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## BILL ANALYSIS



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House Bill 4529 (Substitute H-3 as passed by the House)  
House Bill 4530 (as passed by the House)  
Sponsor: Representative Tom McMillin  
House Committee: Criminal Justice

**CONTENT**

House Bills 4529 (H-3) and 4530 would create the "Michigan Indigent Defense Commission Act" and amend the Code of Criminal Procedure, respectively, to replace the current system for the appointment of counsel for indigent criminal defendants, and establish a new funding mechanism.

House Bill 4529 (H-3) would do the following in regard to the appointment of counsel:

- Create the Michigan Indigent Defense Commission (MIDC) as an autonomous entity in the judicial branch.
- Require the MIDC to propose minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel to adults throughout the State.
- Require a minimum standard to be approved by the Michigan Supreme Court.
- Require the MIDC to adhere to specific principles concerning defense counsel.
- Require all adults, except those with retained counsel or those who had made an informed waiver of counsel, to be screened for eligibility for indigent criminal defense services.
- Require counsel to be assigned as soon as an indigent adult was determined to be eligible.
- Provide that a defendant would be responsible for applying for indigent defense counsel and establishing his or her indigency and eligibility.
- State that a defendant would be considered indigent if he or she were unable, without substantial financial hardship to himself or herself or to his or her dependents, to obtain competent, qualified legal representation on his or her own.
- Create a rebuttable presumption of substantial financial hardship under certain circumstances.
- Require each indigent criminal defense system to submit to the MIDC a plan, including a cost analysis, for the provision of indigent criminal defense services.
- Require the MIDC to approve or disapprove a plan or cost analysis.
- Establish procedures for the mediation of a dispute between the MIDC and an indigent criminal defense system, and allow the MIDC or a system to bring an action in court under certain circumstances.
- Establish a duty of every local unit of government and every trial court that was part of an indigent criminal defense system to comply with an approved plan.

The bill would do the following in regard to funding:

- Require the MIDC to submit a report to the Governor and the Legislature requesting the appropriation of funds necessary to implement the approved plan for each indigent criminal defense system.
- Require an indigent criminal defense system to maintain at least its local share of the cost of indigent criminal defense services.

- Require the State to pay the amount in excess of a system's share, if necessary to bring the system into compliance with the MIDC's minimum standards; and provide for the funding to be administered through grants.
- Require the Legislature to appropriate funds to pay the additional costs, as well as grants to cover data collection costs.
- Require a system to pay up to 40% of the State's costs if the MIDC provided indigent criminal defense services for the system under a court order.
- Provide for grants to local units of government for the costs of developing and implementing a plan.
- Provide that a system would not have to spend its local share if it could meet the minimum standards for less, but its local share would not be reduced.

House Bill 4530 would require a magistrate to appoint counsel for a person charged with a crime if he or she were eligible for appointed counsel under the proposed Michigan Indigent Defense Commission Act. The bill would delete the current provisions for appointment of counsel, under which the chief judge of the circuit court appoints or directs the magistrate to appoint counsel, and an appointed attorney is paid by the county an amount the judge considers reasonable compensation. The bill is tie-barred to House Bill 4529.

MCL 775.16 (H.B. 4530)

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bills would have an indeterminate, but potentially significant, fiscal impact on State government. The primary potential cost would be the provision of grants to local indigent defense systems. Each local system would be required to submit a plan to the MIDC to demonstrate how that local system would be brought into compliance with the minimum standards established by the MIDC. If the plan were approved, the State then could provide a grant to assist the local system in executing the plan. In most cases, the only fiscal requirement on the local system would be maintenance of effort consistent with the average of the most recent three years. The only exception to this would be if the court ordered the MIDC, in lieu of the local system, to undertake the provision of indigent criminal defense services because of the local system's failure to comply. If that occurred, the local system would be charged a 10% share of the increases in the first year of noncompliance, and the cost sharing would rise in increments of 10% until the local system would have to pay 40% in the fourth or subsequent year (while still maintaining effort at the three-year average). Without knowing the details of the standards that the MIDC would establish, or how local systems would choose to attempt to adapt their systems to meet those standards, it is not possible to provide a more precise estimate of potential costs at this time.

In addition to generating the primary potential cost of providing grants, the bills would:

- Require the State to provide grants to cover the cost of collecting data.
- Create a 15-member commission, whose members would not be paid but would receive reimbursement of actual and reasonable expenses, which would result in indeterminate but relatively minor administrative costs to the State.
- Call for the commission to hire a director and staff.
- Require the State and the local system to pay equal shares of the cost of mediation and/or the cost of an action in circuit court if mediation were not successful.

The bills do not specifically quantify the number of staff. The potential cost of the staff would vary widely depending on the exact number of FTEs that would be required. It would cost at a minimum \$300,000, but would likely be greater.

Date Completed: 6-19-13

Fiscal Analyst: Dan O'Connor

Floor/hb4529

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.