

INDIGENT DEFENSE

House Bills 4529 and 4530

Sponsor: Rep. Tom McMillin

Committee: Criminal Justice

Complete to 4-30-13

A SUMMARY OF HOUSE BILLS 4529 AND 4530 AS INTRODUCED 4-10-13

House Bill 4529 would establish a system for the delivery of indigent criminal defense services independent of the judiciary by which all eligible adults would be guaranteed the right to assistance of counsel as provided under the United States and Michigan Constitutions. A brief description follows later.

House Bill 4530 would amend the Code of Criminal Procedure (MCL 775.16) to revise provisions pertaining to the appointment of counsel to conform to provisions within the Michigan Indigent Defense Commission Act created by House Bill 4529. The bill is tie-barred to House Bill 4529, meaning that neither bill could be enacted without the other.

Much of the current process detailed in Section 16 of the code would be eliminated. Instead, when a person charged with having committed a crime (rather than a felony) appears before a magistrate without counsel, the person would have to be advised of the right to have counsel appointed. If the person states he or she is unable to procure counsel, the magistrate must appoint counsel, if the person is eligible for appointed counsel under the new act.

Briefly, House Bill 4529 would do the following:

- Create the Michigan Indigent Defense Commission Act.
- Create a 16-member Michigan Indigent Defense Commission (one non-voting member), prescribe membership requirements, and provide for commission duties and powers.
- Establish minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel to adults throughout the state. "Adult" would mean (1) an individual 17 years of age or older or (2) under certain circumstances, an individual less than 17 at the time of the commission of a felony.
- Require the commission to adhere to specific criteria when establishing the minimum standards; for instance, that defense counsel is provided sufficient time and a space to meet with the client where attorney-client confidentiality is

safeguarded and that defense counsel's ability, training, and experience match the nature and complexity of the case assigned.

- Make commission policies publicly available, including on a public website.
- Require trial courts to assure that each criminal defendant is advised of the right to counsel.
- Screen all adults for eligibility for indigent criminal defense services, except for those with retained counsel or who waived the right to counsel.
- Establish criteria for indigency.
- Require indigent criminal defense systems to submit a plan to the commission for the provision of services as determined by the commission, including a cost analysis to implement that plan. A local government could submit an estimate to the commission of the cost of developing that plan and cost analysis. Upon approval, the commission would have to award the local governmental unit a grant to pay the approved costs for developing the plan and cost analysis.
- Establish a mechanism, including the use of a mediator, to resolve disputes if the commission does not approve a plan after the third submission.
- Require the commission to request legislative appropriations for the funds necessary to implement the plan for each approved system.
- Require an indigent criminal defense system to maintain not less than its local share, defined to mean the system's average annual expenditure for such services in the three fiscal years immediately preceding the creation of the commission, excluding reimbursements to the system by those determined to be partially indigent.
- Require the state to pay any excess funding necessary for a system to meet and maintain the commission's minimal standards.
- Require certain assessments to be paid by any indigent criminal defense system that fails to comply with the provisions regarding submitting a plan for the provision of services and paying its local share.
- Require the commission to publish and make available on a website its annual report, budget, and a listing of all expenditures by quarter (with some exceptions).
- Apply both the Freedom of Information Act (with some exceptions for client confidentiality) and the Open Meetings Act to the commission.

- Specify that the bill is not to be construed to overrule, expand, or extend decisions reached by the U.S. or state Supreme Courts regarding the effective assistance of counsel.
- Specify that nothing in the bill is to be construed to override certain Headlee provisions within the state constitution regarding unfunded state mandates on local governments.
- Specify that the failure of an indigent criminal defense system to comply with statutory duties under the bill does not create a cause of action against the government or system, and statutory duties imposed that create a higher standard than that imposed by the U.S. or state constitutions do not create a cause of action against a local governmental unit, indigent criminal defense system, or the state.
- Specify that violations of commission rules that do not constitute ineffective assistance of counsel under the U.S. or state constitutions would not constitute grounds for a conviction to be reversed or a judgment to be modified.

FISCAL IMPACT:

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.