

HOUSE BILL NO. 6344

July 20, 2022, Introduced by Rep. Lightner and referred to the Committee on Judiciary.

A bill to amend 1978 PA 620, entitled
"Appellate defender act,"
by amending the title and sections 2, 4, 6, and 7 (MCL 780.712,
780.714, 780.716, and 780.717) and by adding section 1a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act relating to ~~criminal procedure;~~ **indigent appellate**
3 **defense;** to provide for the defense of ~~persons accused or convicted~~
4 ~~of criminal offenses;~~ **certain indigent individuals;** to create the
5 appellate defender commission; to provide for an appellate

1 defender; to prescribe powers and duties; to provide facilities,
2 personnel, and related assistance and services for the appellate
3 defender and the commission; and to provide for the financing of
4 the administration of this act.

5 **Sec. 1a. As used in this act:**

6 (a) "Adult" means an individual who is eligible to appeal a
7 criminal conviction or exercise any other post-conviction remedy.

8 (b) "Juvenile" means an individual who is the subject of an
9 order of disposition.

10 (c) "Order of disposition" means an order of disposition made
11 under chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
12 712A.1 to 712A.32.

13 Sec. 2. (1) An appellate defender commission is created within
14 the office of the state court administrator. The appellate defender
15 commission consists of 7 members appointed by the governor for
16 terms of 4 years. Of the 7 members, 2 members shall be recommended
17 by the supreme court of this state, 1 member shall be recommended
18 by the court of appeals of this state, 1 member shall be
19 recommended by the Michigan judges association, 2 members shall be
20 recommended by the state bar of Michigan, and 1 member, who shall
21 not be an attorney, shall be selected from the general public by
22 the governor. A member of the commission shall not be, at the time
23 of appointment, a sitting judge, a prosecuting attorney, or a law
24 enforcement officer.

25 (2) Initially 4 members of the commission shall be appointed
26 for terms of 4 years and 1 member each for terms of 1, 2, and 3
27 years respectively.

28 (3) Members of the commission shall not receive a salary in
29 that capacity but shall be reimbursed for their reasonable actual

1 and necessary expenses by the state treasurer upon the warrant of
2 the state treasurer.

3 (4) The commission shall be responsible for the development of
4 ~~a~~ **both of the following:**

5 (a) A system of ~~indigent~~ appellate defense services ~~which~~
6 ~~shall~~ **for indigent adults.**

7 (b) A system of appellate defense services for indigent
8 juveniles.

9 (5) **Both of the systems described in subsection (4) must**
10 include services provided by ~~the~~ **both of the following:**

11 (a) The office of the state appellate defender, ~~provided for~~
12 ~~under~~ **created in** section 3. ~~and locally~~

13 (b) **Locally** appointed private counsel.

14 (6) ~~(5)~~ The commission shall be responsible for the
15 development of minimum standards to which all indigent ~~criminal~~
16 ~~defense~~ appellate **defense** services ~~shall~~ **for adults and juveniles**
17 **must** conform. ~~Within 180 days after appointment of the commission~~
18 ~~and whenever~~ **Whenever** the commission deems it advisable, ~~after that~~
19 ~~period,~~ the commission shall submit proposed standards to the
20 supreme court. Upon approval of the proposed standards by the
21 supreme court, the commission shall adopt the standards.

22 (7) ~~(6)~~ The commission shall compile and keep current ~~a~~ **both**
23 **of the following:**

24 (a) A statewide roster of attorneys eligible for, and willing
25 to accept appointment by, an appropriate court to serve as ~~criminal~~
26 appellate defense counsel for ~~indigents.~~ **indigent adults.**

27 (b) A statewide roster of attorneys eligible for, and willing
28 to accept appointment by, an appropriate court to serve as
29 appellate defense counsel for indigent juveniles.

1 (8) The appointment of ~~criminal~~-appellate defense services for
 2 ~~indigents shall~~ **indigent adults and juveniles must** be made by the
 3 trial court from the **applicable** roster ~~provided by the commission~~
 4 ~~or shall be~~ **described in subsection (7), or** referred to the office
 5 of the state appellate defender.

6 (9) ~~(7)~~ The commission shall provide a continuing legal
 7 education training program for its staff and the private attorneys
 8 who appear on the ~~roster for purposes of appointment for indigent~~
 9 ~~criminal defense appellate service.~~ **rosters described in subsection**
 10 **(7).**

11 Sec. 4. (1) ~~The~~ **An individual shall not serve as an** appellate
 12 defender, deputy appellate defender, ~~and each or~~ assistant
 13 appellate defender ~~shall~~:

14 ~~(a) Be~~ **unless the individual is** an attorney licensed to
 15 practice law in this state.

16 (2) ~~(b)~~ **The appellate defender, the deputy appellate defender,**
 17 **and each assistant appellate defender shall do all of the**
 18 **following:**

19 (a) Take and subscribe to the oath required by the
 20 constitution before taking office.

21 (b) ~~(e)~~ Perform duties as may be provided by law.

22 (c) ~~(d)~~ Represent the **following individuals:**

23 (i) **An indigent defendant** ~~adult~~ only subsequent to a conviction
 24 or entry of a guilty plea or plea of nolo contendere at the trial
 25 court level.

26 (ii) **An indigent juvenile only subsequent to an order of**
 27 **disposition.**

28 (3) ~~(e) Not~~ **The appellate defender and the deputy appellate**
 29 **defender shall not** engage in the practice of law or as an attorney

1 or counselor in a court of this state except in the exercise of ~~his~~
 2 **the** duties ~~under this~~ **prescribed by this** act.

3 (4) ~~(2)~~ For purposes of this act, the appellate defender, the
 4 deputy appellate defender, ~~the~~ **each** assistant appellate defender,
 5 and support personnel ~~shall be~~ **are** considered ~~as~~ court employees
 6 and **are** not ~~as~~ classified civil service employees.

7 Sec. 6. The appellate defender shall **do all of the following:**

8 (a) Conduct an appeal of a felony conviction or conduct other
 9 ~~post-conviction~~ **post-conviction** remedies on behalf of ~~a person~~ **an**
 10 **indigent adult** for whom the appellate defender is assigned as
 11 attorney by a court of a record.

12 (b) **Conduct an appeal of an order of disposition on behalf of**
 13 **an indigent juvenile for whom the appellate defender is assigned as**
 14 **attorney by a court of record.**

15 (c) ~~(b)~~ Provide investigatory and other services necessary for
 16 a complete appellate review or appropriate ~~post-conviction~~ **post-**
 17 **conviction** remedy.

18 (d) ~~(e)~~ Accept only that number of assignments and maintain a
 19 caseload which will ~~insure~~ **ensure** quality ~~criminal defense~~
 20 appellate **defense** services **for indigent adults and juveniles**
 21 consistent with the funds appropriated by the state. However, the
 22 number of cases assigned to the appellate defender office ~~shall~~
 23 **must** not be less than 25% of the total ~~criminal defense~~ appellate
 24 **defense** cases for ~~indigents~~ **indigent adults and juveniles** pending
 25 before the appellate courts of this state.

26 (e) ~~(d)~~ Maintain a repository of briefs prepared by the
 27 appellate defender and make those briefs available to private
 28 attorneys providing ~~criminal defense~~ appellate **defense** services for
 29 ~~indigents~~ **indigent adults and juveniles.**

1 **(f)** ~~(e)~~ Perform other duties required by law as directed by
2 the commission.

3 Sec. 7. **(1)** The appellate defender may appoint special
4 assistant appellate defenders to ~~represent~~ **do any of the following:**

5 **(a) Represent** indigent ~~persons~~ **adults** or ~~to~~ **otherwise** assist
6 in the representation of ~~an~~ indigent ~~person~~ **adults** at any stage of
7 appellate or ~~post-conviction~~ **post-conviction** proceedings, upon
8 rules adopted by the commission. ~~Special~~

9 **(b) Represent indigent juveniles or otherwise assist in the**
10 **representation of indigent juveniles at any stage of appellate**
11 **proceedings, upon rules adopted by the commission.**

12 **(2) The special** assistant appellate defenders shall be paid on
13 a contract basis approved by the commission within funds available
14 to the commission. ~~and shall not be subject to the restrictions on~~
15 ~~the practice of law contained in section 4.~~