

Legislative Analysis



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House Bill 5842 as introduced
Sponsor: Rep. Kurt Heise

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5843 as introduced
Sponsor: Rep. Martin Howrylak

House Bill 5845 as introduced
Sponsor: Rep. Vanessa Guerra

House Bill 5844 as introduced
Sponsor: Rep. Klint Kesto

House Bill 5846 as introduced
Sponsor: Rep. David LaGrand

Committee: Criminal Justice
Complete to 9-12-16

BRIEF SUMMARY:

The bills amend various sections of the Michigan Indigent Defense Commission Act, which established a commission to develop and oversee the implementation of minimum standards for the effective representation of indigent adults by local indigent criminal defense systems.

House Bill 5842 reestablishes the Michigan Indigent Defense Commission within the Department of Licensing and Regulatory Affairs; currently the MIDC is within the judicial branch of government. The bill also revises the process by which minimum standards for the local delivery of indigent criminal defense services are approved.

House Bills 5843-5846 make complementary revisions to other sections within the Michigan Indigent Defense Commission Act to conform to the changes made by House Bill 5842.

The bills are tie-barred to each other; a bill cannot become law unless a bill to which it is tie-barred is also enacted into law. Each of the bills would take effect 90 days after enactment.

BACKGROUND INFORMATION:

On June 1, 2016, the Michigan Supreme Court announced that it conditionally approved standards to regulate the appointment of counsel for indigent defendants in criminal cases. However, some provisions of the Michigan Indigent Defense Commission Act raise some constitutional concerns. Thus, the Court's approval is conditional and contingent on the Legislature revising some provisions of the MIDC act to resolve the constitutional concerns. Specifically, some duties of the Court prescribed by the MIDC act appear to interfere with the basic principle of the separation of powers and interfere with other restrictions placed on the court by the state Constitution.

DETAILED SUMMARY:

House Bill 5842

The bill amends Sections 3, 5, and 11 of the MIDC act (780.983, 780.985, and 780.991). Public Act 93 of 2013 created the MIDC act and placed the new commission within the judicial branch of state government. Instead, the bill places the commission within the Department of Licensing and Regulatory Affairs (LARA). Thus, the commission will be located in the executive branch of state government.

Minimum standards

One of the duties of the commission is to propose minimum standards for the local delivery of indigent criminal defense services. The minimum standards must be designed to ensure the provision of indigent criminal defense services that meet constitutional requirements for effective assistance of counsel. The bill adds that these minimum standards must not infringe on the state Supreme Court's authority over practice and procedure in the state courts as set forth in Section 5 of Article VI of the state constitution.

The bill also deletes numerous references to oversight currently provided by the state Supreme Court in the approval process for minimum standards and instead references LARA. In addition, the bill adds the following regarding approval of a minimum standard for the local delivery of indigent criminal defense services:

- An indigent criminal defense system that objects to a recommended minimum standard on the ground that it would exceed the MIDC's statutory authority must state specifically how that recommended minimum standard would exceed the commission's authority.
- A minimum standard approved by LARA is not subject to challenge through the appellate procedures contained in Section 15 of the act. Further, an approved minimum standard for the local delivery of indigent criminal defense services within an indigent criminal defense system is not a rule as defined in Section 7 of the Administrative Procedures Act. (Under that act, "rule" means an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency.)
- Approval of a minimum standard proposed by the MIDC is considered a final LARA action subject to judicial review under Section 28 of Article VI of the state constitution to determine whether the approved minimum standard is authorized by law. Jurisdiction and venue for the judicial review is vested in the Court of Claims.

An indigent criminal defense system could file a petition for review in the Court of Claims within 60 days after the date of mailing notice of LARA's final decision

on the recommended minimum standard. Filing a petition for review does not stay enforcement of an approved minimum standard; however, LARA may grant, or the Court of Claims may order, a stay upon appropriate terms.

Definition of "indigent criminal defense system":

Currently, the term is defined to mean either a local unit of government that funds a trial court *combined with each and every trial court funded by the local unit of government* or if a trial court is funded by more than one local unit of government, those local units, collectively, *combined with each and every trial court funded by those local units of government*. The italicized portions would be eliminated.

Adherence to stated principles:

In establishing the minimum standards, rules, and procedures, certain principles as stated in the act must be adhered to. The bill revises two of those principles. Instead of requiring defense counsel to attend continuing legal education relevant to their indigent defense clients, the bill requires indigent criminal defense systems to employ only defense counsel who have attended the relevant continuing legal education.

In addition, the principles include that defense counsel be systemically reviewed at the local level for efficiency and for effective representation according to MIDC standards. The bill specifies that indigent criminal defense systems systematically provide the reviews.

Indigent Criminal Defense Services and Determination of Indigency:

The act establishes requirements for the application for, and appointment of, indigent criminal defense services. For instance, a preliminary inquiry regarding, and the determination of, the indigency of a defendant must be made by the court no later than at the defendant's first appearance in court, though the court could review that determination at any other stage of the proceedings. In determining whether a defendant is entitled to the appointment of counsel, the court must consider whether the defendant is indigent and the extent of his or her ability to pay, as outlined in the act. The bill deletes references to the "court" and instead references the indigent criminal defense system.

In addition, the bill adds that a trial court could play a role in this determination as part of any indigent criminal defense system's compliance plan under the direction and supervision of the state Supreme Court, consistent with Section 4 of Article VI of the state constitution. Nothing in the act could prevent a court from making a determination of indigency for any purpose consistent with that Article.

House Bill 5843

The bill amends Section 9 of the act, which prescribes the duties and authority of the MIDC (MCL 780.989). Currently, the duties include establishing procedures for the mandatory collection of data concerning the operation of the MIDC, *each individual attorney providing indigent criminal defense services*, each indigent criminal defense system, and the operation of indigent criminal defense services. The bill deletes the italicized portions.

The bill also deletes as a duty of the MIDC collecting data from all individual attorneys providing indigent criminal defense services to adults.

House Bills 5844 and 5845

The bills amend Sections 13 and 15 of the act (MCL 780.993 and 995, respectively). The bills delete references to the state Supreme Court and instead reference LARA.

House Bill 5846

Currently, every local unit of government *and every trial court* that is part of an indigent criminal defense system is required to comply with an approved plan under this act (MCL 780.997). The bill deletes the italicized portion of the provision.

FISCAL IMPACT:

The bills will likely have a nominal fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) and no fiscal impact on local units of government. HB 5842 transfers administration of the Michigan Indigent Defense Commission from the judiciary to LARA, but the increased administrative costs that are likely to arise will be offset by additional funding provided for the administration of the commission. LARA will be responsible for several administrative functions that will increase the department's costs; namely, holding public hearings for and approving proposed standards for the local delivery of indigent criminal defense services. Additionally, the department may experience increased costs due to challenges of adopted standards, which are subject to judicial review.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

