

**SUBSTITUTE FOR
SENATE BILL NO. 424**

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, and by adding section 14.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to create the Michigan indigent defense commission and
3 to provide for its powers and duties; to provide **certain** indigent
4 defendants in criminal **and juvenile** cases with effective assistance



1 of counsel; to provide standards for the appointment of legal
2 counsel; to provide for and limit certain causes of action; and to
3 provide for certain appropriations and grants.

4 Sec. 3. As used in this act:

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

6 (i) An individual **who is** 18 years of age or older.

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

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

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

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

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

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



1 Statistics.

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

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

8 (e) "Indigent" means ~~meeting 1 or more of the conditions~~
9 ~~described in section 11(3).~~ **an inability to obtain competent legal**
10 **representation for oneself without substantial financial hardship**
11 **to oneself or one's dependents, as determined using the standards**
12 **and procedures prescribed by MIDC under section 11.**

13 (f) "Indigent ~~criminal-defense services~~" means local legal
14 defense services provided to a ~~defendant and to which both of the~~
15 ~~following conditions apply:~~ **any of the following individuals:**

16 (i) ~~The defendant~~ **An indigent adult who** is being prosecuted or
17 sentenced for a crime for which ~~an individual~~ **the adult** may be
18 imprisoned upon conviction, beginning ~~with~~ **not later than** the
19 ~~defendant's~~ **adult's** initial appearance in court to answer to the
20 criminal charge.

21 ~~(ii) The defendant is determined to be indigent under section~~
22 ~~11(3).~~

23 (ii) **An indigent youth who is, or is alleged to be, under the**
24 **jurisdiction of the court under section 2(a), (d), or (h) of**
25 **chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2,**
26 **beginning not later than the youth's initial appearance in court.**

27 (g) Indigent ~~criminal-defense services~~ do not include ~~services~~
28 ~~authorized to be~~ **either of the following:**

29 (i) **Services** provided under the appellate defender act, 1978 PA



1 620, MCL 780.711 to 780.719.

2 **(ii) Services provided by a lawyer-guardian ad litem under**
 3 **section 17c(7) to (10) and section 17d of chapter XIIA of the**
 4 **probate code of 1939, 1939 PA 288, MCL 712A.17c and 712A.17d.**

5 (h) "Indigent ~~criminal~~-defense system" or "~~system~~" means
 6 either of the following:

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

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

10 (i) "Local share" or "share" means an indigent ~~criminal~~
 11 defense system's average annual expenditure for indigent ~~criminal~~
 12 **adult** defense services in the 3 fiscal years immediately preceding
 13 the creation of the MIDC under this act, excluding money reimbursed
 14 to the system by individuals determined to be partially indigent,
 15 **and indigent youth defense services in the 3 fiscal years**
 16 **immediately preceding January 1, 2024.** Beginning on November 1,
 17 2018, if the Consumer Price Index has increased since November 1 of
 18 the prior state fiscal year, the local share must be adjusted by
 19 that number or by 3%, whichever is less.

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

22 (k) "Partially indigent" means a ~~criminal~~-defendant who is
 23 unable to afford the complete cost of legal representation, but is
 24 able to contribute a monetary amount toward ~~his or her~~**the**
 25 representation.

26 **(l) "Youth" means an individual who is less than 18 years of**
 27 **age and the subject of a delinquency petition.**

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



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

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

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

20 (5) ~~(4)~~The commission shall convene a public hearing before a
 21 proposed **minimum** standard is recommended to the department.

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

25 (7) **Any opposition** to a proposed minimum standard may be
 26 submitted to the department in a manner prescribed by the
 27 department. ~~An~~**If an** indigent ~~criminal~~-defense system ~~that~~ objects
 28 to a ~~recommended~~**proposed** minimum standard on the ground that the
 29 ~~recommended~~**proposed** minimum standard would exceed the MIDC's



1 statutory authority, ~~shall~~ **the objection must** state specifically
 2 how the ~~recommended~~ **proposed** minimum standard would exceed the
 3 MIDC's statutory authority. A

4 **(8) Except as otherwise provided in subsection (9), a** proposed
 5 minimum standard is final when it is approved by the department. A

6 **(9) The commission may amend an approved minimum standard at**
 7 **any time in accordance with the procedures set forth in subsections**
 8 **(5) to (8). If a proposed minimum standard has been recommended to**
 9 **the department but not yet approved or rejected, the commission may**
 10 **modify the proposed minimum standard. If the commission modifies**
 11 **the proposed minimum standard under this subsection, the commission**
 12 **must again convene a public hearing before recommending the**
 13 **modified proposed minimum standard to the department.**

14 **(10) An approved** minimum standard ~~that is approved by the~~
 15 ~~department~~ is not subject to challenge through the appellate
 16 procedures in section 15.

17 **(11) An approved minimum standard for the local delivery of**
 18 **indigent ~~criminal~~ defense services within an indigent ~~criminal~~**
 19 **defense system is not a rule as that term is defined in section 7**
 20 **of the administrative procedures act of 1969, 1969 PA 306, MCL**
 21 **24.207.**

22 **(12) ~~(5) Approval~~ An approval** of a minimum standard proposed
 23 by the MIDC is considered a final department action subject to
 24 judicial review under section 28 of article VI of the state
 25 constitution of 1963 to determine whether the approved minimum
 26 standard is authorized by law. ~~Jurisdiction~~

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

29 **(14) An indigent ~~criminal~~ defense system may file a petition**



1 for **the review of an approved minimum standard** in the court of
 2 claims within 60 days after the date of mailing **or emailing** notice
 3 of the department's final decision on the ~~recommended~~**proposed**
 4 minimum standard.

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

9 (16) ~~(6)~~The MIDC shall identify and encourage best practices
 10 for delivering the effective assistance of counsel to indigent
 11 defendants. ~~charged with crimes.~~

12 (17) ~~(7)~~The MIDC shall identify and implement a system of
 13 performance metrics to assess the provision of indigent defense
 14 services in this state relative to national standards and
 15 benchmarks.

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

19 Sec. 7. (1) The MIDC includes ~~18~~**19** voting members and the ex
 20 officio member described in subsection ~~(2)~~**(4)**.

21 (2) ~~The~~**Except as otherwise provided in subsection (11), the**
 22 ~~18-19~~ voting members ~~shall~~**must** be appointed by the governor for
 23 terms of 4 years. ~~, except as provided in subsection (4).~~

24 (3) Subject to ~~subsection (3),~~**subsections (5) to (9),** the
 25 governor shall appoint **the 19** members ~~under this~~**described in**
 26 subsection **(1)** as follows:

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

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



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

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

5 **(e) One member from a list of 3 names submitted by the**
6 **children's law section of the State Bar of Michigan who is**
7 **experienced in defending youth in delinquency proceedings.**

8 **(f)** ~~(e)~~—One member from a list of 3 names submitted by the
9 Michigan Judges Association.

10 **(g)** ~~(f)~~—One member from a list of 3 names submitted by the
11 Michigan District Judges Association.

12 **(h)** ~~(g)~~—One member from a list of 3 names submitted by the
13 State Bar of Michigan.

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

18 **(j)** ~~(i)~~—One member from a list of 3 names submitted by the
19 Prosecuting Attorneys Association of Michigan who is a former
20 county prosecuting attorney or former assistant county prosecuting
21 attorney.

22 **(k)** ~~(j)~~—One member selected to represent the general public.

23 **(l)** ~~(k)~~—Two members representing the funding unit of a circuit
24 court from a list of 6 names submitted by the Michigan Association
25 of Counties.

26 **(m)** ~~(l)~~—One member representing the funding unit of a district
27 court from a list of 3 names submitted by the Michigan Townships
28 Association or the Michigan Municipal League. The Michigan
29 Townships Association and the Michigan Municipal League shall



1 alternate in submitting a list as described under this subdivision.
 2 For the first appointment after ~~the effective date of the~~
 3 ~~amendatory act that amended this subdivision, **March 21, 2019,**~~ the
 4 Michigan Municipal League shall submit a list as described under
 5 this subdivision for consideration for the appointment. For the
 6 second appointment after ~~the effective date of the amendatory act~~
 7 ~~that amended this subdivision, **March 21, 2019,**~~ the Michigan
 8 Townships Association shall submit a list as described under this
 9 subdivision for consideration for the appointment.

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

12 (4) ~~(2)~~ The supreme court chief justice or ~~his or her~~ **the**
 13 designee **of the chief justice** shall serve as an ex officio member
 14 of the MIDC without vote.

15 (5) ~~(3)~~ ~~Individuals~~ **Every individual** nominated for service on
 16 the MIDC as provided in subsection ~~(1)~~ **(3)** must have **at least 1 of**
 17 **the following:**

18 (a) ~~significant~~ **Significant** experience in the defense or
 19 prosecution of criminal proceedings. ~~or have~~

20 (b) **Significant experience in the defense or prosecution of**
 21 **youth in juvenile proceedings.**

22 (c) ~~demonstrated a~~ **A strong and demonstrated** commitment to
 23 providing effective representation in indigent ~~eriminal~~ defense
 24 services.

25 (6) Of the members appointed under this section, the governor
 26 shall appoint no fewer than 2 individuals who are not licensed
 27 attorneys **and at least 1 individual with substantial knowledge of**
 28 **the juvenile justice system.**

29 (7) Any individual who receives compensation from this state



1 or an indigent ~~criminal~~-defense system for providing prosecution of
 2 or representation to indigent adults **or youth** in state courts is
 3 ineligible to serve as a member of the MIDC.

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

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

8 (10) ~~(4)~~-An MIDC ~~members~~-**member** shall hold office until ~~their~~
 9 ~~successors are~~-**a successor is appointed for the member.**

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

15 (12) ~~(5)~~-The governor shall fill a vacancy occurring in the
 16 membership of the MIDC in the same manner as the original
 17 appointment, except if the vacancy is for an appointment described
 18 in subsection ~~(1)(d)~~,-(3) (d), the source of the nomination shall
 19 submit a list of 3 names for each vacancy. However, if the senate
 20 majority leader or the speaker of the house of representatives is
 21 the source of the nomination, 1 name must be submitted. If an MIDC
 22 member vacates the commission before the end of the member's term,
 23 the governor shall fill that vacancy for the unexpired term only.

24 (13) ~~(6)~~ The governor shall appoint 1 of the original MIDC
 25 ~~members to serve as chairperson of the MIDC for a term of 1 year.~~
 26 ~~At the expiration of that year, or upon the vacancy in the~~
 27 ~~membership of the member appointed chairperson, the~~-**The** MIDC shall
 28 annually elect a chairperson from its membership to serve a 1-year
 29 term. An MIDC member shall not serve as chairperson of the MIDC for



1 more than 3 consecutive terms.

2 (14) ~~(7)~~—MIDC members shall not receive compensation in that
3 capacity but must be reimbursed for their reasonable actual and
4 necessary expenses by the state treasurer.

5 (15) ~~(8)~~—The governor may remove an MIDC member for
6 incompetence, dereliction of duty, malfeasance, misfeasance, or
7 nonfeasance in office, or for any other good cause.

8 (16) ~~(9)~~—A majority of the MIDC voting members constitute a
9 quorum for the transaction of business at a meeting of the MIDC. A
10 majority of the MIDC voting members are required for official
11 action of the commission.

12 (17) ~~(10)~~—Confidential case information ~~—~~including, but not
13 limited to, client information and attorney work product ~~—~~is
14 exempt from disclosure under the freedom of information act, 1976
15 PA 442, MCL 15.231 to 15.246.

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

17 (a) Developing and overseeing the implementation, enforcement,
18 and modification of minimum standards, rules, and procedures to
19 ensure that indigent ~~criminal~~-defense services providing effective
20 assistance of counsel are consistently delivered to all indigent
21 adults **and youth** in this state consistent with the safeguards of
22 the United States ~~constitution~~, **Constitution**, the state
23 constitution of 1963, and this act.

24 (b) Investigating, auditing, and reviewing the operation of
25 indigent ~~criminal~~-defense services to ~~assure~~ **ensure** compliance with
26 the commission's minimum standards, rules, and procedures. However,
27 an indigent ~~criminal~~-defense service that is in compliance with the
28 commission's minimum standards, rules, and procedures must not be
29 required to provide indigent ~~criminal~~-defense services in excess of



1 those standards, rules, and procedures.

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

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

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

8 (ii) Assisting the MIDC in developing, implementing, and
9 regularly reviewing the MIDC's standards, rules, and procedures,
10 including, but not limited to, recommending to the MIDC suggested
11 changes to the criteria for an indigent adult's **or youth's**
12 eligibility for receiving ~~criminal~~-trial defense services under
13 this act.

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

18 (f) Establishing procedures for the mandatory collection of
19 data concerning the operation of the MIDC, each indigent ~~criminal~~
20 defense system, and the operation of indigent ~~criminal~~-defense
21 services.

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

26 (h) Establishing procedures for annually reporting to the
27 governor, **the** legislature, and **the** supreme court. The report
28 required under this subdivision ~~shall~~**must** include, but **is** not ~~be~~
29 limited to, recommendations for improvements and further



1 legislative action.

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

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

11 (a) **Indigent** defense services provided to ~~juveniles~~ **youth**
 12 under the age of ~~17-18~~ who are tried in the same manner as adults
 13 or who may be sentenced in the same manner as adults. ~~and to~~

14 (b) **Indigent defense services provided to** adults with mental
 15 impairments.

16 (4) The MIDC shall be mindful that defense attorneys who
 17 provide indigent ~~criminal~~-defense services are partners with the
 18 prosecution, law enforcement, and the judiciary in the criminal **and**
 19 **juvenile** justice ~~system~~ **systems**.

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

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



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

3 (a) The delivery of indigent ~~criminal~~-defense services must be
4 independent of the judiciary but ensure that the judges of this
5 state are permitted and encouraged to contribute information and
6 advice concerning that delivery of indigent ~~criminal~~-defense
7 services.

8 (b) If the caseload is sufficiently high, indigent ~~criminal~~
9 defense services may consist of both an indigent ~~criminal~~-defender
10 office and the active participation of other members of the state
11 bar.

12 (c) ~~Trial courts~~ **A trial court** shall ~~assure~~ **ensure** that each
13 ~~criminal~~-defendant **or youth** is advised of ~~his or her~~ **the** right to
14 counsel. ~~All adults, except those~~ **A defendant or youth may not**
15 **waive the right to counsel without first consulting with counsel on**
16 **the consequences of waiver. If a defendant or youth waives the**
17 **right to counsel, it must be on the record and in writing.**

18 (d) **Except for a defendant** appearing with retained counsel or
19 ~~those a defendant~~ who ~~have~~ **has** made an informed waiver of counsel,
20 ~~must each defendant must~~ be screened for eligibility ~~under this~~
21 ~~act,~~ **indigency using the standards and procedures prescribed by**
22 **MIDC under subsection (3),** and counsel must be assigned as soon as
23 an indigent ~~adult~~ **defendant** is determined to be eligible for
24 indigent ~~criminal~~-defense services.

25 (2) The MIDC shall implement minimum standards, rules, and
26 procedures to guarantee the right of indigent defendants to the
27 assistance of counsel as provided under ~~amendment~~ **Amendments VI and**
28 **XIV** of the Constitution of the United States and section 20 of
29 article I of the state constitution of 1963. In establishing



1 minimum standards, rules, and procedures, the MIDC shall adhere to
2 the following principles:

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

6 (b) Defense counsel's workload is controlled to permit
7 effective representation. Economic disincentives or incentives that
8 impair defense counsel's ability to provide effective
9 representation must be avoided. The MIDC may develop workload
10 controls to enhance defense counsel's ability to provide effective
11 representation.

12 (c) Defense counsel's ability, training, and experience match
13 the nature and complexity of the case to which ~~he or she~~ **the**
14 **defense counsel** is appointed.

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

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

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

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

29 ~~(a) A preliminary inquiry regarding, and the determination of,~~



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

~~29 (b) A defendant is considered to be indigent if he or she is~~



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

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

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

27 ~~(e) The MIDC shall promulgate objective standards for indigent~~
28 ~~criminal defense systems to determine whether a defendant is~~
29 ~~indigent or partially indigent. These standards must include~~



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

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

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

19 **(3) The MIDC shall establish standards and procedures for**
 20 **determinations of indigency.**

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

28 (5) An indigent ~~criminal~~ defense system may include in its
 29 compliance plan a request that the MIDC serve as a clearinghouse



1 for experts and investigators. If an indigent ~~criminal~~-defense
 2 system makes a request under this subsection, the MIDC may develop
 3 and operate a system for determining the need and availability for
 4 an expert or investigator in individual cases.

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

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

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



1 (4) The MIDC shall approve or disapprove all or any portion of
 2 a plan or cost analysis, or both a plan and cost analysis,
 3 submitted under subsection (3), and shall do so ~~within~~**not later**
 4 **than** 90 calendar days ~~of~~**after** the submission of the plan and cost
 5 analysis. If the MIDC disapproves any part of the plan, the cost
 6 analysis, or both the plan and the cost analysis, the indigent
 7 ~~criminal~~ defense system shall consult with the MIDC and, for any
 8 disapproved portion, submit a new plan, a new cost analysis, or
 9 both ~~within~~**not later than** 60 calendar days ~~of~~**after** the mailing **or**
 10 **emailing** date of the official notification of the MIDC's
 11 disapproval. If, after 3 submissions, ~~a compromise is not reached,~~
 12 **the MIDC still disapproves of any portion of the plan or cost**
 13 **analysis,** the ~~dispute~~**disputed portion** must be resolved as provided
 14 in section 15. All approved provisions of an indigent ~~criminal~~
 15 defense system's plan and cost analysis must not be delayed by any
 16 disapproved portion and must proceed as provided in this act. The
 17 MIDC shall not approve a cost analysis or portion of a cost
 18 analysis unless it is reasonably and directly related to an
 19 indigent defense function.

20 (5) The MIDC shall submit a report to the governor, the senate
 21 majority leader, the speaker of the house of representatives, and
 22 the appropriations committees of the senate and house of
 23 representatives requesting the appropriation of funds necessary to
 24 implement compliance plans after all the systems compliance plans
 25 are approved by the MIDC. For standards approved after January 1,
 26 2018, the MIDC shall include a cost analysis for each minimum
 27 standard in the report and shall also provide a cost analysis for
 28 each minimum standard approved on or before January 1, 2018, if a
 29 cost analysis for each minimum standard approved was not provided,



1 and shall do so not later than October 31, 2018. The amount
 2 requested under this subsection must be equal to the total amount
 3 required to achieve full compliance as agreed upon by the MIDC and
 4 the indigent ~~eriminal~~-defense systems under the approval process
 5 provided in subsection (4). The information used to create this
 6 report must be made available to the governor, the senate majority
 7 leader, the speaker of the house of representatives, and the
 8 appropriations committees of the senate and house of
 9 representatives.

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

17 ~~(6)~~ ~~(7)~~-Except as provided in subsection ~~(9)~~, ~~(8)~~, an indigent
 18 ~~eriminal~~-defense system shall maintain not less than its local
 19 share. If the MIDC determines that funding in excess of the
 20 indigent ~~eriminal~~-defense system's share is necessary in order to
 21 bring its system into compliance with the minimum standards
 22 established by the MIDC, that excess funding must be paid by this
 23 state. The legislature shall appropriate to the MIDC the additional
 24 funds necessary for ~~a~~-**an indigent defense** system to meet and
 25 maintain those minimum standards, which must be provided to
 26 indigent ~~eriminal~~-defense systems through grants as described in
 27 subsection ~~(8)~~. ~~(7)~~. The legislature may appropriate funds that
 28 apply to less than all of the minimum standards and may provide
 29 less than the full amount of the funds requested under subsection



1 (5). Notwithstanding this subsection, it is the intent of the
 2 legislature to fund all of the minimum standards contained in the
 3 report under subsection (5) within 3 years of the date on which the
 4 minimum standards were adopted.

5 (7) ~~(8)~~—An indigent ~~criminal~~ defense system must not be
 6 required to provide funds in excess of its local share. The MIDC
 7 shall provide grants to indigent ~~criminal~~ defense systems to assist
 8 in bringing the systems into compliance with minimum standards
 9 established by the MIDC.

10 (8) ~~(9)~~—An indigent ~~criminal~~ defense system is not required to
 11 expend its local share if the minimum standards established by the
 12 MIDC may be met for less than that share, but the local share of a
 13 system that expends less than its local share under these
 14 circumstances is not reduced by the lower expenditure.

15 (9) ~~(10)~~—This state shall appropriate funds to the MIDC for
 16 grants to the local units of government for the reasonable costs
 17 associated with data required to be collected under this act that
 18 is over and above the local unit of government's data costs for
 19 other purposes.

20 (10) ~~(11)~~—Within 180 days after receiving funds from the MIDC
 21 under subsection ~~(8)~~, ~~(7)~~, an indigent ~~criminal~~ defense system
 22 shall comply with the terms of the grant in bringing its system
 23 into compliance with the minimum standards established by the MIDC
 24 for effective assistance of counsel. The terms of a grant may allow
 25 an indigent ~~criminal~~ defense system to exceed 180 days for
 26 compliance with a specific item needed to meet minimum standards if
 27 necessity is demonstrated in the indigent ~~criminal~~ defense system's
 28 compliance plan. The MIDC has the authority to allow an indigent
 29 ~~criminal~~ defense system to exceed 180 days for implementation of



1 items if an unforeseeable condition prohibits timely compliance.

2 (11) ~~(12)~~—If an indigent ~~criminal~~ defense system is awarded no
3 funds for implementation of its plan under this act, the MIDC shall
4 nevertheless issue to the **indigent defense** system a zero grant
5 reflecting that it will receive no grant funds.

6 (12) ~~(13)~~—The MIDC may apply for and obtain grants from any
7 source to carry out the purposes of this act. All funds received by
8 MIDC, from any source, are state funds and must be appropriated as
9 provided by law.

10 (13) ~~(14)~~—The MIDC shall ensure proper financial protocols in
11 administering and overseeing funds utilized by indigent ~~criminal~~
12 defense systems, including, but not limited to, all of the
13 following:

14 (a) Requiring documentation of expenditures.

15 (b) Requiring each indigent ~~criminal~~ defense system to hold
16 all grant funds in a fund that is separate from other funds held by
17 the indigent ~~criminal~~ defense system.

18 (c) Requiring each indigent ~~criminal~~ defense system to comply
19 with the standards promulgated by the ~~governmental accounting~~
20 ~~standards board~~. **Governmental Accounting Standards Board.**

21 (14) ~~(15)~~—If an indigent ~~criminal~~ defense system does not
22 fully expend a grant toward its costs of compliance, its grant in
23 the second succeeding fiscal year must be reduced by the amount
24 equal to the unexpended funds. Identified unexpended grant funds
25 must be reported by indigent ~~criminal~~ defense systems on or before
26 October 31 of each year. Funds subject to extension under
27 subsection ~~(11)~~ **(10)** must be reported but not included in the
28 reductions described in this subsection. Any grant money that is
29 determined to have been used for a purpose outside of the



1 compliance plan must be repaid to the MIDC, or if not repaid, must
2 be deducted from future grant amounts.

3 **(15)** ~~(16)~~—If an indigent ~~criminal~~ defense system expends funds
4 in excess of its local share and the approved MIDC grant to meet
5 unexpected needs in the provision of indigent ~~criminal~~ defense
6 services, the MIDC shall recommend the inclusion of the funds in a
7 subsequent year's grant if all expenditures were reasonably and
8 directly related to indigent ~~criminal~~ defense functions.

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



1 Sec. 14. (1) The MIDC shall not make a grant under section 13
2 unless the indigent defense system has an approved plan and cost
3 analysis under section 13(4).

4 (2) The first MIDC grant installment to an indigent defense
5 system is 40% of the system's grant award. The 3 subsequent MIDC
6 grant installments are each 20% of the indigent defense system's
7 grant award.

8 (3) After the first grant installment under subsection (2),
9 the 3 subsequent grant installments are based on the MIDC's review
10 and approval of documentation provided to the MIDC by the indigent
11 defense system, including documentation of expenditures and
12 unexpended funds under section 13(14) and (15). The indigent
13 defense system's documented expenditures for the prior quarter must
14 be not less than 25% of the total plan and cost analysis approved
15 under section 13(4).

16 (4) The MIDC may allow an indigent defense system to request
17 to be exempt from the requirements under this section for
18 unforeseeable conditions that may prohibit timely expenditure
19 processing by the system.

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



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

11 **(2) The MIDC shall establish resolution procedures under**
 12 **section 9(5) related to resolving a dispute with an indigent**
 13 **defense system that is not in compliance with section 13 or 17. The**
 14 **procedures must be available on a public website. If a dispute**
 15 **between the MIDC and an indigent defense system concerning**
 16 **compliance with section 13 or 17 cannot be resolved through the**
 17 **MIDC resolution procedures created under this subsection,**
 18 **subsection (4) applies.**

19 **(3)** ~~(2)~~—If the parties do not come to a resolution of the
 20 dispute during mediation under subsection (1), all of the following
 21 apply:

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

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



1 (c) The indigent ~~eriminal~~-defense system that is aggrieved by
 2 the final plan, cost analysis, or both, may bring an action seeking
 3 equitable relief as described in subsection ~~(3)~~. **(4)**.

4 **(4)** ~~(3)~~—The MIDC, or an indigent ~~eriminal~~-defense system may
 5 bring an action seeking equitable relief in the circuit court only
 6 as follows:

7 (a) Within 60 days after the MIDC's issuance of an approved
 8 plan and cost analysis under subsection ~~(2)(b)~~. **(3)(b)**.

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

12 (c) Within 30 days of the MIDC's determination that the
 13 indigent ~~eriminal~~-defense system has breached its duty to comply
 14 with ~~an~~ **any of the following**:

15 **(i) An approved plan.**

16 **(ii) A cost analysis.**

17 **(iii) A grant contract provision.**

18 **(iv) A provision of section 13 or 17.**

19 (d) The action must be brought in the judicial circuit where
 20 the indigent ~~eriminal~~-defense ~~service~~-**system** is located. The state
 21 court administrator, as authorized by the supreme court, shall
 22 assign an active or retired judge from a judicial circuit other
 23 than the judicial circuit where the action was filed to hear the
 24 case. Costs associated with the assignment of the judge must be
 25 paid equally by the parties.

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

29 **(5)** ~~(4)~~—If the dispute involves the indigent ~~eriminal~~-defense



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

8 **(6)** ~~(5)~~—If a party refuses or fails to comply with a previous
 9 order of the court, the court may enforce the previous order
 10 through the court's enforcement remedies, including, but not
 11 limited to, its contempt powers, and may order that the state
 12 undertake the provision of indigent ~~criminal~~-defense services in
 13 lieu of the indigent ~~criminal~~-defense system.

14 **(7)** ~~(6)~~—If the court determines that an indigent ~~criminal~~
 15 defense system has breached its duty under section 17(1), the court
 16 may order the MIDC to provide indigent ~~criminal~~-defense on behalf
 17 of that **indigent defense** system.

18 **(8)** ~~(7)~~—If the court orders the MIDC to provide indigent
 19 ~~criminal~~-defense services on behalf of an indigent ~~criminal~~-defense
 20 system, the court shall order the system to pay the following
 21 amount of the state's costs that the MIDC determines are necessary
 22 ~~in order to~~ bring the indigent ~~criminal~~-defense system into
 23 compliance with the minimum standards established by the MIDC:

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



1 (9) ~~(8)~~—An indigent ~~eriminal~~—defense system may resume
 2 providing indigent ~~eriminal~~—defense services at any time as
 3 provided under section 13. When ~~a~~—**an indigent defense** system
 4 resumes providing indigent ~~eriminal~~—defense services, it is no
 5 longer required to pay an assessment under subsection ~~(7)~~—(8) but
 6 must be required to pay no less than its share.

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

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

15 (3) The MIDC may proceed under section 15 if an indigent
 16 ~~eriminal~~—defense system breaches its duty of compliance under
 17 subsection (1).

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

19 (a) ~~The~~—**Except as provided in section 7(17), the** freedom of
 20 information act, 1976 PA 442, MCL 15.231 to 15.246. ~~, except as~~
 21 ~~provided in section 7(10).~~

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

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

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



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

5 (4) ~~Statutory~~**The** duties imposed **under this act** that create a
 6 higher standard than that imposed by the United States ~~constitution~~
 7 **Constitution** or the state constitution of 1963 do not create a
 8 cause of action against a local unit of government, an indigent
 9 ~~criminal~~-defense system, or this state.

10 (5) ~~Violations~~**A violation** of **the** MIDC rules that ~~do~~**does** not
 11 constitute ineffective assistance of counsel under the United
 12 States ~~constitution~~**Constitution** or the state constitution of 1963
 13 ~~do~~**does** not constitute grounds for a conviction to be reversed or a
 14 judgment to be modified for ineffective assistance of counsel.

