

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

2

An act to create the Michigan indigent defense commission and

1 to provide for its powers and duties; to provide **certain** indigent
2 ~~defendants in criminal cases~~ **individuals** with effective assistance
3 of counsel; to provide standards for the appointment of legal
4 counsel; to provide for and limit certain causes of action; and to
5 provide for certain appropriations and grants.

6 Sec. 3. As used in this act:

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

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

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

11 (A) During consideration of a petition filed under section 4
12 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL
13 712A.4, to waive jurisdiction to try the individual as an adult and
14 upon granting a waiver of jurisdiction.

15 (B) The prosecuting attorney designates the case under section
16 2d(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL
17 712A.2d, as a case in which the juvenile is to be tried in the same
18 manner as an adult.

19 (C) During consideration of a request by the prosecuting
20 attorney under section 2d(2) of chapter XIIA of the probate code of
21 1939, 1939 PA 288, MCL 712A.2d, that the court designate the case
22 as a case in which the juvenile is to be tried in the same manner
23 as an adult.

24 (D) The prosecuting attorney authorizes the filing of a
25 complaint and warrant for a specified juvenile violation under
26 section 1f of chapter IV of the code of criminal procedure, 1927 PA
27 175, MCL 764.1f.

28 (b) "Consumer Price Index" means the annual United States
29 Consumer Price Index for all urban consumers as defined and

1 reported by the United States Department of Labor, Bureau of Labor
2 Statistics.

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

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

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

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

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

18 (ii) The ~~defendant~~ **adult** is determined to be indigent under
19 section ~~11(3)~~.**11.**

20 ~~(g) Indigent criminal defense services do not include services~~
21 ~~authorized to be provided under the appellate defender act, 1978 PA~~
22 ~~620, MCL 780.711 to 780.719.~~

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

28 (h) "Indigent ~~criminal~~ defense system" or ~~"system"~~ means
29 either of the following:

1 (i) The local unit of government that funds a trial court.

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

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

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

8 (ii) The juvenile is determined to be indigent under section
9 11.

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

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

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

27 (m) ~~(k)~~ "Partially indigent" means ~~a criminal defendant~~ **an**
28 **adult or juvenile** who is unable to afford the complete cost of
29 legal representation, but is able to contribute a monetary amount

1 toward ~~his or her~~ **legal** representation.

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

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

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

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

23 (5) ~~(4)~~The commission shall convene a public hearing before a
24 proposed **minimum** standard is recommended to the department.

25 (6) A **proposed** minimum standard ~~proposed under this subsection~~
26 must be submitted to the department for approval or rejection.
27 ~~Opposition~~

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

1 department.

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

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

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

12 (11) An approved minimum standard for the local delivery of
13 indigent ~~criminal~~-defense services ~~within an indigent criminal~~
14 ~~defense system~~ is not a rule as that term is defined in section 7
15 of the administrative procedures act of 1969, 1969 PA 306, MCL
16 24.207.

17 (12) ~~(5) Approval~~-**An approval** of a minimum standard proposed
18 by the MIDC is considered a final department action subject to
19 judicial review under section 28 of article VI of the state
20 constitution of 1963 to determine whether the approved minimum
21 standard is authorized by law. ~~Jurisdiction~~

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

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

29 (15) The filing of a petition for review **under subsection (14)**

1 does not stay enforcement of an approved minimum standard, but the
2 department may grant, or the court of claims may order, a stay upon
3 appropriate terms.

4 (16) ~~(6)~~—The MIDC shall identify and encourage best practices
5 for delivering the effective assistance of counsel to indigent
6 ~~defendants charged with crimes.~~ **adults and juveniles.**

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

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

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

16 (2) ~~The~~ **Except as provided in subsections (10) and (11), the**
17 18 voting members shall be appointed by the governor for terms of 4
18 years. ~~, except as provided in subsection (4).~~

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

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

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

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

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

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

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

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

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

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

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

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

17 (l) One member representing the funding unit of a district
18 court from a list of 3 names submitted by the Michigan Townships
19 Association or the Michigan Municipal League. The Michigan
20 Townships Association and the Michigan Municipal League shall
21 alternate in submitting a list as described under this subdivision.
22 For the first appointment after ~~the effective date of the~~
23 ~~amendatory act that amended this subdivision,~~ **March 21, 2019,** the
24 Michigan Municipal League shall submit a list as described under
25 this subdivision for consideration for the appointment. For the
26 second appointment after ~~the effective date of the amendatory act~~
27 ~~that amended this subdivision,~~ **March 21, 2019,** the Michigan
28 Townships Association shall submit a list as described under this
29 subdivision for consideration for the appointment. **The Michigan**

1 **Townships Association and the Michigan Municipal League shall**
 2 **alternate in submitting a list for subsequent appointments.**

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

5 (4) ~~(2)~~—The supreme court chief justice or ~~his or her~~ **the**
 6 **designee of the chief justice** shall serve as an ex officio member
 7 of the MIDC without vote.

8 (5) ~~(3) Individuals~~ **Every individual** nominated for service on
 9 the MIDC as provided in subsection ~~(1)~~ **(3)** must ~~have~~ **satisfy at**
 10 **least 1 of the following:**

11 (a) **Have** significant experience in the defense or prosecution
 12 of criminal proceedings. ~~or have~~

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

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

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

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

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

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

28 (10) ~~(4) An~~ MIDC ~~members~~ **member** shall hold office until ~~their~~
 29 ~~successors are~~ **a successor is** appointed.

1 **(11)** The terms of the members must be staggered. Initially, 4
 2 members must be appointed for a term of 4 years each, 4 members
 3 must be appointed for a term of 3 years each, 4 members must be
 4 appointed for a term of 2 years each, and 3 members must be
 5 appointed for a term of 1 year each.

6 **(12)** ~~(5)~~—The governor shall fill a vacancy occurring in the
 7 membership of the MIDC in the same manner as the original
 8 appointment, except if the vacancy is for an appointment described
 9 in subsection ~~(1)(d)~~, **(3) (d)**, the source of the nomination shall
 10 submit a list of 3 names for each vacancy. However, if the senate
 11 majority leader or the speaker of the house of representatives is
 12 the source of the nomination, 1 name must be submitted. If an MIDC
 13 member vacates the commission before the end of the member's term,
 14 the governor shall fill that vacancy for the unexpired term only.

15 **(13)** ~~(6)~~—The governor shall appoint 1 of the original MIDC
 16 members to serve as chairperson of the MIDC for a term of 1 year.
 17 At the expiration of that year, or upon the vacancy in the
 18 membership of the member appointed chairperson, the MIDC shall
 19 annually elect a chairperson from its membership to serve a 1-year
 20 term. An MIDC member shall not serve as chairperson of the MIDC for
 21 more than 3 consecutive terms.

22 **(14)** ~~(7)~~—MIDC members shall not receive compensation in that
 23 capacity but must be reimbursed for their reasonable actual and
 24 necessary expenses by the state treasurer.

25 **(15)** ~~(8)~~—The governor may remove an MIDC member for
 26 incompetence, dereliction of duty, malfeasance, misfeasance, or
 27 nonfeasance in office, or for any other good cause.

28 **(16)** ~~(9)~~—A majority of the MIDC voting members constitute a
 29 quorum for the transaction of business at a meeting of the MIDC. A

1 majority of the MIDC voting members are required for official
2 action of the commission.

3 (17) ~~(10) Confidential~~ **Any confidential** case information of
4 **the MIDC**, including, but not limited to, client information and
5 attorney work product, is exempt from disclosure under the freedom
6 of information act, 1976 PA 442, MCL 15.231 to 15.246.

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

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

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

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

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

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

28 (ii) Assisting the MIDC in developing, implementing, and
29 regularly reviewing the MIDC's standards, rules, and procedures,

1 including, but not limited to, recommending to the MIDC ~~suggested~~
2 **either of the following:**

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

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

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

13 (f) Establishing procedures for the mandatory collection of
14 data concerning the operation of the MIDC, each indigent ~~criminal~~
15 defense system, and the operation of indigent ~~criminal~~-defense
16 services.

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

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

25 (2) Upon the appropriation of sufficient funds, the MIDC shall
26 establish minimum standards to carry out the purpose of this act,
27 and collect data from all indigent ~~criminal~~-defense systems. The
28 MIDC shall propose goals for compliance with the minimum standards
29 established under this act consistent with the metrics established

1 under this section and appropriations by this state.

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

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

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

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

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

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

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

26 (a) The delivery of indigent ~~criminal~~ defense services must be
27 independent of the judiciary but ensure that the judges of this
28 state are permitted and encouraged to contribute information and
29 advice concerning that delivery of indigent ~~criminal~~ defense

1 services.

2 (b) If the caseload is sufficiently high, indigent ~~criminal~~
3 defense services may consist of both an indigent criminal **or**
4 **juvenile** defender office and the active participation of other
5 members of the state bar.

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

14 (2) The MIDC shall implement minimum standards, rules, and
15 procedures to guarantee the right of indigent ~~defendants~~ **adults and**
16 **juveniles** to the assistance of counsel, as provided under amendment
17 VI of the Constitution of the United States and section 20 of
18 article I of the state constitution of 1963, **as applicable**. In
19 establishing minimum standards, rules, and procedures, the MIDC
20 shall adhere to the following 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~~ **the**
 3 **defense counsel** is 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 (3) ~~The following requirements apply to the~~ **An** application
 16 for, and **the** appointment of, indigent ~~criminal~~ defense services
 17 under this act **must meet the requirements set forth in subsections**
 18 **(4) to (18).**

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

28 (5) In determining whether a ~~defendant~~ **an adult or juvenile** is
 29 entitled to the appointment of counsel, the indigent ~~criminal~~

1 defense system shall consider whether the defendant is indigent and
2 the ~~extent of his or her~~ **adult's or juvenile's** ability to pay.

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

5 (a) **The** income or funds from employment or any other source,
6 including personal public assistance, to which the ~~defendant~~ **adult,**
7 **the juvenile, or a parent or legal guardian of the juvenile** is
8 entitled. 7

9 (b) **The** property owned by the ~~defendant~~ **adult, the juvenile,**
10 **or a parent or legal guardian of the juvenile,** or in which ~~he or~~
11 ~~she~~ **the adult, juvenile, parent, or legal guardian, as applicable,**
12 has an economic interest. 7

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

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

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

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

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

25 (7) If an indigent ~~criminal~~ defense system determines that a
26 ~~defendant~~ **an adult or juvenile** is partially indigent, the indigent
27 ~~criminal~~ defense system shall determine the amount of money the
28 ~~defendant~~ **adult or juvenile** must contribute to ~~his or her~~ **the**
29 defense.

1 (8) An indigent ~~criminal~~-defense system's determination
 2 regarding the amount of money a partially indigent ~~defendant~~**adult**
 3 **or juvenile** must contribute to ~~his or her~~**the adult's or juvenile's**
 4 defense is subject to judicial review.

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

8 (10) ~~(b) A defendant~~**An adult or juvenile** is considered to be
 9 indigent if ~~he or she~~**the adult, the juvenile, or a parent or legal**
 10 **guardian of the juvenile** is unable to obtain competent, qualified
 11 **legal representation for the adult or juvenile, as applicable,**
 12 without substantial financial hardship to ~~himself or herself or to~~
 13 ~~his or her~~**the adult, juvenile, parent, or legal guardian, as**
 14 **applicable, or substantial financial hardship to the** dependents ~~7~~
 15 ~~to obtain competent, qualified legal representation on his or her~~
 16 ~~own. Substantial~~**of the adult, juvenile, parent, or legal guardian,**
 17 **as applicable.**

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

25 (12) **In addition to the rebuttable presumption described in**
 26 **subsection (11), an adult** is ~~also~~ rebuttably presumed to have a
 27 substantial financial hardship **under subsection (10)** if ~~he or she~~
 28 **the adult** is currently serving a sentence in a correctional
 29 institution or is receiving residential treatment in a mental

1 health or substance abuse facility.

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

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

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

27 (16) ~~(f) The MIDC shall promulgate objective standards for~~
28 indigent ~~criminal~~ defense systems to determine the amount a
29 partially indigent ~~defendant~~ **adult or juvenile** must contribute to

1 ~~his or her~~ **the** defense. The standards must include availability of
 2 prompt judicial review, under the direction and supervision of the
 3 supreme court, if the indigent ~~criminal~~ defense system is making
 4 the determination regarding how much a partially indigent ~~defendant~~
 5 **adult or juvenile** must contribute to ~~his or her~~ **the adult's or**
 6 **juvenile's** defense.

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

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

16 (19) ~~(4)~~ The MIDC shall establish standards for trainers and
 17 organizations conducting training that receive MIDC funds for
 18 training and education. The standards established under this
 19 subsection must require that the MIDC analyze the quality of the
 20 training, and must require that the effectiveness of the training
 21 be capable of being measured and validated.

22 (20) ~~(5)~~ An indigent ~~criminal~~ defense system may include in
 23 its compliance plan a request that the MIDC serve as a
 24 clearinghouse for experts and investigators. If an indigent
 25 ~~criminal~~ defense system makes a request under this subsection, the
 26 MIDC may develop and operate a system for determining the need and
 27 availability for an expert or investigator in individual cases.

28 Sec. 13. (1) All indigent ~~criminal~~ defense systems and, at the
 29 direction of the supreme court, attorneys engaged in providing

1 indigent ~~criminal~~-defense services shall cooperate and participate
2 with the MIDC in the investigation, audit, and review of their
3 indigent ~~criminal~~-defense services.

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

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

24 (4) The MIDC shall approve or disapprove all or any portion of
25 a plan or cost analysis, or both a plan and cost analysis,
26 submitted under subsection (3), and shall do so within 90 calendar
27 days ~~of~~**after** the submission of the plan and cost analysis. If the
28 MIDC disapproves any part of the plan, the cost analysis, or both
29 the plan and the cost analysis, the indigent ~~criminal~~-defense

1 system shall consult with the MIDC and, for any disapproved
2 portion, submit a new plan, a new cost analysis, or both within 60
3 calendar days of the mailing date of the official notification of
4 the MIDC's disapproval. If after 3 submissions a compromise is not
5 reached, the dispute must be resolved as provided in section 15.
6 ~~All approved~~ **Approved** provisions of an indigent ~~criminal~~-defense
7 system's plan and cost analysis must not be delayed by any
8 disapproved portion and must proceed as provided in this act. The
9 MIDC shall not approve a cost analysis or portion of a cost
10 analysis unless it is reasonably and directly related to an
11 indigent defense function.

12 (5) The MIDC shall submit a report to the governor, the senate
13 majority leader, the speaker of the house of representatives, and
14 the appropriations committees of the senate and house of
15 representatives requesting the appropriation of funds necessary to
16 implement compliance plans after all the systems compliance plans
17 are approved by the MIDC. For standards approved after January 1,
18 2018, the MIDC shall include a cost analysis for each minimum
19 standard in the report and shall also provide a cost analysis for
20 each minimum standard approved on or before January 1, 2018, if a
21 cost analysis for each minimum standard approved was not provided,
22 and shall do so not later than October 31, 2018. The amount
23 requested under this subsection must be equal to the total amount
24 required to achieve full compliance as agreed upon by the MIDC and
25 the indigent ~~criminal~~-defense systems under the approval process
26 provided in subsection (4). The information used to create this
27 report must be made available to the governor, the senate majority
28 leader, the speaker of the house of representatives, and the
29 appropriations committees of the senate and house of

1 representatives.

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

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

26 ~~(7)~~ ~~(8)~~ An indigent ~~criminal~~ defense system must not be
 27 required to provide funds in excess of its local share. The MIDC
 28 shall provide grants to indigent ~~criminal~~ defense systems to assist
 29 in bringing the systems into compliance with minimum standards

1 established by the MIDC.

2 (8) ~~(9)~~—An indigent ~~criminal~~ defense system is not required to
3 expend its local share if the minimum standards established by the
4 MIDC may be met for less than that share, but the local share of a
5 system that expends less than its local share under these
6 circumstances is not reduced by the lower expenditure.

7 (9) ~~(10)~~—This state shall appropriate funds to the MIDC for
8 grants to the local units of government for the reasonable costs
9 associated with data required to be collected under this act that
10 is over and above the local unit of government's data costs for
11 other purposes.

12 (10) ~~(11)~~—Within 180 days after receiving funds from the MIDC
13 under subsection ~~(8)~~, ~~(7)~~, an indigent ~~criminal~~ defense system
14 shall comply with the terms of the grant in bringing its system
15 into compliance with the minimum standards established by the MIDC
16 for effective assistance of counsel. The terms of a grant may allow
17 an indigent ~~criminal~~ defense system to exceed 180 days for
18 compliance with a specific item needed to meet minimum standards if
19 necessity is demonstrated in the indigent ~~criminal~~ defense system's
20 compliance plan. The MIDC has the authority to allow an indigent
21 ~~criminal~~ defense system to exceed 180 days for implementation of
22 items if an unforeseeable condition prohibits timely compliance.

23 (11) ~~(12)~~—If an indigent ~~criminal~~ defense system is awarded no
24 funds for implementation of its plan under this act, the MIDC shall
25 nevertheless issue to the **indigent defense** system a zero grant
26 reflecting that it will receive no grant funds.

27 (12) ~~(13)~~—The MIDC may apply for and obtain grants from any
28 source to carry out the purposes of this act. All funds received by
29 MIDC, from any source, are state funds and must be appropriated as

1 provided by law.

2 **(13)** ~~(14)~~—The MIDC shall ensure proper financial protocols in
3 administering and overseeing funds utilized by indigent ~~criminal~~
4 defense systems, including, but not limited to, all of the
5 following:

6 (a) Requiring documentation of expenditures.

7 (b) Requiring each indigent ~~criminal~~—defense system to hold
8 all grant funds in a fund that is separate from other funds held by
9 the indigent ~~criminal~~—defense system.

10 (c) Requiring each indigent ~~criminal~~—defense system to comply
11 with the standards promulgated by the governmental accounting
12 standards board.

13 **(14)** ~~(15)~~—If an indigent ~~criminal~~—defense system does not
14 fully expend a grant toward its costs of compliance, its grant in
15 the second succeeding fiscal year must be reduced by the amount
16 equal to the unexpended funds. Identified unexpended grant funds
17 must be reported by indigent ~~criminal~~—defense systems on or before
18 October 31 of each year. Funds subject to extension under
19 subsection ~~(11)~~—**(10)** must be reported but not included in the
20 reductions described in this subsection. Any grant money that is
21 determined to have been used for a purpose outside of the
22 compliance plan must be repaid to the MIDC, or if not repaid, must
23 be deducted from future grant amounts.

24 **(15)** ~~(16)~~—If an indigent ~~criminal~~—defense system expends funds
25 in excess of its local share and the approved MIDC grant to meet
26 unexpected needs in the provision of indigent ~~criminal~~—defense
27 services, the MIDC shall recommend the inclusion of the funds in a
28 subsequent year's grant if all expenditures were reasonably and
29 directly related to indigent ~~criminal~~—defense functions.

1 **(16)** ~~(17)~~The court shall collect contribution or
2 reimbursement from individuals determined to be partially indigent
3 under applicable court rules and statutes. ~~Reimbursement~~**If the**
4 **indigent defense system provides indigent criminal defense**
5 **services, the reimbursement** under this subsection is subject to
6 section 22 of chapter XV of the code of criminal procedure, 1927 PA
7 175, MCL 775.22. The court shall remit 100% of the funds it
8 collects under this subsection to the indigent ~~criminal~~ defense
9 system in which the court is sitting. Twenty percent of the funds
10 received under this subsection by an indigent ~~criminal~~ defense
11 system must be remitted to the department in a manner prescribed by
12 the department and reported to the MIDC by October 31 of each year.
13 The funds received by the department under this subsection must be
14 expended by the MIDC in support of indigent ~~criminal~~ defense
15 systems in this state. The remaining 80% of the funds collected
16 under this subsection may be retained by the indigent ~~criminal~~
17 defense system for purposes of reimbursing the costs of collecting
18 the funds under this subsection and funding indigent defense in the
19 subsequent fiscal year. The funds collected under this subsection
20 must not alter the calculation of the local share made ~~pursuant to~~
21 **under** section ~~3(i)~~**3**.

22 Sec. 15. (1) Except as provided in section 5, if a dispute
23 arises between the MIDC and an indigent ~~criminal~~ defense system
24 concerning the requirements of this act, including a dispute
25 concerning the approval of an indigent ~~criminal~~ defense system's
26 plan, cost analysis, or compliance with section 13 or 17, the
27 parties shall attempt to resolve the dispute by mediation. The
28 state court administrator, as authorized by the supreme court,
29 shall appoint a mediator agreed to by the parties within 30

1 calendar days of the mailing date of the official notification of
 2 the third disapproval by the MIDC under section 13(4) to mediate
 3 the dispute and shall facilitate the mediation process. The MIDC
 4 shall immediately send the state court administrative office a copy
 5 of the official notice of that third disapproval. If the parties do
 6 not agree on the selection of the mediator, the state court
 7 administrator, as authorized by the supreme court, shall appoint a
 8 mediator of ~~his or her~~ **the state court administrator's** choosing.
 9 Mediation must commence within 30 calendar days after the mediator
 10 is appointed and terminate within 60 calendar days of its
 11 commencement. Mediation costs associated with mediation of the
 12 dispute must be paid equally by the parties.

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

15 (a) The mediator may submit ~~his or her~~ **a** recommendation of how
 16 the dispute should be resolved to the MIDC within 30 calendar days
 17 of the conclusion of mediation for the MIDC's consideration.

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

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

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

29 (a) Within 60 days after the MIDC's issuance of an approved

1 plan and cost analysis under subsection (2) (b).

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

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

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

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

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

26 (5) If a party refuses or fails to comply with a previous
27 order of the court, the court may enforce the previous order
28 through the court's enforcement remedies, including, but not
29 limited to, its contempt powers, and may order that the state

1 undertake the provision of indigent ~~criminal~~-defense services in
2 lieu of the indigent ~~criminal~~-defense system.

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

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

13 (a) In the first year, 20% of the state's costs.

14 (b) In the second year, 40% of the state's costs.

15 (c) In the third year, 60% of the state's costs.

16 (d) In the fourth year, 80% of the state's costs.

17 (e) In the fifth year, and any subsequent year, not more than
18 the dollar amount that was calculated under subdivision (d).

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

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

28 (2) ~~A~~-**An indigent defense** system's duty of compliance with 1
29 or more standards within the plan under subsection (1) is

1 contingent upon receipt of a grant in the amount sufficient to
 2 cover that particular standard or standards contained in the plan
 3 and cost analysis approved by the MIDC.

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

7 Sec. 21. Both of the following apply to the MIDC:

8 (a) ~~The~~ **Except as provided in section 7, the** freedom of
 9 information act, 1976 PA 442, MCL 15.231 to 15.246. ~~, except as~~
 10 ~~provided in section 7(10).~~

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

12 Sec. 23. (1) Nothing in this act shall be construed to
 13 overrule, expand, or extend, either directly or by analogy, any
 14 decisions reached by the United States ~~supreme court~~ **Supreme Court**
 15 or the supreme court of this state regarding the effective
 16 assistance of counsel.

17 (2) Nothing in this act shall be construed to override section
 18 29 or 30 of article IX of the state constitution of 1963.

19 (3) Except as otherwise provided in this act, the failure of
 20 an indigent ~~criminal~~ defense system to comply with statutory duties
 21 imposed under this act does not create a cause of action against
 22 the government or a system.

23 (4) ~~Statutory~~ **The** duties imposed **under this act** that create a
 24 higher standard than that imposed by the United States ~~constitution~~
 25 **Constitution** or the state constitution of 1963 do not create a
 26 cause of action against a local unit of government, an indigent
 27 ~~criminal~~ defense system, or this state.

28 (5) ~~Violations~~ **A violation** of **the** MIDC rules that ~~do~~ **does** not
 29 constitute ineffective assistance of counsel under the United

- 1 States ~~constitution~~ **Constitution** or the state constitution of 1963
- 2 ~~de~~ **does** not constitute grounds for a conviction to be reversed or a
- 3 judgment to be modified for ineffective assistance of counsel.