

# SENATE BILL NO. 724

January 16, 2020, Introduced by Senator LUCIDO and referred to the Committee on Judiciary and Public Safety.

A bill to amend 2013 PA 93, entitled  
"Michigan indigent defense commission act,"  
by amending section 11 (MCL 780.991), as amended by 2018 PA 214.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

3           (a) The delivery of indigent criminal defense services must be  
4 independent of the judiciary but ensure that the judges of this

1 state are permitted and encouraged to contribute information and  
2 advice concerning that delivery of indigent criminal defense  
3 services.

4 (b) If the caseload is sufficiently high, indigent criminal  
5 defense services may consist of both an indigent criminal defender  
6 office and the active participation of other members of the state  
7 bar.

8 (c) Trial courts shall assure that each criminal defendant is  
9 advised of his or her right to counsel. All adults, except those  
10 appearing with retained counsel or those who have made an informed  
11 waiver of counsel, must be screened for eligibility under this act,  
12 and counsel must be assigned as soon as an indigent adult is  
13 determined to be eligible for indigent criminal defense services.

14 (2) The MIDC shall implement minimum standards, rules, and  
15 procedures to guarantee the right of indigent defendants to the  
16 assistance of counsel as provided under amendment VI of the  
17 Constitution of the United States and section 20 of article I of  
18 the state constitution of 1963. In establishing minimum standards,  
19 rules, and procedures, the MIDC shall adhere to the following  
20 principles:

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

24 (b) Defense counsel's workload is controlled to permit  
25 effective representation. Economic disincentives or incentives that  
26 impair defense counsel's ability to provide effective  
27 representation must be avoided. The MIDC may develop workload  
28 controls to enhance defense counsel's ability to provide effective  
29 representation.

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

4 (d) The same defense counsel continuously represents and  
5 personally appears at every court appearance throughout the  
6 pendency of the case. However, indigent criminal defense systems  
7 may exempt ministerial, nonsubstantive tasks, and hearings from  
8 this prescription.

9 (e) Indigent criminal defense systems employ only defense  
10 counsel who have attended continuing legal education relevant to  
11 counsels' indigent defense clients.

12 (f) Indigent criminal defense systems systematically review  
13 defense counsel at the local level for efficiency and for effective  
14 representation according to MIDC standards.

15 **(g) Defense counsel must personally appear at every court**  
16 **event throughout the pendency of the case, including, but not**  
17 **limited to, arraignment, probable cause conference, preliminary**  
18 **examination, trial, and any other critical event.**

19 **(h) Defense counsel must be appointed to an indigent defendant**  
20 **for an appeal after a guilty plea has been entered or the defendant**  
21 **has been convicted after a trial, or for an interlocutory appeal**  
22 **while a case is pending, including, but not limited to, an appeal**  
23 **of the court's decision regarding pretrial release on bond.**

24 **(i) Defense counsel must be compensated during the pendency of**  
25 **an appeal of the court's decision regarding pretrial release on**  
26 **bond.**

27 (3) The following requirements apply to the application for,  
28 and appointment of, indigent criminal defense services under this  
29 act:

1 (a) A preliminary inquiry regarding, and the determination of,  
2 the indigency of any defendant, including a determination regarding  
3 whether a defendant is partially indigent, for purposes of this act  
4 must be made as determined by the indigent criminal defense system  
5 not later than at the defendant's first appearance in court. The  
6 determination may be reviewed by the indigent criminal defense  
7 system at any other stage of the proceedings. In determining  
8 whether a defendant is entitled to the appointment of counsel, the  
9 indigent criminal defense system shall consider whether the  
10 defendant is indigent and the extent of his or her ability to pay.  
11 Factors to be considered include, but are not limited to, income or  
12 funds from employment or any other source, including personal  
13 public assistance, to which the defendant is entitled, property  
14 owned by the defendant or in which he or she has an economic  
15 interest, outstanding obligations, the number and ages of the  
16 defendant's dependents, employment and job training history, and  
17 his or her level of education. A trial court may play a role in  
18 this determination as part of any indigent criminal defense  
19 system's compliance plan under the direction and supervision of the  
20 supreme court, consistent with section 4 of article VI of the state  
21 constitution of 1963. If an indigent criminal defense system  
22 determines that a defendant is partially indigent, the indigent  
23 criminal defense system shall determine the amount of money the  
24 defendant must contribute to his or her defense. An indigent  
25 criminal defense system's determination regarding the amount of  
26 money a partially indigent defendant must contribute to his or her  
27 defense is subject to judicial review. Nothing in this act prevents  
28 a court from making a determination of indigency for any purpose  
29 consistent with article VI of the state constitution of 1963.

1 (b) A defendant is considered to be indigent if he or she is  
2 unable, without substantial financial hardship to himself or  
3 herself or to his or her dependents, to obtain competent, qualified  
4 legal representation on his or her own. Substantial financial  
5 hardship is rebuttably presumed if the defendant receives personal  
6 public assistance, including under the food assistance program,  
7 temporary assistance for needy families, Medicaid, or disability  
8 insurance, resides in public housing, or earns an income less than  
9 140% of the federal poverty guideline. A defendant is also  
10 rebuttably presumed to have a substantial financial hardship if he  
11 or she is currently serving a sentence in a correctional  
12 institution or is receiving residential treatment in a mental  
13 health or substance abuse facility.

14 (c) A defendant not falling below the presumptive thresholds  
15 described in subdivision (b) must be subjected to a more rigorous  
16 screening process to determine if his or her particular  
17 circumstances, including the seriousness of the charges being  
18 faced, his or her monthly expenses, and local private counsel rates  
19 would result in a substantial hardship if he or she were required  
20 to retain private counsel.

21 (d) A determination that a defendant is partially indigent may  
22 only be made if the indigent criminal defense system determines  
23 that a defendant is not fully indigent. An indigent criminal  
24 defense system that determines a defendant is not fully indigent  
25 but may be partially indigent must utilize the screening process  
26 under subdivision (c). The provisions of subdivision (e) apply to a  
27 partially indigent defendant.

28 (e) The MIDC shall promulgate objective standards for indigent  
29 criminal defense systems to determine whether a defendant is

1 indigent or partially indigent. These standards must include  
2 availability of prompt judicial review, under the direction and  
3 supervision of the supreme court, if the indigent criminal defense  
4 system is making the determination regarding a defendant's  
5 indigency or partial indigency.

6 (f) The MIDC shall promulgate objective standards for indigent  
7 criminal defense systems to determine the amount a partially  
8 indigent defendant must contribute to his or her defense. The  
9 standards must include availability of prompt judicial review,  
10 under the direction and supervision of the supreme court, if the  
11 indigent criminal defense system is making the determination  
12 regarding how much a partially indigent defendant must contribute  
13 to his or her defense.

14 (g) A defendant is responsible for applying for indigent  
15 defense counsel and for establishing his or her indigency and  
16 eligibility for appointed counsel under this act. Any oral or  
17 written statements made by the defendant in or for use in the  
18 criminal proceeding and material to the issue of his or her  
19 indigency must be made under oath or an equivalent affirmation.

20 (4) The MIDC shall establish standards for trainers and  
21 organizations conducting training that receive MIDC funds for  
22 training and education. The standards established under this  
23 subsection must require that the MIDC analyze the quality of the  
24 training, and must require that the effectiveness of the training  
25 be capable of being measured and validated.

26 (5) An indigent criminal defense system may include in its  
27 compliance plan a request that the MIDC serve as a clearinghouse  
28 for experts and investigators. If an indigent criminal defense  
29 system makes a request under this subsection, the MIDC may develop

- 1 and operate a system for determining the need and availability for
- 2 an expert or investigator in individual cases.