly vetted. To do otherwise introduces many flaws, additional costs and adversely impacts programs other than indigent defense.

The present definition of criminal trial defense services will become obsolete upon adoption of Substitute H-2. Simply put, the definition in Sec. (3) (D) (d) is wrong. At present, the submission of indigent defense financial data to the Supreme Court has little or no financial implications whatsoever. Likely, the costs included in the financial data submitted to the Supreme Court is solely the amounts paid directly to the attorneys and likely expert and related witnesses.

Yet, upon the adoption of Substitute H-2 and imposition on local units, the following costs ancillary to the compliance with the new legislation will be required, even as they are *excluded* from consideration in determining the minimum threshold of funding among which are:

- Additional personnel associated with the administrative functions dictated through the minimum standards yet to be developed.
- Data captured almost certainly means additional technology modifications as well.
- There is reference to the local units of government providing some level of assurances that the attorneys practicing in front of the courts would be part of the new responsibilities of local units

of government. Leaving aside the troubling notion that the local units may become responsible for a vendor's training, there is no reasonable way that this cost can be quantified. The Substitute H-2 must make clear that training and related personal costs of practicing law must remain the responsibility of the individual and not local units of government.

- There is reference to the local unit of government being responsible for adequate facility needs (meaning capital costs yet to be determined). There is no way that this provision can be quantified.

It should be noted that the 13-member MIDC board has just one member to represent the local funding units, counties and cities having district courts. The remaining members of the MIDC would clearly have the programmatic needs of the indigent criminals in mind, but would have absolutely no accountability for their dictates on local units of government. The governance and operating model contemplated in Substitute H-2 is fundamentally flawed and will accomplish little more than creating further wedges between the State and local units of government at a time where it is critical that collegiality is critical to the mutual fiscal survival of State and local governments.

Finally, the additional section in Substitute H-2 that permits the *potential* for the County to avoid increased local costs does nothing to alleviate the anticipated fiscal burdens and uncertainties imposed by an unelected State entity, particularly when local units of government have only one voice out of thirteen on the board.

SEPARATION OF POWERS / CONSTITUTIONAL FLAWS

Separation of powers and Constitutional flaws continue to exist in Substitute H-2 of the MIDC legislation. Some of the more egregious examples follow:

- The MIDC is designed to be an 'autonomous' entity created in the judicial branch of state government. Yet, the executive branch has appointment and removal powers over this 'autonomous' judicial entity. Sec. 5 (2) and Sec. 7.
- The MIDC not only will establish but *enforce* the minimum standards for the local delivery of criminal trial defense services. In doing so, the Legislature has established a funding formula involving minimum per capita rates that compel county boards of commissioners to appropriate these amounts (minimizing the local units' legislators' appropriation function to a ministerial level). It is the judiciary that controls practice and procedure in Michigan. They established the State Bar of Michigan to monitor attorney performance, not the MIDC. Sec. 9 (1).
- If in the sole determination of the MIDC local units are not meeting the yet to be established minimum standards the MIDC can provide the services and direct State treasurer to withhold disbursements relating to non-indigent defense State expenditures. Sec. 13 (6). Of course, the objection was: what happened to the principle that statutes could not be amended by reference? If a statute grants a right of payment to a CVT how can the MIDC intercept that or abrogate the state's duty to pay it?
- Sec. 13 (6) now states: "If, after the time allowed under subsection (5), a local unit of government fails to comply, the MIDC shall provide indigent criminal trial defense services *at state cost* to that local unit of government." (Emphasis Added). The offensive language

concerning self-help remains in Section 13 (7). But, using the extreme example of a local unit of government failing to comply with the MIDC assuming the indigent services' costs, why would *any* government comply with any MIDC standards? Why would they simply not walk away from the services in the entirety and allow MIDC to operate the indigent defense services thereby avoiding all related costs? Why would Oakland County taxpayers ever pay the \$5.1 million in current level costs for indigent defense ever again where there is a means for the MIDC to fund these costs? This approach sounds similar to the approach proposed by Oakland County in earlier sections of this correspondence.

- In the event that a local unit objects to the MIDC actions, Substitute H-2 'affords the local unit an opportunity to be heard' *by the MIDC*. Since it is the MIDC's actions being objected to, just how realistic would it be that they will reverse their earlier position? What then would be the remedy afforded the aggrieved local unit to seek its day in court? Sec. 13 (3).
- The MIDC is to establish procedures for the receipt and resolution of complaints.' Sec. 9 (e). This function is accorded the Judiciary in the State's Constitution. To legislatively establish a second body "independent of the judiciary" and controlled by executive branch appointees to perform the same function invites a constitutional challenge.
- The MIDC is to 'establish procedures for annually reporting to the governor, legislature, and supreme court.' Sec. 9 (g). This function is accorded the Judiciary in the State's Constitution and not to an 'autonomous entity.'
- The MIDC has been afforded State appropriations powers over the Legislature, specifically "To the extent feasible, the MIDC shall establish metrics for *determining the resources necessary* for each local unit of government to comply with the minimum standards *established by the MIDC and for the MIDC to fulfill its role.*" Sec. 9 (2). Once the metrics are established by the MIDC both the local units and the State is compelled to find the resources necessary to the satisfy MIDC's operations, as determined by the MIDC metrics. This section reduces the appropriation powers of the legislative branch to an unelected entity within the judicial branch.
- The MIDC has effectively indicated an equal role of indigent defense with that of other local public safety functions with a legislative fiat to the local units to 'adequately fund these functions (including indigent defense) in order to fulfill their role.' Sec. 9 (4). The sole determining entity, the MIDC, is comprised of an unelected board that permits virtually no appeal process once the MIDC determines required funding levels at a local level.
- The functions of '...selection, funding, and payment of defense counsel, shall be independent of the judiciary.' The selection function is currently under the control of the judiciary. The funding and payment functions are shared by the judiciary, legislative and executive officials in county government. They now appear to be functions of what now to be a fourth branch of government. Sec. 11 (1) (a). If these functions are of the MIDC and not the local units, then this section should be revised to clarify this point. However, since the autonomous MIDC board now has the ability to select, fund and pay defense counsel, why isn't the next logical step having the State assume the full funding responsibilities for court functions?

- Substitute H-2 indicates that the 'defense counsel's workload is controlled to permit high-quality representation.' Sec. 11 (2) (d). The 'controller' of the workload should be defined. Further, if that 'controller' is the MIDC this further demonstrates that local court functions and the funding relating thereto will become ministerial in nature.

Somewhat related to the above, if the standards yet to be developed create an environment that encourages defense attorneys, financially or through disciplinary standards, to delay proceedings by filing more motions as a means of "defensive practice" it is probable that what would occur is that dockets will become backlogged. It is conceivable that this will become a practice similar to "defensive medicine" where unnecessary tests are requested as a way to protect doctors against malpractice claims. Such practices are usually condemned as they ensure added medical fees and costs generally with little or no likely improvement of medical health to the patient. The similarities of this Substitute H-2 section to the medical profession's fee issues are startling.

- The 'defense counsel's ability, training, and experience match the nature and complexity of the case to which he or she is appointed.' Sec. 11 (2) (c). 'Defense counsel is systematically reviewed for quality....of representation according to MIDC standards' (presently unwritten). Sec. 11 (2) (f). The MIDC's apparent oversight of the professional standards established by the State Bar of Michigan is troubling. Apparently, by implication, the State Bar has members that consistently fail to perform up to their professional standards. Has the Bar taken action? Is it necessary to have a second body responsible for this function?

OTHER

Should you have questions concerning this correspondence, please contact Mr. Robert Daddow, Deputy County Executive at 248 / 858-1650.

BOARD CHAIR
Sandi Frost Parrish

BOARD VICE CHAIR
Dan Koorndyk

BOARD MINORITY VICE CHAIR
Carol Hennessy

COMMITTEE CHAIRS

Finance:
Harold Voorhees

Legislative:
Dan Koorndyk

MEMBERS
Tom Antor
Jack Boelena
Dick Bulkowski
Candace Chivis
Bill Hirsch
Harold Mast
Roger Morgan
Stan Ponstein
Gary Rolls
Jim Saalfeld
Shana Shroll
Jim Talen
Dick Vander Molen
Ted Vonk
Mike Wawee, Jr.

October 8, 2012

Senate Judiciary Committee
Senator Rick Jones, Chair
915 Farnum Building
P.O. Box 30036
Lansing, MI 48909-7536

Senator Jones:

Thank you for the opportunity to offer written testimony regarding HB 5804 (S-2) which establishes a permanent Michigan Indigent Defense Commission.

While Kent County supports the State's efforts to develop a legislative solution to improve services to indigent defendants, the current legislation raises more questions than provides answers. Any legislative solution should meet the intent of the State and be able to be administratively and financially implemented by the courts and the counties. As it stands currently, there is no clear understanding of the administrative or financial burden that will be incurred by the State, the courts, or the counties to meet the undefined standards. And, any additional costs incurred by the County could be considered an unfunded mandate.

There has been much discussion about per-capita costs, minimum funding levels, and statewide averages, none of which clearly defines the services levels that must be met to ensure effective delivery of indigent defense services. For example, in Kent County (not including district courts) we spend approximately \$5.6 million (\$9.22 per capita) to fund indigent defense services for criminal cases, juvenile delinquency cases, juvenile neglect cases, as well as appellate cases. Of that amount, we spend \$4.79 per-capita for criminal cases, which is far less than the \$7.25 that has been discussed by the House and the Governors Indigent Advisory Commission. If the \$7.25 per-capita cost is established (or another similar per-capita rate), this will have a significant impact on Kent County and will amount to an additional \$1.5 million in additional costs to meet standards that have yet to be defined. In short, a per-capita funding amount is no evidence of adequate services or service levels.

I urge this committee and the State Legislature to work to clarify what the standards for indigent defense will be before establishing funding. I ask that the State perform its due diligence and address the following questions prior to passing legislation:

- What are the statewide standards that will be adopted?
- What is the statewide average cost for indigent defense services for criminal defendants?
- What counties meet or exceed those standards?



BOARD OF COUNTY COMMISSIONERS

300 Monroe Avenue N.W.
Grand Rapids, Michigan 49503
Administrative Office (616) 632-7580
Fax (616) 632-7585
www.accesskent.com

- What are the best practices to meeting those standards?
- What happens if service levels fluctuate and the actual costs are less than the State minimum is established? Will the County still have to pay and who will it pay?
- Will the Commission, in addition to criminal cases, eventually focus on juvenile delinquency and abuse and neglect cases?
- What will be the impact on administrative duties that are performed by the Court? Will this require additional reporting, oversight, and administrative duties? Will it slow down court processes?
- What source of revenue will the State utilize to fund the new standards? A funding source should be clearly identified and it should not be the reallocation of resources which only partially fund courts in Kent County.
- Is the Legislature suggesting that counties now be responsible for indigent defense services that are provided by district courts, even if the district court is managed by another municipality?

It is also very important that the Michigan Indigent Defense Commission include adequate representation from the counties who will be asked to fund any changes to the system. Currently, there is one seat designated for funding units and that simply is not enough. There are 83 counties impacted by this bill, and as such, it is important that we are adequately represented in all phases of this legislation to ensure proper planning and effective implementation.

If indigent defense services are to continue to be provided as they are today, with local control, but meeting State minimum standards, Kent County requests that the legislation include the following:

- Language which clearly holds the County harmless from incurring additional costs;
- Clearly defined standards that must be met by the courts;
- A clearly defined funding source that will fund the new standards and the possible increased costs for indigent defense;
- Adequate county representation on the Michigan Indigent Defense Commission;
- Clarification regarding the role and responsibility of indigent defense services that are provided at the district court level.

The Kent County Board of Commissioners thanks you for your work on behalf of the residents of Kent County.

Respectfully submitted,



Sandi Frost Parrish
Chair

Cc: Senator Tonya Schuitmaker, Vice-Chair
Senator Tory Rocca
Senator Steve Bieda, Minority Vice-Chair

Ottawa County's budget calls for using \$1 million from fund balance, leaders say scenario is unlikely



By **Greg Chandler** | The Grand Rapids Press

on October 04, 2012 at 9:50 PM, updated October 04, 2012 at 9:52 PM

[Email](#) | [Print](#)



Al Vanderberg *Courtesy*

OTTAWA COUNTY, MI - After several years of declining tax revenues because of falling residential property values, Ottawa County may finally be starting to turn the corner.

However, even with revenues expected to range from about even to a slight increase next year, county officials are still emphasizing controlling costs in next year's county budget.

Under the general fund budget proposal being considered by commissioners, the county would spend about \$63.9 million next year, about the same as this year's budget. Projections call for the county to take in \$62.9 million in revenues, leaving about \$1 million of fund balance the county may use to make up the difference.

However, if past history is any indication, the county won't need to use its reserves at all.

"We budget fairly conservatively, but it's gotten more and more realistic with the times," County Administrator Al Vanderberg said. "We've never used a penny of fund balance at the end of the year (in the time I've been administrator)."

Vanderberg credits his department heads, who more often than not spend less than what they're allocated in their budget.

Several cost-cutting moves that county officials have approved in the last two years will have an impact on the 2013 budget, most notably the consolidation of the offices of clerk and register of deeds into a single department and the elimination of health care benefits for commissioners.

The clerk/register of deeds consolidation, which was approved by commissioners in 2010, is expected to save the county about \$101,000 under the next budget, while doing away with commissioners' health insurance, a move unanimously approved by the board last year, will save taxpayers an additional \$40,000, county spokeswoman Shannon Felgner said.

In addition, the county will leave vacant at least nine open job positions, some of which have gone unfilled since 2009. Those jobs are in the sheriff's department, prosecutor's office, fiscal services and geographic information services, according to budget documents.

However, after two years of a freeze on creating new positions within the general fund budget, the 2013 plan does call for two additional positions, one for a legal self-help coordinator at the county courthouse in Grand Haven that had been previously funded by a grant, and another for a part-time communications position that's being shared with the county Health Department and Parks Commission.

"The (legal self-help) position creates a significant amount of efficiency in the court system," Vanderberg said of his rationale for continuing the position.

Ottawa County has undertaken a large number of cost control measures over the past several years to balance the budget, including instituting a new health insurance program, freezing wages for county employees and cutting commissioners pay.

The new budget calls for most employees to receive a 1.75 percent pay increase, with a portion of that increase to go toward paying the deductible on a health savings accounts program that was instituted last year, Vanderberg said.

“They’re asking increasingly informed questions of their health providers to work on maximizing their investment, not just the county’s investment,” Vanderberg said of the HSA program, which 75 percent of employees signed up for this year. “They’re making increasingly wise pharmaceutical choices.”

County residents will have a chance to speak out on the budget proposal during a public hearing at 1:30 p.m. Tuesday at the county’s administrative complex, 12220 Fillmore St.



Zero revenue loss reason to celebrate in Ottawa County

By ANNETTE MANWELL

The Holland Sentinel

Posted Oct 07, 2012 @ 06:11 AM

Business News

[How to Save Yourself From the Foreclosure Fraud Epidemic](#)

[Financial Success Tips for Any Kind of Family \(or Single Person\)](#)

[Younger Workers Give Up Top Salaries for the Right Workplace](#)

Ottawa County — After four years of decline, Ottawa County officials have budgeted 2 revenue loss.

The county projects property tax revenues of \$33,535,248 for the county's general fun

The annual budget hearing will be held at 1:30 p.m. Tuesday at the county's Fillmore & Olive Township.

The fiscal year 2010 budget saw a property tax revenue drop of 4 percent, the 2011 bu than a 2 percent decline, and the 2012 budget saw a 1 percent decline.

Suggested Stories

[Lindy Ver Beek, 35](#)

[Man charged with felonious assault for stabbing outside bowling alley bar](#)

[Man sentenced to 3 1/2 to 20 years for assaulting, abducting woman](#)

"Its as economist have projected; a slow climb out of the hole," County Administrator said. "It's a little weird to celebrate it hitting zero."

Seventy-one percent of the county's revenue for the general fund comes from property declined sharply in the past several years.

"That means there is some recovery in that area," Vanderberg said, adding there has b investment in residential properties.

"Until they turn this big ship around we need residential to improve," he said, speakin national economy.

From the Web

[7 Halloween costumes unnervingly inspired by alleged criminals](#) TheWeek

[7 brutally murdered in northern Mexico](#) Inquirer.net

[Police: Man Shot In Squad Car Called Girlfriend National Memo](#)

Fiscal year 2013 won't be a year of big cuts, Vanderberg said, "In fact it's a year of sma

The county does not expect any big policy changes at the state level that could affect lc government either, he said. The county dealt with the loss of \$1 million in revenue fro revenue sharing in the past. The possible repeal of the personal property tax is still loc Vanderberg thinks for now that won't go through.

And while the 2013 budget doesn't call for any dramatic changes in the operations, the changes in the past few years that will help the budget for decades, Vanderberg said.

Sponsored content

What's this? Pension benefits for new hires in particular will save the county about \$30 million in t said.

Employees will see 1.75 percent wage increase, Vanderberg said, but 0.75 percent of that will be used for the 25 perc deductibles for the employee health savings accounts.

Switching to the health savings accounts will increase the employees' deductibles and will eventually hold down clai

employees more responsible for their own health and wellness, health management studies have shown, especially v deductible reaches 50 percent, which will happen the next fiscal year, Vanderberg said.

Seventy-five percent of employees have opted for the plan, he said.

Vanderberg said the hard work of department heads has kept the budget stable and kept the county from having to balance. This year's budget calls for using \$1 million of fund balances, but fund balances haven't been used in all the Vandenberg has served and it's not likely to happen this year, he said.

— **Follow this reporter on [Facebook](#) or [Twitter](#), [@Sentinelnetty](#).**

Copyright 2012 The Holland Sentinel. Some rights reserved

Comments (0)

[Login](#) or [register](#) to post a user comment.

Internet Marketing by [Propel Marketing](#) | [RadarFrog](#)

OTTAWA COUNTY SHERIFF'S DEPARTMENT LAW ENFORCEMENT

\$8,708,430 in county law enforcement budget

By Annette.Manwell
@hollandsentinel.com
(616) 546-4270

WHAT Law enforcement is one of the two primary duties of the sheriff's department and its most visible function. The other is the correctional facility. The sheriff's office provides law enforcement to 17 townships and two cities in Ottawa County. Those municipalities reimburse the county for this work.

WHAT IT WAS LAST YEAR
\$8,474,344

TOTAL GENERAL FUND BUDGET \$63,650,007
PERCENT OF TOTAL BUDGET 13

TOTAL DEPARTMENT BUDGET \$26,531,425
PERCENT OF TOTAL DEPARTMENT BUDGET 32

EXPLANATION Law enforcement accounts for one-third of the sheriff's office total budget. There are 124 full-time and eight part-time sworn officers, 20 civilian support staff, three animal control officers, 80 reserve deputies, and 70 volunteers. Those employees cost a

total of \$2,311,870 for salary and benefits. The remainder of the budget is used for: office supplies, \$18,400; printing and binding, \$12,875; postage, \$5,980; operational supplies, \$378,767; canine fees, \$7,500; service contracts, \$139,000; memberships and dues, \$2,600; data processing services, \$333,323; telephone, \$56,140; mileage, \$500; conferences and travel fees, \$5,470; extradition, \$5,600; gas and oil, \$260,000; vehicle repair and maintenance, \$100,000; vehicle

insurance, \$96,095; advertising, \$300; insurance and bonds, \$167,055; equipment repairs, \$6,800; equipment rental, 288,611; and employee training, \$5,500.

QUOTE "The investment into our law enforcement and correctional operations plays a significant role in our Criminal Justice System and in the overall quality of life issues in our county," Sheriff Gary Rosema said. "Maintaining levels of service even during difficult financial times has allowed us to address community issues and

respond to those situations where service is needed in a timely fashion."

FOR MORE INFORMATION
Ottawa County's complete budget is available at miot-tawa.org.

Where should we look next in the budget?

Contact us at:
MAIL 54 W. Eighth St. Holland, Mich. 49423
EMAIL newsroom@hollandsentinel.com