

SUBSTITUTE FOR  
HOUSE BILL NO. 4529

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

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "Michigan indigent defense commission act".

3           Sec. 3. As used in this act:

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

5           (i) An individual 17 years of age or older.

6           (ii) An individual less than 17 years of age at the time of the

1 commission of a felony if any of the following conditions apply:

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

6 (B) The prosecuting attorney designates the case under section  
7 2d(1) of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL  
8 712A.2d, as a case in which the juvenile is to be tried in the same  
9 manner as an adult.

10 (C) During consideration of a request by the prosecuting  
11 attorney under section 2d(2) of chapter XIIIA of the probate code of  
12 1939, 1939 PA 288, MCL 712A.2d, that the court designate the case  
13 as a case in which the juvenile is to be tried in the same manner  
14 as an adult.

15 (D) The prosecuting attorney authorizes the filing of a  
16 complaint and warrant for a specified juvenile violation under  
17 section 1f of chapter IV of the code of criminal procedure, 1927 PA  
18 175, MCL 764.1f.

19 (b) "Effective assistance of counsel" or "effective  
20 representation" means legal representation that is compliant with  
21 standards established by the appellate courts of this state and the  
22 United States supreme court.

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

25 (d) "Indigent criminal defense services" means local legal  
26 defense services provided to a defendant and to which both of the  
27 following conditions apply:

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

5           (ii) The defendant is determined to be indigent under section  
6 11(3).

7           (e) Indigent criminal defense services do not include services  
8 authorized to be provided under the appellate defender act, 1978 PA  
9 620, MCL 780.711 to 780.719.

10           (f) "Indigent criminal defense system" or "system" means  
11 either of the following:

12           (i) The local unit of government that funds a trial court  
13 combined with each and every trial court funded by the local unit  
14 of government.

15           (ii) If a trial court is funded by more than 1 local unit of  
16 government, those local units of government, collectively, combined  
17 with each and every trial court funded by those local units of  
18 government.

19           (g) "Local share" or "share" means an indigent criminal  
20 defense system's average annual expenditure for indigent criminal  
21 defense services in the 3 fiscal years immediately preceding the  
22 creation of the MIDC under this act, excluding money reimbursed to  
23 the system by individuals determined to be partially indigent.

24           (h) "MIDC" or "commission" means the Michigan indigent defense  
25 commission created under section 5.

26           Sec. 5. (1) The Michigan indigent defense commission is  
27 created in the judicial branch of state government.

1           (2) The MIDC shall retain as an autonomous entity all  
2 statutory authority, powers, duties, functions, records, personnel,  
3 property, unexpended balances of appropriations, allocations, and  
4 other functions, including the functions of budgeting, personnel,  
5 locating offices, and other management functions. Any portion of  
6 funds appropriated to the MIDC that is not expended in a state  
7 fiscal year shall not lapse to the general fund but shall be  
8 carried forward in a work project account that is in compliance  
9 with section 451a of the management and budget act, 1984 PA 431,  
10 MCL 18.1451a, for use in the following state fiscal year.

11           (3) The MIDC shall propose minimum standards for the local  
12 delivery of indigent criminal defense services providing effective  
13 assistance of counsel to adults throughout this state. These  
14 minimum standards shall be designed to ensure the provision of  
15 indigent criminal defense services that meet constitutional  
16 requirements for effective assistance of counsel. The commission  
17 shall convene a public hearing before a proposed standard is  
18 submitted to the supreme court. A minimum standard proposed under  
19 this subsection shall be submitted to the supreme court. Opposition  
20 to a proposed minimum standard may be submitted to the supreme  
21 court in a manner prescribed by the supreme court, but a minimum  
22 standard that is approved by the supreme court is not subject to  
23 challenge through the appellate procedures under section 15. A  
24 proposed minimum standard shall be final when it is approved by the  
25 supreme court. If the supreme court neither approves nor  
26 disapproves a proposed minimum standard within 180 days of its  
27 submission, then the standard is not approved.

1           (4) The MIDC shall identify and encourage best practices for  
2 delivering the effective assistance of counsel to indigent  
3 defendants charged with crimes.

4           Sec. 7. (1) The MIDC includes 15 voting members and the ex  
5 officio member described in subsection (2). The 15 voting members  
6 shall be appointed by the governor for terms of 4 years, except as  
7 provided in subsection (4). Subject to subsection (3), the governor  
8 shall appoint members under this subsection as follows:

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

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

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

14           (d) Three members from a list of 9 names submitted by the  
15 criminal defense attorney association of Michigan.

16           (e) One member from a list of 3 names submitted by the  
17 Michigan judges association.

18           (f) One member from a list of 3 names submitted by the  
19 Michigan district judges association.

20           (g) One member from a list of 3 names submitted by the state  
21 bar of Michigan.

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

26           (i) One member from a list of 3 names submitted by the  
27 prosecuting attorney's association of Michigan who is a former

1 county prosecuting attorney or former assistant county prosecuting  
2 attorney.

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

4 (k) One member selected to represent local units of  
5 government.

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

8 (3) Individuals nominated for service on the MIDC as provided  
9 in subsection (1) shall have significant experience in the defense  
10 or prosecution of criminal proceedings or have demonstrated a  
11 strong commitment to providing effective representation in indigent  
12 criminal defense services. Of the members appointed under this  
13 section, the governor shall appoint no fewer than 2 individuals who  
14 are not licensed attorneys. Any individual who receives  
15 compensation from this state or an indigent criminal defense system  
16 for providing prosecution of or representation to indigent adults  
17 in state courts is ineligible to serve as a member of the MIDC. Not  
18 more than 3 judges, whether they are former judges or sitting  
19 judges, shall serve on the MIDC at the same time. The governor may  
20 reject the names submitted under subsection (1) and request  
21 additional names.

22 (4) MIDC members shall hold office until their successors are  
23 appointed. The terms of the members shall be staggered. Initially,  
24 4 members shall be appointed for a term of 4 years each, 4 members  
25 shall be appointed for a term of 3 years each, 4 members shall be  
26 appointed for a term of 2 years each, and 3 members shall be  
27 appointed for a term of 1 year each.

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

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

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

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

23           (9) A majority of the MIDC voting members constitute a quorum  
24 for the transaction of business at a meeting of the MIDC. A  
25 majority of the MIDC voting members are required for official  
26 action of the commission.

27           (10) Confidential case information, including, but not limited

1 to, client information and attorney work product, is exempt from  
2 disclosure under the freedom of information act, 1976 PA 442, MCL  
3 15.231 to 15.246.

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

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

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

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

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

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

24 (ii) Assisting the MIDC in developing, implementing, and  
25 regularly reviewing the MIDC's standards, rules, and procedures,  
26 including, but not limited to, recommending to the MIDC suggested  
27 changes to the criteria for an indigent adult's eligibility for



1 receiving criminal trial defense services under this act.

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

6 (f) Establishing procedures for the mandatory collection of  
7 data concerning the operation of the MIDC, each individual attorney  
8 providing indigent criminal defense services, each indigent  
9 criminal defense system, and the operation of indigent criminal  
10 defense services.

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

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

19 (2) Upon the appropriation of sufficient funds, the MIDC shall  
20 establish minimum standards to carry out the purpose of this act,  
21 and collect data from all indigent criminal defense systems and  
22 individual attorneys providing indigent criminal defense services  
23 to adults. The MIDC shall propose goals for compliance with the  
24 minimum standards established under this act consistent with the  
25 metrics established under this section and appropriations by this  
26 state.

27 (3) In establishing and overseeing the minimum standards,

1 rules, and procedures described in subsection (1), the MIDC shall  
2 emphasize the importance of indigent criminal defense services  
3 provided to juveniles under the age of 17 who are tried in the same  
4 manner as adults or who may be sentenced in the same manner as  
5 adults and to adults with mental impairments.

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

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

13 (6) Commission policies shall be placed in an appropriate  
14 manual, made publicly available on a website, and made available to  
15 all attorneys and professionals providing indigent criminal defense  
16 services, the supreme court, the governor, the senate majority  
17 leader, the speaker of the house of representatives, the senate and  
18 house appropriations committees, and the senate and house fiscal  
19 agencies.

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

22 (a) The delivery of indigent criminal defense services shall  
23 be independent of the judiciary but ensure that the judges of this  
24 state are permitted and encouraged to contribute information and  
25 advice concerning that delivery of indigent criminal defense  
26 services.

27 (b) If the caseload is sufficiently high, indigent criminal

1 defense services may consist of both an indigent criminal defender  
2 office and the active participation of other members of the state  
3 bar.

4 (c) Trial courts shall assure that each criminal defendant is  
5 advised of his or her right to counsel. All adults, except those  
6 appearing with retained counsel or those who have made an informed  
7 waiver of counsel, shall be screened for eligibility under this  
8 act, and counsel shall be assigned as soon as an indigent adult is  
9 determined to be eligible for indigent criminal defense services.

10 (2) The MIDC shall implement minimum standards, rules, and  
11 procedures to guarantee the right of indigent defendants to the  
12 assistance of counsel as provided under amendment VI of the  
13 constitution of the United States and section 20 of article I of  
14 the state constitution of 1963. In establishing minimum standards,  
15 rules, and procedures, the MIDC shall adhere to the following  
16 principles:

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

20 (b) Defense counsel's workload is controlled to permit  
21 effective representation. Economic disincentives or incentives that  
22 impair defense counsel's ability to provide effective  
23 representation shall be avoided. The MIDC may develop workload  
24 controls to enhance defense counsel's ability to provide effective  
25 representation.

26 (c) Defense counsel's ability, training, and experience match  
27 the nature and complexity of the case to which he or she is

1 appointed.

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

7 (e) Defense counsel is required to attend continuing legal  
8 education relevant to counsel's indigent defense clients.

9 (f) Defense counsel is systematically reviewed at the local  
10 level for efficiency and for effective representation according to  
11 MIDC standards.

12 (3) The following requirements apply to the application for,  
13 and appointment of, indigent criminal defense services under this  
14 act:

15 (a) A preliminary inquiry regarding, and the determination of,  
16 the indigency of any defendant shall be made by the court not later  
17 than at the defendant's first appearance in court. The  
18 determination may be reviewed by the court at any other stage of  
19 the proceedings. In determining whether a defendant is entitled to  
20 the appointment of counsel, the court shall consider whether the  
21 defendant is indigent and the extent of his or her ability to pay.  
22 The court may consider such factors as income or funds from  
23 employment or any other source, including personal public  
24 assistance, to which the defendant is entitled, property owned by  
25 the defendant or in which he or she has an economic interest,  
26 outstanding obligations, the number and ages of the defendant's  
27 dependents, employment and job training history, and his or her

1 level of education.

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

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

22 (d) A defendant shall be responsible for applying for indigent  
23 defense counsel and for establishing his or her indigency and  
24 eligibility for appointed counsel under this act. Any oral or  
25 written statements made by the defendant in or for use in the  
26 criminal proceeding and material to the issue of his or her  
27 indigency shall be made under oath or an equivalent affirmation.

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

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

12           (3) No later than 180 days after a standard is approved by the  
13 supreme court, each indigent criminal defense system shall submit a  
14 plan to the MIDC for the provision of indigent criminal defense  
15 services in a manner as determined by the MIDC and shall submit an  
16 annual plan for the following state fiscal year on or before  
17 February 1 of each year. A plan submitted under this subsection  
18 shall specifically address how the minimum standards established by  
19 the MIDC under this act shall be met and shall include a cost  
20 analysis. The standards to be addressed in the annual plan are  
21 those that the supreme court approved not less than 60 days before  
22 the annual plan submission date. This cost analysis shall include a  
23 statement of the funds in excess of the local share, if any,  
24 necessary to allow its system to comply with the MIDC's minimum  
25 standards.

26           (4) The MIDC shall approve or disapprove a plan or cost  
27 analysis, or both a plan and cost analysis, submitted under

1 subsection (3), and shall do so within 60 calendar days of the  
2 submission of the plan and cost analysis. If the MIDC disapproves  
3 the plan, the cost analysis, or both the plan and the cost  
4 analysis, the indigent criminal defense system shall consult with  
5 the MIDC and submit a new plan, a new cost analysis, or both within  
6 30 calendar days of the mailing date of the official notification  
7 of the MIDC's disapproval. If after 3 submissions a compromise is  
8 not reached, the dispute shall be resolved as provided in section  
9 15.

10 (5) 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 requesting the appropriation of funds necessary to  
14 implement the plan for each system approved by the MIDC. The  
15 information used to create this report shall be made available to  
16 the governor, the senate majority leader, the speaker of the house  
17 of representatives, and the appropriations committees of the senate  
18 and house of representatives.

19 (6) Except as provided in subsection (8), an indigent criminal  
20 defense system shall maintain not less than its local share. If the  
21 MIDC determines that funding in excess of the indigent criminal  
22 defense system's share is necessary in order to bring its system  
23 into compliance with the minimum standards established by the MIDC,  
24 that excess funding shall be paid by this state. The legislature  
25 shall appropriate to the MIDC the additional funds necessary for a  
26 system to meet and maintain those minimum standards, which funds  
27 shall be provided to indigent criminal defense systems through

1 grants as described in subsection (7).

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

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

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

17 (10) Within 180 days after receiving funds from the MIDC under  
18 subsection (7), an indigent criminal defense system shall comply  
19 with the terms of the grant in bringing its system into compliance  
20 with the minimum standards established by the MIDC for effective  
21 assistance of counsel.

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

26 (12) The MIDC may apply for and obtain grants from any source  
27 to carry out the purposes of this act. All funds received by MIDC,



1 from any source, are state funds and shall be appropriated as  
2 provided by law.

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

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

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

27       (b) The MIDC shall consider the recommendation of the

1 mediator, if any, and shall approve a final plan or the cost  
2 analysis, or both, in the manner the MIDC considers appropriate  
3 within 30 calendar days, and the indigent criminal defense system  
4 shall implement the plan as approved by the MIDC.

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

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

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

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

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

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

26 (e) The action shall not challenge the validity, legality, or  
27 appropriateness of the minimum standards approved by the supreme

1 court.

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

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

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

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

26 (a) In the first year, 10% of the state's costs.

27 (b) In the second year, 20% of the state's costs.

1 (c) In the third year, 30% of the state's costs.

2 (d) In the fourth year, 40% of the state's costs.

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

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

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

15 (2) A system's duty of compliance with the terms of the plan  
16 as prescribed under subsection (1) is contingent upon receipt of a  
17 grant in the amount contained in the plan and cost analysis  
18 approved by the MIDC.

19 (3) The MIDC may proceed under section 15 if an indigent  
20 criminal defense system breaches its duty of compliance under  
21 subsection (1).

22 Sec. 19. The MIDC shall publish and make available to the  
23 public on a website its annual report, its budget, and a listing of  
24 all expenditures. Publication and availability of the listing of  
25 expenditures shall be on a quarterly basis, except for the annual  
26 report and salary information, which may be published and made  
27 available on an annual basis. As used in this section,

1 "expenditures" means all payments or disbursements of MIDC funds,  
2 received from any source, made by the MIDC.

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

4 (a) The freedom of information act, 1976 PA 442, MCL 15.231 to  
5 15.246, except as provided in section 7(10).

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

7 Sec. 23. (1) Nothing in this act shall be construed to  
8 overrule, expand, or extend, either directly or by analogy, any  
9 decisions reached by the United States supreme court or the supreme  
10 court of this state regarding the effective assistance of counsel.

11 (2) Nothing in this act shall be construed to override section  
12 29 or 30 of article IX of the state constitution of 1963.

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

17 (4) Statutory duties imposed that create a higher standard  
18 than that imposed by the United States constitution or the state  
19 constitution of 1963 do not create a cause of action against a  
20 local unit of government, an indigent criminal defense system, or  
21 this state.

22 (5) Violations of MIDC rules that do not constitute  
23 ineffective assistance of counsel under the United States  
24 constitution or the state constitution of 1963 do not constitute  
25 grounds for a conviction to be reversed or a judgment to be  
26 modified for ineffective assistance of counsel.