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BILL ANALYSIS



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House Bill 5985 (Substitute H-2 as passed by the House)  
Sponsor: Representative Rob VerHeulen  
House Committee: Appropriations  
Senate Committee: Appropriations

Date Completed: 6-5-18

**CONTENT**

The bill would amend the Michigan Indigent Defense Act to do the following:

- Change the local share formula (which determines the amount of funds an indigent criminal defense system must provide) to require the local share to be increased by the lesser of the annual change in the Consumer Price Index or 3.0%.
- Remove work project status from unspent appropriations for the Michigan Indigent Defense Commission (MIDC).
- Require the MIDC to implement metrics to assess the provision of indigent defense throughout Michigan relative to national standards, and to provide an annual report.
- Remove from the MIDC one member who represents local units of government, and add three members, with one recommended by each of the following: Michigan Association of Counties, Michigan Township Association, and Michigan Municipal League.
- Add one member to the MIDC, chosen by the Governor, from a list of three names submitted by the State Budget Office.
- Require that during a preliminary inquiry into whether a defendant is indigent, a determination be made as to whether the defendant is partially indigent; and if the defendant is partially indigent, require the indigent defense system to determine how much the defendant must contribute to his or her defense.
- Require the MIDC to promulgate objective standards for courts to determine whether a defendant is partially indigent.
- Require the MIDC to establish standards for MIDC-funded training and education, and to measure the quality of that training.
- Allow an indigent criminal defense system to request that the MIDC serve as a clearinghouse for experts and investigators.
- Change the due date for annual indigent defense system plans from February 1 to October 1.
- Require an indigent defense system plan to address all standards approved within 180 days, rather than 90 days, before the plan's due date.
- Allow the MIDC 90 days, rather than 60 days, to approve or disapprove a plan or cost analysis from an indigent defense system; and allow the MIDC to approve part of a plan or cost analysis, even if other portions of the plan or cost analysis were disapproved.
- Require the MIDC to provide a cost analysis with the report for each new minimum standard for standards approved after January 1, 2018; and, by October 31, 2018, to provide a cost analysis for standards approved before January 1, 2018.

- Require that the amount of grant funds requested by the MIDC each year be equal to the total amount required to achieve full compliance as agreed upon by the MIDC and the indigent defense systems.
- Require the MIDC, by October 31, 2021, to submit a report that included a recommendation as to the appropriate level of local share as a total dollar amount and as a percentage of the total cost for each indigent criminal defense system.
- Allow the Legislature to appropriate funds that would apply to less than all of the minimum standards, and express the intent of the Legislature to fund all approved minimum standards within three years of the date each standard was approved.
- Allow an indigent criminal defense system longer than 180 days to comply with a minimum standard if the system demonstrated necessity.
- Require the MIDC to establish financial protocols in administering and overseeing grants, including the following: documentation of expenditures, separation of grant funds from system general funds, and requiring compliance with standards of the Governmental Accounting Standards Board.
- Provide that if an indigent criminal defense system did not fully spend its grant, the grant would be reduced by the unspent amount in the subsequent fiscal year, unless the system was granted an extension for compliance with a particular standard or standards.
- Require that grant funds used for a purpose outside a compliance plan be repaid or deducted from future grant amounts.
- Provide that if an indigent criminal defense systems spent in excess of its local share and grant for costs that were reasonably and directly related to the provision of indigent criminal defense, the MIDC would have to recommend the inclusion of those funds in a subsequent year's grant.
- Require an indigent defense system to seek reimbursement from partially indigent defendants, and to remit 20.0% of those reimbursements to the Department of Licensing and Regulatory Affairs for use in supporting indigent criminal defense systems; and provide that the remaining 80.0% would be retained by the indigent defense system to fund indigent defense, and could not alter the local share calculation.
- Increase the amount an indigent defense system must pay the State if a court orders the MIDC to provide indigent criminal defense services on behalf of a system, by doubling the amounts from 10.0% in the first year, 20.0% in the second, 30.0% in the third, and 40.0% in the fourth and subsequent years, to 20.0% in the first, 40.0% in the second, 60.0% in the third, and 80.0% in the fourth and subsequent years.
- Provide that an indigent criminal defense system's duty of compliance with an approved standard would be contingent upon the receipt of grant funds sufficient to comply with a particular standard or standards, rather than sufficient to comply with all approved standards as currently provided.
- Create the "Michigan Indigent Defense Fund", and allow the MIDC to use the Fund to carry out its duties.

MCL 780.983 et al

### **FISCAL IMPACT**

The bill would have a positive fiscal impact on the State, and a negative fiscal impact on local units of government.

The bill would include an inflationary adjustment for the calculation of an indigent criminal defense system's share of its total cost. Under current law, the local share is calculated as the average of the system's expenditures for fiscal years 2010-11, 2011-12, and 2012-13 and its share will remain at that dollar amount in perpetuity. The bill would adjust that amount each

year by the lesser of the change in the United States Consumer Price Index or 3.0%. Over time, this provision would shift some of the cost inflation of indigent defense services from the State to indigent criminal defense systems.

The bill also would allow the State to receive 20.0% of partially indigent reimbursements that are collected by indigent criminal defense systems from partially indigent defendants. These collections would offset State General Fund revenue in providing grants to indigent criminal defense systems to support their compliance plans. These collections total about \$10.9 million each year, meaning that the State would receive \$2.2 million each year under the bill. Additionally, it is likely that, under the bill, the total amount collected from partially indigent reimbursements would increase, as the bill also contains provisions that would require indigent criminal defense systems to pursue reimbursements, and would require the MIDC to promulgate uniform criteria for classification as a partially indigent defendant.

Finally, the bill would allow the Legislature to appropriate grant funds to implement individual standards rather than funds that are sufficient to implement either all approved standards or none of them. The bill further states the intent of the Legislature to fund all approved standards within three years of their approval. If the Legislature were to use this provision and implement fewer than the total number of approved standards, the State could save a potentially significant amount of money, depending on which and how many standards remained unimplemented.

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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.