

**SUBSTITUTE FOR
HOUSE BILL NO. 5804**

A bill to create the Michigan indigent defense commission and to provide for its powers and duties; to provide for constitutionally effective assistance of counsel to represent indigent defendants in criminal cases; to provide standards for the appointment of legal counsel; and to provide for certain appropriations.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 Sec. 3. As used in this act:

4 (a) "Adult" means either of the following:

5 (i) An individual 17 years of age or older.

6 (ii) An individual less than 17 years of age at the time of the

1 commission of a felony if any of the following conditions apply:

2 (A) During consideration of a petition filed under section 4
3 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
4 712A.4, to waive jurisdiction to try the individual as an adult and
5 upon granting a waiver of jurisdiction.

6 (B) The prosecuting attorney designates the case under section
7 2d(1) of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
8 712A.2d, as a case in which the juvenile is to be tried in the same
9 manner as an adult.

10 (C) During consideration of a request by the prosecuting
11 attorney under section 2d(2) of chapter XIIIA of the probate code of
12 1939, 1939 PA 288, MCL 712A.2d, that the court designate the case
13 as a case in which the juvenile is to be tried in the same manner
14 as an adult.

15 (D) The prosecuting attorney authorizes the filing of a
16 complaint and warrant for a specified juvenile violation under
17 section 1f of chapter IV of the code of criminal procedure, 1927 PA
18 175, MCL 764.1f, and the individual is arraigned on a felony charge
19 in circuit court.

20 (b) "Criminal law" means a law of this state that provides for
21 the possibility of imprisonment upon conviction.

22 (c) "Criminal trial defense services" means criminal law
23 defense services other than those authorized to be provided under
24 the appellate defender act, 1978 PA 620, MCL 780.711 to 780.719.

25 (d) "MIDC" or "commission" means the Michigan indigent defense
26 commission created under section 5.

27 Sec. 5. (1) The Michigan indigent defense commission is

1 created in the judicial branch of state government.

2 (2) The MIDC shall retain as an autonomous entity all
3 statutory authority, powers, duties, functions, records, personnel,
4 property, unexpended balances of appropriations, allocations, and
5 other functions, including the functions of budgeting, personnel,
6 locating offices, and other management functions.

7 (3) The MIDC shall propose minimum standards for the local
8 delivery of criminal trial defense services providing
9 constitutionally effective assistance of counsel to indigent adults
10 throughout this state. A minimum standard proposed under this
11 subsection takes effect upon the supreme court's approval or 120
12 days after submission to the supreme court for review, whichever
13 occurs first, unless the supreme court rejects the proposed minimum
14 standard.

15 (4) The MIDC shall identify and encourage best practices for
16 delivering that assistance.

17 (5) Local units of government shall comply with the standards
18 established by the MIDC under this act and shall cooperate with the
19 MIDC in carrying out its duties under this act.

20 Sec. 7. (1) The MIDC consists of 14 members, 13 of whom shall
21 be appointed by the governor for terms of 4 years. Subject to
22 subsection (3), the governor shall appoint members under this
23 subsection as follows:

24 (a) Two members submitted by the speaker of the house of
25 representatives.

26 (b) Two members submitted by the senate majority leader.

27 (c) One member from a list of 3 names submitted by the supreme

1 court chief justice.

2 (d) Two members from a list of 6 names submitted by the
3 criminal defense attorney association of Michigan.

4 (e) One member from a list of 3 names submitted by the
5 Michigan judges association.

6 (f) One member from a list of 3 names submitted by the
7 Michigan district judges association.

8 (g) One member from a list of 3 names submitted by the state
9 bar of Michigan.

10 (h) One member from names submitted by bar associations whose
11 primary mission or purpose is to advocate for minority interests.

12 (i) One member selected to represent the general public.

13 (j) One member selected to represent local units of
14 government.

15 (2) The supreme court chief justice or his or her designee
16 shall serve as an ex officio member of the MIDC without vote.

17 (3) Individuals nominated for service on the MIDC shall have
18 significant experience in the defense or prosecution of criminal
19 proceedings or have demonstrated a strong commitment to high-
20 quality representation in indigent criminal trial defense matters.
21 Of the members appointed under this section, the governor shall
22 appoint no fewer than 2 individuals who are not licensed attorneys.
23 An individual who receives compensation from this state or a local
24 unit of government for providing representation to indigent adults
25 in state courts is ineligible to serve as a member of the MIDC. Not
26 more than 3 judges, whether they are former judges or sitting
27 judges, shall serve on the MIDC at the same time. The governor may

1 reject the names submitted under subsection (1) and request
2 additional names.

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

9 (5) The governor shall fill a vacancy occurring in the
10 membership of the MIDC in the same manner as the original
11 appointment, except that the source of the nomination shall submit
12 a list of 3 names for each vacancy. If an MIDC member vacates his
13 or her commission before the end of the member's term, the governor
14 shall fill that vacancy for the unexpired term only.

15 (6) The governor shall appoint 1 of the original MIDC members
16 to serve as chairperson of the MIDC for a term of 1 year. At the
17 expiration of that year, or upon the vacancy in the membership of
18 the member appointed chairperson, the MIDC shall annually elect a
19 chairperson from its membership to serve a 1-year term. An MIDC
20 member shall not serve as chairperson of the MIDC for more than 3
21 consecutive terms.

22 (7) MIDC members shall not receive compensation in that
23 capacity but shall be reimbursed for their reasonable actual and
24 necessary expenses by the state treasurer.

25 (8) The governor may remove an MIDC member for incompetence,
26 dereliction of duty, malfeasance, misfeasance, or nonfeasance in
27 office, or for any other good cause.

1 (9) A majority of the MIDC voting members constitute a quorum
2 for the transaction of business at a meeting of the MIDC. A
3 majority of the voting members present and serving are required for
4 official action of the commission.

5 (10) Confidential case information, including, but not limited
6 to, client information and attorney work product, is exempt from
7 disclosure under the freedom of information act, 1976 PA 442, MCL
8 15.231 to 15.246.

9 Sec. 9. (1) The MIDC has the following authority and duties:

10 (a) Developing and overseeing the implementation, enforcement,
11 and modification of minimum standards, rules, and procedures to
12 ensure that criminal trial defense services providing effective
13 assistance of trial counsel are consistently delivered to all
14 indigent adults in this state consistent with the safeguards of the
15 United States constitution, the state constitution of 1963, and
16 this act.

17 (b) Investigating, auditing, and reviewing the operation of
18 local indigent criminal trial defense delivery systems to assure
19 compliance with the commission's standards, rules, and procedures.

20 (c) Hiring an executive director and determining the
21 appropriate number of staff needed to accomplish the purpose of the
22 MIDC consistent with annual appropriations.

23 (d) Assigning the executive director the following duties:

24 (i) Establishing an organizational chart, preparing an annual
25 budget, and hiring, disciplining, and firing staff.

26 (ii) Assisting the MIDC in developing, implementing, and
27 regularly reviewing and enforcing the MIDC's standards, rules, and

1 procedures, including, but not limited to, determining the criteria
2 for an indigent adult's eligibility for receiving criminal trial
3 defense services under this act.

4 (e) Establishing procedures for the receipt and resolution of
5 complaints, and the implementation of recommendations from the
6 courts, other participants in the criminal justice system, clients,
7 and members of the public.

8 (f) Establishing procedures for the mandatory collection of
9 data concerning the operation of the MIDC, each individual attorney
10 representing indigent criminal trial defense services, and each
11 local indigent criminal trial defense services system.

12 (g) Establishing procedures for annually reporting to the
13 governor, legislature, and supreme court. The report required under
14 this subdivision shall include, but not be limited to,
15 recommendations for improvements and further legislative action.

16 (2) Upon the appropriation of sufficient funds, the MIDC shall
17 hire staff, establish minimum standards to carry out the purpose of
18 this act, and begin collecting data from all local units of
19 government and individual attorneys providing criminal trial
20 defense services to indigent adults. To the extent feasible, the
21 MIDC shall establish metrics for determining the resources
22 necessary for each local unit of government to comply with the
23 minimum standards established by the MIDC and for the MIDC to
24 fulfill its role. The MIDC shall establish a timeline for local
25 units of government to comply with the minimum standards
26 established under this act consistent with the metrics established
27 under this section and appropriations by this state.

1 (3) In establishing and overseeing the minimum requirements,
2 rules, and procedures described in subsection (1), the MIDC shall
3 emphasize the importance of criminal trial defense services
4 provided to juveniles under the age of 17 who are tried in the same
5 manner as adults or who may be sentenced in the same manner as
6 adults and to indigent adults with mental impairments.

7 (4) The MIDC shall be mindful that defense attorneys who
8 represent indigent adults are equal partners with the prosecution,
9 law enforcement, and the judiciary in the criminal justice system.
10 The MIDC shall also be mindful that the local indigent criminal
11 trial defense systems should be adequately funded in order to
12 fulfill their roles.

13 Sec. 11. (1) The MIDC shall establish minimum requirements,
14 rules, and procedures to effectuate the following:

15 (a) The delivery of indigent criminal trial defense services,
16 including, but not limited to, the selection, funding, and payment
17 of defense counsel, shall be independent of the judiciary but
18 ensure that the judges of this state are permitted and encouraged
19 to contribute information and advice concerning that delivery of
20 indigent criminal trial defense services.

21 (b) If the caseload is sufficiently high, indigent criminal
22 trial defense services shall consist of both an indigent criminal
23 defender office and the active participation of other members of
24 the state bar.

25 (c) Each system shall assure that each criminal defendant is
26 advised of his or her right to counsel. All indigent adults, except
27 those appearing with retained counsel or those who have made an

1 informed waiver of counsel, shall be screened for eligibility under
2 this act, and counsel shall be assigned as soon as feasible after
3 formal charges are filed against the indigent adult.

4 (2) In establishing minimum requirements, rules, and
5 procedures, the MIDC shall adhere to the following principles:

6 (a) Defense counsel is provided sufficient time and a space
7 where attorney-client confidentiality is safeguarded for meetings
8 with defense counsel's client.

9 (b) Defense counsel's workload is controlled to permit high-
10 quality representation. A local unit of government shall not create
11 economic disincentives or incentives that may impair defense
12 counsel's ability to provide effective representation, and may
13 develop workload controls to enhance defense counsel's ability to
14 provide effective representation.

15 (c) Defense counsel's ability, training, and experience match
16 the nature and complexity of the case to which he or she is
17 appointed.

18 (d) The same defense counsel continuously represents and
19 personally appears at every court appearance throughout the
20 pendency of the case. However, local units of government may exempt
21 ministerial, nonsubstantive tasks, and hearings from this
22 prescription.

23 (e) Defense counsel is provided with and required to attend
24 relevant continuing legal education.

25 (f) Defense counsel is systematically reviewed for quality and
26 efficiency of representation according to MIDC standards.

27 (3) The MIDC shall permit a local indigent criminal trial

1 defense service system to continue to operate if it complies with
2 the principles listed in subsection (2).

3 Sec. 13. (1) It is the duty of this state to ensure criminal
4 trial defense services providing constitutionally effective
5 assistance of counsel to indigent adult defendants through this
6 state. All local units of government shall cooperate and
7 participate in the investigation, audit, and review of their local
8 indigent criminal trial defense systems conducted by the MIDC under
9 section 11.

10 (2) A local unit of government shall maintain not less than
11 the level of funding for indigent criminal trial defense services,
12 adjusted for inflation as reported by the Detroit consumer price
13 index, as its average annual expenditure in the 3 fiscal years
14 immediately preceding the creation of the MIDC under this act, or
15 the statewide average annual expenditure in the 3 fiscal years
16 immediately preceding the creation of the MIDC under this act,
17 whichever is greater. If additional funding is necessary in order
18 to bring a local unit of government's delivery of criminal trial
19 defense services into compliance with the standards established by
20 the MIDC, that additional funding shall be paid by this state. The
21 legislature shall appropriate the additional funds necessary to a
22 local unit of government to allow that local unit of government to
23 meet the demonstrated and quantified requirements of a local unit
24 of government to meet those standards. The statewide average annual
25 expenditure in the 3 fiscal years immediately preceding the
26 creation of the MIDC shall be determined by the MIDC on an
27 expenditure per capita basis after input from and consultation with

1 the house fiscal agency, the senate fiscal agency, and the state
2 court administrative office. For purposes of this section, average
3 annual expenditure shall be calculated as follows:

4 (a) A county shall count all funds expended for the provision
5 of indigent criminal trial defense services for adults by the
6 county together with all funds expended by other units of
7 government within that county for the provision of indigent
8 criminal trial defense services for adults, including, but not
9 limited to, funds expended through district court districts of the
10 third class as that term is defined in section 8103 of the revised
11 judicature act of 1961, 1961 PA 236, MCL 600.8103.

12 (b) A local unit of government operating or participating in
13 the operation of a district court district of the third class shall
14 count all funds expended for the provision of indigent criminal
15 trial defense services for adults through or in that district of
16 the third class as that term is defined in section 8103 of the
17 revised judicature act of 1961, 1961 PA 236, MCL 600.8103.

18 (3) A local indigent criminal trial defense system may request
19 that the MIDC review its current or proposed system to determine
20 its compliance with the standards established under this act. The
21 MIDC shall conduct a review as necessary to determine its level of
22 compliance. If the MIDC determines that the local indigent criminal
23 trial defense system is in compliance, the maintenance of funding
24 provisions of this section requiring a minimum expenditure of the
25 minimum statewide average shall not apply and no state funds shall
26 be used to support that local indigent criminal trial defense
27 system.

1 (4) The MIDC shall provide criminal trial defense services to
2 indigent adults if, or to the extent that, a local indigent
3 criminal trial defense system fails or is unable to meet the
4 minimum standards necessary for the delivery of constitutionally
5 effective assistance of counsel established by the MIDC under
6 section 11. Upon request, a local unit of government shall be
7 afforded an opportunity to be heard by the MIDC prior to the MIDC's
8 determination that it is not in compliance.

9 (5) If a local unit of government requests a hearing under
10 subsection (4), the MIDC shall identify the local unit of
11 government's areas of noncompliance and allow sufficient time for
12 the local unit of government to come into compliance.

13 (6) If, after the time allowed under subsection (5), a local
14 unit of government fails to comply, the MIDC shall provide indigent
15 criminal trial defense services at state cost to that local unit of
16 government.

17 (7) Upon the MIDC's determination that a local unit of
18 government has failed or is unable to meet the minimum standards
19 established by the MIDC under this act, the MIDC shall direct the
20 state treasurer to withhold an amount equal to that local unit of
21 government's maintenance of the funding requirement prescribed
22 under subsection (2) from any state payments to that local unit of
23 government. No action shall be taken against a local unit of
24 government providing adult indigent criminal trial defense services
25 for failing to maintain funding under section 13(2) prior to the
26 approval of the first minimum standard by the supreme court.

27 (8) The MIDC may apply for and obtain grants from any source

1 to carry out the purposes of this act.

2 Sec. 15. (1) The commission shall establish procedures for the
3 conduct of its affairs and promulgate policies necessary to carry
4 out its powers and duties under this act.

5 (2) The commission shall convene a public hearing before a
6 proposed policy becomes effective.

7 (3) Commission policies shall be placed in an appropriate
8 manual, made publicly available on a website, and made available to
9 all attorneys and professionals providing public defense services,
10 the supreme court, the senate and house appropriations committees,
11 and the senate and house fiscal agencies.

12 Sec. 17. Both of the following apply to the MIDC:

13 (a) The freedom of information act, 1976 PA 442, MCL 15.231 to
14 15.246.

15 (b) The open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

16 Sec. 19. Nothing in this act should be construed to overrule,
17 expand, or extend, either directly or by analogy, the decision
18 reached by the United States supreme court in Strickland v
19 Washington, 466 US 688 (1984), or its progeny in the supreme court
20 of this state.