

HOUSE BILL No. 5676

December 9, 2009, Introduced by Reps. Constan and Amash and referred to the Committee on Judiciary.

A bill to create the Michigan public defense act; to provide for a public defense commission; to provide for a state office of public defense; to provide for a state public defender and a state appellate defender; to provide for attorney representation of indigent criminal and juvenile defendants; to provide standards for the appointment of legal counsel; to create the public defense fund; to provide for deposits into and expenditures from the fund; to provide for the assessment of certain fees; to require dissemination of certain information to the public; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan public defense act".

3 Sec. 2. The purpose of this act is to do all of the following:

1 (a) Establish a state public defense system to provide
2 effective assistance of counsel to criminal defendants who are
3 eligible for appointed counsel and juveniles in delinquency
4 proceedings who are entitled by law to assistance of counsel at
5 public expense.

6 (b) Ensure the system is free from undue political
7 interference and conflicts of interest.

8 (c) Provide that public defense services are delivered by
9 qualified and competent counsel in a manner that is fair and
10 consistent throughout the state.

11 (d) Establish a system that uses state employees, contracted
12 services, and members of the private bar in a manner that is
13 responsive to, and respectful of, community needs and interests.

14 (e) Ensure that adequate state funding of the state public
15 defense system is provided and managed in a fiscally responsible
16 manner.

17 Sec. 3. As used in this act:

18 (a) "Adult" means an individual 17 years of age or older.

19 (b) "Appellate defense bureau" or "bureau" means the appellate
20 defense bureau created under section 10.

21 (c) "Assigned counsel" means an attorney in private practice
22 who is not employed by the state office of public defense, a
23 nonprofit office of public defense, or a county office of public
24 defense and who is appointed by the state office of public defense
25 to represent eligible individuals.

26 (d) "Case" means a legal proceeding that charges an individual
27 with the commission of a crime or a delinquency or status offense

1 in a court of this state, a postconviction or postadjudication
2 proceeding, or another matter designated by the court or the
3 commission as a case under this act. A case may involve multiple
4 charges if those charges arise out of the same transaction or
5 occurrence or out of a related series of transactions or
6 occurrences.

7 (e) "Conflict counsel" means an attorney appointed to provide
8 public defense services in a case where a conflict of interest
9 exists.

10 (f) "Contract defense counsel" means an attorney providing
11 public defense services as a member of a contract defense office.

12 (g) "Contract defense office" means an attorney or group of
13 attorneys in private practice who contract with the office to
14 provide public defense services and who are not organized as a
15 nonprofit office of public defense or a county office of public
16 defense.

17 (h) "Contribution fee" means the amount an eligible individual
18 is assessed to recover a portion of the cost of legal
19 representation.

20 (i) "County office of public defense" means an office staffed
21 by county employees that provides public defense services under
22 contract with the office of public defense.

23 (j) "Court" means the supreme court, court of appeals, circuit
24 court, district court, family court, probate court, or municipal
25 court.

26 (k) "Eligible individual" means an adult or juvenile
27 determined to be eligible for public defense services under this

1 act.

2 (l) "Juvenile" means an individual under the age of 17 charged
3 in the family division of the circuit court or in the general
4 division of the circuit court with violating a criminal law or an
5 individual under the age of 17 charged in the family division of
6 the circuit court under section 2(a)(2) of chapter XIIIA of the
7 probate code of 1939, 1939 PA 288, MCL 712A.2.

8 (m) "Nonprofit office of public defense" means a nonprofit
9 corporation recognized under section 501(c)(3) of the internal
10 revenue code of 1986, 26 USC 501, that provides public defense
11 services under contract with the state office of public defense.

12 (n) "Plan" means the commission plan for providing public
13 defense services throughout this state.

14 (o) "Professional" means an expert, mental health and
15 substance abuse treatment specialist, educational specialist,
16 forensic evidence examiner including without limitation a DNA
17 expert, ballistic analyst, accident reconstruction expert,
18 mitigation expert, investigator, interpreter, dispositional
19 specialist, and any other individual employed or under contract to
20 provide professional services within the criminal justice system.

21 (p) "Public defense commission" or "commission" means the
22 public defense commission created under section 5.

23 (q) "Public defense fund" means the public defense fund
24 created under section 17.

25 (r) "Public defense services" means legal representation and
26 other services provided by the office to eligible individuals.

27 (s) "Region" means a judicial circuit or group of judicial

1 circuits designated by the commission as an administrative unit to
2 oversee the provision of public defense services.

3 (t) "Regional office" means an office administered by a
4 regional director appointed by the state public defender to oversee
5 public defense services in a region.

6 (u) "State appellate defender" means the state appellate
7 defender appointed under section 8.

8 (v) "State office of public defense" or "office" means the
9 state office of public defense created under section 5.

10 (w) "State public defender" or "public defender" means an
11 attorney employed full-time by the office, a nonprofit office of
12 public defense, or a court office of public defense and who is not
13 engaged in the private practice of law.

14 (x) "State public defense system", "state system", or "system"
15 means the state public defense system created under section 5.

16 Sec. 4. A court may order the office to appoint counsel under
17 this act in the following cases:

18 (a) In cases in which an individual is entitled by law to
19 assistance of counsel at public expense because of financial
20 inability to retain private counsel, subject to a determination of
21 eligibility under this act, including any of the following:

22 (i) For an individual charged with a felony or charged with a
23 misdemeanor for which there is a possibility of incarceration.

24 (ii) For an individual charged with a probation violation and
25 for an individual seeking or subject to the amendment of probation.

26 (iii) For an individual appealing a misdemeanor conviction or a
27 felony conviction or an adjudication of delinquency or seeking

1 other postconviction relief as directed by the commission.

2 (iv) For a witness in a criminal grand jury proceeding convened
3 under chapter VII of the code of criminal procedure, 1927 PA 175,
4 MCL 767.1 to 767.96.

5 (b) In cases in which an individual is entitled by law to the
6 assistance of counsel at public expense regardless of the
7 individual's financial ability to retain private counsel, including
8 any of the following:

9 (i) For a juvenile in a proceeding under chapter XIIIA of the
10 probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

11 (ii) For a juvenile entitled to assigned counsel in a
12 proceeding under the interstate compact for juveniles, 2003 PA 56,
13 MCL 3.691 to 3.692.

14 (c) In other matters as directed by the court or approved by
15 the commission.

16 Sec. 5. (1) The state public defense system is created to
17 provide public defense services throughout this state.

18 (2) The public defense commission is created to head the state
19 system, supervise the office, and establish policies to implement
20 this act.

21 (3) The state office of public defense is created in the
22 judicial branch of state government to administer the system and
23 its regional offices under the supervision and direction of the
24 commission.

25 (4) The office is an autonomous entity having all statutory
26 authority, powers, duties, functions, records, personnel, property,
27 unexpended balances of appropriations, allocations, and other

1 funds, including the functions of budgeting, personnel, locating
2 offices, and other management functions.

3 Sec. 6. (1) The commission shall consist of 9 members who
4 shall be appointed by the governor for terms of 3 years. Of the 9
5 members, 2 members shall be recommended by the supreme court, 1
6 member shall be recommended by the Michigan judges' association, 1
7 member shall be recommended by the Michigan district judges'
8 association, 2 members shall be recommended by the state bar of
9 Michigan, 2 members shall be recommended by the criminal defense
10 attorneys association of this state, and 1 member, who is not an
11 attorney, shall be selected from members of the general public by
12 the governor. Appointments to the commission shall reasonably
13 reflect the population, geographic, and rural and urban diversity
14 of this state.

15 (2) Not fewer than 1 individual appointed to the commission
16 shall have significant experience in the representation of
17 juveniles in delinquency proceedings or a demonstrated commitment
18 to quality representation of juveniles in those proceedings. Not
19 fewer than 1 individual appointed to the commission shall have
20 significant experience in criminal appeals.

21 (3) At the time of appointment or while serving on the
22 commission, a member of the commission shall not be a sitting judge
23 or prosecuting attorney, or an individual employed by a prosecuting
24 attorney, a law enforcement agency, a probation department, or the
25 Michigan department of corrections, and shall not be a criminal
26 defense attorney employed by, or under contract with, the office.

27 (4) All commission members shall be appointed for terms of 3

1 years and shall hold office until their successors are appointed.
2 The terms of the members shall be staggered. Initially, 3 members
3 shall be appointed for a term of 3 years each, 3 members shall be
4 appointed for a term of 2 years, and 3 members shall be appointed
5 for a term of 1 year.

6 (5) The governor shall fill a vacancy occurring in the
7 membership of the commission, for the unexpired term only, in the
8 same manner as the original appointment and in a timely manner.

9 (6) Members of the commission shall not receive a salary in
10 that capacity but shall be reimbursed for their reasonable, actual,
11 and necessary expenses by the state treasurer.

12 (7) The commission shall establish procedures for the conduct
13 of its affairs and elect a presiding officer from among its
14 members.

15 (8) The commission shall promulgate policies necessary to
16 carry out its powers and duties under this act.

17 (9) The commission shall convene a public hearing before a
18 proposed policy becomes effective.

19 (10) Commission policies shall be placed in an appropriate
20 manual, made publicly available on an internet website, and made
21 available to all attorneys and professionals providing public
22 defense services, the supreme court, the senate and house
23 appropriations committees, and the senate and house fiscal
24 agencies.

25 Sec. 7. (1) The commission shall, with the assistance of the
26 office, develop a plan using methods consistent with the purposes
27 described in this act for providing public defense services that

1 divides the state into defense regions sufficient to provide
2 efficient provision of public defense services throughout this
3 state while addressing local needs. The plan shall do all of the
4 following:

5 (a) Establish an office in each region to oversee the
6 provision of all public defense services, as provided under the
7 commission's strategic plan, under the supervision of a regional
8 public defender.

9 (b) Ensure assigned counsel is a component of each regional
10 delivery system.

11 (c) Ensure that nonprofit state and county public defense
12 offices providing public defense services before the effective date
13 of this act are included in the plan for providing public defense
14 services in their regions, subject to compliance by those offices
15 with terms of their contracts with the office. Nothing in this act
16 shall cause a reduction in the total compensation for an employee
17 of any of those offices below his or her total compensation on the
18 effective date of this act.

19 (d) Allocate sufficient personnel, resources, training,
20 supervision, and physical facilities in each region to ensure the
21 efficient provision of effective assistance of counsel to eligible
22 individuals.

23 (e) Avoid conflicts of interest in the administration of
24 public defense services and in the appointment of conflict counsel.

25 (f) Establish policies for the receipt and resolution of
26 complaints from the courts, prosecutors, clients, and members of
27 the public.

1 (g) Establish polices for the collection and reporting of
2 detailed expenditure and caseload data to support ongoing planning
3 for defense service delivery and budgeting.

4 (2) The commission shall hold not less than 3 public hearings
5 on the proposed plan in separate geographical regions of this state
6 before adopting the plan.

7 (3) The commission shall periodically review any revisions to
8 the plan recommended by the office, and take such action it
9 considers appropriate.

10 (4) The commission shall ensure that client-related data
11 remain secure and that policies regarding access to that data and
12 procedures are established by the office to ensure confidentiality.

13 (5) The commission shall assist in the implementation of
14 programs that improve the criminal justice system and reduce
15 recidivism.

16 Sec. 8. (1) The commission shall establish the qualifications,
17 duties, and compensation of the state public defender and state
18 appellate defender. The commission shall appoint the state public
19 defender to head the office of public defense and the state
20 appellate defender to head the appellate defense bureau, after
21 considering qualified applicants.

22 (2) The commission shall regularly evaluate the performance of
23 the state public defender and the state appellate defender and
24 establish policies for the operation of the state office of public
25 defense.

26 (3) The commission shall ensure that attorneys employed by the
27 office, including the state public defender and state appellate

1 defender, meet all of the following criteria:

2 (a) Are licensed to practice law in this state and are members
3 in good standing of the state bar of Michigan.

4 (b) Take and subscribe to the oath required by the
5 constitution before taking office.

6 (c) Perform duties as may be provided by law.

7 (d) Represent eligible defendants as required by the office.

8 (e) Are prohibited from engaging in the private practice of
9 law or as an attorney or counselor in a court of this state except
10 in the exercise of his or her duties under this act.

11 (4) The commission shall review and approve proposals by the
12 state public defender to create permanent attorney and staff
13 positions within the office.

14 (5) All appointees and employees of the office are considered
15 employees of the judicial branch of state government and are exempt
16 from civil service under section 5 of article XI of the state
17 constitution of 1963.

18 (6) The commission shall adopt personnel policies and
19 procedures, and may adopt those policies and procedures by
20 reference to policies and procedures of other governmental
21 agencies.

22 (7) Compensation for full-time public defenders and staff
23 employed by the office shall be not less than the compensation paid
24 to assistant prosecuting attorneys and prosecuting attorney staff
25 with comparable duties and responsibilities in their respective
26 regions.

27 (8) The commission shall review and approve budget proposals

1 submitted by the state public defender.

2 Sec. 9. (1) The state public defender shall be the chief
3 administrative officer of the office and shall manage and oversee
4 the office while maintaining and honoring the independence of the
5 appellate defender bureau in matters related to representation of
6 clients and the supervision of its personnel. The state public
7 defender shall hire or contract for and supervise personnel
8 necessary to perform the function of the office and to implement
9 commission policies, the plan, and this act.

10 (2) The state public defender's duties include all of the
11 following:

12 (a) Acting as secretary to the commission and providing
13 administrative staff support to the commission.

14 (b) Assisting the commission in establishing the state system
15 and maintaining the system and establishing and enforcing the
16 policies required under this act.

17 (c) Establishing procedures to implement commission policies.

18 (d) Assisting the commission in developing the initial plan
19 for the provision of public defense services throughout this state
20 and submitting it to the commission for approval.

21 (e) Establishing procedures to provide for the approval,
22 payment, recording, reporting, and managing of defense expenses
23 paid under this act.

24 (f) Establishing an information technology system and
25 procedures to ensure that personnel providing public defense
26 services use information technology and workload management systems
27 so that detailed expenditure and workload data are accurately

1 collected, recorded, and reported.

2 (g) Establishing procedures for managing workloads and
3 assigning cases in a manner that ensures public defense attorneys
4 are assigned cases according to experience, training, and
5 manageable workloads, taking into account case complexity, the
6 severity of the charges and potential punishments, and the legal
7 skills required to provide effective assistance of counsel.

8 (h) Establishing procedures to prevent conflicts of interest
9 and, when they occur, ensuring conflicts are handled according to
10 professional ethical standards.

11 (i) Establishing and supervising a training, performance
12 monitoring, and evaluation program for all attorneys,
13 professionals, and administrative support staff providing public
14 defense services.

15 (j) Establishing procedures to handle complaints from clients,
16 judges, other criminal justice personnel, and the public, and
17 ensuring clients are aware of procedures for bringing complaints.

18 (k) Establishing administrative procedures for regional
19 offices.

20 (l) Reviewing the commission plan on an annual basis and
21 recommending modifications as required.

22 (m) Submitting biennial reports for the commission's approval
23 and dissemination of certain information in accordance with this
24 act.

25 (n) Serving as a liaison between the commission and the court.

26 (o) Requesting funding for additional personnel if workload
27 standards are consistently exceeded.

1 (p) Seeking gifts, grants, and donations that may be available
2 through federal, state, or local governments, foundations,
3 corporations, private individuals, or other sources to help fund
4 the system.

5 (q) Exploring and assisting in the development of programs to
6 improve the criminal justice system and reduce recidivism.

7 (r) Working with the commission and the state appellate
8 defender to provide the efficient and effective delivery of public
9 defense services.

10 (s) Performing all other duties assigned by the commission
11 under this act.

12 Sec. 10. (1) The appellate defense bureau is created in the
13 office. The commission shall hire and supervise a state appellate
14 defender to manage the bureau. The commission shall establish
15 policies to ensure the independence of the appellate defense bureau
16 and to avoid conflicts of interest in the administration of the
17 system.

18 (2) The state appellate defender's duties include all of the
19 following:

20 (a) Assisting the commission in developing the initial plan,
21 with the state public defender, for providing public defense
22 services throughout this state and submitting it to the commission
23 for approval.

24 (b) Managing the appellate defense bureau and overseeing the
25 provision of appellate, postconviction, and postadjudication public
26 defense services.

27 (c) Hiring or contracting for and supervising the personnel

1 authorized by the commission to perform the functions of the bureau
2 and to implement commission policies, office procedures, and this
3 act.

4 (d) Ensuring assigned counsel and attorneys employed by, or
5 under contract with, the bureau who are providing appellate public
6 defense services comply with the commission policies, office
7 procedures, and this act.

8 (e) Collecting data, keeping a detailed record of bureau
9 expenses and appellate public defense services, and submitting
10 records and reports to the state public defender as required to
11 implement commission policies, office procedures, and this act.

12 (f) Maintaining a repository of pleadings, databases, and
13 legal resources and making them available to all attorneys
14 providing public defense services.

15 (g) Ensuring that conflicts are promptly identified and
16 handled in a manner consistent with professional ethics and this
17 act.

18 (h) Recommending appellate policies and procedures and
19 assisting the state public defender in implementing commission
20 policies, office procedures, and this act.

21 (i) Working with the commission and the state public defender
22 to provide efficient and effective provision of public defense
23 services.

24 Sec. 11. The state public defender shall establish regional
25 offices and appoint regional public defenders to oversee the
26 efficient provision and oversight of nonappellate public defense
27 services within those regions. Within their respective regions,

1 regional public defenders' duties include all of the following:

2 (a) Ensuring that the provision of nonappellate public defense
3 services in the region is in compliance with commission policies,
4 office procedures, and this act.

5 (b) Administering the regional office and supervising and
6 evaluating regional office staff.

7 (c) Ensuring that the regional office works closely with the
8 courts in the region to ensure efficient and effective defense
9 representation.

10 (d) Maintaining rosters of qualified assigned counsel.

11 (e) Appointing attorneys in a timely manner and ensuring case
12 assignments are fairly distributed to attorneys who provide public
13 defense services in the region.

14 (f) Monitoring workloads, notifying the office of public
15 defense when workload standards are consistently exceeded, and
16 making recommendations to ensure compliance with workload
17 standards.

18 (g) Collecting data and preparing reports as required by the
19 commission and the office.

20 (h) Ensuring attorneys in the region have access to the
21 resources, professionals, and training required by the plan.

22 (i) Implementing training, and implementing performance
23 monitoring and evaluation programs for attorneys providing public
24 defense services in the region.

25 Sec. 12. (1) All attorneys providing public defense services
26 under this act shall be licensed to practice law in this state and
27 be members in good standing of the state bar of Michigan.

1 (2) The commission shall establish state standards for public
2 defense services to ensure services are provided by competent
3 counsel and in a manner that is fair and consistent throughout the
4 state. The standards shall address all of the following:

5 (a) The level of education and experience required to provide
6 effective representation, based on case complexity and severity of
7 the charges and potential punishments.

8 (b) Acceptable workloads that take into account case
9 complexity, the severity of charges, client factors such as mental
10 illness, and potential punishments in a case.

11 (c) The availability of, access to, and use of professional
12 services that may be required for a case, including, but not
13 limited to, paralegals, investigators, and expert witnesses.

14 (d) The availability of, access to, and use of technology and
15 legal resources.

16 (e) The availability of, access to, and completion of training
17 and continuing education requirements.

18 (f) Practice standards.

19 (g) Performance criteria.

20 (h) Performance evaluation procedures.

21 (3) The commission shall establish procedures to monitor
22 workloads and policies to prevent workload in excess of commission
23 standards.

24 (4) An attorney or professional providing public defense
25 services shall not be required to maintain a workload in excess of
26 the workload standards established by the commission.

27 (5) The commission shall establish policies to ensure that all

1 of the following criteria are met:

2 (a) Attorneys are appointed to represent clients in a timely
3 and equitable manner.

4 (b) Cases are assigned to attorneys with the skills, training,
5 and experience to handle them and whose workloads are within the
6 limits established by commission policies.

7 (c) Conflicts of interest are identified and those cases
8 involving a conflict of interest are handled according to
9 professional and ethical standards. There shall be a presumption
10 that all codefendants have conflicts that require the appointment
11 of conflict counsel.

12 (d) In appropriate cases, clients are assessed for mental
13 illness, addiction, and other underlying issues and a client
14 rehabilitation plan is provided to the sentencing judge. The plan
15 shall use available community resources, rather than incarceration,
16 where appropriate.

17 (6) This act does not permit the commission or the office to
18 interfere with the reasonable professional judgment exercised by an
19 attorney in connection with his or her representation of an
20 individual eligible for public defense services.

21 Sec. 13. (1) When a court orders the office to appoint
22 counsel, the office shall immediately appoint counsel, even if the
23 individual has yet to be determined eligible for public defense
24 services.

25 (2) An individual for whom counsel is appointed is entitled to
26 the full benefit of public defense services until that individual
27 is determined to be ineligible for services or the individual

1 wishes to proceed pro se and the court permits him or her to do so.

2 (3) A qualified attorney shall be appointed to meet with any
3 juvenile who wishes to waive his or her right to counsel to ensure
4 he or she fully understands the consequences of that waiver.

5 (4) The attorney providing public defense services shall
6 continually represent his or her adult client from that client's
7 initial assignment of counsel through sentencing, unless otherwise
8 provided by commission policies or relieved of his or her duties.
9 The attorney providing public defense services to a juvenile in the
10 family division of the circuit court shall continually represent
11 that juvenile from the initial assignment of counsel until the case
12 is dismissed or closed, including all postdisposition hearings,
13 unless otherwise provided by commission policies or relieved of his
14 or her duties.

15 Sec. 14. (1) The commission shall establish policies to ensure
16 contracting for public defense services is done fairly and
17 consistently statewide and within each region. The policies
18 established under this subsection shall provide for all of the
19 following:

20 (a) Attorney qualifications.

21 (b) Adherence to standards promulgated by the commission,
22 including, but not limited to, performance standards.

23 (c) Standards defining adequate access by attorneys to support
24 services, including technology, legal resources, professionals, and
25 administrative support staff.

26 (d) Workload standards that define, among other things, the
27 extent to which attorneys employed by a contract defense office may

1 engage in private practice.

2 (e) Reporting and workload monitoring.

3 (f) Supervision, performance monitoring, and performance
4 evaluation.

5 (g) Conflict resolution.

6 (h) Training and continuing education, in accordance with
7 commission standards.

8 (2) The state public defender shall provide for contract
9 oversight and enforcement to ensure compliance with commission
10 policies, office procedures, and this act.

11 (3) Contracts executed under this section shall not be based
12 solely on a fixed fee paid regardless of the number of cases
13 assigned.

14 (4) The commission shall establish reasonable compensation
15 rates for contracted services.

16 (5) The state office of public defense shall ensure that
17 payments to contractors are made in a timely fashion.

18 Sec. 15. The office may enter into agreements and contracts
19 with departments and agencies of the judicial or executive branch
20 of state government, as well as local units of government,
21 including counties and municipalities, to carry out its duties
22 under this act.

23 Sec. 16. (1) The commission shall establish policies governing
24 the manner in which cases are allocated to assigned counsel to
25 ensure that cases are allocated in a fair and equitable manner.

26 (2) The commission shall require assigned counsel to comply
27 with all commission policies, office procedures, and this act,

1 including those regarding qualifications, performance, training,
2 continuing education, supervision, workloads, conflicts of
3 interest, and reporting.

4 (3) The commission shall require assigned counsel to have the
5 physical facilities, equipment, access to professionals, including
6 experts and investigators, and administrative support to provide
7 effective assistance of counsel.

8 (4) The office shall establish procedures to ensure assigned
9 counsel's compliance with commission policies, office procedures,
10 and this act.

11 (5) The commission shall establish a reasonable compensation
12 schedule for assigned counsel and review those rates every 2 years.

13 (6) The office shall ensure payments to assigned counsel are
14 made in a timely fashion.

15 Sec. 17. (1) This state shall be responsible for all costs of
16 the public defense system and public defense services to ensure the
17 right to counsel under the constitution of the United States and
18 the state constitution of 1963.

19 (2) The public defense fund is created as a separate account
20 in the department of treasury. Money in the fund shall be used only
21 for the operation of the system. The unencumbered balance and all
22 interest earnings remaining in the fund at the close of the fiscal
23 year shall remain in the fund and shall not revert to the general
24 fund.

25 (3) All contribution fees collected by the courts under
26 section 1k(1)(b)(iii) of chapter IX of the code of criminal
27 procedure, 1927 PA 175, MCL 769.1k, if any, shall be deposited in

1 the public defense fund for use by the office.

2 (4) The legislature shall annually make an appropriation to
3 the public defense fund to implement this act and to ensure that
4 the right to counsel under the constitution of the United States,
5 the state constitution of 1963, and this act is adequately funded.

6 (5) The public defense fund shall be administered by the
7 commission, through the office, in compliance with policies
8 promulgated by the commission and the laws of this state. The
9 commission, through the office, may solicit additional funding for
10 the state public defense service system from federal, state, and
11 local governments, and foundations, corporations, individuals, and
12 any other public or private sources, provided that the receipt of
13 those funds does not conflict with the commission's mission or
14 create an appearance of impropriety. The funds, if received, shall
15 be deposited in the public defense fund. The funds, if received, do
16 not diminish the responsibility of this state under this section.

17 Sec. 18. The commission shall establish and maintain an
18 internet website containing all of the following information:

19 (a) All policies and procedures in effect for the operation
20 and administration of the state public defense system.

21 (b) All standards established or being considered by the
22 commission or the state public defender.

23 (c) The number of regional public defenders, including a
24 description of the geographic region supervised by each.

25 (d) The number of assigned counsel and attorneys employed by
26 the office or employed by entities that have contracted with the
27 system who are providing public defense services and identified by

1 region.

2 (e) The number of attorneys and other staff supervised by each
3 regional public defender.

4 (f) The number of new cases in which counsel was assigned to
5 represent a party, disaggregated by region, court, and case type.

6 (g) The total number of individuals represented by the office
7 identified by region, court, and case type.

8 (h) The annual caseload and workload of each attorney
9 providing public defense services identified by region, court, and
10 case type.

11 (i) The training programs conducted by the office and the
12 number of attorney and nonattorney staff that attended each
13 program.

14 (j) The continuing education courses on criminal defense or
15 criminal procedure attended by each attorney providing public
16 defense services.

17 (k) Detailed expenditure data by region, court, and case type.

18 (l) All other financial, client demographic, and workload data
19 needed to assist in determining the appropriate amount of funding
20 needed to ensure the delivery of effective representation and to
21 assist in planning.

22 Sec. 19. (1) An applicant is eligible for appointed counsel
23 under this act if 1 or more of the following criteria apply:

24 (a) The applicant's income is not more than 133% of the
25 poverty level set according to the most current federal poverty
26 guidelines updated periodically in the federal register by the
27 United States department of health and human services under the

1 authority of 42 USC 9902(2).

2 (b) The applicant qualifies for and receives public
3 assistance, including, but not limited to, food assistance,
4 medicaid benefits administered under section 105 of the social
5 welfare act, 1939 PA 280, MCL 400.105, and social security
6 disability benefits, resides in public housing, or receives other
7 means-tested assistance.

8 (c) The applicant, at the time representation is requested,
9 does not have readily available or unencumbered assets, credit, or
10 other means to retain counsel and to provide for other costs of his
11 or her defense without subjecting the applicant or the applicant's
12 dependents to substantial financial hardship, and has not disposed
13 of any assets since the date and time of the charged offense with
14 the intent or for the purpose of establishing eligibility for
15 assistance under this act. An applicant or an applicant's
16 dependents shall be considered to suffer substantial financial
17 hardship if they would be deprived of funds needed for basic living
18 necessities including, but not limited to, food, shelter, clothing,
19 necessary medical expenses, and child support.

20 (d) The applicant is a juvenile whose parents would otherwise
21 be eligible for public defense services under this section or are
22 unwilling to retain counsel to represent the juvenile.

23 (2) Eligibility shall not be denied solely because of an
24 applicant's ability to post bail or solely because the applicant is
25 employed.

26 (3) The courts shall conduct all eligibility screening under
27 policies established by the commission. The presiding judge,

1 prosecuting attorney, an employee of a prosecuting attorney, or an
2 attorney providing public defense services shall not conduct
3 eligibility screening.

4 (4) An individual shall be screened for eligibility as soon as
5 possible after arrest, detention, or request for counsel.

6 (5) Eligibility determination proceedings are confidential.
7 Information divulged during the screening process shall not be used
8 against an applicant in any civil or criminal proceeding, except in
9 the sentencing phase when determining restitution, to enforce
10 collections, or to prosecute perjury under this act.

11 (6) If the court determines there is no substantial financial
12 hardship under this section, the court shall set forth the factors
13 upon which the determination was made in the record.

14 (7) An applicant has a right to appeal the determination of
15 ineligibility. While the appeal is pending, the office shall
16 provide public defense services.

17 (8) The court may modify a determination of eligibility if
18 additional material information becomes available or if the
19 applicant's financial circumstances change.

20 (9) In determining an applicant's income, a court shall use
21 the applicant's federal adjusted gross income, without regard to
22 loss, as that term is defined in section 62 of the internal revenue
23 code of 1986, 26 USC 62, plus all nontaxable income including, but
24 not limited to, all of the following:

25 (a) The amount of a pension or annuity, including railroad
26 retirement act benefits and veterans' disability benefits.

27 (b) The amount of capital gains excluded from adjusted gross

1 income.

2 (c) Alimony.

3 (d) Child support money.

4 (e) Nontaxable strike benefits.

5 (f) Cash public assistance and relief.

6 (g) Interest on federal, state, county, and municipal bonds.

7 (h) All payments received under the social security act, 42
8 USC 301 to 1397jj, except social security income paid directly to a
9 nursing home.

10 (10) A determination of eligibility shall not be reexamined
11 absent compelling reason.

12 (11) The commission shall promulgate policies to implement
13 this section that accomplish all of the following:

14 (a) Ensure that the eligibility determination process is fair
15 and consistent throughout this state.

16 (b) Avoid unnecessary duplication of processes.

17 Sec. 20. (1) The court may order an adult who receives public
18 defense services or the parents of a juvenile who receives public
19 defense services to pay a portion of the costs associated with
20 receiving those services under section 1k(1)(b)(iii) of chapter IX of
21 the code of criminal procedure, 1927 PA 175, MCL 769.1k. The order
22 shall be made on the record at the time of sentencing, and after a
23 determination that repayment will not constitute a substantial
24 financial hardship under section 19. The order shall be contained
25 in the judgment of sentence.

26 (2) Subsection (1) does not apply to cases ending in acquittal
27 or dismissal of all charges.

1 (3) An individual who has been ordered to pay a portion of the
2 cost of public defense service may petition the court at any time
3 to waive the payment, if that payment will result in substantial
4 financial hardship to the person or the person's dependents'
5 substantial financial hardship as that term is described in section
6 19.

7 (4) An attorney providing public defense services shall not
8 pursue payment from his or her client for any costs related to
9 public defense services.

10 (5) A person shall not be imprisoned, denied bond, denied
11 counsel, have his or her probation or parole revoked, or otherwise
12 face a penalty for failure to pay all or any portion of public
13 defense services under this act, unless a court determines both of
14 the following:

15 (a) That the failure to pay is willful.

16 (b) That the individual is able to make the payment without
17 substantial financial hardship to that individual or his or her
18 dependents under section 19.

19 (6) The court may enforce a person's obligation to pay all or
20 any portion of the cost of legal representation under this act in
21 the same manner as a judgment in a civil action, if the enforcement
22 will not impose a substantial financial hardship under section 19.

23 (7) An applicant shall be informed at the time of eligibility
24 screening, both orally and in writing, that he or she may be
25 assessed a portion of the cost of his or her public defense
26 services, if a court determines that the assessment will not cause
27 substantial financial hardship under section 19. If possible, the

1 applicant also shall be provided with the projected amount of the
2 portion of that cost.

3 (8) An order for payment of costs for public defense services
4 under this section is the exclusive means by which the cost of
5 public defense services shall be recouped.

6 Sec. 21. The appellate defender act, 1978 PA 620, MCL 780.11
7 to 780.719, is repealed.