

## MICHIGAN INDIGENT DEFENSE REVISIONS

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### House Bill 5985 proposed committee substitute (H-1)

Sponsor: Rep. Rob VerHeulen

Committee: Appropriations

Complete to 5-15-18

Analysis available at  
<http://www.legislature.mi.gov>

### BRIEF SUMMARY:

House Bill 5985 would amend the Michigan Indigent Defense Act (the Act) to do all of the following:

- Revise the Michigan Indigent Defense Commission's (MIDC) powers, duties, and functions; eliminate work project status for unexpended MIDC funds.
- Expand and revise the membership of the MIDC to include additional local representation and representation of the State Budget Office (SBO).
- Allow courts to determine indigence, partial indigence, and amount of partially indigent reimbursement.
- Provide for 20% of partially indigent reimbursements to be received by the State for use towards indigent defense and local indigent criminal defense systems (indigent defense systems).
- Allow for the annual adjustment of local share amounts.
- Allow for approval or disapproval of portions of compliance plans and cost analyses and alter time limitations for review and resubmissions.
- Allow indigent defense systems, under certain circumstances, more than 180 days to comply with standards after receiving funding.
- Provide for increasing or decreasing grant amounts in subsequent years to reflect expenditures made by indigent defense systems.
- Increase the percentage of state costs that indigent defense systems are responsible for, in the event that the MIDC has to provide indigent defense services.
- Create the Michigan Indigent Defense Fund to support the MIDC's responsibilities.
- Change the due date for annual indigent defense system plan submissions from February 1 to October 1.

A more detailed summary of the bill follows below.

The bill would take effect 90 days after it is enacted.

### SUMMARY:

#### MIDC Powers and Duties

Under the bill, the MIDC would continue to operate as an autonomous entity within the Department of Licensing and Regulatory Affairs (LARA), but LARA would provide administrative services to the MIDC. Specifically, the bill would shift the provision of personnel, budget, procurement, and administrative support to LARA, requiring the

department to provide the support and services as requested by the MIDC sufficient to carry out its duties. The bill would eliminate the MIDC's authority to carry forward unexpended funds in a work project for expenditure in a subsequent fiscal year.

The bill would also require the MIDC to identify and implement a performance metrics system to assess the provision of indigent defense services in Michigan relative to national standards and benchmarks. MIDC would have to report annually on the performance metrics by December 15 to the governor, legislature, state supreme court, and state budget director.

The bill would require the MIDC to establish standards for trainers and organizations conducting training and receiving MIDC funds, and would require the MIDC to analyze the quality of said training. The bill would also require the MIDC to serve as a clearinghouse for experts and investigators, if requested by an indigent defense system in its compliance plan. The MIDC presently may hire an executive director, but under the bill would recommend an executive director to LARA for hiring.

### **MIDC Membership**

The bill would expand the number of voting MIDC members from 15 to 18. It would expand representation of local units of government from one to 3 members, with 2 members representing a funding unit of a circuit court from a list of 6 names submitted by the Michigan Association of Counties and one member representing a funding unit of a district court of the third class from a list of names submitted by the Michigan Municipal League. The bill also adds one member from a list of 3 names submitted by the SBO.

### **Determination of Indigence, Partial Indigence and Partially Indigent Reimbursement**

Under the Act, indigent defense systems must determine the indigence of a defendant not later than the defendant's first court appearance. Under the bill, the court would make the determination regarding a defendant's indigence or partial indigence, and if a defendant was determined to be partially indigent, the court would determine the amount a defendant must contribute to his or her defense.

The bill would define "partially indigent" as a criminal defendant who is unable to afford the complete cost of legal representation, but is able to contribute some monetary amount.

The bill would allow the State (LARA) to receive 20% of revenues collected from partially indigent reimbursement, and require that LARA report revenues to the MIDC by October 31 of each year. Revenues received by LARA from this source must be expended in support of indigent defense systems. Indigent defense systems would be allowed to retain the remaining 80% of collected reimbursements, and such collections would not count towards an indigent defense system's local share.

### **Local Share**

Local share is most succinctly described as the funding level for compliance that indigent defense systems must maintain. The bill would increase the local share annually by the lesser of 3% or the increase in the US Consumer Price Index (CPI), if the CPI increased

between November 1 of the current fiscal year and November 1 of the prior fiscal year. This adjustment would begin in Fiscal Year (FY) 2019.

### **Compliance Planning Approval, Disapproval, and Time Frames**

Currently, the MIDC may approve or disapprove of a compliance plan or cost analysis only in its entirety. The bill would allow the MIDC to approve or disapprove of any provision contained within plans or analyses, in addition to the plan or analysis in its entirety. The bill would extend the time the MIDC has to approve or disapprove compliance plans and cost analyses from 60 to 90 calendar days. The period for a resubmission of a disapproved plan or plan portion would be extended from 30 to 60 calendar days. The bill stipulates that approved provisions of indigent defense system plans must not be delayed by disapproved portions and that the MIDC shall not approve cost analyses or portions unless there is a reasonable and direct relation to indigent defense functions.

### **MIDC Compliance Plans Appropriation Report and Local Share Report**

Currently, the Act requires the MIDC to submit to the governor and legislature an appropriation request for funds necessary to implement compliance plans. The bill would require the MIDC to submit the report after it approves all indigent defense system compliance plans. The report must include cost analyses for each approved standard and must be submitted by October 31, 2018. The amount requested would have to equal the total amount required to achieve full compliance.

Additionally, the bill would require the MIDC to submit a report to the governor and legislature by October 31, 2021, recommending the appropriate level of local share expressed in both total dollars and as a percentage of the total cost of compliance for each indigent defense system.

The bill would allow the legislature to fund one or more minimum standards approved by the MIDC; however, the bill provides intent that the legislature will fund all of the minimum standards within three years of the date on which they were adopted.

### **MIDC Grant Requirements**

The Act currently requires indigent defense systems to comply with the terms of a grant from the MIDC within 180 days of receiving funds from the MIDC. This bill would allow more than 180 days to comply with specific items if there is demonstrated need in an indigent defense system's compliance plan. The MIDC could allow a period longer than 180 days for compliance if unforeseeable conditions arise.

The bill would make several changes to the financial aspects of the grant process. The MIDC would have to require the following from indigent defense systems: documentation of system expenditures, the holding of grant funding received from the MIDC in separate funds, and compliance with standards promulgated by the Governmental Accounting Standards Board. The bill would include a provision that grant funding that is distributed but not fully expended in a given fiscal year would decrease the subsequent fiscal year's distribution by a like amount. The bill outlines reporting requirements for unexpended amounts and stipulates that any grant money that has been used for a purpose outside of

the compliance plan must be repaid to the MIDC, or the subsequent grant will be decreased by that amount. In the event that an indigent defense system expends funds in excess of both its local share and the approved grant to meet unexpected needs, the MIDC shall recommend inclusion of these funds in the subsequent year's grant.

### **Reimbursement of State Costs from Indigent Defense Services**

In certain instances, the Act allows a court to order the MIDC to provide indigent criminal defense in place of an indigent defense system. The Act requires the system to reimburse the state at a rate of 10% of the state's costs in the first year, 20% in the second year, 30% in the third year, 40% in the fourth year, and in the fifth or subsequent year not more than the dollar amount calculated in the fourth year. The bill would double the percentages to 20%, 40%, 60%, and 80%, respectively, while retaining the language for the fifth or subsequent years.

### **Creation of the Michigan Indigent Defense Fund**

The bill would create the Michigan Indigent Defense Fund within the State Treasury, with the MIDC serving as the fund's administrator. Money remaining in the fund at the conclusion of the fiscal year would lapse to the General Fund. The bill would allow money from any source to be deposited into the fund. Money could be expended from the fund for the MIDC to carry out its responsibilities under the Michigan Indigent Defense Commission Act.

### **Due Date for Annual Indigent Defense System Plans**

The bill would delay the due date for annual plan submissions by indigent defense systems, from February 1 to October 1. Under the Act, annual plans must address standards approved not less than 60 days before the plan submission date, but the bill would expand that time period to 180 days, so standards approved within 180 days of the submission date of the plan would not be included in the annual plan.

MCL 780.983 et al.

## **FISCAL IMPACT:**

House Bill 5985 would have a significant fiscal impact on both the State and on local units of government. Changes made to the definition of "local share" would also have a significant fiscal impact by potentially decreasing state costs and increasing local costs.

The bill could result in negligible cost increases for the MIDC. The bill would expand the MIDC's responsibilities by: requiring the MIDC to establish standards for trainers and training organizations, potentially requiring the commission to serve as a clearinghouse for experts and investigators, and requiring the MIDC to establish a performance metrics system. These functions would be fulfilled by existing staff and would not lead to any increase in costs. The bill would also expand the commission's voting membership, potentially leading to increased costs from reimbursements for reasonable expenses. In FY 2017, these reimbursement costs totaled approximately \$6,400, so any increase in costs from adding three members would be negligible.

The bill would increase State revenues. The bill would allow the State to receive 20% of reimbursements collected from partially indigent criminal defendants. These fees would be used, along with General Fund appropriations, to provide grants to indigent defense systems to fund their compliance plans. Preliminary data indicates that collections of partially indigent fees will total approximately \$17.8 million annually. Thus, the state would receive approximately \$3.6 million, while indigent defense systems would retain \$14.2 million.

Changes made to the definition of local share would have significant consequences for the division of State and local costs for compliance with minimum standards. According to submissions received by the MIDC, local share for units with approved compliance plans and cost analyses totals approximately \$29.9 million, while local share for units with resubmissions totals \$7.8 million, leading to a total local share of roughly \$37.7 million (excluding three units that did not complete submissions or resubmissions). This amount would be the floor for local spending on compliance, and would increase by the lesser of 3% or the US CPI in each fiscal year that there is an increase in the US CPI.

The bill would reduce state costs for providing services on behalf of indigent defense systems by increasing the percentage of costs that a system must pay. This would lower costs for the state, while increasing costs for indigent defense systems. Since the MIDC has not yet provided these services for indigent defense systems, there is no data to project what the fiscal impact might be.

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