

HOUSE BILL No. 4742

June 14, 2011, Introduced by Reps. Constan, Slavens, Cavanagh and Darany and referred to the Committee on Judiciary.

A bill to provide for a public defense commission; to provide for development, implementation, and administration of a public defense system; to provide for attorney representation of indigent criminal and juvenile defendants; to provide standards for the appointment of legal counsel; and to prescribe powers and duties.

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. As used in this act:

4 (a) "Plan" means the commission's plan for providing public
5 defense services throughout this state.

6 (b) "Public defense commission" or "commission" means the
7 public defense commission created under section 3.

8 (c) "Public defense services" means legal representation and

1 other services provided to eligible individuals.

2 (d) "Region" means a judicial circuit or group of judicial
3 circuits designated by the commission as an administrative unit to
4 oversee the provision of public defense services.

5 (e) "State public defense system", "state system", or "system"
6 means the state public defense system developed and implemented by
7 the commission under section 4.

8 Sec. 3. (1) The public defense commission is created to
9 implement and administer a state public defense system.

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

22 (3) Not fewer than 1 individual appointed to the commission
23 shall have significant experience in the representation of
24 juveniles in delinquency proceedings or a demonstrated commitment
25 to quality representation of juveniles in those proceedings. Not
26 fewer than 1 individual appointed to the commission shall have
27 significant experience in criminal appeals.

1 (4) At the time of appointment or while serving on the
2 commission, a member of the commission shall not be a sitting judge
3 or prosecuting attorney, or an individual employed by a prosecuting
4 attorney, a law enforcement agency, a probation department, or the
5 Michigan department of corrections, and shall not be a criminal
6 defense attorney employed by, or under contract with, the office.

7 (5) All commission members shall be appointed for terms of 3
8 years and shall hold office until their successors are appointed.
9 The terms of the members shall be staggered. Initially, 3 members
10 shall be appointed for a term of 3 years each, 3 members shall be
11 appointed for a term of 2 years, and 3 members shall be appointed
12 for a term of 1 year.

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

16 (7) Members of the commission shall not receive a salary in
17 that capacity but shall be reimbursed for their reasonable, actual,
18 and necessary expenses by the state treasurer.

19 Sec. 4. (1) The commission has the following duties:

20 (a) To establish procedures for the conduct of its affairs and
21 elect a presiding officer from among its members.

22 (b) To promulgate policies necessary to carry out its powers
23 and duties under this act.

24 (c) To convene a public hearing before a proposed policy
25 becomes effective.

26 (d) To place commission policies in an appropriate manual
27 publicly available on an internet website to all attorneys and

1 professionals providing public defense services, the supreme court,
2 the senate and house appropriations committees, and the senate and
3 house fiscal agencies.

4 Sec. 5. (1) In addition to the duties listed under section 4,
5 the commission shall develop a plan for providing public defense
6 services that divides the state into defense regions sufficient to
7 provide efficient provision of public defense services throughout
8 this state while addressing local needs.

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

12 (3) The commission shall periodically review any proposed
13 revisions to the plan and take such action it considers
14 appropriate.

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

18 (5) The commission shall assist in the implementation of
19 programs that improve the criminal justice system and reduce
20 recidivism.

21 Sec. 6. (1) All attorneys providing public defense services
22 under this act shall be licensed to practice law in this state and
23 be members in good standing of the state bar of Michigan.

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

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

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

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

10 (d) The availability of, access to, and use of technology and
11 legal resources.

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

14 (f) Practice standards.

15 (g) Performance criteria.

16 (h) Performance evaluation procedures.

17 (3) The commission shall establish policies to ensure that all
18 of the following criteria are met:

19 (a) Attorneys are appointed to represent clients in a timely
20 and equitable manner.

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

24 (c) Conflicts of interest are identified and those cases
25 involving a conflict of interest are handled according to
26 professional and ethical standards.

27 (d) In appropriate cases, clients are assessed for mental

1 illness, addiction, and other underlying issues and a client
2 rehabilitation plan is provided to the sentencing judge. The plan
3 shall use available community resources, rather than incarceration,
4 where appropriate.

5 (4) The commission shall not interfere with the reasonable
6 professional judgment exercised by an attorney in connection with
7 his or her representation of an individual eligible for public
8 defense services.

9 Sec. 7. The commission may enter into agreements and contracts
10 with departments and agencies of the judicial or executive branch
11 of state government, as well as local units of government,
12 including counties and municipalities, to carry out its duties
13 under this act.

14 Sec. 8. (1) The commission shall establish policies governing
15 the manner in which cases are allocated to assigned counsel to
16 ensure that cases are allocated in a fair and equitable manner.

17 (2) The commission shall require assigned counsel to comply
18 with all commission policies, office procedures, and this act,
19 including those regarding qualifications, performance, training,
20 continuing education, supervision, workloads, conflicts of
21 interest, and reporting.

22 (3) The commission shall require assigned counsel to have the
23 physical facilities, equipment, access to professionals, including
24 experts and investigators, and administrative support to provide
25 effective assistance of counsel.

26 (4) The office shall establish procedures to ensure assigned
27 counsel's compliance with commission policies and this act.

1 (5) The commission shall establish a reasonable compensation
2 schedule for assigned counsel.

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