HOUSE BILL NO. 6345

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

A bill to amend 2013 PA 93, entitled "Michigan indigent defense commission act," by amending the title and sections 3, 5, 7, 9, 11, 13, 15, 17, 21, and 23 (MCL 780.983, 780.985, 780.987, 780.989, 780.991, 780.993, 780.995, 780.997, 780.1001, and 780.1003), section 3 as amended by 2019 PA 108, sections 5, 9, 11, 13, 15, and 17 as amended by 2018 PA 214, and section 7 as amended by 2018 PA 443.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

An act to create the Michigan indigent defense commission and
to provide for its powers and duties; to provide certain indigent defendants in criminal cases individuals with effective assistance of counsel; to provide standards for the appointment of legal counsel; to provide for and limit certain causes of action; and to provide for certain appropriations and grants.

Sec. 3. As used in this act:

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

(i) An individual 18 years of age or older.

(ii) An individual less than 18 years of age at the time of the commission of a felony if any of the following conditions apply:

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

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

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

(D) The prosecuting attorney authorizes the filing of a complaint and warrant for a specified juvenile violation under section 1f of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.1f.

(b) "Consumer Price Index" means the annual United States Consumer Price Index for all urban consumers as defined and
reported by the United States Department of Labor, Bureau of Labor Statistics.

(c) "Department" means the department of licensing and regulatory affairs.

(d) "Effective assistance of counsel" or "effective representation" means legal representation that is compliant with standards established by the appellate courts of this state and the United States Supreme Court.

(e) "Indigent" means meeting 1 or more of the conditions described in section 11(3).11.

(f) "Indigent criminal defense services" means local legal defense services provided to a defendant—an adult—and to which both of the following conditions apply:

(i) The defendant—adult is being prosecuted or sentenced for a crime for which an individual may be imprisoned upon conviction, beginning with the defendant’s—adult's initial appearance in court to answer to the criminal charge.

(ii) The defendant—adult is determined to be indigent under section 11(3).11.

(g) Indigent criminal defense services do not include services authorized to be provided under the appellate defender act, 1978 PA 620, MCL 780.711 to 780.719.

(g) "Indigent defense services" means indigent criminal defense services or indigent juvenile defense services, or both. Indigent defense services do not include services authorized to be provided under the appellate defender act, 1978 PA 620, MCL 780.711 to 780.719.

(h) "Indigent criminal defense system" or "system" means either of the following:
(i) The local unit of government that funds a trial court.

(ii) If a trial court is funded by more than 1 local unit of government, those local units of government, collectively.

(i) "Indigent juvenile defense services" means local legal defense services provided to a juvenile to which both of the following conditions apply:

(i) The juvenile is the subject of delinquency proceedings.

(ii) The juvenile is determined to be indigent under section 11.

(j) "Juvenile" means, except as otherwise provided in subdivision (a), an individual who is less than 18 years of age who is the subject of a delinquency petition.

(k) (i) "Local share" or "share", before the effective date of the amendatory act that added subdivision (j), means an indigent criminal defense system's average annual expenditure for indigent criminal defense services in the 3 fiscal years immediately preceding the creation of the MIDC under this act, excluding money reimbursed to the system by individuals determined to be partially indigent. Beginning on November 1, 2018, if the Consumer Price Index has increased since November 1 of the prior state fiscal year, the local share must be adjusted by that number or by 3%, whichever is less. Beginning on the effective date of the amendatory act that added subdivision (j), local share or share means ________________.

(l) (j) "MIDC" or "commission" means the Michigan indigent defense commission created established under section 5.

(m) (k) "Partially indigent" means a criminal defendant an adult or juvenile who is unable to afford the complete cost of legal representation, but is able to contribute a monetary amount
toward his or her legal representation.

Sec. 5. (1) The Michigan indigent defense commission is established within the department.

(2) The MIDC is an autonomous entity within the department. Except as otherwise provided by law, the MIDC shall exercise its statutory powers, duties, functions, and responsibilities independently of the department. The department shall provide support and coordinated services as requested by the MIDC including providing personnel, budgeting, procurement, and other administrative support to the MIDC sufficient to carry out its duties, powers, and responsibilities.

(3) The MIDC shall propose minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel to adults and juveniles throughout this state. These

(4) The minimum standards described in subsection (3) must be designed to ensure the provision of indigent criminal defense services that meet constitutional requirements for effective assistance of counsel. However, these minimum standards must not infringe on the supreme court's authority over practice and procedure in the courts of this state as set forth in section 5 of article VI of the state constitution of 1963.

(5) The commission shall convene a public hearing before a proposed minimum standard is recommended to the department.

(6) A proposed minimum standard proposed under this subsection must be submitted to the department for approval or rejection.

(7) Any opposition to a proposed minimum standard may be submitted to the department in a manner prescribed by the
department.

(8) An indigent criminal defense system that objects to a recommended minimum standard on the ground that the recommended minimum standard would exceed the MIDC's statutory authority shall state specifically how the recommended minimum standard would exceed the MIDC's statutory authority.

(9) A proposed minimum standard is final when it is approved by the department.

(10) A proposed minimum standard that is approved by the department is not subject to challenge through the appellate procedures in section 15.

(11) An approved minimum standard for the local delivery of indigent criminal defense services within an indigent criminal defense system is not a rule as that term is defined in section 7 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.207.

(12) Approval of a minimum standard proposed by the MIDC is considered a final department action subject to judicial review under section 28 of article VI of the state constitution of 1963 to determine whether the approved minimum standard is authorized by law. Jurisdiction

(13) The jurisdiction and venue for the judicial review of an approved minimum standard are vested in the court of claims.

(14) An indigent criminal defense system may file a petition for the review of an approved minimum standard in the court of claims within 60 days after the date of mailing notice of the department's final decision on the recommended proposed minimum standard.

(15) The filing of a petition for review under subsection (14)
does not stay enforcement of an approved minimum standard, but the
department may grant, or the court of claims may order, a stay upon
appropriate terms.

(16) (5) The MIDC shall identify and encourage best practices
for delivering the effective assistance of counsel to indigent
defendants charged with crimes. adults and juveniles.

(17) (7) The MIDC shall identify and implement a system of
performance metrics to assess the provision of indigent defense
services in this state relative to national standards and
benchmarks.

(18) The MIDC shall provide an annual report to the governor,
the legislature, the supreme court, and the state budget director
on the performance metrics not later than December 15 of each year.

Sec. 7. (1) The MIDC includes 18 voting members and the ex
officio member described in subsection (2) (4).

(2) Except as provided in subsections (10) and (11), the
18 voting members shall be appointed by the governor for terms of 4
years, except as provided in subsection (4).

(3) Subject to subsection (2) (5) to (9), the governor shall
appoint members under this subsection (2) as follows:

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

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

(c) One member from a list of 3 names submitted by the supreme
court chief justice.

(d) Three members from a list of 9 names submitted by the
Criminal Defense Attorneys of Michigan.

(e) One member from a list of 3 names submitted by the
Michigan Judges Association.
(f) One member from a list of 3 names submitted by the Michigan District Judges Association.

(g) One member from a list of 3 names submitted by the State Bar of Michigan.

(h) One member from a list of names submitted by bar associations whose primary mission or purpose is to advocate for minority interests. Each bar association described in this subdivision may submit 1 name.

(i) One member from a list of 3 names submitted by the Prosecuting Attorneys Association of Michigan who is a former county prosecuting attorney or former assistant county prosecuting attorney.

(j) One member selected to represent the general public.

(k) Two members representing the funding unit of a circuit court from a list of 6 names submitted by the Michigan Association of Counties.

(l) One member representing the funding unit of a district court from a list of 3 names submitted by the Michigan Townships Association or the Michigan Municipal League. The Michigan Townships Association and the Michigan Municipal League shall alternate in submitting a list as described under this subdivision.

For the first appointment after the effective date of the amendatory act that amended this subdivision, March 21, 2019, the Michigan Municipal League shall submit a list as described under this subdivision for consideration for the appointment. For the second appointment after the effective date of the amendatory act that amended this subdivision, March 21, 2019, the Michigan Townships Association shall submit a list as described under this subdivision for consideration for the appointment. The Michigan
Townships Association and the Michigan Municipal League shall alternate in submitting a list for subsequent appointments.

(m) One member from a list of 3 names submitted by the state budget office.

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

(5) (3) Individuals—Every individual nominated for service on the MIDC as provided in subsection (1)(3) must have satisfy at least 1 of the following:

(a) Have significant experience in the defense or prosecution of criminal proceedings.

(b) Have significant experience in the defense or prosecution of juveniles in delinquency proceedings.

(c) Have demonstrated a strong commitment to providing effective representation in indigent criminal defense services.

(6) Of the members appointed under this section, the governor shall appoint no fewer than 2 individuals who are not licensed attorneys.

(7) Any individual who receives compensation from this state or an indigent criminal defense system for providing prosecution of or representation to indigent adults or juveniles in state courts is ineligible to serve as a member of the MIDC.

(8) Not more than 3 judges, whether they are former judges or sitting judges, shall serve on the MIDC at the same time.

(9) The governor may reject the names submitted under subsection (1)(3) and request additional names.

(10) (4) An MIDC member shall hold office until their successor is appointed.
(11) The terms of the members must be staggered. Initially, 4
members must be appointed for a term of 4 years each, 4 members
must be appointed for a term of 3 years each, 4 members must be
appointed for a term of 2 years each, and 3 members must be
appointed for a term of 1 year each.

(12) The governor shall fill a vacancy occurring in the
membership of the MIDC in the same manner as the original
appointment, except if the vacancy is for an appointment described
in subsection (1)(d)–(3)(d), the source of the nomination shall
submit a list of 3 names for each vacancy. However, if the senate
majority leader or the speaker of the house of representatives is
the source of the nomination, 1 name must be submitted. If an MIDC
member vacates the commission before the end of the member's term,
the governor shall fill that vacancy for the unexpired term only.

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

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

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

(16) A majority of the MIDC voting members constitute a
quorum for the transaction of business at a meeting of the MIDC. A
majority of the MIDC voting members are required for official action of the commission.

(17) Any confidential case information of the MIDC, including, but not limited to, client information and attorney work product, is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

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

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

(b) Investigating, auditing, and reviewing the operation of indigent criminal defense services to assure compliance with the commission's minimum standards, rules, and procedures. However, an indigent criminal defense service that is in compliance with the commission's minimum standards, rules, and procedures must not be required to provide indigent criminal defense services in excess of those standards, rules, and procedures.

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

(d) Assigning the executive director the following duties:

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

(ii) Assisting the MIDC in developing, implementing, and regularly reviewing the MIDC's standards, rules, and procedures,
including, but not limited to, recommending to the MIDC suggested either of the following:

(A) Suggested changes to the criteria for an indigent adult's eligibility for receiving criminal trial defense services under this act.

(B) Suggested changes to the criteria for an indigent juvenile's eligibility for receiving juvenile defense services in delinquency proceedings under this act.

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

(f) Establishing procedures for the mandatory collection of data concerning the operation of the MIDC, each indigent criminal defense system, and the operation of indigent criminal defense services.

(g) Establishing rules and procedures for indigent criminal defense systems to apply to the MIDC for grants to bring the system's delivery of indigent criminal defense services into compliance with the minimum standards established by the MIDC.

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

(2) Upon the appropriation of sufficient funds, the MIDC shall establish minimum standards to carry out the purpose of this act, and collect data from all indigent criminal defense systems. The MIDC shall propose goals for compliance with the minimum standards established under this act consistent with the metrics established
under this section and appropriations by this state.

(3) In establishing and overseeing the minimum standards, rules, and procedures described in subsection (1), the MIDC shall emphasize the importance of indigent criminal all of the following:

(a) Indigent defense services provided to juveniles under the age of 17 who are tried in the same manner as adults or who may be sentenced in the same manner as adults and to

(b) Indigent defense services provided to adults and juveniles with mental impairments.

(4) The MIDC shall be mindful that defense attorneys who provide indigent criminal defense services are partners with the prosecution, law enforcement, and the judiciary in the criminal and juvenile justice systems.

(5) The MIDC shall establish procedures for the conduct of its affairs and promulgate policies necessary to carry out its powers and duties under this act.

(6) The MIDC policies must be placed in an appropriate manual, made publicly available on a website, and made available to all attorneys and professionals providing indigent criminal defense services, the supreme court, the governor, the senate majority leader, the speaker of the house of representatives, the senate and house appropriations committees, and the senate and house fiscal agencies.

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

(a) The delivery of indigent criminal defense services must be independent of the judiciary but ensure that the judges of this state are permitted and encouraged to contribute information and advice concerning that delivery of indigent criminal defense
(b) If the caseload is sufficiently high, indigent criminal defense services may consist of both an indigent criminal or juvenile defender office and the active participation of other members of the state bar.

(c) Trial courts—A trial court shall assure that each criminal defendant—adult and juvenile is advised of his or her—the adult or juvenile's right to counsel. All adults, Any adult or juvenile, except those appearing with retained counsel, or those who have made an informed waiver of counsel, must shall be screened for eligibility under this act, and counsel must be assigned as soon as an indigent adult or juvenile is determined to be eligible for indigent criminal defense services.

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

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

(b) Defense counsel's workload is controlled to permit effective representation. Economic disincentives or incentives that impair defense counsel's ability to provide effective representation must be avoided. The MIDC may develop workload controls to enhance defense counsel's ability to provide effective representation.
(c) Defense counsel's ability, training, and experience match the nature and complexity of the case to which he or she is appointed.

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

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

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

3 The following requirements apply to the application for, and the appointment of, indigent criminal defense services under this act: must meet the requirements set forth in subsections (4) to (18).

4 (a) A preliminary inquiry regarding, and the determination of, the indigency of any defendant, an adult or juvenile, including a determination regarding whether a defendant, the adult or juvenile is partially indigent, for purposes of this act, must be made as determined by the indigent criminal defense system not later than at the defendant's adult's or juvenile's first appearance in court. However, the determination may be reviewed by the indigent criminal defense system at any other stage of the proceedings.

5 (5) In determining whether a defendant, an adult or juvenile is entitled to the appointment of counsel, the indigent criminal
defense system shall consider whether the defendant is indigent and
the extent of his or her adult's or juvenile's ability to pay.

Factors: The factors to be considered in this determination include,
but are not limited to, any of the following:

(a) The income or funds from employment or any other source,
including personal public assistance, to which the defendant adult,
the juvenile, or a parent or legal guardian of the juvenile is
entitled.

(b) The property owned by the defendant adult, the juvenile,
or a parent or legal guardian of the juvenile, or in which he or
she, the adult, juvenile, parent, or legal guardian, as applicable,
has an economic interest.

(c) The outstanding obligations, of the adult, the
juvenile, or a parent or legal guardian of the juvenile.

(d) The number and ages of the defendant's dependents, of the
adult, the juvenile, or a parent or legal guardian of the juvenile.

(e) The employment and job training history, and his or her
of the adult or juvenile.

(f) The level of education of the adult or juvenile.

(6) A trial court may play a role in this determination
described in subsection (5) as part of any indigent criminal
defense system's compliance plan under the direction and
supervision of the supreme court, consistent with section 4 of
article VI of the state constitution of 1963.

(7) If an indigent criminal defense system determines that a
defendant adult or juvenile is partially indigent, the indigent
criminal defense system shall determine the amount of money the
defendant adult or juvenile must contribute to his or her the
defense.
(8) An indigent criminal defense system's determination regarding the amount of money a partially indigent defendant—adult or juvenile—must contribute to his or her—the adult's or juvenile's—defense is subject to judicial review.

(9) Nothing in this act prevents a court from making a determination of indigency for any purpose consistent with article VI of the state constitution of 1963.

(10) (b) A defendant—An adult or juvenile—is considered to be indigent if he or she—the adult, the juvenile, or a parent or legal guardian of the juvenile—is unable to obtain competent, qualified legal representation for the adult or juvenile, as applicable, without substantial financial hardship to himself or herself or to his or her—the adult, juvenile, parent, or legal guardian, as applicable, or substantial financial hardship to the dependents—to obtain competent, qualified legal representation on his or her—own. Substantial of the adult, juvenile, parent, or legal guardian, as applicable.

(11) The substantial financial hardship described in subsection (10) is rebuttably presumed if the defendant—adult, the juvenile, or a parent or legal guardian of the juvenile—receives personal public assistance, including under the food assistance program, temporary assistance for needy families, Medicaid, or disability insurance, resides in public housing, or earns an income less than 140% of the federal poverty guideline. A defendant—

(12) In addition to the rebuttable presumption described in subsection (11), an adult is also rebuttably presumed to have a substantial financial hardship under subsection (10) if he or she—the adult is currently serving a sentence in a correctional institution or is receiving residential treatment in a mental
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health or substance abuse facility.

(13) (c) A defendant An adult or juvenile not falling below
the presumptive thresholds described in subdivision (b) subsections
(10) to (12) must be subjected to a more rigorous screening process
to determine if his or her the particular circumstances of the
adult or juvenile, including the seriousness of the charges being
faced, his or her the monthly expenses and of the adult or
juvenile, and local private counsel rates, would result in a
substantial hardship if he or she the adult or juvenile were
required to retain private counsel.

(14) (d) A determination that a defendant an adult or juvenile
is partially indigent may only be made only if the indigent
criminal defense system determines that a defendant the adult or
juvenile is not fully indigent. An indigent criminal defense system
that determines a defendant an adult or juvenile is not fully
indigent but may be partially indigent must utilize the screening
process under subdivision (c) subsection (13). The provisions of
subdivision (e) subsection (15) apply to a partially indigent
defendant adult or juvenile.

(15) (e) The MIDC shall promulgate objective standards for
indigent criminal defense systems to determine whether a defendant
an adult or juvenile is indigent or partially indigent. These
standards must include availability of prompt judicial review,
under the direction and supervision of the supreme court, if the
indigent criminal defense system is making the determination
regarding a defendant's indigency or partial indigency.

(16) (f) The MIDC shall promulgate objective standards for
indigent criminal defense systems to determine the amount a
partially indigent defendant adult or juvenile must contribute to
his or her defense. The standards must include availability of prompt judicial review, under the direction and supervision of the supreme court, if the indigent criminal defense system is making the determination regarding how much a partially indigent defendant adult or juvenile must contribute to his or her the adult's or juvenile's defense.

(17) (g) A defendant—An adult or juvenile is responsible for applying for indigent defense counsel and for establishing his or her the adult's or juvenile's indigency and eligibility for appointed counsel under this act.

(18) Any oral or written statements made by the defendant adult or juvenile in or for use in the criminal or juvenile proceeding, as applicable, and that is material to the issue of his or her the adult's or juvenile's indigency, must be made under oath or an equivalent affirmation.

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

(20) (5) An indigent criminal defense system may include in its compliance plan a request that the MIDC serve as a clearinghouse for experts and investigators. If an indigent criminal defense system makes a request under this subsection, the MIDC may develop and operate a system for determining the need and availability for an expert or investigator in individual cases.

Sec. 13. (1) All indigent criminal defense systems and, at the direction of the supreme court, attorneys engaged in providing
indigent criminal defense services shall cooperate and participate
with the MIDC in the investigation, audit, and review of their
indigent criminal defense services.

(2) An indigent criminal defense system may submit to the MIDC
an estimate of the cost of developing the plan and cost analysis
for implementing the plan under subsection (3) to the MIDC for
approval. If approved, the MIDC shall award the indigent criminal
defense system a grant to pay the approved costs for developing the
plan and cost analysis under subsection (3).

(3) No later than 180 days after a standard is approved by the
department, each indigent criminal defense system shall submit a
plan to the MIDC for the provision of indigent criminal defense
services in a manner as determined by the MIDC and shall submit an
annual plan for the following state fiscal year on or before
October 1 of each year. A plan submitted under this subsection must
specifically address how the minimum standards established by the
MIDC under this act will be met and must include a cost analysis
for meeting those minimum standards. The standards to be addressed
in the annual plan are those approved not less than 180 days before
the annual plan submission date. The cost analysis must include a
statement of the funds in excess of the local share, if any,
necessary to allow its system to comply with the MIDC's minimum
standards.

(4) The MIDC shall approve or disapprove all or any portion of
a plan or cost analysis, or both a plan and cost analysis,
submitted under subsection (3), and shall do so within 90 calendar
days after the submission of the plan and cost analysis. If the
MIDC disapproves any part of the plan, the cost analysis, or both
the plan and the cost analysis, the indigent criminal defense
system shall consult with the MIDC and, for any disapproved portion, submit a new plan, a new cost analysis, or both within 60 calendar days of the mailing date of the official notification of the MIDC's disapproval. If after 3 submissions a compromise is not reached, the dispute must be resolved as provided in section 15. All approved provisions of an indigent criminal defense system's plan and cost analysis must not be delayed by any disapproved portion and must proceed as provided in this act. The MIDC shall not approve a cost analysis or portion of a cost analysis unless it is reasonably and directly related to an indigent defense function.

(5) The MIDC shall submit a report to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of representatives requesting the appropriation of funds necessary to implement compliance plans after all the systems compliance plans are approved by the MIDC. For standards approved after January 1, 2018, the MIDC shall include a cost analysis for each minimum standard in the report and shall also provide a cost analysis for each minimum standard approved on or before January 1, 2018, if a cost analysis for each minimum standard approved was not provided, and shall do so not later than October 31, 2018. The amount requested under this subsection must be equal to the total amount required to achieve full compliance as agreed upon by the MIDC and the indigent criminal defense systems under the approval process provided in subsection (4). The information used to create this report must be made available to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of
representatives.

(6) The MIDC shall submit a report to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of representatives not later than October 31, 2021 that includes a recommendation regarding the appropriate level of local share, expressed in both total dollars and as a percentage of the total cost of compliance for each indigent criminal defense system.

(6) (7) Except as provided in subsection (9), an indigent criminal defense system shall maintain not less than its local share. If the MIDC determines that funding in excess of the indigent criminal defense system’s share is necessary in order to bring its system into compliance with the minimum standards established by the MIDC, that excess funding must be paid by this state. The legislature shall appropriate to the MIDC the additional funds necessary for an indigent defense system to meet and maintain those minimum standards, which must be provided to indigent criminal defense systems through grants as described in subsection (8). (7). The legislature may appropriate funds that apply to less than all of the minimum standards and may provide less than the full amount of the funds requested under subsection (5). Notwithstanding this subsection, it is the intent of the legislature to fund all of the minimum standards contained in the report under subsection (5) within 3 years of the date on which the minimum standards were adopted.

(7) (8) An indigent criminal defense system must not be required to provide funds in excess of its local share. The MIDC shall provide grants to indigent criminal defense systems to assist in bringing the systems into compliance with minimum standards.
established by the MIDC.

(8) (9) An indigent criminal defense system is not required to expend its local share if the minimum standards established by the MIDC may be met for less than that share, but the local share of a system that expends less than its local share under these circumstances is not reduced by the lower expenditure.

(9) (10) This state shall appropriate funds to the MIDC for grants to the local units of government for the reasonable costs associated with data required to be collected under this act that is over and above the local unit of government's data costs for other purposes.

(10) (11) Within 180 days after receiving funds from the MIDC under subsection (8), (7), an indigent criminal defense system shall comply with the terms of the grant in bringing its system into compliance with the minimum standards established by the MIDC for effective assistance of counsel. The terms of a grant may allow an indigent criminal defense system to exceed 180 days for compliance with a specific item needed to meet minimum standards if necessity is demonstrated in the indigent criminal defense system's compliance plan. The MIDC has the authority to allow an indigent criminal defense system to exceed 180 days for implementation of items if an unforeseeable condition prohibits timely compliance.

(11) (12) If an indigent criminal defense system is awarded no funds for implementation of its plan under this act, the MIDC shall nevertheless issue to the indigent defense system a zero grant reflecting that it will receive no grant funds.

(12) (13) The MIDC may apply for and obtain grants from any source to carry out the purposes of this act. All funds received by MIDC, from any source, are state funds and must be appropriated as
provided by law.

(13) (14) The MIDC shall ensure proper financial protocols in administering and overseeing funds utilized by indigent criminal defense systems, including, but not limited to, all of the following:

(a) Requiring documentation of expenditures.
(b) Requiring each indigent criminal defense system to hold all grant funds in a fund that is separate from other funds held by the indigent criminal defense system.
(c) Requiring each indigent criminal defense system to comply with the standards promulgated by the governmental accounting standards board.

(14) (15) If an indigent criminal defense system does not fully expend a grant toward its costs of compliance, its grant in the second succeeding fiscal year must be reduced by the amount equal to the unexpended funds. Identified unexpended grant funds must be reported by indigent criminal defense systems on or before October 31 of each year. Funds subject to extension under subsection (11) (10) must be reported but not included in the reductions described in this subsection. Any grant money that is determined to have been used for a purpose outside of the compliance plan must be repaid to the MIDC, or if not repaid, must be deducted from future grant amounts.

(15) (16) If an indigent criminal defense system expends funds in excess of its local share and the approved MIDC grant to meet unexpected needs in the provision of indigent criminal defense services, the MIDC shall recommend the inclusion of the funds in a subsequent year's grant if all expenditures were reasonably and directly related to indigent criminal defense functions.
The court shall collect contribution or reimbursement from individuals determined to be partially indigent under applicable court rules and statutes. If the indigent defense system provides indigent criminal defense services, the reimbursement under this subsection is subject to section 22 of chapter XV of the code of criminal procedure, 1927 PA 175, MCL 775.22. The court shall remit 100% of the funds it collects under this subsection to the indigent criminal defense system in which the court is sitting. Twenty percent of the funds received under this subsection by an indigent criminal defense system must be remitted to the department in a manner prescribed by the department and reported to the MIDC by October 31 of each year. The funds received by the department under this subsection must be expended by the MIDC in support of indigent criminal defense systems in this state. The remaining 80% of the funds collected under this subsection may be retained by the indigent criminal defense system for purposes of reimbursing the costs of collecting the funds under this subsection and funding indigent defense in the subsequent fiscal year. The funds collected under this subsection must not alter the calculation of the local share made pursuant to section 3(i-3).

Sec. 15. (1) Except as provided in section 5, if a dispute arises between the MIDC and an indigent criminal defense system concerning the requirements of this act, including a dispute concerning the approval of an indigent criminal defense system's plan, cost analysis, or compliance with section 13 or 17, the parties shall attempt to resolve the dispute by mediation. The state court administrator, as authorized by the supreme court, shall appoint a mediator agreed to by the parties within 30
calendar days of the mailing date of the official notification of
the third disapproval by the MIDC under section 13(4) to mediate
the dispute and shall facilitate the mediation process. The MIDC
shall immediately send the state court administrative office a copy
of the official notice of that third disapproval. If the parties do
not agree on the selection of the mediator, the state court
administrator, as authorized by the supreme court, shall appoint a
mediator of his or her choosing. Mediation must commence within 30 calendar days after the mediator is appointed and terminate within 60 calendar days of its commencement. Mediation costs associated with mediation of the dispute must be paid equally by the parties.

(2) If the parties do not come to a resolution of the dispute during mediation under subsection (1), all of the following apply:

(a) The mediator may submit a recommendation of how the dispute should be resolved to the MIDC within 30 calendar days of the conclusion of mediation for the MIDC's consideration.

(b) The MIDC shall consider the recommendation of the mediator, if any, and shall approve a final plan or the cost analysis, or both, in the manner the MIDC considers appropriate within 30 calendar days, and the indigent criminal defense system shall implement the plan as approved by the MIDC.

(c) The indigent criminal defense system that is aggrieved by the final plan, cost analysis, or both, may bring an action seeking equitable relief as described in subsection (3).

(3) The MIDC, or an indigent criminal defense system may bring an action seeking equitable relief in the circuit court only as follows:

(a) Within 60 days after the MIDC's issuance of an approved
plan and cost analysis under subsection (2)(b).

(b) Within 60 days after the system receives grant funds under section 13(8)–13(7), if the plan, cost analysis, or both, required a grant award for implementation of the plan.

(c) Within 30 days of the MIDC's determination that the indigent criminal defense system has breached its duty to comply with an approved plan.

(d) The action must be brought in the judicial circuit where the indigent criminal defense service is located. The state court administrator, as authorized by the supreme court, shall assign an active or retired judge from a judicial circuit other than the judicial circuit where the action was filed to hear the case. Costs associated with the assignment of the judge must be paid equally by the parties.

(e) The action must not challenge the validity, legality, or appropriateness of the minimum standards approved by the department.

(4) If the dispute involves the indigent criminal defense system's plan, cost analysis, or both, the court may approve, reject, or modify the submitted plan, cost analysis, or the terms of a grant awarded under section 13(8)–13(7) other than the amount of the grant, determine whether section 13 has been complied with, and issue any orders necessary to obtain compliance with this act. However, the system must not be required to expend more than its local share in complying with this act.

(5) If a party refuses or fails to comply with a previous order of the court, the court may enforce the previous order through the court's enforcement remedies, including, but not limited to, its contempt powers, and may order that the state
undertake the provision of indigent criminal defense services in lieu of the indigent criminal defense system.

(6) If the court determines that an indigent criminal defense system has breached its duty under section 17(1), the court may order the MIDC to provide indigent criminal defense on behalf of that indigent defense system.

(7) If the court orders the MIDC to provide indigent criminal defense services on behalf of an indigent criminal defense system, the court shall order the system to pay the following amount of the state's costs that the MIDC determines are necessary in order to bring the indigent criminal defense system into compliance with the minimum standards established by the MIDC:

(a) In the first year, 20% of the state's costs.
(b) In the second year, 40% of the state's costs.
(c) In the third year, 60% of the state's costs.
(d) In the fourth year, 80% of the state's costs.
(e) In the fifth year, and any subsequent year, not more than the dollar amount that was calculated under subdivision (d).

(8) An indigent criminal defense system may resume providing indigent criminal defense services at any time as provided under section 13. When an indigent defense system resumes providing indigent criminal defense services, it is no longer required to pay an assessment under subsection (7) but must be required to pay no less than its share.

Sec. 17. (1) Except as provided in subsection (2), every local unit of government that is part of an indigent criminal defense system shall comply with an approved plan under this act.

(2) An indigent defense system's duty of compliance with 1 or more standards within the plan under subsection (1) is
contingent upon receipt of a grant in the amount sufficient to
cover that particular standard or standards contained in the plan
and cost analysis approved by the MIDC.

(3) The MIDC may proceed under section 15 if an indigent
criminal defense system, a local unit of government breaches its
duty of compliance under subsection (1).

Sec. 21. Both of the following apply to the MIDC:
(a) The Except as provided in section 7, the freedom of
information act, 1976 PA 442, MCL 15.231 to 15.246, except as
provided in section 7(10).
(b) The open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

Sec. 23. (1) Nothing in this act shall be construed to
override, expand, or extend, either directly or by analogy, any
decisions reached by the United States Supreme Court or the supreme court of this state regarding the effective
assistance of counsel.
(2) Nothing in this act shall be construed to override section
29 or 30 of article IX of the state constitution of 1963.
(3) Except as otherwise provided in this act, the failure of
an indigent criminal defense system to comply with statutory duties
imposed under this act does not create a cause of action against
the government or a system.
(4) Statutory duties imposed under this act that create a
higher standard than that imposed by the United States Constitution or the state constitution of 1963 do not create a
cause of action against a local unit of government, an indigent
criminal defense system, or this state.
(5) Violations A violation of the MIDC rules that does not
constitute ineffective assistance of counsel under the United
States constitution or the state constitution of 1963 does not constitute grounds for a conviction to be reversed or a judgment to be modified for ineffective assistance of counsel.